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Lawyers And Money: Profession For Sale?

Law360, New York (June 04, 2010) -- Here's an awful item:

"Given the success of Australia's first publicly traded law firm and an impending law that will allow third parties to invest in U.K. law firms, a reversal of the rule barring nonlawyers from investing in U.S. law firms could help the industry bounce back from a crippling recession, according to industry insiders." US Law Firms Might Be Next For Outside Investment, Law360, Apr. 21, 2010.

The legal profession successfully fought off partnering with accounting firms 10 years ago. Although that may have had less to do with allegiance to professional standards than with the coincident timing of the "accounting scandals" (Enron, WorldCom etc.) that made these alliances anathema.

Dreadful though it might be, the concept of publicly owned law firms or "legal services corporations" (does that term sound familiar?) could gain some traction.

Large law firms have come to run annual budgets in the hundreds of millions of dollars. At the same time, they tilt toward "alternative billing" practices, i.e., alternatives to fees based on hourly rates that, whatever else one might say about them, more or less match fee revenues with law firm costs. Departure from that desirable accounting objective can lead to booms, but also to busts. Hence the possibility of a future shift from alternative billing to alternative sources of revenue, such as floating shares.

A generation ago, few large law firms carried any debt. But as they grew and moved to larger and more expensive offices, they began borrowing from banks. Bank lending to law firms became a growth business. Recently, one large firm reportedly raised \$125 million in a privately placed bond offering to refinance existing bank debt. The sale of convertible bonds, preferred shares and common stock may not be far behind.

A corporation is supposed to be managed for the profit of its shareholders. Lawyers owe an unqualified duty of loyalty to their clients. This duty is frequently in conflict with opportunities to maximize profits. Rules of Professional Conduct prohibit an "excessive" fee. Clients, not their lawyers, decide whether to proceed with or withdraw from a deal or a lawsuit and on what terms. And, of course, the lawyer is duty-bound to advise the client in the client's own best interests, whether that means not to pursue the deal or to drop the lawsuit and, therefore, to dispense with the lawyer's further service. Can such professional standards and practices be reconciled with enlarging lawyers' earnings? Should they be?

Congress and the government are currently probing apparent conflicts in the banking business. Bankers have duties to be honest with what they tell their customers and discreet with what their customers tell them. They also have a duty to earn money for their shareholders.

Banks are meant to make money. Generally, all businesses — whether privately held or publicly owned — are managed to make money. But, not everyone is motivated primarily by money. There are disciplined, educated, accomplished people who are our teachers, professors, research scientists, clergy, public policy makers, judges, artists, dancers, musicians, composers, writers, critics and journalists. Their words and art are often remembered long after the Forbes 400 is forgotten.

Lawyers in private practice — even at the upper echelons — do not earn the same Big Bucks as their counterparts in business. We earn lawyers' bucks. It is a comfortable living, but we were drawn to the bar for reasons other than to make the most money. This used to be more apparent before the image that attracted so many to the profession shifted from Atticus Finch to L.A. Law.

Today, the "blue-chip" bar (yes, that is what we call the major commercial firms) competes for leadership positions in published profits per partner and league tables ranked by the number and dollar value of their clients' deals. These are among the lawyers' own measures of their value. Can the profession object if the public adopts them?

Would public shareholders support a law firm's nonremunerative pro bono work? Would public shareholders support the defense of Guantanamo prisoners?

The sale of law firms to public shareholders might help the profession recover from the recent recession. But I doubt that it would serve clients and promote professional standards

of intellectual independence and objectivity.

So, Skadden Inc.? Let's hope not.

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