

US Law Week

Tech-Friendly Legal Services Get Lift on Ownership Rules (1)

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- Investments must be passive, opinion says
 - Attorneys must watch for conflicts when investing, ABA says
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The American Bar Association delivered a boost to the growing non-traditional legal services sector by blessing passive attorney investment in law firms that aren't fully owned by lawyers, under certain circumstances.

By confirming that such investments don't run afoul of legal ethics rules, an ABA opinion released Wednesday could increase chances that so-called alternative business structures will be able to find surer footing as standards evolve on how to regulate them.

The long-awaited opinion comes as consumer-focused businesses like the website LegalZoom aim to expand their operations amid a push and pull between law firm traditionalists, known for resisting change, and those backing a more tech-friendly legal services sector they say is the future. A growing number of states are seeking to loosen their rules to promote increased access to legal services while maintaining the professional independence of attorneys.

The opinion is a "practical acknowledgment" of the reality of alternative business structures, or ABS, in the U.S., said Zack DeMeola of the Institute for the Advancement of the American Legal System, which argues for changes to fix legal system flaws. The ABA opinion follows a similar view issued last year by the New York City Bar, he said.

"It's an acknowledgment that there is a momentum towards reforms allowing for entity regulation ABS models that will likely spread to more than just Arizona and Utah," DeMeola said in a written statement. "The genie is out of the bottle, and it is not going back in."

Ownership Interest

Attorneys already are allowed to make investments that are unrelated to their practice. "For instance, a lawyer may have an ownership interest in a restaurant, be a partner in a consulting business, invest in a mutual fund, or buy stock in a publicly traded company," the opinion said.

Utah, Arizona, and the District of Columbia allow different types of nontraditional legal services business structures, and a number of others, including California, North Carolina, Florida, and Illinois, are considering similar changes.

The opinion says that lawyers licensed in jurisdictions that haven't modified their ethics rules to allow these arrangements can nevertheless passively invest in them, as long as they're cognizant of potential conflicts of interest.

A passive investment interest "means that a lawyer contributes money to an ABS with the goal of receiving a monetary return on that investment," the opinion said.

However, lawyers can't practice through the ABS, have a managerial role, or be involved in the firm's daily operations, the opinion said. The businesses also can't provide access to client information without their informed consent.

The opinion is a "baby step at best" toward less regulation of the legal profession, said Michele DeStefano, a professor at the University of Miami School of Law.

Lawyers are already allowed to passively invest in businesses that are owned by people who do not practice law, DeStefano said, but it's nevertheless a positive development.

"ABSs have the potential to enhance diversity and innovation in the law marketplace in many ways and the result will be better client experiences, enhanced and more holistic service, and increased access to justice," DeStefano said.

No Conflicts

In addition to making sure lawyer-investors are not identified as being associated with the business in a legal capacity, attorneys also must ensure there are no conflicts of interests with their current clients, the opinion said.

Under ABA model rule 1.7, an investment in the ABS could create a significant risk that attorney representation of a business, for instance, would be "materially limited" by the investment, it said.

In such a scenario, attorneys can't invest unless they believe it will be possible to competently represent clients and that clients give written, informed consent, the ABA said.

The ABA has previously promoted less restrictive legal service ownership models as ways to promote access to justice.

At its midyear meeting in February of 2020, the group's House of Delegates passed a resolution that encourages states to weigh "innovative approaches" that might increase access to legal services, and to collect data to see if the new approaches are working.

The opinion is ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 499, 9/8/21.

(This version includes new comment from Zack DeMeola and Michele DeStefano.)

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Documents

Opinion

[Lawyers' Manual on Professional Conduct – Conflicts of Interest](#)

[ABA Model Rule 1.6](#)

[ABA Model Rule 1.7](#)

[ABA Model Rule 1.8](#)

[ABA Model Rule 5.4](#)

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