

# **“Ethics and the New Practice of Law: Is the Future Really Now”?**

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# **Introduction**

The obligatory disclaimers . . .

“It’s déjà vu all over again.” Yogi Berra.

Then, client driven? Now, lack-of-client driven?

The issue: The “access to justice” gap.

Questions are welcome!

# **Distinctives of the Legal Profession**

Loyalty.

Avoiding conflicts of interest.

Confidentiality (current, former, even prospective clients).

Professional independence.

Judicial regulation!

# Non-lawyer Participation in Law Practice

What is driving the changes? The hope of improving access to justice.

Tennessee Supreme Court's "Justice For All" initiative:

More than half of TN lawyers provided pro bono services.

More than 660,000 pro bono hours.

Equivalent to \$142 million donated!

Tennessee pilot online dispute resolution program for medical bills.

But . . . are the ethics rules really the problem?

# The Rules Being Challenged

Tennessee Rule of Professional Conduct 5.4:

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: . . ."
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) 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.
- (d) A lawyer shall not practice with or in the form of a professional corporation, or other association authorized to practice law for a profit, if:
  - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or ownership interest of the lawyer for a reasonable time during administration;
  - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
  - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

# The Rules Being Challenged

Tennessee Rule of Professional Conduct 7.3:

(f) A lawyer shall not compensate, give, or promise anything of value to a person who is not an employee or lawyer in the same firm for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may . . .

# Nationwide Developments

ABA Resolution 402 (August 2022) –

"The sharing of legal fees with non-lawyers and the ownership or control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession. The law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be revised."

# Nationwide Developments

Washington, D.C. (1991).

Arizona.

Fee-sharing and non-lawyer ownership rules abolished.

“ABS” (Alternative Business Structure).

Direct client representation by legal paraprofessionals.

No prohibition on paying non-lawyers for case referrals.

Permitted direct solicitation of persons in business representation scenarios.

# Nationwide Developments

Have the Arizona rule changes had the desired effect of improving access?

25 ABS approvals through August 2022

Vast majority are business, estate planning, or personal injury firms.

Legal Zoom has been approved for an ABS that employs lawyers.

Website of recently approved ABS states that the firm "is a proud new Arizona Alternative Business Structure (ABS) license holder, *operating as a Traditional Law Firm.*"

# Nationwide Developments

Utah.

Modified fee-sharing and non-lawyer ownership rules when authorized by state supreme court as part of “regulatory sandbox.”

First “sandbox” applicant in Utah: “Law On Call.”

Advertised as the first completely NON-lawyer owned law firm in the country.

\$9 per month for phone calls, but . . . additional charges when legal needs go “beyond basic legal advice.” Hourly rates start at \$99, go up to \$250 based on lawyer’s experience.

# Nationwide Developments

California (more than 170,000 lawyers).

Minnesota.

Oregon, Colorado.

New York. *Upsolve, Inc. v. James*, 2022 WL 1639554 (S.D.N.Y. May 24, 2022).

## Tennessee?

ABA Formal Opinion 499 ("passive investment" by Tennessee lawyers in a firm that has non-lawyer owners)

# Possible Effects of these Rule Changes

The jury is still out . . .

The law of unintended consequences?

# Possible Effects of these Rule Changes

Possible positives:

- Improved ability to market lawyers' services using technology.
- Easier contact and communication.
- Technology-driven law office efficiencies.

Possible negatives:

- Effective conflicts management?
- Confidentiality and privilege loss or confusion?
- Erosion of professional independence?
- Inevitable shift from judicial to legislative regulation?

# **Consideration of Incremental Steps**

Streamline lawyer advertising and marketing regulations.

Broaden lawyers' ability to pay for referrals – "reasonable cost of advertising"?

Reduce or eliminate restrictions on sale or pledging of law firm accounts receivable?

Encourage working relationships with funding companies?

Try to reduce entry barriers that elevate the cost structure?

# Law School Costs

Summary

Tuition

Net Tuition

Conditional Scholarships

Living Expenses

Debt

Federal Investment

Debt:Income

## Modify Data

Scope: National

Change Scope

Years Compared: 1985 to 2019

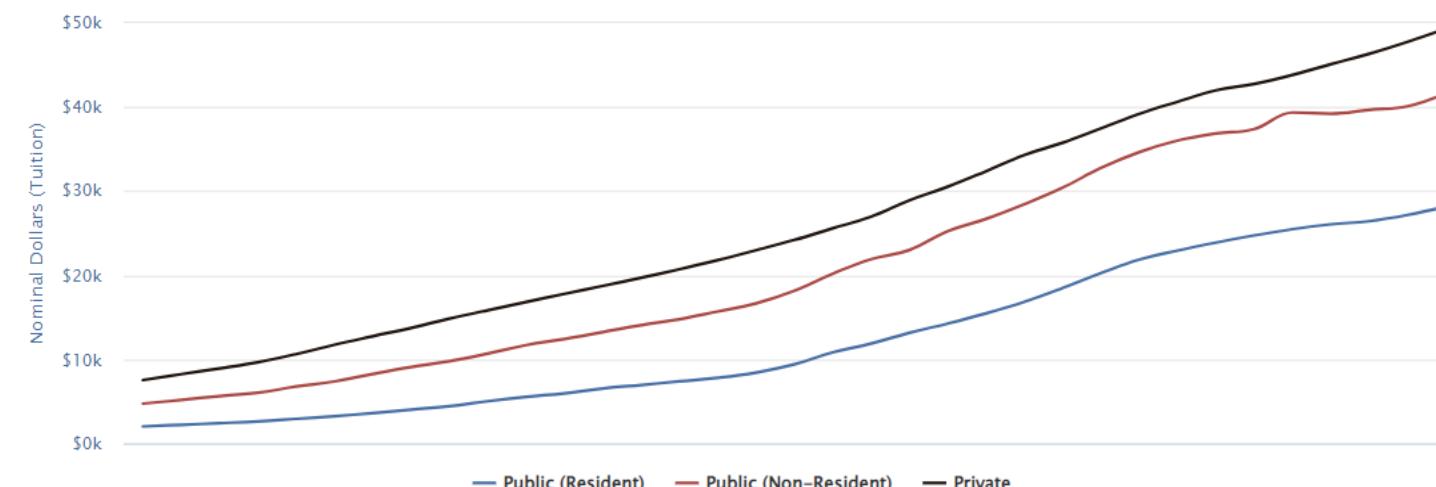
Change Years

Tuition, also known as "nominal tuition" or "sticker price," continues to climb at U.S. law schools. The following chart reflects the average nominal tuition prices for each category over 35 years, from 1985 to 2019, for all ABA-Approved law schools.

**Tip** On the left panel, you can change the data scope to view tuition from different angles.

Nominal Tuition Averages

for ABA-approved schools



Inflation has been a factor in rising law school prices, but law school tuition increases exceed the inflation rate between 1985 and 2019. In 1985, the average private school tuition was \$7,526 (1985 dollars), which would have cost a student \$17,871 in 2019. Instead, average tuition was \$49,312 (2019 dollars). In other words, private law school was 2.76 times as expensive in 2019 as it was in 1985 after adjusting for inflation.

In 1985, the average public school tuition was \$2,006 (1985 dollars) for residents, which would have cost a student \$4,763 in 2019. Instead, average tuition was \$28,186 (2019 dollars) for residents. In other words, public school was 5.92 times as expensive in 2019 as it was in 1985 after adjusting for inflation.

# **Consideration of Incremental Steps**

Apprenticeship option to traditional law school?

Law school accreditation and state supreme courts.

# Conclusion

The goal – move the discussion forward. The future is fast approaching . . .

**“In a world of technology, PEOPLE make the difference.”**

THANK YOU!