

# NAVIGATING THE CHANGING TIDES IN THE LEGAL SERVICE LANDSCAPE: AN ASSESSMENT OF ALTERNATIVE BUSINESS STRUCTURES

William Tyler Lowman\*

## ABSTRACT

*In the vast ocean of the legal industry, it has always been an established principle those who sail the legal seas are only those who are licensed to practice law. These aspiring sailors in the United States go through an extensive process of passing intense admission exams, completing challenging years of legal studies, and passing the dreaded bar examination. While a select few countries have allowed non-lawyer professionals on board some of their legal ships, the United States has stuck to their Code, ABA Rule 5.4, prohibiting anyone else from participating in sailing the legal seas.*

*But the tides are changing in the United States. In 2020 Arizona and Utah made groundbreaking reforms, with Arizona abolishing the Code, and Utah revising the Code to allow non-lawyers to navigate the legal seas of their jurisdictions. These newly structured ships have taken the name Alternative Business Structures, allowing non-lawyers to invest, take ownership, or even join as co-captain alongside lawyers.*

*Arizona and Utah have raised their sails and begun the course of navigating uncharted territory in the legal service landscape. And other states are watching their voyage to decide whether to join this new quest. The waters are choppy and murky, with conflicting interests and duties presenting areas of concern. But Alternative Business Structures offers promises of spurring innovation, revolutionizing the delivery of legal services, and increasing access to justice.*

*This Note is the first to empirically assess the impacts of the licensed and active Alternative Business Structures in the United States. Arizona and Utah's regulatory reforms to ABA Rule 5.4, Arizona's repeal of Rule 5.4 and Utah's regulatory "Sandbox", led to 108 currently licensed and active Alternative Business Structures between the two jurisdictions. These 108 existing firms fall into three typologies of Alternative Business Structures: "Traditional Law Firms Remodeled", "One-Stop Shops", and "Alternative Legal Service Providers". While the data on each type's impact has some limitation in that it cannot fully answer the larger question about the impact on the access to justice crisis, this Note provides insight into each Alternative Business Structure's impact on innovating the delivery of legal services and promoting access to affordable legal services, and how they can be regulated more efficiently to improve access to justice, spur innovation, and prevent consumer harm.*

---

\* J.D. and LL.M in Taxation. Student at the University of Miami School of Law. I would like to thank Professor Andrew Dawson for inspiring me to write about this topic and for his guidance and support. I would also like to thank my father, William Lowman, for his guidance and support in both this paper and in my professional career.

## TABLE OF CONTENTS

ABSTRACT .....	1
INTRODUCTION .....	2
I. ALTERNATIVE BUSINESS STRUCTURES .....	5
A. <i>Regulatory Reforms and Barriers in the United States</i> .....	5
B. <i>Alternative Business Structures in Arizona</i> .....	7
1. Arizona's Compliance Lawyer .....	8
C. <i>Alternative Business Structures in Utah</i> .....	10
1. Utah's Risk Based Regulatory Framework .....	11
D. <i>Categorizing Alternative Business Structures</i> .....	13
II. TRADITIONAL LAW FIRMS REMODELED .....	14
A. <i>Nonlawyer Ownership in the PI Market</i> .....	15
1. Conflicting Interests and Litigation Funding .....	16
2. Pitfalls of Arizona's Regulatory Framework .....	18
B. <i>Immigration Law in the Sandbox</i> .....	21
C. <i>Lack of Full-Service ABSs</i> .....	22
III. ONE-STOP SHOPS .....	23
A. <i>Business and Law Under One Roof</i> .....	24
1. One Shop, Separate Entities .....	26
2. Protecting Client Confidentiality .....	27
B. <i>Hybrid ABS Model</i> .....	28
C. <i>Non-Profit Holistic Support Systems</i> .....	29
IV. ALTERNATIVE LEGAL SERVICE PROVIDERS .....	30
A. <i>ALSPs Employing Lawyers</i> .....	31
1. Emerging Market Potential .....	33
2. Improved Access-to-Justice? .....	34
B. <i>Regulating ALSPs in the Legal Market</i> .....	35
V. CONCLUSION .....	38

## INTRODUCTION

For over 100 years, nonlawyers were blocked off from participating in the United States legal industry. Non-lawyer ownership of law firms, partnerships between lawyers and nonlawyers engaging in legal services, and sharing of legal fees between lawyers and nonlawyers was strictly prohibited

throughout the United States.<sup>1</sup> These restrictions for nonlawyers are grounded in the American Bar Association's ("ABA") Attorney Rule of Professional Conduct, Model Rule 5.4, released in 1983 and adopted uniformly by every state.<sup>2</sup> The ABA justifies these restrictions as essential for protecting the lawyer's independent professional judgment.<sup>3</sup> However, not every individual or business views these ABA model rules as essential.<sup>4</sup> In fact, advocates for a regulatory reform view this rule as a barrier in the United States, citing to issues such as the United States access-to-justice crisis, steep legal fees, and the inability for smaller law firms to raise equity capital.<sup>5</sup> These advocates claim that reforming Rule 5.4 will result in more affordable legal services, diversification of the legal profession, and foster innovation in the legal field.<sup>6</sup>

The legal profession is not an industry known for embracing change. When Arizona and Utah undertook major regulatory reforms to the longstanding Rule 5.4, it caused quite the surprise as well as uneasiness among many law firms and professionals; however, many advocates for reform kindly welcomed this alteration in the legal landscape.<sup>7</sup> In 2020, the Arizona Bar repealed and replaced its version Rule 5.4, and the Utah Bar revised its version Rule 5.4, launching a seven-year regulatory "sandbox."<sup>8</sup> Arizona and Utah's reforms led to the creation of Alternative Business Structures in the United States. An Alternative Business Structure ("ABS") is a type of law firm ownership structure where nonlawyers can have equitable ownership and decision-making authority in a law firm, participate in fee sharing with lawyers, and/or provide nonlegal services alongside lawyers through the business entity.<sup>9</sup> The implementation of these ABS

---

<sup>1</sup> Conrad Jacoby, *Practice Innovations: Non-lawyer ownership of law firms- Are winds of change coming for Rule 5.4?*, THOMSON REUTERS (Mar. 29, 2022), <https://www.thomsonreuters.com/en-us/posts/legal/practice-innovations-april-2022-non-lawyer-ownership/#:~:text=First%20released%20in%201983%2C%20the,the%20activities%20of%20the%20partnership> [https://perma.cc/9SHZ-C92K].

<sup>2</sup> *Id.*

<sup>3</sup> Joel Truett, *Goodbye Rule 5.4: Legal Ethics Change in Arizona*, ARIZ. ST. L. J. (Apr. 19, 2021), <https://arizonastatelawjournal.org/2021/04/19/goodbye-rule-5-4-legal-ethics-change-in-arizona/> [https://perma.cc/R47V-2TNG].

<sup>4</sup> Stephen Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, THE YALE L. J. 259, 260 (Oct. 19, 2022), <https://www.yalelawjournal.org/forum/the-pitfalls-and-false-promises-of-nonlawyer-ownership-of-law-firms> [https://perma.cc/XKL9-82XS].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Jenna Greene, *Arizona and Utah lead the way on legal industry change*, REUTERS (Oct. 3, 2022, 2:12 PM) <https://www.reuters.com/legal/legalindustry/arizona-utah-lead-way-legal-industry-change-2022-10-03/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Alternative Business Structures (ABS) Frequently Asked Questions*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/abs> [https://perma.cc/7PYY-Q269].

entities removes “the mainstay of the legal industry...that prevented law firms from sharing ownership with non-lawyers.”<sup>10</sup>

Arizona and Utah revolutionized the legal services landscape through their respective ABS programs. And as this Note will illustrate, authorized ABSs have adopted a wide variety of business models beyond a traditional law firm taking on nonlawyer equitable ownership or investment, such as entities offering legal services and non-legal services under “one roof” and alternative legal service providers employing lawyers. Arizona and Utah’s respective regulatory objectives for these entities are improving access-to-justice, diversifying the legal market, and increasing and innovating the delivery of legal services.<sup>11</sup> As other states and individuals monitor these reforms and contemplate a change, the following question remains unanswered: What is the effect of nonlawyers in the ownership and management of and services provided by Alternative Business Structures in the legal industry?

It has now been over 3 years since Arizona and Utah began licensing ABSs, yet no one knows the extent to which ABSs are advancing their regulatory objectives. Are they improving access-to-justice and innovating the delivery of legal services (as optimists hoped to see), or are they exposing consumers to harm and creating the ethical issues that Rule 5.4 was adopted to prevent (as critics of these structures have feared)?

There are currently 108 licensed and active ABS firms across the two jurisdictions as of September 27, 2024, with 70 in Arizona<sup>12</sup> and 43 in Utah (5 entities are licensed in both)<sup>13</sup>. This Note conducts an empirical assessment of the impact of the ABS structure. Part I provides an overview of the emergence of ABSs, discussing both sides of the regulatory reform debate, and Arizona and Utah’s regulatory reform. Next, introducing Arizona and Utah’s ABS program and purpose, each state’s application and licensing process, and each state’s regulatory framework in place. Part I concludes by discussing the process used to gather information on each ABS and categorize them into one of three types based on their business model for analysis. Part II, III, and IV then offer an in depth look at each of the three main types of ABSs, providing a study and impact assessment for ABS entities categorized as “Traditional Law Firms Remodeled,” “One Stop-Shops,” and “Alternative Legal Service Providers.” Each assessment

---

<sup>10</sup> Steve German, *What Attorneys Should Know When Starting An Alternative Business Structure Law Firm*, FORBES (June 30, 2023, 8:00 AM), <https://perma.cc/9PJF-FWB5>.

<sup>11</sup> See *id.*; see also *What We Do*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/what-we-do/> [<https://perma.cc/97E9-6F6W>].

<sup>12</sup> *ABS Directory*, ARIZ. JUD. BRANCH, (last visited Nov. 10, 2024) <https://www.azcourts.gov/Portals/26/ABS%20Master%20Directory%20May%2010%2C%202024.pdf> <https://perma.cc/H5RS-LZWQ>.

<sup>13</sup> *Authorized Entities*, UTAH OFF. LEGAL SERVS. INNOVATION, (last visited Nov. 10, 2024), <https://utahinnovationoffice.org/authorized-entities/> [<https://perma.cc/VVA3-8N98>].

presents findings from the ABS participants, examines their practice areas and services offered, and analyzes whether they are having a desirable impact, one that also aligns with Arizona and Utah's regulatory objectives. Each assessment additionally highlights areas of concern and presents suggestions for how certain ABSs can be better regulated to improve access-to-justice and address ethical concerns. This Note concludes by offering recommendations for the regulation and licensure of ABSs and offers predictions about the future of ABSs and nonlawyer ownership in the legal industry.

With only 108 licensed ABS entities across Arizona and Utah, it is important to recognize the data limitations on answering the question of whether ABSs will reduce the access-to-justice gap in the United States. However, through an empirical assessment on the impact of ABS entities, this Note provides insight on how ABS entities are impacting the United States legal market and how they can be better regulated going forward to improve access-to-justice and the delivery of legal services.

## I. ALTERNATIVE BUSINESS STRUCTURES

### A. *Regulatory Reforms and Barriers in the United States*

ABA Model Rule of Professional Conduct 5.4 governs the lawyer's independent judgment, prohibiting lawyers from forming partnerships with nonlawyers if any of the partnership activities consist of the practice of law, and prohibiting the sharing of legal fees with nonlawyers.<sup>14</sup> The rule is "in place to safeguard lawyers from outside influence, and in doing so, protect the public."<sup>15</sup> Bar associations have long opposed relaxing the rule to allow nonlawyer participation.<sup>16</sup> However, advocates for reform argue that it serves as a barrier to both innovation and addressing the access-to-justice crisis.<sup>17</sup> While Rule 5.4 was adopted in 1983, the debate on reforming the rule continues to grow and spread across the country.<sup>18</sup>

One of the leading reasons supporters base the argument for reforming Rule 5.4 is the access-to-justice crisis in the United States.<sup>19</sup> Even opponents

---

<sup>14</sup> Younger, *supra* note 4, at 259.

<sup>15</sup> Zachariah James DeMeola & Michael Houlberg, *Model Rule 5.4: How It Protects Little, Harms a Lot, and Why Its Removal Can Greatly Benefit Lawyers*, GPSOLO MAGAZINE (Aug. 13, 2021), <https://www.americanbar.org/groups/gpsolo/resources/magazine/archive/model-rule-54/?abajoin=true> [<https://perma.cc/UQ2S-LQD8>].

<sup>16</sup> Natalie Knowlton, *A Debate on Nonlawyer Participation, Part 1: Stephen Younger Warns that Nonlawyer Ownership Is Not the Solution to the Justice Gap*, IAALS (Dec 14, 2022), <https://iaals.du.edu/blog/debate-nonlawyer-participation-part-i-stephen-younger-warns-nonlawyer-ownership-not-solution> [<https://perma.cc/R7Y7N-JXZH>].

<sup>17</sup> Jason Solomon, *How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice*, STAN. L. SCHOOL PUBLICATIONS 1, 7-8 (Apr. 2020), <https://law.stanford.edu/publications/how-reforming-rule-5-4-would-benefit-lawyers-and-consumers-promote-innovation-and-increase-access-to-justice/> [<https://perma.cc/F3VW-N3UM>].

<sup>18</sup> DeMeola & Houlberg, *supra* note 15.

<sup>19</sup> *Id.*

to reform do not dispute there is a disturbing access-to-justice gap.<sup>20</sup> The World Justice Project's 2024 Rule of Law Index ranks the United States 107 out of 142 countries on "accessibility and affordability of civil justice."<sup>21</sup> The index considers *inter alia* whether people can access and afford legal representation or advice and can access the court system without incurring unreasonable fees.<sup>22</sup> A major contribution to the access-of-justice crisis is that market inefficiency in the legal industry contributed to an environment where lawyers must charge legal fees that most people cannot afford.<sup>23</sup>

Proponents of reform claim that the restrictions imposed by Rule 5.4 are contributing factors to this market inefficiency.<sup>24</sup> Rule 5.4's ban on fee sharing prevents law firms from raising equity capital to sustain their businesses, and results in firms relying on debt.<sup>25</sup> The ban on fee-sharing further hinders the adoption of new technology and innovation.<sup>26</sup> Under Rule 5.4, lawyers cannot bring in non-lawyer partners with expertise in areas other than law such as business, marketing or technology, which then in turn takes up countless hours of lawyers' administrative task and client outreach.<sup>27</sup> Lawyers advocating for the removal of Rule 5.4 point to evidence from the United Kingdom's regulatory reform demonstrating that removing Rule 5.4's restrictions would grant them the opportunity to adapt to this changing society, increase technology, and provide innovative services.<sup>28</sup> And advocates for reform claim that removing Rule 5.4's restrictions allowing this change and innovation will contribute to affordable legal services.<sup>29</sup>

Proponents of keeping Rule 5.4 ground their arguments in the inherent duties of professionalism and the ethical practice of law.<sup>30</sup> Lawyers are bound by a unique ethical framework, and the consequences for ethical violations in the legal industry are very different than the consequences for professionals in most other industries.<sup>31</sup> Lawyers must exercise their own independent judgment and owe a fiduciary duty to their client—the concern with removing Rule 5.4's protections is centered around the fear of involvement of nonlawyers in the practice compromising this fiduciary

---

<sup>20</sup> Knowlton, *supra* note 16.

<sup>21</sup> *National Coalition for a Civil Right to Counsel*, NCCRC (Oct. 25, 2023), [https://civilrighttocounsel.org/major\\_developments/u-s-rank-on-access-to-civil-justice-in-rule-of-law-index-116th-out-of-142-countries/](https://civilrighttocounsel.org/major_developments/u-s-rank-on-access-to-civil-justice-in-rule-of-law-index-116th-out-of-142-countries/) [https://perma.cc/9V34-J7P7] 2024 WJP RULE OF LAW INDEX, (last visited Feb. 12, 2024).

<sup>22</sup> *Id.*; WORLD JUSTICE PROJECT, WJP RULE OF LAW INDEX 2023 at 18 (2023).

<sup>23</sup> *See* DeMeola & Houlberg, *supra* note 15.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Solomon, *supra* note 17.

<sup>27</sup> DeMeola & Houlberg, *supra* note 15.

<sup>28</sup> *Id.*

<sup>29</sup> Solomon, *supra* note 17.

<sup>30</sup> Knowlton, *supra* note 16.

<sup>31</sup> *Id.*

duty.<sup>32</sup> Opponents of reforming Rule 5.4 worry removing the rule will result in conflicting interests, outside pressure leading to unethical fee sharing, and the unauthorized practice of law.<sup>33</sup>

Amidst this debate, the ABA has reaffirmed its commitment to Rule 5.4 stating that 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.”<sup>34</sup> However, this reaffirmance does not limit the ability of states to make their own regulatory change to their version of Model Rule 5.4. In 2020, Arizona and Utah became the first two states in the United States to reform Rule 5.4 and create ABS programs.<sup>35</sup>

### *B. Alternative Business Structures in Arizona*

In August of 2020, the Supreme Court of Arizona abolished ABA Model Rule 5.4 “after years of mounting calls for reform,” and brought ABSs into practice in the United States.<sup>36</sup> Arizona’s replacement rule eliminates the restrictions on fee sharing and nonlawyer ownership in law firms through the implementation of its ABS program.<sup>37</sup> Entities looking to benefit from these opportunities available from the reform must obtain a license from the Arizona Supreme Court to operate as an ABS.<sup>38</sup> Arizona defines an ABS as, “a business entity that includes nonlawyers who have an economic interest or decision-making authority in a firm and provides legal services in accord with Supreme Court Rules 31 and 31.1(c).”<sup>39</sup>

With licensed ABS status, non-lawyers can share fees with lawyers and have economic ownership, management, and decision-making authority in legal partnerships and businesses providing legal services.<sup>40</sup> “Decision-Making Authority” in an ABS, as defined by the Arizona Code of Judicial Administration, allows the non-lawyer to legally bind the ABS, control or participate in management, and make day-to-day or long-term decisions of the matters of management, policy, and operations of the ABS.<sup>41</sup> Although non-lawyers can make these business decisions in the ABS, only lawyers

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> A.B.A., 402, ANNUAL MEETING 2022- HOUSE OF DELEGATES RESOLUTION, [https://www.americanbar.org/news/reporter\\_resources/annual-meeting-2022/house-of-delegates-resolutions/402/](https://www.americanbar.org/news/reporter_resources/annual-meeting-2022/house-of-delegates-resolutions/402/).

<sup>35</sup> William C. Marra, *Arizona Law Firm Ownership Rule Change Is a Win for Clients*, VALIDITY (Sep. 3, 2020), <https://www.validityfinance.com/news/thought-leadership/2020-09-03-az-rule-change-law360> [<https://perma.cc/4H9R-J72J>].

<sup>36</sup> *Id.*

<sup>37</sup> C. Thea Pitzen, *Can Nonlawyers Close the Legal Services Gap?*, A.B.A. (Apr. 21, 2022), [https://www.americanbar.org/groups/gpsolo/publications/gpsolo\\_ereport/2022/april-2022/can-nonlawyers-close-legal-services-gap-two-states-remove-ban-fee-sharing-partnerships-nonlawyers/](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2022/april-2022/can-nonlawyers-close-legal-services-gap-two-states-remove-ban-fee-sharing-partnerships-nonlawyers/).

<sup>38</sup> ARIZ. REV. STAT. ANN. § 7-209 (2024).

<sup>39</sup> ARIZONA JUDICIAL BRANCH, *supra* note 9.

<sup>40</sup> *Id.*

<sup>41</sup> ARIZ. CODE OF JUD. ADMIN., § 7-209(A) (2022).

licensed to practice law by the Arizona State Bar are allowed to provide the legal services within the respective entity.<sup>42</sup>

The purpose of the ABS program was “rooted in the idea that entrepreneurial lawyers and nonlawyers would pilot a range of different forms.”<sup>43</sup> Arizona believes the formation of ABSs will lead to greater technological innovations in delivering legal services, additional capital for law firms, the attraction of “the best and brightest” nonlawyer partners, and “one-stop shops” providing legal and non-legal services to the public.<sup>44</sup> Arizona’s ultimate regulatory objective in implementing the ABS program is to improve access-to-justice and the delivery of legal services.<sup>45</sup>

All ABS applications are reviewed by the Committee on Alternative Business Structures.<sup>46</sup> Both the ABS entity and every “authorized person” of the ABS must submit an application; an “authorized person” is someone with at least 10% economic interest in the ABS or the legal right to exercise Decision Making Authority on behalf of the ABS.<sup>47</sup> The Committee then examines whether each applicant has stated how its entity will advance one or more of the following regulatory objectives: “(1) protecting and promoting the public interest; (2) promoting access to legal services; (3) advancing the administration of justice and the rule of law; (4) encouraging an independent, strong, diverse, and effective legal profession; and (5) promoting and maintaining adherence to professional principles.”<sup>48</sup> The Committee also examines whether the entity has adequate policies and structures in place to ensure compliance with all professionalism and ethical standards.<sup>49</sup> The Committee submits its recommendation to the Arizona Supreme Court, who makes the final decision in whether to grant the entity an ABS license.<sup>50</sup>

### 1. *Arizona’s Compliance Lawyer*

Perhaps the most significant requirement of Arizona’s regulatory framework is the entity must have a designated “compliance lawyer”.<sup>51</sup> The

---

<sup>42</sup> ARIZONA JUDICIAL BRANCH, *supra* note 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Press Release, ARIZONA SUPREME COURT, *Arizona Supreme Court Makes Generational Advance in Access to Justice*, (Aug. 27, 2020), <https://www-media.floridabar.org/uploads/2020/08/AZ-press-release-on-rule-changes.pdf> [<https://perma.cc/562Q-HDKE>].

<sup>46</sup> ARIZONA JUDICIAL BRANCH, *supra* note 9.

<sup>47</sup> ARIZ. CODE OF JUD. ADMIN., § 7-209(A) (2022).

<sup>48</sup> See Brad Denton, *Getting Licensed as an “Alternative Business Structure” in Arizona*, DENTON PETERSON DUNN, <https://arizonabusinesslawyeraz.com/getting-licensed-as-an-alternative-business-structure-in-arizona/> [<https://perma.cc/KVQ5-XLLW>] (citing ARIZ. CODE OF JUD. ADMIN., § 7-209(E)(2)(a)(1) (2022)).

<sup>49</sup> *Id.*

<sup>50</sup> ARIZ. CODE OF JUD. ADMIN., § 7-209(D)(5)(b)(1)(a) (2022).

<sup>51</sup> Andrew Halaby, *Arizona ABS Compliance Lawyers and the Attorney-Client Privilege*, GREENBERG TRAURIG (Sept. 2022).



lawyer must be a manager or employee of the ABS, an active member of the Arizona state bar, and “possess credentials and experience in the legal field to ensure that ethical obligations, protection of the public, and standards of professionalism are adhered to.”<sup>52</sup> The compliance lawyer is responsible for establishing policies and procedures within the ABS firm to assure nonlawyer compliance with these rules and prevent nonlawyers from interfering with lawyers’ ethical duties to clients.<sup>53</sup>

The compliance lawyer must also take “all reasonable steps” to ensure all authorized persons and employees associated with the ABS “do not cause or substantially contribute to a breach” of the governing legal service provider regulations.<sup>54</sup> The compliance lawyer must promptly report to the state bar of any facts or matters “reasonably” believed to be a substantial breach or “reasonably” believed should be brought to the state bar’s attention for review.<sup>55</sup> Consumers can also bring complaints against ABSs, and those complaints will be directly reviewed by the State Bar of Arizona in the same manner as complaints against lawyers.<sup>56</sup>

Arizona’s compliance lawyer requirement imposes a considerable amount of responsibility and obligations on the designated attorney, essentially tasking them with monitoring all the ethical issues that could arise without Rule 5.4.<sup>57</sup> While all members of the ABS are responsible for adhering to the codes of conduct of the regulatory scheme and failing to do so can lead to ABS status revocation and members facing penalties, the duty of the compliance lawyer is to ensure members’ adherence to the rules and report any noncompliance.<sup>58</sup> Although consumer complaints can trigger an investigation process by the Arizona Supreme Court, the compliance lawyer has the sole responsibility of preventing or reporting violations within the ABS.<sup>59</sup> If the compliance lawyer fails to report anything he or she “reasonably” believes is a substantial breach or fails to comply with any of the ABS program rules, the compliance lawyer faces personal disciplinary risks such as suspension from practicing law.<sup>60</sup>

In drafting the rule this way, the Supreme Court of Arizona placed a heightened burden of the risk on the compliance lawyer and shifted the responsibility in preventing regulatory violations from the ABS entity to the individual compliance lawyer.<sup>61</sup> The Supreme Court of Arizona also shifted the duty of compliance review to the Committee, who is tasked with deciding

---

<sup>52</sup> See Denton, *supra* note 48 (citation omitted).

<sup>53</sup> See Pitzen, *supra* note 37.

<sup>54</sup> See Denton, *supra* note 48.

<sup>55</sup> ARIZ. CODE OF JUD. ADMIN., § 7-209(G)(3) (2022).

<sup>56</sup> ARIZONA JUDICIAL BRANCH, *supra* note 9.

<sup>57</sup> Halaby, *supra* note 51.

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

the adequacy of the ABS applicant's designated compliance lawyer.<sup>62</sup> The protection of the public and consumers of ABS legal services is entrusted to the compliance lawyer and the Committee. Through analyzing the ABSs in Arizona in Parts II, III, and IV, this Note assesses whether this degree of protection is enough for Arizona's regulatory framework.

### C. *Alternative Business Structures in Utah*

In August of 2020, the Supreme Court of Utah voted unanimously to establish a regulatory "Sandbox" to address the state's access-to-justice crisis.<sup>63</sup> The Sandbox is a seven-year pilot program that opens up legal business models that were prohibited under the traditional rules of professional conduct, specifically Rule 5.4.<sup>64</sup> The program revises Utah's Rule 5.4 to allow entities to provide legal services as authorized ABSs participating in the Sandbox.<sup>65</sup> Rather than abolishing Rule 5.4 as Arizona did, the Utah Supreme Court temporarily relaxed this rule to allow participants to develop innovative business models and services.<sup>66</sup> None of these changes are permanent, and the Sandbox only runs until August 2027.<sup>67</sup> This experimental program permits authorized ABS entities to adopt the following business models: law firms with nonlawyer investment or ownership; law firms and lawyers engaged in profit-sharing relationships with nonlawyers; nonlawyer-owned entities employing lawyers to practice law; entities providing intermediary services to connect lawyers to consumers; and firms using alternative legal providers to practice law.<sup>68</sup>

The primary goal of the Sandbox is to improve access-to-justice.<sup>69</sup> In reaching this goal, Utah's regulatory objective is to ensure consumers have access to an affordable, well-developed, and innovative market for legal services.<sup>70</sup> The Utah Supreme Court concluded there is a need for "market-based, far-reaching reform focused on opening up the legal market to new providers, business models, and service options."<sup>71</sup> With the temporary

---

<sup>62</sup> ARIZONA JUDICIAL BRANCH, *supra* note 9.

<sup>63</sup> Zachariah DeMeola *Utah Supreme Court Makes History with Vote to Establish Regulatory Sandbox*, UNIVERSITY OF DENVER (Aug. 17, 2020), <https://iaals.du.edu/blog/utah-supreme-court-makes-history-vote-establish-regulatory-sandbox> [https://perma.cc/SW6Z-LDBS].

<sup>64</sup> *Frequently Asked Questions*, UTAH OFF. OF LEGAL SERVS. INNOVATION (last visited Sep. 27, 2024), <https://utahinnovationoffice.org/faq/> [https://perma.cc/CZJ2-E6XU].

<sup>65</sup> *Id.*

<sup>66</sup> See Wendy Meyeroff, *Shaking Up the Law Firm Management Structure*, THE MAGAZINE OF ALA, <https://www.alanet.org/legal-management/2021/september/features/shaking-up-the-law-firm-management-structure>.

<sup>67</sup> *Id.*

<sup>68</sup> *What We Do*, UTAH OFF. OF LEGAL SERVS. INNOVATION (last visited Sep. 25, 2024), <https://utahinnovationoffice.org/what-we-do/> [https://perma.cc/P59N-AAUC].

<sup>69</sup> *Id.*

<sup>70</sup> *Our History*, UTAH OFF. OF LEGAL SERVS. INNOVATION (last visited Sep. 25, 2024), <https://utahinnovationoffice.org/our-history/> [https://perma.cc/EVR7-HJGJ].

<sup>71</sup> Pitzen, *supra* note 37.

revisal of Rule 5.4, the Court aims to shrink the access-to-justice gap by fostering innovation through allowing the application of ABSs.<sup>72</sup> Having this experiment allows the Court to determine whether Rule 5.4 is necessary to prevent consumer harm, or if it is actually preventing innovation that benefits consumers.<sup>73</sup> At the end of the seven-year pilot program, the Court will review the experiment, assess the approved and active ABS entities, and determine whether to extend, make permanent, or terminate the Sandbox.<sup>74</sup>

The Utah Supreme Court created the Office of Legal Services Innovation (the “Innovation Office”) to oversee the entities in the Sandbox and serve as an independent regulator.<sup>75</sup> The Innovation Office assesses, recommends, and monitors entities interested in engaging in the new approaches to legal practices within the Sandbox.<sup>76</sup> Entities seeking to participate in the Sandbox must provide in their application a description of the entity structure, and full disclosure of all individuals and entities that make up the entity’s ownership and management.<sup>77</sup> The application also requires a description of how the applicant’s proposed ABS will offer innovative services and how Sandbox authorization will allow those innovative services to reach consumers underserved in the legal market.<sup>78</sup> The Innovation Office lists examples such as “reducing the cost of legal services, making legal services more accessible, or developing a new business model.”<sup>79</sup> Applicants must also describe how they will identify and mitigate consumer risks in their proposed service method.<sup>80</sup>

### 1. Utah’s Risk Based Regulatory Framework

The Innovation Office utilizes a unique “risk based” regulatory framework to assess data collected from authorized ABSs in the Sandbox.<sup>81</sup> Once an entity is authorized as an ABS in the Sandbox, they must regularly submit “de-identified service-level data” the Innovation Office.<sup>82</sup> The frequency of reporting and amount of required data for the authorized entity is determined by the level of risk the entity falls in — low, moderate, or high risk.<sup>83</sup> In determining an entity’s risk level, the Innovation Office adopts a

---

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 64.

<sup>75</sup> *See* DeMeola, *supra* note 63.

<sup>76</sup> UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 64.

<sup>77</sup> *Innovation Office Manual*, THE OFF. OF LEGAL SERVS. INNOVATION, 1, 3 (2023) <https://utahinnovationoffice.org/wp-content/uploads/2023/04/IO-Manual-Published-5.1.2023.pdf> [<https://perma.cc/PPP6-WP3U>].

<sup>78</sup> *Id.* at 9.

<sup>79</sup> *Id.*

<sup>80</sup> *See id.* at 10.

<sup>81</sup> UTAH OFFICE OF LEGAL SERVICES INNOVATION, *supra* note 68.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*; *see also*, UTAH OFF. LEGAL SERV. INNOVATION, *supra* note 13; Logan Cornett & Zachariah DeMeola, *Data from Utah’s Sandbox Shows Extraordinary Promise, Refutes Fears of Harm*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, (last visited Nov. 9, 2024) [<https://perma.cc/8797-P2GX>].

consumer-oriented approach, based on the type of harm a consumer could face from the services provided by the ABS.<sup>84</sup> The Innovation Office defines this type of consumer harm as (1) the risk of the consumer receiving inaccurate or inappropriate legal results, (2) failing to exercise a legal right due to bad advice, or (3) receiving unnecessary or inappropriate legal service.<sup>85</sup> If an entity's data indicates a risk of consumer harm, the Innovation Office will mitigate through obtaining additional data through independent auditors and evaluating their findings to guide a risk response plan.<sup>86</sup> If there is substantial evidence of consumer harm or noncompliance with regulatory requirements, the entity's authorization can be suspended or terminated.<sup>87</sup>

The Innovation Office conducts monthly reports that summarize the activities and risk assessment of all authorized entities in the Sandbox.<sup>88</sup> This report is posted publicly and contains metrics of service reporting data submitted by ABSs.<sup>89</sup> For example, the "total services by innovation level" metric presents the total amount of legal services sought from ABS consumers and the total amount of legal services delivered to these consumers.<sup>90</sup> The report includes a harm assessment of all consumer complaints received and collects audit materials from the entity complained about to determine whether the complaint is linked to one of the Innovation Office's consumer harm categories.<sup>91</sup>

Utah does not require a compliance lawyer like Arizona's ABS program.<sup>92</sup> An entity designated as low-risk is not likely being monitored as often by the Innovation Office, and if one of these entities is not reporting data frequently or consumers do not recognize harm, there is a stronger likelihood for ethical violations to go unnoticed especially without a compliance lawyer.<sup>93</sup> However, Utah's risk-based framework involves a higher level of engagement with ABSs in comparison to Arizona, where engagement with the ABS after its authorization only occurs if consumers submit complaints or the compliance lawyer reports an issue to the Arizona bar.<sup>94</sup> Instead of putting the responsibility on a compliance lawyer to ensure ethical standards are maintained, the Innovation Office categorizes entities

<sup>84</sup> UTAH OFF. LEGAL SERV. INNOVATION, *supra* note 68.

<sup>85</sup> UTAH OFF. LEGAL SERV. INNOVATION, *supra* note 13.

<sup>86</sup> *See id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Sandbox Activity Reports Archive*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/sandbox-activity-reports-archive/> [<https://perma.cc/TC7R-D5JB>] (last accessed Nov. 15, 2024).

<sup>89</sup> *Activity Report: June 2024*, UTAH OFF. OF LEGAL SERVS. INNOVATION (June 2024), <https://utahinnovationoffice.org/wp-content/uploads/2024/09/Activity-Report-June-2024.pdf> [<https://perma.cc/TXX7-CW6F>].

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Halaby, *supra* note 51.

<sup>93</sup> *See generally* UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 11.

<sup>94</sup> *See generally id.*; *see also* Denton, *supra* note 48.

by their risk from their onset of ABS approval<sup>95</sup> using a consumer-oriented approach, and then uses the regulatory system to collect data from the entities to prevent consumer harm.<sup>96</sup> Through analyzing the ABSs in Utah in Part II, III, and IV, this Note assesses whether this risk-based regulatory framework for ABS firms is sufficient to prevent ethical violations from occurring and protect consumers from the harm that Rule 5.4 was in place to prevent.

#### D. *Categorizing Alternative Business Structures*

For purposes of this Note's empirical assessment and analysis, I categorized the 108 licensed and active entities—70 in Arizona, 43 in Utah, five licensed in both—into three typologies of ABSs based on their service model and structure. For this process, I first compiled the 70 license names of Arizona entities from the Supreme Court of Arizona's ABS directory and the 43 license names of Utah entities from the Innovation Office's List of Authorized Entities.<sup>97</sup> With this list, I then conducted extensive research on each ABS. The focal point of my research was to obtain data and information on the entity's capital and ownership structure, legal practice area(s) and services offered, and method of delivering services.

The Innovation Office provides entity-specific information for each ABS including its service category, service model, and authorization materials, including the Innovation Office's discussion and recommendation for ABS licensure.<sup>98</sup> I cross-referenced the information I gathered from each Utah ABS's website and related sources with the information provided by the Innovation Office. Arizona does not provide entity-specific information, only the administrative orders approving each entity. Out of the 70 active ABSs listed on the directory, five have no online presence or available information, so they were left out for this assessment.<sup>99</sup>

Additionally, Stanford Law School's Rhode Center on the Legal Profession has a "Legal Innovation Clearinghouse," which provides a database on the ABSs in Arizona and Utah.<sup>100</sup> For each ABS entity, it

---

<sup>95</sup> I have not assessed the degree of diligence that the Innovation Office completes in evaluating each application and whether its initial assessment and designation of low, moderate, or high-risk level for each entity is accurate. This assessment should be completed but is beyond the scope of this Note.

<sup>96</sup> See generally UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 11.

<sup>97</sup> See ARIZ. JUD. BRANCH, *supra* note 12; see also UTAH OFF. LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>98</sup> See UTAH OFF. LEGAL SERV. INNOVATION, *supra* note 13.

<sup>99</sup> Additionally, since May 14, 2024, the Supreme Court of Arizona has approved 30 ABSs (12 in August and September). However, these entities are not listed on Arizona's Directory nor listed as active, have no information available/online presence, and are most likely not operating as an ABS yet. See *2024 Administrative Orders*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/orders/Administrative-Orders-Index/2024-Administrative-Orders> [<https://perma.cc/3FRC-D3WC> (last visited Nov. 15, 2024)].

<sup>100</sup> Deborah L. Rhode, *Legal Innovation Clearinghouse*, STAN. L. SCH., <https://clp.law.stanford.edu/legal-innovation-clearinghouse/> [<https://perma.cc/4YB8-6T2L>] (last visited Sep. 27, 2024). [<https://web.archive.org/web/20240912063439/https://clp.law.stanford.edu/legal-innovation-clearinghouse/>].

provides a short description of the entity’s business model, whether the entity has 50% or more nonlawyer ownership or if ownership is unclear (data also provided by the Innovation Office but not by Arizona), the legal areas served, and other analytical insights into what type of innovation may be offered by the ABS.<sup>101</sup> I cross-referenced each entity specific information I obtained from my research and from the Innovation Office with the Legal Innovation Clearinghouse’s database for each ABS.

Following my research process, I created a comprehensive list of every authorized and active ABS with available information, their business model and practice areas. Within this list each of the 103 entities is categorized into one of three ABS typologies—Traditional Law Firms Remodeled, One-Stop Shops, and Alternative Legal Service Providers—based on their business service model and type of non-lawyer ownership involvement.<sup>102</sup> In Part II, III, and IV, organized by ABS typology, this Note explains the business model adopted including certain sub-categories, presents findings, analyzes whether ABSs in the category are likely to advance Arizona and Utah’s regulatory objectives, addresses areas of concern, and proposes solutions for how certain ABSs may be better regulated.

## II. TRADITIONAL LAW FIRMS REMODELED

Traditional Law Firms Remodeled (“TLFR”) are traditional law firms that have remodeled their ownership structure by permitting nonlawyer ownership of an economic interest and Decision-Making Authority in the ABS.<sup>103</sup> The economic interest either takes the form of an equity investment or a fee-sharing arrangement.<sup>104</sup> ABSs can be structured with a majority of nonlawyer ownership, and this is the case for most TLFR in Utah (including the two entities also licensed in Arizona).<sup>105</sup> Some of these ABSs are 100% owned by nonlawyers, creating a subcategory of TLFR—an organization or partnership where a lawyer(s) is employed or managed by a nonlawyer(s).<sup>106</sup> As stated previously, the Supreme Court of Arizona does not provide these ownership statistics.<sup>107</sup> Here are the key findings: (1) 59/103 ABSs fall into this typology, with 41 out of the 59 in Arizona, 18 in Utah, and one in both; (2) 37 TLFR serve the legal areas of accident/injury, from auto accident to mass tort; (3) ten TLFR serve the legal area of immigration; (4) only 2/59 TLFR are full-service firms, and only 5/29 offer services in more than three

---

<sup>101</sup> *Id.*

<sup>102</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 11; see also Rhode, *supra* note 100.

<sup>103</sup> Rhode, *supra* note 100; see also UTAH OFF. OF LEGAL SERV. INNOVATION, *supra* note 11.

<sup>104</sup> See ARIZONA JUDICIAL BRANCH, *supra* note 10; see also UTAH OFF. OF LEGAL SERV. INNOVATION, *supra* note 11.

<sup>105</sup> *Id.*

<sup>106</sup> See generally THE OFF. OF LEGAL SERV. INNOVATION, *supra* note 13.

<sup>107</sup> See *Annual Report of the Committee on Alternative Business Structures to the Arizona Supreme Court*, ARIZ. JUD. BRANCH (Apr. 2024), <https://perma.cc/FJ8H-8K5G>.

areas of law; and (5) the remaining TLFR have one practice area, including business, estate planning, employment, consumer financial issues, or public benefits.<sup>108</sup>

#### A. *Nonlawyer Ownership in the PI Market*

31 out of the 41 Arizona TLFR are litigation firms that solely practice in personal injury, including mass tort litigation.<sup>109</sup> From an economic investment perspective, this finding is not a major surprise. The market for these practice areas historically has large profits and a comparatively routine and high volume of cases that frequently result in settlement.<sup>110</sup> Why not would profit driven private equity firms and litigation funders want to participate in this lucrative industry where they can be both investors and decision-makers? The real surprise is Arizona's willingness to approve so many of these entities. Permitting nonlawyer ownership in firms titled "Bad Drug Law Firm," "Big Auto-Accident Attorneys," and "National Mass Tort & Class Action Law Firm" does not offer much promise of improving access to justice.<sup>111</sup> Yet, all 28 entities successfully demonstrated to Arizona in their ABS application how they will advance its regulatory objectives of improving access to justice and the delivery of legal services.<sup>112</sup>

Arizona does not post the approved ABS applications, but some are available online for these PI firms. There is a common theme among these applications of the firm's description stating it will expand access to legal representation by using contingency fee arrangements. For example, G Law Services in their approved ABS application stated they will "promote access to legal services through contingent fee representations that do not require clients to pay any up-front fees or costs to seek legal redress."<sup>113</sup> Similarly, Big Auto-Accident Attorneys and Saddle Rock Legal Group stated that by providing legal services on a contingency basis, they hope to expand access to legal representation to those otherwise unable to afford it.<sup>114</sup> And other PI firms in this category like National Injury Attorneys and Esquire Law highlight this arrangement on their websites reassuring prospective clients that they will not incur legal fees unless the client wins the case.<sup>115</sup>

The use of contingency fee arrangement advantageously improves access for indigent clients who could not otherwise afford counsel to assert

<sup>108</sup> See *Categorizing Alternative Business Structures*, *supra* Section I(D).

<sup>109</sup> See *id.*; see also Rhode, *supra* note 100; UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>110</sup> See Younger, *supra* note 4, at 283.

<sup>111</sup> See ARIZ. JUD. BRANCH, *supra* note 12.

<sup>112</sup> See ARIZ. JUD. BRANCH, *supra* note 40; see also ARIZ. JUD. BRANCH, *supra* note 12.

<sup>113</sup> See *Application for Initial License of Alternative Business Structure*, ARIZ. SUP. CT., [https://www.azcourts.gov/Portals/26/Application%20for%20Initial%20License%20%28March%202023%29%20-%20Fillable\\_1.pdf](https://www.azcourts.gov/Portals/26/Application%20for%20Initial%20License%20%28March%202023%29%20-%20Fillable_1.pdf) [<https://perma.cc/AA8Z-ZC4J>].

<sup>114</sup> *Id.*

<sup>115</sup> *Experienced Attorneys Are Ready To Help You*, NAT'L INJ. ATT'YS, <https://nationalinjuryattorneys.com/about-us/> [<https://perma.cc/PD4S-7Y9X>] (last visited Nov. 8, 2024); *About Esquire Law*, ESQUIRE L., <https://esquirelaw.com/about/> [<https://perma.cc/T696-F5Y7>] (last visited Nov. 7, 2024).

their claims.<sup>116</sup> However, this arrangement is already a long-standing practice in the legal industry, and is one of the most common fee structures among PI firms.<sup>117</sup> Vantage Law Firm, a PI firm and ABS in this category, describes the contingency fee arrangement as actually being ineffective for advancing Arizona's regulatory objectives.<sup>118</sup> With rising litigation expenses, there is also growing financial strain where law firms using a contingency fee must charge higher rates or serve less of the community.<sup>119</sup> Between the already prevalent use of contingency fees in the United States legal industry and rising litigation expenses, if a contingency fee arrangement is the primary mechanism these TLFR are using to improve access to justice, then it is unlikely that these firms will add any real value to the access to justice crisis in the United States.<sup>120</sup>

The evidence in the United Kingdom is also supportive. A study showed that between 2012 and 2013, ABS firms in England and Wales accounted for 33.5% of the PI market share in the United Kingdom.<sup>121</sup> The evidence showed that this rush of nonlawyer investment in the PI market had almost no contribution to increasing access to PI lawyers for indigent populations.<sup>122</sup> In the prior year before these ABSs were licensed, 97% of people in England and Wales that brought a PI claim reported they did not pay either because their legal practitioner was compensated by their insurance, or the contract was a contingency-fee arrangement.<sup>123</sup> Due to the variety of options already in place for affordable or free legal services, ABSs had little direct impact in addressing access to justice.<sup>124</sup> The evidence from the United Kingdom shows that due to the nature of the personal injury market, people bringing PI claims are more driven by the structure of contingency fee arrangements than the emergence of ABSs.<sup>125</sup> Like the United Kingdom, due to the prevalence of PI firms in the United States with contingency fee arrangements, it is unlikely that Arizona PI firms with ABS licensure utilizing this arrangement will have any impact.<sup>126</sup>

### 1. *Conflicting Interests and Litigation Funding*

---

<sup>116</sup> *Contingent Fee*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/contingent\\_fee#:~:text=Contingency%20fees%20are%20particularly%20common,be%20signed%20by%20the%20client](https://www.law.cornell.edu/wex/contingent_fee#:~:text=Contingency%20fees%20are%20particularly%20common,be%20signed%20by%20the%20client) [https://perma.cc/GJ9Q-4MHW] (last visited Nov. 7, 2024).

<sup>117</sup> See Younger, *supra* note 4, at 279.

<sup>118</sup> See ARIZ. SUP. CT., *supra* note 113.

<sup>119</sup> See *id.*; DeMeola, *supra* note 63.

<sup>120</sup> See generally Younger, *supra* note 4, at 279.

<sup>121</sup> Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEO. J. LEGAL ETHICS 1, 20-21 (2016).

<sup>122</sup> See Younger, *supra* note 4, at 275.

<sup>123</sup> See Robinson, *supra* note 121, at 25-26.

<sup>124</sup> See Younger, *supra* note 4, at 283.

<sup>125</sup> See Robinson, *supra* note 121, at 26.

<sup>126</sup> See *id.* at 25.



Even if these PI firms were likely to advance Arizona's regulatory objectives, they expose both the legal profession and the public to some real areas of ethical concern. Almost every Arizona PI firm within this category of ABSs is structured as an LLC.<sup>127</sup> Under Arizona law, any nonlawyer in an LLC who has Decision-Making Authority is either a manager or a de facto manager and owes a common-law fiduciary duty to the ABS and its members.<sup>128</sup> This fiduciary duty held by nonlawyers can become problematic when the majority of the economic interest of the ABS is held by nonlawyers.<sup>129</sup> The nonlawyers making decisions on behalf of the ABS in this situation are considering the best interests of the investor members, who seek to maximize their profit.<sup>130</sup> The lawyer members or managers additionally owe a fiduciary duty to act in the best interest of their client, whereas the nonlawyer manager owes no fiduciary duty to the client.<sup>131</sup> These different interests and duties increase the potential for conflicts of interest.<sup>132</sup> Lawyer serving as managers of the LLC can become caught in a conflict between their duties to investors and their duties to their clients.<sup>133</sup> Nonlawyer managers may have the inclination to encourage decisions that benefit the ABS and its members but might not be best for the client.<sup>134</sup>

This matter worsens when it comes to making decisions about settling contested litigation.<sup>135</sup> The nonlawyer managers may be incentivized to push for a settlement because of their fee-sharing arrangements or the interests of the investor members.<sup>136</sup> Because their interests are not aligned with the clients, they are in a stronger position to push for an early settlement rather than continuing litigation to obtain the best result for their client.<sup>137</sup> The practice of third-party funding highlights how these conflicting interests and duties can occur in contested litigation.

In third party litigation funding, the funder provides capital to cover the costs of litigation, and in exchange receives a share of the damages

---

<sup>127</sup> See *Categorizing Alternative Business Structures*, *supra* Section I(D); ARIZ. JUD. BRANCH., Alternative Business Structures Directory, <https://www.azcourts.gov/cld/Alternative-Business-Structure/Directory> [<https://perma.cc/NT36-XCHV>] (last visited Nov. 15, 2024); Lynda C. Shely, *Arizona Legal Services: ABS Entities, Paying Referral Fees, Legal Paraprofessionals, and Advertising Rule Changes*, (2022), [https://iaals.du.edu/sites/default/files/documents/publications/2022\\_shely\\_az\\_abs\\_lp\\_advertising\\_overview.pdf](https://iaals.du.edu/sites/default/files/documents/publications/2022_shely_az_abs_lp_advertising_overview.pdf) [<https://perma.cc/8LST-CBP5>].

<sup>128</sup> See Erika Johnsen, *Arizona Supreme Court Clarifies Applicability of Fiduciary Duties in LLCs*, LANG THAL KING & HANSON (Sep. 2, 2019), <https://www.lang.law/blog/arizona-supreme-court-ruling-fiduciary-duties-in-llcs> [<https://perma.cc/B94A-FCQR>].

<sup>129</sup> See Robinson, *supra* note 121, at 13.

<sup>130</sup> See *id.*

<sup>131</sup> See Knowlton, *supra* note 16.

<sup>132</sup> See generally *id.*

<sup>133</sup> See Robinson, *supra* note 121, at 13–14.

<sup>134</sup> See Tyler Cobb, *Have Your Cake and Eat It Too! Appropriately Harnessing the Advantages of Nonlawyer Ownership*, 54 ARIZ. L. REV. 765, 772 (2012).

<sup>135</sup> See Younger, *supra* note 4, at 269.

<sup>136</sup> *Id.*

<sup>137</sup> See generally *id.*

recovered.<sup>138</sup> The nonlawyer funder is meant to be a passive and detached investor.<sup>139</sup> However, due to the lack of transparency requirements and regulations, funders with millions of dollars at stake begin to have little incentive to behave ethically in remaining detached from their litigation investment.<sup>140</sup> For instance, Buford Capital, the largest litigation finance firm in the U.S., invested \$140 million in Sysco Corporation's antitrust lawsuits.<sup>141</sup> When Buford became worried about their investment, they amended their funding agreement to provide them decision-making authority over when to settle.<sup>142</sup> With this authority, they proceeded to object to early settlements, resulting in heavy litigation between the two firms and the nonlawyers ultimately gaining complete control over the litigation.<sup>143</sup> Once the nonlawyer exercises control over any decision of a lawsuit, the attorney-client relationship is compromised and the objective shifts from justice to profit. Making matters even more problematic, at least 15 litigation funding firms have equitable ownership in Arizona PI ABSs.<sup>144</sup>

Returning to ABSs, the nonlawyer with Decision-Making Authority is not a passive and detached investor, and is in an even better position to exert control over the litigation outcome.<sup>145</sup> Since most of the PI ABSs have contingency arrangements, this can particularly occur where the contingency rate is low, and the nonlawyers, motivated by the bottom line, desire to settle because the small potential gain of proceeding in trial is outweighed by the costs of litigation.<sup>146</sup> But this potential gain could be much more desirable from the client's perspective.<sup>147</sup> When the lawyer representing the client becomes accountable to others in these cases they no longer have professional independence, which is what Rule 5.4 is supposed to protect.<sup>148</sup> The question then turns on whether Arizona's ABS program is suitable with the rising amount of ABS approved PI firms and these potential issues.<sup>149</sup>

## 2. *Pitfalls of Arizona's Regulatory Framework*

---

<sup>138</sup> See *What You Need to Know About Third Party Litigation Funding*, U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM (Jun. 7, 2024), <https://perma.cc/D953-AYXP>.

<sup>139</sup> *Id.*

<sup>140</sup> See generally The Editorial Board, *The Litigation Finance Snare*, WALL ST. J. (Mar. 21, 2023, 6:31 PM), <https://perma.cc/Y495-7FQM>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> See Emily R. Siegel, *Private Equity Goes to Arizona for National Tort Firms*, BLOOMBERG L., <https://news.bloomberglaw.com/business-and-practice/private-equity-flows-into-arizona-to-run-national-tort-firms> (last updated July 2, 2024, 2:09PM).

<sup>145</sup> Cobb, *supra* note 134.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See *Categorizing Alternative Business Structures*, *supra* Section I(D).

The compliance lawyer is responsible within each PI ABS to prevent conflicts of interests and report any substantial breaches.<sup>150</sup> In the example of contested litigation, the duty falls on the compliance lawyer to report to the Arizona Supreme Court if the lawyer's professional independence becomes compromised or if the nonlawyers with Decision Making Authority interfere with the lawyer's fiduciary duty to the client.<sup>151</sup> Outside the compliance lawyer, the only other method of preventing consumer harm comes after the fact, upon a consumer submitting a complaint to the Arizona Supreme Court.<sup>152</sup>

In 2023, 24 consumer complaints were filed against ABSs and ABS compliance lawyers, including for "the nature of charge not defined," "communication," and "dishonesty, fraud, deceit, or misrepresentation."<sup>153</sup> Additionally, a client could accept his or her attorney's advice and settle early with no knowledge of the nonlawyer's influence, even though continued litigation would serve his or her best interests.<sup>154</sup> The compliance lawyer is also naturally given a lot of deference and might not "reasonably" believe a substantial breach has occurred.<sup>155</sup> When the compliance lawyer is not a manager or director, the larger the amount of managers and members the PI ABS has, the larger the risk that the compliance lawyer may not even know about any conflicting interests or breaches of duties.<sup>156</sup>

There is also the possibility of the compliance lawyer becoming conflicted. Arizona law does not restrict the compliance lawyer from sitting on the board of members of an LLC, board of directors of a firm, or from having equity ownership in the firm; Arizona also does not require the disclosure of the compliance lawyer's identity or information to clients of the ABS.<sup>157</sup> The compliance lawyer could be a manager of the LLC owing a fiduciary duty to the investor members and ABS in a scenario where the law firm is owned by majority nonlawyer ownership.<sup>158</sup> In Bridgemont Group, an Arizona PI ABS, the compliance lawyer owns 50% of the firm and has Decision-Making Authority, with the remaining 50% ownership held by nonlawyers.<sup>159</sup> In another Arizona PI ABS, Legal Help Partners, the

---

<sup>150</sup> Brad Denton, *supra* note 48.

<sup>151</sup> *Id.*

<sup>152</sup> See ARIZ. JUD. BRANCH, *supra* note 40.

<sup>153</sup> ARIZ. JUD. BRANCH, *supra* note 107.

<sup>154</sup> Cobb, *supra* note 134.

<sup>155</sup> ARIZ. CODE OF JUD. ADMIN., § 7-209(G)(3)(C) (2024).

<sup>156</sup> See generally ARIZ. CODE OF JUD. ADMIN., § 7-209(G)(3) (2024).

<sup>157</sup> See ARIZ. CODE OF JUD. ADMIN., § 7-209(G)(3) (2024).

<sup>158</sup> See generally *Summaries of Alternative Business Structures in 2021*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/Portals/26/Approved%20ABS%20summaries.pdf> [<https://perma.cc/MH5X-N9SE>] (last visited Nov. 17, 2024).

<sup>159</sup> See *id.* According to the Alternative Business Structures Directory Bridgemont Group, ABS was formerly Wall and Olson. *ABS Master Directory*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/Portals/26/ABS%20Master%20Directory%20May%2010%2C%202024.pdf> [<https://perma.cc/V38H-VQSN>] (last updated May 10, 2024).

compliance lawyer has Decision-Making Authority and the ABS has 90% nonlawyer ownership.<sup>160</sup>

If the compliance lawyer becomes conflicted or is unaware of a breach that has occurred within the ABS, does not make any report to the Arizona Supreme Court, and no consumers submit any complaints of harm, this entire ABS model fails. If Arizona is going to continue to approve PI firms, or any TLFR for this matter, Arizona should consider requiring the use of external auditors<sup>161</sup> for ensuring ABS compliance, rather than internal, to provide consumers the most protection and preserve the integrity of the legal system in Arizona.

There are six PI firms in Utah in this category, four with less than 50% nonlawyer ownership, and the other two with 50% or more nonlawyer ownership.<sup>162</sup> Notably, the two firms with majority nonlawyer ownership, Bike Law Utah, and Davis and Sanchez, have a low to moderate risk level, as opposed to the other four that have a low risk level.<sup>163</sup> Perhaps the Innovation Office recognizes the potential issues and risks of PI firms owned and managed by a majority of nonlawyers. Additionally, those two firms were originally approved as low risk entities, so the Innovation Office has adjusted their risk of harm since their ABS approval.<sup>164</sup> When the Innovation Office designates an entity with a moderate risk level, the Innovation Office collects audit materials and a panel of independent lawyers audit randomly selected legal service files of the entity.<sup>165</sup> The Innovation Office then presents audit reports to the Legal Services Innovation Committee and the Utah Supreme Court to determine whether there is evidence of consumer harm and whether the entity may “continue to offer services within the Sandbox.”<sup>166</sup> This independent audit process is better equipped to offer consumer protection and prevent the ethical issues that can arise within PI ABSs than Arizona’s current regulatory scheme. Further, the evidence indicates this process is effectively preventing any related consumer harm.<sup>167</sup>

---

<sup>160</sup> ARIZ. JUD. BRANCH, *supra* note 158.

<sup>161</sup> Perhaps comparable to the role of an independent CPA who conducts an external audit of an accounting firm to evaluate the firm’s compliance and the accuracy of the firm’s representation of its financial activities and condition. *See generally* Harrison E. Greene, Jr., *Accounting News: Auditor Independence*, 3 SUPERVISORY INSIGHTS 33, 33–34 (2006).

<sup>162</sup> *See* UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13; *see also* *Categorizing Alternative Business Structures*, *supra* Section I(D).

<sup>163</sup> UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>164</sup> *See Sandbox Authorization Packet: Big Legal Utah*, OFF. OF LEGAL SERV. INNOVATION (Aug. 15, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/09/Amended-Auth-Packet-Bike-Legal-Utah-8.22.pdf> [<https://perma.cc/9UEP-LQ56>]; *see Amended Sandbox Authorization Packet: Davis & Sanchez*, OFF. OF LEGAL SERV. INNOVATION (Aug. 15, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/09/Amended-Auth-Packet-Davis-Sanchez-8.22.pdf> [<https://perma.cc/ZE7W-X9B5>].

<sup>165</sup> UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 89.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

### B. Immigration Law in the Sandbox

The more common practice area among TLFR in Utah is immigration, with nine out of the 19 TLFR offering some type of immigration service.<sup>168</sup> The unmet need for legal representation for indigent immigrants is a contributor to the access to justice gap.<sup>169</sup> Studies show that millions of immigrants may have legal remedies that would allow them to stay in the United States but are either unaware of these opportunities or lack the legal resources necessary to pursue a course of action.<sup>170</sup> And studies show that approximately 30-40% of these immigrants need low-cost legal assistance.<sup>171</sup> Another issue is that filing applications without legal assistance is problematic for lower-income immigrants with a lower level of education.<sup>172</sup> This is an area of law that could largely benefit from ABSs used as a vehicle for improving access-to-justice.

The TLFR in Utah that offer immigration services appear to be using ABS status and nonlawyer ownership to serve immigrants facing these issues while also advancing Utah's objectives of providing innovative services to reach underserved legal consumers.<sup>173</sup> For example, Visa Place seeks to target clients who are often taken advantage of by the confusing immigration system and lawyers that charge high legal fees while not serving their best interest.<sup>174</sup> By bringing on a seasoned team of professionals including a chief technology officer with experience in immigration, Visa Place's goal is to offer cost effective and transparent legal services.<sup>175</sup> Boundless Immigration is one of the ABSs in the subcategory of TLFR—nonlawyer-owned entities employing lawyers to practice law.<sup>176</sup> Boundless Immigration originally was a nonlawyer entity that provided document checklists and application review for immigration support, but with ABS status expanded its services by employing lawyers to provide consultation and legal reviews.<sup>177</sup> Most services offered by Boundless are tied to a flat fee, rather than an hourly rate.<sup>178</sup> Through Utah's Sandbox, Boundless markets its offering of “the best of modern technology and legal immigration services—at a fraction of what

---

<sup>168</sup> See *Categorizing Alternative Business Structures*, *supra* Section I(D).

<sup>169</sup> See Muzaffar Chishti, et al., *Advancing Immigrant Legal Representation: The Next Fifteen Years*, 92 FORDHAM L. REV. 865, 865 (2023).

<sup>170</sup> *Id.* at 866.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 867.

<sup>173</sup> *Categorizing Alternative Business Structures*, *supra* Section I(D); see also UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>174</sup> See *Sandbox Authorization Packet Visa Place*, OFFICE OF LEGAL SERVICES INNOVATION (Apr. 6, 2023), <https://utahinnovationoffice.org/wp-content/uploads/2023/07/Sandbox-Authorization-Packet-Visa-Place.pdf> [<https://perma.cc/4Z5X-EEFT>]; see also *Why VisaPlace?*, VISA PLACE, <https://www.visaplace.com/about-us/why-hire-us/>.

<sup>175</sup> See *id.*

<sup>176</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>177</sup> See *Sandbox Authorization Packet Boundless Immigration*, UTAH OFF. OF LEGAL SERVS. INNOVATION (May 19, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/06/Auth-Packet-Boundless.pdf> [<https://perma.cc/H8N5-3QGH>].

<sup>178</sup> See *About Us*, BOUNDLESS, <https://www.boundless.com/about/>.

it costs to hire a traditional attorney.”<sup>179</sup> And other firms in this category, like Immigration Office Solutions, similarly utilize an affordable flat fee system.<sup>180</sup>

On paper, these immigration ABSs are well positioned to advance Utah’s objectives through providing affordable legal services to underserved immigrants. And the latest report from the Innovation Office offers encouraging statistics.<sup>181</sup> Through June 2024, 103,713 legal services were provided to nearly 24,000 unduplicated consumers by ABSs in Utah, and immigration law accounted for 23.8% of those legal services.<sup>182</sup> This represents an 81% increase in legal services delivered by ABSs since June 2023, and an increase of 216% in the amount of immigration legal services delivered.<sup>183</sup> While it is impossible to discern the amount of immigrant clients suffering from the access-to-justice gap, the data provides evidence that the immigrant population is largely benefitting from the Sandbox program in Utah from the increased number of legal services sought and delivered by these ABSs.<sup>184</sup>

### C. Lack of Full-Service ABSs

Interestingly, there is a lack of TLFR that have multiple legal practice areas in Arizona and Utah, with only 5 out of the 59 TLFR offering services in more than three areas of law, and only 2 of these of which are full-service firms.<sup>185</sup> This could be indicative that nonlawyers are more inclined to invest or gain ownership in firms with one target market, like personal injury in Arizona or immigration in Utah. The more brand-name licenses or firms that are “Big Law” have also steered clear of participating in the ABS program.<sup>186</sup> While subsidiaries of these companies operating out of Arizona or Utah could apply for an ABS license, lawyers that are in multi-jurisdictional firms or members of other state bars are not immunized from Rule 5.4 in every other state.<sup>187</sup> And these larger firms may have no desire to share profits with nonlawyers.<sup>188</sup> But mid-sized firms in Arizona and Utah that operate as full-

---

<sup>179</sup> See *FAQ: Boundless for Individuals & Families*, BOUNDLESS, <https://www.boundless.com/what-you-get-with-boundless-2/>.

<sup>180</sup> See BOUNDLESS, *supra* note 178.

<sup>181</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 89.

<sup>182</sup> *Id.*

<sup>183</sup> Compare *id.* with *Activity Report: June 2023*, UTAH OFF. OF LEGAL SERVS. INNOVATION, [https://utahinnovationoffice.org/wp-content/uploads/2024/01/2023\\_June\\_IO\\_Monthly-Report.pdf](https://utahinnovationoffice.org/wp-content/uploads/2024/01/2023_June_IO_Monthly-Report.pdf) [<https://perma.cc/NK23-HJZ3>].

<sup>184</sup> See generally *id.*

<sup>185</sup> See *Categorizing Alternative Business Structures*, *supra* Part I(D); see also Rhode, *supra* note 100; UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>186</sup> See *The Law Firm Disrupted: Still Looking for the Gold Rush*, FLORIDA JUSTICE REFORM INSTITUTE (Nov. 2, 2023, 6:12 PM), [https://www.fljustice.org/2023\\_1102\\_the-law-firm-disrupted--still-looking-fo.html](https://www.fljustice.org/2023_1102_the-law-firm-disrupted--still-looking-fo.html).

<sup>187</sup> *Id.*

<sup>188</sup> See *id.*

service firms could largely benefit from bringing on nonlawyer expertise for the business management of the firm, and smaller law firms that wish to expand into new practice areas could do so from the additional capital provided by nonlawyers.<sup>189</sup>

For instance, Radix Professional Services, LLC was the first multi-lawyer traditional law firm in the United States to have a combination of lawyers and non-lawyer owners.<sup>190</sup> Through ABS status, Radix gathered nonlawyer professionals from various industries to serve on its advisory board and help run its business, which enabled its lawyers to have more time to focus on clients and practicing law.<sup>191</sup> In an interview discussing ABSs, Andy Kvesic, CEO and managing partner of Radix, discussed how having a team of nonlawyer capital partners with their own business network allows the firm to provide a wealth of relationships to help its clients grow their network and help its attorneys grow their practice.<sup>192</sup> Similarly, Singular Law Group, PLLC, an ABS in Arizona that offers legal services in business, criminal, immigration, and family law, brought on nonlawyer ownership to put together an experienced team with professional expertise on their board of directors to improve its business operations.<sup>193</sup>

The additional capital from nonlawyers also provided these ABSs the ability to expand their practice areas and target new consumer markets.<sup>194</sup> Radix started seven new practice groups, added five new attorneys, and three new staff groups since its ABS licensure.<sup>195</sup> Kvesic emphasized how nonlawyer ownership within Radix is contributing to Arizona's regulatory objectives of improving access to legal services.<sup>196</sup> With the additional inflow of capital, he explained how Radix now can work with clients from all income levels to create unique payment structures, rather than charging a hefty amount upfront.<sup>197</sup>

ABSs like Radix demonstrate the potential benefits to small and mid-sized law firms from bringing on nonlawyer ownership as TLFR. But for now, it remains uncertain whether more multi-practice law firms will seek ABS licensure and if so, whether it would likewise expand the delivery of legal services or contribute to affordable legal costs.

### III. ONE-STOP SHOPS

---

<sup>189</sup> See generally *id.*

<sup>190</sup> *Feature: Alternative Business Structure Law Firms: Where We Are So Far*, 59 AZ ATTORNEY 12, 13 (2022).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 18; see also *Our Story*, RADIX LAW, <https://radixlaw.com/about/> [<https://perma.cc/A3RD-Y4US>].

<sup>193</sup> See *The Singular Team*, SINGULAR LAW GROUP PLLC, <https://singular.law/about-us/> [<https://perma.cc/6V3X-Y92Y>].

<sup>194</sup> See generally *Feature: Alternative Business Structure Law Firms: Where We Are So Far*, *supra* note 190.

<sup>195</sup> *Id.* at 20.

<sup>196</sup> *Id.* at 18.

<sup>197</sup> *Id.*

A One-Stop Shop (“OSS”) is a new entrant to the legal market that has combined lawyer and nonlawyer expertise to provide holistic or bundled services.<sup>198</sup> This ABS type takes the nonlawyer ownership in TLFR to a new magnitude with the nonlawyer providing nonlegal services through the ABS, rather than only holding management authority or an economic interest.<sup>199</sup> OSSs often take the form of joint ventures or other forms of business partnerships between lawyers or law firms and nonlawyer individuals or entities to offer multi-professional services.<sup>200</sup> It also includes an entity that began to offer legal services as an adjunct to the entity’s primary business line.<sup>201</sup> Here are the key findings: (1) 20/103 ABSs fall into this typology, with 11 in Arizona, 10 in Utah, and 1 in both; (2) 12 OSSs offer legal services alongside financial planning, accounting, tax, estate planning, compliance, and/or business consulting; (3) 2 OSSs are “holistic support” nonprofits (the only nonprofit ABSs); and (4) the remaining OSSs offer legal services alongside services such as immigration, hospitality, or technological services.<sup>202</sup>

#### A. *Business and Law Under One Roof*

The majority of OSS are a combination of business and law services, offering legal services alongside the services of nonlawyer business professionals in the areas of finance, accounting, estate planning, tax, real estate, consulting, business formation, and other similar business fields.<sup>203</sup> Some of these entities originally operated in their own respective industry and gained ABS status to hire lawyers and expand their services into the legal market.<sup>204</sup> For example, Payne Huebsch was formed in 2017 as a tax and accountancy firm and now operates as Boss Advisors PLC, an Arizona ABS offering legal services in addition to tax and accounting.<sup>205</sup> Michael Payne, co-owner of Boss and a licensed attorney and CPA, stated that providing

---

<sup>198</sup> See generally David Engstrom et al., *Legal Innovation After Reform: Evidence from Regulatory Change*, STANFORD LAW SCHOOL (September 2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

<sup>199</sup> See generally ARIZ. JUD. BRANCH, *supra* note 10; see also UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>200</sup> See generally Engstrom, *supra* note 198, at 29; see also UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>201</sup> See generally Engstrom, *supra* note 198, at 6.

<sup>202</sup> See *Categorizing Alternative Business Structures*, *supra* Part I(D); see also Rhode, *supra* note 100; UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>203</sup> See *id.*

<sup>204</sup> See Neil Rose, *ABSs become a reality in America as Arizona approves the first two*, LEGAL FUTURES (Mar. 22, 2021), <https://www.legalfutures.co.uk/latest-news/abss-become-a-reality-in-america-as-arizona-approves-the-first-two> [https://perma.cc/EW7V-HJS2].

<sup>205</sup> *Id.*; see also Bob Ambrogi, *Arizona Licenses First Three Alternative Business Structures for Delivering Legal Services*, LAW SITES (May 7, 2021), <https://www.lawnext.com/2021/05/arizona-licenses-first-three-alternative-business-structures-for-delivering-legal-services.html> [https://perma.cc/5G65-RSAB].



legal, accounting, and tax services for businesses under one roof “will afford clients earlier, more frequent, and more affordable access to the protective tools and strategies available under the law.”<sup>206</sup>

Similarly, Arete Financial Solutions, formerly solely providing accounting and tax services, now provides legal services in trusts, probate, and corporate transactions as an ABS.<sup>207</sup> Arete also added a financial planning division after obtaining ABS licensure in Arizona.<sup>208</sup> Like Boss, Arete believes that by having all its advisors under one roof, its clients will be provided with the highest level of efficiency, customer service, and success in financial and business objectives.<sup>209</sup>

These OSSs demonstrate the ability to use an ABS to offer clients access to a wide range of services from a single provider, rather than hiring multiple professional business and legal service firms.<sup>210</sup> They also exemplify Arizona and Utah’s goals of opening the legal market to new providers, innovating the delivery of legal services, and providing consumers access to innovative markets.<sup>211</sup> Nevertheless, some critics of the OSS structure argue that it does not serve the goal of increasing access-to-justice.<sup>212</sup> Specifically, they believe that these entities in Arizona, while claiming they can improve access to affordable legal services, are targeting high-net worth individuals and businesses or are not offering legal services typically in high demand among underserved individuals seeking reduced costs.<sup>213</sup>

However, most OSSs in this category are small partnerships of professionals not targeting or requiring a specific basket of income.<sup>214</sup> Their market (including Boss Advisors and Arete Financial Solutions) have a market primarily consisting of consumers and/or small businesses without in-house counsel.<sup>215</sup> Other OSSs like HW Human Capital and PatentVest provide entrepreneur start up services.<sup>216</sup> HW Human Capital, a Utah ABS, states that by bringing legal, business, and management training experts into one entity they can assist small businesses with a variety of needs.<sup>217</sup>

Larger investment banks and hedge funds have steered clear of Arizona and Utah’s ABS programs, and while the Big Four accounting firms have slowly gained ABS licensure in the United Kingdom, up until recently none

---

<sup>206</sup> *Id.*

<sup>207</sup> See *Complete Financial Wellbeing*, ARETE FINANCIAL SOLUTIONS, [https://aretefs.com/\[https://perma.cc/53PS-M4KE\]](https://aretefs.com/[https://perma.cc/53PS-M4KE]); see also *PowerPoint Presentation ABS Approvals as of December 2021*, ARIZONA JUDICIAL BRANCH, <https://www.azcourts.gov/Portals/26/Approved%20ABS%20summaries.pdf> [https://perma.cc/G8M2-U6SD].

<sup>208</sup> See *id.*

<sup>209</sup> See *id.*

<sup>210</sup> See generally Rose, *supra* note 204.

<sup>211</sup> See generally ARIZONA JUDICIAL BRANCH, *supra* note 40; see also Pitzen, *supra* note 37.

<sup>212</sup> See Younger, *supra* note 4, at 266-67.

<sup>213</sup> *Id.* at 264, 277.

<sup>214</sup> See generally Engstrom, *supra* note 198, at 29.

<sup>215</sup> Rhode, *supra* note 100.

<sup>216</sup> *Id.*

<sup>217</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 177.

had sought licensure in the United States.<sup>218</sup> In February of 2025, KPMG became the first Big Four firm to apply and gain approval to operate as an ABS in Arizona.<sup>219</sup> “KPMG Law US” will be an independent law firm and wholly owned subsidiary of KPMG, positioned to provide legal services including integrated legal contracts and tech systems after corporate mergers; however, the impact of their recent ABS approval remains uncertain.<sup>220</sup> For now, OSSs are providing legal consumers with diverse service options and meeting Arizona and Utah’s short term objectives of innovating the delivery and access to legal services, although the data limitations prevent the ability to ascertain their effect on the overall access-to-justice crisis, as well as whether larger financial/accounting firms will enter the ABS marketplace.<sup>221</sup>

### 1. *One Shop, Separate Entities*

One potentially problematic OSS structure that warrants attention is an entity that markets itself as a OSS, but in actuality is a law firm with ABS licensure in an exclusive bilateral client referral agreement with a financial firm.<sup>222</sup> For example, Trajan Estate, an estate-planning firm with ABS licensure in Arizona and Utah<sup>223</sup>, is in an arrangement with Trajan Wealth, a financial-planning firm, where Trajan Estate refers clients with financial advisory needs exclusively to Trajan Wealth, and Trajan Wealth refers clients with estate planning needs exclusively to Trajan Estate.<sup>224</sup> The area of concern for this type of structure comes from the nonlawyer professional who is partnered with the ABS but is not governed by the same ethical rules as lawyers.<sup>225</sup> Trajan Wealth is not an ABS licensed entity and the nonlawyer professionals in Trajan Wealth are not bound by the same ethical rules as lawyers.<sup>226</sup> A consumer might go to Trajan Wealth for legal services. Trajan Wealth under its arrangement is obligated to refer that client to Trajan Estate,

---

<sup>218</sup> Rohit Sandhu, *Should law firms be worried about the ‘Big Four’*, LAW FOR ALL SOCIETY (Mar. 23, 2022), <https://www.ucl-law-for-all.com/post/should-law-firms-be-worried-about-the-big-four> [<https://perma.cc/ES78-RGYS>].

<sup>219</sup> Justin Henry and Roy Strom, *KPMG Wins Approval to Launch First US Law Firm for Big Four*, BLOOMBERG LAW (Feb. 27, 2025, 12:51 PM), <https://news.bloomberglaw.com/business-and-practice/kpmg-becomes-first-accounting-firm-allowed-to-practice-law-in-us>.

<sup>220</sup> *Id.*

<sup>221</sup> See generally Engstrom, *supra* note 198, at 29.

<sup>222</sup> See generally Committee on Alternative Business Structures Meeting Agenda, ARIZONA JUDICIAL BRANCH (Mar. 9, 2011), <https://www.azcourts.gov/LinkClick.aspx?fileticket=BaGkF1Svu9c%3D&portalid=0>.

<sup>223</sup> Trajan Estate is designated by the Innovation Office as a low-risk entity. See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 14.

<sup>224</sup> See generally ARIZ. JUD. BRANCH, *supra* note 222; see also *Comprehensive Estate Planning*, TRAJAN WEALTH, <https://trajanwealth.com/estate-planning/> [<https://perma.cc/9BLQ-KWL4>].

<sup>225</sup> See Younger, *supra* note 4, at 278.

<sup>226</sup> See *id.*

but nothing exists to prevent that client from being “encouraged” in unethical ways to also use and pay for Trajan Wealth’s financial and wealth management services.<sup>227</sup> There is no compliance lawyer or risk framework in place at Trajan Wealth, and there is no supervision of solicitation and advertising.<sup>228</sup> In a hypothetical OSS with this structure in Arizona, the compliance lawyer has no way of knowing about undue influence coming from the financial entity to pressure consumers into seeking their services.<sup>229</sup>

This is not to say anything unethical has or is happening at Trajan Wealth or Trajan Estate or that these entities have done anything wrong, rather to point out that this type of ABS model is ripe for potential conflict. But if more ABS entities partner with non-ABS financial or accounting firms, this business model can become more problematic. The use of an independent auditor who assesses the compliance of both the ABS and its affiliated entities would provide stronger consumer protection.

In Utah, there have only been 18 consumer complaints reported (representing a miniscule ratio between complaints and services), 10 which were found to fall into one of the three consumer harm categories, representing a ratio of less one complaint per 7,759 services.<sup>230</sup> And only two of these complaints are categorized as when the consumer “purchases an unnecessary or inappropriate legal service.”<sup>231</sup> However, the Innovation Office has no complaint harm category for consumers receiving unnecessary services in general.<sup>232</sup> In the type of OSS structure contemplated above, the Innovation Office is not designating any risk level or monitoring the affiliated non-ABS financial company.<sup>233</sup> Consumers likely face less harm from financial and accounting providers and legal service providers that operate within one ABS, like Arete Financial Solutions or HW Human Capital, with the compliance lawyer or the Innovation Office’s risk framework overseeing all the ABS’s practices.<sup>234</sup>

## 2. *Protecting Client Confidentiality*

Confidentiality concerns are also inherently present among every OSS.<sup>235</sup> For example, lawyers of an ABS might try to provide the non-legal service providers with recommendations on what services to offer/market

<sup>227</sup> See *id.*

<sup>228</sup> See generally ARIZ. JUD. BRANCH, *supra* note 222; see also *Sandbox Authorization Packet Trajan Estate*, OFF. OF LEGAL SERVS. INNOVATION (Apr. 14, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/07/Auth-Packet-Trajan-Estate.pdf> [<https://perma.cc/7PC5-M8KH>].

<sup>229</sup> See generally Younger, *supra* note 4, at 278.

<sup>230</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 89.

<sup>231</sup> *Id.*

<sup>232</sup> See generally *id.*

<sup>233</sup> See generally UTAH OFF. OF LEGAL SERV. INNOVATION, *supra* note 13.

<sup>234</sup> See generally Bob Ambrogio, *Arizona Licenses First Three Alternative Business Structures for Delivering Legal Services*, LAW SITES (May 7, 2021), <https://www.lawnext.com/2021/05/arizona-licenses-first-three-alternative-business-structures-for-delivering-legal-services.html> [<https://perma.cc/5G65-RSAB>].

<sup>235</sup> See generally Cobb, *supra* note 134.

based on client specific information.<sup>236</sup> On the flipside, throughout the course of business between the two providers, there is a constant possibility of nonlawyers asking lawyers about their clients, especially when the client is receiving services from both professionals in the OSS.<sup>237</sup> Arizona and Utah's governing laws for ABSs have no specific confidentiality provision.<sup>238</sup> Arizona and Utah both require that the applicant describe their policies and procedures for protecting client information at ABS inception, but since this is a new type of legal service model in both ABS programs, not all these confidentiality concerns can be anticipated that may arise throughout the course of business and as the ABS's client base expands.<sup>239</sup> Both jurisdictions have governing law that prohibits lawyers from sharing client information without a client's informed consent.<sup>240</sup> This law broadly governs client confidentiality for lawyers, but a rule tailored specifically to ABSs would strengthen the protection of client confidentiality for the unique situations contemplated above.<sup>241</sup>

### B. Hybrid ABS Model

Elysium Holdings, LLC ("Elysium") may be one of the most innovative ABSs to date.<sup>242</sup> It is a OSS and multi-professional services entity, with services in multiple practices of law, online legal services, financial planning, and investment planning and wealth management.<sup>243</sup> Elysium received ABS approval in Utah to operate as an OSS through four subsidiaries.<sup>244</sup> One of the subsidiaries is Pearson Butler, a full-service law firm with ABS licensure in Utah<sup>245</sup>, featuring the areas of civil litigation, criminal defense, family law, business law, probate, and employment law among many more, and is one of the only mid-size multi-practice law firms in Utah (and one of the only two full-service ABSs).<sup>246</sup> Carson Pearson,

---

<sup>236</sup> See Robert Teuton, *One Small Step and a Giant Leap: Comparing Washington D.C.'s Rule 5.4 with Arizona's Rule 5.4 Abolition*, 65 AM. U.L. REV. 223, 248 (2023).

<sup>237</sup> See generally Cobb, *supra* note 134.

<sup>238</sup> See ARIZ. CODE OF JUD. ADMIN., § 7-209 (2022); see also *Sandbox Resources*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/sandbox-resources/> [https://perma.cc/PY4H-SNZZ].

<sup>239</sup> *Id.*; see also UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>240</sup> See Teuton, *supra* note 236.

<sup>241</sup> See generally *id.*

<sup>242</sup> See generally *Amended Sandbox Authorization Packet Elysium Holdings*, UTAH OFF. OF LEGAL SERVS. INNOVATION (Sep. 21, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Amended-Auth-Packet-Elysium-9.22.pdf> [https://perma.cc/9TCL-5ZF3].

<sup>243</sup> See *id.*

<sup>244</sup> See *id.*

<sup>245</sup> Both Elysium Holdings and Pearson Butler are designated as moderate risk entities and are thus required to submit data more frequently to the Innovation Office. See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>246</sup> See *Full-Service Law Firm in Utah*, PEARSON BUTLER, <https://www.pearsonbutler.com/> [https://perma.cc/22LM-Y4JJ].

managing partner at Pearson Butler, described how technological companies are “rapidly eating away at the [legal] market share,” and discussed how law firms must innovate to compete with these legal technology companies.<sup>247</sup> This innovation can be seen through the second subsidiary, Elysium Legal, which is an alternative legal service provider (the ABS typology discussed in Part IV) offering online estate planning services.<sup>248</sup> The other two subsidiaries are a financial services firm and a registered investment advisor (RIA) firm.<sup>249</sup>

This hybrid ABS combines the elements of all three ABS typologies—TLFR, OSSs, and alternative legal service providers.<sup>250</sup> The target consumer market is lower to upper middle-class consumers and small businesses.<sup>251</sup> According to the Innovation Office, Elysium meets the Sandbox’s regulatory objective qualifier because Elysium’s service model has the potential to increase access to services through a holistic model, incorporating legal services alongside investment and financial services, and the potential to increase accessibility to individuals and small businesses with lower capital resources through its alternative legal provider services.<sup>252</sup> Elysium offers a wider range of legal services than almost every TLFR and OSS and offers those services alongside financial and wealth management services while also utilizing an alternative legal service provider.<sup>253</sup> An ABS model like the one Elysium adopted might be the best vehicle for change to advance Arizona and Utah’s regulatory objectives.

### C. Non-Profit Holistic Support Systems

One last noteworthy finding in this category is that Utah’s ABS program contains the only non-profit ABSs—Holy Cross Ministries and Timpanogos Legal Center—entities that offer “holistic support” services.<sup>254</sup> In Holy Cross Ministries, its community health workers already provided holistic services to the variety of issues related to health problems before entering the Sandbox.<sup>255</sup> Holy Cross Ministries proposed training its community health workers to become bilingual medical debt legal advocates to offer “limited-

---

<sup>247</sup> Sarah Martinson, *Firm Leaders Pushing Legal Innovation Urge Others to Follow*, LAW 360 (Feb. 16, 2023), <https://www.law360.com/pulse/articles/1575964/firm-leaders-pushing-legal-innovation-urge-others-to-follow> [<https://perma.cc/K37Z-K2YW>].

<sup>248</sup> See *Online Will and Trust Services*, ELYSIUM, <https://myelysium.com/online-estate-planning> [<https://perma.cc/TQS6-YY77>].

<sup>249</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 242.

<sup>250</sup> See *id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> See generally *id.*

<sup>254</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13; see also Deborah L. Rhode, *supra* note 100.

<sup>255</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13

scope legal assistance related to medical debt and its collateral issues.”<sup>256</sup> Its purpose as an ABS is to serve as a bridge between patients, health care providers, and social service providers creating a holistic support service system.<sup>257</sup>

The other nonprofit ABS, Timpanogos Legal Center, is a community-based organization that collaborates with the communities it serves to ensure its clients, many being victims of domestic violence, are connected with housing, health care, and other support resources.<sup>258</sup> With ABS licensure and its Certified Advocate Partner Program, Timpanogos offers free legal services through its program coordinators (licensed attorneys in Utah with expertise in the subject area), and “certified advocates”.<sup>259</sup> These certified advocates are “nonlawyers who assist victims of crimes such as domestic violence, . . . child abuse, . . . and stalking.”<sup>260</sup> Utah’s Innovation Office permits them to provide legal advice with the oversight of the program coordinators to victims seeking protective orders and stalking injunctions.<sup>261</sup> Timpanogos Legal Center’s mission is to empower “self-represented Utahns to realize safety and stability by providing legal support in family law, abuse, and housing matters.”<sup>262</sup> While Holy Cross Ministries and Timpanogos Legal Center might not rise to the innovation level of other OSSs, they are leaders among ABSs in promoting access-to-justice through their nonprofit legal services.

#### IV. ALTERNATIVE LEGAL SERVICE PROVIDERS

An Alternative Legal Service Provider (“ALSP”) is an entity that provides legal support services as their primary business through some type of technological and online platform but has previously not been allowed in

<sup>256</sup> *Id.*; see also Bob Ambroggi, *Utah Sandbox Oks Two Programs Enabling Non-Lawyers to Give Legal Advice on Medical Debt*, LAW SITES (May 12, 2021), <https://www.lawnext.com/2021/05/utah-sandbox-oks-two-programs-enabling-non-lawyers-to-give-legal-advice-on-medical-debt.html> [https://perma.cc/C2BX-JTZM].

<sup>257</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13

<sup>258</sup> Lucy Ricca & Eric Hellana, *Conference on Access to Justice in California*, RAND (September 25, 2024), [https://www.rand.org/content/dam/rand/pubs/conf/proceedings/CFA3400/CFA3411-1/RAND\\_CFA3411-1.pdf](https://www.rand.org/content/dam/rand/pubs/conf/proceedings/CFA3400/CFA3411-1/RAND_CFA3411-1.pdf).

<sup>259</sup> *Amended Order for Authorization to Practice Law In re: Application of Timpanogos Legal Center’s Certified Advocate Partners Program*, UTAH OFF. OF LEGAL SERVS. INNOVATION (Aug. 30, 2024), <https://utahinnovationoffice.org/wp-content/uploads/2024/09/Amended-Authorization-Order-TLC-August-2024-signed.pdf> [https://perma.cc/74QE-BCTR]

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*; Rebecca L. Sandefur & Lucy Ricca, *Outside the Box: How States Are Increasing Access to Justice Through Evidence-Based Regulation of the Practice of Law*, 108 JUDICATURE 58, 62 (2024), <https://judicature.duke.edu/articles/outside-the-box-how-states-are-increasing-access-to-justice-through-evidence-based-regulation-of-the-practice-of-law/> [https://perma.cc/G9WL-QSCY].

<sup>262</sup> *Our Mission*, TIMPANOGOS LEGAL CTR., <https://www.timplegal.org/about/our-mission> [https://perma.cc/CTS2-L5R5] (last visited Nov. 20, 2024).

the legal industry because they are not owned solely by lawyers.<sup>263</sup> The entity uses a legal software program, process, or AI to provide these legal support services such as business formation or legal document completion, and now with ABS licensure, the entity can offer legal services through lawyers.<sup>264</sup> This category is distinct from TLFR and OSSs because ALSPs, such as LegalZoom and Elevate, are not the actual ABS entity, but rather have joined the legal market through their affiliate ABS company (with the exception of a few intermediary platforms). Here are the key findings: (1) 28/112 ABSs fall into this typology, with 11 of the 28 in Arizona, and 17 in Utah; (2) most of these entities are structured as a parent ALSP employing lawyers through its subsidiary ABS; and (3) 5/28 are intermediary platforms that serve as an online marketplace connecting lawyers and consumers.<sup>265</sup>

#### A. ALSPs Employing Lawyers

Prior to gaining ABS licensure, ALSPs participated solely in the online legal service market, providing legal services “apart from the conventional paradigm” of the traditional law firm model.<sup>266</sup> Services are offered through technological platforms and include legal document review and automation, contract management, business formation, compliance support, legal research, e-discovery, and/or due diligence.<sup>267</sup> ALSPs do not operate as a law firm but as a “legal support service” firm.<sup>268</sup> This distinction is important because ALSPs are owned by non-lawyers and are limited in the scope of legal services they can offer.<sup>269</sup> ALSPs can provide legal support services but are prohibited from providing clients legal advice or representation under the ABA Rules for the unlicensed practice of law.<sup>270</sup> As a result, ALSPs either refer clients elsewhere or outsource work to freelance lawyers to meet client needs beyond the scope of their services.<sup>271</sup> Because of these rules, ALSPs turned to Arizona and Utah’s ABS programs to expand their services.<sup>272</sup> With

<sup>263</sup> Engstrom et al., *supra* note 198, at 26; UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 68.

<sup>264</sup> See, e.g., UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>265</sup> *Categorizing Alternative Business Structures*, *supra* Section I(D); See Rhode, *supra* note 100; UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>266</sup> Alejandro Esteve de Miguel Anglada, *Alternative Legal Service Provider on the Rise: Threat or Opportunity?*, BIGLE LEGAL (Oct. 30, 2023), <https://blog.biglelegal.com/en/alternative-legal-service-provider-on-the-rise-a-threat-or-an-opportunity> [https://perma.cc/J57X-WNCT].

<sup>267</sup> Kara Wen, *What are Alternative Legal Service Providers?*, SIMPLELEGAL (Mar. 23, 2022), <https://www.simplelegal.com/blog/alternative-legal-service-providers> [https://perma.cc/D6K3-5WWF].

<sup>268</sup> *Id.*

<sup>269</sup> See Natali Shaybak, *Legal Tech v. Legal Outsourcing and ALSP*, LAWFLEX (May 10, 2022), <https://lawflex.com/legal-tech-v-legal-outsourcing-and-alsp/> [https://perma.cc/8FV9-EFEY].

<sup>270</sup> See Wen, *supra* note 267.

<sup>271</sup> See Shaybak, *supra* note 269.

<sup>272</sup> See generally Sara Merken, *Ex-ABA Leader Joins Rocket Lawyer Amid Push to Grow Alternative Legal Business*, THOMSON REUTERS (Sept. 14, 2023, 6:02 AM), <https://www.reuters.com/legal/legalindustry/ex-aba-leader-joins-rocket-lawyer-amid-push-grow-alternative-legal-business-2023-09-14/> [https://perma.cc/6YML-ZENT].

ABS approval, ALSPs offer dual services in the legal industry through their technological platforms and lawyer employees.<sup>273</sup>

Most ALSPs in this category created subsidiaries in Arizona and/or Utah which were granted ABS licensure, with the parent ALSP company employing lawyers through its ABS licensed subsidiary.<sup>274</sup> For example, Rocket Lawyer is a privately held legal tech company that offers digital tools to create and sign documents.<sup>275</sup> Its ABS licensed subsidiary, Rocket Legal, employs lawyers in Utah.<sup>276</sup> Rocket Lawyer offers bundled legal service subscriptions and flat fee services at an affordable cost, and increases consumer accessibility to lawyers through its ABS affiliate.<sup>277</sup> The CEO of Rocket Lawyer said employing lawyers directly enables the firm to “provide a great customer experience at a fraction of the cost.”<sup>278</sup>

LegalZoom, a publicly traded legal tech company offering the same type of services as Rocket Lawyer, helps millions of consumers create legal documents.<sup>279</sup> Through its ABS licensed subsidiary, LZ Legal Services, LegalZoom hired lawyers in Arizona to provide legal advice directly to customers rather than relying on an independent network of lawyers.<sup>280</sup> The vice president of LZ Legal Services said the firm’s unique value proposition is presenting potential clients legal services in an affordable and transparent way through people, process, and technology, and by charging a flat-fee basis taking “only a reasonably small fraction of what one may expect to pay for a traditional firm.”<sup>281</sup>

---

<sup>273</sup> See *id.*

<sup>274</sup> See *id.*; see also UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>275</sup> See generally Merken, *supra* note 272.

<sup>276</sup> Jon Campisi, *Rocket Lawyer Subsidiary Lands ABS License in Arizona*, THE AMERICAN LAWYER (Sept. 26, 2024, 4:59 PM), <https://www.law.com/americanlawyer/2024/09/26/rocket-lawyer-subsidiary-lands-abs-license-in-arizona/?slreturn=20241115145520> [https://perma.cc/Q6EL-KXCS].

<sup>277</sup> See generally ROCKET LAWYER, <https://www.rocketlawyer.com/> [https://perma.cc/3EQK-MS82] (last visited Nov. 20, 2024).

<sup>278</sup> See Lyle Moran, *Rocket Lawyer is Among the First Applicants Approved to Join Utah’s Regulatory Sandbox Program*, A.B.A. J. (Sept. 8, 2020, 4:38 PM), <https://www.abajournal.com/web/article/rocket-lawyer-given-approval-to-join-utahs-regulatory-sandbox-program> [https://perma.cc/V6GX-FMT4].

<sup>279</sup> See Jacqueline Nguyen & Miles Hamberg, *Rocket Lawyer Vs. LegalZoom*, FORBES ADVISOR (Apr. 28, 2024, 3:24 PM), <https://www.forbes.com/advisor/business/rocketlawyer-vs-legalzoom/> [https://perma.cc/6DDD-WHWN].

<sup>280</sup> See Lyle Moran, *LegalZoom is Pursuing an Alternative Business Structure License in Arizona*, A.B.A. J. (Aug. 16, 2021, 9:55 AM), <https://www.abajournal.com/web/article/after-its-ipo-legalzoom-seeks-alternative-business-structure-license-in-arizona> [https://perma.cc/XV83-SCUS]; Sam Skolnik, *LegalZoom Gets Green Light for Arizona Non-Lawyer Owned Services*, BLOOMBERG L. (Oct. 1, 2021, 2:07 PM), [https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/X4E52DAC000000?bna\\_news\\_filter=business-and-practice#cite](https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/X4E52DAC000000?bna_news_filter=business-and-practice#cite) [https://perma.cc/DT8Y-GVBH].

<sup>281</sup> See Feature: *Alternative Business Structure Law Firms: Where We Are So Far*, *supra* note 190.



ALSPs employing lawyers distinguish their product from traditional law firms by using innovative legal service delivery models where consumers can choose the portions of the work they wish to complete themselves with the assistance of ALSP software and the portions for which they would like legal advice and representation from the ABS.<sup>282</sup>

These entities also benefit from the resources and expertise in technology provided by their parent company.<sup>283</sup> LegalZoom provides LZ Legal Services with over 20 years of technologic experience and monetary resources that they would ever never have as a law firm their size.<sup>284</sup> Axiom Global, another prominent company in the ALSP market, provides legal automation and support to in-house legal departments, but stated that its inability to provide legal services and representation prevents it from providing legal talent to businesses without in-house counsel.<sup>285</sup> Its subsidiary, Axiom Advice & Counsel LLC (“Axiom Advice”), gained ABS approval to offer legal advice and informed practical guidance to these businesses.<sup>286</sup> Axiom Advice benefits from its parent company’s expertise in innovative pricing models and alternative fee arrangements, as well as its back-office functions including HR, finance, marketing, and recruiting.<sup>287</sup> The managing partner of Axiom Advice called this an opportunity to “reinvent the archetype of the modern firm” and by “leveraging the right legal talent, data, and practice-specific technology” the firm will offer businesses a new cost-effective way to control risk through access to affordable legal services.<sup>288</sup>

### 1. Emerging Market Potential

The adoption of ABS licensure by these ALSPs has revealed a large gap in the United States between the existing legal software services offered by companies like ALSPs and full lawyer representation.<sup>289</sup> Three of the

---

<sup>282</sup> See generally Engstrom et al., *supra* note 198, at 26.

<sup>283</sup> See generally Feature: *Alternative Business Structure Law Firms: Where We Are So Far*, *supra* note 190, at 12, 18.

<sup>284</sup> *Id.*

<sup>285</sup> Bob Ambrogi, *ALSP Axiom Opens Law Firm in Arizona Under Alternative Business Structure License*, LAW SITES (Jan. 23, 2023), <https://www.lawnext.com/2023/01/alsp-axiom-opens-law-firm-in-arizona-under-alternative-business-structure-license.html> [<https://perma.cc/9ZF2-APHW>] (click on “its ABS application” for a copy of Axiom’s application for an alternative business structure license).

<sup>286</sup> See *About us*, AXIOM ADVICE & COUNSEL, <https://www.axiomadviceandcounsel.com/about> [<https://perma.cc/X5LD-KSX2>] (last visited Nov. 20, 2024).

<sup>287</sup> See Ambrogi, *supra* note 285.

<sup>288</sup> See *id.*

<sup>289</sup> See THOMSON REUTERS INST. ET AL., *ALTERNATIVE LEGAL SERVICE PROVIDERS—UNDERSTANDING THE GROWTH AND BENEFITS OF THESE NEW LEGAL PROVIDERS* 2, 15 (2017), [https://www.srln.org/system/files/attachments/S043079\\_Long\\_Final.pdf](https://www.srln.org/system/files/attachments/S043079_Long_Final.pdf) [<https://perma.cc/75V9-9UJA>]; see also *Amended Sandbox Authorization Packet My Immigration*, OFF. OF LEGAL SERVS. INNOVATION (Aug. 10, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Amended-Auth-Packet-My-Immigration-8.22.pdf> [<https://perma.cc/95UA-X2YU>].

prominent vendors in the ALSP market—Rocket Lawyer, LegalZoom, and Axiom—have begun the process of bridging this gap in Arizona and Utah through ABS licensure, and some smaller ALSPs have followed.<sup>290</sup> Because of nonlawyer ownership in the ALSP market, ABSs are the only mechanism to enter this untapped market.<sup>291</sup>

ABS-approved ALSPs in this market have successful records of providing productized and affordable legal support systems to underserved consumers unable to afford legal representation.<sup>292</sup> Rocket Lawyer and LegalZoom deliver services to millions of these consumers each year.<sup>293</sup> Many professionals perceive the quality of services offered by these ALSPs is subpar due to the lack of lawyers involved.<sup>294</sup> Employing lawyers directly through ABSs could correlate to a higher quality of legal services than ALSPs without lawyer involvement.<sup>295</sup> Keeping lawyers under one roof rather than outsourcing to freelance lawyers leads to more collaboration and innovation, as seen by the entities previously discussed.<sup>296</sup> These ABSs operating in the market area between ALSPs and full lawyer representation are improving the delivery of legal services, but the question is whether targeting this market will impact access-to-justice.

## 2. *Improved Access-to-Justice?*

ALSPs by nature target low-income consumers who cannot afford the hourly rates of lawyers.<sup>297</sup> Will these consumers really benefit from an ALSP bringing on a team of lawyers? Both the ALSP and law firm in an ABS are in a mutually beneficial relationship, and this business model is innovating the delivery of legal services to a higher extent than most other ABSs.<sup>298</sup> This innovation could lead to lower pricing models on the ALSP side of the entity through leveraging new resources and lawyer expertise, but it's hard to

<sup>290</sup> See generally Lucy Ricca & Graham Ambrose, *The High Highs and Low Lows of Legal Regulatory Reform*, STAN. L. SCH. (Oct. 17, 2022), <https://law.stanford.edu/2022/10/17/the-high-highs-and-low-lows-of-legal-regulatory-reform-333-2/> [<https://perma.cc/5DDE-WGAD>].

<sup>291</sup> See generally *id.*

<sup>292</sup> See James Goodnow, *LegalZoom is Coming for Your Lunch*, ABOVE THE LAW (Oct. 15, 2021, 1:13 PM), <https://abovethelaw.com/2021/10/legalzoom-is-coming-for-your-lunch/> [<https://perma.cc/7DEV-L94M>].

<sup>293</sup> See Nguyen & Hamberg, *supra* note 279.

<sup>294</sup> See generally Goodnow, *supra* note 292; see also John S. Dzienkowski, *The Future of Big Law: Alternative Legal Service Providers to Corporate Clients*, 82 FORDHAM L. REV. 2995, 3024 (2014).

<sup>295</sup> See generally Lucy Ricca & Graham Ambrose, *The High Highs and Low Lows of Legal Regulatory Reform*, STAN. L. SCH. (Oct. 17, 2022), <https://law.stanford.edu/2022/10/17/the-high-highs-and-low-lows-of-legal-regulatory-reform-333-2/> [<https://perma.cc/AP58-5EVB>].

<sup>296</sup> See generally Ricca & Ambrose, *supra* note 291.

<sup>297</sup> See generally Goodnow, *supra* note 292; see also Cody Blades, *Crying Over Spilt Milk: Why the Legal Community is Ethically Obligated to Ensure LegalZoom's Survival in the Legal Services Marketplace*, 38 HAMLINE L. REV. 31, 32 (2015).

<sup>298</sup> See generally Ricca & Ambrose, *supra* note 291.

imagine that the lawyers employed will drop their prices down to the ALSP's level.

Indigent or low-income consumers might not receive any benefit from ALSPs employing lawyers where they originally sought ALSP services because they couldn't afford legal advice and representation.<sup>299</sup> If most of the work needed by the client is services from the ALSP, then they might reap benefits. For example, if a client goes to LegalZoom to draft their will, and only 10% of the work requires a lawyer, then they will be saving more money than seeking an attorney to draft the entire will.<sup>300</sup> However, the adoption of this ABS model could also lead to ALSPs targeting larger companies who seek the services of a OSS of technology and law, rather than low-income individuals, having no effect on the access-to-justice crisis.<sup>301</sup>

ALSPs employing lawyers are advancing at least one of Arizona and Utah's regulatory objectives. More ALSPs outside of Arizona and Utah's ABS programs will certainly try to gain ABS licensure seeing the benefits their competitors are experiencing with ABSs. If more ALSPs seek ABS licensure to employ lawyers, it is crucial for both consumers and other states to keep watch over how ALSP's targeted market changes with the ability to offer enhanced services using lawyers and technology. If Arizona and Utah want these entities to simultaneously innovate the delivery of legal services and promote access-to-justice, they should closely monitor this structure and market.

#### *B. Regulating ALSPs in the Legal Market*

The market for ALSPs outside of the ABS context has grown over the last five years, and now comprises a segment of over twenty billion dollars of the legal market.<sup>302</sup> Some law firms view ALSPs as a threat to the industry, while others are beginning to recognize the benefits ALSPs provide to individuals and the complimentary role they can offer to firms.<sup>303</sup> In the latter, these firms of all sizes are becoming consumers of ALSPs.<sup>304</sup> Through using ALSPs' technological support systems, law firms can free up their internal resources to focus on higher value tasks.<sup>305</sup> This increased productivity can relieve the strain on understaffed law departments and

---

<sup>299</sup> See generally Alejandro Esteve de Miguel Anglada, *supra* note 266.

<sup>300</sup> See, e.g., LEGALZOOM, <https://www.legalzoom.com/> [<https://perma.cc/LYX6-B5PQ>] (select "Personal" on main page; then choose "Will" from drop down) (advertising \$99 for a "Basic Will" and \$249 for a "Premium Will" which includes an attorney review of legal documents).

<sup>301</sup> See generally *Market for Alternative Legal Services Growing Dramatically, New Report Shows*, THOMSON REUTERS (Jan. 30, 2023), <https://www.thomsonreuters.com/en-us/posts/legal/alsp-report-2023/> [<https://perma.cc/TZZ7-55TH>].

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> See THOMPSON REUTERS INST. ET AL., *ALTERNATIVE LEGAL SERVICE PROVIDERS 2021*, at 12 (2021), [https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2021/07/ALSP\\_2021-Report\\_FINAL-1.pdf](https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2021/07/ALSP_2021-Report_FINAL-1.pdf) [<https://perma.cc/44PR-QXSX>].

<sup>305</sup> See *id.* at 7.

improve cost efficiency.<sup>306</sup> However, the growth in this market blurs the boundaries between ALSPs, legal departments, and law firms.<sup>307</sup>

In the law firm and ALSP relationship outside the ABS programs, the lawyer receives a customized blueprint from the ALSP on the most efficient way to deliver legal services through lawyers and nonlawyer service providers.<sup>308</sup> When the lawyer adopts the blueprint, the lawyer is no longer handling the entire representation of the client.<sup>309</sup> This can lead to client communication and confidentiality issues if lawyers are not transparent about their dual relationship with the client and the ALSP.<sup>310</sup> Oversight can also be problematic especially in relationships with larger ALSPs, some with an enterprise value of over a billion dollars.<sup>311</sup> Coupling this collaborative business model with the ethical duties of the lawyer makes it crucial for lawyers to oversee the work performed by the outside ALSP partners.<sup>312</sup> If proper oversight is not taken, the client can be harmed and the unauthorized practice of law can occur by nonlawyers of the ALSP.<sup>313</sup>

Class action lawsuits have been filed against ALSPs for engaging in deceptive business practices and practicing law without a license.<sup>314</sup> These lawsuits have also involved claims from individual consumers of the ALSP's automation of legal documents and business forms.<sup>315</sup> The boundaries between authorized and unauthorized law practice are blurred again when legal advice is provided in connection with the forms through members of the ALSP.<sup>316</sup> If these members are not lawyers, they are violating unlicensed practice of law statutes and harming the public.<sup>317</sup> The legal industry and state courts face the problem of how to treat these services offered by ALSPs,

<sup>306</sup> See Wen, *supra* note 267.

<sup>307</sup> See THOMPSON REUTERS *supra* note 301.

<sup>308</sup> See Dzienkowski, *supra* note 294, at 3037.

<sup>309</sup> See *id.*

<sup>310</sup> See *Key Ethical Obligations in the Era of Modern Law*, EPIQ SYSTEMS, <https://www.epiqglobal.com/en-us/resource-center/articles/key-ethical-obligations-in-the-era-of-modern-law> [<https://perma.cc/RNX8-V6CT>] (last visited Nov. 20, 2024).

<sup>311</sup> See *id.*; see also *LegalZoom.com, Inc. (LZ)*, STOCK ANALYSIS, <https://stockanalysis.com/stocks/lz/statistics/> [<https://perma.cc/W3NZ-XAE2>] (last visited Nov. 20, 2024).

<sup>312</sup> See EPIQ SYSTEMS, *supra* note 310.

<sup>313</sup> *Id.*

<sup>314</sup> See *Online Legal Documents Company Sued Over Flawed Estate Plan*, ELDER LAW ANSWERS, <https://attorney.elderlawanswers.com/online-legal-documents-company-sued-over-flawed-estate-plan-8509#:~:text=LegalZoom%2C%20one%20of%20the%20most,practicing%20law%20without%20a%20license> [<https://perma.cc/3FUE-E3HH>] (last visited Nov. 20, 2024).

<sup>315</sup> *Id.*

<sup>316</sup> See THOMPSON REUTERS (Jan. 30, 2023), *supra* note 301.

<sup>317</sup> See Arthur D. Burger, *Legal Practice Should Make Room for Alternative Service Providers*, BLOOMBERG L. (Jan. 17, 2023, 4:00 AM), <https://news.bloomberglaw.com/us-law-week/legal-practice-should-make-room-for-alternative-service-providers> [<https://perma.cc/6JE9-TLJ8>].

especially with rise of AI platforms in the legal service landscape, and prevent the issues contemplated above.<sup>318</sup> ABSs might be one solution.

As previously discussed, subsidiaries of ALSP entities gained ABS licensure to employ lawyers through Arizona and Utah's ABS program. This business model keeps the line clear between the practice of law and ALSP services. LegalZoom has faced lawsuits in the past for the unauthorized practice of law.<sup>319</sup> But now in Arizona, this is less likely to occur with its ABS subsidiary lawfully offering legal services.<sup>320</sup> When consumers of these ALSPs engage an attorney to provide legal advice or service, they must enter into a separate agreement that creates an attorney-client relationship between the consumer and the ABS affiliate.<sup>321</sup> These consumers might be more inclined to report complaints or issues to the Arizona Supreme Court or Innovation Office which will then be investigated, as opposed to ALSPs in states only governed by state law where the consumer would have to pursue litigation.

However, a fundamental flaw in Arizona's ABS regulatory framework is the compliance lawyer has no oversight over the parent company of an ABS licensed subsidiary.<sup>322</sup> The compliance lawyer must either be a manager or employee of the ABS subsidiary but is not required to have any relationship with the parent company, and only oversees and ensures compliance with ethical and professional responsibilities in the subsidiary ABS.<sup>323</sup> Utah's regulatory framework is better equipped for providing consumer protection and oversight for ALSPs employing lawyers through a subsidiary.

Utah's Innovation Office specifically addresses risks associated with a "legal practice through technology and nonlawyer providers."<sup>324</sup> The service model "software provider with lawyer involvement", or ALSPs employing lawyers, is assigned to the moderate risk category.<sup>325</sup> Most of the ALSPs in Utah have either a low-moderate risk level or a moderate risk level.<sup>326</sup> And in assessing the initial risk levels of these entities, all the potential problems discussed above with ALSPs were identified.<sup>327</sup> For example, the Innovation Office designated nonlawyer ownership, user communications, and legal

---

<sup>318</sup> See *id.*

<sup>319</sup> See e.g., ELDER LAW ANSWERS, *supra* note 314.

<sup>320</sup> See Lyle Moran, *LegalZoom is Pursuing an Alternative Business Structure License in Arizona*, A.B.A. J. (Aug. 16, 2021, 9:55 AM), <https://www.abajournal.com/web/article/after-its-ipo-legalzoom-seeks-alternative-business-structure-license-in-arizona> [<https://perma.cc/XV83-SCUS>].

<sup>321</sup> See ROCKET LAWYER, <https://www.rocketlawyer.com/general-terms-of-service> [<https://perma.cc/5C73-2PSC>] (last visited Nov. 20, 2024).

<sup>322</sup> See generally ARIZ. CODE OF JUD. ADMIN., § 7-209(G) (2022).

<sup>323</sup> See *id.*

<sup>324</sup> See *Legal Sandbox Authorization Materials: 1Law, P.C. / 1Law Legal Services*, UTAH OFF. OF LEGAL SERVS. INNOVATION (Aug. 22, 2022), <https://utahinnovationoffice.org/wp-content/uploads/2024/10/1LawAppandPacket.pdf> [<https://perma.cc/8TNK-YHRN>].

<sup>325</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 13.

<sup>326</sup> See generally *id.*

<sup>327</sup> See generally *id.*

practice through technology and nonlawyer providers as specific risks facing Rocket Lawyer.<sup>328</sup>

The Innovation Office clearly recognizes the inherent issues and risks with ALSPs. It requires more data from these low-to-moderate risk level entities and uses its external audit system to assess the moderate risk entities, providing consumers of ALSPs stronger protection than those outside Utah's ABS program.<sup>329</sup> Applying Utah's regulatory framework to future ALSPs that employ lawyers through ABS licensure will reduce the risk of consumer harm and of unauthorized practice of law and keep a clear separation of involvement between nonlawyers and lawyers in ALSPs and ABSs.

## V. CONCLUSION

Arizona and Utah each took a distinct and aspirational approach to reforming Rule 5.4 and pioneering ABSs in the United States. Their ABS programs reveal the benefits of allowing nonlawyer participation in the legal market and innovation in the delivery of legal services. However, their programs also expose shortcomings in the use and regulation of ABSs. Both states set a high standard of approval for ABS candidates—an entity that promotes and improves access to justice and innovates and diversifies the legal market and delivery of legal services.<sup>330</sup> Categorizing the 108 ABSs in Arizona and Utah and assessing their impact shows it is evident that not every ABS will fulfill Arizona's and Utah's goals. Some structures are fundamentally flawed, and others were never going to advance their regulatory objectives from the onset. Arizona may have acted prematurely in eliminating Rule 5.4 and Utah's Regulatory Sandbox experiment ends in 2027 and then will be reevaluated.<sup>331</sup> While there is uncertainty whether the adoption of certain ABS models will increase access to justice, this Note has ascertained the types of ABSs that are positioned to promote such affordable access, diversify the legal market and innovate the delivery of legal services.

Only a small number of TLFR—the full-service firms and some Utah ABSs—brought on nonlawyer ownership to improve the business side of their firm and expand their practice areas to reach new clients. TLFR demonstrate a considerable lack of innovation in the delivery of legal services. The abundance of PI ABSs has overshadowed TLFR in Arizona, and there is no evidence that granting ABS licensure to a contingency PI firm

---

<sup>328</sup> See *Sandbox Authorization Packet Rocket Lawyer Inc.*, UTAH OFF. OF LEGAL SERVS. INNOVATION 663 (Sep. 22, 2020), <https://utahinnovationoffice.org/wp-content/uploads/2021/04/Amended-Auth-Packet-Rocket-Lawyer.pdf> [https://perma.cc/CY5U-H6RS].

<sup>329</sup> See UTAH OFF. OF LEGAL SERVS. INNOVATION, *supra* note 89.

<sup>330</sup> *Arizona Supreme Court Makes Generational Advance in Access to Justice*, ARIZ. SUP. CT. (Aug. 27, 2020), <https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf> [https://perma.cc/WK3T-K83E]; see also Pitzen, *supra* note 38.

<sup>331</sup> Meyeroff, *supra* note 66.

has any impact on promoting access to legal services. PI is not an area of law where individuals are unable to access representation, and the use of contingency fees should not be a regulatory qualifier in an ABS program.<sup>332</sup> OSSs offering legal services with financial, accounting, and other business-related services or holistic support systems under one roof are providing consumers better access to more diverse markets at a potentially lower cost. These single ABS entities that offer multi-professional services from lawyers and nonlawyers are best suited for promoting access to justice under the oversight of the ABS regulatory structure, as opposed to an ABS licensed firm in a partnership or other business relationship with a separate entity. ALSPs employing lawyers opened the legal market to new providers and are frontrunners in innovating the delivery of legal services. However, the ALSPs are better regulated within a framework like Utah's Regulatory Sandbox, in which their structure, market, and risk are constantly assessed, as compared to Arizona's ABS program where the compliance lawyer has no oversight of the ALSP.

Moving forward with ABSs, Arizona and other states should adopt Utah's blueprint for the licensure and regulation of ABSs. Utah's Regulatory Sandbox is the forefront for how to properly run an experimental ABS program. The Innovation Office's scrupulous decision-making process for ABS licensure correlates to innovation and improvement in the delivery of legal services. Its risk-based regulatory framework provides consumers a strong degree of protection from harm that can occur from conflicts of interest, undue nonlawyer influence, overly profit-focused investors, and unauthorized practice of law. The framework's associated independent audit process is pivotal for the regulation of ABSs, and the requirement of an independent auditor to ensure compliance should be standard for ABS regulation. Finally, implementing the ABS program as a time-limited experiment is the most appropriate way for engaging this regulatory reform because it allows Utah to ultimately evaluate the impact of licensed ABSs and the necessity of Rule 5.4.

Within the next five years, many entities will likely join Arizona's and Utah's voyage across this uncharted territory of the legal service landscape. With the rise of technology and increased demand for affordable legal services, this Note predicts many ALSPs and OSSs will operate as ABSs. Small and mid-sized traditional law firms will slowly continue to gain ABS licensure, but larger firms and "Big Law" will likely steer clear of ABSs until the tides have calmed. It remains uncertain whether more states will join this voyage, but those that follow Utah's vessel will be best fit to sail these seas and spur positive impacts on the delivery of legal services and access to justice.

---

<sup>332</sup> Younger, *supra* note 5, at 278–79.