May 2, 2016

VIA Mail and email –
lpcomments@americanbar.org

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American Bar Association
Office of the President
321 North Clark Street
Chicago, IL 60610

Re: Comment: Issue Paper Regarding Alternative Business Structures,
April 8, 2016

To Whom It May Concern:

I am writing this letter in response to your invitation for comments on the ABA’s issue paper on non-lawyer ownership of law firms, dated April 8, 2016. I am unequivocally opposed to any move by the American Bar Association to propose and/or establish rules that would enable non-lawyers to have any ownership interest, whether passive or active, in a law firm. Likewise, I am opposed to allowing non-lawyers to have any managerial control and authority over attorneys. My position is based on the manner in which the current issue paper frames and analyzes this issue.

Before we adopt such a drastic change, we should more accurately frame the issues. It is disingenuous to couch a clear money-making proposal in terms of access to justice. To be sure, there are many challenges facing lawyers, judges, clients, and the rule of law in this country; however, adding a layer of corporate bureaucracy is not the answer. In fact, it will likely be counterproductive, as it will accelerate the reification of law, and further alienate lawyers from their labor and the law. The law, in a constitutional republic, cannot be commodified and shrink-wrapped.

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As an initial matter, we need more diverse voices on this committee. I notice that Ms. Littlewood is listed as a person to whom comments should be directed. Ms. Littlewood has previously demonstrated her bias. For example, in previous articles addressing this issue, she has already marginalized those of us who oppose ABS. Similarly, the issue paper, as currently written, seems to rely heavily on the work of Andrew Grech and Tahlia Gordon, both interested parties who are not practicing attorneys within the United States. Thus, like their “paper” (“Should Non-Lawyer Ownership of Law Firms be Endorsed and Encouraged?”), the current ABA issue paper reads like a sales pitch.

The decision we face in regards to non-lawyer ownership of law firms will have far reaching consequences that will affect the rule of law, and the very foundation of our government; therefore this issue should be reviewed and discussed exhaustively.

First, there must be a philosophic line of inquiry to accompany the soft science research. As I sit back and watch the evolution of our law, whether it be tort reform, worker’s compensation reform, or “innovative” theories of judicial interpretation, it is clear to me that the self-understanding of lawyers and judges, and our role in society, is increasingly infantile. Flattening the attorney client relationship into a relationship of production and consumption, could have devastating and unintended consequences. To discuss this matter philosophically will help us identify where we want to go as a profession and, ultimately, as a country. No other profession has the impact on society, culture, and politics that we have; thus, no other profession has a greater responsibility to ensure that our actions do not undermine the fabric of the republic.

Second, the research is incomplete. Absent in the research cited is the identification of research bias in the entities, scholars and individuals who are writing on this issue, and upon whom we rely. While I have only been practicing for five years, one need only thumb through a treatise on expert testimony to appreciate the risk bias poses, both to the “truth” of the expert’s conclusions and the credibility of the person relying on and repeating the results of the experts research. At the least, one need only write and respond to a Motion in Limine regarding something as routine as an automobile accident reconstruction expert, to come to the same conclusion. Soft science research is especially susceptible to uncritical, instrumental use.

Third, there is a lack of qualitative research. This is especially egregious since, as Ms. Littlewood points out in her paean to LLLT’s (see footnote 1); physicians have been through this before. We should commission qualitative studies to interview physicians (not Nurse Practitioners, CEO’s, or twenty-something MBA “mangers”) and catalog their experience, so we can better understand the challenges we will face. Like attorneys, and unlike business people, physicians dedicate themselves to serious study, and have taken an oath. Their input would be invaluable.

Third, the issue paper draws on the experience of jurisdictions outside of the United States to test the viability of ABS. We should commission an in-depth study by comparative law scholars and attorneys who practice internationally in order to compare the legal culture, legal

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structures, and constitutional structures of these other jurisdictions to our own, before relying on this “data.”

“Access to justice” is certainly a problem in America. However, the lack of access to lawyers and the Courts is more complex than “it’s too expensive”. The sheer number of reforms that have occurred in the last fifty years, from the Rules of Civil Procedure to tort reform, have affected client’s access to justice. The expense is just one aspect, and we should carefully consider this problem from all angles. Simply adding a layer corporate bureaucracy is likely to exacerbate the problem.

Sincerely,

MINK & DUKE, PLLC

By: William M. Leech, III