



Episode 70 - Non-Lawyer Ownership: Public Comment to California ATILS

Introduction: This is Lawyers Gone Ethical. Straight talk about legal ethics. Here's your host, Megan Zavieh.

Megan Zavieh: Hi everyone. Welcome back to another episode of Lawyers Gone Ethical. This is episode 70 and I'm coming off of a really cool weekend where I got to attend Failure Camp at Vanderbilt University, put on by Cat Moon and Larry Bridgesmith - two people that if you're not following on Twitter, go and get following them now - two really amazing people. Failure Camp was really interesting and I want to share a little bit about that with you. It wasn't really on my agenda for this episode, but I thought it was such an interesting experience that I wanted to make sure to put it out there, that this is something that I hope we will all participate in to a certain extent. Whether you go to camp or not, get on Twitter and search for #failurecamp and you'll see a lot of posts from it. The concept of failure camp was let's get a bunch of people together. There are lawyers and non-lawyers involved. It was not exclusively lawyers despite being put on by

lawyers at a law school. And let's talk about failure. We have all failed, right? And we hide it and we try and put a nice gloss on it and we don't always just own it and talk about what we've gone through, how we've experienced it and how we've come out the other side. So, although there's been a little bit of conversation about how a lot of failure stories at camp had a happy ending because I think those are the stories more of us are willing to share, there's definitely a component of just kind of living with the fact that things haven't always gone the way you planned. I thought it was really good to get a group of people who are naturally inclined towards hiding our failures and have a profession where failure is typically not celebrated and get us talking. You know, really get this snowball going of talking very honestly about failure.

And we had an amazing breakout session. Everyone got to pitch what kind of breakout sessions they'd like to see. So we ended up with I think 16 proposals and five sessions voted upon and chosen to have as breakout sessions. And then two combined into one because a lot of people went "Well, I want to go to both of those" All right, let's just put them together. And so we had a breakout session that was about getting comfortable with being uncomfortable, kind of practicing failing so that when we fail at something we didn't think we would fail at, we're already accustomed to that feeling and we know it's going to be okay. Right. That gut wrenching knot in your stomach. Like it's actually going to be okay at the end of this. I've been through this before, I failed before. It's

going to be okay.

So practicing failure basically and dealing with the middle, those stories sounded really great. This arc of I failed, it was horrible, blah, blah blah, and now I'm okay. Right? And we didn't talk a whole lot or we don't tend to talk a whole lot about the middle. When you have failed and you are miserable and you are not yet okay. So we had this breakout session to talk about those two concepts, which are clearly very closely related and in the room. And we had people saying, well in my family, you don't show emotion, you don't show concern for your own failures, you always act happy. We had people saying, my culture tells me I have to behave a certain way or other, you know, social norms are impacting me. I mean it was really, really honest. This group of people who had never met each other before. And I got the added bonus of bringing my husband. So he and I had never attended a legal conference together. He is a CPA with a background that involves a whole lot of law and his work is very closely related to law, although he is not a lawyer. He sometimes talks about going to law school and I keep telling him, no, don't do that. It will screw with your head. But he came and we got to both share some failure stories. So it was really fun to spend that day together. So get on Twitter, search #failurecamp, learn a little bit more about what was going on there at Vanderbilt and consider how you can analyze your own failures and maybe find a failure partner to talk to and run through how you failed and things you've learned. But let's jump into today's topic.

I want to talk in more detail about the concept that we commonly refer to as non-lawyer ownership of law firms. Now this is, it's broader than that in that just tends to be the way we refer to it. But in the California task force recommendations that are out for public comment, and this is really important, I want everybody to go and comment, share your thoughts with the State Bar of California on this concept, whether you're in California or elsewhere, internationally, it doesn't matter where you are. Please share your thoughts on this concept. They are talking about ways that the financial dealings of legal services, organizations, entities, providing legal services can be impacted by non-lawyers being more participants. So we tend to see in sort of at least the Twittersphere and the more innovative legal space, talk about non-lawyer ownership as if it's a foregone conclusion that this is a good thing, right? We just assume it is. Absolutely, man, let's get some more money in here. Let's fund lawyers trying to innovate. Let's make this easier for legal tech companies to give stock. Let's, you know, let's move forward. Let's do these things. And sometimes I think we haven't stepped back and thought, well why? Why is this a good thing or is it a good thing? Are we just assuming that? Are we becoming "yes men" because advocates who are very loud, outspoken are telling us, this is a good thing? I want to talk about why do we have the ban on non-lawyer ownership in the first place and should we jump straight into knocking it out and

saying there is no longer a ban or should we really be giving this a little bit more thought.

Now, full disclosure, I support the idea that we lift the ban and we don't make having a license to practice law a criterion for having an ownership stake or a financial interest in an entity that provides legal services. That is my baseline position. I don't think it makes sense that we put so much stock in this licensed to practice law and we hold back the ability of some lawyers to provide legal services and lawyers to create new solutions. So that's my position, but I don't think we should all just jump to it and public comment should be Rah, Rah, Rah. Yeah, go ahead and lift the ban. Our public comments need to be more reason than that anyway to be useful. And everyone should be thinking this through because not everyone's going to agree with me.

So let's talk first about sort of why there's this ban in the first place. The ban is that you can't, well it takes a couple of angles, you can't split fees with a non-lawyer, so you can't pay part of legal fees to a non-lawyer. So the fee splitting is kind of one aspect, but more globally you can't have a non-lawyer owning an interest in a firm. So for example, a non-lawyer can't go hang out a sign that says immigration lawyer and then hire an immigration lawyer to actually do the work and collect the fees as the owner and then pay that immigration lawyer a salary. We can't do that. We also can't have a lawyer go,

wow, I have this really great idea for a tech platform that would assist self-represented people in the court system, but I can't afford to stop practicing law while I build it. And it's definitely going to provide legal services, this thing I want to build. So I want to go get an angel investor to give me \$500,000 to fund my efforts and pay me a salary while I'm doing it. And then at the end of it, they can own half share of all the fees that come in. We can't do that either.

So there are a lot of angles that it takes, but just think of it as financially - only lawyers are allowed to be benefiting from entities that are providing legal services. Underlying this entire ban is really this notion that lawyers somehow are incredibly susceptible to influence by someone without a license to practice law. And if someone without a license to practice law has some influence over a lawyer, they're not going to be able to perform the functions that they are supposed to be performing for their clients. That is really insulting if you think about it. It is a ban that we place on ourselves, on the idea that we are so weak that we can't see that we're being manipulated by someone without a license. And of course it does nothing for the fact that someone with a license could be manipulating us, right? Someone without a license could easily be running this show and manipulating us and convincing us to do things we shouldn't and giving us all the perverse financial incentives - kind of sounds like a lot of law firms, right? But that's all okay. But the ban says somebody without a license can't do that to you. Well, okay, I

have a real issue with that underlying concept and add to that that the rules otherwise frame lawyers as being capable of performing Jedi mind tricks on the general public. There's so much in the rules to protect the public from our undue influence. So on the one hand we are capable of manipulating all the people around us and fooling people and we're so powerful. But on the other hand we're so weak that someone without a law license can manipulate us.

So it's a really weird sort of, I think, identity crisis, honestly, not how we regulate ourselves. Now I have seen non-lawyers running practices in a very nefarious and manipulative way. Then you may think I shouldn't see that. Right? Cause we have a ban. Well we do have a ban but it still happens and we have lawyers who aren't very bright sometimes, especially in business who go, oh I thought it was okay that my paralegal actually owns the firm or that this non-lawyer, you know, threw out the sign and handled all the advertising. And did this and did this and did this and I just worked there. So this is happening anyway and it certainly can be a situation where the non-lawyer's manipulating the lawyer in a negative way, but the fact that they don't have a law license is not the base problem. They could have a license and still be performing the same manipulative acts and causing the same problems. Then one of the objections to lifting the ban is that it dilutes the commitment by the lawyer to the clients, that our

commitment to our clients is, you know, at the base of our core values of the profession.

And if someone without a license now has a financial stake, they are going to move our needle away from fulfilling those core duties to the clients. Now that sounds a whole lot like protectionism to me. Like we are so special that we can only be responsible to the client and if we're responsible in any way to anyone without a license, then that dilutes our commitment. Well, think about now, right? You could be a true solo. No one else has a financial interest in your firm. No one else is directing you. When you go into the office in the morning and you answer your own phone calls and you don't owe anyone a paycheck, you maybe don't even owe anyone rent. Maybe you're virtual and you work from home, you know, as isolated as possible financially. Okay. No one else has influence over you. You still owe your mortgage, right? And you still have to buy groceries for your family. Like we already have financial pressures to fulfill, you know, these duties that we have to meet. So the idea that now if someone else has an ownership stake, that means that all changes is kind of ridiculous. Of course we have other people we are beholden to, other entities we have to fulfill duties to. We still can fulfill our duties to our client wholesale. This is still an important duty - our core value, our clients. And it's not changed by the fact that we are trying to make money and pay other bills. So, that in and of itself kind of makes me scratch my head.

Also, the other part of that objection is that we become beholden to the source of the money. You know, so like the investors in our firm, if we were allowing non-lawyers to invest, and now the other people who are expecting to make money from the firm are going to say, hey, you need to be doing X, Y, Z, and maybe that's inconsistent with our duties to our client. Well, again, don't we already have that? I mean if you're part of a firm, if you're part of a partnership or any kind of structure, any pyramid structure of typical law firms, you're already beholden to other people. You're beholden financially to your partners. If you're an associate in a big firm, you're beholden financially to the partners above you who write your paychecks and can fire you any time if you are not doing your job appropriately. And doing your job is more than just fulfilling duties to clients. Sometimes doing your job is something you don't necessarily like, or maybe it's something you even have questions about, whether it fulfills the duty to the client. So we already have this problem and the ban doesn't prevent the problem. Also, we already allow firms to take out loans, right? And if you look at some of the big firm implosions over the years, a lot of them were crushed by debt.

I mean if you look just back historically over the last not very many years, Heller Erhman crashed, Dewey and Leboeuf crashed, Howery. I remember when Gunderson did and I went to work for a firm that had no debt, probably about 15 years ago now. I went to work for them and it was like a headline. If you research the firm before an interview

like you're supposed to, everything talked about the fact that this one firm had no debt. That was so unusual. So firms have debt, they take out loans, and then guess what? They're financially beholden to the lenders. The lenders may not be in the office saying, Hey, make this decision, but we're not really talking about that with investors in firms either. It's really not too much different. You're still going to be beholden to someone else and loans can scuttle a firm. They can make them crash.

So why are we really talking so much different of a situation if we were to allow an equity interest? Now, we do have another part of that objection and that is that the investors or the equity stake holders are going to get involved in cases to increase their financial return. Well, I don't think we need the ban to prevent that. You already have lawyers owing clients duties. Those duties are not being taken away by having non-lawyer ownership. We're not saying you're now going to be able to be owned by someone without a license, and that person is going to be able to control all of your work and you no longer have to zealously advocate for your client and you no longer have to put your client's interests first. Like, no, we're not saying any of that. Lawyers still have the same duties to their clients.

And so anyone investing in a law firm has to understand that the lawyers are still beholden to those duties to their clients. That doesn't change. Think about it in say, medicine. If I invested in a medical practice and full disclosure, I'm not sure I'm allowed

to do that, but let's say I am, I would have to realize that the doctors have duties to the patients first. Right? Well if you invest in a law firm, you have to understand that the lawyers have duties to their clients first. It's not necessary to have a ban to have that be the reality. So I've touched on it a little bit, but I want to specifically talk about what does non-lawyer ownership even look like? Like what are we talking about when we say non-lawyer ownership?

So one is they just have a financial stake. You know I'm married to someone who's not a lawyer. I mentioned that at the beginning. So my operating account at the bank when I was 100% true solo (now I have a team, but I'm still the only lawyer). It was awkward like I went to the bank and, well gosh my husband can't be on this account. Like we kind of do everything together, right? Everything is mixed. We've never had like, this is yours, this is mine. Paychecks come in to joint accounts. We've always been very tied together. And then I had to have this bank account and like, oh, he can't be on it. Right? So it could be as simple as lawyers who are solos, have their spouse who's not a lawyer on all of their finances for the firm and they can sign off on checks and they can help operate the business and those fees can come in and they're split between the two. It could be as simple as that. It could be that we do a multidisciplinary practice. So say my CPA husband and I decided to hang out a shingle "Zavieh and Zavieh, Accountants and Lawyers". Well, we could do that. So it could be multidisciplinary practice. And we've

seen that starting in some other countries. It could be that the person without the law license manages the firm in an ownership capacity. So we already have, you know, office managers or COOs of some firms who are not lawyers, but make a lot of the business decisions. They can't make any of the legal decisions obviously, but they have to be paid a salary. They can't be paid based upon the fees that come into the firm. So that management structure could change and be more of an equity structure where when their business decisions pay off and there's more legal fees coming in, they're automatically getting more of those.

We can already give bonuses, but take the, take all of that away from the lawyers and let that non-lawyer actually earn based upon the fees generated by the firm. You could also have sole owners of entities that employ lawyers. Now this is where I've heard the objection. Well Walmart could start a law firm. Every Walmart store could have its own law firm in it and lawyers say that like, oh well obviously this is a problem to remove the ban because Walmart could open law firms in every store. Yeah, they could. Isn't that awesome? And the person putting the objection out there, it's usually like horrified that, you know, thinking it's a foregone conclusion that everyone will see that's a bad idea.

Well, it's really not a bad idea. And you can have a person or an entity that's not licensed to practice law employing lawyers to go perform legal services for clients. That could be as simple as a solo person opening a shop and hiring lawyers, or it could be Walmart running law firms. Well, the reason I don't think this is so horrifying if Walmart

were to do that is that we still have like 80% of people who need a lawyer not getting one. Right? I mean, we've talked about those access to justice statistics. I don't care if it's really 80 I don't care if it's 50 I don't care if it's 20, a whole lot of people out there are not getting the legal services they need. If Walmart could open a law firm in every shop, that'd be awesome. We'd actually start to address some of the needs. So this is not a bad thing. And that's one way that non-lawyer ownership could manifest.

Another is joint ventures. This is one that I hear a lot about in the legal tech space.

A lot of the innovators in legal tech are lawyers, right? Not everyone. But if you go to a conference where one of the tech companies is spearheaded by a non-lawyer, they're like, well I'm not a lawyer, as if this is, you know, some terrible thing that they're confessing. Well, we could have joint ventures where a lawyer says, I have this great idea and I want to make this happen and I really don't want to take on investors and cash because I don't want to be responsible for that. But I know this programmer who would really love to get involved and now the programmer and the lawyer could start a joint venture where they're both invested equity wise and if it pays off and a bunch of legal fees come out of it, they split them. That would be a really big avenue that I think especially in the technology side, we would see, and also as I mentioned, you could have the multidisciplinary practice. I think that's also kind of a joint venture. So this is definitely a more complicated topic than just a bright line. This is what it would look like.

And yes, I'm in favor of it. Also before I wrap up, I want to talk about the idea that other places are already doing this. Okay. And they're okay. Their systems haven't fallen apart. Now the ABA Commission on Ethics 2020 was a big, big deal a few years ago. Um, it was in 2012 they came out with some recommendations for changing the ethics rules and when they did, it was, you know, watched carefully and everybody was hoping for sweeping changes and some of the changes were quite sweeping but they did not propose allowing non-lawyer ownership. So let that kind of sink in and shape some of your view of the history of this, that in the US even a commission national in scope did not propose this, but other countries have been doing this and doing it for a while, like a pretty good long while, with great success.

Now you don't find horror stories coming out of these countries where they're like, oh my gosh, we should never have let non-lawyers get involved in the finances of these firms. In fact, there are some statistics out there that say that since allowing non-lawyer ownership bar complaints have gone down. Now I'm not diving into those statistics here. It's kind of beyond the scope of what I want to talk about. But understand that we're not having stories of collapse of legal systems because they allowed this. Australia and the UK are the ones we hear about the most. Perhaps it's because Americans can more closely relate to those countries. We think of them as being closely aligned to us and that's appropriate. You know, obviously we came from England, Australia came

from England and these all seem similar and they all speak English and we can often have stories of having traveled to those countries. And so it's easy to relate to those two. So Australia started allowing non-lawyer ownership back in 2004 and they even have a publicly traded law firm at this point. So they've had, you know, that publicly traded, it's like as far as you can go, I think with non-lawyer ownership. So they have stockholders, shares traded on the stock exchange that they're responsible to and you know what? They're okay. The UK started allowing it in 2007 so this isn't like last year. Hey, let's see how this pans out. No, it's been a while. It panned out. It's good. Also DC is allowing some non-lawyer ownership in the U S so we've even had this one little start in the US as well. Now Canada is like us, they have province by province rules and so you know, just like we have our state by state rules, but some multidisciplinary practice was allowed starting all the way back in 1999 and at first that was even without lawyers all. So we've seen some of that up there and again, they've been fine. But you know what? It goes way beyond. In fact, the discussion of non-lawyer ownership tends to be wow, should we let go of our ban? Well Australia and the UK have and they seem to be all right. Maybe we should too as if we would be joining that small contingent of places allowing non-lawyer ownership. Well the reality is actually quite different. So many countries allow non-lawyer ownership. We actually are sticking out like a sore thumb that we are not allowing it. The list of countries allowing it is like most of the Western world and I'll just give you a partial list. These are countries that all allow some

alternative structures including non-lawyer ownership that you know really put us to shame. So Germany, France, the Netherlands, Spain, New Zealand, Singapore, Italy, Denmark - that's just a sampling and there are many more. So we're no longer really looking like the ones that are in the majority and maybe we'll take this risk of leaping to be different like Australia and the UK. No, it's more like are we really going to keep holding onto this antiquated idea? So as you can see, it's not as simple and black and white as hey, this is great, we should all jump in. And there are some objections that have been lodged that deserve some thought. But at the end of the day, these changes need public comment in order to happen in a thoughtful and rational and supportable way. If we don't jump in and give our 2 cents in the public comment session, we just are allowing the regulators to make their own decision. And the task force has worked really, really hard in California to come up with these ideas.

The task force is like half non lawyers. Okay, these are people who are really smart and closely involved in the legal community, but not lawyers. So they're not in that protectionist mindset and they're not in the mindset of this is how we've always done it; we have to keep doing it this way. So it's led to some wonderful creative solutions. I urge you to go to the state bar website, go to the public comment section and comment on the proposals. Give your 2 cents and you may disagree with me completely. You may be horrified by the Walmart law firm idea. We'll throw that in there. You know, I'm not

saying everybody has to agree with me. I just want everyone to have some discourse. I want voices to be heard and for this issue to be well debated so that decisions are made that can move us forward. So make sure you check that public comment link. And of course, if you want to start a public discussion, hit me up on Twitter. There's lots of good public discussion going on out there. So I'm at ZaviehLaw on Twitter and I'll see you out there and see you next time.