

## CHANGING TIMES IN THE LEGAL PROFESSION—A SURVEY OF PRACTICING LAWYERS<sup>1</sup>

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### I. INTRODUCTION: A CHANGING SCENE

Admission to law practice and the provision of legal services are evolving rapidly in the 21st century as a result of new attitudes, new demands, new patterns in American society, and advances in technology. The following are a few examples of this changing scene:

◦ Legal education is less and less local. Every law school attracts students from different states,<sup>2</sup> every law school offers a broad, national curriculum in keeping with the American Bar Association (“ABA”) requirements,<sup>3</sup> and Juris Doctor (“J.D.”) graduates from every accredited law school have the freedom to sit for the bar exam in any state.<sup>4</sup> At the same time, bar exams are becoming more standardized throughout the country.<sup>5</sup> In most states the exam no longer serves as a barrier to students who have studied elsewhere.

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1. This article expands upon the article, Stephen C. Sieberson et al., *Law Practice in the 21st Century – Where Are We Heading?*, 41 NEWSLETTER OMAHA BAR ASS’N, no. 3, Sept. 2016, at 1, 9, and is published with the permission of the Omaha Bar Association.

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2. Jessica Edwards, *What’s it like going to school out of state?*, B. EXAM INSIDER (Aug. 2, 2016), <http://www.kaptest.com/blog/bar-exam-insider/2016/08/02/whats-it-like-going-to-school-out-of-state/> (explaining that more law students than undergraduate students attend out-of-state law schools).

3. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS r. 316 (AM. BAR ASS’N 2016-2017).

4. *Frequently Asked Questions*, A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, [http://www.americanbar.org/groups/legal\\_education/resources/frequently\\_asked\\_questions.html](http://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions.html) (last visited Jan. 17, 2017).

5. The National Conference of Bar Examiners reports that in 2015 all states except Louisiana use the Multistate Bar Exam (“MBE”). Non-state jurisdictions that use the MBE include the District of Columbia, Guam, Northern Mariana Islands, Palau, and the Virgin Islands. Puerto Rico does not use the MBE. *Jurisdictions Administering the MBE*, NAT’L CONF. OF BAR EXAMINERS, <http://www.ncbex.org/exams/mbe> (last visited Feb. 21, 2017).

- Business, investing, personal affairs, disputes, and even criminal activity are increasingly multistate in character,<sup>6</sup> and it is natural that clients would wish to have their attorneys provide services wherever needed.
- For many segments of the United States population, the cost of traditional legal services is simply too high.<sup>7</sup> There is a critical need for less expensive options.
- There is increasing awareness that persons other than fully trained lawyers can offer competent legal advice and handle legal tasks.<sup>8</sup> This trend is also seen in health care, where a variety of practitioners with different levels of education and licensure are supplementing and even competing with the services traditionally provided by medical doctors.<sup>9</sup>
- The complexity of modern life makes it increasingly difficult to separate legal services from other services such as financial advising, tax counseling, and accounting.<sup>10</sup> Lawyers may find themselves com-

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6. See MODEL RULES OF PROF'L CONDUCT r. 5.5 cmt. 14 (explaining that while provisions (c)(3) and (c)(4) of the rule require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted, there are many situations in which the client's activities or the legal issues involve multiple jurisdictions). An example of this situation is when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each.

7. Debra Cassens Weiss, *Middle-Class Dilemma: Can't Afford Lawyers, Can't Qualify for Legal Aid*, ABA J. (July 22, 2010, 1:36 PM), [http://www.abajournal.com/news/article/middle-class\\_dilemma\\_cant\\_afford\\_lawyers\\_cant\\_qualify\\_for\\_legal\\_aid](http://www.abajournal.com/news/article/middle-class_dilemma_cant_afford_lawyers_cant_qualify_for_legal_aid) (explaining that lawyers are too expensive for the middle class, but many in the middle class are turned away from legal aid clinics because budget cuts force the organizations to turn away potential clients in order to serve clients that are at or below the poverty level). See also LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP 5 (2009) (indicating that approximately one million cases a year are currently being rejected by Legal Service Corporation-funded legal aid programs because programs lack sufficient resources to handle them). The report notes that this number represents only a fraction of the low-income people with legal needs.

8. For example, the state of Washington has recently established a Limited Practice Board to certify certain lay persons as limited practice officers. Limited Practice Officers are authorized by Washington's Admission to Practice Rule 12 to select, prepare, and complete documents in a form previously approved by the Limited Practice Board for use in closing a loan, extension of credit, or sale or other transfer of real or personal property. WASH. ADMISSION TO PRAC. r. 12 (WASH. ST. CTS. 2014).

9. M. D. Naylor & E. T. Kurtzman, *The Role Of Nurse Practitioners In Reinventing Primary Care*, 29 HEALTH AFFAIRS 893, 893 (2010).

10. Elijah D. Farrell, *Accounting Firms and the Unauthorized Practice of Law: Who is the Bar Really Trying to Protect?*, 33 IND. L. REV. 599 (2000). The author argues that the trend of accounting firms employing lawyers represents "a natural extension of services already being offered." *Id.* at 599.

peting with other professionals, and attorneys must often coordinate their professional activities with those of non-lawyers.

◦ Perhaps more significant than any of the above is the fact that technology has changed the way people find information, communicate, seek advice, and manage data. In law practice there are new ways to connect clients with attorneys and new ways for lawyers to carry out their work.<sup>11</sup>

## II. IMPACT ON THE LEGAL PROFESSION—HOW DO LAWYERS VIEW THE NEW WORLD?

During the spring of 2016 we studied how the above developments have been reflected in concrete changes in the legal profession. As our research proceeded, we focused on seven trends in legal education, licensing, and practice. These trends represent significant developments that lawyers might consider to be an opportunity, a threat, or simply another challenge in an already demanding career. We then created an informal survey to discern the attitudes of practicing lawyers toward these developments.

On April 8, 2016, we presented the survey to the annual Seminar on Ethics and Professionalism conducted in Omaha, Nebraska, sponsored by Creighton Law School and the Omaha Bar Association. Dr. Sieberson presented seven survey questions in PowerPoint format and provided a written handout, and we used the Survey Monkey application to allow audience members to vote by smart phone, tablet, or laptop immediately after each question was presented. In addition, we kept the survey open for four days after the seminar to allow responses by those individuals who were not prepared to answer during the presentation. Of an audience of more than 400 practicing attorneys, we received an average of 225 responses to each question.

## III. QUESTIONS AND RESPONSES

Each question below is preceded by a brief description of the topic. For the live presentation, that description was presented orally and accompanied by bullet points on the PowerPoint slides.

For each survey question we tried to offer at least one response that reflects resistance to the trend, one that embraces the trend, and one or more that demonstrate some form of middle ground. The seven

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11. Blair Janis, *How Technology Is Changing the Practice of Law*, 31 GP SOLO, no. 3, May/June 2014, at 10, [http://www.americanbar.org/publications/gp\\_solo/2014/may\\_june/how\\_technology\\_changing\\_practice\\_law.html](http://www.americanbar.org/publications/gp_solo/2014/may_june/how_technology_changing_practice_law.html); Adam Nguyen, *What is the Future of Law as it Converges with Technology?*, LAW TECH. TODAY (Apr. 10, 2015), <http://www.lawtechnologytoday.org/2015/04/future-of-law-technology/>.

questions, along with their response options and the results from our audience, are presented below. Percentages are rounded to the nearest tenth of a percent.

*Topic 1: A Single Bar Exam.* Traditionally, each state offered its own unique bar exam, largely made up of essay questions.<sup>12</sup> Today, states have the option of using the Multistate Bar Exam (“MBE”), Multistate Essay Exam (“MEE”), and Multistate Performance Test (“MPT”).<sup>13</sup> In 2011 the MBE, MEE, and MPT were first offered as a package called the Uniform Bar Exam (“UBE”).<sup>14</sup> Twenty-six states and the District of Columbia have adopted the UBE.<sup>15</sup> Others have adopted one or more of its components, supplemented by tests on local law.<sup>16</sup>

Question 1: Which bar exam is desirable? (231 responses)

- No UBE at all—local exam only
  - 7 responses, 3.0%

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12. Margo S. Melli, *Passing the Bar: A Brief History of Bar Exam Standards*, 21 GARGOYLE 3, 3 (1990); Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1193-94 (1995).

13. The Multistate Bar Exam (“MBE”) is a six-hour, multiple-choice exam. The Multistate Essay Examination (“MEE”) consists of six 30-minute questions in which the examinee demonstrates his or her ability to communicate effectively in writing. The Multistate Performance Test (“MPT”) is developed by the NCBE and consists of two 90-minute items designed to test an examinee’s ability to apply fundamental lawyering skills in a realistic situation. NAT’L CONF. OF BAR EXAMINERS, [ncbex.org](http://ncbex.org) (last visited Jan. 17, 2017).

14. The Uniform Bar Exam (“UBE”) takes place over the course of two days and is uniformly administered, graded, and scored by user jurisdictions. UBE scores are portable and may be used to apply for admission in other UBE jurisdictions. Some UBE jurisdictions may require an additional jurisdiction-specific examination. NAT’L CONF. OF BAR EXAMINERS, <http://www.ncbex.org/exams/ube/> (last visited Jan. 17, 2017).

15. *Jurisdictions That Have Adopted the UBE*, NAT’L CONF. OF BAR EXAMINERS, <http://www.ncbex.org/exams/ube/> (last visited Feb. 21, 2017) (reporting that the following jurisdictions have adopted the UBE: Alabama, Alaska, Arizona, Colorado, Connecticut, District of Columbia, Idaho, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, South Carolina, Utah, Vermont, Washington, West Virginia, and Wyoming).

16. NAT’L CONF. OF BAR EXAMINERS & AM. BAR ASS’N SEC. OF LEGAL EDUC. AND ADMISSION TO THE BAR, *COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 25* (2016), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/ComprehensiveGuidetoBarAdmissions/2016\\_comp\\_guide.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2016_comp_guide.authcheckdam.pdf) (reporting that the following jurisdictions have adopted one or more UBE components in addition to jurisdiction-specific components: Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, and Texas).

- Uniform Bar Exam à la carte—with one or more local components
  - 105 responses, 45.5%
- Uniform Bar Exam identical in every state
  - 93 responses, 40.3%
- No bar exam for J.D. graduates from accredited schools
  - 26 responses, 11.3%

Comment: *The overwhelming majority of responders supported the current trend toward a uniform bar exam, with this group split evenly between those who favor a local component to the exam and those who do not. Very few responders would turn back the clock to unique exams in each state. A relatively small percentage of responders would eliminate the bar exam entirely (the Wisconsin model for graduates of in-state law schools), and this result may well reflect the fact that most people in the audience had already “paid their dues” by surviving a bar exam. We imagine that a poll of current law students would produce many more votes for the no-exam option.*

*Topic 2: Multistate Practice.* Each state’s supreme court has authority over lawyers in its jurisdiction, and each court issues law licenses valid in that state only.<sup>17</sup> Lawyers can hold multiple licenses, subject to paying fees and following all rules of practice in each state, which can vary.<sup>18</sup> Admission in a different state may occur by transfer of UBE scores, waiving in based on similar bar exams, or “admission on motion” if a lawyer has practiced for several years.<sup>19</sup> Rule 5.5 of the Model Rules of Professional Conduct prohibits the unlicensed practice of law, but allows a lawyer to provide temporary services in another jurisdiction. The range of such services is carefully limited.<sup>20</sup>

Question 2: What type of license is desirable? (230 responses)

- One state at a time, based on bar exam, no admission on motion
  - 2 responses, 0.9%

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17. BENJAMIN F. BUTLER ET AL., FUNDAMENTALS OF AMERICAN LAW 154 (Alan B. Morrison ed., 1996) (stating that “American courts uniformly deem the regulation of the legal profession to be within their special province.”).

18. *Id.*

19. *Taking the Bar*, HARV. LAW SCH., <http://hls.harvard.edu/dept/dos/taking-the-bar-exam/> (last visited Jan. 28, 2017).

20. Model Rule of Professional Conduct 5.5 allows lawyers to provide services only on a temporary basis either undertaken in association with a lawyer who is admitted to practice in the jurisdiction, or if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice. ELLEN J. BENNETT, ELIZABETH J. COHEN & HELEN W. GUNNARSSON, AM. BAR ASS’N, ANNOTATED MODEL RULES OF PROF’L CONDUCT 515 (8th ed. 2015).

- One state at a time, with easily attainable admission on motion
  - 134 responses, 58.3%
- Multistate license with one state handling the administration
  - 24 responses, 10.4%
- Multistate license within a region, with regional administration
  - 21 responses, 9.1%
- National license, with national administration
  - 49 responses, 21.3%

Comment: *It is clear that very few responders wished to require lawyers to take a second or third bar exam, and ninety-nine percent preferred to facilitate multistate practice. Our suggestions (options three through five) for a true multistate license, whether administered by one state or a regional or national administration, are not, to our knowledge, under serious consideration anywhere, likely because state supreme courts have jealously guarded their control over the legal profession. Nevertheless, these rather novel options received 40.8 percent of the votes. A majority of 58.3 percent favored easy reciprocity, even if that means being subject to more than one set of rules and more than one governing authority.*

*Topic 3: Online Legal Assistance.* It is now possible to purchase a number of legal services online, including preparation of a will, trust, incorporation documents, dissolution documents, and power of attorney documents.<sup>21</sup> In the process, the client fills in an electronic form. The online service provider reviews the form, but disclaims any offering of legal advice.<sup>22</sup> Rule 5.5 prohibits unlicensed law practice,<sup>23</sup> but there have been longstanding accommodations for selling legal forms and for having real estate agencies and title companies prepare certain forms.<sup>24</sup> The new online providers claim that they operate like these traditional services.<sup>25</sup> The providers have settled challenges by bar associations,<sup>26</sup> and there appears to be growing acceptance of the practice.

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21. See [www.legalzoom.com](http://www.legalzoom.com), [www.rocketlawyer.com](http://www.rocketlawyer.com), [www.docracy.com](http://www.docracy.com) (last visited Jan. 17, 2017).

22. See, e.g., LEGALZOOM, <https://www.legalzoom.com/disclaimer.html> (last visited Sept. 15, 2016) (stating, "We are not a law firm or a substitute for an attorney or law firm. We cannot provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies.").

23. See MODEL RULES OF PROF'L CONDUCT r. 5.5, *supra* note 20.

24. Robert Ambrogi, *Latest legal victory has LegalZoom poised for growth*, ABA J. (Aug. 1, 2014, 8:00 AM), [http://www.abajournal.com/magazine/article/latest\\_legal\\_victory\\_has\\_legalzoom\\_poised\\_for\\_growth/](http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth/).

25. *Id.*

26. *Id.*

Question 3: How may clients be assisted online? (227 responses)

- Only law firms, legal aid, or bar association should provide and fill out legal forms
  - 84 responses, 37.0%
- Allow non-lawyers to provide and fill out legal forms through a service company only if each matter is reviewed by a lawyer
  - 96 responses, 42.3%
- Allow non-lawyers to provide and fill out forms through a service company without lawyer review
  - 47 responses, 20.7%

*Comment: Despite the increasing presence of online form-sellers, nearly eighty percent of our responders indicated that lawyers should handle or supervise the provision of legal documents. Whether those lawyers take any steps through their bar associations, and whether the courts respond in their favor, will be worth watching. Without active intervention, we should expect the online businesses to continue vigorously promoting their services.*

*Topic 4: Limited Law Licenses.* The state of Washington has recently created two types of licensing for non-lawyers. First, a Limited Practice Officer (“LPO”), after passing an exam, may prepare documents for loans and real and personal property transactions. The documents must be based on approved forms. An LPO does not represent separate clients, but represents all parties to a transaction, and may not offer legal advice. An LPO may work independently.<sup>27</sup> Second, a Limited License Legal Technician (“LLLT”) must study for one year and work for one to two years for a lawyer, and then the LLLT must pass an exam. An LLLT may work independently, represent clients, and offer legal advice in family law matters only, although the subject areas may expand in the future.<sup>28</sup> An LLLT compares to a nurse practitioner.<sup>29</sup>

Question 4: Should there be limited practice licenses? (223 responses)

- There is no need to have limited-license law specialists
  - 71 responses, 31.8%

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27. WASH. ADMISSION TO PRAC. R. 12 (WASH. ST. CTS. 2014).

28. *Id.* at r. 28.

29. See NAT’L GOVERNORS ASS’N, THE ROLE OF NURSE PRACTITIONERS IN MEETING INCREASING DEMAND IN PRIMARY CARE 44 (2012), <http://www.aacn.nche.edu/government-affairs/NGA-Nurse-Practitioner-Paper.pdf>.

- Limited-license law specialists should be required to work under lawyer supervision
  - 107 responses, 48.0%
- Limited-license law specialists should be allowed to work independently within specified limits
  - 45 responses, 20.2%

Comment: *The idea of limited license practitioners who can operate independently was favored by only 20.2 percent of our responders. Nearly half approved a new form of licensing, but only as long as the technicians work as paralegals and legal assistants currently do, i.e., under lawyer supervision. The Washington model will undoubtedly be monitored by lawyers and courts in other jurisdictions, and a key consideration should be whether the new types of practitioner will help fill the need for less expensive legal services.*

*Topic 5: Multi-Disciplinary Firms.* A multi-disciplinary firm (“MDF”) is one that offers a variety of professional services.<sup>30</sup> In the United States, Rule 5.4 of the Model Rules of Professional Conduct prohibits lawyers from fee-sharing with non-lawyers,<sup>31</sup> and this has prevented lawyers from participating in MDFs in which non-lawyers are equity owners.<sup>32</sup> MDFs are common in other countries.<sup>33</sup> In the state of Washington, new Rule of Professional Conduct 5.9 allows Limited License Legal Technicians to own a share in a law firm as long as lawyers retain control.<sup>34</sup>

**Question 5:** Should lawyers be allowed to practice in an MDF? (224 responses)

- No, Rule 5.4 should be retained as is
  - 67 responses, 29.9%
- Yes, but only if lawyers retain control over the MDF
  - 45 responses, 20.1%

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30. The American Bar Association has described a multidisciplinary practice as a partnership, professional corporation, or other association or entity that includes lawyers and non-lawyers and has as one, but not all, of its purposes the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing non-legal, as well as legal, services. ABA COMM. ON MULTIDISCIPLINARY PRAC., REP. TO THE HOUSE OF DELEGATES 1 (1999).

31. MODEL RULES OF PROF'L CONDUCT r. 5.4 (AM. BAR ASS'N 2016).

32. ELLEN J. BENNETT, ELIZABETH J. COHEN & HELEN W. GUNNARSSON, AM. BAR ASS'N, ANNOTATED MODEL RULES OF PROF'L CONDUCT 508 (8th ed. 2015).

33. Katherine L. Harrison, *Multidisciplinary Practices: Changing the Global View of the Legal Profession*, 21 U. PA. J. INT'L L. 4, 879 (2000).

34. WASH. RULES OF PROF'L CONDUCT r. 5.9 (WASH. ST. CTS. 2015).

- Yes, if lawyers retain professional independence despite non-lawyer control over the MDF
  - 89 responses, 39.7%
- Lawyers should not be restricted from participating in an MDF, regardless of its control
  - 23 responses, 10.3%

*Comment: Looking at options two through four, 70.1 percent of responders approved the concept of a multi-disciplinary firm that includes lawyers providing legal services. This is a rather significant rejection of Rule 5.4 as it has traditionally been interpreted. Nevertheless, very few of those in favor of the MDF selected option four, which would allow the lawyers in an MDF to be subject to control by non-lawyers without restriction.*

*Topic 6: Referral Fees.* Rule 5.4 prohibits sharing fees with a non-lawyer.<sup>35</sup> Rule 7.2 prohibits paying referral fees except to certain non-profit referral agencies, but it does permit a lawyer to pay for “advertising or communication.”<sup>36</sup> A new for-profit online company refers clients to its list of lawyers, collects a fixed fee from the client up front for the legal services, and then pays the lawyer the full fee when the work is completed. However, the company then charges the lawyer a “marketing fee” of approximately 15-20% of the lawyer’s earned fee.<sup>37</sup> The company claims that its marketing fee is consistent with the rules of ethics.<sup>38</sup>

**Question 6:** Should lawyers be allowed to pay referral fees to “for-profit” companies? (225 responses)

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35. MODEL RULES OF PROF’L CONDUCT r. 5.4 (AM. BAR ASS’N 2016).

36. *Id.* at r. 7.2.

37. *Attorney FAQ for Avvo Legal Services*, AVVO, <https://support.avvo.com/hc/en-us/articles/208458216-Services-FAQ-for-attorneys> (last visited Feb. 20, 2017) (explaining, “This fee is withdrawn from the bank account you choose for withdrawals—this should be your operating account. The amount depends on the service, and ranges from a \$10 marketing fee for a \$39 service, to \$40 marketing fee for a \$149 service, up to a \$400 marketing fee for a \$2995 service. For example, if a client purchases a \$149 document review service with you, you will be paid the full \$149 client payment into your deposits account. As a separate transaction, you will be charged a \$40 marketing fee from your withdrawals account.”).

38. Avvo defends its fees as follows:

Fee splits are not inherently unethical. They only become a problem if the split creates a situation that may compromise a lawyer’s professional independence of judgment. We believe that Avvo Legal Services fees, if deducted like credit card fees, would involve the sort of technical fee split that would not create such a potential for compromise. Nonetheless, we have tried to keep things simple and clear by making the per-service marketing fee a separate charge from your operating account.

*Id.*

- No, such fees should be limited to a bar association or nonprofit referral agency
  - 110 responses, 48.9%
- Yes, but only if the fee has no relation to the number of referred cases or size of legal fees
  - 68 responses, 30.2%
- Yes, allow such a fee after the referral and based on the size of the legal fee
  - 28 responses, 12.4%
- Yes, there should be no restrictions on referral fees to anyone
  - 19 responses, 8.4%

Comment: *The company referred to in this question is Avvo, although others may be using a similar business model. Option one would reject the new model and preserve the traditional system of lawyer referrals. Option two would allow a lawyer to pay a true marketing fee to a company, but that fee would have to be based on the marketing efforts and not the results. Only 20.6 percent of responders selected options three or four, which would approve the Avvo model or some other form of percentage-based referral fee to a for-profit company. A substantial majority selected options one or two, expressing a rejection of percentage-based fees being paid to a for-profit company.*

*Topic 7: Outsourcing Support Services.* It is possible to retain an outside firm to provide support services such as document review, research, document drafting, and data management.<sup>39</sup> Such “legal process outsourcing” providers may be local, but may also be located anywhere in the world—India, for example.<sup>40</sup> Ethical issues in outsourcing implicate Rules 5.1<sup>41</sup> and 5.3<sup>42</sup> (a lawyer’s supervisory responsibilities), Rule 1.7 (conflict of interest—who else is the provider working for?),<sup>43</sup> and Rule 1.6 (confidentiality/privilege).<sup>44</sup>

Question 7: Should there be limits on outsourcing? (223 responses)

- Outsourcing should not be allowed in any form
  - 61 responses, 27.4%

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39. William L. Pfeifer Jr., *Privacy and Legal Outsourcing*, 29 GP SOLO, no. 6, November/December 2012, at 31.

40. *Id.* See also Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT’L L. 401 (2007).

41. MODEL RULES OF PROF’L CONDUCT r. 5.1 (AM. BAR ASS’N 2016).

42. *Id.* at r. 5.3.

43. *Id.* at r. 1.7.

44. *Id.* at r. 1.6.

- Allow outsourcing only to firms with which the lawyer has ongoing face-to-face contact
  - 72 responses, 32.3%
- Allow outsourcing only to firms within the United States
  - 43 responses, 19.3%
- No geographical restrictions on outsourcing
  - 47 responses, 21.1%

*Comment: Option one received more than a quarter of the vote, even though it is likely that every lawyer at one time or another has retained an outside service company for assistance in printing or managing data or technology. Therefore, we should interpret option one as rejecting only those support services that closely resemble legal work such as research, document review, and drafting. There was a fairly even split among the four options, although a clear majority of 59.7 percent of responders favored options one and two and would require careful lawyer control over all legal services, either by keeping them in-house or by demanding close supervision of the outsourced work. Still, it is significant that nearly three-quarters of responders (options two through four) approved of outsourcing, including nearly forty percent (options three and four) who would permit outsourcing to a remote service provider.*

#### IV. LIMITATIONS OF THIS SURVEY

The limitations of this survey are several. First, our description of each of the seven trends was distilled into a format that could be explained, digested, and voted on in approximately five minutes. Thus, the questions and responses lacked the detail and nuance that they undoubtedly deserve. Second, to keep things manageable, for the response to each question we offered only a handful of alternatives, and we required the responder to select only one of them. Again, simplicity triumphed over subtlety. Third, although we did our best to present the material in a lucid and objective fashion, we did not test the survey in advance to determine whether our descriptions were clear to the audience or to uncover our own biases. Fourth, to keep our focus on the practice of law, we emphasized the practical aspects of each subject. Legal and ethical concerns were present in the entire exercise, but we did not emphasize the technical requirements of the applicable rules of professional conduct. Fifth, we did not ask for demographic information from responders, and thus we do not know how the responses might have reflected age, gender, ethnicity, years of practice, type of practice, or other factors.

## V. FINAL OBSERVATIONS

We conclude by reminding ourselves and the bar that we cannot simply ignore these trends in how our profession is composed and in how legal services are being delivered to the public. We urge state and local bar associations and the courts to keep abreast of these developments and to address them thoughtfully, in order to preserve the professionalism of law practice, but more importantly, to ensure that quality legal services can be made available to all members of society.