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PERSPECTIVE

## Could law firms run by VC's and big corps become reality?

By **Bradley Wallace**

In recent years, the decades-long rule barring nonlawyers from having an ownership stake in law firms has been reversed in Arizona and Utah. With the State Bar of California's board of trustees recently meeting on Sept. 23 to adopt and submit the final Paraprofessionals Working Group report to a 110-day public comment period before the board's final vote on the proposal in January, California is poised to be next, raising serious concerns among the legal community.

At the same time, the California State Bar has also established the Task Force on Access Through Innovation of Legal Services, which proposes the creation of a regulatory sandbox that will open the doors for venture capitalists and big corporations to have ownership in law firms purportedly because the ethical rules requiring lawyer ownership of law firms "limits both the opportunity and incentive for nonlegal entrepreneurs to enter the legal market." The implications of these changes are so enormous and alarming, they would create a sea change in the economic model of law firm ownership, and not for the better.

Allowing venture capitalists and big corporations to own law firms will destroy the integrity of the current legal business model system. Law firms are a unique business model compared to

other businesses because lawyers have strict ethical and fiduciary duties to their clients. Lawyers make decisions in the best interest of their clients, and there are times when these decisions are not necessarily in the best financial interest for the law firm's bottom line, but the lawyers' ethical duties and fiduciary duties always override. If a corporate entity is allowed to own up to a 49% interest in a law firm, as is being proposed, the corporation's duties to shareholders or investors and maximizing profits could clearly override the lawyer's duty to the client. At a minimum, it would create an actual conflict of interest that would likely preclude any further representation by the attorney. In a very negative way, the possibilities are endless.

Behind this current push for the potential change in California's regulatory scheme overseeing law firm management is the State Bar's assertion that allowing for nonlawyer ownership of law firms will increase access to justice. According to the Bar's 2019 California Justice Gap Study Executive Report, there are critical access-to-justice issues because many respondents reported they were unable to get legal assistance for various issues. Unfortunately, the survey did little to inquire on why, not properly investigating whether respondents' failure to obtain legal representation was due to their case being rejected due to lack of merit, or whether respondents made any effort to seek

legal advice for their perceived legal issue in the first instance. The report is selective in the data it proffers and in turn creates an appearance of a justice gap wider than actually exists.

The real questions are: Who does this ultimately benefit, and why is the State Bar going in this direction so aggressively? While the State Bar purports to remedy an access to justice issue, it appears clear that corporate interests are really driving this initiative. It is no wonder than Consumer Attorneys Association of Los Angeles, Consumer Attorneys of California, California Employment Lawyers Association, the Los Angeles County Bar Association and nearly all California legal-aid organizations have publicly opposed the State Bar's proposal.

Rather than worrying about whether they can incentivize "nonlegal entrepreneurs to enter the legal market," the State Bar should be focusing on critically needed support to legal aid clinics, court-sponsored self-help and pro-bono programs. Instead of seeking to introduce an entirely new category of paraprofessionals who are not required to be supervised by attorneys or held to the same ethical or professional standards, establishing a program that would have very little proposed oversight or enforcement mechanisms to protect people, the State Bar should be focused on regulating the more than 190,000 licensed attorneys on active status and actively practicing law already.

After all, the State Bar's proposals to allow nonattorneys, and even corporations, to own up to 49% of a law firm and effectively be able to wield a controlling interest in the ownership of a law firm (especially in situations where the remaining 51% is divided amongst multiple attorney partners) comes at a time where several high-profile lawyers have hit the headlines for corruption, deceit, theft of client funds, and more.

The introduction of nonattorney ownership proposes to set up a newly created and separate regulatory and enforcement scheme when the State Bar

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should really be focusing on effectively enforcing the system that is already set up to regulate lawyers. Instead of opening ownership to a new and likely unregulated group of nonlawyers and corporate interest, the State Bar should bolster its enforcement and investigation efforts on attorney wrongdoers, like Tom Girardi who had multiple and repeated disciplinary complaints made against him over the course of decades without any repercussions from the State Bar. Now, in addition to ignoring attorney misconduct, we run the very real risk of al-

lowing nonattorneys and VCs and corporations, held to different rules of professional conduct, to further deceive and take advantage of the vulnerable and disenfranchised.

There is no access to justice issue as it pertains to civil consumer contingency practice, which constitutes more than 40% of unlimited jurisdiction superior court cases. Having significant experience practicing in the area of plaintiff consumer contingency practice for my entire career, and currently owning a firm in this extremely competitive industry, I can attest

first hand to the fact that when it comes to someone suffering damages in a personal injury or employment matter due to the negligence of another, there is no access to justice issue whatsoever. Just look at the billboards around town or the millions of dollars being spent each month on internet marketing. In the world of civil contingency practice, if someone has a valid case, they can find a lawyer.

In truth, the State Bar's plan is quite reckless when there has been no discussion or real focus on increased enforcement of the current attorney regulatory

scheme as an absolute starting point. Beyond that, the State Bar is using access to justice to introduce a nonattorney ownership scheme that will negatively impact the legal space beyond what we can truly contemplate or anticipate at this juncture. It ignores the real issues that are going on, is dangerous and unnecessary, and fails to address the much needed support the legal industry needs with enforcement of attorney misconduct and financial and resource support for legal aid, court-sponsored self-help and pro-bono programs. ■