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COMMENTARY

*PROPELLING THE PRACTICE OF LAW INTO THE PRESENT:
ARIZONA APPROVES MORE ALTERNATIVE BUSINESS STRUCTURES.*

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Eighty-six percent of civil legal matters reported by low-income Americans receive no or inadequate legal aid according to a 2017 study by the Legal Services Corporation.¹ In an effort to close the access to justice gap the Arizona Supreme Court issued an order eliminating Ethics Rule 5.4 in August of 2020, thereby allowing non-lawyers to own and manage law practices through Alternative Business Structure (“ABS”) licensing.² Arizona is the first state to take this action, but not the only state liberalizing its rules regarding the legal industry.³ It is likely that this innovative trend will continue to spread to more states. This rule change is a needed shift away from traditional views of the legal profession which likely perpetuate the justice gap.

Comment 1 of Ethics Rule 5.4 explained that “[t]hese limitations are to protect the lawyer’s professional independence of judgment.” Rule 5.4 displayed a distrust in lawyers, implying that a lawyer’s judgment and duties of loyalty and confidentiality would be swayed if a non-lawyer had some control over the law firm.⁴ The Arizona Task Force on the Delivery of Legal Services concluded that “no compelling reason exists for maintaining ER 5.4 because its twin goals of protecting a lawyer’s independent professional judgment and protecting the public are reflected in other ethical rules[.]”⁵ For example, after Rule 5.4 was eliminated, lawyers are

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¹ Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low- Income Americans* 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

² *In re Restyle & Amend Rule 31*, No. R-20-0034, 2020 Ariz. LEXIS 273 at *60 (Aug. 27, 2020).

³ Daniel Rodriguez, *Legal Services Reform at the Bleeding Edge*, 56 ARIZ. ATT’Y 26, 27 (April 2020).

⁴ Whitney Cunningham, *In Favor of Alternative Business Structures*, 56 ARIZ. ATT’Y 34, 36 (April 2020).

⁵ ARIZ. SUP. CT. TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, REPORT AND RECOMMENDATIONS at 13 (Oct. 4, 2019), <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>.

still held accountable for exercising their independent professional judgment and upholding their duties of loyalty and confidentiality to their clients.⁶

An Arizona Supreme Court press release following their order to eliminate Rule 5.4 explained that “[t]he Court’s goal is to improve access to justice and to encourage innovation in the delivery of legal services.”⁷ To achieve these goals, the court amended Rule 31 to implement Alternative Business Structure (“ABS”) licensing.⁸ An ABS is a business entity that includes nonlawyers who hold an economic or decision-making authority in the firm and must provide legal services in compliance with Rule 31.1.⁹ Rule 31.1 requires an ABS to employ at least one attorney in good standing with the State Bar of Arizona, be licensed, and only permit those authorized to practice law to do so.¹⁰

So far eight entities have been licensed as an ABS in Arizona, with the last five licenses issued this August.¹¹ LegalZoom, a company worth \$7 billion which went public in June, has applied for a license which is pending approval.¹² LegalZoom provides an online platform for various legal services such as Will creation, trademark applications, contracts, and bankruptcy aid.¹³ LegalZoom has faced numerous unauthorized practice of law suits in multiple states.¹⁴ If granted an ABS license, LegalZoom will likely avoid these suits in Arizona and more effectively be able to provide legal services to more people. The technological aspect of platforms like LegalZoom demonstrate the potential of this rule change; they provide access to legal services to everyone with a connection to the internet and at a lower cost.

The theory behind permitting outside investment and non-lawyer ownership in law practices is two-fold. First, the extra funding of firms will lead them to engage in more pro bono and low-cost legal services for the community.¹⁵ Second, because more options for seeking legal services will be available, the services will be more affordable.¹⁶ However, this may not be the actual result. Some have argued that additional funding could just as likely be used to improve the services already provided, raising their value and cost.¹⁷ Further, more options and innovation may not result in cheaper options, though this is likely to occur.¹⁸

⁶ *Id.*

⁷ Press Release, Ariz. Sup. Ct., *Arizona Supreme Court Makes Generational Advance in Access to Justice* (Aug. 27, 2020), <https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf>.

⁸ *Supra* note 2.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ Sara Merken, *Arizona approves five more entities for new legal business structure*, REUTERS (Aug. 27, 2021, 1:24 PM), <https://www.reuters.com/legal/legalindustry/arizona-approves-five-more-entities-new-legal-business-structure-2021-08-27/>.

¹² Sam Skolnik, *LegalZoom Asks to Employ Lawyers Under New Arizona Rules*, Bloomberg Law (Aug. 16, 2021, 1:08 PM), <https://news.bloomberglaw.com/business-and-practice/legalzoom-asks-to-employ-lawyers-under-new-arizona-rules?context=search&index=8>.

¹³ *Id.*

¹⁴ *LegalForce RAPC Worldwide, P.C. v. LegalZoom.com, Inc.*, No. 17-cv-07194-MMC, 2018 U.S. Dist. LEXIS 72488 (N.D. Cal. Apr. 30, 2018); *Medlock v. LegalZoom.Com, Inc.*, No. 2012-208067, 2013 S.C. LEXIS 362 (Oct. 18, 2013); *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053 (W.D. Mo. 2011).

¹⁵ Angela O’Meara, *Non-lawyer Ownership and Management of Law Practices*, 53 GONZ. L. REV. 339, 343 (2018).

¹⁶ *Id.*

¹⁷ *Id.* at 344-45.

¹⁸ *Id.*

Even if the implementation of ABS licensure does not actually help to close the access to justice gap, it will still create a positive result. The rule change allows for greater innovation and collaboration across disciplines involving the practice of law and can lead to more comprehensive and holistic legal services. This change widens the options that lawyers have to pursue their legal careers and provides businesses with more leeway to be innovative in supplying legal services. Arizona's elimination of Ethics Rule 5.4 is a step forward in bringing the practice of law into the current world, where technology and collaboration can make the delivery of legal service more effective, and hopefully, more affordable, and accessible for all.