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Future Of Florida 'Legal Lab' Proposal In Jeopardy

By [Madison Arnold](#) | Dec 17, 2021, 7:01 PM EST ·

A so-called "legal lab" that would allow testing of experimental legal concepts in the Florida legal industry, such as allowing for the creation of new entities that offer both legal and nonlegal services, is facing a difficult path ahead after Florida Bar leadership shot down the proposal earlier this month.

After rejecting several individual proposals recommended as part of the would-be legal lab, including allowing the sharing of fees with nonlawyers or allowing nonlawyer ownership of law firms, the Florida Bar Board of Governors voted Dec. 3 not to endorse the concept of a legal lab in its entirety, citing concerns about potential violations of state ethics rules.

A final decision on whether to allow the proposal to move forward ultimately rests with the [Florida Supreme Court](#), and members of the special committee backing the plan say they're hoping to be given time to more fully flesh out their ideas.

"I think our report spelled out that we wanted to really promote data-driven decision-making, and we thought the lab was the safest environment to do that," said John Stewart, who served as chair of the special committee.

The proposed legal lab would act as a space to collect data on new legal concepts that could potentially improve access to justice in the state and would be governed by a commission appointed by the Florida Supreme Court.

Stewart said, however, that he thought the board's decision not to support the concept of a legal lab was premature because the special committee was only asking the Supreme Court for six more months to finalize the details of the proposal.

He said legal labs would be a safe way to make progress, collect data and ensure that the state is not making rule changes based on just fear or gut feelings.

"[It would] allow some of these ideas to be permitted, limited in scope, limited [in] time, in a controlled environment, and if they appeared to be successful, then maybe they should continue or should grow. And if they were not being successful then they should certainly be stopped," Stewart said.

[The Florida Bar](#) declined to make any of the governors available for an interview about the legal lab concept.

"The board will be putting together their recommendations and comments and providing that to the court later this month," Florida Bar spokeswoman Jennifer Krell Davis told Law360 Pulse in an email.

In rejecting the proposal for the legal lab, which are sometimes referred to as sandboxes, the Board of Governors raised concerns that it would be allowed to operate outside of bar rules that apply to every other lawyer in the state.

Another concern is that some of the concepts could cause lawyers to lose their independence, which could happen when a lawyer shared fees with nonlawyers, said Michele DeStefano, a professor at the University of Miami School of Law and founder of the nonprofit LawWithoutWalls, which helps practicing lawyers and law students learn skills such as cultural competency and self-awareness.

"So they won't be making independent decisions as a lawyer would, but instead, they might be influenced by other factors, other people, other things, and lose that independence," DeStefano said.

However, she noted that there are multiple layers of professional integrity rules from the Florida Bar that would not go away if, for example, an attorney shared fees or firm ownership stakes with a nonattorney.

DeStefano compared it to the game of Jenga, where people often think if you take one ethical rule out, the rest will fall apart.

"As long as we keep our professional integrity rules intact, I don't see them all coming tumbling down," she said.

Any negative effect on the legal community is something Stewart and the special committee say they don't want.

"Nobody wants to do anything that would be detrimental to the consumers or to the profession, and we felt that the lab provided that safety net so that some of these ideas could be tested in a limited, controlled environment and data could be collected," Stewart said.

DeStefano said the legal lab concept could be a tool to look at a client's problems holistically. For example, if nonattorney ownership or fee sharing were allowed, legal service providers could partner with other professionals to help a resolve a problem, such as a divorce.

People seeking legal help with a divorce may also need help with child custody issues, child care, remortgaging their homes, finance and creating a will. A legal lab or sandbox could allow for a law firm to join with other consultancies to help with those other client challenges, DeStefano said.

"I'm a big believer in multidisciplinary sandboxes that are piloting new ways to deliver legal services, both traditional and nontraditional legal services and holistically because, let's face it: Are there any problems that are solely law problems today?" DeStefano said.

Since creating a legal lab may be difficult for the special committee, DeStefano suggested the best way to make progress could be by seeking certain small changes to Florida Bar rules first.

However, if a legal lab were to be implemented, it could help provide the proof that any potential bar rule change or new program could benefit the legal community before being applied across the board.

"It's a little bit of a chicken [or the] egg. I don't know how the committee gets something through if they're going to need proof before it happens. It's very typical of the lawyer's mindset, right? You go first and then, if it works, we'll follow," DeStefano said.

Stewart, who is a former president of the Board of Governors, said he thought the Florida Supreme Court would likely take up the legal lab issue during the first quarter of next year. But exactly what the court will do is still a mystery.

"Our concept of a legal lab was there's nothing that you can do that you can't undo, right? Part of the understanding is that people entering the lab are testing their platforms or their programs

or their concepts or their ideas with permission, but they have to provide data to do so. Not everybody, by the way, that has an idea is going to get approved," Stewart said.

--Editing by Rich Mills.

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Michele DeStefano

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