

Sullivan County Bar Association

OCTOBER 2024 - NEWSLETTER

EVENT

|  |                                |
|--|--------------------------------|
| SCBA Member Dinner   | \$45/person incl. tax/gratuity |
| October 24, 2024 - 6:00pm  | Entree Choices:                |
| ROSCOE MOUNTAIN CLUB (RMC)   | Seared Salmon/Chicken Marsala  |
| 100 Fairway Drive  | Appetizers & Sides             |
| ROSCOE, NY 12776   | Cash Bar                       |
| 607-498-5000   |                                |
| <a href="http://www.roscoemountainclub.com">www.roscoemountainclub.com</a> |                                |

The Dinner Meeting will be held in The Barn Event Space at RMC. Enter at 100 Fairway Drive, go to the 'T' at the top of the hill, make a left, then a right at the Pickleball Courts. The Barn will be on your left with parking all around.

Please RSVP to Jerry Dorfman at [jdlawny@verizon.net](mailto:jdlawny@verizon.net) by October 21st.

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**The Practice of Law in an Interdisciplinary World**

On a recent trip to the United Kingdom (UK), I noticed some peculiar (to me) signage on the doors and windows of local attorneys - solicitors and barristers in the UK. In particular, it appeared as if attorneys held themselves out to provide more than just the practice of law. I read signs offering tax advice, investment advice, real estate sales and 'letting' and retirement planning. As it turns out, interdisciplinary practices have been permitted in the UK since the implementation of the UK's Legal Services Act of 2007. The rationale for allowing a wide range of non-legal services to be offered under the roof of one law firm was to, theoretically, increase competition, improve access to legal services and encourage innovation in the practice of law.

It's an intriguing concept and I'm sure there will be strong feelings on both sides of the issue, but it IS a movement that is growing and we, as practitioners, should keep a keen eye on how it may affect our respective practices. I put together a brief summary of the state-of-affairs concerning interdisciplinary practices.

In the United States, interdisciplinary practices that combine legal and non-legal services are generally prohibited under long-standing professional rules of conduct that govern the legal profession. However, there has been increasing discussion and some movement toward loosening

these restrictions in a few jurisdictions, driven by innovations in legal technology, changing client needs and the economies of running a law practice.

### General Prohibition on Non-Legal Services in Law Firms

Most states, including New York, adhere to ABA Model Rule 5.4, which prohibits lawyers from sharing legal fees with non-lawyers and forbids non-lawyers from having ownership or managerial control in law firms. The rationale behind this prohibition is to maintain professional independence, avoid conflicts of interest, and protect client confidentiality. Current Trends in the U.S. Several states and the District of Columbia are moving toward more flexible models, considering reforms to allow interdisciplinary practices. These changes are driven by the desire to modernize the legal industry, enhance access to justice, and encourage innovation.

1. District of Columbia: Washington, D.C., is the only U.S. jurisdiction where non-lawyers are allowed to have partial ownership of law firms. However, this exception is narrow, permitting only firms that provide a combination of legal and non-legal services directly related to the firm's legal practice.

2. Arizona: In 2020, Arizona became the first state to officially eliminate Rule 5.4 through a regulatory sandbox model. This allows non-lawyer ownership and the creation of alternative business structures for providing legal services, similar to what is seen in the UK. The Arizona Supreme Court argues that the change will help improve access to affordable legal services.

3. Utah: Utah has also developed a regulatory sandbox under which non-lawyers can own or invest in law firms. Like Arizona, the state seeks to broaden access to legal services while preserving consumer protection and ethical standards.

4. California: California has been exploring possible reforms for several years, though significant changes have yet to be adopted. In 2019, the State Bar of California launched a task force to evaluate whether the rules should be adjusted to permit non-lawyer ownership and fee-sharing.

### Resistance to Interdisciplinary Practices

While some states are moving forward with regulatory reform, many others remain resistant to the idea of interdisciplinary practices. Critics argue that non-lawyer ownership could compromise a lawyer's ethical duties, including their duty of loyalty and confidentiality.

The ABA has been traditionally opposed to non-lawyer ownership of law firms. In 2020, the ABA's House of Delegates rejected proposals to allow non-lawyer ownership but continues to monitor experiments with regulatory innovation in states like Arizona and Utah. New York has not yet embraced the idea of interdisciplinary practices. The New York State Bar Association (NYSBA) has expressed concerns about non-lawyer involvement in legal services, citing risks to

professional ethics and client interests. As of now, New York remains aligned with the traditional prohibitions of Rule 5.4.

Key References: - The ABA offers reports and position papers on interdisciplinary practices and alternative business structures, including the 2020 House of Delegates' debates on non-lawyer ownership. - "Resolution 115" (ABA, 2020) and "Report of the Commission on the Future of Legal Services" (ABA, 2016).

The NYSBA has issued statements and reports that analyze the potential risks and benefits of interdisciplinary practices, though it remains largely opposed. - see "NYSBA Report on Non-Lawyer Ownership of Law Firms" (2021)

Utah Sandbox Program: The Utah Office of Legal Services Innovation offers detailed reports on how its regulatory sandbox has performed since its inception in 2020.

*For the uninformed, like myself, a regulatory sandbox is a framework set up by regulatory bodies that allows businesses to test innovative products, services, business models, or delivery mechanisms in a controlled and supervised environment, often with relaxed regulatory requirements. The purpose of a regulatory sandbox is to encourage innovation while ensuring that consumer protection and market stability are not compromised.*

*Key features of a regulatory sandbox typically include:*

*Testing Period: Companies can operate under modified rules or reduced regulatory burdens for a limited time.*

*Supervision: The regulator monitors the business closely during the sandbox period.*

*Limited Scope: Tests are usually conducted with a limited number of customers or in a specific area to minimize risks.*

*Consumer Protection: Safeguards are often put in place to ensure that customers involved in the tests are not unduly exposed to harm.*

*Regulatory sandboxes are widely used in sectors like fintech, healthcare, and legal services to foster innovation, especially in highly regulated industries.*

These developments indicate that while interdisciplinary practices are not the norm in the U.S., the regulatory landscape is evolving, with certain states leading the charge toward more innovative legal service delivery models.

While it appears that this movement remains cautious, it has gained traction in certain jurisdictions. And, as we all know, our system of law is derived from English law (not including Louisiana) and the UK has been operating under interdisciplinary practice rules for 17 years and, from what I read, the program has been generally successful. Challenges have included slow adoption, big firm consolidation of services and a continuing worry about maintaining professional ethics and client protections.

We shall see...

Tim McCausland