

Connecticut Court Takes Up Ban Against Outside Investors

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By CHRISTIAN NOLAN

Last year, the national law firm of Jacoby & Meyers filed a controversial challenge in the federal courts of three states, including Connecticut, claiming that rules of professional conduct that prevent law firms from having non-lawyer investors are unconstitutional.

While it's still unclear how a federal judge in Connecticut might rule, pre-trial motions to dismiss the claims have already been decided upon in the other two states -- New Jersey and New York -- with mixed results.



Attorney William H. Clendenen Jr. says the independence and competence of Connecticut lawyers is best served under the current rules in which all law firm owners fall under the jurisdiction of the state Judicial Branch.
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A hearing this week in a Connecticut federal court will bring the case one step closer to a resolution, perhaps determining whether the plaintiff's claim has legs. Earlier this month, a federal judge in New York dismissed the claim. But a judge in New Jersey allowed the case to proceed past an early motion to dismiss.

Wick R. Chambers, a New Haven lawyer whose practice focuses on the law of lawyering and legal ethics, said it was difficult to say if either decision would influence the judge in Connecticut. But Chambers believes the plaintiffs are "barking up the wrong tree" overall with taking their claim to federal court to try to change rules made by state judges.

"I'm not happy that they're purporting to speak for me," Chambers said of the Jacoby & Meyers suit in Connecticut. "Having a federal judge simply declare [the rule] unconstitutional, I think it's asking for the wrong result and going to the wrong place to get it."

Jacoby & Meyers, a personal injury firm that once pioneered the use of TV advertising and flat billing rates, argues that allowing such investment could help smaller law firms compete with larger rivals. It claims all three states' rules are unconstitutional and impair the firm's ability to offer low-cost legal services to underserved communities.

But Chambers is not the only member of the Connecticut bar to voice displeasure with the lawsuit. Both the Connecticut Bar Association and the Connecticut Trial Lawyers Association have recently filed briefs in support of motions to dismiss the lawsuit. The groups oppose the notion of non-lawyers directing lawyers on business decisions.

"CTLA's members have not found the Rules' prohibition on equity financing to be a hindrance to their practice of law and they certainly do not feel trammled, either by Internet start-ups or by Australian competitors," wrote Shipman & Goodwin lawyers, Paul Bailin and James Bergenn, on behalf of the CTLA.

'Fiduciary Duties'

The CBA also filed a separate lengthy brief in federal court backing a motion to dismiss.

"Given the fiduciary duties and personal character of the lawyer-client relationship, as well as the inherently complex nature of Connecticut's legal system," writes one of the CBA's lawyers, William H. Clendenen Jr., of Clendenen & Shea LLC in New Haven, "Connecticut citizens can be better assured of their lawyers' independence, competence and responsibility when the practice of law is limited to only those subject to the Connecticut Judicial Branch's requirements and regulations of the legal profession."

The bar group further argues that Jacoby has undertaken its crusade because it finds the rules "inconvenient and inconsistent with its purely financial interests."

The state Attorney General's Office is defending the federal suit in Connecticut on behalf of a group of Superior Court judges named in the complaint. Oral arguments on the motion to dismiss filed by the state Attorney General's Office are scheduled to be heard March 19.

Jeffrey Carton, an attorney with Meiselman, Denlea, Packman, Carton & Eberz in White Plains, N.Y., who is representing Jacoby in all three suits, could not be reached for comment.

Earlier this month, a Manhattan federal district court judge, Lewis Kaplan, ruled that the federal court lacked jurisdiction to hear the case, which involves state court issues. Kaplan also noted that Jacoby's suit challenges only one of several New York ethics rules that ban outside investors.

Though he did not go into the merits of Jacoby's argument on why outside investment should be allowed, Kaplan did say that allowing third-party investors to sink equity into law firms could amount to making "a deal with the devil."

A day before Kaplan's ruling, New Jersey U.S. District Judge Peter Sheridan denied a motion to dismiss Jacoby's suit in that state. In his decision, Sheridan ruled that the court first needs to ascertain if outside investment may already be permitted under the state's rules of professional conduct.

Sheridan asked the New Jersey Supreme Court to explore that issue, and added that the federal court still has jurisdiction over the constitutional issues raised by the suit.

In an opposition to the motion to dismiss, Jacoby argues that "the practice of law in the United States is at serious risk of falling behind the rest of the world," citing the rise of alternative business structures in Australia and the United Kingdom.

Its motion explains the firm's need for an infusion of capital to hire more attorneys and staff, buy new technology, and improve its offices, as well as to help it expand "within communities in which working-class, blue-collar and immigrant families reside."