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Much Ado About Nothing: The ABA's Ideas About Admitting Nonlawyers to Law Firm Partnerships; "Alternative Law Practice Structures"

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The American Bar Association's Commission on Ethics 20/20 just released its long awaited "Discussion Paper on Alternative Law Practice Structures." The report immediately brought to mind Judge Posner's recent decision in which he bench slapped a lawyer in a written and illustrated opinion by comparing him to an ostrich for ignoring an obvious case which the court felt controlled in the matter *sub judice.* My take is that the Commission simply ignored facts already on the ground and, more significantly, completely sidestepped the more urgent question, namely whether the

United States would follow the lead of the United Kingdom and permit non lawyer ownership and equity investments in law firms. Our cousins across the pond call this model "Alternative Business Structures" or sometimes the "Tesco" model (the latter based on the ubiquitous retailer of that name).

The essence of the Commission's report, predicated on the notion that lawyers in the United States some current ethical strictures relaxed so that they can effectively compete on the global stage, mandate the following changes which would permit nonlawyers to hold equity in a law firm, subject to the following strictures:

- such law firms would be restricted to providing legal services;

- nonlawyer owners would have to be active in the firm, providing services that support the delivery of legal services by the lawyers (i.e., the firm cannot be a multidisciplinary practice);

- nonlawyer ownership and voting interests would be restricted by a percentage cap sufficient to ensure that lawyers retain control of the firm;

- nonlawyer owners would be required to agree in writing to conduct themselves in a manner consistent with the Rules of Professional Conduct for lawyers; and

- lawyer owners would be responsible for both ensuring that the nonlawyer owners in their firm were of good character and supervising the nonlawyers in regard to compliance with the Rules of Professional Conduct.

These recommendations are, frankly, superfluous and add nothing to the current marketplace. . More significantly, market forces and realities have already pushed the envelope way beyond the Commission's shortsighted vision.

For example, the Commission noted that many proponents argued that in order to attract the highest quality management and support staff that today's legal market demands, law firms should have the opportunity to provide these personnel with an equity kicker. But, the fact is that the market long successfully dealt with this issue by simply paying top quality nonlawyer support personnel partner level compensation and bonuses. Famed comedian Jackie Mason does a great riff on how some people just want to be called partners for bragging rights, but the fact is that as Jerry McGuire said, "just show me the money." And as we well know, law firm partners are nothing more or less than employees at will.

Second, the purported extant strictures limiting the services a law firm can offer to the delivery of legal services have long been ignored and circumvented through the creation of law firm subsidiaries that offer a plethora of services, some not even law related.

Moreover, substantial nonlawyer control currently exists in that many law firms are rather tightly controlled by their lenders. It is often said that Citibank owns more law firms in the world than anybody. And banks can exercise the ultimate control: they can force a law firm to shut its doors.

The final piece of what is to me plain silliness are the peculiar requirements that nonlawyer partners need to be vetted to be assured that they have the character and fitness required for bar admission and their conduct must be monitored by lawyer partners to assure that they are in full compliance with the Rules of Professional Responsibility. Who is going to do this vetting? And should a nonlawyer partner violate one of the Rules, who is going to be subject to discipline? As I said before, top notch professionals just want to be "shown the money" and treated with professionalism and respect. Having a business card that contains the word "partner" is no assurance of financial reward, job security or being treated with respect or dignity.

The tonier topic, is of course private equity investment in law firms. As for that issue, the Commission blithely said

The Commission has ruled out certain forms of nonlawyer ownership that currently exist in other countries. In particular, the Commission rejected: (a) publicly traded law firms, (b) passive, outside nonlawyer investment or ownership in law firms, and (c) multidisciplinary practices (i.e., law firms that offer both legal and non-legal services separately in a single entity).

But whether you are a believer or a doubter concerning the Alternative Business Structures, it is a topic that demands immediate attention and public debate. But as with so much else that Commissions do, it simply kicked the can down the road and agreed to continue to study the issue.

As that can goes rolling down the road beyond any visible horizon, the United Kingdom, bent on the home to the world's great law firms, will take robust advantage of its substantial head start, legal services will be increasingly be provided by nonlawyer owned and unregulated Internet providers of legal services and offshore LPO's will continue to take larger market share, again in an environment where they are not owned by lawyers, not regulated and often under insured.

My expectation is that the next step in the evolution of law firms will largely

continue to evolve and form significant joint ventures with non-traditional providers of legal services.

In one of the next belated iterations of the Commission's discussion papers, the Commission and the bar will arise from its long slumber and look around at a brand new world and perhaps even wonder "how did all of this happen; who was asleep at the switch?"

Jerry Kowalski, who provides consulting services to law firms, is also a dynamic (and often humorous) speaker on topics of interest to the profession and can be reached at jkowalski@kowalskiassociates.com