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May 6, 2016

Ms. Katy Englehart
American Bar Association
Office of the President
321 N. Clark Street
Chicago, IL 60610

Re: Issues Paper Regarding Alternative Business Structures

TRUSTEES 2016

John F. Gillick
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Dear Ms. Englehart:

The Middlesex County (New Jersey) Bar Association (hereinafter referenced as “MCBA”) has learned that the ABA Commission on the Future of Legal Services is seeking feedback as to whether “Alternative Business Structures” should be promoted by the ABA. The MCBA opposes any initiative for the non-lawyer ownership of law firms as described in the Issues Paper.

TRUSTEES 2017

Andrew Carey
Risa M. Chalfin
Patrick Heller
Edward Testino
Kimberly Yonta

The ABA was founded with the mission to “serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.” Yet its consideration of concepts such as Alternative Business Structures and the provision of legal services to the public directly by non-lawyers is squarely and unquestionably counter to that mission. A profession is substantively different from corporate interests. It is difficult to imagine how such proposals serve the interests of the profession or the public. These concepts undermine the very goal of our Rules of Professional Conduct: that the public receive high quality legal advice from lawyers without any compromise to their professional judgment. The MCBA is deeply concerned that the ABA’s opening of membership to corporate sponsors has undermined its Mission and goals. We are deeply concerned that the ABA may well pass a recommendation for non-lawyer ownership of law firms. Accordingly, the MCBA is still going to lay out the clear case against it.

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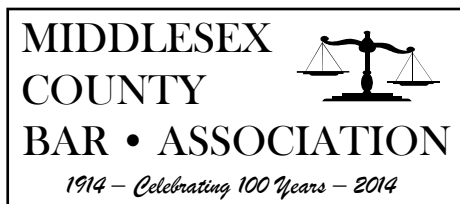
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Recent developments in the law and the profession have affected both the New Jersey public’s access to the courts and the ability of attorneys to successfully operate their practices. Legislative initiatives as varied as the tort threshold and the TILA RESPA Integrated Disclosure (TRID) requirements are two such examples. The emergence of large marketing corporations such as LegalZoom, RocketLawyer and Avvo have created a treacherous playing field tilted against the small and medium sized law firms that make up the majority of our profession. It is clear that their goal is to develop a massive stream of revenue for themselves through the sharing of legal fees



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with lawyers. Fee sharing with non-lawyers is unethical and illegal, yet this is exactly what Rocket Lawyer, LegalZoom and Avvo are attempting to do or are doing. If the ABA is accepting money from some of these groups, in the form of sponsorships, the ABA's duty to the profession may have been compromised. Furthermore, these businesses are saturating television, radio and the internet with marketing and advertising with which sole practitioners and small law firms cannot compete. The ABA – the nation's supposed representative of the legal profession – adds insult to injury by then promoting the idea that Limited Licensed Legal Technicians (LLLTs) and other unqualified non-attorney para-professionals should engage in the provision of legal services directly to the public without supervision, to the palpable detriment of practicing lawyers and the public.

While purporting to advance a balanced view, the Issues Paper subtly advocates the ownership of law firms by non-lawyers, i.e. business corporations. When attorneys are reduced to mere labor for powerful corporate supervisors, the high standards of this profession will be diminished. Non-lawyer investment in law firms will make profit paramount while crushing the independence, initiative, pro bono commitments and charitable work that have been the hallmarks of our profession for centuries. Lawyers with their own practices – and not corporations – developed our Constitution and Bill of Rights. A corporate model of the practice of law undermines the ideals that our profession is built upon and which have guided us from the beginning.

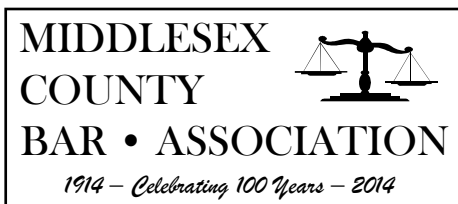
There is a very good reason that, in Washington, DC, the only U.S. jurisdiction which has experimented with an ABS-type approach¹, that approach has failed. The adherence to strong ethical principles in the other jurisdictions where D.C. lawyers are licensed would not permit it.

To rely on experience in such jurisdictions as Australia, Wales and Singapore is grossly misplaced. In reviewing the Australian experience, was any attention paid to the Australia and New Zealand Banking Group (ANZ) scandal? In March 2016, the Australian Securities and Investments Commission filed action against ANZ, alleging manipulation of benchmark interest rates.² Is this where the American legal system should be headed? Have we already forgotten the lessons we should have learned from Enron, Tyco, WorldCom, and particularly Arthur Anderson in our own country?

As to multidisciplinary practice, it is the independence of the professionals that ensures that the advice a client gets is sound. Lawyers should give independent legal advice and accountants should give independent

¹ Washington State is improperly cited on page 4 of the Issues Paper in support of ABS. Washington State is experimenting with the para-professional LLLT program, and permitting these para-professionals to own minority interests. This is a far cry from corporate ownership or multi-disciplinary practice. In addition, this is a recent experiment, which may or may not succeed.

² <http://download.asic.gov.au/media/3563864/originating-process-asicvanz.pdf>.



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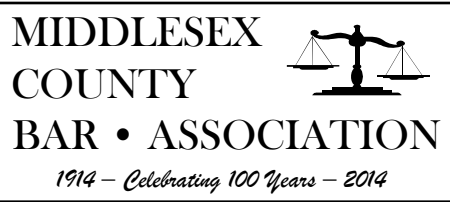
accounting advice. Having the two professions operating under the same corporate roof raises issues of independence, ultimate responsibility for advice and whether the client's best interests are being served. The involvement of non-attorneys in the formulation of legal solutions to a client's problems opens the door for the client's interest being subjugated to the profit interest of the multi-disciplinary organization. Again, can we ignore the Arthur Anderson scandal and the collapse of Lehman Brothers only a few short years ago? Should the remaining Big Four accounting firms be permitted to swallow up the biggest law firms in America and with that, their legal independence? If anything, the ABA should not be looking to emulate the corruption that exists in the Australian corporate world, but to offer real solutions to the corporate greed that has so affected our economy. To have legal services delivered by large corporate entities with the drive for profits setting the lawyer's goals, is absolutely not the right direction. The clients, the public and the lawyers undoubtedly will be the losers.

Law firms do not need outside investment. We work hard and are succeeding through our planning and perseverance. Moreover, attorneys already collaborate with other professionals such as accountants, physicians and legal experts every day, and it has been unnecessary for those non-lawyers to own a part of our practices.

The Issues Paper cites (page 13) the U.S. experience with in-house counsel. It has been precisely the professional independence of American lawyers and adherence to a strong code of professional ethics that has allowed in-house counsel to avoid being manipulated by management in a way that would compromise their ability to adhere fully to the spirit and letter of their ethical obligations. If non-lawyer ownership of law firms is ever implemented, this conflict will be amplified many thousands of times, every day and in every office. The Rules of Professional Conduct would become meaningless and empty.

It appears that ABA is choosing to disregard a core principle of its mission statement: serving as the national representative of the legal profession. The ABA's very existence is founded on representing a profession, not corporate sponsors. The ABA should not even consider serving as the agent for venture capitalists and non-lawyers that are seeking to profit from the public at any cost. The American legal system differs substantively from that of Australia, England, and Wales. Indeed it is unique in the world. Our justice system has done much to make America great. It is that justice system that the ABA has pledged, in its mission statement, to defend.

The MCBA strongly supports increased access to justice and has acted on this priority as outlined in our prior letter regarding the LLLT proposal. We support the creation of opportunities for unemployed and



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underemployed lawyers to assist in bridging the justice gap, but we will not support the selling out of the legal profession to corporate interests.

The MCBA views the implementation of Alternative Business Structures and similar initiatives as a clear and present danger to the legal profession and to the public. We urge the ABA to review its mission as it relates to the positions advocated in the Issues Paper and come to its senses. It is our future AND your future that is at stake.

Thank you for your attention to and consideration of our comments.

Respectfully,

Craig M. Aronow

CRAIG M. ARONOW, ESQ.
President
Middlesex County Bar Association

cc: Miles Winder, Esq., President, New Jersey State Bar Association
All New Jersey Delegates to the American Bar Association
All New Jersey County Bar Associations

CMA/jpc