

Clients and Law Firms Call for a Uniform Set of Lawyer Regulations

By **Larry Bodine, Esq.**, a business development advisor with a nationwide practice. He can be reached at www.LarryBodine.com and 630.942.0977.



In a stunning move, 23 major law firms have joined business clients to call for a uniform set of lawyer regulations, so that American lawyers can compete in the global economy.

“We are convinced that the current array of regulations governing lawyers in the U.S. significantly hinders such flexibility, results in inefficiencies and higher costs in the delivery of legal services, and ultimately will lead to U.S. law firms being placed at a competitive disadvantage in an increasingly global market,” reads the proposal submitted by the Law Firm General Counsel Roundtable. See <http://bit.ly/g9EJsD>.

The proposal was sent to the ABA Commission on Ethics 20/20. Unless there is a groundswell of support, the Commission is likely to defend state bar associations, which promulgate the patchwork quilt of conflicting regulations governing lawyers.

This is an idea whose time has come:

- US lawyers need to compete with firms in Canada, the UK, Europe and Australia. State-by-state regulations put US lawyers at a big disadvantage.
- Business clients represented by the Association of Corporate Counsel called for deregulation in a proposal sent to the ABA Commission in July 2010.
- Deregulation of businesses, like law firms, is a growingly popular position in many economic circles. There already is growing deregulation of legal markets in the UK, Europe, Australia and Canada.
- Multi-state and multi-national companies need lawyers who can practice across state lines.
- State-by-state regulations hurt lawyers’ ability to rebound from the recession which ravaged the profession in 2008. The recession has eliminated 9,500 jobs at the country’s 250 largest law firms in 2009 and 2010.
- Uniform national regulations will likely make it easy for law firms to market and grow their business, without running afoul of contradictory and anti-business regulations in states like Florida and Iowa.

The roundtable's proposal to the commission was signed by general counsel or risk management counsel from 23 firms around the US, including such legal giants as Nixon Peabody, O'Melveny & Myers, Baker & McKenzie, Latham & Watkins, and Bryan Cave.

The proposal also calls for:

- **Freedom of movement for lawyers.** Any lawyer in good standing should be free to practice across jurisdictional boundaries and be admitted to practice in any

other state. “In an age when the business activities of large commercial enterprises routinely span both state and national borders, it is anomalous that rules of practice across the U.S. routinely inhibit such representation,” the proposal states

- **Separate regulations for “sophisticated clients.”** Big businesses should be able to “agree with lawyers that it engages to limit the liabilities of such lawyers or to indemnify them in connection with the engagement, including with respect to the nature or extent of such lawyers’ liability towards the client.” **A corporation or other entity should be presumed to be a sophisticated client if:**
 - a. It is publicly traded; or
 - b. It is a repetitive user of legal services and has had a reasonable opportunity to obtain the advice of independent counsel of its own choosing (including its own in-house counsel); or
 - c. It has a balance sheet showing assets in excess of \$25 million; or
 - d. It has an annual budget for legal services (including expenditures for in-house and outside counsel) in excess of \$300,000; or
 - e. It operates in at least five jurisdictions; or
 - f. It is a governmental entity with power to consent to waivers of conflicts of interest.

In my opinion, it is clear that law firms engage in interstate commerce and should have the right to practice under federal or uniform national regulations. There is also no compelling governmental interest in restricting a lawyer’s right to movement – and state bar rules that require out-of-state lawyers to take the state bar exam restrict a lawyer’s right. Accordingly a constitutional argument can be made to support a uniform set of rules of professional conduct.

“Our activities are focused on striving to conform the conduct of our law firms and of the individual lawyers within our firms to the myriad and frequently inconsistent regulations governing the provision of legal services in the United States, as well as in foreign jurisdictions,” the roundtable of law firms declared.

State-by-state regulations “do not work well when applied to relationships between large commercial enterprises and their outside counsel. Indeed, the effects of such application is to drive up the cost of legal services for such clients and, in some cases, to restrict the ability of clients to select the counsel of their choice,” the group stated.