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ABA Commission on Ethics 20/20
321 N. Clark Street
Chicago, IL 60654-7598

Comments of Professor Thomas D. Morgan on the Discussion Paper on Alternative Law Practice Structures

I appreciate the Commission's invitation to comment on your proposed revisions to ABA Model Rule 5.4. First, I thank and congratulate the Commission for the work you have done on a wide variety of issues relating to technology and the global nature of law practice. I know from experience how much effort goes into developing facts and formulating proposals such as yours. Each of the comments that follows, even if critical, is made in the context of that appreciation.

One of the interpretations of your Commission's "20/20" name has been that you have made a commitment to see the reality facing lawyers clearly and without distortion. I expect that many of the comments you receive about your ALPS proposal will suggest you have departed too much from traditional view of a law firm as owned and operated exclusively by licensed lawyers. My comments say just the opposite. I believe you have been too timid in your description of what is developing in what might be called the "institutional practice of law."

I. The Institutional Practice of Law Has Arrived and Is Not Going to Go Away

Up to now, the ABA and lawyer regulators have tended to view law practice as something done by individual lawyers, not organizations. As the Connecticut Supreme Court put it: "The practice of law is open only to individuals proved to the satisfaction of the court to possess sufficient general knowledge and adequate special qualifications as to learning in the law and to be of good moral character. ... Only a human being can conform to these exacting requirements." 1

Yet that is too simple today. Few lawyers now act alone when they represent a client. Most act as members of teams, often only some of whose members are lawyers. We may call some of the non-lawyers "paralegals" to try to retain the illusion that the lawyers are the only

1State Bar Ass'n v. Connecticut Bank & Trust Co., 140 A.2d 863, 870 (Conn. 1958).
ones exercising judgment, but some of the non-lawyers may be nurses, economists, or financial planners who would be independent professionals in any other context.\textsuperscript{2}

What I call the new institutional law practice of law, then, is the multi-person provision of legal services through organizations ranging from traditional law firms, to corporate legal departments, to legal aid offices, to prosecutorial and other government agencies, to entities that develop technology designed to simplify client self-representation. The trend toward such organizational delivery of legal services is almost certain to continue, so I respectfully submit that the question before your Commission should be what justifies regulation of such organizations’ composition and function and why.

There are several reasons why institutional law practice has grown and is here to stay.

First, law has become far more complex in recent years. Even small town lawyers face issues with multistate and even international dimensions. Business clients send employees all over the country and the world. Those employees create family, tax, and other financial issues that were largely unknown to previous lawyer generations. Even the ablest lawyers cannot be expert in all law everywhere, so the scope of an individual lawyer's practice field has inevitably narrowed. A lawyer who tries to be a solo practitioner focusing on local subjects that he or she studied for the bar exam will in most cases neither serve clients well nor retain clients long.

Second, in a world where lawyers must develop a field of expertise in which they can stand out as special, a lawyer will do well only so long as his or her expertise is widely needed. If client needs change, able lawyers in declining fields will face problems. Private law firms are organized in significant part to diversify the economic risk lawyers face at different stages of a business cycle.\textsuperscript{3} A booming economy may keep experienced transactional lawyers busy, for example, as clients seek to expand or go public. Bankruptcy lawyers, on the other hand, get busier when the economy turns down. Forming law firms allows lawyers with varying specialties to support each other through good times and bad. In good times, transactional lawyers keep the revenue flowing and to some extent pay the bankruptcy lawyers more than they deserve. Bankruptcy lawyers return the favor later.

\textsuperscript{2}Indeed, we view such people as sufficiently independent and professional that Model Rule 7.2(b)(4) permits a lawyer to enter into a reciprocal referral arrangement with them that would not violate the rule against compensated recommendations.

\textsuperscript{3}Ronald J. Gilson & Robert H. Mnookin, \textit{Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits}, 37 STAN. L. REV. 313, 322-29 (1985). The authors concluded that objectives such as economies of scale, the ability to support specialists, and the ability to offer a range of services could be achieved by firms significantly smaller than the firms then seen, much less the large firms found today. Id. at 317. Robert Nelson suggests an alternative way to state the point, i.e., that firms can provide a base of general service to some clients that helps pay the bills during the times between successful periods for the specialty practices of the firm. ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 50-56 (1988).
Third, institutional practice organizations can provide a sheer number of people that some clients require for the kind of work a client cannot do for itself. A firm can provide the bodies needed to close a business deal, for example, or try a major lawsuit that would overwhelm a solo practitioner or even an in-house legal department, and this so-called “project” work can often profitably involve non-lawyers as well as lawyers.4

As your discussion paper recognizes, each of these realities is as true for organizations serving individual clients as they are for business lawyers. Many traditional legal services for individuals will tend to be delivered as commodities, that is, as standardized products sold primarily on the basis of price. Technology, for example, will allow many documents to be sold as forms or tailored to individual needs using a few clicks of a computer mouse. If a client needs face-to-face advice for reassurance or needs to take a matter to court, someone with legal training will become involved, but for the kinds of work that many people with modest training can do quite well, competition will tend to drive fees to levels far lower than those we see today.5 Indeed, increasingly such work is being done by corporations such as LegalZoom.com that sell millions of dollars worth of clients documents that can be personalized and prepared based on information entered into the clients’ home computers.6

II. Changes in Regulation Suggested by These Changes in Practice

The move to seeing law as practiced by organizations, not simply individual lawyers, suggests four kinds of changes in lawyer regulation. You have partly acknowledged one of them, recognized but rejected a second, and largely ignored the other two. Let me explain.

A.

First, you have seen and addressed the appropriate role of non-lawyers in firms that deliver many kinds of legal services. Non-lawyers obviously already do many kinds of work

4George P. Baker & Rachel Parkin, The Changing Structure of the Legal Services Industry and the Careers of Lawyers, 84 N.C. L. REV. 1635, 1656-59 (2006); Randall S. Thomas, Stewart J. Schwab & Robert G. Hansen, Megafirms, 80 N.C. L. REV. 115 (2001). Of course, other providers such as Axiom provide an alternative way to staff large matters by providing legal offices with individual lawyers who work on matters, sometimes from home. See www.axiomlaw.com. In another development, Thomson Reuters has acquired Pangea3, one of the largest outsourcing firms in India, and has hired U.S. lawyers to do outsourcing work for corporations and law firms. See Rachel M. Zahorsky, Vendor or Competitor?: Pangea3 Purchase Pleases Some, Worries Others, ABA J., Feb. 2011, p. 27.


6This work was recently challenged as the unauthorized practice of law in Janson v. LegalZoom.com, Inc., 2011 WL 3320500 (W.D.Mo. 2011), and the challenge was upheld largely based on the fact that nonlawyers were used to verify a document’s completeness, grammar, and consistency of the personalized information throughout the document. News reports indicate that the company intends to continue operating in Missouri, albeit with procedures tailored to meet the court’s objections.
traditionally and simultaneously done by lawyers. Non-lawyers prepare tax returns, for example. They also legally give tax advice, or negotiate and argue cases before the Internal Revenue Service and the Tax Court. Indeed, the practice is so well recognized that Congress has recognized an accountant-client evidentiary privilege. 26 U.S.C. § 7525(a). Similarly, non-lawyer patent agents prepare patent applications and otherwise advocate on behalf of inventors before the U.S. Patent & Trademark Office. In each case, the non-lawyers are subject to federal rules of practice that apply to lawyers and non-lawyers alike.

The critical distinction made in Model Rule 5.4 is that it is lawful for lawyers to employ nonlawyers but not to become their partner if any of the services would traditionally be viewed as practicing law. That is surely a distinction without a difference unless one presumes that lawyers are somehow better people and always deserve to be in control. It is not lawyer bashing to say that no such irrefutable presumption is appropriate.

Several law firms already have expanded their range of services by adding law related services ranging from economic consulting to private investigation to financial management. Sometimes the services have been provided from within the firm; at other times, separate stand-alone or side-by-side entities have been created. A friend of mine who does estate planning in Virginia has transformed himself and his firm into a wealth planning enterprise and he gives investment advice in addition to drafting wills and trusts. Lawyers in the firm have become licensed securities dealers and certified financial planners as well as lawyers in order to be able to deliver this total package. I would not be surprised to see other lawyers and firms take similar steps in their own areas of expertise, but it seems to me nonsensical to say the lawyers must do all the non-lawyer jobs. As you have recognized, admitting non-lawyers as law firm partners makes perfect sense as the firms seek to deliver a range of useful, often-specialized services.

We, of course, all remember that a decade ago, the report of the Multidisciplinary Practice Commission called for revisions in Rule 5.4 that were defeated. It was around the time of the Enron scandal and association with accountants such as Arthur Andersen was on everyone’s mind. I believe the time has come to put the fact of the rejection of multidisciplinary practice behind us. Multi-service practice is not just of interest only to corporate clients. Social service agencies that want to provide legal services as part of a package of services to the poor have an equal stake in changing the present rules, and as your report notes, most of the applicants

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7Professor Kritzer has done outstanding work on this topic for many years. He calls such persons “law workers” and sees them as examples of the kinds of people with whom lawyers are likely to compete in the future. See Herbert M. Kritzer, The Future Role of “Law Workers”: Rethinking the Forms of Legal Practice and the Scope of Legal Education, 44 ARIZ. L. REV. 917 (2002); HERBERT M. KRIFZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998).

Nonlawyers have rarely done their assigned work in a way that has damaged an organization’s clients. Indeed, “it is not self-evident that professional certification or supervision insures special competence.” Deborah Rhode, Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions, 34 STAN. L. REV. 1, 87 (1981). See also, Thomas D. Morgan, Professional Malpractice in a World of Amateurs, 40 ST. MARY'S L. J. 891 (2009).
for multidisciplinary recognition in the United Kingdom have been relatively small entities.

I realize that the Commission faces a challenge getting the House of Delegates to modify the existing prohibition in any way, but limiting multi-practice organizations is likely to prove self-defeating. Although American lawyers are barred from participating in such firms that deliver legal services in the United States, American clients can often get the services from firms operating out of Great Britain or Australia. In any event, I applaud your efforts to get the ABA to get beyond acting as though lawyers still operate in a world in which communication and travel are difficult.

Regulatory standards should properly continue to require competent service, protection of privileged information and avoiding conflicts of interest. And although the D.C. rule has worked well without it, I can even defend the “fit to own” requirement for non-lawyer partners. In my view, however, your only-service-providers and maximum-percentage-interest requirements should be removed from the proposal as I explain in the next section of these comments.

B.

My second subject of appropriate rule change – the one that you have rejected – would permit a law firm to sell part or even all its equity to non-lawyer, non-employee investors. The current Rule 5.4(d) prohibition both denies law firms the ability to raise a potentially important form of capital and reduces the incentive a firm can give its members to help build the firm as an effective, ethical institution that will be attractive to outside investors.

Given a history of law firm finance that has seemed to work for generations, a natural question might be why law firms would want to raise equity capital from third parties at all. One answer is obviously that it is human nature to want to take risks using other people’s money rather than your own. Taking on debt means retaining risk, while equity seems to shift it. Equity capital can be relatively expensive, however, because one has to share profits, not just pay interest. Ordinarily, one only seeks outside capital at all when the projected return is likely to exceed the cost, and in a world of low interest rates, borrowed money has long looked like the way to keep law firm profits in the hands of the lawyer-partners.

But there are at least three reasons why law firm interest in selling equity seems to be

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8 Legal Services Act 2007, Ch. 29 (Great Britain); Legal Professional Act of 2004 (NSW) (Australia). Developments in England, Australia, Canada and Scotland are discussed in ABA Commission on Ethics 20/20, Issues Paper Concerning Alternative Business Structures, Apr. 5, 2011, at 7-17.

9 A similar requirement is found in the new Australian regulations. See Steve Mark, Views From an Australian Regulator, 2009 J. PROF’L LAWYER 45, 58-63.

10 One of the early articles considering these issues was Edward S. Adams & John H. Matheson, Law Firms on the Big Board: A Proposal for Nonlawyer Investment in Law Firms, 86 CALIF. L. REV. 1 (1998).
growing. First, law firms have long paid out profits each year rather than retaining earnings. The partners in many firms have learned to like the short-term lifestyle such a practice supports, but the result has been to make money less available or more costly for long-term investments in new technology, new offices, or to support an expanded scope of practice.

The Australian and U.K. experience tends to confirm this explanation. Slater & Gordon, for example, reported a need to consolidate several offices into larger ones and a need to finance high litigation expenses between the time a case is filed and the time the fee becomes payable. In the U.K., it seems to be midsize firms that want to expand their ability to use technology to deliver commodity services to middle class clients that may be especially hungry for capital.

A second reason for a law firm’s turning to non-lawyer investors will be to create a liquid market in firm shares so that good will can be priced and departing partners can realize full value for their years of service. Successful managers in other industries receive stock options; they profit when the company profits and they pay taxes at capital gain rates on the increase in their share value. Lawyers and law firm managers, on the other hand, basically receive only a pass-through of fees earned that is taxed at high ordinary-income marginal rates.

A third incentive for seeking non-lawyer investment may be to create a more lasting institutional character to the modern law firm and to encourage the development of the firm’s brand identity and its reputation for ethics and quality. A law firm’s principal assets—its partners and associates—walk out the firm’s door every day, have no obligation to return, and often get no more or less in return of their capital investment whether they have helped the firm prosper or simply get by. In such an environment, even equity partners have little personal stake in the firm as an institution, other than not to be left holding the bag if the firm fails. When outside investors are involved, on the other hand, there are parties with a genuine stake in the institution’s growth and prosperity. And the incentives flow to the lawyers as well. The best way to get people to devote full effort to their law practice is to give them something tangible to show for their efforts when the time comes to leave.

But if there are legitimate reasons for seeking outside investors, why have lawyers so long resisted the idea? The first reason is probably historical. Until the late 1960s, law firms tended to be quite small. In 1968, for example, only twenty U.S. law firms had over 100 lawyers. In a small firm, personal relationships provide bonding and incentives for firm survival that outside investors might do little to augment. Further, few outside investors would likely have wanted to put their money into such small operations. In short, until recent years, I believe there was more disinterest than opposition to the subject of outside investment in law firms.

But for those who did think about the issue, one concern was that lawyers are clients’ agents and have a fiduciary duty to focus principal attention on their clients’ interests. Admitting

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non-lawyer investors to the mix will create a competing interest in earning a high economic return, the argument goes, thus potentially compromising the interests of clients or even influencing lawyers' professional judgment about how to represent the clients.

A related concern is that shareholders who are not firm lawyers may expect information about the firm and its clients, if only to measure management success and to predict future firm performance. Confidential client information is something a lawyer must keep inviolate. Even a client's identity is normally not public information and may not be disclosed other than when doing so would be in the client's interest. Market information, on the other hand, is essential and the inherent tension over its release may seem to place insurmountable limits on sale of equity securities.

Finally, many lawyers seem to have a recurring nightmare of waking up working for Walmart. One of the early proposals when the ABA Model Rules were proposed in 1983 was that the barrier against lawyers practicing with non-lawyers be breached. Geoffrey Hazard, reporter to the ABA Commission was asked: "Does this mean Sears & Roebuck will be able to offer a law office?" When Hazard answered "yes," the proposal was defeated. Lawyers working for non-lawyers, it seemed, would be demeaning and thus unprofessional.12

The answers to these objections, of course, are not hard to see. First, the idea that only outside investors have a profit motive ignores the history of large law firms over the last forty years. Profits have been widely publicized in the American Lawyer and elsewhere.13 Profits have been a lure to attract new lawyers, an incentive to work evenings and weekends, and the measure of many lawyers' self-worth. The presence of outside investors may change how profits are shared but not whether profits are sought.

Second, most of the talk today is about firms seeking private capital from sophisticated investors rather than selling publicly-traded stock as Slater & Gordon did. While one could imagine law firms doing the kind of financial reporting that the SEC requires, it would likely be more trouble than it is worth, and reducing the number of investors actually involved would tend to reduce the amount of even non-sensitive client information that would be made available.14

Finally, lawyers are likely to have to get over the fear of all of their clients turning to Walmart for their legal needs. Most lawyers do not provide services to Walmart customers or other middle class clients today. Those potential clients represent a possible growth market for

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14The New South Wales (Australia) Legal Services Commissioner describes the challenges of dealing with this issue in Steve Mark, Views From an Australian Regulator, 2009 J. PROF'L LAWYER 45, 56-58.
lawyers, however, and a potential unmet demand. At least the start-up costs to do that kind of work will require the kind of capital that outside investors can provide, and Walmart and other mass merchandisers seem as good a source of capital as any.

The more serious practical question is whether anyone who is well-informed would decide to invest in a law firm. As the economy rebounds, lawyers will do better, but law practice activity tends to lag economic recovery, not lead it. Stock in a law firm, in short, will tend to track most other business investments, not hedge or otherwise complement them. But whether non-lawyer investment in law firms is wise as an investment strategy is largely beside the point. The practice of allowing non-lawyer investment in law firms has the potential of providing a genuine economic benefit and a relatively low risk of public harm.

I recognize that you have considered and at least implicitly rejected all these arguments. If not an idea whose adoption is inevitable, however, I suggest it is an idea whose time has come. Wearing your 20/20 lenses, I hope I can persuade you to at least make the kinds of considerations I have raised a part of your final report so as to give future Commissions a basis for picking up the themes at some future time.

C.

Finally, I believe there are two important ideas relating to ALPS that your report does not reflect at all. First is the idea that, while we should continue to require lawyers individually to adhere to standards of integrity and confidentiality, conduct standards also should be imposed on firms and other practice organizations themselves. This is not a new proposal, of course. I suspect that Professor Ted Schneyer has urged it on his fellow Commissioners as he did in the *Cornell Law Review* over 20 years ago.¹⁵ Indeed, New York and New Jersey have adopted forms of the Schneyer proposal and I would urge you to consider recommending it to the remaining jurisdictions.

Regulating the conduct of practice organizations – not just individual lawyers – continues to be an idea whose time should come. Firm managers need an incentive to create a world in which lawyers share responsibility as well as benefits of each other’s conduct. Today, for example, lawyers are sometimes paid on a basis that they “eat what they kill,” i.e., they are paid based on client matters they attract to the firm. A world of decreased demand for lawyer services promises to be one in which there will be competition within law firms, not just among them. In an eat what you kill system, a lawyer knows he will be paid for fee-generating work he brings in but others will share the liability if the client turns out to be dishonest.¹⁶


¹⁶A similar problem arises when one lawyer wants a firm to represent a client whose work would create a conflict of interest with a client attracted to the firm by a different lawyer. See Geoffrey C. Hazard, Jr. & Ted Schneyer, *Regulatory Controls on Large Law Firms: A Comparative Perspective*, 44 ARIZ. L. REV. 593, 602-06 (2002).
The risk to firms who see themselves as only aggregations of their members thus can be enormous. Clients as well as lawyers have a stake in having professional standards that reinforce efforts of law firms to establish a culture of ethical conduct by each of its lawyers and non-lawyers. Young lawyers learn quickly that their future in the firm depends on how well they please their elders. Everyone has a stake in having firms preserve the value of the reputation that is a firm-wide asset, and the challenge for managers will be to preserve that asset as firms develop a less cohesive feel.

Two examples may help provide some reality to the idea of sanctioning organizations, not simply individuals. First, when document provider LegalZoom was charged with unauthorized practice, it was the corporation that was charged, not Robert Shapiro or other individual lawyers and non-lawyers who work there. Because it is a corporation, it is easy for us to see LegalZoom as an entity subject to such a charge. What I am advocating here is that we see law firms and other practice organizations the same way.

Take another example: In Maples v. Thomas, recently decided by the U.S. Supreme Court, two Sullivan & Cromwell associates worked pro bono on a petition for a writ of habeas corpus on behalf of an Alabama prisoner sentenced to death. While the matter was awaiting decision in the district court, each of the lawyers left the firm for other jobs. Neither withdrew as counsel for the prisoner. The district court denied the habeas petition and the court clerk sent notice of the denial to the lawyers at Sullivan & Cromwell, their old address. Someone in the firm’s mailroom noted on the envelope that the lawyers no longer worked there and returned the notice to the court unopened.

The time for appeal expired, and the question before the Supreme Court was whether the 11th Circuit could hear the appeal anyway. The Court held that it could, because the lawyers had in effect abandoned their client without his knowledge. But for our purposes, what is important is that during oral argument, Justice Scalia asked:

“If we find that these lawyers did abandon their client, will there be some sanction imposed on them by the bar. I often wonder * * * does anything happen to counsel who have been inadequate in a capital case? * * * Have you ever heard of anything happening to them: Other than they're getting another capital case?”

It is possible, of course, that the lawyers would be subject to discipline under Rules 1.1

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17 For a rich account of this phenomenon, see Kimberly Kirkland, Ethics in Large Law Firms: The Principle of Pragmatism, 35 U. MEMPHIS L. REV. 631 (2005).


(competence), 1.3 (diligence), and 1.4 (communication), for abandoning their client in this way, but my argument is that Sullivan & Cromwell also should be held responsible. The delivery of legal services includes the work of people in the mailroom, not just the firm’s lawyers. Lawyers at law firms come and go, and firm clients should not be the victims of those departures. The firm itself should bear responsibility for seeing that its obligations to firm clients are met.

In my view the rise of risk management is one of the most important accomplishments of the modern legal profession. Far from trying simply to “manage” risk, the process has been an effort to establish “institutional (i.e., firm or practice-wide) policies, procedures, or systems * * * designed to minimize risk within the firm and its practice.” As a result of organizations such as the Attorneys Liability Assurance Society (ALAS), other legal malpractice insurers, and the personal leadership of people such as Robert O’Malley, Anthony Davis, and Robert Creamer, firms have reexamined leadership structures, initiated new matter review procedures, and designated “general counsel” to receive confidential reports and questions from lawyers concerned about what they are being asked to do on behalf of a client. In spite of good risk management programs, some lawyers have behaved badly, but because of risk management efforts, we can expect the number of such incidents have been reduced.

Thus I suggest that, while we should retain Model Rule 5.2(a) that makes clear that, whatever the ethical responsibility of others, each lawyer retains a personal responsibility to conform to the rules of professional conduct, firms themselves should be subject to professional sanction as well.

D.

Finally, I would suggest that you propose that Model Rule 5.6(a) should be amended to permit restrictive covenants designed to impose reasonable restrictions on a lawyer’s changing firms. The traditional argument against even reasonable restrictions has been that they violate a lawyer’s professional independence and a client’s freedom to choose its own lawyer. That probably made sense in a world in which most lawyers practiced alone. Today, however, when

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22A natural question that follows, of course, is what the sanction could or should be. It is easy to disbar or suspend the license of a natural person; it is harder to imagine suspending a law firm. It is not hard to think about censuring a firm, however, and in today’s competitive environment, even making a firm ineligible to take more pro bono cases could be a sanction firms would seek to avoid. In any event, because Maples was a criminal case, the usual malpractice remedy against a firm would be hard to pursue. A majority of jurisdictions require a criminal defendant pursuing a malpractice remedy to prove affirmatively that he is innocent of the charges against him. RESTATEMENT (THIRD): THE LAW GOVERNING LAWYERS § 53.

most lawyers work within some kind of firm or other organization, the financial viability of such firms and organizations often depends on a reasonably stable number of contributing members.

In the name of not restricting lawyer mobility, Model Rule 5.6 now permits a lawyer to leave her current firm with little or no notice, while at the same time trying to persuade clients to follow the lawyer to a new firm. One need not argue that lawyers must be yoked to the same firm forever to recognize that reasonable restrictions on departure can allow firms more financial security and flexibility in establishing their management and compensation structures.

Important as mobility is, firms must contract for space, hire associates, and develop a reputation that only a degree of institutional stability permits. It can cost law firms competing for top talent anywhere from $200,000 to $500,000 to bring a recent law graduate into the firm as an associate. Nevertheless, at many firms, at least 40% of new hires have voluntarily resigned by the end of their 3rd year in practice, hardly having made back the cost the firm spent to recruit them. The law will not enforce restrictive covenants in any field that are excessive in scope or duration, but there seems no good reason to subject lawyer covenants to greater restriction.

Ultimately, firms are likely to have to convince young lawyers that they have a future at the firm that will be attractive over a multi-year career, but requiring lawyers to spend a given period at a firm after joining it could be an important part of the process. Some courts have implicitly acknowledged this, recognizing that persons who make up a law firm should be capable of reaching arrangements appropriate to their situation. Conforming the rules to the decisions would be a good step in helping firms and other practice organizations deal with the oncoming realities they will face as the economy again improves.

III. Conclusion

Again, I appreciate the work your Commission has done. You have opened the eyes of many to the changes faced by the legal profession, although I anticipate that several of the ideas expressed in these comments will be different than the majority of comments you receive about this proposal.

The point of these comments has been that institutional law practice is here to stay. The sensible question is how to embrace it and make it better serve the public interest. That is the insight Great Britain and Australia have had in their moves to register and regulate law practice


organizations, in addition to registering and regulating individual lawyers. While the new regulatory structure in both countries was initiated by antitrust authorities rather than the legal profession itself, both Great Britain nor Australia have a developed sense of lawyer professional duty and practitioners have largely accepted the new regime.

We can learn a lot from the British and Australian experience. It is frequently hard for lawyers to welcome change, but I believe that on the topic of Alternative Law Practice Structures your Commission has proposed too little, not too much. I hope that whatever form your final proposed Resolution takes, at least your Report will develop some of the themes I have raised and alert delegates and interested readers to them. No matter how the votes go this time, these are issues the ABA is likely to have to revisit again and again until it gets them right.

Respectfully submitted,

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