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LETTERS TO THE EDITOR

Nonlawyer law firm ownership is a cure worse than the disease

Ralph Baxter and Zachariah DeMeola believe the legal system is broken ("The legal system is broken; it's time for change," Mar. 22, 2021). Their arguments for why and how nonlawyer ownership of law firms is the fix do not withstand the slightest scrutiny. They conveniently sidestep the most critical problems of nonlawyer firm ownership raised by Arash Homampour ("A regulatory 'sandbox' that will turn to quicksand," Feb. 26, 2021).

The Other Side of the Statistics Coin

Baxter and DeMeola cite the State Bar of California's Justice Gap Study's finding that nearly 70% of Californians who had at least one civil legal problem in 2018 did not receive legal assistance. While that study had good intentions, its design and implementation were flawed. Notably, the study did not disclose whether the Californians in that 70% statistic sought legal assistance but had their potential cases rejected because of inviable claims. There was additional criticism of the study's questions to its sample of 3,885 Californians, which the State Bar of California itself admitted was plagued by "[l] ogistical limitations."

The study's findings reveal a lack of *something*, but not necessarily access to legal assistance. According to the study, 31% of respondents did not seek legal help because they were unsure if they had a legal issue, 31% did not seek help because they resolved the issue themselves, 16% were worried about cost, 15% did not know where to look for help, and 14% were afraid to pursue legal action. These reasons demonstrate an education gap — not a justice gap. Californians lack general knowledge about the legal problems they face. This lack of knowledge extends to the 16% of respondents worried about cost. Many of the most in-demand legal practice areas (e.g., personal injury, workers' compensation, and employment law) rely on contingency fee arrangements where would-be plaintiffs rarely need to pay any fees or expenses up front. Better education-based marketing from law firms, bar associations, and legal aid organizations will help close this education gap and not nonlawyer-owned law firms.

Even if all the Californians in the 70% statistic had viable legal claims and needed assistance, nonlawyer ownership is not the answer. Baxter and DeMeola cite a statistic (drawn from marketing collateral) that lawyers bill on average barely two hours a day. Assuming that statistic is correct, it shows lawyers have plenty of excess capacity to devote to new client matters. That is a problem solved by lawyers and their firms more effectively marketing themselves to the people who need their services — not by nonlawyer ownership of law firms.

Prohibition of Nonlawyer Ownership Does Not Stifle Innovation

Baxter and DeMeola claim that California Rule of Professional Responsibility 5.4's ban on nonlawyer ownership hinders innovation by restricting lawyers' ability to invest in building and sustaining their firms and by "seal[ing] themselves off from new ideas and different perspectives." It does no such thing.

For generations, lawyers have built and sustained their firms by tapping outside lines of credit and retained earnings and increasing buy-ins from equity partners. This has worked well for law firms, including Baxter's old firm, Orrick, Herrington & Sutcliffe LLP, now a behemoth with revenues topping $1.15 billion. Importantly, lawyers have historically grown their firms without handing over ownership to third parties and compromising their dedication to serving clients. In suggesting outside equity capital is necessary for law firms' growth, Baxter and DeMeola ignore how law firms big and small have grown over time, as well as the many business owners who believe taking outside equity capital was one of the worst decisions they ever made.

Additionally, Baxter's and DeMeola's belief that law firms can only innovate if they share fees with, or provide ownership stakes to, innovative nonlawyers is misguided. Law firms can hire or partner with innovative third parties, like consultants, using corporate structures that pass ethical muster to obtain the benefit of innovative thinking without relinquishing ownership of their firms.

Baxter's and DeMeola's premise that lawyers are not innovative ignores the accomplishments of innovative lawyers across the U.S., including Baxter. As chairman and CEO of Orrick, he built a culture of innovation that has played a large role in Orrick's profit-per-equity- partner surging to $2.274 million in 2020, according to media reports.

Corporate Thumbs on the Scales of Justice

Baxter and DeMeola are perhaps more concerned with profit margins than they are with justice gaps. They do not address Homampour's concerns about how nonlawyer owners will prevent cookie-cutter legal solutions from overtaking personalized legal representation, nor how nonlawyer owners will avoid conflicts of interest when insurance- company-owned law firms settle cases against each other's corporate parents for pennies on the dollar.

Perhaps we shouldn't expect them to address these concerns. According to Baxter's own bio, he sits on LegalZoom's "legal advisory board" and sat on boards of two companies purchased by LexisNexis. DeMeola's organization, the Institute for the Advancement of the American Legal System, is affiliated with State Farm and the U.S. Chamber of Commerce's Institute for Legal Reform. In addition, a State Farm legal executive and a former Accenture general counsel sit on the organization's board of advisors. To answer these concerns would require dealing with inconvenient truths unlikely to sit well with Baxter's and DeMeola's partners. All of these professionals likely have an interest in seeing nonlawyer ownership of law firms in California.

Baxter and DeMeola want you to believe that California's legal system is "disgracefully broken" and "in grave need of fixing." That is debatable. What's not debatable is the efficacy of their proposed cure of nonlawyer ownership of law firms — a cure that would undoubtedly be worse than the disease. ■

— Danny Abir
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