



“For the times, they are a changing’!”
But what about the Rules of Professional Conduct?

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Today's Agenda

- Legal Information v. Legal Advice
- SCR Chapter 23 Regulation of Unauthorized Practice of Law
- SCR 20:6.5 Nonprofit and Court-Annexed Limited Legal Services Programs
- SCR 20:1.2(c) and (cm) Limited Scope Representation
- Regulatory Sandboxes and Alternative Business Structures: Will They Provide Access to Justice?

Legal Information v. Legal Advice

- Legal information is general information about the law and legal processes.
- Legal advice is applying the law to a specific situation.
- Showing people how to search for statutes, case law, articles and forms is legal information: “You can find case law online at ...”
- Researching a point of law is legal advice: “I’ve researched cases similar to your case ...”
- Pointing someone towards a certain law and explaining what that law says is legal information: “This law is about ... and it says that ...”
- Interpreting and explaining how the law applies to someone’s situation is legal advice: “In your situation, you are likely to ... based on the law ...”
- Outlining possible options for dealing with a legal problem or alternatives to court is legal information: “There are other processes that you can look at instead of going to court. They are ...”
- Recommending what steps someone should take and why is legal advice: “I would recommend that you ... because ...”

SCR Chapter 23:

Regulation of Unauthorized Practice of Law

- SCR 23.01 defines that practice of law.
- However, SCR 23.02(2) lists exceptions and exclusions where a license to practice is not required regardless of whether the activities constitute the practice of law.
- One of the exceptions is paragraph (2)(i), which states: “Selection or completion of a legal document, including a legal document created pursuant to statute, administrative rule, or Supreme Court Order, where the document may contain various blanks and provisions to be filled in or completed and selection or completion of the legal document requires only common or transaction-specific knowledge regarding the required information and general knowledge of the legal consequences.”

SCR 20:6.5 Nonprofit and Court-Annexed Limited Legal Services Programs

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
 - (1) is subject to SCR 20:1.7 and SCR 20:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
 - (2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9(a) with respect to the matter.
- (b) Except as provided in par. (a)(2), SCR 20:1.10 is inapplicable to a representation governed by this rule.

Limited Scope Representation SCR 20:1.2(c)

- (c) A lawyer may limit the scope of the representation **if the limitation is reasonable under the circumstances** and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).
- (1) The client's informed consent need not be given in writing if:**
- a. the representation of the client consists solely of telephone consultation;
 - b. **the representation is provided by a lawyer employed by or participating in a program sponsored by** a nonprofit organization, a bar association, **an accredited law school**, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms;



Limited Scope Representation SCR 20:1.2(cm)

(cm) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that “This document was prepared with the assistance of a lawyer.” A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

Important Note: In 2018, the legislature amended Wis. Stat. § 802.05(2m) through an omnibus landlord-tenant bill. The amendment required lawyers to include their names and bar numbers in addition to the statement that, “This document was prepared with the assistance of a lawyer.” On April 17, 2020, the Wisconsin Supreme Court ordered that Wis. Stat. § 802.05(2m) be amended, effective July 1, 2020, to delete the previous version requiring lawyers to include their names and bar numbers.



Would you like to play in a regulatory sandbox? Climb on an alternative business structure?

In some states, you can because the Rules of Professional Conduct - “they are a changing’.”
And here is why!



Where, oh where, did Rule 5.4 go?

- Model Rule 5.4 and its Wisconsin counterpart SCR 20:5.4 express the traditional limitations on sharing fees with nonlawyers and on permitting nonlawyers to have an ownership interest in a law practice.
- These limitations are designed to protect the lawyer's professional independent judgment.



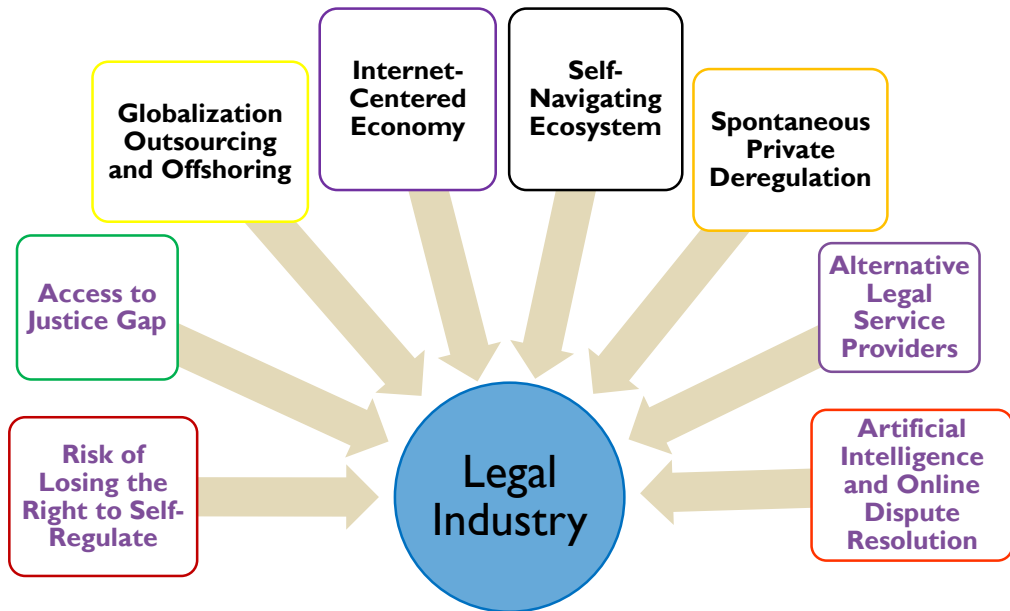
The Decade in Legal Tech: The 10 Most Significant Developments

5. Upheaval in Legal Ethics

“This decade brought upheaval in legal ethics and regulation such as we have never seen before – **and it has set us on a path of reform from which there is no turning back.**” Bob Ambrogi

<https://www.lawsitesblog.com/2020/01/the-decade-in-legal-tech-the-10-most-significant-developments.html>

Pressures on the Legal Industry Fueled by Technology



Internet-Centered Legal Solutions?



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We can buy books without bookstores.
We can get music without record stores.
We can see movies without theatres.
Once, these were all unthinkable.

Can we have legal solutions without
lawyers and law firms?
Can we have dispute resolution without
courts?

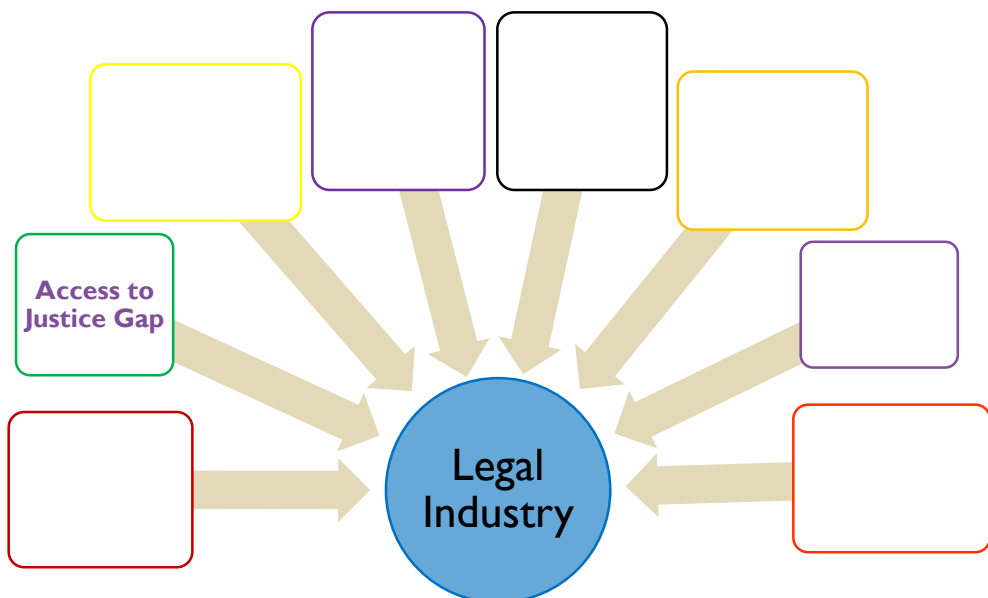
Let's think about that.

12:57 PM - 14 Sep 2018

A Crucial Question for the Future of Lawyering

- Can we have legal solutions without lawyers and law firms?
- Are lawyers being woven out of the fabric of justice?
- Does this mean lawyers should try to push to ensure that they remain woven *throughout* this fabric?
- Or should lawyers focus on trying to reinforce and improve the parts where lawyering is most important, perhaps where the ethics of lawyering make the distinct professional role especially meaningful?

Pressures on the Legal Industry Fueled by Technology





Civil Justice for All: A Report and Recommendations from the Making Justice Accessible Initiative 2020

The project's seven recommendations

1. Dedicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward “justice for all.”
2. Increase the number of legal services lawyers who focus on the needs of low-income Americans.
3. Increase the number of lawyers providing pro bono and other volunteer assistance, to supplement the corps of legal services lawyers.
4. **Bring many new advocates—service providers who are not lawyers—into the effort to solve civil justice problems.**



Civil Justice for All: A Report and Recommendations from the Making Justice Accessible Initiative 2020 (continued)

The project's seven recommendations (continued)

5. **Foster greater collaboration among legal services providers and other trusted professionals—such as doctors, nurses, and social workers.**
6. **Expand efforts to make legal systems easier to understand and use through the simplification of language, forms, and procedures and the wider use of technology.**
7. Create a national team, or even a new national organization, to coordinate the efforts listed above, collect much-needed data on the state of civil justice, and help identify and publicize effective innovations that improve access.

https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf

Access to Affordable Civil Legal Services

- The World Justice Project's [2020 Rule of Law Index](https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data) ranks the **U.S. tied for 108th place out of 126 countries on "accessibility and affordability of civil justice."** This factor measures the accessibility and affordability of civil courts, including whether people are aware of available remedies, can access and afford legal advice and representation, and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers.
http://civilrighttocounsel.org/major_developments/217
- In 2019, the United States ranked 103rd out of 126 countries in terms of the accessibility and affordability of civil legal services. World Justice Project, Rule of Law Index: Current and Historical Data (2019)
<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data>

Unmet Legal Needs in the United States: Some Statistics

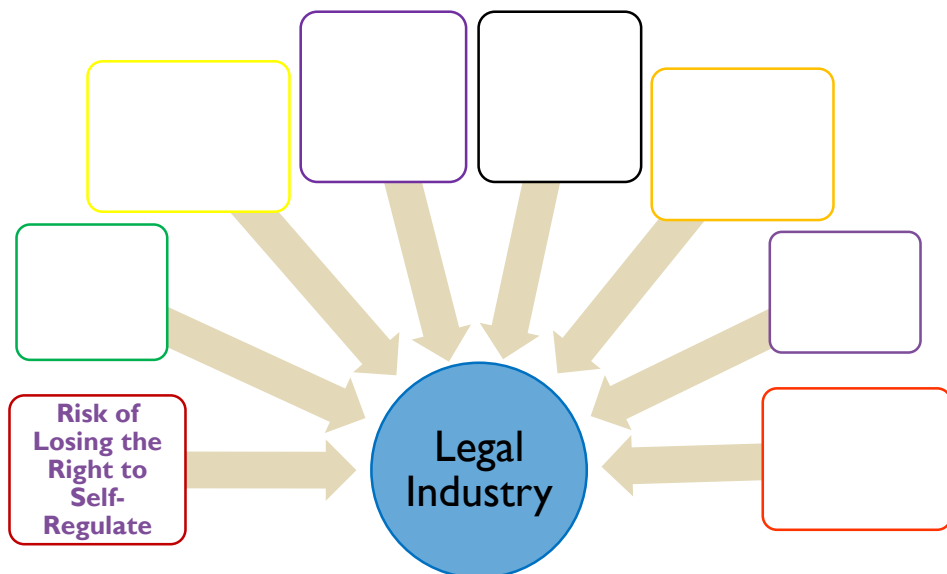
- Well over 100,000,000 Americans are living with civil-justice problems, including those involving evictions, mortgage foreclosure, child custody proceedings and debt collection.
- From 2010 to 2019, more than 90% of defendants in debt collection cases had no lawyers, and Plaintiffs won over 95% of the debt collection suits.
- **U.S. lawyers would have to increase their pro bono efforts to over 900 hours each to provide some measure of assistance to all households with civil legal needs. (18 weeks at 50 hours per week)**

Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (American Bar Association 2016)

Unmet Legal Needs in the United States: Some Statistics (continued)

- More than 80% of people below the poverty line and a majority of middle-income Americans receive inadequate assistance when facing critical civil legal issues, such as child custody, debt collection, eviction, and foreclosure. Legal Servs. Corp., Justice Gap Report: Measuring the Civil Legal Needs of Low-Income Americans (2017) <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>

Pressures on the Legal Industry Fueled by Technology



Risk of Losing the Right to Self-Regulate

- Law has long been modeled as a self-regulated profession. **Legal practice was once synonymous with the delivery of legal services.**
- Law was about legal expertise and nothing else, and consequently, the primary means of regulation – the rules that govern lawyer conduct – was sufficient.
- However, a large number of clients and potential clients are being underserved by the legal market, and failure of the profession to address this concern could result in the loss of the right to self-regulate.

Risk of Losing the Right to Self-Regulate (continued)

- The public policy that underlies the legal ethics rules is one of consumer protection. Legal regulators should take a capacious view of this policy and **acknowledge the harm that occurs when ordinary citizens cannot afford cost-effective legal solutions to life's most basic problems, such as sickness, housing, old age, family planning and access to government benefits."**
- **"The law should not be regulated to protect the 10 percent of consumers who can afford legal services while ignoring the 90 percent who lack the ability to pay.** This is too big a gap to fill through a renewed commitment to pro bono. This is a structural problem rooted in lagging legal productivity that requires changes in how the market is regulated." William Henderson, *Legal Market Landscape Report* (July 2019)

Risk of Losing the Right to Self-Regulate (continued)

- William Henderson, in his Legal Services. Landscape Report, suggests that “rather than amend an ethics framework built for a bygone era, the public interest may be better served by **a new regulatory structure that includes traditional lawyering side by side with one-to-many legal services, products and solutions created by a wide range of professionals from multiple disciplines.**
- The legal ‘profession’ refers to lawyers—their training, licensure, ethical responsibilities, client obligations, and other practice-related matters.. Lawyers also enter into a social compact to represent society by defending the rule of law.

Risk of Losing the Right to Self-Regulate (continued)

- “Let lawyers regulate practice and independent business professionals oversee the industry. **Conflation of the two is detrimental to the profession, the industry, and society.”**
- “The ‘industry’ describes the inter-disciplinary, tech-enabled, one trillion-dollar global business of delivering legal services.”
- “**The business of law is about using technology and process to identify and automate repetitive tasks, ‘productize’ routinized functions, streamline efficiency, promote transparency and diversity, compress delivery cycles, and provide legal buyers with ‘more for less’ within acceptable risk parameters.”**
<https://www.forbes.com/sites/markcohen/2018/03/29/law-is-a-profession-and-an-industry-it-should-be-regulated-that-way/#768e46c46598>

Risk of Losing the Right to Self-Regulate (continued)

- “Legal delivery is an amalgam of legal, technological, and process expertise and deploying the appropriate resource—human and/or machine—to a task/matter/portfolio.”
- “Regulation of the industry should provide flexibility to structure delivery and economic models that align providers with legal buyers, enhance competition, and promote innovation. The objectives of industry regulation should be to promote competition, encourage innovation, and allow formation of delivery models that enhance access to and improve delivery of legal services.”
<https://www.forbes.com/sites/markcohen/2018/03/29/law-is-a-profession-and-an-industry-it-should-be-regulated-that-way/#768e46c46598>

Regulatory Sandboxes for the Legal Industry

- “Regulatory sandbox” refers to a way for companies and regulators to experiment with new types of services and technologies to best determine how to regulate them.
- “A safe playground in which to experiment, collect experiences, and **play without having to face the strict rules of the real world. The private sector can innovate without worrying about fines or liability**, the regulatory agency can test regulations to see what works before going through the long process of creating new rules, and consumers have access to these services in a controlled environment. The goal is to relax or change existing regulation in a controlled and evaluated space to run real-world experiments. These experiences can be collected and inform evidence-based regulatory schemes.” Jorge Gabriel Jiménez, a fellow in Stanford Law School’s Legal Design Lab, and Margaret Hagan, director of the Legal Design Lab.

Regulatory Sandboxes for the Legal Industry (continued)

- The concept of regulatory sandboxes first appeared in the financial services sector. Since the 2007-08 financial crisis, both regulation of the financial sector and investment in financial technology (fintech) have taken off.
- Levels of investment in fintech have risen from less than \$3 billion in 2011 to over \$100 billion in 2018, according to Hook Tangaza. Flexibility in regulation is credited as one of the reasons behind increased investment.
- In 2018, Arizona launched a fintech regulatory sandbox to promote entrepreneurship and investment in blockchain, cryptocurrencies and other emerging technologies.

Regulatory Sandboxes for the Legal Industry (continued)

- **Venture capitalists invested over \$1 billion in legal tech businesses in 2018, \$1.23 billion by the end of the third quarter of 2019, and \$339 million by the end of the second quarter of 2020.**
- Stanford University compiled an international catalogue of **1,200 legal tech businesses**—the largest and best known index in the field.
- **However, much legal tech activity is aimed at cultivating efficiencies in law firms and corporate legal departments, rather than at improving the delivery of legal services themselves.** For example, Evolve the Law's directory of U.S. legal tech businesses includes **58 organizations that target "BigLaw" or corporate legal departments and only five that are consumer facing.**

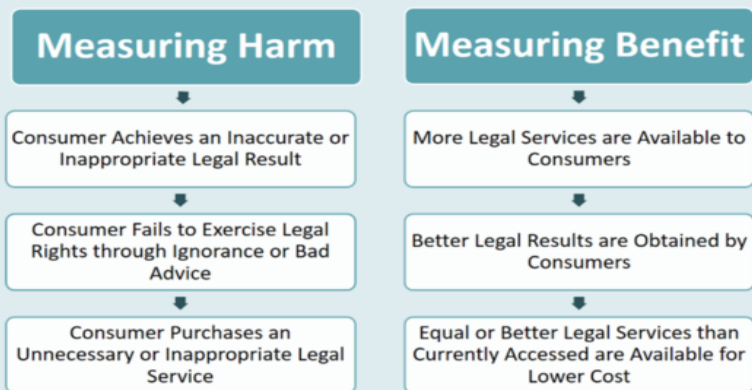
Utah's Regulatory Sandbox Pilot Program

- On August 13, 2020, the Utah Supreme Court unanimously approving a regulatory sandbox pilot program for two years that would allow nonlawyers to provide certain legal services. In late April 2021, the Utah Supreme Court extended the pilot program to seven years.
- **For the first time in the United States, law firms and corporations can experiment with new legal structures including allowing non-lawyers to practice and manage law firms.**
- Under the state's "regulatory sandbox," applicants will be able to seek approval to experiment with new legal business models and approaches. These new providers and offerings will be carefully tracked over the next two years, after which the high court will make a decision about whether the program should continue.
- As of May 3, 2021, the court has received 47 applications and has approved 26 entities. A list of authorized entities can be found at <https://utahinnovationoffice.org/authorized-entities/>

Measuring Harm and Benefit for Risk-Based Regulation

Utah Risk based Regulation

What is Being Measured?



Examples of Sandbox Programs Granted Approval by the Utah Supreme Court

- **Rocket Lawyer:** Rocket Lawyer is an online legal technology that provides individuals and small to medium-sized businesses with online legal services.
- **LawHQ:** The Salt Lake City law firm plans to offer equity ownership to certain software developers in the firm. LawHQ also plans to offer a software application, called CallerHQ, designed to allow consumers to report spam telephone calls, text messages and voicemails. Consumers signed up through the application may then be joined into a mass tort litigation brought by LawHQ against the spammers.
- **ILaw:** This entity plans to provide no-cost and low-cost legal services to assist clients in completing court documents and also offer related legal advice using chatbots, instant messaging, automated interviews, nonlawyer staff and technology-assisted lawyers. ILaw plans to have more than 50% nonlawyer ownership.

Examples of Sandbox Programs Granted Approval by the Utah Supreme Court

- **LawPal:** This entity plans to provide a TurboTax-like technology platform to generate legal documents in contested and uncontested divorce and custody cases, eviction cases and debt-related property seizure cases. It expects to feature 50% nonlawyer ownership.
- **Blue Bee Bankruptcy Law:** The sole owner of the firm plans to give his paralegal employee a 10% ownership interest in the firm as an incentive to remain with the firm.
- **Hello Divorce:** Hello Divorce is a direct-to-consumer legal platform that gives users access to the [Divorce Navigator](#), a web application that guides users through the divorce process from start to finish. It integrates with the document-generation software [Documate](#) to produce all required forms, and it includes features such as interactive checklists and tutorials. Hello Divorce is majority owned by a California lawyer.

Utah's Amended Rule 5.4 (effective May 1, 2021)

Rule 5.4. Professional Independence of a Lawyer

- (a) A lawyer may provide legal services pursuant to this Rule only if there is at all times no interference with the lawyer's:
 - (1) professional independence of judgment,
 - (2) duty of loyalty to a client, and
 - (3) protection of client confidences.
- (b) A lawyer may permit a person to recommend, retain, or pay the lawyer to render legal services for another.
- (c) A lawyer or law firm may share legal fees with a nonlawyer if:
 - (1) the fee to be shared is reasonable and the fee-sharing arrangement has been authorized as required by Utah Supreme Court Standing Order No. 15;
 - (2) the lawyer or law firm provides written notice to the affected client and, if applicable, to any other person paying the legal fees;
 - (3) the written notice describes the relationship with the nonlawyer, including the fact of the fee-sharing arrangement; and
 - (4) the lawyer or law firm provides the written notice before accepting representation or before sharing fees from an existing client.

Utah's Amended Rule 5.4 (effective May 1, 2021) (continued)

- (d) A lawyer may practice law with nonlawyers, or in an organization, including a partnership, in which a financial interest is held or managerial authority is exercised by one or more persons who are nonlawyers, provided that the nonlawyers or the organization has been authorized as required by Utah Supreme Court Standing Order No. 15 and provided the lawyer shall:
 - (1) before accepting a representation, provide written notice to a prospective client that one or more nonlawyers holds a financial interest in the organization in which the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and
 - (2) set forth in writing to a client the financial and managerial structure of the organization in which the lawyer practices.

Arizona Alternative Business Structures

- The Arizona Supreme Court voted on August 28, 2020 to allow alternative business structures (ABS) in the legal industry through approving changes to ethics rules that take effect January 1, 2021.
 - Unlike Utah, there will be no sandbox program, but the application process has been described as a “rigorous.” The nontraditional legal businesses also will have to comply with a code of conduct that mandates an internal compliance attorney.
 - An ABS is an entity that provides legal services and has nonlawyer ownership, managers, or decision makers in the business. Nonlawyers could have economic ownership (an equity stake) in the business, but only lawyers and other individuals licensed or certified by the Arizona Supreme Court are permitted to provide legal services.
 - The advantages of an ABS include:
 - ✓ It will allow for greater technological innovations in the delivery of legal services.
 - ✓ It will provide additional capital to be infused in legal firms.
 - ✓ It will allow firms to attract the best and brightest nonlawyer partners.
 - ✓ It will allow for “one stop shops” to be able to provide legal and non-legal services.
- <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/abs>

Arizona’s Rules of Professional Conduct Changes

- 5.3 Supervision of Nonlawyers (MODIFIED)
- 5.4 Professional Independence (DELETED)
- 5.7 Ancillary Businesses (DELETED)

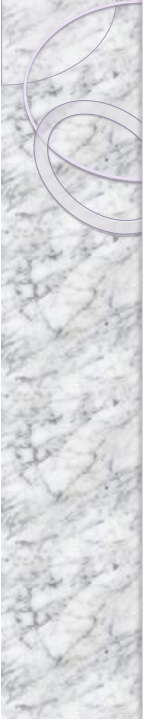


BigLaw Firm Gets UK Approval for Nonlawyer Partners and Outside Investment

- Reed Smith LLP is a global law firm headquartered in Pittsburgh, Pennsylvania, with more than 1,500 lawyers in 30 offices throughout the United States, Europe, the Middle East and Asia.
- In November 2019, Reed Smith announced that the U.K. legal regulator approved Reed Smith's adoption of an alternative business structure (ABS) that allows the firm to have nonlawyer partners. Reed Smith is the first international law firm to convert to an ABS.
- An alternative business structure allows law firms to be managed and owned by individuals without legal training, to provide services beyond traditional legal advice, and to receive outside investment.
- **In a press release Reed Smith stated that it was “future-proofing” its business. The structure gives Reed Smith “the agility to immediately seize new opportunities—in tech, big data and other specialized consultancy services—that will help us drive our clients’ businesses forward.”**

The “Big Four” Accounting Firms Have Obtained an Alternative Business Structure License which Permits Them to Practice as Law Firms in the UK

- The “Big Four” accounting and audit firms are continuing to redraw the professional boundaries. Each has obtained an “alternative business structure” license which permits them to practice as law firms in the UK and Wales.
- **The “Big Four” collectively employ approximately 10,000 attorneys globally with expertise in practice areas such as tax, immigration, corporate, litigation support, regulatory work, and labor and employment.**



The End

Thank You!