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# How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice

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# Introduction: The Access to Justice Crisis and Rule 5.4

It is a shameful irony that the nation with one of the world's highest concentrations of lawyers has done so little to make them accessible to those who need them most. The U.S. ranks just 109 out of 128 countries in access to justice and affordability of civil legal services, below Zambia, Nicaragua, and Afghanistan.[1] Two-thirds of American adults reported having a civil legal problem in the past year, but only one-third of those received any help.[2] The human costs are often staggering, with domestic violence, illness and serious economic hardships among them. Small businesses have significant legal issues as well, and yet 60% of small business owners who have at least one such issue – which they describe as one of the "greatest threats to their business" – do not have a lawyer to assist them.[3] Nor is the problem getting better. Today, nearly 80% of civil cases involve at least one party without an attorney – double the percentage of self-represented litigants in 1980.[4]

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Legal aid and pro bono alone cannot solve the problem. Providing even one hour of attorney time to everyone in the United States with a legal problem would cost around $40 billion, but total expenditures on legal aid (both public and private) are just 3.5% of that amount.[5]

Providing one hour of pro bono per justice problem would require over 200 hours of pro bono work per attorney per year, but the average pro bono hours worked per attorney is only 42.8.[6]

Why hasn't the market offered more solutions to serve individuals and small businesses who can pay something for legal services, but not upwards of $200 per hour? One significant reason – as explained further be-

low – is that regulations on legal service providers limit the ability to create solutions. The American Bar Association's (ABA) Model Rule of Professional Conduct 5.4, Professional Independence of a Lawyer, includes several provisions: "A lawyer or law firm shall not share legal fees with a nonlawyer;"[7] a "lawyer shall not form a partnership with a nonlawyer;"[8] and a lawyer shall not practice law for profit if "a nonlawyer owns any interest therein."[9] The Rule aims to protect the "professional judgment of a lawyer" but is both a poor fit for that task and has negative consequences for the legal services market.

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Judy Perry Martinez, ABA President

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Under this rule, "[l]egal services must be provided by a law firm that is owned, managed, and financed exclusively by lawyers."[10] Yet forbidding outside ownership and investment in legal services providers contributes to the low innovation and high cost of services that characterize the U.S. legal market today. In short, the rule is a "major contributing factor" to America's access to justice problem.[11] Indeed, countries that allow lay investment in or ownership of legal service providers consistently rank ahead of the United States in access to and affordability of legal services.[12] Without the ability to offer equity stakes to business leaders or investors – or to have a diverse, independent board of directors through the corporate form – legal service providers are not able to enlist the best business expertise.

For these reasons, there has long been a consensus among both legal ethics scholars and experts on the legal services market that Rule 5.4 should be repealed. Leaders of the bar are increasingly voicing this view as well. In February 2020, the ABA's House of Delegates passed a resolution calling for "regulatory innovations that have the potential to improve the ac-

cessibility, affordability, and quality of civil legal services."[13] As ABA President Judy Perry Martinez put it, "We need new ideas. We are one-fifth into the 21st century, yet we continue to rely on 20th-century processes, procedures and regulations."[14] The Conference of Chief Justices passed a similar resolution, specifically citing "consideration of alternative business structures" as an area to consider.[15] And the outgoing president of the Legal Services Corporation, James Sandman, has also pointed to regulatory reform as a key priority to help increase collaboration with other professionals and drive access to justice.[16]

## Bans on Outside Investment and Ownership Limit Choice and Services for Consumers

Rule 5.4, which prohibits lawyers from partnering with non-lawyers and prohibits non-lawyers from investing in law firms, harms the legal market in two primary ways. [17] First, prohibiting investment from non-lawyers leaves law firms strapped for capital. Second, it makes it harder for law firms to keep up with modern innovations in business practices. Firms cannot form cost-effective multidisciplinary practices with other service providers, and few have incentive to invest in technology and business processes. Consumers today expect seamless, integrated services, and Rule 5.4 prevents lawyers from meeting the needs of their clientele.

### Legal Service Providers Have Limited Access to Capital

Under the ABA's regulations, private-sector lawyers can only deliver legal services through three kinds of entities: sole proprietorships, legal partnerships, or LLCs.[18] As Gillian Hadfield has pointed out, these first two structures are the most common in law but play a limited role in the modern economy generally, and are much less common even among other professional services firms.[19] For law firms, money comes in as fees, and partners receive profits annually. Because law firms cannot obtain equity investments from non-lawyers, firms' only sources of capital are revenues and loans.[20] Indeed, a part of rule 5.4 has been interpreted to preclude revenue-sharing or profit-sharing arrangements with entities or individuals who are not lawyers. As such, "[a]nxiety over the negative effect that

inadequate capital has on attorneys in private practice has been a constant source of concern for the bar."[21]

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Law firms' financing structures are especially poorly suited to today's workforce. Currently, a firm's capital comes almost entirely from its equity partners, but as lateral movement among firms increases, more and more lawyers "may be reluctant to invest in firms' long-term needs."[22] Because partners must bear all the financial risk, firms are left more vulnerable to economic downturns.[23] As analysts observed during the 2008 recession, "the fact that the only outside source of capital available to law firms was conventional debt put them in an especially vulnerable position."[24] Lawyers are only able to use financial tools that are "primitive" compared to modern advances in finance.[25]

The lack of access to capital also means firms are less likely to invest in efforts that have a long time horizon in which to deliver a return.[26] This has limited law firms' capacity to build the economies of scale needed to provide the level of service now expected of most customer-oriented businesses. "Prohibition of lay investment cuts legal organizations off from the sources of funds that fuel innovation elsewhere in the economy: angel investors, venture capital, private equity, and public capital markets."[27] As a result, law firms lag far behind other industries – including other professional services like accounting, consulting and medicine – in adopting business processes and technology to provide better service at lower cost. As other industries – including law firm clients – undergo "digital transformation" to improve their own operations and services, the legal industry's limited access to investment capital has become increasingly stark and problematic.[28]

## The Legal Profession Is Ill-Equipped to Benefit From Business Expertise

Rule 5.4 prevents law firms from utilizing the best business practices both by inhibiting long-term investment in firm-specific capital like business processes and technology, and by preventing firms from offering equity stakes, or revenue or profit-sharing opportunities, to individuals or organizations with business expertise.

The ban on nonlawyer ownership means lawyers – who receive no training on how best to manage a business during their three years in law school – are expected to run businesses. Private-sector lawyers spend much of their time on business development and administrative tasks, with an average of only 2.5 hours of billable time per 8 hour work day.[29] Allowing non-lawyers to have a larger stake in the business side of the law firm would free up lawyers to focus on their strength of practicing *law*.

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Meanwhile, other professionals with significant business-development expertise cannot obtain equity in law firms, which may deter them from taking otherwise desirable jobs in the legal field. In business, the majority of compensation of most executive pay packages comes in the form of equity, so the ability to offer stock options becomes key to attracting talent.[30] Thus, law firms suffer from a lack of innovation in marketing, finance systems, project management, and more.[31] Indeed, the need for expertise in marketing to consumers is particularly important when seeking to develop a business that provides a "one to many" solution for routine legal matters.

These limitations have prevented real mass-market law firms for consumers from emerging. Jacoby & Meyers, a consumer law firm with offices across the U.S., has repeatedly explained that restrictions on nonlawyer ownership hamper its ability to grow and become such a mass-market law firm. It sued the state bars in New York, New Jersey, and Connecticut to try to overcome these barriers.[32] The firm argued that it cannot upgrade technology, take advantage of scale, or expand its offices because of the prohibition on obtaining outside capital. And it maintained that it could give more clients access to justice if the prohibitions were eliminated.[33] Erin Levine, a family lawyer in California, started a successful, award-winning low-cost divorce platform ("Hello Divorce"), but said that "one thing that has been really difficult for me is the lack of ability for a nonlawyer to have an ownership interest in a law firm. Another is this lack of our ability as a law firm to take any sort of outside investment from a nonlawyer."[34]

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Individuals and small businesses are turning to legal businesses like LegalZoom and Rocket Lawyer that have little to no lawyer ownership at all, and lie largely outside the existing regulatory scheme. And corporate clients are also turning towards entities that are better suited to their needs. A 2019 survey found 63% of traditional law firms were losing business to in-sourcing by law departments in businesses, 14% were losing business to alternative legal providers, and 9% were losing business to the Big 4 accounting firms.[35] Accounting firms can provide similar services to law firms on matters such as tax, estate planning, intellectual property, and litigation support. But since these firms do not have the same restrictions on access to capital, accounting firms "generally offer a wider range of

services, greater economies of scale, and more effective marketing and managerial capacities."[36]

Meanwhile, lawyers continue to rely on a "narrow, outdated business model" – individual lawyers providing service billed by the hour to individual clients – that is isolated from the tools that other industries use to "create incentives to reduce costs, improve quality, and figure out better ways to meet economic demand."[37]

In this respect, law compares unfavorably to medicine, where doctors have considerably more flexibility in the contractual and organizational arrangements that they use to deliver care. Many doctors are employees of health care organizations such as hospitals or HMOs (not owned by physicians), which offers them a salary in exchange for the revenue they bring in. That is a practice that the bar's ethical rules prohibit. Other doctors are part of a group medical practice where they may have an ownership stake, but also have revenue or profit-sharing arrangements with other entities – another structure impermissible in law.

To be sure, the presence of third-party payers such as private insurance or government programs has played a major role in expanding access to medical care. However, the delivery of those services has been achieved through a variety of contractual and organizational structures that share the risks, rewards, and incentives among physicians, people with business and management expertise, and investors.[38] Like lawyers, doctors have ethical obligations to their patients, which may conflict with financial considerations, but the profession has found ways to regulate such conflicts without banning cost-effective service delivery structures.

## Evidence from Other Jurisdictions and Innovative U.S. Companies Indicates Reforms Would Benefit the Public

Many jurisdictions and entities have recognized that changing the prohibition on non-lawyer ownership may create stronger, more stable law firms, as well as free up lawyers to focus on more on legal practice, which

is what they are trained in and interested in doing. Jurisdictions that have eliminated regulations similar to Rule 5.4 (and the innovative U.S. legal businesses that have developed outside the "practice of law") demonstrate that involvement of non-lawyers fuels innovation without compromising legal services. These jurisdictions include England & Wales, Scotland, Australia, Canada, Germany, the Netherlands, and Brussels.[39] To date, no jurisdiction that eliminated its prohibition on non-lawyer ownership has reinstated it.[40]

## Other Countries' Reforms Led to More Choice and Better Services for Consumers

Much of the recent data on outside ownership of law firms comes from England and Wales, which recently implemented the Legal Services Act of 2007 (LSA). The reforms eliminated bans on non-lawyer ownership, and lawyers and non-lawyers can now work together in Alternative Business Structures (ABS). England and Wales began licensing ABS firms in 2011. Precise evaluations of these new structures has been challenging, particularly because England and Wales were significantly impacted by the 2008 global economic crisis, which led to severe cuts to legal aid throughout the 2010s.[41] Regardless, preliminary data indicate that the ABS model has allowed law firms to develop more innovative practices than traditional counterparts:

- ABS firms are more likely to use technology, with 91% of ABS firms using a website to deliver information and services, compared to only 52% of solicitor firms[42]
- ABS firms are 13 to 15% more likely to introduce new legal services[43]
- ABS firms are "particularly likely to have delivered radical service innovations or organizational innovations"[44]

Most importantly, comparative research finds no evidence that ABS models result in adverse effects on consumers. Rather, they allow for increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services.[45] ABS reforms also made it possible for 45% of consumers with family law

needs to pay a fixed fee for services, compared to only 12% of consumers in 2012, which made it easier for individuals to make informed choices among providers.[46] The proportion of family law clients who reported that they received value for their money increased from 50% to 62%. [47]

Examples of the innovative firms and services that have emerged include:

- Z Group, a firm in London that employs architects, accountants and solicitors, and so serves as a "one stop shop" for design planning, architecture, feasibility analysis, tax and legal;
- Parental Choice, which helps parents find a nanny or au pair and also helps them understand their legal obligations as employers; and
- Co-Op Legal Services, operated by a well-established consumer-owned grocery chain that has used its brand and consumer-facing expertise to provide will-writing, family, employment and other consumer legal services at affordable prices.[48]

These innovative practices have not just improved services for consumers; lawyers have benefited as well. They have experienced no loss of employment after the LSA; in fact, job vacancies advertised at law firms increased 48% in 2014.[49] Introducing ABS firms has also alleviated concerns of financial vulnerability: "Extending law firm ownership to include non-lawyers has contributed to the improvement of the financial stability of some law firms through attracting, promoting and retaining people with corporate management skills and encouraging external investment."[50]

Australia offers another example. The country was the first common law jurisdiction to create alternative business structures. In 2001, New South Wales passed legislation permitting legal practices to incorporate, share receipts, and provide services in conjunction with non-lawyer legal practitioners.[51] Much of the impetus came from attorneys who felt that traditional law firm ownership structures were not meeting their needs, or those of consumers.

While the reforms have been less studied in Australia than in England and Wales, most evidence indicates that the reforms were successful. After witnessing New South Wales's reforms in 2001, all Australian jurisdictions have since decided to permit alternative business structures.[52] And almost a third of law firms have taken advantage of the ability to alter their practice structures through incorporation.[53] Removing regulatory barriers has also increased seamless legal services across state lines.[54]

Slater and Gordon, Australia's first publicly traded law firm, has reported that the "consequent capital raising has allowed national expansion and growth that would not otherwise have been possible."[55] The firm used that capital to grow (in just six years) from seven equity partners to a mass-market national firm that serves consumers with a range of legal needs, including help with pensions and disability insurance, workers' compensation, and estate planning.[56] In addition to raising necessary capital, the firm has been able to access business expertise through their independent board and by hiring people from other consumer-facing industries to build efficient processes that have kept prices down while enabling high-quality client experiences.[57]

## Allowing Outside Ownership Would Be Particularly Beneficial in the U.S.

In general, studies from other countries "provide support to the argument that non-lawyer ownership can, and in some circumstances does, lead to new innovation in legal services, larger economies of scale and scope, and new compensation structures."[58] In the U.S., there is reason to believe that non-lawyer ownership could bring even greater benefits to consumers.

First of all, the U.S. legal market is currently more heavily regulated than the U.K. market was before the Legal Services Act. The U.K. market had already undergone significant deregulation since the Thatcher era.[59] Historically, there have also been different kinds of legal professionals and "citizen advice bureaus" in the U.K. to provide services to a broad range of consumers. The U.S. market has always been strictly limited to lawyers,

so reforms would alter the status quo more substantially and with larger benefits.

Moreover, the U.S. legal market is substantially larger and the capital markets "more robust" than the markets in England and Wales or Australia, so the environment is well-suited to scale online legal services that could reach low and middle income Americans.[60] The U.S. has already demonstrated significantly more innovation in the online legal sphere than comparable countries.[61] Given the size, money, and entrepreneurial spirit in the U.S., reforming Rule 5.4 could result in new delivery methods for legal services that no one could have imagined even a few years ago. Indeed in the U.K., innovations in marketing – critical to expanding mass-market legal services – were used by 58% of alternative business structures, as opposed to just 35% of non-ABS organizations and 37% of all solicitors.[62]

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Within the U.S., some legal businesses – which escape Rule 5.4 regulation by offering legal services that do not constitute the "practice of law"[63] – have already demonstrated the innovation that occurs with increased access to capital. These new, mostly online legal services companies have benefited from venture capital funding. It has helped fuel the rapid growth of online legal services companies such as LegalZoom, which offers guided document preparation; Rocket Lawyer, which provides documents for starting businesses; and UpCounsel, which is a business law marketplace. But the scope of what these new businesses can offer is limited by the combination of Rule 5.4 and unauthorized practice of law (UPL) restrictions.[64]

## Ethical Concerns Should Not Preclude Reform

### Lawyers' Professional Judgment Is Unlikely to Be Impaired

Some worry that if multidisciplinary practices and non-lawyer investment were allowed, lawyers' professional judgment would be compromised as they strive to build their bottom line.[65] However, these concerns are unsupported in practice and founded on a questionable premise. This is why we see broad support among legal ethics experts for eliminating Rule 5.4.

In practice, jurisdictions that allow for nonlawyer ownership or partnership do not report increased ethical concerns. For example, the District of Columbia has allowed nonlawyer ownership for more than two decades, and experienced no escalation of related disciplinary violations.[66] Lawyers who have worked in both traditional law firms and firms that allow for partnerships with nonlawyers testified to the ABA House of Delegates that "there were not significant differences in the ethical cultures of the two kinds of organizations."[67] Indeed, in the United Kingdom, the alternative business structures have so far dealt better with complaints and had no more regulatory action taken against them than traditional 100% lawyer-owned practices.[68]

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Furthermore, this critique of nonlawyer ownership implies that lawyers in traditional firms are driven only by what is best for the client. It is naive to argue that lawyers now are immune from competing financial concerns or pressure from nonlawyers that could impair their professional judgment. In-house lawyers and government lawyers, for instance, must please non-lawyer managers to meet business or policy goals.[69] Solo practitioners are under pressure to pay their bills, and lawyers at large

firms are under pressure to meet their hours.[70] Moreover, reliance on borrowing may also put pressure on lawyers' judgment.[71]

Indeed, lawyers are already driven by their desire to maximize their own profits – an interest that is no doubt stronger than any pressure to increase profits for someone else. Law firms are, at their core, businesses, and survival compels finding ways to constrain financial pressures. Moreover, the overwhelming majority of private-sector lawyers work in partnerships whose revenue is distributed right back to lawyer-partners in profit every year – a structure which places the financial motive front and center in lawyers' minds in a way it might not be in other professional services firms. In fact, the key metric by which major law firms are compared is Am Law 100's annual "Profits Per Equity Partner" ranking – a metric that plays a critical role in the market for talent.[72]

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There is, moreover, reason to believe that outside ownership or investment will both help insulate lawyers' judgment from financial pressures as well as insulate business decision-making from lawyers' individual interests. The latter was the effect at Slaters and Gordon, Australia's first publicly traded law firm. Its managing director reported that their corporate structure has the benefit of creating greater separation between the interests of the business, and the personal interests and careers of employees.[73] Similarly, alternative business structures in the U.K. such as Riverview Law – a technology and process-driven legal managed services company – have found that separating ownership from management helps incentivize firm-specific investments that both benefit clients and produce long-term returns.[74] The U.K. and Australian legal experience suggests that allowing the "corporate practice of law" would better align interests for the benefit of the firm and its clients.

## Established Mechanisms Exist for Mitigating Risk

In other common-law jurisdictions that have implemented reforms to allow lawyers and non-lawyers to own businesses together, regulatory systems exist to mitigate ethical concerns. These jurisdictions all use some form of entity-based regulation, meaning that both law firms and lawyers are regulated (e.g., the entity is regulated separately from the authorized legal practitioners who work there, who are regulated as individuals).[75] In short, "since most lawyers now practice in firms, and most firms operate as businesses, ethical regulation of the legal profession can no longer afford to focus only on individual lawyers."[76]

Under this system, the firm – rather than just the individual lawyer – can be sanctioned for violations committed by its employees. A common practice is to require each business to have one legal compliance officer who is responsible for ensuring that the organization meets all ethical and confidentiality requirements. The idea is that "specialized management positions, such as ethics advisor and law firm general counsel, will promote individual accountability by promoting ethical awareness and monitoring within firms."[77]

For example, in England, where lawyers and non-lawyers can now work together in ABS firms, each ABS has a Head of Legal Practice who acts as a compliance officer.[78] While individual lawyers remain subject to traditional disciplinary sanctions, the firm must also report on rule breaches; maintain appropriate systems for governance and compliance; and provide indemnity insurance coverage appropriate for the work they do, among other requirements.[79]

Similarly, incorporated legal practices in Australia must have at least one legal practitioner director who is responsible for managing the legal services provided by the firm and preventing or remedying professional misconduct by employees.[80] Australia uses a proactive, management-based approach to regulation (PMBR), under which Australian oversight officials identify regulatory objectives, and each firm is responsible for de-

signing their own management systems and using a system of self-assessments to ensure compliance.[81] Research in New South Wales showed that the rate of complaints against entities that were subject to management-based regulation was two-thirds lower than the rate for entities that weren't subject to such regulation.[82] Several Canadian regulators are instituting similar approaches.[83]

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This kind of management-based approach to regulation is also catching on in the United States: The Colorado Supreme Court Office of Attorney Regulation Counsel has developed a voluntary self-assessment tool for lawyers to assess their systems for ensuring ethical behavior in their practice, and Illinois has implemented a self-assessment program that is mandatory for some lawyers and available to all.[84] New Mexico is considering similar changes.[85] The evidence from Australia indicates that focusing on proactive efforts to prevent ethical problems before they occur is a more cost effective way to mitigate harm than after-the-fact discipline.

Although most U.S. jurisdictions still only discipline individual lawyers for ethical violations, two jurisdictions– New York and New Jersey – have already laid the groundwork for stronger entity-based regulation, though in the context of exclusively lawyer-owned firms. New Jersey has asserted its authority to discipline entire law firms since 1984.[86] New York similarly extended each law firm's duty to ensure their lawyers comply with disciplinary rules.[87] Although few prosecutions of firms has occurred in either state, the disciplinary structure exists to deter violations under a more permissive approach to lawyer and nonlawyer jointly owned organizations.[88]

# Conclusion

Reforming Rule 5.4 is an opportunity to regulate in a way that benefits both lawyers and consumers. The current rule prohibiting lawyers from jointly investing with non-lawyers discourages profitable business practices, leaving law firms unable to access capital and vulnerable to economic downturns. State bar associations also remain targets for threats of litigation for antitrust claims. And critically, consumers suffer from a lack of access to affordable, easy-to-use legal services. U.S. jurisdictions should follow in the footsteps of other countries and allow lawyer and non-lawyer partnerships to better serve the public and the profession.

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[1] *See* World Justice Project, *Rule of Law Index*, https://www.worldjusticeproject.org/rule-of-law-index/factors/2020/Civil%20Justice/ (last accessed April 6, 2020).

[2] *Id.*

[3] The Legal Needs of Small Business: A Research Study Conducted by Decision Analyst (LegalShield 2013).

[4] *Task Force on Self-Represented Litigants: Final Report*, JUDICIAL COUNCIL OF CALIFORNIA, October 2014.

[5] Gillian Hadfield & Deborah Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191, 1193 (2016)..

[6] *Id.*; Am. Bar Ass'n Standing Comm. on Pro Bono & Pub. Serv., Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers 6 (2013).

[7] MODEL CODE OF PROF'L CONDUCT r. 5.4(a) (AM. BAR ASS'N 1983).

[8] *Id.* at r. 5.4(b).

[9] *Id.* at r. 5.4(d)(1).

[10] Hadfield and Rhode, *supra* note 5, at 1194.

[11] *Id.*

[12] World Justice Project, Rule of Law Index 2020, at 154; https://www.worldjusticeproject.org/rule-of-law-index/factors/2020/Civil%20Justice/ (U.S. at 109th out of 128 countries, with Netherlands 2, Germany 3, Australia 46, and U.K. 79) .

[13] Resolution 115, passed at 2020 Midyear Meeting.

[14] ABA Journal, President's Letter, "Innovation and Access to Justice: We must not squander the future of legal services," Feb-March 2020.

[15] Resolution 2: Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services.

[16] Remarks of James Sandman, Stanford Center on the Legal Profession Panel, *Will Changing Legal Services Regulation Increase Access to Justice?*, at 24:50 (Oct. 31, 2019), available at https://law.stanford.edu/videos/will-changing-legal-services-regulation-increase-access-to-justice/.

[17] Jayne Reardon, *How Reregulation Could Benefit Lawyers*, IAALS (Dec. 5, 2019), https://iaals.du.edu/blog/how-reregulation-could-benefit-lawyers.
[18] *Id.*
[19] GILLIAN HADFIELD, RULES FOR A FLAT WORLD 238 (2017); Gillian Hadfield, *The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law*, 38 INTERNATIONAL REV. OF LAW & ECON. 43, 53-56 (2014) (citing Greenwood and Empson 2003).
[20] Anthony Sebok, *Making Sense of the Fee-Splitting Rule*, Legal Profession (Feb. 27, 2018), https://legalpro.jotwell.com/making-sense-fee-splitting-rule/.
[21] Anthony Sebok, *Selling Attorney's Fees*, 2018 U. ILL. L. REV. 1207, 1209 (2018).
[22] DEBORAH RHODE, THE TROUBLE WITH LAWYERS 100 (2015).
[23] Sebok, *Making Sense, supra* note 20.
[24] Sebok, *Selling Attorney's Fees, supra* note 21, at 1211-12.
[25] *Id.* (citing Gillian Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, STAN. L. REV. 1689, 1726-27 (2008)).
[26] Sebok, *Selling Attorney's Fees, supra* note 21, at 1211.
[27] Rhode, *supra* note 22, at 100.
[28] Mark Cohen, *Law is Lagging Digital Transformation – Why it Matters*, FORBES, Dec. 20, 2018.
[29] Clio, 2019 Legal Trends Report, at 48.
[30] *See Basics of Executive Compensation*, CENTER ON EXECUTIVE COMPENSATION, https://execcomp.org/Basics/Basic/Equity-Compensation (last visited Jan. 15, 2020); Gary McCarthy, *Using Stock Options to Reward and Retain Key Talent*, MCCARTHY WEIDLER (Sept.6, 2017), http://mccarthypc.com/business-planning/using-stock-options-reward-retain-key-talent; David Stack, *How Stock Options Can Help Your Startup Attract and Retain Top Talent*, ENTREPRENEUR (Jan 1, 2016), https://execcomp.org/Basics/Basic/Equity-Compensation.
[31] *See* William Henderson & Rachel Zahorsky, *Paradigm Shift*, 2011 ABA J. 40, 45-47.
[32] *See The Case Against Clones*, ECONOMIST (Feb. 2, 2013), https://www.economist.com/business/2013/02/02/the-case-against-clones; *see also* Nathan Koppel, *Jacoby & Meyers' Newest Fight: Helping Nonlawyers Own Law Firms*, WALL STREET J., May 19, 2011, https://www.wsj.com/articles/SB10001424052748703421204576331531008464712. *See also* Second Amended Complaint for Declaratory and Injunctive Relief, Jacoby & Meyers Law Offices v. Presiding Justices, No. 11-3387 (LAK) (S.D.N.Y. June 21, 2013), 2013 WL 9580965. The lawsuits against New York and Connecticut were ultimately rejected in Jacoby & Meyers, LLP v. Presiding Justices of the First, Second, Third and Fourth Departments, Appellate Division of the Supreme Court of New York, 852 F.3d 178 (2nd Cir. 2017).
[33] Second Amended Complaint for Declaratory and Injunctive Relief, Jacoby & Meyers Law Offices, 2013 WL 9580965; *The Case Against Clones, supra* note 32. See also William Henderson, *The Failed Storefront Revolution and the Inner Guild in All of Us*, LEGAL EVOLUTION, July 29, 2018 (suggesting that the regulations limiting what paraprofessionals can do in providing legal services prevented Jacoby and Meyers from building a sustainable business model).
[34] Lawyers Gone Ethical podcast 34, Ethics Issues in the Development of Innovative Legal Products with Erin Levine, at 8:00.
[35] *Law Firms in Transition 2019: An Altman Weil Flash Survey*, ALTMAN WEIL, http://www.altmanweil.com/LFiT2019/.
[36] Rhode, *supra* note 22, at 95.
[37] Hadfield, RULES FOR A FLAT WORLD, *supra* note 19, at 240.
[38] Hadfield, *The Cost of Law*, *supra* note 19, at 47-50.
[39] James McCauley, *The Future of the Practice of Law: Can Alternative Business Structures for the Legal Profession Improve Access to Legal Services?*, 51 U. RICHMOND L. R. 53, 59 (2016).
[40] *Id.* at 65.

[41] *See* Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEORGETOWN J. OF L. ETHICS 1, 17-19 (2016).
[42] Hadfield & Rhode, *supra* note 5, at 1212-13. To find the latest studies on the impact of the LSA and ABS implementation in England & Wales, visit https://www.legalservicesboard.org.uk/reports and https://www.sra.org.uk/sra/how-we-work/reports/.
[43] *Id.*
[44] Impact Evaluation of SRA's Regulatory Reform Programme, SOLICITORS REGULATION AUTHORITY (Apr. 2018), https://www.sra.org.uk/sra/how-we-work/reports/abs-evaluation/.
[45] *Id.*
[46] Hadfield & Rhode, *supra* note 5, at 1212-13.
[47] *Id.*
[48] Crispin Passmore, submission to CA Bar ATILS, at 11, 20 (Sept. 20, 2019); Hadfield, *The Cost of Law*, *supra* note 19, at 43.
[49] Hadfield & Rhode, *supra* note 5, at 1212-13.
[50] Impact Evaluation, *supra* note 44.
[51] McCauley, *supra* note 39, at 58.
[52] *Id.* at 58-61.
[53] *Id.*
[54] *Id.*
[55] Submission from Slater and Gordon to Judy Perry Martinez, Chair, Commission on the Future of Legal Services (Dec. 29, 2014), available at https://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf.
[56] *See* MITCHELL KOWALSKI, THE GREAT LEGAL REFORMATION: NOTES FROM THE FIELD 4 (2017); SLATER AND GORDON, https://www.slatergordon.com.au/.
[57] Kowalski, *supra* note 56, at 10-14.
[58] Robinson, *supra* note 41, at 44.
[59] *Id.* at 18.
[60] *Id.* at 44.
[61] *Id.*
[62] Innovations in Legal Services: A Report for the Solicitors Regulation Authority and the Legal Services Board 69 (July 2015).
[63] According to some commentators: "What is clear is that wherever you look in the US legal market change has already happened. New ideas have broken through guild like walls and new law companies are meeting the needs of clients of traditional law firms in ways that simply bypass regulators." Crispin Passmore, *Re-Regulating Legal Services in the U.S.*, PASSMORE CONSULTING (Jan. 9, 2020), https://www.passmoreconsulting.co.uk/re-regulating-legal-services-in-the-us.
[64] For a discussion of the challenges legal innovators face, see William Henderson, *Are We Asking the Wrong Questions About Lawyer Regulation?*, TRUTH ON THE MARKET (Sept. 19, 2011), https://truthonthemarket.com/2011/09/19/william-henderson-on-are-we-asking-the-wrong-questions-about-lawyer-regulation/.
[65] See, e.g., New York State Bar Association, Special Committee on the Law Governing Firm Structure and Operation, Preserving the Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers 324 (2000).
[66] Rhode, *supra* note 22, at 99; *see, e.g.*, Catherine Ho, *Can Someone Who Is Not a Lawyer Own Part of a Law Firm? In D.C., Yes.*, WASH. POST. (Apr. 8, 2012), https://www.washingtonpost.com/business/capitalbusiness/can-someone-who-is-not-a-lawyer-own-part-of-a-law-firm-in-dc-yes/2012/04/06/gIQAnrvd4S_story.html.
[67] Rhode, *supra* note 22, at 96.

[68] Crispin Passmore, submission to CA Bar ATILS, at 8 (Sept. 20, 2019).
[69] Rhode, *supra* note 22, at 97.
[70] *Id.* at 99-100; Letter from Thomas Gordon, Executive Director, Responsive Law, to the ABA Commission on Ethics 20/20 Working Group on Alternative Business Structures, May 31, 2011.
[71] *See, e.g.,* Bernard Sharfman, Note, *Modifying Model Rule 5.4 to Allow for Minority Ownership of Law Firms by Nonlawyers*, 13 GEO. J. LEGAL ETHICS 477, 486 (2000) ("Overdependence on bank borrowings may put a severe financial strain on a law firm and its lawyers, putting pressure on their independence of judgment about what is best for the client.").
[72] *The 2019 Global 100: Ranked by Profits Per Equity Partner*, AM. LAWYER (Sept. 24, 2019), https://www.law.com/americanlawyer/2019/09/24/the-2019-global-100-ranked-by-profits-per-equity-partner/; *see also* Kathryn Rubino, *Good News for the Am Law 100 – Profits Per Partner Were Up In 2018*, ABOVE THE LAW (Apr. 24, 2019), https://abovethelaw.com/2019/04/good-news-for-the-am-law-100-profits-per-partner-were-up-in-2018/.
[73] Kowalski, *supra* note 56, at 21.
[74] *Id.* at 51.
[75] Hadfield & Rhode, *supra* note 5, at 1208-09; Jayne Reardon, *Would Entity Regulation Improve Consumer Protection?*, 2Civility Blog, ILL. SUPREME. CT. COMM'N ON PROFESSIONALISM (Feb. 21, 2019), https://www.2civility.org/can-entity-regulation-protect-consumers/.
[76] Christine Parker et al., *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, 37 J. L. & SOCIETY 466, 469 (2010).
[77] Elizabeth Chambliss, *The Nirvana Fallacy in Law Firm Regulation Debate*, 33 FORDHAM URBAN L. J. 101, 104 (2005).
[78] For an in-depth discussion of professional regulation under the LSA, see Andrew Boon, *Professionalism Under the Legal Services Act of 2007*, 17 INT'L J. L. PROF. 195 (2010). All standards and regulations issued by the Solicitors Regulatory Authority (SRA) can be found at https://www.sra.org.uk/solicitors/standards-regulations/. Additionally, the Law Society, an independent professional body for solicitors in England and Wales, issued a guide to entity based regulation for firms and practitioners authorized by the SRA. It is available at https://www.lawsociety.org.uk/support-services/advice/practice-notes/entity-based-regulation/.
[79]See SRA Code of Conduct for Firms, at https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/; SRA Indemnity Insurance Rules, at https://www.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/.
[80] Parker et al, *supra* note 76, at 471.
[81] Gregory Mize, *Law Practice Regulation in the United States & Issues Raised by Cross Board Legal Practice*, National Center for State Courts (Jan. 2018), at 3, available at https://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Web%20Documents/Law-Practice-Regulation-in-the-USA.pdf.
[82] Parker et al, *supra* note 76, at 488.
[83] Mize, *supra* not 81, at 3.
[84] Cecil Morris, *Colorado's New Lawyer Self-Assessment Program*, TRIAL TALK (Dec./Jan. 2018), available at http://www.coloradosupremecourt.com/PDF/AboutUs/PMBR/Morris%20Trial%20Talk%20Colorado%20Lawyer%20Self%20Assessment%20Program.pdf; Supreme Court of Illinois, *Illinois Becomes First State to Adopt Proactive Management-Based Regulation* (January 25, 2017), available at https://courts.illinois.gov/Media/PressRel/2017/012417.pdf.
[85] Reardon, *Would Entity Regulation Improve Consumer Protection?*, *supra* note 75.
[86] N.J. CT. R. 1:20-1(a).
[87] Ted Schneyer, *On Further Reflection: How "Professional Self-Regulation" Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 ARIZ. L. REV. 577, 585 (2011).
[88] Reardon, *Would Entity Regulation Improve Consumer Protection?*, *supra* note 75.