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Law Firms Split Over Nonlawyer Investors

By Jennifer Smith

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The legal profession's notion that law isn't a commercial enterprise may come as a surprise, since some lawyers now charge more than $1,000 an hour.

But some legal purists are aghast at a proposal that would reverse long-standing tradition by letting nonlawyers own limited stakes in U.S. law firms, something allowed on a broader scale in the U.K. and Australia.

Opponents worry that non-lawyer partners could push law firms to maximize profits at the expense of their obligations to clients.

"Let's keep remembering the story of Arthur Andersen and Enron—how great firms can lose their way by chasing monetary gain," said Lawrence J. Fox, a partner at the Philadelphia law firm of Drinker Biddle & Reath LLP who objects to the proposal. "I'd like us to mind our knitting."

Ethics rules bar most U.S. lawyers from sharing profits with non-lawyers. The theory is that outsiders not subject to the same rules of conduct could influence lawyers' judgments or otherwise erode the profession's ethical obligations of client loyalty and confidentiality.

Across the Atlantic, however, new British rules intended to expand consumers' access to legal services and spur competition are shaking things up. Changes phased in this year allow British lawyers to team up with insurers or other businesses, and even to solicit outside investments.

The changes followed similar ones in Australia, where Slater & Gordon, a personal-injury specialist, became the first law firm to float a public offering in 2007.

Given those developments, the American Bar Association is weighing whether to present its members with a less-sweeping option: allowing nonlawyers who work at law firms to own as much as 25% of a firm.

To some, the proposal would simply codify arrangements that are already common at many large law firms, where lawyers regularly work alongside nonlawyer professionals who help guide business decisions. Many of those professionals sit in on partnership meetings and are compensated by a bonus system that mimics profit-sharing, said Tony Williams, a London-based legal consultant and former managing partner of the global British firm Clifford Chance.

"I've been party to this sometimes rather sterile debate—are you a profession or a business?" said Mr. Williams. "I don't see a contradiction between the two."

Still, the question has some stateside lawyers up in arms. "I can't think of anything more pernicious or ill-considered," said David J. Carr, a partner at Ice Miller LLP in Indianapolis, who wrote one of the dozen or so comments urging the ABA to ditch the proposal. "You are diluting the essence of what it means to be a lawyer."

Such objections persist despite safeguards intended to guard against ethical lapses. Nonlawyer partners, for instance, would have to agree to abide by the same codes of conduct as lawyers and would have no control over a lawyer's professional judgment.

The ABA doesn't plan to bring the measure up for a vote by its policy-setting body, the House of Delegates, until next year, at the earliest, if it decides to put it forward at all. Its previous proposals to expand law-firm ownership have been squashed repeatedly. The ABA's rules of professional conduct aren't binding, but they serve as the model for most state bar associations.

One exception: the District of Columbia, where the local bar voted in the 1980s to let nonlawyers hold financial interests in law firms. It isn't clear how many Washington firms have taken that opportunity, but the now-defunct firm Howrey & Simon made its top financial official a partner back in 1990.

At the national level, opponents worry that opening the door a crack could lead to more profound shifts like those under way abroad. Last week, British regulators approved a license that will allow the Co-operative Group, a member-owned organization that runs grocery stores and also offers banking and insurance services, to provide legal advice on divorce and other family-law matters to its seven million members.

That's the kind of development that Thomas Gordon, legal and policy director for Consumers for a Responsive Legal System, would like to see in the U.S. "It's the people who can't pay $500 an hour but could pay a $500 flat fee for a divorce who would benefit," said Mr. Gordon, whose group wants to make legal services more accessible and affordable.

Nonlawyer ownership isn't exactly a burning issue for the larger firms that dominate the $100 billion global corporate legal market, according to interviews with a number of managing partners. Most can get the capital they need from their partners or banks.

In the U.K., most big corporate firms have yet to take advantage of their new options, partly because they threaten to create more problems than they solve, at least for now. For example, New York lawyers can't practice law in the state if they are part of a British firm with nonlawyer owners, according to a March 14 ethics opinion by the New York state bar association.

The idea of nonlawyer partners, or even outside investors, may have more appeal for smaller firms. Last year Jacoby & Meyers Law Offices LLC, a well-known personal-injury firm, filed federal lawsuits in New York, New Jersey and Connecticut challenging ethics rules that prohibit outside investment in law firms.

The 60-lawyer firm claimed the restrictions hurt its ability to raise capital to cover technology and expansion costs, and hampered efforts to provide affordable legal services to working-class clients. The New York suit was dismissed last month.

A lawyer representing the firm couldn't be reached for comment.