

Revising Model Rule 5.4: Adopting a Regulatory Scheme that Permits Nonlawyer Ownership and Management of Law Firms

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I. INTRODUCTION

In the past decade, Australian and British legislators have recognized that rules barring nonlawyer ownership and management of law firms are outdated and have a negative effect on the practice of law.¹ They responded by passing legislation that permits nonlawyer ownership and management of law firms.² Many Australian firms have taken advantage of the Australian legislation, and, in the Australian states that permit outside investment, the percentage of incorporated firms per state ranges from seven percent in Queensland, which just recently passed legislation allowing incorporation in 2007, to twenty-seven percent in Western Australia.³

The trend toward the incorporation of law firms in Australia is not limited to large firms interested in listing on the Australian Stock Exchange (ASE). In fact, most of the incorporated law firms will never list on the ASE.⁴ These firms recognize the benefits associated with the ability to raise even relatively small amounts of capital through private outside investment. On the other hand, those Australian firms that choose to list on the ASE see the opportunities for large expansion and huge increases in profits that result from having large amounts of readily

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1. See *infra* notes 98-130 and accompanying text.

2. See Legal Services Act, 2007, c. 29 (Eng.); Legal Profession Act, 2004, c. 2 (Austl.). The British legislation was passed but is not expected to take effect until the 2009-2010 parliamentary session. Richard Lloyd, *British Firms Watch Australia's Law Firm IPOs with Interest*, LAW.COM, June 6, 2007, <http://www.law.com/jsp/article.jsp?id=1181034331105>.

3. Christine Parker, *Peering over the Ethical Precipice: Incorporation, Listing, and the Ethical Responsibilities of Law Firms* 7 (Apr. 24, 2008) (unpublished draft, available at <http://www.law.georgetown.edu/LegalProfession/documents/ParkerWebsiteArticle.pdf>).

4. In 2008, the vast majority of incorporated firms in New South Wales had fewer than ten partners. Parker, *supra* note 3, at 9 tbl.2. It is unlikely that any demand would exist on a securities exchange for an interest in these relatively small firms. Therefore, it is unlikely these small- and medium-sized firms will ever list on an exchange.

accessible capital.⁵ For example, in the first fiscal half-year after its initial public offering, the profits of Australian law firm Slater & Gordon increased fifty-six percent compared to its profits over the same period in the previous year.⁶

United States legal professionals have recognized for years that nonlawyer investment in law firms can have a positive impact on the profession. In 1981, the American Bar Association (ABA) considered adopting a rule of professional conduct that would have permitted unfettered nonlawyer ownership and managerial control of law firms.⁷ However, the ABA rejected the proposed rule and instead adopted current Model Rule 5.4,⁸ which bars all nonlawyer ownership and management of law firms.⁹ Instead of addressing the particular ethical considerations that could arise from nonlawyer ownership and management of law firms and drafting precise rules to address these issues, the ABA adopted Rule 5.4, which deems all lay investment and management to be interference with the lawyers' professional judgment.¹⁰

While states are not required to follow the ABA's recommendations and adopt the Model Rules or similar ethical standards, the vast majority of states currently have a rule limiting or barring nonlawyer investment in law firms, many of which are identical or very similar to Rule 5.4.¹¹ As a result, the states' rules are generally consistent with the ABA's position on nonlawyer investment.¹² This Note proposes a change to Model Rule 5.4 that would permit nonlawyer ownership and managerial control of law firms, with delineated restrictions that would maintain the policies behind the current Rule 5.4. These changes are necessary in order to: (1) allow United States law firms to keep up with

5. See, e.g., Martha Neil, *Going Public Pays: 56% Profit Increase Follows Law Firm's IPO*, ABA JOURNAL, Feb. 22, 2008, http://abajournal.com/news/going_public_pays_56_profits_increase_follows_law_firms_ipo/.

6. *Id.* Slater & Gordon became the first law firm to list on the Australian Stock Exchange when it made its initial public offering (IPO) in May 2007. Slater & Gordon History, <http://www.slatergordon.com.au/pages/history.aspx> (last visited Apr. 4, 2009). In the six months following its IPO, Slater & Gordon used the infusion of capital to acquire D'Arcy's Solicitors, a firm specializing in military compensation, a Sydney-based law firm, McClelland's, and three regional firms based in Coffs Harbour, Nowra, and Bunbury. Slater & Gordon Archive 2007, http://www.slatergordon.com.au/pages/archive_2007.aspx (last visited Apr. 4, 2009).

7. See *infra* notes 44-49 and accompanying text.

8. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2003).

9. See *infra* notes 73-75 and accompanying text.

10. See GEOFFREY C. HAZARD, JR. ET AL., *THE LAW OF LAWYERING* § 45.4 (3d ed. 2009).

11. Edward S. Adams & John H. Matheson, *Law Firms on the Big Board?: A Proposal for Nonlawyer Investment in Law Firms*, 86 CAL. L. REV. 1, 8 (1998); see, e.g., KAN. RULES OF PROF'L CONDUCT R. 5.4 (2007), available at <http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&r2=18>; MO. RULES OF PROF'L CONDUCT R. 4-5.4, available at <http://www.courts.mo.gov/sup/index.nsf/0/3608230ed5cbe92786256f0b0062df37?opendocument>; NEB. RULES OF PROF'L CONDUCT R. 3-505.4, available at <http://www.supremecourt.ne.gov/rules/pdf/Ch3Art5.pdf>.

12. However, the District of Columbia permits lawyers to form partnerships with nonlawyers that consist of the practice of law under certain circumstances. See *infra* notes 91-97 and accompanying text.

the expansion of British and Australian law firms; (2) allow United States law firms to compete with other large companies to recruit top-tier managers, officers, and marketers; and (3) allow United States law firms to provide a broader range of legal and professional services to clients.

This Note is broken into four major sections. The history and background section discusses the evolution of the ban on nonlawyer ownership and management of law firms in the United States from the original *Canons of Professional Ethics* in 1908 to the current ABA *Model Rules of Professional Conduct*. The British and Australian legislation section examines the rules that govern nonlawyer ownership and management of law firms, as well as the impetus behind permitting nonlawyer ownership and management in each country. The analysis section includes three parts: (1) a discussion of the benefits of multidisciplinary practices and passive investment in law firms by nonlawyers; (2) a discussion of the potential problems created by nonlawyer ownership and management of law firms; and (3) a discussion of provisions that should be included in a rule that permits nonlawyer ownership and management of law firms.

II. HISTORY AND BACKGROUND

The professional practice of law in the United States started dubiously and was barred in many of the colonies.¹³ The statutory prohibition on the practice of law for hire persisted until Virginia repealed the final statute banning the practice in 1748.¹⁴ The colonies' change of stance was necessary because, as industry and commerce in the colonies expanded, the colonial courts were presented with more complex legal issues.¹⁵

13. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 81 (1973). The disdain for the professional practice of law was rooted in a distrust of lawyers. See *id.* Furthermore, colonists disliked lawyers because of the lawyer's role as servant of the English government. *Id.* at 82. The Quaker settlers opposed the adversary system in principle and viewed lawyers as contentious individuals who contributed to the adversary system. *Id.* Puritans distrusted lawyers because they believed the lawyers contributed to the inequities of the law and "the harshness with which it was often applied." ANTON-HERMAN CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 27 (1965). In addition, early colonial judges and court staff were often untrained amateurs with professions that ranged from clergymen to politicians. *Id.* at 26. The judges and court staff often ignored English law and precedent, leaving the law in a state of flux. *Id.* These circumstances did not support a competent and strong class of professional lawyers. *Id.*

14. See CHROUST, *supra* note 13, at 272. Virginia's hostility toward professional lawyers began in 1642 when legislation banned a person from pleading a cause on behalf of another without a license from the court. *Id.* at 268-69. The 1642 law set a maximum attorney's fee of fifty pounds of tobacco, which was a ridiculously small fee. *Id.* at 269. The colony took a much stronger position against professional attorneys in 1645 when it passed legislation that barred any attorney from practicing for a fee. *Id.* In 1748, lawyers in Virginia were permitted to accept fees for legal work after a great deal of legislative waffling between barring attorneys from practicing for a fee and permitting fees under limited circumstances. *Id.* at 272.

15. James W. Jones & Bayless Manning, *Getting at the Root of Core Values: A "Radical" Proposal to Extend the Model Rules to Changing Forms of Legal Practices*, 84 MINN. L. REV. 1159, 1164

Prior to the Civil War, legal partnerships with more than three lawyers were rare; however, the spread of industrialization facilitated the growth of law firms in the late nineteenth century.¹⁶ During this expansion, local “bar associations were established in the major commercial centers”¹⁷ The local bar associations were usually social associations that did not set norms for lawyer conduct and had little control over the practice of law in their jurisdictions.¹⁸ State bar associations were slow to develop and “[n]early three fourths of all state bar associations were established in the last two decades of the nineteenth century.”¹⁹

“In 1878, . . . representatives from twenty-one jurisdictions . . . form[ed] the American Bar Association.”²⁰ The goal of the ABA was to seek “the advancement of the science of jurisprudence, the promotion of the administration of justice and a uniformity of legislation throughout the country”²¹ The ABA believed that furthering this goal required the standardization of professional norms.²² The ABA recognized that one of the cornerstones of the legal profession is the power of self-regulation, and, through self-regulation, the profession could avoid state regulation.²³

A. *The Canons of Professional Ethics*

The ABA published its first common statement of professional norms in 1908 after adopting the *Canons of Professional Ethics*.²⁴ The ABA promoted the Canons among bar associations throughout the country.²⁵ However, even if a bar association adopted the Canons, the rules did not have the force of law.²⁶ Nonetheless, courts often referred to the rules, “not as independent bases of decision, but as sources to be

(2000).

16. *Id.* at 1168-69.

17. RICHARD L. ABEL, *AMERICAN LAWYERS* 44-45 (1989). The associations were primarily based on small geographic areas, such as cities and counties, without any statewide bar associations. *Id.* at 40.

18. Jones & Manning, *supra* note 15, at 1171. Most local bar associations enrolled only a very small percentage of the jurisdiction’s lawyers. *See* ABEL, *supra* note 17, at 45. In 1870, only ten percent of New York City’s lawyers were enrolled in the Association of the Bar of the City of New York; “this proportion had doubled by 1895 but dwindled to 10 percent in 1908” *Id.* The low membership was intentional because in major cities the associations were designed to admit only the “elite” lawyers. *Id.*

19. ABEL, *supra* note 17, at 46. Many of the state bar associations failed to survive or reorganized before 1900. *Id.*

20. Jones & Manning, *supra* note 15, at 1171.

21. History of the American Bar Association, <http://www.abanet.org/about/history.html> (last visited Apr. 4, 2009) (internal quotations omitted) (alterations in original).

22. *See* HAZARD, *supra* note 10, § 1.9.

23. *See* ABEL, *supra* note 17, at 142.

24. CANONS OF PROF’L ETHICS (1908) (superseded by MODEL CODE OF PROF’L RESPONSIBILITY in 1970); Jones & Manning, *supra* note 15, at 1171.

25. HAZARD, *supra* note 10, § 1.10.

26. *Id.* § 1.9.

incorporated into the evolving common law”²⁷ These rules then became binding under the principles of stare decisis.²⁸ After the middle of the twentieth century, these principles of professional ethics became legally binding codes of conduct when courts adopted them in their entirety.²⁹

The 1908 *Canons of Professional Ethics* contained many of the same rules as the current *Model Rules of Professional Conduct*.³⁰ The 1908 Canons, however, did not address the division of fees for legal services with nonlawyers.³¹ In 1928, the ABA adopted Canons 33 and 34, which barred the sharing of legal fees with nonlawyers and the formation of partnerships, between lawyers and nonlawyers, that engage in the practice of law in any way.³² The ABA adopted Canons 33 and 34 to limit the unauthorized practice of law, not to preserve the professional independence of lawyers.³³

B. The Model Code of Professional Responsibility

In 1969 the ABA adopted the *Model Code of Professional Responsibility* to supplant the *Canons of Professional Ethics*.³⁴ The *Model Code of Professional Responsibility* restricted fee-sharing in DR 3-102 and forbade partnerships between lawyers and nonlawyers that consisted of the practice of law in DR 3-103.³⁵ Since these rules were contained in Canon 3, titled “A Lawyer Should Assist in Preventing the Unauthorized Practice of Law,” it is apparent that the ABA intended these rules to prevent the unauthorized practice of law.³⁶ Furthermore, DR 5-107 provided that

a lawyer shall not practice with or in the form of a professional corporation . . . authorized to practice law for a profit, if: 1) a non-lawyer owns any interest therein . . . ; 2) a non-lawyer is a corporate director or officer thereof; or 3) a non-lawyer has the right to direct or control the professional judgment of a lawyer.³⁷

27. *Id.*

28. *Id.* The doctrine of stare decisis provides that courts must follow earlier judicial precedent when the same issues arise in later cases. *In re Osborne*, 76 F.3d 306, 309 (9th Cir. 1996).

29. HAZARD, *supra* note 10, § 1.9.

30. Compare CANONS OF PROF'L ETHICS (1908), with MODEL RULES OF PROF'L CONDUCT (2003).

31. Compare CANONS OF PROF'L ETHICS (1908), with MODEL RULES OF PROF'L CONDUCT (2003). The 1908 Canons of Professional Ethics ended at Canon 32, whereas provisions concerning fee sharing began at Canon 33.

32. CANONS OF PROF'L ETHICS, CANONS 33, 34 (1928).

33. Jones & Manning, *supra* note 15, at 1192 & n.141.

34. MODEL CODE OF PROF'L RESPONSIBILITY Preface (1981), available at <http://www.abanet.org/cpr/mrpc/mcpr.pdf>.

35. MODEL CODE OF PROF'L RESPONSIBILITY DR 3-102, 3-103 (1981).

36. See MODEL CODE OF PROF'L RESPONSIBILITY Canon 3; Jones & Manning, *supra* note 15, at 1192-93, 1193 n.142.

37. MODEL CODE OF PROF'L RESPONSIBILITY DR 5-107(c).

In contrast to the Canons, it is evident that the ABA's rationale for the Model Code's DR 5-107 was to preserve the professional independence of lawyers because this rule is included in Canon 5, titled "A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client."³⁸

C. The Kutak Commission

Because of its tripartite structure, which included the "Canons," the "Ethical Considerations," and the "Disciplinary Rules," the *Model Code of Professional Responsibility* was rather confusing.³⁹ The ABA intended the Disciplinary Rules to be legally binding standards of conduct, but intended the Canons and Ethical Considerations to serve as interpretive guidelines.⁴⁰ However, some states explicitly adopted the Canons and Ethical Considerations as legally binding rules, while other states did not adopt either.⁴¹ The Model Code's inconsistent language and its failure to take into account non-litigation situations further complicated matters.⁴² These problems led the ABA to form the Commission on the Evaluation of Professional Standards (Kutak Commission) in 1977 to examine whether the ABA should revise or replace the Model Code.⁴³

The Kutak Commission determined that revisions of the Model Code would not suffice and an entirely new set of rules was needed.⁴⁴ The Kutak Commission recommended that Rule 5.4 read as follows:

Rule 5.4: Professional Independence of a Lawyer

A lawyer may be employed by an organization in which a financial interest is held or managerial authority is exercised by a nonlawyer, or by a lawyer acting in a capacity other than that of representing clients, such as a business corporation, insurance company, legal services organization or government agency, but only if:

- (a) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;
- (b) information relating to representation of a client is protected as required by Rule 1.6;
- (c) the organization does not engage in advertising or personal contact with prospective clients if a lawyer employed by the organization would be prohibited from doing so by Rule 7.2 or Rule 7.3; and

38. See MODEL CODE OF PROF'L RESPONSIBILITY Canon 5; Jones & Manning, *supra* note 15, at 1193.

39. HAZARD, *supra* note 10, § 1.11.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* § 1.12. The commission was commonly referred to as the Kutak Commission because the chair of the commission was Robert Kutak. Adams & Matheson, *supra* note 11, at 8.

44. ABA, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2005, at v (2006).

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(d) the arrangement does not result in charging a fee that violates Rule 1.5.⁴⁵

The Kutak Commission's Recommended Rule 5.4 would have opened the door for nonlawyer investment in and managerial control of law firms.⁴⁶ Furthermore, the rule would have permitted law firms to incorporate and be publicly traded.⁴⁷ The proposed rule represented a drastic deviation from the previous rules on nonlawyer ownership and management of law firms.⁴⁸ The Kutak Commission's rationale for permitting nontraditional forms of organization for law practices was that "the Rules in this area should focus on the actual potential for abuse in [the expansion of legal practices] rather than the particular form of law practice."⁴⁹ The proposed rule drew a great deal of opposition.

Opponents of the Kutak Commission's proposed rule presented several reasons why ownership or management of law firms by nonlawyers was potentially harmful.⁵⁰ First, they contended that nonlawyers could not appreciate the ethical considerations and responsibilities involved in representing a client.⁵¹ Second, the existing structure restricting the business forms in which lawyers practiced ensured compliance with the Rules of Professional Conduct and still permitted ample room for firms to experiment with different methods of delivering legal services.⁵² Third, and probably most compelling to those in attendance, opponents of the proposed rule presented the "fear of Sears" argument.⁵³ The "fear of Sears" argument suggested that the proposed rule would permit large retailers, like Sears, or large accounting firms to open law offices and compete with traditional law firms.⁵⁴ The proponents of this argument believed that the large corporate law offices would put small firms and sole practitioners out of business.⁵⁵ At a February 1983 ABA House of Delegates meeting to consider Recommended Rule 5.4, Professor Geoffrey C. Hazard informed the delegates that the "fear of Sears" argument had merit and that the rule would permit Sears to open a law office.⁵⁶ This effectively ended the debate on

45. *Id.* at 580.

46. Adams & Matheson, *supra* note 11, at 8-9.

47. *Id.* at 9.

48. Compare MODEL CODE OF PROF'L RESPONSIBILITY EC 3-102, 3-103, 5-107 (1981), with A LEGISLATIVE HISTORY, *supra* note 44, at 580.

49. ABA, ABA COMMISSION ON EVALUATION OF PROFESSIONAL STANDARDS REPORT TO THE HOUSE OF DELEGATES, available at http://www.abanet.org/cpr/mrpc/kutak_8-82.pdf.

50. A LEGISLATIVE HISTORY, *supra* note 44, at 580-81.

51. *Id.*

52. *Id.* at 581.

53. Adams & Matheson, *supra* note 11, at 10.

54. *Id.*

55. Bernard Sharfman, Note, *Modifying Model Rule 5.4 to Allow for Minority Ownership of Law Firms by Nonlawyers*, 13 GEO. J. LEGAL ETHICS 477, 481-82 (2000).

56. Adams & Matheson, *supra* note 11, at 10-11.

Recommended Rule 5.4, and the House of Delegates rejected it.⁵⁷

D. Current Model Rule 5.4

Recommended Rule 5.4 was the only proposed rule that the ABA House of Delegates rejected in its entirety.⁵⁸ In its place, the House of Delegates adopted current Model Rule 5.4, which prohibits a lawyer from: (1) sharing fees with a nonlawyer; (2) practicing law in a partnership with a nonlawyer; (3) permitting a person who pays the lawyer's legal fees for another to alter the lawyer's judgment; and (4) practicing law in a corporation or association authorized to practice law for a profit where a nonlawyer owns an interest, a nonlawyer is a director, or "a nonlawyer has the right to direct or control the professional judgment of the lawyer."⁵⁹ This section addresses each subsection of Rule 5.4 and explains the rule's intended purpose and actual effect.

1. Lawyer Sharing Legal Fees with a Nonlawyer

Rule 5.4(a) bars a lawyer from sharing legal fees with a nonlawyer, except under very narrow circumstances.⁶⁰ The rule was designed to prevent the unauthorized practice of law and "is taken verbatim from DR 3-102 of the Code of Professional Responsibility"⁶¹ The rule protects clients by limiting nonlawyer control over legal services.⁶² While the rule permits lawyers to work with and hire nonlawyers, a lawyer can only hire a nonlawyer on an hourly or fixed-rate basis.⁶³

Many commentators criticize the rule as being too broad because it bars "any financial arrangement in which a nonlawyer's profit or loss is directly related to the successfulness of a lawyer's legal business."⁶⁴ In many circumstances, a financial arrangement between a lawyer and a nonlawyer based on the lawyer's legal fees does not create any greater danger of the unauthorized practice of law than a financial arrangement between a lawyer and a nonlawyer not based on the lawyer's legal fees.⁶⁵

57. *Id.*

58. HAZARD, *supra* note 10, § 45.2.

59. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2003).

60. *Id.* at R. 5.4(a).

61. HAZARD, *supra* note 10, § 45.6.

62. RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY 942 (2008).

63. *Id.* For example, under the rule, a law firm could hire an accountant to perform accounting services as part of litigation, but the firm can only pay the accountant a fee that is not contingent on the outcome of the case. *See id.*

64. HAZARD, *supra* note 10, § 45.6 (emphasis in original).

65. *See id.* § 45.6, illus. 45-1. For example, lawyers *A* and *B* each need a loan to expand their respective practices. *Id.* *A* borrows the money from a bank that is confident that *A*'s practice will expand based on the infusion of capital and gives *A* an open line of credit. *Id.* *B* borrows the same amount from a passive investor. *Id.* The investor is confident that *B*'s practice will expand, and, in lieu of interest or principal payments, *B* agrees to give the investor a ten percent share of net receipts. *Id.* Lawyer *B* has violated Rule 5.4(a) because he agreed to split legal fees with a nonlawyer. *See*

2. Forming a Partnership with a Nonlawyer

Rule 5.4(b) prohibits a lawyer from forming a partnership with a nonlawyer if the partnership provides any legal services to clients.⁶⁶ The prohibition on forming a partnership with a nonlawyer bars a lawyer from giving any nonlawyer any managerial control in the partnership; however, a lawyer may include nonlawyer-employees in profit-sharing arrangements permitted by Rule 5.4(a)(3).⁶⁷ The rule also prohibits law firms from selling shares in a legal partnership to nonlawyers and effectively limits the size of law firms by limiting their access to capital.⁶⁸

3. Third Party Interference with a Lawyer's Professional Judgment

Rule 5.4(c) states that “[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”⁶⁹ The rule requires a lawyer to represent his or her client based on the client’s wishes—not the wishes of a third party paying for the lawyer’s services.⁷⁰ Rule 5.4(c) is specifically directed at ensuring that a lawyer’s relationship with a third party does not interfere with the independence of the lawyer’s professional judgment.⁷¹ Furthermore, the rule expands on Rule 1.8(f)’s prohibition against a lawyer accepting payment for representing a client from a third party unless the client consents and the lawyer’s independent professional judgment is not affected by the third party.⁷²

MODEL RULES OF PROF'L CONDUCT R. 5.4(a); HAZARD, *supra* note 10, § 45.6, illus. 45-1. Lawyer *A* has not violated Rule 5.4(a). See HAZARD, *supra* note 10, § 45.6, illus. 45-1. Economically, the transactions are very similar because both *A* and *B* will repay the loans with money from legal fees; the only difference is that *A* will pay a fixed rate and *B* will pay a proportionate share of his fees. *Id.* Neither transaction creates a danger that the bank or the investor will engage in the unauthorized practice of law. *Id.* The main theory distinguishing the two scenarios is that, because the investor's repayment is based on a percentage of legal fees, *B* will allow the investor to control *B*'s legal judgment. Cf. ROTUNDA & DZIENKOWSKI, *supra* note 62, at 942. However, an equally strong case can be made for the argument that the bank may try to control *A*'s legal judgment if *A* falls behind on his payments. HAZARD, *supra* note 10, § 45.6, illus. 45-1.

66. MODEL RULES OF PROF'L CONDUCT R. 5.4(b). Many states have addressed whether a lawyer has formed a partnership with a nonlawyer that consists of the practice of law. See, e.g., Utah State Bar Ethics Advisory Opinion Comm., Op. 02-04 (2002), available at http://www.utahbar.org/rules_ops_pols/ethics_opinions/op_02_04.html. The Utah State Bar issued an ethics opinion stating that a lawyer who is employed by an accounting firm and is also a CPA is barred by “Rule 5.4(b) from forming a business association with a non-lawyer to provide the accounting services when the lawyer is contemporaneously engaged in the practice of law.” *Id.*

67. ROTUNDA & DZIENKOWSKI, *supra* note 62, at 949.

68. *Id.*

69. MODEL RULES OF PROF'L CONDUCT R. 5.4(c).

70. HAZARD, *supra* note 10, § 45.4.

71. *Id.* § 45.8.

72. MODEL RULES OF PROF'L CONDUCT R. 1.8(f). Common scenarios include a parent paying a lawyer to represent a child, a corporation paying a lawyer to represent a director, and an insurance company paying a lawyer to represent its insured. See ROTUNDA & DZIENKOWSKI, *supra* note 62, at 432-33.

4. Nonlawyer Directors or Owners of a Law Firm

Rule 5.4(d) bars lawyers from practicing law in a professional corporation or association if: “(1) a nonlawyer owns any interest therein . . . ; (2) a nonlawyer is a corporate director or officer . . . ; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.”⁷³ The purpose of the rule is to ensure that a lawyer’s business relationships with nonlawyers do not compromise the lawyer’s professional judgment.⁷⁴ It does so with a broad sweeping rule that deems all nonlawyer investment and participation in law firms to be interference with a lawyer’s professional judgment.⁷⁵

E. The ABA Commission on Multidisciplinary Practice

In the late 1990s, the ABA recognized that expanding technology, the globalization of financial markets, and increased government regulation had reshaped client demand for legal services.⁷⁶ Clients no longer wanted their legal, financial, and accounting advice to come from distinct organizations.⁷⁷ Business clients sought “one-stop shops” where professionals from different disciplines worked as one unit to provide the client with consolidated advice on complex issues.⁷⁸ With the existing state of the Model Rules, law firms could not provide the “one-stop shops” clients desired.⁷⁹ However, the large accounting firms were filling the need by not only providing financial and accounting services, but also providing services similar to those traditionally offered by law firms.⁸⁰ The ABA stated that the expansion of large accounting firms into the practice of law was “the most important issue to face the legal profession this century,” and it sought the advice of the Commission on Multidisciplinary Practice about how the legal profession could adapt to meet the changing needs of clients.⁸¹

In July of 2000, the Commission on Multidisciplinary Practice recommended that the ABA amend the Model Rules to permit lawyers and nonlawyer professionals to form partnerships that provide both legal and nonlegal professional services.⁸² The recommendation stated that lawyers in multidisciplinary practices should “have the control and

73. MODEL RULES OF PROF'L CONDUCT R. 5.4(d).

74. HAZARD, *supra* note 10, § 45.4.

75. *Id.*

76. ABA, *Background Paper on Multidisciplinary Practice*, <http://www.abanet.org/cpr/mdp/multicomreport0199.html> (last visited Apr. 4, 2009).

77. *Id.*

78. *Id.*

79. *See* MODEL RULES OF PROF'L CONDUCT R. 5.4(b) (2003) (barring partnerships between lawyers and nonlawyers that provide legal services).

80. *Background Paper*, *supra* note 76.

81. *Id.*

82. ABA Commission on Multidisciplinary Practice, *Report to the House of Delegates*, July 2000, <http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html>.

authority necessary to assure lawyer independence in the rendering of legal services.”⁸³ The Commission also recommended that passive investment in law firms and multidisciplinary practices remain prohibited.⁸⁴ The recommendation, however, left the details of implementation to the states.⁸⁵

The Commission’s recommendation met strong opposition from many state bar associations.⁸⁶ The opponents proposed that each jurisdiction revise its ethics rules and reaffirm the principle that the “sharing of legal fees with nonlawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession.”⁸⁷ On July 11, 2000, the ABA House of Delegates overwhelmingly agreed with the opponents and rejected the Commission’s recommendation by a vote of 314 to 106.⁸⁸ The recommendation failed, in part, because of Arthur Andersen and its in-house legal counsel’s involvement in the Enron collapse.⁸⁹ The ABA’s rejection of the Commission’s recommendation effectively ended the multidisciplinary practice debate within the ABA; however, it did not end the discussion in individual states.⁹⁰

F. District of Columbia Rule 5.4

The District of Columbia is currently the only United States jurisdiction that has adopted a rule substantially different from Model Rule 5.4.⁹¹ In the District of Columbia, a lawyer may form a partnership with a nonlawyer if the purpose of the partnership is to practice law, and the nonlawyer may hold a financial or managerial interest in the partnership.⁹² However, a nonlawyer is only permitted to hold a managerial

83. *Id.*

84. *Id.*

85. *See id.*

86. *E.g.*, Illinois State Bar Association, et al., *Recommendation*, <http://www.abanet.org/cpr/mdp/mdprecom10f.html> (last visited Apr. 4, 2009).

87. *Id.*

88. Keith Kaap, *ABA Rejects Economic Partnerships Between Lawyers & Nonlawyers*, WISBAR.ORG, http://www.wisbar.org/AM/Template.cfm?Section=Research_and_Reports&Template=/CM/ContentDisplay.cfm&ContentID=16690 (last visited Apr. 4, 2009).

89. Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 98 (2003). Arthur Andersen’s involvement in the Enron collapse raised issues concerning the ethical practices of accounting and consulting firms and whether they were compatible with the ethical obligations of lawyers. *See id.*

90. Kaap, *supra* note 88.

91. *See* D.C. RULES OF PROF’L CONDUCT R. 5.4(b) (2007).

92. *Id.* One problem with the District of Columbia permitting lawyers to form partnerships with nonlawyers is that lawyers who practice in the District of Columbia and another jurisdiction are subject to conflicting rules. To deal with this potential problem, the ABA Standing Committee on Ethics and Professional Responsibility has formally addressed how the District of Columbia rule applies to lawyers who are licensed to practice law in the District of Columbia as well as other jurisdictions. *See* ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op. 91-360 (1991). The committee held that when a lawyer is licensed in the District of Columbia as well as a jurisdiction that does not permit the lawyer to form a partnership with a nonlawyer, the lawyer “[can] practice law through a partnership with a nonlawyer-partner or principal in the District of Columbia without be-

position or be a partner if he or she “performs professional services which assist the organization in providing legal services to the clients”⁹³ Thus, the rule does not allow for passive investment in the organization by nonlawyers.⁹⁴

In the District of Columbia, the lawyer-nonlawyer partnership is, first and foremost, a law firm that provides legal services; the law firm may only provide “ancillary services,” like accounting, financial advising, and similar professional services, if the services are “directly linked to the legal services being provided to the client.”⁹⁵ The lawyer-partners in the firm that have managerial authority are responsible for the nonlawyer-partners to the same extent they are responsible for the actions of subordinate lawyers.⁹⁶ Thus, they must make reasonable efforts to ensure that the nonlawyer-partners’ conduct conforms to the Rules of Professional Conduct.⁹⁷

III. EXAMINATION OF BRITISH AND AUSTRALIAN LEGISLATION

British and Australian legislation have paved the way for law firms to incorporate and list on securities exchanges. This recent legislation signifies a major change in both countries from the previously permitted business forms. This section addresses some of the relevant details of the British and Australian legislation and discusses the legislatures’ rationales for supporting this drastic change.

A. British Legislation

The Legal Services Act of 2007 (LSA) permits lawyers to form alternative business structures to provide legal advice and other services in England.⁹⁸ In an alternative business structure, lawyers and

ing subject to discipline in [the other jurisdiction].” *Id.* However, the lawyer may not practice in the jurisdiction that bars partnerships with nonlawyers in a business structure that has nonlawyer-partners or principals. *Id.* Furthermore, a Michigan Ethics Opinion addressed whether a lawyer licensed to practice in both Michigan and the District of Columbia could obtain a financial interest in a District of Columbia firm that has financial interests held by nonlawyers. State Bar of Mich., Op. RI-225 (1995), available at http://www.michbar.org/opinions/ethics/numbered_opinions/ri-225.htm. The opinion also discussed whether a lawyer licensed in Michigan and the District of Columbia could establish a branch of his Michigan law firm in the District of Columbia and have the District of Columbia firm have a nonlawyer with a financial interest. *Id.* The bar committee decided that the lawyer would not violate the Michigan rules by obtaining a financial interest in the District of Columbia firm, so long as the District of Columbia allowed nonlawyer ownership and the District of Columbia firm does not handle Michigan legal matters. *Id.* However, “[a] Michigan lawyer may not form a partnership for delivery of legal services with a nonlawyer, where any portion of the firm’s operations will be conducted in Michigan and where the nonlawyer has any financial interest in or control over the firm’s operations in Michigan or on Michigan legal matters.” *Id.*

93. D.C. RULES OF PROF’L CONDUCT R. 5.4(b).

94. *See id.*

95. HAZARD, *supra* note 10, § 45.7.

96. D.C. RULES OF PROF’L CONDUCT R. 5.4(b)(3).

97. *See id.* at R. 5.1(b).

98. *See* Explanatory Notes to Legal Services Act 2007: 2007 Chapter 29, ¶ 178, available at http://www.opsi.gov.uk/ACTS/acts2007/en/ukpgaen_20070029_en_1.

nonlawyers can form legal partnerships and companies that perform both legal and non-legal services.⁹⁹ The LSA permits a nonlawyer to manage those alternative business structures and own an interest in a corporation that performs legal services.¹⁰⁰ However, the company must become a licensed body.¹⁰¹

The impetus for the British legislation permitting alternative business structures is twofold. First, the alternative business structures will benefit consumers in a variety of ways.¹⁰² Second, the alternative business structures will benefit legal service providers.¹⁰³ In addition to the benefits provided for clients and legal service providers, the legislators also designed the LSA to promote adherence to professional principles while allowing less restrictive business structures.¹⁰⁴ Similar to the professional principles for lawyers under the *Models Rules of Professional Conduct*, the LSA sought to promote the principles of independence and integrity, proper standards of work, best interests of the client, and protection of client confidences.¹⁰⁵

British legislators believed that the previous statutory restrictions on legal business structures were unduly restrictive and that less restrictive rules would be more consumer-friendly.¹⁰⁶ The LSA's provisions give consumers more flexibility for in finding legal and non-legal services.¹⁰⁷ Alternative business structures will reduce the costs to consumers of some legal services because of economies of scale and reduced transaction costs.¹⁰⁸ Furthermore, access to external financing

99. *Id.*

100. See Legal Services Act, 2007, c. 29, § 72(1) (Eng.). A manager is defined differently depending on the management structure of the company. *Id.* § 207(1). If the company is managed by its members, then the term "manager" includes any member. *Id.* If the company is a corporate body that is not managed by its members, then managers are the directors of the body. *Id.* If the company is unincorporated and is not a partnership, then its managers are any members of the governing body. *Id.*

101. Explanatory Notes to Legal Services Act 2007, *supra* note 98. The company can become a licensed body through application to the Legal Services Board or an approved regulator. *Cf. id.* The Legal Services Board was created by the Legal Services Act, 2007, c. 29, § 2. The Board's purpose is to provide oversight to promote the regulatory objectives of the Act. *Id.* § 3. However, the approved regulators have responsibility for the day-to-day regulating activities. *Cf. id.* If the Board believes a regulator has taken action that will have an adverse impact on a regulatory objective, then the Board may direct the regulator to take steps the board believes will counter the adverse impact. *Id.* § 32. The Board may petition the High Court to compel the regulator to take the prescribed steps if the regulator does not comply with the directions. *Id.* § 34. Finally, if certain requirements are met, the Board can issue a public censure or impose financial penalties against a regulator. *Id.* §§ 35-37.

102. DEP'T OF CONSTITUTIONAL AFFAIRS, THE FUTURE OF LEGAL SERVICES: PUTTING CONSUMERS FIRST 40 (2005), <http://www.claimsregulation.gov.uk/pdfs/whitepaper.pdf>.

103. *Id.* at 40-41.

104. Legal Services Act, 2007, c. 29, § 1(1)(h).

105. Compare *id.* § 1(3)(a), (b), (c), (e) (Eng.), with MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.6, 5.4 (2003). Rule 1.1 provides that a lawyer is required to provide competent representation to a client. MODEL RULES OF PROF'L CONDUCT R. 1.1. Rule 1.6 provides that a lawyer must keep client confidences. *Id.* at R. 1.6. Rules 1.8(f)(2) and 5.4(c) provide that lawyers must provide independent professional judgment for their clients. *Id.* at R. 1.8(f)(2), 5.4(c).

106. Explanatory Notes to Legal Services Act 2007, *supra* note 98, ¶¶ 180-81.

107. DEP'T OF CONSTITUTIONAL AFFAIRS, *supra* note 102, at 40.

108. *Id.*

and in-house non-legal experts will permit alternative business structures to provide more comprehensive services to consumers.¹⁰⁹ Also, consumers benefit from one-stop shopping for legal and related services.¹¹⁰ In addition, alternative business structures allow firms to facilitate expansion and increase efficiency by investing in large-scale capital projects.¹¹¹ Outside investment also permits a firm to spread its risks among shareholders, which can result in lower prices for consumers.¹¹² Finally, the legislators recognized that alternative business structures permit law firms to hire and retain top-quality non-legal staff through stock incentives.¹¹³

The British legislators placed provisions in the LSA specifically designed to protect the ethical obligations of lawyers practicing in alternative business structures by imposing restrictions on nonlawyer management and ownership.¹¹⁴ The main restriction deals with the amount of interest a nonlawyer can hold.¹¹⁵ A nonlawyer's purchase of an interest in an alternative business structure is subject to approval by the Legal Services Board or an approved regulator if: (1) the nonlawyer owns an interest of ten percent or more in the company or its parent company; (2) the nonlawyer holds ten percent or more of the voting rights of the company or its parent company; or (3) the nonlawyer can exercise significant influence over the management of the company or its parent company by virtue of his or her shareholding or voting power in it.¹¹⁶

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 41. Reduced financial risk for the partners can lead to reduced costs for consumers because the partners do not require a high rate of return when they have less financial risk. See Robert A. Levy, Note, *The Prudent Investor Rule: Theories and Evidence*, 1 GEO. MASON L. REV. 1, 10 (1994). Similar to any investment, partners in law firms will demand a higher rate of return if there is a greater chance that they will lose the principal of their investment. *Id.* When a firm wishes to expand, it will require a potentially higher return on the investment if the risk of loss is high. *Id.* In the context of a law firm, higher returns usually require higher fees for services. *Id.* If the firm brings in outside investors, it reduces the risk of expansion for the partners because each partner now makes a smaller capital contribution. Therefore, the lawyers will not require higher rates of return and the firm can charge clients lower fees than it could charge if the partners bore all the risk of expansion.

113. DEP'T OF CONSTITUTIONAL AFFAIRS, *supra* note 102, at 41.

114. Explanatory Notes to Legal Services Act 2007, *supra* note 98, ¶ 227.

115. Legal Service Act, 2007, c. 29, § 89, sched. 13 (Eng.).

116. See *id.* § 89 sched. 13, pt. 1, ¶¶ 1(1), 2(1), 3(1) (Eng.). The attribution rules in schedule 13, part 1, paragraph 5 apply to determine what interest a person holds in the alternative business structure. See *id.* § 89 sched. 13, pt. 1, ¶ 5. Prior to obtaining a license to form an alternative business structure, the company must notify the Legal Services Board of all nonlawyers who hold a restricted interest. *Id.* § 89 sched. 13, pt. 1, ¶ 10.

A non-authorized person's holding of a restricted interest will be approved if the licensing authority is satisfied that it would not compromise the regulatory objectives or compliance by the licensed body and such of its managers and employees who are authorized persons with the duties in section 176. The licensing authority must also be satisfied that the person is a fit and proper person to hold the interest.

Explanatory Notes to Legal Services Act 2007, *supra* note 98, ¶ 232. After the license is granted, the duty to inform the Legal Services Board about the potential purchase of a restricted interest falls on the investor wishing to purchase the interest. Legal Services Act, 2007, c. 29, § 89, sched. 13, pt. 3, ¶ 21(1), (2). If an investor purchases a restricted interest without the Board's approval, the Board may

The LSA also imposes a duty on all nonlawyer managers, employees, and persons holding an interest in the alternative business structure not to interfere with the lawyers' compliance with the LSA and regulations imposed by an approved regulator.¹¹⁷

B. Australian Legislation

In 2000, New South Wales passed the Legal Profession Act and became the first jurisdiction to permit unrestricted incorporation for firms that provide legal services.¹¹⁸ The Legal Profession Act, as amended in 2004, permits any corporation to establish a division to provide legal services in the form of an incorporated legal practice.¹¹⁹ Furthermore, the Act explicitly permits a lawyer to share revenues or other income from the provision of legal services with an incorporated legal practice.¹²⁰

The Act requires each incorporated legal practice to appoint a legal director, who is responsible for management of the legal services of the corporation.¹²¹ The legal director must institute appropriate oversight systems to ensure that the corporation complies with the professional obligations of the lawyers.¹²² Furthermore, the legal director must ensure that other officers or employees of the corporation do not adversely affect the professional obligations of the legal professionals.¹²³ If the legal director is aware that actions by the corporation will lead to a breach of the lawyers' professional obligations, he or she must take steps to avoid the breach or must take appropriate remedial action.¹²⁴ If

apply to the High Court and the court may order the investor to sell the number of shares required to reduce the investor's interest below the restricted interest threshold. *See id.* § 89 sched. 13, pt. 5, ¶¶ 43, 45.

117. *See id.* §§ 90, 176.

118. Steve Mark, NSW Legal Services Commissioner, *The Corporatisation of Law Firms—Conflicts of Interests for Publicly Listed Law Firms*, [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/vwFiles/Corporatisation_of_Law_Firms_Conflicts_of_interests_for_publicly_listed_law_firms_October_2007.doc/\\$file/Corporatisation_of_Law_Firms_Conflicts_of_interests_for_publicly_listed_law_firms_October_2007.doc](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/vwFiles/Corporatisation_of_Law_Firms_Conflicts_of_interests_for_publicly_listed_law_firms_October_2007.doc/$file/Corporatisation_of_Law_Firms_Conflicts_of_interests_for_publicly_listed_law_firms_October_2007.doc) (last visited Apr. 4, 2009). The Australian legislators recognized many of the same rationales for permitting unrestricted incorporation and multidisciplinary practices as the British legislators. Compare Parker, *supra* note 3, at 13-15, with *supra* notes 102-113 and accompanying text. Allowing unrestricted incorporation permits incorporated firms to raise capital more quickly and efficiently through public offerings. Parker, *supra* note 3, at 14. The unrestricted structure permits firms to provide ownership incentives to lawyer- and nonlawyer-employees. *Id.* Allowing multidisciplinary practices and unrestricted incorporation also benefits clients because clients have more options when deciding who should provide their legal services, and multidisciplinary practices and unrestricted incorporation can create one-stop shops for legal and nonlegal services. *See id.* at 13.

119. Legal Profession Act, 2004, c. 2, §§ 135(1), 136(1) (Austl.). An incorporated legal practice is any corporation that engages in legal practice, regardless of whether it provides nonlegal services. *Id.* § 134(1).

120. *Id.* § 151(1).

121. *Id.* § 140(1), (2). This individual is referred to in the Act as a "legal practitioner director." *Id.*

122. *Id.* § 140(3)(a).

123. *Id.* § 140(3)(b).

124. *Id.* § 140(4). The lawyers who are employees of the incorporated legal practice still must

the legal director fails to take appropriate action when a breach is apparent, the director may be subject to penalties for breaching his or her professional obligations.¹²⁵

The Act also permits multidisciplinary partnerships between lawyers and nonlawyers.¹²⁶ The Act explicitly states that it does not prevent a lawyer in a multidisciplinary partnership from sharing revenues or income earned from the provision of legal services with nonlawyer-partners.¹²⁷ Any lawyer-partner in a multidisciplinary partnership is responsible for managing the legal services provided by the partnership.¹²⁸ Furthermore, the lawyer-partner must institute appropriate oversight systems to ensure that the partnership complies with the professional obligations of the lawyer-partners.¹²⁹ The lawyer-partners must ensure that the lawyers' professional obligations are not adversely affected by the nonlawyer-partners or employees.¹³⁰

IV. ANALYSIS

A. The Benefits of Permitting Nonlawyer Ownership and Management of Law Firms

The British and Australian legislators recognized many of the benefits that result from permitting nonlawyer ownership and management of law firms.¹³¹ Both bodies recognized that permitting nonlawyer investment in law firms would give firms greater access to capital through private or public offerings, allow firms to offer stock option incentives to lawyer as well as nonlawyer-employees, allow law firms to offer more comprehensive services to clients, and create one-stop shops

comply with their professional obligations as lawyers. *Id.* § 143(1). The Law Society Council may apply to the supreme court of a state or territory in order to disqualify an incorporated legal practice from providing legal services if, among other things, "the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services . . ." *Id.* § 153(3)(b). The rules of attorney-client privilege still apply to lawyers acting as officers or employees of an incorporated legal practice. *Id.* § 143(3).

125. *Id.* § 140(3)-(5). The Act imputes all conflicts of the incorporated legal practice and any of its related corporate bodies to any lawyers who are officers or employees of the incorporated legal practice. *Id.* § 145(1). Every lawyer-employee of an incorporated legal practice must disclose to his or her clients the services to be provided and whether a lawyer will provide the services, and must identify any services that will not be provided by a lawyer. *Id.* § 146(2), (3). For those services that accompany legal services, but will not be provided by a lawyer, the lawyer must disclose the "status or qualifications of the person or persons who will provide the services . . ." *Id.* § 146(3)(c).

126. *Id.* § 166(1). The act defines a multidisciplinary partnership as a "partnership between one or more Australian legal practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services . . . as well as other services." *Id.* § 165(1).

127. *Id.* § 177(1).

128. *Id.* § 168(1).

129. *Id.* § 168(2)(a).

130. *Id.* § 168(2)(b).

131. See *supra* notes 102-113 and accompanying text; *supra* note 118.

for clients to receive legal as well as non-legal services.¹³² Furthermore, the legislators recognized that permitting nonlawyer investment could result in other benefits to clients and firms, such as better and less expensive legal services.¹³³ This section will discuss the possible benefits of nonlawyer investment in law firms and explain how nonlawyer investment can lead to these results.

1. Nonlawyer Employee Ownership

As mentioned above, one of the major benefits of nonlawyer investment in law firms is the ability to provide ownership interests to nonlawyer-employees. A corporation can use an ownership interest as an incentive through stock options or by issuing employees stock as a component of their compensation. This Note addresses how stock options for nonlawyer-employees can: (1) increase employee performance; (2) help law firms retain quality nonlawyer-employees; and (3) help law firms recruit top quality nonlawyer-employees and managers.

Employers commonly give employees stock options to accomplish two objectives. First, employers give employees stock options to encourage the employees to provide a higher standard of performance.¹³⁴ Many companies that offer stock options to employees believe that an employee with an ownership stake in the company will have an incentive to provide a better product and increase the value of the company.¹³⁵ Second, stock options give employees an incentive to monitor their coworkers and superiors.¹³⁶ In most circumstances, employees may be reluctant to report or confront coworkers or superiors who are engaging in behavior that is possibly detrimental to the company because of the natural tendency to avoid conflict with coworkers.¹³⁷ When an employee has an ownership interest in the company, however, the acts of a coworker harm the employee directly as a shareholder.¹³⁸ The direct harm to the employee increases the likelihood that the employee will confront the coworker or report the conduct.¹³⁹

Law firms could benefit from the increased production and coworker monitoring provided by nonlawyer-employees with an ownership interest in the firm. This is true because the lawyers in a firm are not the only individuals that determine the success of the firm; the ac-

132. See *supra* notes 102-113 and accompanying text; *supra* note 118.

133. See *supra* notes 102-113 and accompanying text; *supra* note 118.

134. Sharon Hannes, *Reverse Monitoring: On the Hidden Role on Employee Stock-Based Compensation*, 105 MICH. L. REV. 1421, 1428 (2007); 18B AM. JUR.2D *Corporations* § 1688 (2004).

135. *Stock Options: The End of the Affair?*, June 30, 2003, <http://knowledge.wharton.upenn.edu/article.cfm?articleid=825>.

136. See Hannes, *supra* note 134, at 1436.

137. See *id.*

138. See *id.*

139. See *id.*

tions of nonlawyer-employees also have a major impact on the firm's success.¹⁴⁰ If the nonlawyer-employees provide better services to the lawyers, then the lawyers are able to provide better services to their clients. Therefore, a law firm can benefit from the increased performance and monitoring that result from offering its nonlawyer-employees an ownership interest in the firm.

Higher employee productivity and increased coworker monitoring are not the only benefits nonlawyer-employee stock options could provide a law firm. The ability to offer employee stock options to nonlawyer-employees could also help firms retain talented employees.¹⁴¹ Retaining lawyer and nonlawyer-employees is important because hiring and replacing employees is extremely costly.¹⁴² Stock option plans give employees an incentive to stay with the firm because, generally, stock option plans vest gradually over a period of years.¹⁴³ Thus, a law firm's ability to offer nonlawyer-employees stock options would result in less turnover and reduced costs of employee replacement for the firm.

In addition to helping firms retain employees, if law firms are able to offer nonlawyer managers and employees an ownership interest, the firms can compete with other companies for top-tier managers and employees.¹⁴⁴ Stock incentives are a major tool that companies use to recruit executives.¹⁴⁵ Commonly, stock options will comprise a large part of an executive's compensation package.¹⁴⁶ Model Rule 5.4's prohibition against law firms offering nonlawyer managers an ownership interest places firms at a disadvantage when trying to compete with other companies for financial officers, marketing directors, human resource

140. Law firms commonly rely on nonlawyer-employees for clerical work, marketing, and management of human resources, as well as for many other functions. The employees in a law firm's marketing department can affect the success of the firm through their successful or unsuccessful marketing efforts. Furthermore, clerical and secretarial staff can affect the success of a law firm based on the quality of work that they provide for the lawyers.

141. See DEP'T OF CONSTITUTIONAL AFFAIRS, *supra* note 102, at 41.

142. Adrienne Selko, *Tips on Avoiding the High Cost of Employee Turnover*, Sept. 1, 2008, <http://www.industryweek.com/ReadArticle.aspx?ArticleID=17180>. The cost of replacing an employee can easily exceed 150% of the employee's salary. Mark Trowbridge, *Tips for Retaining, Top Performing Supply Management Staff*, BEST PRACTICES J., Jan./Feb. 2007, at 3, 6, <http://www.strategicprocurementsolutions.com/PDF%20Files/SPSNewsletterVol32%20PDF.pdf>.

The expenses associated with replacing employees include out of pocket expenses, the expense of inefficiency, and the expense of time that could be used for other purposes. *Id.* at 6-7. In particular, the expense to replace an employee includes recruiting, advertising, time to review resumes and interview applicants, additional bookkeeping, lost productivity while the job is vacant, and inefficiency as the new employee becomes familiar with the job requirements. *Id.*

143. See Hannes, *supra* note 134, at 1429.

144. See *infra* notes 145-147 and accompanying text.

145. Marcel Kahan, *The Limited Significance of Norms for Corporate Governance*, 149 U. PA. L. REV. 1869, 1888 (2001). In a "1996 study, 94% of the 250 largest companies use[d] stock options as part of their [CEO] compensation package." *Id.*

146. See Hannes, *supra* note 134, at 1426. In 2000, based on the samples studied, an average of 51% of a CEO's total compensation was in the form of stock options. See *id.*

directors, or other nonlawyer managers.¹⁴⁷ In order to compete, law firms are forced to devise alternative compensation packages that provide these managers with comparable total benefits without any ownership interest.¹⁴⁸ To provide comparable benefits without any ownership interest, firms must pay nonlawyer managers a higher salary than they would demand if stock options were part of the compensation package. Thus, law firms may be reluctant to compete with other companies for top-tier executives because they must compensate for the inability to issue stock options by offering higher annual salaries.

2. Access to Capital

Due to Model Rule 5.4, law firms in the United States which are in need of capital rely primarily on borrowing.¹⁴⁹ If the Model Rules permitted nonlawyer investment in law firms, those firms could raise capital by issuing shares to nonlawyer investors.¹⁵⁰ Easier access to capital creates many advantages for both firms and clients. This section addresses those advantages in the context of law firm expansion and capital-intensive practice areas.

A firm's greatest need for capital usually occurs when it wishes to expand. Raising capital through nonlawyer investors decreases the financial risks that accompany expansion.¹⁵¹ If a firm obtains capital through borrowing, the firm is then liable to pay back the creditor and all the risks associated with expansion are borne by the partners of the firm.¹⁵² If the firm obtains capital through nonlawyer investors, however, the risk of expansion is spread among all the partners and the outside investors. Thus, expansion through borrowing creates more risk for the partners than does expansion through outside or employee investment.¹⁵³

The United States is the largest market for legal services in the world.¹⁵⁴ However, U.S. law firms recognize the opportunities pre-

147. Law firms benefit from hiring top quality nonlawyer managers. See Thomas R. Andrews, *Nonlawyers in the Business of Law: Does the One Who Has the Gold Really Make the Rules?*, 40 HASTINGS L.J. 577, 627-28 (1989). This allows the lawyers in the firm to spend more of their time working on clients' projects instead of spending time dealing with the management of the firm. When lawyers spend more time working on clients' projects, they are devoting their time to revenue generating activities. Furthermore, the firm benefits from having top quality nonlawyers handle the marketing, finances, and human resources of the firm because the nonlawyers who are trained in those areas generally have a better skill-set for dealing with issues that arise in those areas. Finally, clients benefit because the lawyers are able to focus more on the clients' projects without the distraction of managing the business side of the law firm.

148. See *id.* at 628.

149. See *id.* at 629-30.

150. See *id.*

151. Sharfman, *supra* note 55, at 484.

152. Dependence on bank loans can put a financial strain on a law firm. *Id.* at 486. Over-reliance on bank loans can even lead to a law firm's collapse. *Id.*

153. See *id.* at 483.

154. Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really*

sented by international expansion,¹⁵⁵ and “[o]ver the past decade, major . . . firms have made international expansion a top priority”¹⁵⁶ The trend is expected to continue, if not increase, because of a slowdown in demand for legal services in New York and a steady demand in Asia.¹⁵⁷ Many United States, British, and Australian firms are opening branches or expanding their current branches in international locations like Dubai, Hong Kong, and Saudi Arabia.¹⁵⁸ This creates competition between United States firms and British and Australian firms to set up offices in these international markets before the markets become oversaturated with legal service providers.¹⁵⁹

While international expansion presents many unique opportunities, it also is costly.¹⁶⁰ Based on the legislation in England and Australia, British and Australian law firms that wish to expand into these international markets have easier access to the necessary capital because of their ability to obtain financing from outside investors.¹⁶¹ United States firms may not be able to raise the necessary capital as quickly, however, because they lack the ability to issue stock to outside investors.¹⁶² Furthermore, U.S. firms may be hesitant to take on the risks that accompany expanding into these markets through borrowing.¹⁶³ Therefore, British and Australian firms may expand into and saturate the international markets, while United States firms are not able to take advantage of the international opportunities because they lack the ability to raise

Better? An International Comparison, 40 VAND. J. TRANSNAT'L L. 763, 769 (2007).

155. *Cf. id.* at 790. United States firms' recognition of international opportunities has led to "substantial growth in the number of overseas offices and attorneys of elite law firms over the last decade." *See id.*

156. John Bringardner, *Lawyers Wanted: Abroad That Is*, Nov. 23, 2008, http://www.nytimes.com/2008/11/23/business/23law.html?_r=1.

157. *Id.*

158. *See id.*

159. These markets do not represent a never ending source of legal work. *Cf. id.* Like any market, these markets at some point will become saturated with talented lawyers and the opportunities for expansion into these markets by foreign firms will dry up. *Cf. id.* This is already starting to happen in Dubai where the number of lawyers is inching closer to a critical mass. *Id.* This is forcing international firms that did not tap into the very desirable Dubai market to set up branches in the growing, but less desirable, markets of Abu Dhabi and Qatar. *Id.*

160. In addition to the costs that accompany opening new branches in the United States and Europe, the salaries demanded for attorneys to relocate to Dubai, Saudi Arabia, or Hong Kong are often much greater than the salaries a firm would pay a comparable associate in the United States because of the demanded housing allowance. *See id.*

161. *See supra* notes 98-101, 118-120 and accompanying text. Firms in Britain and Australia have more sources from which they can obtain capital than do firms in the United States. *Supra* notes 98-101, 118-120 and accompanying text. Similar to firms in the United States, British and Australian firms can raise capital through borrowing or by not making distributions to the partners and accumulating the income. However, Australian firms now have the option, and British firms will have the option very soon, to raise capital by issuing stock on a public exchange or to private investors. *See supra* notes 98-101, 118-120 and accompanying text.

162. United States firms only have the option to generate capital through borrowing or accumulating income by not making partner distributions. Borrowing is not always an attractive option because of the risk that accompanies it. *See supra* notes 151-153 and accompanying text. Building up capital through accumulating income may not be an attractive option because it requires the partners of the firm to take smaller distributions than they would have otherwise received.

163. *See supra* notes 151-153 and accompanying text.

capital by issuing stock to outside or employee investors.

Greater access to capital can also help firms build more efficient and competitive practices in certain capital-intensive practice areas. In particular, contingent fee cases require the representing law firm to provide a great deal of upfront capital.¹⁶⁴ Similar to expansion, taking on contingent fee cases creates a greater amount of risk for the partners.¹⁶⁵ The financial risk for firms that take on large contingent fee cases can deter firms from pursuing anything but the strongest plaintiffs' cases.¹⁶⁶ If plaintiffs' firms could raise capital through outside investment, however, they would likely take on greater numbers of contingent fee cases because the outside investment would provide the firms with more capital to finance the litigation and would spread the financial risk of the litigation.¹⁶⁷ This would expand options for plaintiffs who rely on contingent fee representation.¹⁶⁸

3. One-Stop Shops

Permitting lawyers to form multidisciplinary practices with nonlawyer professionals can provide consumers with one-stop shops.¹⁶⁹ The main advantage of one-stop shops is the convenience for consumers.¹⁷⁰ Furthermore, one-stop shops have the potential to offer consumers cost savings, while simultaneously encouraging innovation and competition.¹⁷¹ Having lawyers and other professionals working for one entity instead of multiple separate entities will foster coordination, teamwork, and in-depth strategic planning.¹⁷² Finally, studies have shown that many potential clients are intimidated by lawyers and may only seek them out as a last resort.¹⁷³ Multidisciplinary practices allow lawyers to recast themselves as part of a problem-solving team that includes other professionals, and consumers will benefit from obtaining legal advice at an earlier stage when the lawyer may be able to help the client more than if the client had come to the lawyer as a last resort.¹⁷⁴

164. See Sharfman, *supra* note 55, at 485; Adams & Matheson, *supra* note 11, at 34.

165. See Adams & Matheson, *supra* note 11, at 34.

166. See Sharfman, *supra* note 55, at 485.

167. See Adams & Matheson, *supra* note 11, at 35. However, firms would also have an incentive not to take on cases that are overly risky or unmeritorious because outside investment would become unavailable if investors discovered that the firm does not choose cases wisely. *Id.*

168. See Adams & Matheson, *supra* note 11, at 35.

169. A rule permitting lawyers to form multidisciplinary practices would be most effective if it permitted lawyers to form partnerships that provide legal services and other services with "members of recognized professions or other disciplines that are governed by ethical standards." See *Report to the House of Delegates*, *supra* note 82.

170. DEP'T OF CONSTITUTIONAL AFFAIRS, *supra* note 102, at 21.

171. *Id.*

172. Caryn L. Abramowitz, *Multidisciplinary Practice: Will We Vote Ourselves out of the Competition* (Aug. 2000), <http://www.wsba.org/media/publications/barnews/archives/2000/aug-00-multidisciplinary.htm>.

173. *Id.*

174. See *id.*

Examples of logical multidisciplinary practices include attorneys partnering with accountants, real estate agents, architects, or psychologists.¹⁷⁵

B. Potential Problems Caused by Permitting Ownership by Nonlawyer-Employees and Outside Investors

As discussed above, the Kutak Commission's proposed Rule 5.4 was met with a great deal of opposition.¹⁷⁶ Those individuals and groups opposed to the rule raised the following arguments: (1) "Fear of Sears;" (2) nonlawyers cannot understand the ethical considerations and responsibilities of lawyers; and (3) outside investment causes potential conflicts of interest.¹⁷⁷ This section will address these arguments.

1. "Fear of Sears"

Many opponents to nonlawyer management and ownership of law practices believe that the largest accounting firms will create huge departments to provide legal services to the public, and the accounting firms will drive large law firms, as well as small firms and sole practitioners, out of business.¹⁷⁸ The possibility of this happening is limited by the independence requirements placed on accounting firms that provide independent audits.

As of 2003, the four largest accounting firms, the "Big Four," provided audits to over seventy-eight percent of the publicly traded companies in the United States.¹⁷⁹ In order to ensure accurate, truthful, and

175. Attorneys could partner with accountants to provide not only legal services but also financial services. Large accounting firms already provide a great deal of tax advice to their clients. *Background Paper*, *supra* note 76. These firms recruit many tax attorneys from large law firms. *Id.* With the extensive tax advice the accounting firms render with the help of their in-house legal counsel, they are essentially providing legal services, in the form of tax advice, without the lawyers being subject to the lawyers' regulatory system. *Report to the House of Delegates*, *supra* note 82. Permitting lawyers to form multidisciplinary practices with accountants could give attorneys a means to provide in-depth tax services similar to those provided by the large accounting firms, while also ensuring that the attorneys are still subject to the lawyers' regulatory system. *See id.* Clients would benefit because lawyers in partnerships with accountants would not be able to avoid personal liability in the same way that lawyers working in-house for large accounting firms are able to avoid personal liability. *See id.*

A real estate agent could partner with an attorney in a real estate practice for the purposes of providing title opinions, advising clients on the ramifications of buying or selling property, and drafting all the necessary documents that accompany real estate transactions. Attorneys that also act as mediators could partner with psychologists to provide more comprehensive mediation in divorces or closely held business matters.

176. *See supra* notes 50-57 and accompanying text.

177. *See supra* notes 50-57 and accompanying text.

178. *See supra* notes 53-57 and accompanying text.

179. U.S. GEN. ACCOUNTING OFFICE, HIGHLIGHTS OF GAO-03-864, A REPORT TO THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, AND THE HOUSE COMMITTEE ON FINANCIAL SERVICES (2003), available at <http://www.gao.gov/highlights/d03864high.pdf>. The Big Four handle such a high percentage of audits of large public companies because the Big Four firms are the only ones equipped with the resources and personnel to handle auditing large public companies. *See id.*

complete financial statements, the Securities and Exchange Commission (SEC) requires that an independent auditor examine a publicly traded company's financial reports.¹⁸⁰ The auditor must be independent in order to ensure that the audit is reliable and that investors can trust the financial statements.¹⁸¹ An auditor is not independent if a reasonable investor, with knowledge of all relevant facts, would conclude that the auditor could not exercise objective and impartial judgment.¹⁸²

The independent auditor standards could deter the Big Four accounting firms from creating large legal departments to provide services to the public because of the potential for disqualification from providing independent audit services. The accounting firms may fear that providing legal services to potential audit clients could create the appearance that the firm's auditors would not be objective and impartial because of the firm's interest in maintaining the legal representation of the client and the firm's position as an advocate for the client in legal matters.¹⁸³ Therefore, the large accounting firms may be reluctant to create large legal departments because of the risks of failing to meet the independence requirements of the SEC to conduct independent audits.¹⁸⁴ The "Fear of Sears," however, extends beyond a fear that large retailers or accounting firms will dominate the market for legal services and drive

180. SEC, *All About Auditors: What Investors Need to Know*, <http://www.404.gov/investor/pubs/aboutauditors.htm> (last visited Apr. 4, 2009). The independent auditor examines the company's financial statements and creates a written opinion stating whether the financials are fairly stated and comply with "Generally Accepted Accounting Principles." *Id.*

181. Final Rule: Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 33,7919, Exchange Act Release No. 34,43602, Investment Company Act No. 1911, 65 Fed. Reg. 76008-01 (Dec. 5, 2000), available at <http://www.sec.gov/rules/final/33-7919.htm>.

182. 17 C.F.R. § 210.2-01(b) (2005). The regulations also provide that an auditor is not independent if the auditor provides legal services to or has certain financial relationships with the audit client. *Id.* § 210.2-01(c)(1), (c)(4)(ix). The prohibited financial interests preclude the auditor, a member of his or her immediate family, or the accounting firm from having a direct investment in the audit client or in an entity over which the client has the ability to exercise significant control. *Id.* § 210.2-01(c)(1)(i)(A), (c)(1)(i)(E).

183. Accounting firms already provide consulting services to their audit clients, and these services represent huge revenues for the firms that they would not want to lose. See Business Editors, *Stanford Business School Study Finds Consulting Contracts Impair Auditor Objectivity*, BUS. WIRE, Aug. 1, 2001, available at <http://www.allbusiness.com/professional-services/accounting-tax-auditing/6106297-1.html>. The SEC rules permit accounting firms that provide independent audits to also provide consulting services to the audit clients. See 17 C.F.R. § 210.2-01(c)(4). However, when the accounting firms provide consulting services to audit clients they are not acting as advocates of the client. If the accounting firms provided legal services to the audit clients they would be representing the clients in an advocate capacity, which is wholly different than simply providing consulting services to the client. While it is not clear under the current rules whether the advocacy relationship between the accounting firm and the client would eliminate the auditor's independence, accounting firms may be reluctant to offer legal representation to their audit clients because of the fear that the firm would no longer be able to satisfy the independence requirements necessary to provide independent audits.

184. The independent audit services that the Big Four provide are no longer the main source of revenue and profits for the firms. See Business Editors, *supra* note 183. For example, in 2000 Sprint paid Ernst & Young just over \$2 million for audit services and over \$63 million for consulting and deployment of a financial-information system. *Id.* However, accounting firms would be reluctant to take actions that would jeopardize their ability to provide independent audits because the accounting firms use the independent audits as a gateway to setting up contracts to provide consulting and compliance services to the audit clients, which are the major source of revenues and profits for the firms. See *id.*

small firms and sole practitioners out of business; it also includes a fear that large law firms could expand to such a degree that they would dominate the market and reduce opportunities for small firms and sole practitioners.¹⁸⁵ Edward Adams and John Matheson discussed the “Fear of Sears” theory in *Law Firms on the Big Board?: A Proposal for Nonlawyer Investment in Law Firms*.¹⁸⁶ They contend that the current conflict of interest rules in the *Model Rules of Professional Conduct*—Rules 1.7, 1.9, and 1.10—restrict the size of law firms and do not allow a few large firms to control the market for legal services.¹⁸⁷ Model Rule 1.7 prohibits a lawyer from representing a client if that representation is directly adverse to another client or the representation will be materially limited by the lawyer’s responsibilities to another client, “unless the lawyer reasonably believes there will be no adverse effect and the lawyer obtains the client[s]’ informed consent.”¹⁸⁸ Furthermore, Model Rule 1.9 prohibits a lawyer from representing a person in a matter if the lawyer formerly represented a client in that same matter when “that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.”¹⁸⁹ Finally, if Rule 1.7 or 1.9 prohibits any lawyer in a firm from representing a person, none of the lawyers in that firm may represent that person.¹⁹⁰

As a law firm grows, it requires more clients to sustain its growth. Each additional client, however, increases the firm’s potential conflicts of interest.¹⁹¹ The conflict of interest rules should effectively limit the size of law firms because, at some point, continued expansion will reduce the number of business opportunities available to the firm.¹⁹² A firm will cease expansion when taking on an additional client would adversely affect the firm’s business opportunities by barring it from accepting more work than it would receive in representing that additional client.¹⁹³ Therefore, the belief that a few very large firms or companies

185. Adams & Matheson, *supra* note 11, at 14.

186. *Id.*

187. *Id.*

188. *Id.* (citing Model Rule 1.7).

189. MODEL RULES OF PROF’L CONDUCT R. 1.9(a) (2003).

190. *Id.* at R. 1.10(a). However, this rule only applies to prohibitions based on nonpersonal conflicts of interest. *See id.* If the representation barred by Rule 1.7 or 1.9 is due to a personal conflict of interest, the other lawyers in the firm may represent that client if the lawyer’s personal conflict of interest “does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” *Id.*

191. Adams and Matheson discussed *Westinghouse Electric Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311 (7th Cir. 1978), as an example of how the conflict of interest rules restrict the amount of business a law firm can handle. Adams & Matheson, *supra* note 11, at 15. The Chicago office of Kirkland & Ellis represented Westinghouse in a suit against several oil companies that were all members of American Petroleum Institute. *Id.* Kirkland & Ellis was barred from representing Westinghouse because its Washington, D.C. office represented American Petroleum Institute. *Id.*

192. Adams & Matheson, *supra* note 11, at 15.

193. *See id.*

can dominate the legal profession and drive most small firms and sole practitioners out of business is unrealistic.¹⁹⁴

2. Nonlawyers Cannot Understand the Ethical Considerations and Requirements of Lawyers

A common argument against permitting nonlawyer ownership or management of a law firm is that nonlawyers cannot understand the ethical considerations of lawyers and are driven only by a profit motive.¹⁹⁵ This argument is based on a belief that nonlawyer managers and owners would be primarily concerned with making the provision of services cost-effective and would overlook the lawyers' ethical duty to competently provide legal services.¹⁹⁶ A major flaw of this argument is that it assumes that providing ethical, competent representation and making a profit are diametrically opposed to one another.¹⁹⁷ Few lawyers would engage in the private practice of law if they did not see the opportunity to make a profit.¹⁹⁸ Furthermore, no empirical studies have found that a "profit motive is bound to lead to inadequate or unethical legal services."¹⁹⁹

In theory, a law firm's profits will increase by providing competent, ethical, and quality services to clients.²⁰⁰ A firm develops a reputation for quality by providing competent, top-quality services and placing its client's interests above its own.²⁰¹ Clients will tender repeat business and agree to pay a premium if the firm provides quality services.²⁰²

194. See Sharfman, *supra* note 55, at 483.

195. See *supra* note 51 and accompanying text.

196. Andrews, *supra* note 147, at 601-02. This concern is also present in other types of representation, for example, when a lawyer is representing an insured individual but a liability insurance company pays for the legal services. MODEL RULES OF PROF'L CONDUCT R. 1.8 cmt. 11 (2003). In those cases, the insurance company is often concerned with the cost-effectiveness of and the amount spent on the representation. *Id.* However, the Model Rules do not bar representation of an insured where the insurer pays for the legal services. See *id.* The Model Rules deal with this conflict by providing that the lawyer cannot accept compensation from the insurer "unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client." *Id.*

The argument that nonlawyers should not have an ownership interest in law firms because they are driven purely by a profit motive is likely also based on a belief that a profit motive could lead to demand-inflation. Demand-inflation occurs when lawyers advise clients to buy unnecessary legal services or work too hard on a client's project. Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 VA. L. REV. 1707, 1710-11 (1998). Lawyers may advise clients to buy additional legal services by exaggerating the clients' risk exposure or exaggerating the work that goes into completing the clients' projects. *Id.* Lawyers may work too hard on a client's project to increase profits simply by taking unreasonable steps to ensure that the client's task is done correctly. *Id.* These unnecessary steps increase the number of hours billed for a project. *Id.* These issues are present because clients commonly rely on a lawyer's expertise to decide what methods are necessary to accomplish the client's task. *Id.*

197. See Andrews, *supra* note 147, at 602.

198. *Id.*

199. *Id.*

200. Karl S. Okamoto, *Reputation and the Value of Lawyers*, 74 OR. L. REV. 15, 22 (1995).

201. See *id.*; Ribstein, *supra* note 196, at 1714-15.

202. Okamoto, *supra* note 200, at 22.

Moreover, if, in order to achieve a higher profit on a client's current project, a firm delivered sub-par services or took actions that were detrimental to the client, then that client would not become a repeat customer, and the firm would forfeit the potential premium a client would pay for quality service.²⁰³ Therefore, in order to maximize profits by obtaining repeat clients who are willing to pay a premium for quality services, a law firm has an incentive to provide quality legal services and refrain from self-dealing.²⁰⁴ Thus, a law firm's goal of making a profit and its duty to provide competent, ethical representation to its clients are not in opposition to each other; a law firm can only maximize its profits by providing competent, quality, ethical representation.

3. Conflicts of Interest

Allowing nonlawyer ownership and management of a law firm creates several possible conflict-of-interest issues. First, does a lawyer owe his or her primary duty to act in the best interests of the corporation or in the best interests of the client? Second, outside ownership can create conflicts of interest for lawyers if the interests of the outside investors are imputed to the law firm.

a. Lawyers' Primary Duty Must Be to the Clients

Directors, officers, and employees of a corporation owe fiduciary duties to the corporation.²⁰⁵ Those fiduciary duties require the directors, officers, and employees to act in the best interests of the corporation.²⁰⁶ Assuming that a rule permitting nonlawyer ownership of law firms permitted law firm incorporation, a lawyer working for an incorporated law firm will owe a duty to the firm to act in its best interests.²⁰⁷

203. *Id.* The possibility that a lawyer in a large law firm or a nonlawyer owned firm will engage in self-dealing to the detriment of the client may be reduced by utilizing the same compensation structure currently used by many large firms. Ribstein, *supra* note 196, at 1715-16. Many large law firms' compensation structures provide that "profit shares may not be directly tied to billable hours." *See id.* at 1718-19. Conversely, compensation for lawyers in small firms and sole practitioners is generally more directly tied to production. *Cf. id.* Lawyers whose compensation is tied directly to what they produce have a great deal to gain from engaging in demand inflation. *See id.* at 1710-11. However, lawyers whose compensation is not tied directly to production will only see a marginal benefit from engaging in demand inflation. *See id.* In both cases, the lawyers would be taking the same amount of risk by engaging in self-dealing because each could be subject to liability for legal malpractice and professional discipline. Therefore, when risk remains the same, the lawyer who stands to benefit more directly from demand inflation will be more likely to engage in it than the lawyer who would only fractionally benefit from it.

204. *See* Okamoto, *supra* note 200, at 22.

205. *See* RESTATEMENT (THIRD) OF AGENCY § 8.01 (2006).

206. MODEL BUS. CORP. ACT §§ 8.30, 8.42 (Supp. 2000-2002). An employee of a corporation is an agent of the corporation because the employee acts on behalf of and subject to the control of the corporation through its officers and managers. RESTATEMENT (THIRD) OF AGENCY § 1.01. Furthermore, an employee of a corporation owes fiduciary duties to the corporation only when he or she is acting on matters connected with the agency relationship. *Id.*

207. *Cf.* MODEL BUS. CORP. ACT §§ 8.30, 8.42; RESTATEMENT (THIRD) OF AGENCY §§ 1.01, 8.01.

However, a lawyer's primary duty is to his or her clients.²⁰⁸ This creates a possible conflict of interest because the lawyer's duty to act in the best interests of the firm may materially limit the lawyer's ability to properly represent his or her clients.²⁰⁹ This Note proposes a solution to this conflict of interest in Part V.²¹⁰

b. Imputed Conflicts of Interest

Nonlawyer ownership of a law firm creates a possible conflict of interest when one of the firm's clients has interests that are adverse to the interests of a stockholder. For example, a client may present the firm with a case in which a stockholder of the firm is an adverse party to the client. Under the current *Model Rules of Professional Conduct*, it is not clear if the firm taking on this representation would create a concurrent conflict of interest because the rules do not contemplate nonlawyer ownership of law firms.²¹¹ The most likely concurrent conflict of interest that the representation creates is a conflict with the personal interests of the lawyer.²¹² The lawyer has a personal interest in retaining his or her employment with the firm and may fear that a shareholder with enough voting power will pressure the firm's board of directors to "punish" the attorney for representing a client whose interests are adverse to

208. A lawyer must provide competent, diligent representation, free from any conflicts that may materially limit the lawyer's responsibilities to the client. See MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.3, 1.7 (2003). The lawyer's duty to take steps that are in the best interests of the client are limited by rules that require lawyers to make disclosures to the court with candor under Model Rule 3.3, be truthful in statements to others under Model Rule 4.1, and not permit his or her services to be used by a client to perpetrate a crime or fraud under Model Rule 1.6(b)(3).

209. See MODEL RULES OF PROF'L CONDUCT R. 1.7(a)(2). The separate duties the lawyer owes to the corporation, as an employee, and the client, as a representative, create a personal conflict of interest for the lawyer. The lawyer's personal interest is in protecting herself from liability for breach of fiduciary duty to the corporation. Therefore, the lawyer must decide between doing what is in the best interests of the client or doing what is in the best interests of the corporation. Under certain circumstances, doing what is best for the client may differ from doing what is best for the corporation; generally, what is best for both the client and the corporation is for the lawyer to exercise independent professional judgment and provide competent, quality representation for the client. See *supra* notes 195-204 and accompanying text.

210. See *infra* Section V.E.

211. Model Rule 1.7 provides that "[a] concurrent conflict of interest exists if: . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." MODEL RULES OF PROF'L CONDUCT R. 1.7(a). The firm's lawyers, as agents of the firm, have "a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship." RESTATEMENT (THIRD) OF AGENCY § 8.01. However, the principal is the firm itself, not the firm's shareholders. Thus, even if a shareholder is injured, the law firm itself could benefit from a transaction. For example, if a client had a cause of action against a shareholder of the corporation and the firm took the case on a contingent fee basis and won a multimillion-dollar verdict, then the firm would benefit by receiving a large fee but the shareholder would be harmed by having to pay damages. The lawyers in the firm bringing this claim against the shareholder would not violate their fiduciary duties to the firm because they acted in the best interests of the principal, the firm. See *id.* The law imposes no duty on the lawyers to act in the best interests of the shareholders of the firm because the shareholders are not the principal. See *id.*

212. See MODEL RULES OF PROF'L CONDUCT R. 1.7(a). Model Rule 1.7(a) bars a lawyer from representing a client if "there is a significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer." *Id.*

the shareholder's interests.²¹³ The lawyer's fear that his or her representation of the client may lead to repercussions creates a significant risk that his or her representation of the client may be materially limited. Therefore, the lawyer would have a concurrent personal conflict of interest.²¹⁴

In a privately held firm, the possibility that a shareholder will have interests that are directly adverse to a client is minimal because the firm is able to pick and choose the owners of the firm. Therefore, the firm can carefully determine which investors best suit its practice, similar to the way a law firm determines which clients to represent based on the potential conflicts of interest that representing some clients would create. Furthermore, in the context of publicly traded firms, the conflict discussed in the preceding paragraph does not create a huge problem because in most publicly traded corporations the shareholders are virtually powerless and take on the role of passive observers in the operations of the corporation.²¹⁵ The possibility still exists, however, that a large corporation could buy major interests in publicly traded plaintiffs' law firms in order to prevent those firms from representing plaintiffs in litigation against the shareholder corporation.²¹⁶ This potential conflict is contrary to one of the major advantages created by nonlawyer investment in law firms—allowing firms to access more readily available capital to finance more contingent fee plaintiffs' litigation.²¹⁷ Part V of this Note addresses how a law firm could issue ownership interests to nonlawyers and also avoid the conflicts of interest discussed above.²¹⁸

213. The lawyer's belief that a shareholder of a large law firm, even a shareholder with a large ownership share, could control the actions of the board is probably not realistic. See James McConvill, *Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation*, 33 OHIO N.U. L. REV. 1013, 1018-19 (2007). First, the directors are required to discharge their duties "in good faith[] and . . . in a manner [that they] . . . reasonably believe to be in the best interests of the corporation." MODEL BUS. CORP. ACT § 8.30(a) (Supp. 2000-2002). Any "punishment" the directors impose on a lawyer for following his or her professional duties and representing the client competently and diligently, as well as trying to benefit the firm by bringing in revenues, would most likely not qualify as the directors discharging their duties in good faith. Therefore, the directors "punishing" a lawyer simply for representing a client to the detriment of a shareholder would violate the directors' fiduciary duties to the corporation and could lead to the nonadverse shareholders bringing a derivative suit against the directors. *Cf. id.*

214. See MODEL RULES OF PROF'L CONDUCT R. 1.7(a).

215. See McConvill, *supra* note 213, at 1018-19.

216. On a secondary exchange, such as the New York Stock Exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ), a company's stockholders, rather than the company itself, sell shares to whomever is willing to buy at a particular price. Therefore, a publicly traded company cannot control who purchases shares, which represent an ownership interest.

217. See *supra* notes 164-168 and accompanying text.

218. See *infra* Section V.B.

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V. PROPOSAL TO MODIFY MODEL RULE 5.4 TO ALLOW LAW FIRMS TO
ISSUE OWNERSHIP INTERESTS TO NONLAWYERS AND PERMIT
NONLAWYER MANAGEMENT OF LAW FIRMS

This Note proposes a modification to Model Rule 5.4 to allow ownership and management of law firms by nonlawyers. Since it is almost impossible to craft one ethics rule that addresses all the issues posed by nonlawyer ownership and investment in law firms, this Note also proposes a regulatory scheme to govern law firms with nonlawyer-owners and managers that would include seven provisions. These provisions permit nonlawyer management and ownership of law firms, while simultaneously addressing the resulting ethical concerns.

*A. Replacement of Model Rule 5.4 with the Kutak Commission's
Recommended Rule 5.4*

Current Model Rule 5.4 should be replaced, in its entirety, by the Kutak Commission's proposed Model Rule 5.4.²¹⁹ Implementing this rule would permit nonlawyer ownership and managerial control of law firms.²²⁰ The Kutak Commission's proposed rule did not extend far enough, however, to address all the potential ethical issues created by nonlawyer ownership and management of law firms. The provisions in the following sections preserve lawyers' legal and ethical obligations while permitting nonlawyer ownership, investment, and managerial control of law firms.

B. State Bar Oversight of Nonlawyer Investments

As discussed above in the section regarding imputed conflicts of interest, a client's adverse interests to a major nonlawyer-owner could create a conflict of interest that bars the firm from representing the client.²²¹ A rule that imputes all conflicts of shareholders to the firm would create huge administrative problems and could also bar firms from representing a number of clients. This Note proposes that, as an alternative to imputing nonlawyer shareholders' conflicts to the firm, the Model Rules should adopt a position similar to that of the LSA: State bar associations that wish to permit nonlawyer ownership of law firms should create a committee to regulate nonlawyer investment in law firms.²²² The committee would monitor outside investment and make sure that any one investor does not control over ten percent of the firm, by value or vote, and that outside investors never hold more than

219. *Supra* Section IV.A. The Kutak Commission's Recommended Rule 5.4 is stated in its entirety in the text accompanying footnote 45.

220. *See* Adams & Matheson, *supra* note 11, at 8-9.

221. *See supra* Section IV.B.3.b.

222. *See supra* note 116 and accompanying text.

forty-nine percent of the voting rights in the firm.²²³ Under this scheme, no single outside investor could have enough of an ownership share in the firm to exercise control over the firm. In addition, this scheme would reduce the potential that a shareholder could punish a lawyer-employee of the firm for representing a client adverse to the shareholder, largely eliminating the potential personal conflict of interest. Therefore, imputing the interests of the outside investors to the firm is not necessary because they cannot affect the lawyers' independent professional judgment.

C. Position of the Legal Director in Law Firms that Have Nonlawyer-Owners or Managers

The Legal Profession Act requires all Australian law firms with nonlawyer ownership or management to appoint a lawyer to the position of legal director.²²⁴ This Note proposes that the Kutak Commission's proposed rule should be amended to require a similar position in each United States firm that has nonlawyer ownership or management.²²⁵ Under the proposed rule, the position would include many of the same duties outlined in the Legal Profession Act, including: (1) the duty to ensure that the firm has appropriate systems in place to ensure that it complies with the professional obligations of the lawyers; (2) the duty to ensure that nonlawyer officers or employees of the firm do not adversely affect or interfere with the professional obligations of the legal professionals; and (3) liability for breaching his professional obligations if the director is aware, or should be aware, that the firm's actions will violate its lawyers' professional obligations and does not take appropriate steps to ensure the breach does not occur.²²⁶ The legal direc-

223. The ten percent limitation would include ownership interests held by individuals and entities that should be attributed to an investor. *See, e.g.*, Legal Services Act, 2007, c. 29, § 89, sched. 13, pt. 1, ¶ 5 (Eng.).

224. Legal Profession Act, 2004, c. 2, § 140(1) (Austl.).

225. The lawyers in the firm would appoint the legal director, and the nonlawyer-owners and managers would not have a vote in the appointment. This would ensure that the nonlawyer managers and owners could not appoint a legal director who would acquiesce to all of their proposals. Furthermore, the state bar association committee that governs nonlawyer ownership interests would be charged with reviewing the qualifications of legal directors and approving their appointments.

The rule would not require multidisciplinary partnerships that do not have outside investors to have a legal director. In multidisciplinary partnerships the lawyer-partners that have managerial authority would be responsible for the actions of nonlawyer-partners to the same extent they are responsible for the actions of subordinate lawyers. *See, e.g.*, D.C. RULES OF PROF'L CONDUCT R. 5.4(b)(3) (2007). Thus, the managerial lawyers must make reasonable efforts to ensure that the nonlawyer-partners' conduct conforms to the Rules of Professional Conduct. *See, e.g., id.* at R. 5.1, 5.4(b)(3).

226. *See* Legal Profession Act, 2004, c. 2 §§ 140(3), 140(4). These duties are very similar to the requirement that Model Rule 5.3(a) places on lawyers in a firm with managerial authority. *Compare id.*, with MODEL RULES OF PROF'L CONDUCT R. 5.3(a). Model Rule 5.3(a) requires that lawyers with managerial authority shall, with respect to nonlawyer-employees, "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer"

tor would provide a first line of defense to ensure that the nonlawyer-owners, managers, and employees of the firm do not take actions that interfere with the lawyers' professional obligations.²²⁷

D. Liability for Nonlawyer Managers and Directors

If the *Model Rules of Professional Conduct* were to permit nonlawyers to act as managers and directors of law firms, then the rules must also provide a mechanism to punish these individuals for actions that interfere with the professional obligations of the lawyers. One obstacle to punishing nonlawyer directors or managers of law firms for these actions is that the nonlawyers are not subject to regulation by the state bar associations. A way around this obstacle is for the Model Rules to impose a monetary penalty on the firm if a nonlawyer manager or director takes actions that are not compatible with the lawyers' professional obligations. While this rule would not directly punish the manager or director, it would give the firm a cause of action against the manager or director for breach of his or her fiduciary duties.²²⁸ Therefore, the rule would deter managers and directors from interfering with the professional obligations of the lawyers because of the potential for liability.²²⁹ This provides a second layer of protection, in addition to the legal director's oversight of the nonlawyer managers and directors.

227. The legal director would primarily oversee actions taken by high-level nonlawyer-employees and directors of a firm. For example, the legal director would be responsible for ensuring that the business strategies that the nonlawyer directors and managers were attempting to implement would not cause any friction with the lawyers' professional obligations. The legal director would leave the overall business strategy planning to the managers who specialize in this field; however, the director would offer input about how certain strategies or proposed business practices would conflict with the lawyers' legal obligations and could veto policies that he or she believed would interfere with the professional obligations of the lawyers.

The legal director would not be required to oversee the daily work of paralegals, legal secretaries, and similarly positioned nonlawyer-employees. Model Rule 5.3(b) places a duty on the lawyer who directly supervises the nonlawyer-employee "to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . ." MODEL RULES OF PROF'L CONDUCT R. 5.3(b). Therefore, the legal director could focus his or her time on overseeing the actions of the nonlawyer managers and directors of the firm, and the other lawyers in the firm would be responsible for monitoring the actions of the other nonlawyer-employees.

228. If the director engaged in conduct that resulted in the firm being assessed a large fine, then the director would have cost the firm a great deal of money and would not have been taking steps that were in the best interests of the firm. Therefore, the director would be liable to the firm for breach of his or her fiduciary duties. Cf. MODEL BUS. CORP. ACT § 8.30 (Supp. 2000-2002); RESTATEMENT (THIRD) OF AGENCY § 8.01 (2006). Furthermore, in most cases the business judgment rule will not protect the directors' actions because in order to qualify for the business judgment rule the decision must be an "informed" decision. See *Kaplan v. Centex Corp.*, 284 A.2d 119, 124 (Del. Ch. 1971). The directors' decisions would not constitute informed decisions because the directors should have consulted a legal professional before taking action in order to determine if their conduct would create any problems with the legal professionals' obligations.

229. The amount of the penalty would have to be significant in order to provide an ample amount of deterrence and also to encourage the firm or the shareholders of the firm to bring a claim against the manager to recover the penalty.

E. Conflicts Created by Fiduciary Duties to the Firm

As discussed above, in an incorporated law firm a lawyer's duty to the firm and the lawyer's duty to his or her clients create a possible conflict of interest.²³⁰ This can be resolved by legislation that creates a hierarchy of duties for a lawyer.²³¹ Therefore, if states permit nonlawyer ownership of law firms, they must pass legislation that makes the lawyer's duty to represent the client superior to the lawyer's fiduciary duty to the firm. However, legislation that wholly eliminates a lawyer's liability to the firm for breach of fiduciary duty would be too broad. In order to eliminate the conflict of interest without eliminating the fiduciary duty to the firm altogether, the legislation must ensure that a lawyer would not be liable to the firm for breach of fiduciary duty for taking actions the lawyer reasonably believed to be in the best interests of a client.²³² This legislation would eliminate the personal conflict of interest a lawyer would face if the best interests of a client and the best interests of the firm were not compatible.²³³

In addition to the legislation proposed above, law firms with nonlawyer investors may wish to make it clear to outside investors, lawyer-employees, and nonlawyer-employees that the lawyers' duties to their clients and their ethical obligations are superior to any duty to the firm. Slater & Gordon provided a section in its prospectus that embodied these values.²³⁴ The prospectus provided that one of the risks of investing in Slater & Gordon is that

[l]awyers have a primary duty to the courts and a secondary duty to their clients. These duties are paramount given the nature of the Company's business as an Incorporated Legal Practice. There could be circumstances in which the lawyers of Slater & Gordon are required to act in accordance with these duties and contrary to other corporate responsibilities and against the interests of Shareholders or the short-term profitability of the Company.²³⁵

This statement effectively addresses the problem and makes it clear to shareholders that the clients' interests come first.²³⁶ All firms that have outside investors, including those that are not publicly traded, could use a statement similar to Slater & Gordon's to notify investors of the firm's hierarchy of duties.

230. See *supra* Section IV.B.3.a.

231. The Model Rules already create a hierarchy for a lawyer's duties to some extent. See *supra* note 208.

232. The legislation would need to specify that the lawyer is still subject to all the Rules of Professional Conduct in the representation of clients. See *supra* note 208.

233. Cf. MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2003).

234. Slater & Gordon Ltd., *Prospectus 9* (2007), available at <http://www.slatergordon.com.au/docs/prospectus/Prospectus.pdf>.

235. *Id.*

236. Parker, *supra* note 3, at 31.

F. Conflicts Created by Nonlegal Services

Model Rule 1.10 prohibits any lawyer in a firm from representing a client if Model Rules 1.7 or 1.9 prohibit any other lawyer in the firm from doing so.²³⁷ The rule imputes disqualification based on the “premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client”²³⁸ In its current form, the rule does not contemplate nonlawyer-employees of a law firm providing nonlegal services to clients.²³⁹ Therefore, Model Rule 1.10 must be supplemented to define the circumstances in which a lawyer is prohibited from representing a client due to the nonlegal services the lawyer’s firm provided to a third party.

In addition to the representation currently prohibited by Model Rules 1.7 through 1.10, Model Rule 1.10 should provide that all representation of a client by a nonlegal professional is imputed to all the lawyers associated with the firm, as if a lawyer in the firm provided the services. In effect, the rule would treat all nonlegal representation as if a lawyer in the firm provided legal services to the client. For example, if the law firm’s in-house financial experts provided consulting services to Client A, then the lawyers in the firm would be barred from representing Client B, whose interests were directly adverse to A’s.²⁴⁰ The rule would also bar the firm’s lawyers from representing Client C if the firm obtained confidential information about Client D, a former client, through the nonlegal services the firm provided to D and that information could advance C’s position to the detriment of D.²⁴¹

G. Duty to Disclose

Model Rules 1.7 and 1.9 permit representation of a client, regardless of a conflict of interest, if the client gives informed consent con-

237. MODEL RULES OF PROF’L CONDUCT R. 1.10(a). This rule only applies, however, to prohibitions based on nonpersonal conflicts of interest. *See id.* If the representation that is barred by Model Rule 1.7 or 1.9 is due to a personal conflict of interest, the other lawyers in the firm may represent the person if the lawyer’s personal conflict of interest “does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” *Id.*

238. *Id.* cmt. 2.

239. *Id.* at R. 1.10(a).

240. *See id.* at R. 1.7(a)(1). This rule would be subject to the same informed consent exception that is present in Model Rule 1.7. *See id.* at R. 1.7(b)(4).

241. *See id.* at R. 1.9 cmt. 3. This would be subject to the informed consent exception in Rule 1.9. *Id.* at R. 1.9(a). Even without adopting the ten percent limitation placed on outside investment in law firms discussed in Section V.B, this rule would remedy the “Fear of Sears” problem because it would bar large accounting firms from a great deal of representation. For example, if a large accounting firm provided consulting services to a large auto manufacturer (A) it would obtain a great deal of confidential information about the company. The proposed rule bars the accounting firm from providing legal services to a competing auto manufacturer (B) if the information it obtained from the consulting services could be used to the detriment of A. Thus, the firm would not be able to represent B in contract negotiations with suppliers if the consulting services included the firm reviewing A’s contracts with suppliers because B could use the information about the terms of A’s contracts to its competitive advantage.

firmed in writing.²⁴² As discussed above, nonlawyer management and ownership should not negatively effect the representation of the client.²⁴³ However, it is likely that some clients would be uncomfortable having a lawyer represent them who works for a firm that has nonlawyer management or ownership. Therefore, the version of Model Rule 5.4 proposed by this Note would require law firms with nonlawyer ownership or management to disclose the nonlawyer interests in the firm to clients. In addition to disclosure, the firm should be barred from representing a client unless it obtains the client's informed consent to the representation.²⁴⁴ This provision permits clients to make an informed decision about whether they are comfortable with a firm that has nonlawyer management or ownership representing them.

VI. CONCLUSION

The ABA's current position on nonlawyer ownership and management of law firms is outdated and in serious need of change. The ABA should reconsider its stance because of the benefits nonlawyer ownership and management provide to firms and their clients. Firms benefit because nonlawyer investment infuses capital, permitting firms to expand into growing legal markets and invest in more contingent fee plaintiff's cases. Furthermore, the ability of law firms to offer nonlawyer-employees an ownership interest will benefit firms through increased employee productivity and the ability to recruit and retain top-tier nonlawyer-employees and managers. Clients benefit because nonlawyer ownership and management of law firms will create one-stop shops for legal and related services, ensure greater access to legal services, and lower costs for legal services.

The ABA and state bar associations should revise their ethics rules to permit nonlawyer ownership and management of law firms. Furthermore, they should adopt the regulatory scheme proposed above, which incorporates the Kutak Commission's Recommended Rule 5.4 as well as provisions similar to those found in the LSA and the Legal Profession Act. The proposed scheme allows for nonlawyer ownership and management of law firms, but also addresses the potential ethical concerns that accompany this business structure. If nothing else, this Note

242. *See id.* at R. 1.7(b)(4), 1.9(a).

243. *See supra* notes 176-203 and accompanying text.

244. To obtain the client's informed consent, the lawyer would have to notify the client that the firm has nonlawyer managers and owners and explain to the client any relevant circumstances that might affect the representation. This would be very similar to the informed consent requirement in Model Rule 1.7. *See* MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 18. For example, if a large shareholder of the firm was an adverse party, then the lawyer would be required to disclose this to the client. While the shareholder could not affect the lawyer's representation of the client, it is still important that the client knows about the shareholder's interest and has the opportunity to change lawyers if the client feels uncomfortable with the circumstances.

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Revising Model Rule 5.4

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seeks to reopen the discussion on nonlawyer ownership and management of law firms as well as multidisciplinary practices in the United States.

