

*Into the Future: Tomorrow's Legal Profession, Legal Services Market
and Legal Education*

June 21-22, 2013

Celebrating the 10th Anniversary of the LL.M in American Law
offered by The Catholic University of America, Washington, D.C.
in cooperation with the Faculty of Law & Administration of Jagiellonian University

The following provides background on the substance of the conference, the names of our distinguished panelists, and some discussion questions we have given them to consider.

***DEVELOPMENTS AND TRENDS IN REGULATION OF THE
LEGAL PROFESSION AND THE LEGAL SERVICES MARKET
OCCURRING IN VARIOUS COUNTRIES***

Item I. Pressure from national governments and the European Union to remove barriers to competition in the legal services market including lowering the barrier to cross-border legal services.

Item II. Criticisms of national legal professions' self-regulation as anti-competitive and impeding innovation in delivery of legal services. Liberalization of several types has occurred or is being discussed in various countries. These types of liberalization generally are:

A. Reducing the categories of activities reserved to licensed lawyers. Poland, like some other European countries, already has a narrower definition of the reserved practice of law than the broad one in the United States, which encompasses the giving of legal advice.

B. Permitting alternative business structures (ABS) with outside investment in legal services delivery organizations through public offerings or private equity and allowing degrees of management of such organizations by non-lawyers.

C. Permitting legal services delivery in multi-disciplinary practice (MDP) with legal services packaged with other legal services. As above, the narrower definition of reserved legal activities in Poland already allows a more liberal joinder with other professional services, *e.g.*, accounting firms can offer legal advice that would be restricted in the U.S.

Item III. Challenges to the effectiveness of self-regulation's quasi-criminal disciplinary model in providing client protection and quality assurance with formal and informal alternatives offered by at least the following.

A. Australian & UK requirements of firm-based complaint systems and annual reporting on firm compliance with systems for compliance with sound management and ethical compliance. (The formulation of ten objectives for Appropriate Management Systems formulated by the Office of the Legal Services Commissioner of New South Wales, Australia, can be found at

http://www.olsc.nsw.gov.au/olsc/lsc_incorp/olsc_appropriate_management_systems.html. An explanation of the encouraged firm self-assessment process can be found at http://www.olsc.nsw.gov.au/olsc/lsc_incorp/olsc_self_assessment_process.html.)

B. Increased frequency of lawyer liability civil actions as a corrective. While we understand that successful civil actions against lawyers in Poland are increasing, some features of the Polish legal system still may make them less likely than in the U.S., *e.g.*, advocates' rules on steps that must be taken before a complaint against a fellow advocate, no contingency fees, loser pay rule.

C. Aggressive risk management by law firm liability insurance carriers.

D. An EU project to extend the standards model now used with regard to certification of providers in technical field.

E. Increased accessibility of on-line client reviews of lawyers and firms.

Item IV. Pressure from clients to reduce the cost of legal services

A. From corporate clients: in-house counsel for corporate clients pressuring for

1. fixed or other alternative fee arrangements and new types of law firms featuring such arrangements, *e.g.*, Clearspire in the US (<http://www.clearspire.com/>), radiant.law (<http://www.radiantlaw.com/>) and Riverview in the UK (<http://www.riverviewlaw.com/>). Riverview's humorous 3.5 minute dramatization of an exchange between a solicitor and an in-house counsel about a fixed fee is worth a view. http://www.youtube.com/watch?v=BfXhn3tf_vE Fixed fee.

2. disaggregating legal projects so components can be sourced to cheaper providers, *e.g.*, e-discovery, so lawyers must assume more of a project manager role.

3. law firms developing products for client use, *e.g.*, regulatory compliance, that they can use rather than hiring outside counsel to do the project each time. For examples, see the Rulefinder Shareholding Disclosure product provided by derivativeservices, an affiliate of Allen & Overy (<http://www.derivativeservices.com/downloads/RulefinderSHD.pdf>);

4. mechanisms for in-house counsel to collaborate to cut costs with mechanisms like Legal On Ramp (<http://legalonramp.com/>) or SHINE (Sharing In-House Expertise) developed by Eversheds (<http://www.eversheds.com/global/en/what/services/in-house-counsel/index.page>).

5. Poland has become a major shared and outsourcing center in areas including finance, accounting, human resources, information technology, and graphic design with estimates of 100,000 jobs in the sector in Poland, including about 26,000 in Krakow. While legal work from abroad appears to not yet have been a significant component, the outsourcing firm Capita, reported assembling a team of 85 people in a legal processing unit in late 2012 to index 1.6 million documents for UK firm Pinsent Masons.

6. Like U.S. firms, some Polish firms send work to their own offices in lower cost cities, and some clients retain Polish firms in lower cost cities who compete for "Warsaw work" with lower cost advantages.

B. From individuals and small business clients who fear the cost of legal services, often forgo it, and want more convenience in access with products arising like

1. in the UK Quality Solicitors planning to put outlets in 500 WH Smith stores and Co-Operative Legal Services with plans to offer services through their 330 UK bank facilities. In Poland Aliorbank has announced an initiative to locate legal services in their branches (http://www.aliorbank.pl/pl/o_banku/centrum_informacyjne/aktualnosci/wiadomosc?newsId=729) and Advocate P□azyński recently discussed in

RZECZPOSPOLITA plans to create a franchised law firm with one name throughout voivodships in Poland;

2. automated document systems like U.S. Legal Zoom (<http://www.legalzoom.com/>) and Rocket Lawyer (<http://www.rocketlawyer.com/>), with Legal Zoom reported to have served more than 2,000,000 customers by early 2012.

3. legal services delivered on-line, *e.g.*, e-prawnik in Poland (<http://e-prawnik.pl/>).

Item V. Pressures and opportunities offered by information technology

A. Not just cost reduction and efficiencies of automating law office functions and enhanced communication.

B. But also development of sophisticated new products for client use like those described above.

Item VI. Collapse of the economic model of many large law firms with partner income generated by high volume work from associates and paralegals with above-mentioned pressures to outsource some components of legal work to lower-cost providers (often referred to as the “pyramid system”), client resistance to hourly billing and suspicion of billing of junior associates as training at the clients’ expense, general pressures to cut outside firm costs.

A. Reduced numbers of junior lawyers, staff cuts.

B. Firms seeking ways to diversify, *e.g.*, creation of legal leasing agencies, Agile by Eversheds (<http://www.evershedsconsulting.com/eversheds-agile/>), Lawyers on Demand (<http://www.lod.co.uk/>) by Berwin Leighton Paisner).

C. Development of “new look” law virtual law firms, *e.g.*, Clearspire, radiant.law, and Riverview (see URLs above) that allow drawing on teams of people for various projects without bricks-and-mortar joint offices. (For an example of a “virtual law firm” serving individuals through online services, see the web page for Stephanie L. Kimbro, who is also the author of an American Bar Association book on virtual law practice. <http://www.burton-law.com/lawyers/stephanie-kimbro/>)

D. Polish firms, even branches of US and UK firms reliant on the pyramid model in their home countries, may not have followed the model of very highly-paid associates whose numbers are now being reduced. Poland has other features that may affect the internal structure of firms, *e.g.*, restrictions on advocates being hired through a labor contract, the large numbers of young lawyers needing apprenticeship patrons, less established criteria for the credentials seen as most desirable for junior associates.

Item VII. Underlying many points above is the assumption that greater market competition, often aided by innovations in technology, can bring public benefits in access to legal services and quality assurance. In many countries, legal action through court decisions, parliamentary initiatives, pressures from competition authorities, departure from self-regulation to co-regulation (as in Australia and the U.K.), or other governmental actions have brought about change. Such changes generally were not initiated by the legal professions themselves. While such judicial, parliamentary and executive interventions may support the laudable goals of public protection, fair access to the profession, and greater accountability of the legal professions, it remains important to strike a balance with the role played by an independent legal profession in a

democracy, *i.e.*, lawyers willing to speak out and bring actions to compel governments to follow their laws and challenge laws and practices that overreach.

PANEL DISCUSSION QUESTIONS

LEGAL PROFESSION: Friday, June 21, 2013 15:00-16:15

-- Malgorzata Kozuch, PhD, Supreme Bar Council (NRA)

-- Eligiusz Krześniak, PhD, Partner Squire Sanders

-- Arkadiusz Radwan, PhD, President of the Allerhand Institute, of counsel KKG Kubas
Kos Gaertner

Moderator: Fryderyk Zoll prof. dr hab, Jagiellonian University, Professor University of
Osnabrück, Osnabrück , Germany

1. Regulation of a profession includes control of requirements for entry/licensing including entry exams and training programs, rules regarding conduct of individual lawyers, rules regarding the organizations in which legal services can be delivered, restrictions on who can provide legal services, and additional mechanisms for protecting the public including the professional discipline with possible loss of right to practice. Is the current system of self-regulation by the national bars necessary to protect the public and secure quality in the legal system? Should other options be considered?

2. Elsewhere countries have or are considering liberalization with regard to (a) reduction in services that can only be provided by licensed lawyers, (b) permission for outside investment, *e.g.*, public offerings, private equity, and degrees of management control of legal-services-delivery organizations by non-lawyers, *e.g.*, corporate ownership, (c) allowing legal services to be delivered in multidisciplinary practice organizations. (As discussed above, provision of legal advice by people who are not licensed lawyers is already less restricted in Poland than in the U.S.) Should Poland change in any of these respects?

3. Is the Polish lawyer discipline system effective in protecting the public? Will and should other forms of mechanisms described above in *Item III* above, *e.g.*, expanded civil liability, firm-level management systems, be more effective and play a greater part in the Polish system?

LEGAL EDUCATION: Friday, June 21, 2013 16:45-18:00

--Fryderyk Zoll, prof. dr hab, Jagiellonian University, Professor University of
Osnabrück, Osnabrück , Germany

--Tomasz Gizbert-Studnicki, prof. dr hab. Jagiellonian University, Managing Partner
Studnicki Płeszka Cwiakalski Górski

--Judge Wojciech Postulski, seconded to the Polish National School of the Judiciary and
Public Prosecution, Secretary-General-elect, European Judicial Training Network, Brussels

--Jan-Gero Alexander Hannemann, President, Federal Association of Student Advisors
Germany (BSRB)

--Tomasz Zielenkiewicz, LL.M. CUA 2011, PhD candidate Jagiellonian University,
Associate DFL Legal

Moderator: Leah Wortham, Professor of Law, The Catholic University of America, Director, CUA-JU LL.M Program in American Law and JU-CUA American Law Certificate Program

The background section above suggests that change in the legal services market will continue, and many of the legal jobs in the future will not be the same as those in the past. What does this suggest for legal education?

1. Specifically in Poland, liberalization in entry to the legal professions has put intense pressures on the apprenticeship training system, *e.g.*, Warsaw with more than 2700 current trainees. Some patrons act in “name only” and provide little actual mentoring. The professions have sought to upgrade their classroom components, but it is difficult for practicing lawyers to find the time to innovate in the courses. What alternatives might be desirable to provide professional training beyond the education in substantive law traditionally provided by the universities:

a. A government-sponsored lawyers’ academy akin to the Polish Judicial School model as was developed in France?

b. A professional training course for which law graduates (and perhaps other graduates in a “conversion course” program) would pay either culminating in a bar exam for entry to the profession or combined with some shortened apprenticeship, similar to UK and revamped Japanese models? Such a system would raise the question of accreditation or certification of entities to provide such a course and whether universities would be interested in offering.

c. Enhanced integration of professional training in university legal education for the *magister* degree?

d. the German system of educating lawyers within the court system through a centralized system with curriculum focused on judicial skills?

e. A career-long system of continuing legal education necessary for lawyers to maintain licensure and what entity should provide?

f. Other?

2. The previous question relates to where and by whom professional training for the legal professions, beyond that traditionally provided by the university, should be provided. This question asks whether there are things in which future lawyers are not now being trained (or trained effectively) for which they will need education for the legal professions and legal services markets of the future?

LEGAL SERVICES MARKET: Saturday, June 22, 2013 10:00-11:15

-- Paweł Pietkiewicz, Managing Partner White & Case.

-- Tomasz Wardyński, Founding Partner Wardyński & Partners

-- Marcin Krakowiak, Partner, Domański Zakrzewski Palinka

-- Justyna Balcarczyk, PhD, LL.M. CUA 2005, adjunct professor University of Wrocław, Fulbright Scholar, associate Studnicki Pleszka Ćwiakalski Górski

-- Daniel Zatorski, LL.M. CUA 2011, PhD candidate, University of Osnabrück

Moderator: Fryderyk Zoll

1. To what degree have Polish firms representing corporate clients observed the following trends reported with regard to effects on large U.S. and U.K. firms. What effects has this had on firms here?
 - a. Resistance to hourly billing, pressure for more fixed and predictable costs.
 - b. Pressure to decompose/unbundle portions of a legal matter and source to less expensive providers with less work for junior lawyers and paralegals within the law firm because of this trend.
 - c. Clients' desires for legal products that they can use themselves rather than having outside firms provide serial service on similar matters.

2. Should Poland liberalize with regard to options to raise capital for law firms through investment, *e.g.*, public offerings, private equity? When would this be desirable for firms?

3. With regard to questions raised about the legal profession and legal education, what do you think is most important to improve provision of legal services in Poland and the functioning of the market? (We know that some Saturday panelists will not be with us on Friday. We intend, by early Saturday morning, to email a summary of the main points made on Friday, and Fryderyk will give a short recap as moderator as well.)

LEGAL SERVICES MARKET INCLUDING ACCESS TO THE LEGAL SYSTEM: Saturday, June 22, 2013 11:45-13:00

-- Kamil Zawicki, Partner, KKG

--Anna-Maria Niżankowska-Horodecka, Phd, Partner, Niżankowska Szumielewicz—

Advocates

-- Natalie Renkoff, LL.M. CUA 2006, PhD candidate University of Bremen, legal consultant, Nat-Mine Legal Consultants, Namibia

-- Adrian Sienkiewicz, LL.M. CUA 2011, PhD candidate Koźmiński University, Associate, Merski Law Firm

Moderator: Leah Wortham

1. To what degree are legal services delivery mechanisms, that may be more easily accessible to individual and small business clients, developing in Poland, *e.g.*, services in retail outlets, banks, or other entities that people already visit, on-line legal services, self-help document services such as Legal Zoom? What Polish rules or conditions impede the development? What new developments would be desirable (or undesirable)?

2. Does the continental law system, by its nature, offer more opportunities than a common law system to provide access to law by means other than access to lawyers? Does information technology offer new possibilities that would be useful in Poland?

3. What mechanisms would help individuals and small businesses get access to legal help they may need? For example, eighty percent of Germans have a prepaid legal services plan. Do on-line dispute resolutions models offer a partial answer? The EU currently is currently focusing on standards for on-line dispute resolution systems. Will/can the private market develop other solutions as well? Are there things the legal professions or the government should be doing?

4. Are firm-wide management practices—whether required by a government, as in the UK or Australia, or through common corporate ownership and management of multiple outlets, *e.g.*, the Quality Solicitors being opened in WH Smith stores— more likely to deliver a consistent and adequate quality of legal services than the current system of individual lawyer responsibility?
5. As time permits, panelists also may comment on questions from the previous legal services market panel.