

Comments on: **Alternative Business Structures**

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Comments to the
**ABA Commission on
Ethics 20/20 Working
Group on Alternative
Business Structures**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Working Group for the opportunity to present its comments on its Issue Paper on Alternative Business Structures. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

On behalf of consumers who would benefit from alternative business structures for law firms, we urge the Working Group to recommend changes to the Model Rules of Professional Conduct that would expand the options available to consumers seeking legal services. Consumers already benefit from innovations such as unbundled legal services and online legal services that were unthinkable a decade or two ago. Allowing nonlawyers to partner with lawyers would benefit consumers by bringing greater business expertise and innovation to the profession.

Although the models currently under review by the Working Group might allow some new services to develop, their impact on consumers would be minimal.

The most expansive option under consideration would allow multidisciplinary practices to offer both legal and non-legal services. Although this might benefit large corporations seeking a combination of financial and legal assistance, the model offers little to the average person or small business. Moreover, although there might be some benefits from arrangements in areas like family law, where a collaborative practice could offer legal, financial planning, and mental-health services, the benefit to the average consumer, who can barely afford to hire one professional, is far from certain. Such consumers are more likely to benefit from greater innovation in the delivery of legal services than in mere business integration. For such innovation to occur, the profession must allow outside investment.

Therefore, while we recognize that the Working Group is only seeking feedback with respect to three of the options it enumerated in its issue paper, we would be remiss if we did not strongly urge it

to consider recommending the Australian model and allow passive investment in law firms.

Entrepreneurship brings innovation to markets, but without outside investment entrepreneurship is stifled.

New models for providing legal services have been slow to develop because of the requirement that capital for innovation come only from lawyers. There are numerous lawyers and non-lawyers who have ideas for improving the way legal services are delivered but lack access to sufficient capital to implement them. Without outside investment, Henry Ford would have been limited to producing a few Model Ts and FedEx would be operating a mom-and-pop delivery service out of Memphis.

Concerns about financial pressure and the welfare of clients are not unique to firms with outside investors. Sole practitioners are under pressure to pay their bills and lawyers at large firms are under pressure to make their hours. In the case of firms with outside investors, the Australian model protects professional independence by requiring that such firms have a Legal Practitioner Director who is responsible and liable for any violations of lawyers' ethical duties.

In the long term, the American legal profession will have to find a way to accommodate outside investment models because, as the Working Group has observed, these models "are in place in the global services marketplace in which U.S. lawyers and firms engage." Furthermore, if global competition does not force the industry to change, the courts themselves might. Earlier this month, Jacoby & Meyers sued several state presiding justices on constitutional grounds for the right to employ outside capital. Rather than being exposed to such uncertain or haphazard development, it would be better for the profession to lead change and ensure that clients enjoy the highest protections.