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Drawing the Line: Can Lawyers Invest in Their Client's Business Without Crossing an Ethical Line?

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DRAWING THE LINE: CAN LAWYERS INVEST IN THEIR CLIENT’S BUSINESS WITHOUT CROSSING AN ETHICAL LINE?

Ali Ghassemi*

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INTRODUCTION

If in 2008, you invested \$1,000 in Netflix stock, your investment would be worth just under \$52,000 in 2018.¹ That same investment in Google would net you almost \$3,000, Amazon \$12,000, and Apple \$6,000.² Now imagine if instead of investing with dollars, you invested with your services and time. Imagine you are an attorney meeting with Jeff Bezos in June of 1997, and instead of asking him to pay you the \$5,000 invoice, you asked him to give you the equivalent of that in stocks. If you had taken roughly 2,800 shares of Amazon stock in place of your fee, your

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¹ Shawn M. Carter, *If You Invested \$1,000 In Google 10 Years Ago, Here’s How Much You’d Have Now*, CNBC MAKE IT (Jan. 11, 2018, 9:54 AM), <https://www.cnbc.com/2018/01/11/if-you-put-1000-in-google-10-years-ago-heres-what-youd-have-now.html>.

² *Id.*

3,335 stocks today would be worth over \$5 million.³ Rather than using money to get a piece of the pie, what if you could barter your legal expertise and counsel for an ownership stake in companies that may one day be worth tens or even hundreds of billions of dollars? Are there legal, ethical, or even moral ramifications that you should be worried about? Should lawyers even be able to invest in their client's companies? Will they be able to effectively fulfill their roles as the client's counsel, while having a personal and financial stake in the client's business affairs? These are only a few of the questions that will be discussed throughout this comment. Throughout this paper, I will explore the gray area of lawyers investing in their client's businesses—specifically startup companies.

I will begin with a look inside the history of entrepreneurship and its rise and decline throughout various times in our country's history. I will then shift the focus towards the history of startup companies and today's modern trend in startups. After laying the foundation for startups, I will look into the complexities of creating a startup company, and at the role that attorneys play in the lifetime of startups. Then, I will dive into the history and trend of lawyers who invested in their clients' companies—through direct investment or bartering services for equity—and how the views on this practice changed over time. I will then summarize the comment by analyzing the modern trend in today's startup and legal market, and I will offer an opinion on the future of attorney's roles as both a startup's counsel and its potential investor.

Although this area is not entirely new—similarly to the world of startups—this gray area in the law continuously changes at a rapid rate. As more and more startups pop-up throughout the world, and as the access to legal information and knowledge grows, the two fields will continue to cross paths. It is the merger of fields, which leads me to believe, that as more attorneys come into contact with new startups—that look for business and legal advice—the more interested and tempted lawyers become to cross the boundary between counsel and partnership.

³ Amazon Stock History, GOOGLE STOCKS, <https://www.google.com/search?q=amazon+stock+history&oq=amazon+stock+history&aqs=chrome..69i57j0l5.2060j1j7&sourceid=chrome&ie=UTF-8> (search Amazon stocks, click on “max” in the timeline; divide \$5,000 by the value of Amazon stock on June 27th, 1997 [\$1.49] and multiply that number by the value of Amazon stock on January 10th, 2019 [\$1,656.22]).

I. HISTORY

A. *A Historical Look at Entrepreneurship in the U.S.*

Entrepreneurship is a term deeply embedded in the American culture. An early example traces back to 1607, when over 100 people boarded three ships by the Virginia Company—all of whom had the same goal—to find success in American plantations.⁴ As a joint-stock company, individuals had the opportunity to invest their money into the Virginia Company without the risk of losing all of their money if the company were to fail.⁵ Through investing in a joint-stock company, individuals who may otherwise not have the means or courage to invest in a risky venture were now entrepreneurs pooling their resources and owning small shares of a big company.⁶

The early investors of the Virginia Company were among the first people to chase what every immigrant is after when they come to the United States: the American Dream.⁷ Political and economic freedom; educational opportunities; and aspiring to improve one's life are the driving forces behind the American Dream.⁸ Being able to wake up in the morning and go to your job—the job at a company, store, or stand created by you—is a classic example of the American Dream.⁹

B. *Entrepreneurship Today versus Yesterday*

According to the Kauffman Index, the U.S. has seen a gradual increase in the number of new entrepreneurs between 2000 and 2016.¹⁰ The Kauffman Index also shows that in any given month during 2016, 310 out of every 100,000 adults in America became a new

⁴ John Steele Gordon, *Entrepreneurship in American History*, 43 IMPRIMIS 2, 1 (2014), <https://imprimis.hillsdale.edu/entrepreneurship-in-american-history/>.

⁵ *Id.*

⁶ *Id.*

⁷ Adam Barone, *American Dream*, INVESTOPEDIA FIN. DICTIONARY, <https://www.investopedia.com/terms/a/american-dream.asp> (last updated May 24, 2019) (The American Dream is the belief that anyone, regardless of where they were born or what class they were born into, can attain their own version of success in a society where upward mobility is possible for everyone).

⁸ *Id.*

⁹ *Id.*

¹⁰ THE KAUFFMAN INDICATORS OF ENTREPRENEURSHIP, *Rate of New Entrepreneurs*, <https://indicators.kauffman.org/indicator/rate-of-new-entrepreneurs> (last updated Feb. 15, 2019).

entrepreneur—an increase from 270 new entrepreneurs out of every 100,000 adults in 2000.¹¹ This increase in new entrepreneurs can be explained by a variety of factors.

For starters, going to school, graduating, and working for a company for most of your career is no longer the most common path young adults are following. A survey conducted by Ernst & Young and Economic Innovation Group in 2016 showed that over seventy-two percent of millennials viewed startups and entrepreneurship as essential tools in promoting innovation and jobs.¹² The same survey also showed that sixty-two percent of millennials considered creating their own startups.¹³ Compared to baby boomers, millennials today are also starting businesses at a younger age.¹⁴ Baby boomers, on average, started their first business at thirty-five, millennials are doing the same at twenty-seven.¹⁵

All of this leads to one question: why? Why are millennials so interested in starting their own businesses? Why are they, on average, starting their first businesses at a younger age than their baby boomer counterparts? For one, millennials are fortunate enough to have a much greater, and more immediate, access to technology and information than baby boomers did.¹⁶ For example, in 1990, less than one percent of U.S. households had access to the internet.¹⁷ That number increased in 2016, where over seventy percent of U.S. households had access to the internet.¹⁸ Internet access, however, is only the beginning. Getting on the internet today is much easier than it was not too long ago. Today, nearly everyone

¹¹ *Id.*

¹² Maria Hollenhorst *Millennials Want To Be Entrepreneurs, But A Tough Economy Stands In Their Way*, NAT'L PUB. RADIO (NPR) (Sept. 26, 2016, 1:57 PM), <https://www.npr.org/2016/09/26/495487260/millennials-want-to-be-entrepreneurs-but-a-tough-economy-stands-in-their-way>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Larry Alton, *Are Millennials More Or Less Likely To Start Their Own Businesses?*, FORBES (Feb. 15, 2017, 12:42 PM), <https://www.forbes.com/sites/larryalton/2017/02/15/are-millennials-more-or-less-likely-to-start-their-own-businesses/#75345f391301>.

¹⁷ Reuben Fischer-Baum, *What 'Tech World' Did You Grow Up In?*, THE WASHINGTON POST (Nov. 26, 2017), https://www.washingtonpost.com/graphics/2017/entertainment/tech-generations/?noredirect=on&utm_term=.e0bb3ddf8956.

¹⁸ *Id.* “Dial-up—which uses pre-existing telephone lines to connect to the Internet—was the primary internet technology throughout the 90s, until faster Broadband services began to take hold.” *Id.*

in the U.S. can simply turn on their phone, and within a few clicks, they are on the internet and can access a wide range of information. The number of people who own cell phones today has increased dramatically since the early 1990s.¹⁹ In 1990 only four percent of Americans had a cell phone, whereas in 2016 that number increased exponentially to over seventy-five percent.²⁰ That number jumped to ninety-five percent in 2018, meaning that nearly all Americans had access to the internet in the palm of their hand.²¹ According to the Pew Research Center, ninety-nine percent of those between the ages of eighteen and twenty-nine own some sort of cell phone, with ninety-six percent of them owning a smartphone and four percent owning a regular cell phone.²² Additionally, seventy-three percent of Americans in 2018 owned a laptop or desktop computer that could be used to access the internet.²³

With these statistics in mind, it is important to note what they mean. As the statistics stand today, any man or woman in America can pull out his or her cell phone, open his or her browser, and have access to an endless supply of information.²⁴ Interested in learning about how to become an Instagram influencer? You can read hundreds of blogs from those who did it before you. With the same ease, another user can find out how others before him or her have started a food truck by reading articles online. If someone wants to start a homemade candle business, he or she does not need to work in a factory to learn the ropes. Instead, that person can spend a day or two watching YouTube videos on candle-making and start his or her own business overnight. The above statistics most notably mean that young adults today do not need to spend five, ten, or even twenty years working in an industry before branching out on their own.²⁵ Today, with immediate and limitless access to technology and the internet, young adults can become young entrepreneurs with the very same devices, with which they make phone calls and take selfies.

Another factor that may contribute to millennials attitude towards working for themselves and starting their own businesses is their desire to be in control of their own work life. According to the 2018 Deloitte Millennial Survey, forty-three percent of millennials plan on leaving their jobs within two years, and among those, “62 percent regard the gig

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Mobile Fact Sheet*, PEW RES. CTR. (June 12, 2019),

<http://www.pewinternet.org/fact-sheet/mobile/>.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

economy as a viable alternative to full-time employment.²⁶ A constant factor among millennials between the ages of eighteen and thirty-five, is flexibility.²⁷ Among those surveyed, 30% of respondents between eighteen and twenty-five years old stated that having a proper work-life balance was important to them, only second to that of career advancement (32%).²⁸ Of those that were between twenty-five and thirty years old, thirty-four percent said that having a proper work-life balance was important, compared thirty-eight percent of those that were thirty to thirty-five years old.²⁹ Based on these statistics³⁰, it seems as though older millennials prefer to have a better work-life balance over better career opportunities, which coincides with their desire to start their own businesses.

The flexibility of the gig economy is incredibly attractive because it allows millennials to tap into their entrepreneurial spirit by working hours that fit their lifestyle.³¹ For example, a person who is passionate about writing, but is not interested in pursuing a journalism degree or working at a newspaper company, can use a website such as Upwork.³² Upwork is a website where individuals can work as a freelance writer, editor, or contributor.³³ Perhaps another person is incredibly talented at writing Swift code for Apple iOS apps, but he or she does not like the idea of working forty, fifty, or even sixty hours a week at a technology company. That individual can use sources such as Upwork to find freelance work where he or she can choose to work on the entire project, or simply on one phase of the project.³⁴ The entrepreneurial spirit here is in the flexibility that the gig economy affords to individuals. Individuals can be their own boss, set their own schedules, work on projects they feel

²⁶ Deloitte, *Deloitte finds millennials' confidence in business takes a sharp turn; they feel unprepared for Industry 4.0*, PR NEWSWIRE (May 15, 2018, 6:00 PM), <https://en.pnasia.com/releases/apac/deloitte-finds-millennials-confidence-in-business-takes-a-sharp-turn-they-feel-unprepared-for-industry-4-0-210863.shtml>.

²⁷ *Study: What Millennials Want*, COMPARABLY (Sep. 6, 2017), <https://www.comparably.com/blog/study-what-millennials-want/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² UPWORK, <https://www.upwork.com> (last visited Oct. 28, 2018).

³³ *Id.*

³⁴ *Id.*

passionate about, and their earning potential is completely up to the amount of effort they want to put in.

Another factor to consider is that there has been an increase in market opportunity in the last few years.³⁵ According to Kauffman Indicators of Entrepreneurship, 2016 saw a 6.68% increase from 2014 in the number of new entrepreneurs who started a new business as a result of new market opportunities.³⁶

New startups have also seen a higher probability of survival within their first five years of business since the early 2000's.³⁷ Whereas less than forty-three percent of new businesses survived their first five years in 2011, 48.73% of new businesses survived their first five years in 2014.³⁸ That number again increased in 2017, where fifty-one percent of small businesses were able to survive their first five years of business.³⁹

As discussed above, the spirit of entrepreneurship is still alive and well today in America. Thanks to the ease of access to and advancement of technology, more people today have the desire to start businesses than may have been in the past. As the economy grows, technology advances, and the rate of survival among new businesses continues to increase. It is likely that more and more new businesses will continue to pop up throughout the country. As new businesses grow in numbers, the role of attorneys within these new businesses will likely continue to become increasingly apparent.

³⁵ *Opportunity Share of New Entrepreneurs*, THE KAUFFMAN INDICATORS OF ENTREPRENEURSHIP, <https://indicators.kauffman.org/indicator/opportunity-share-of-new-entrepreneurs> (last visited Oct. 28, 2018).

³⁶ *Id.* In 2014, 79.57% of new entrepreneurs started a new business as a result of perceived market opportunities, that percentage jumped to 86.25% in 2016. *Id.*

³⁷ *Survival Rate*, KAUFFMAN INDICATORS OF ENTREPRENEURSHIP, <https://www.kauffman.org/kauffman-index/profile?loc=US&name=united-states&breakdowns=growth%7Coverall%2Cstartup-activity%7Coverall%2Cmain-street%7Coverall#indicator-panel-growth-index> (last visited Oct. 28, 2018).

³⁸ *Id.*

³⁹ Marsha Kelly, *Small Business Survival Rates On the Rise*, SMALLBIZDAILY (Apr. 6, 2018), <https://www.smallbizdaily.com/small-businesses-survival-rates-rise/>.

II. ANALYSIS

A. *Ethical Rules Regarding Lawyers & Clients**Working as Business Partners*

Earlier in this comment, I mentioned that the topic of attorneys investing in their clients' businesses and crossing the boundary of counsel-client into partners was a gray area. The reason I view it as such is that the argument for or against attorneys investing in their clients is an issue of ethics more so than it is an issue of legality. Can attorneys who are financially invested in their clients serve those clients to the best of their abilities without compromising their fiduciary and professional duties? Are attorneys who invested in their clients' businesses able to put their clients' needs before their personal needs? Can attorneys truly be objective and ethical towards their clients when they have interests in their clients' successes? These are the kinds of issues that various jurisdictions throughout the country have wrestled in the past, and their opinions were not always uniform.

The issue of attorneys' conflicts of interest is prevalent in situations where attorneys become their clients' partners.⁴⁰ An example of this can be found in an Arizona case, *In Re Pappas*.⁴¹ In this case, an attorney convinced a former client to invest in the attorney's car-rental business without first giving them adequate information that they needed to make an informed decision.⁴² Throughout the dealings, the attorney used shady methods to funnel the clients' money away from what they believed to be the car-rental business, and instead funneled the clients' money into other businesses that the attorney owned.⁴³ It was additionally discovered that the attorney in question took money that was supposed to be used for the car-rental business and used the money in transactions with other companies that he owned, essentially taking the clients' money and putting it back into his pocket through other businesses.⁴⁴ The attorney was also found using the client's money to pay for his own expenses, such as paying for condos that he owned.⁴⁵

⁴⁰ *In re Pappas*, 768 P.2d 1161 (Ariz. 1988).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 1169.

⁴⁴ *Id.*

⁴⁵ *Id.*

In *Pappas*, the attorney was at risk of being disbarred, and the committee overseeing his case found him in violation of the ABA's Model Code of Professional, specifically DR 5-105.⁴⁶ DR 5-105 states that an attorney may not accept or continue working with a client if the interests of one client may negatively affect the attorney's independent judgment.⁴⁷ Under DR 5-105, attorneys cannot continue to work with multiple clients if doing so will impair the attorneys' independent professional judgment to other clients.⁴⁸ In *Pappas*, the attorney was deemed to have violated this by allowing his employment with other investors and businesses to negatively impair his professional judgment and duties towards the plaintiffs.⁴⁹

DR 5-105 may be applied to hypothetical situations wherein an attorney may want to invest in a client's business but doing so may negatively affect their judgment.⁵⁰ For example, imagine if an attorney wants to invest in a client's company, but another one of her clients runs a business that would compete with the first client. Under DR 5-105, does the attorney have a duty to refuse to invest in the first client's business because the other client has a competing business? That answer would most likely depend on what kind of working relationship the attorney had with the second client.⁵¹ If the attorney provided services such as drafting employment contracts or assisting with drafting non-compete agreements for the second client, then perhaps not.⁵² If on the other hand, the attorney's relationship with the second client was that of an advisor in business decisions and strategies, then the attorney would almost certainly violate DR 5-105. It would be nearly impossible for the attorney to give the second client her independent opinion when the attorney would have a personal and financial stake in the first client's success against the second client.⁵³

Aside from conflicting interests, there may also be an issue of identifying the point in which an attorney's relationship changes from attorney-client to an attorney-partner relationship. This issue came up before, such as in the case of *In Re Dwight*. In *Dwight*, the attorney in question, who was also a certified public accountant, was hired as an

⁴⁶ *Id.* at 1170.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ ABA Model Code of Professional Responsibility, DR 5-105 (1983), [https://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM#5-105\(A\)](https://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM#5-105(A)).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

investment advisor by the client.⁵⁴ Rather than helping her invest her money, the attorney instead conducted multiple violations of ethics laws.⁵⁵ During the ten years the attorney served as an investment advisor, he did everything but fulfill his fiduciary duty as a professional financial advisor.⁵⁶ During the ten years the attorney served as an investment advisor, he did everything but fulfill his fiduciary duty as a professional financial advisor.⁵⁷ From failing to maintain proper accounting records of the client's funds and his investment of those funds, to placing various sums of her money into his own personal checking out, this attorney violated the most basic moral and ethical boundaries of the legal field.⁵⁸ One example of the attorney's violations includes using some of his client's money to purchase stock for another client in 1962.⁵⁹ The attorney also used some of his client's money to invest into various ventures in which he himself had direct economic interest, thereby clearly creating a conflict of interest.⁶⁰ These investments included motels, investment funds, and real estate.⁶¹ Aside from poorly investing his client's money, the attorney also failed to keep adequate records of her funds as well as his actions with the funds.⁶² When he was not mismanaging his client's money and investing the funds into his own business, the attorney would take portions of her money for his own personal use.⁶³ For example, he took a total of \$12,900 from her funds and never repaid them.⁶⁴ Furthermore, the attorney also cashed a \$10,000 check that was made payable to the client from a construction company and was unable to account for the money when confronted.⁶⁵ The attorney was also found to have sold shares of stock bought for his client at a loss and had decided to make a "loan" out to himself in the amount of \$6,500.⁶⁶

When the court sat down to determine whether they should disbar the attorney, it came up with a laundry list of ethical violations to use in

⁵⁴ *In re Dwight*, 573 P.2d 481, 482 (Ariz. 1977).

⁵⁵ *Id.* at 482–83.

⁵⁶ *Id.*

⁵⁷ *Id.* at 484.

⁵⁸ *Id.* at 482.

⁵⁹ *Id.* at 483.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 482.

⁶³ *Id.* at 483.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

its determination.⁶⁷ For his misrepresentations to the client, it found him in violation of DR 1-102(A)(4) and 9-102(B)(3) of the Model Code of Professional Responsibility.⁶⁸ DR 1-102(A)(4) states that a lawyer shall not engage in any conduct that involves dishonesty, fraud, deceit, or misrepresentation.⁶⁹ The attorney in *Dwight* was found to have engaged in dishonest, fraudulent, and deceitful conduct, as well as misrepresentation. 9-102(B)(3) requires lawyers to keep a complete set of records of all the funds, securities, and other properties that the lawyer possesses and requires the attorneys to create an appropriate account of those records in relation to the client's records.⁷⁰ In this case, the attorney violated DR 9-102(B)(3) by not keeping sufficient records of the client's funds nor investments.⁷¹

By commingling his and his client's finances, the attorney in *Dwight* also violated the Model Code of Professional Responsibility Canon 9 and DR 9-102(A).⁷² Canon 9 of the Model Code of Professional Responsibility advises lawyers to avoid even the *appearance* of professional impropriety.⁷³ The Model Code not only wants lawyers to avoid stepping outside of the ethical lines; it also wants lawyers to avoid even the appearance of stepping outside of the ethical lines.⁷⁴ This makes sense as the legal field is one which there are both opportunities to build a client's trust and to take advantage of a client's trust. By stating that a lawyer should avoid even the appearance of professional misconduct, this indicates that the Model Code is trying to proactively prevent attorneys from making any decisions that may even look dishonest, let alone are dishonest.

Under DR 9-102(A), an attorney is required to place all payments from clients—other than advances for costs and expenses—into one or more identifiable bank accounts that are maintained within the state in which the law office is located.⁷⁵ Further, the bank accounts are barred from having any funds that belong to the lawyer or law firm.⁷⁶ The

⁶⁷ *Id.*

⁶⁸ *Id.* at 482.

⁶⁹ MODEL CODE OF PROF'L RESPONSIBILITY DR 1-102(A)(4) (Am. Bar Ass'n 1980).

⁷⁰ MODEL CODE OF PROF'L RESPONSIBILITY DR 9-102(B)(3) (Am. Bar Ass'n 1980).

⁷¹ *In re Dwight*, 573 P.2d at 482.

⁷² *Id.*

⁷³ Model Code of Prof'l Responsibility Canon 9 (Am. Bar Ass'n 1980).

⁷⁴ *Id.*

⁷⁵ Model Code of Prof'l Responsibility DR 9-102(A) (Am. Bar Ass'n 1980).

⁷⁶ *Id.*

exceptions to the latter part of the rule are: (1) funds that are reasonably sufficient to pay bank charges; and (2) funds that partially belong to both the attorney and the client.⁷⁷ But if there is a dispute by the client regarding those funds, then the funds may not be withdrawn until the dispute is settled.⁷⁸ As stated above, the attorney in question violated the DR 9-102(A) by commingling his client's funds with that of his own.⁷⁹

The attorney in *Dwight* also violated DR 1-102(A)(6), which prohibits an attorney from engaging in *any* conduct that adversely reflects his fitness to practice law, when he began using various sums of the client's funds for his own use.⁸⁰ Further, using his client's funds for his own ventures also violated DR 5-104(A), which specifically prohibits an attorney from engaging in business transactions with his client if they have differing interests and if the client expects the lawyer to exercise his professional judgment for the client's protection.⁸¹ Yet, this is all excused if the client has consent after full disclosure.⁸² Here, there is no doubt that the attorney was expected to use his professional judgment for the protection of the client, and he did everything except protect the client.

Issues such as those found in *Dwight* are why some may feel as though an attorney should never cross the boundary of a trusted advisor and legal expert into the realm of a partner and investor. An attorney is expected to be the client's first and ultimate line of defense and counsel. He is expected to be able to give sound, objective, and protective advice to the client. A client may not always ask for legal advice, and in many situations, he may come to an attorney as an advisor on key business decisions, such as how to toe the ethical and legal lines of competition and pricing. In a situation where someone is entrusting him with such valuable and vulnerable information, it is no surprise that an attorney may feel tempted to take advantage of the situation for his own benefit. This temptation, however, does not always need to be cynical and selfish in nature. An attorney may see a client with an incredible idea that he believes will be highly successful in the future, and the attorney may want to seize that opportunity to invest in the client's company. As an investor, the

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *In re Dwight*, 573 P.2d at 482.

⁸⁰ *Id.* at 483; *see also* Model Code of Prof'l Responsibility DR 1-102(A)(6) (Am. Bar Ass'n 1980).

⁸¹ *Id.*; *see also* Model Code of Prof'l Responsibility DR 5-104(A) (Am. Bar Ass'n 1980).

⁸² Model Code of Prof'l Responsibility DR 5-104(A) (Am. Bar Ass'n 1980).

attorney undoubtedly has a personal interest in the client's company, but that does not necessarily mean that the attorney is now incapable of fulfilling his fiduciary duty. The attorney in that situation can make clear and full disclosures to the client about his personal interest in the company, as well as do everything in his power to stay in line with his fiduciary duty of being objective and trustworthy towards the client.

When analyzing a scenario where it is unclear whether the attorney went from counselor to investor or partner, some courts relied on the client's belief rather than the attorney's belief. An example of this approach is found in the Supreme Court of Arizona case, *In re Neville*.⁸³ In *Neville*, there were a series of complex real estate transactions wherein the attorney held some financial interest in the client's properties.⁸⁴ When a third party offered to buy one of the properties in which the client and attorney both held an interest, the attorney disclosed his inability to represent either party in the transaction due to ethical concerns.⁸⁵ The client denied the attorney's claim of disclosure and stated that he believed that the attorney acted as his counsel throughout the transaction.⁸⁶ One of the properties was later sold to another third party in which the attorney received at least \$42,000 and the client received nothing.⁸⁷

In examining whether the client was truly a client of the attorney's rather than of a partner, the court stated that DR 5-104 was applicable, so long as the influence from an attorney-client relationship continued beyond the completion of a particular matter.⁸⁸ The court also reasoned that clients expect a level of fairness and confidentiality from their attorneys and expect their attorneys to protect them and their interests.⁸⁹ Although DR 5-104(A) may be read narrowly as applying to situations in which the lawyer is playing the role of counsel in the same transaction in which his interests are adverse to that of the clients, the court here found the rule to apply to a case in which the attorney was not formally in an attorney-client relationship with the opposing party; however, there was a fair expectation by the other party that an ordinary person might have viewed the attorney as a protector rather than an opponent. This expectation might have been rooted in previous transactions and dealings with that attorney.⁹⁰ Based on DR 5-104(A) alone however, the court did not find the attorney to be in violation of that specific ethical code.

⁸³ 708 P.2d 1297 (Ariz. 1985).

⁸⁴ *Id.* at 1299.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 110.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 111.

The court then turned its focus on the client's expectation of the attorney's use of professional judgment in order to protect the client.⁹¹ The court found that based on the client's and attorney's history of dealings with one another, the client was rightfully under the impression that the attorney would exercise professional judgment to best protect the client, even if the client knew the lawyer did not represent them in that particular transaction.⁹² Even further, this expectation would still be reasonable even if the client knew that the attorney previously organized documents for both parties to a transaction.⁹³

Regarding the alleged disclosure by the attorney to the client, the court determined that requiring full disclosure went far beyond merely telling a client that an attorney is no longer representing them in a particular transaction.⁹⁴ The court stated that full disclosure required not only a proper disclosure of non-representation, but also a disclosure of every single circumstance and fact in which the client should know to make an intelligent decision in entering an agreement.⁹⁵ Attorneys must disclose not only all of the interest that exists between them and the client, but also an explanation regarding the client's need to seek independent legal advice and a detailed explanation of the various risks and disadvantages that may exist to the client from their agreement.⁹⁶ These are the kinds of steps that the court believed would satisfy the consent and full disclosure of the DR 5-104(A).⁹⁷

The attorney, in this case, defended his position by stating that although the terms of the agreement were disadvantageous to the client, the client set the terms of the agreement, and the attorney should not be punished merely for going along with the agreement.⁹⁸ The court disagreed with this logic by pointing out that although the client may have set the terms, in fact, the attorney drafted the actual agreement for the client; the client whom the attorney remained obligated to protect and treat fairly.⁹⁹ The court stated the client did not have a duty to be aware of all the inherent dangers in the deal he or she created because the attorney held a

⁹¹ *Id.* at 1303.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 1304.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 1305.

⁹⁹ *Id.*

fiduciary duty to not take advantage of the client's position until the attorney made a full and consented disclosure.¹⁰⁰

The court in *Neville* ultimately found the attorney violated the ethical rules in question but did not find it necessary to suspend the attorney for ninety days as the board recommended.¹⁰¹ Weighing all the relevant facts and factors, the court found that the attorney had not acted in bad faith, did not intend to harm the client, and maintained a clean record up to this point; because of these facts, the court held the attorney should instead be placed on a short suspension by censure.¹⁰²

The above cases serve to highlight the various ethical lines that have been drawn by different courts. As these lines have been tiptoed around, and at times crossed, courts have taken various approaches towards what they believe the rules truly mean and how the courts apply the rules. Although different courts can view the rules differently, the same general foundation lays the same between each jurisdiction. Attorneys in all of these cases were expected to conduct themselves on a very high level of professionalism that required full transparency and disclosures, even beyond what a regular client might expect. Although a layperson may view full disclosure as simply indicating that you cannot represent them as an attorney in a case, courts have made it clear that attorneys must go above and beyond that expectation and disclose deeper layers of transparency, such as disclosing all disadvantages that a client may face in his or her transaction with the attorney and all of the gains that the attorney stands to make in the transaction.¹⁰³

With a foundation of expected ethics established, the focus should shift towards the different methods in which an attorney can enter into a business transaction with a client when ethics are not at issue.

B. *Methods of Entering Business Transactions with Clients*

Taking equity in a client's business can fall into two categories: (1) exchanging legal services for equity interest in a client's company; or (2) simply paying for equity in the client's company while maintaining the attorney—client relationship.¹⁰⁴ Additionally, law firms also have the option of foregoing legal fees in exchange for equity, as well as accepting

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 1306.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ John S. Dzienkowski & Robert J. Peroni, *The Decline in Lawyer Independence: Lawyer Equity Investments in Clients*, 81 TEX. L. REV. 405, 417 (2002).

less than their regular rate for legal services and making up the difference in pay by accepting a specific share of equity as part of their compensation package.¹⁰⁵ Some firms took this route and allowed their startup clients to defer payment of their legal fees for months at a time in exchange for equity.¹⁰⁶ Further support for attorneys investing in their clients are found based on the argument that attorneys who have a vested interest in the success of their client's business are more likely to fulfill their fiduciary duty to the client; this is of course, assuming that this fiduciary duty is not fulfilled at the expense of other clients that the attorneys may represent.¹⁰⁷ By allowing their clients to pay a smaller fee, those attorneys who are willing to forego part of their legal fees in exchange for equity may also be giving clients who otherwise may not be able to afford legal expertise the opportunity to gain access to the legal advice that is necessary to the advice of any new business venture.¹⁰⁸ This sort of arrangement will undoubtedly be beneficial to both parties; the attorneys are able to gain an ownership stake in a company that may eventually pay them much more than a flat fee while also getting at least a small sum of money up front, and the clients benefit by gaining access to the legal advice that will help make their success more likely.

By having a personal interest in the client's business, an attorney is also more likely to go above and beyond giving legal advice and additionally give the client useful business advice. This can be highly advantageous to a startup company where a client may not be business or legal savvy, but having access to a lawyer—and an experienced one at that—will help the client navigate his or her way through various legal and business complexities.¹⁰⁹ Another advantage of lawyers having the freedom to create custom-tailored billing plans for their clients with the option of becoming their investor is that the lawyers and their firms can become more competitive in their market by letting other startups know that they too can benefit from paying lower—or in some cases zero—lawyer fees in exchange for equity.¹¹⁰ In a market that is already incredibly competitive, especially in areas that are highly saturated such as Los Angeles or New York, this type of competitive edge may greatly benefit attorneys; especially those that are new and trying to establish a healthy client list filled with new and repeat business.

¹⁰⁵ *Id.* at 417.

¹⁰⁶ *Id.* at 417–18.

¹⁰⁷ *Id.* at 431–32.

¹⁰⁸ *Id.* at 433.

¹⁰⁹ *Id.* at 434.

¹¹⁰ *Id.* at 436.

Aside from the monetary gains, by investing in their client's companies, lawyers are able to gain an advantageous position that may not have otherwise been achievable. For example, if a lawyer has been interested in owning a tech company that produces a certain microchip for phones, and he or she does not have the required skills or knowledge to do it on his own, but has a client who does and is starting his own microchip company, then the lawyer may be able to invest in—or become a partner in—the microchip company with the client by trading legal services for equity. This way, the owner of the startup gains the help of counsel and a very advantageous legal resource, and the lawyer can partake in the business, in which he or she may otherwise not have been able to partake. Although his or her success is not guaranteed, the lawyer is now more likely to succeed because at the very least, he or she now is working with someone that likely has the skills or knowledge that the attorney lacked.¹¹¹

C. Should Attorneys Not be Allowed to Invest in Clients?

As is often in life, there are always two sides to a story, and the topic at hand is no exception. For every stance that is taken in support of attorneys investing in their clients' business, there may be an equally well-founded reason in opposition. The most striking reason may ultimately lie in the conflict-of-interest argument, which is best analyzed under the scope of rule 1.7 of the Model Rules of Professional Conduct.¹¹² Rule 1.7 is broken down into two parts: 1.7(A) and 1.7(B).¹¹³ Subsection 1.7(A) states that a concurrent conflict of interest exists when a lawyer's representation of one client adversely affects the representation of another client, or where there is a significant risk of a lawyer's ability to represent their client being limited as a result of their responsibility towards another client, a former client, a third person, or by the lawyer's own personal interest.¹¹⁴ Subsection 1.7(B) states that barring the existence of a conflict of interest, a lawyer may represent their client if: 1) he reasonably believes he will be able to provide competent and diligent representation to each of his effected clients, 2) his representation is not prohibited by any laws, 3) his representation does not involve an assertion of a claim by one of his clients against another of his clients who are both represented by the same

¹¹¹ *Id.* at 438.

¹¹² MODEL RULES OF PROF'L CONDUCT r. 1.7 (Am. Bar Ass'n, 2018).

¹¹³ *Id.*

¹¹⁴ *Id.*

lawyer in the same litigation or other proceeding before a tribunal, and 4) each of the affected clients give written consent.¹¹⁵

The eggshells on which lawyers today must walk are found in the latter part of 1.7(A)(2): the existence of a conflict of interest as a result of their equity stake in their client's business.¹¹⁶ Can attorneys represent their client to the best of their abilities when they have something to gain or lose by their client's success and failures? What happens when a client comes to his attorney for legal advice and the attorney's feedback affects the profitability of the business in which he own a percentage? Can, and should, attorneys be trusted to put aside their human instinct for self-interest and greed—however big or small that innate greediness may be—and be the best and most honest attorneys for their clients when they themselves have something to gain or lose? That is the grey area that exists today, and opponents of the topic will likely say no.

This topic was discussed in incredible detail in an article written by John Dzienkowski and Robert Peroni titled "The Decline in Lawyer Independence: Lawyer Equity Investments in Clients," wherein the authors made several points in opposition of lawyers investing in their clients.¹¹⁷ One concern focused on issues arising out of disclosure requirements under state or federal securities laws.¹¹⁸ The authors argued that if there is interest in a client's business, then attorneys may downplay adverse items in relation to public offering documents that deserve to be more fully disclosed in order to further their own financial interests.¹¹⁹

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ John S. Dzienkowski & Robert Joseph Peroni, *The Decline in Lawyer Independence: Lawyer Equity Investments in Clients*, 81 TEX. L. REV. 407, 407–549 (2002–2003) (This article is incredibly informative and relevant to the topic of this comment. Although my position on the topic forces me to disagree with nearly every stance that the authors take in their analysis of the subject, I believe that the time invested in reading this article will be very worthwhile as it is important to always look at a major issue from the lenses of the proponents and opponents. The article is additionally helpful to read as it was written nearly seventeen years ago, and thus it allows the reader of that article to see how entrepreneurship and investments were viewed back then as opposed to how they are viewed today. I wholeheartedly believe that entrepreneurship ten, fifteen, or even twenty years ago, was viewed with a more skeptical view than it is viewed today, and the evolution of the view will inevitably affect the views that people had regarding attorneys investing in entrepreneurs who happened to be their clients.)

¹¹⁸ *Id.* at 523.

¹¹⁹ *Id.*

While this is a valid argument to be made, it is seemingly based more on a possibility than a certainty. Attorneys may very well downplay those adverse items in a fit of self-interest and greed, and if they do, they deserve to face the consequences that may arise. On the other side of the coin, however, lies the possibility of the attorney upholding their oath of professional conduct and disclosing all of the necessary information that would be in their client's interest.

A second concern brought up by the authors revolved around dishonest investors and the possible repercussions against their attorneys.¹²⁰ In their hypothetical scenario, the authors asked what could be done if an attorney discovers that the clients whom they represented and partnered with fraudulently misled all of their investors and the attorney as well.¹²¹ The authors listed two possible outcomes: either the attorneys violate various ethical and securities laws by keeping the fraudulent activity a secret until they sold their shares, or they cease representation of the client and lead a lawsuit against them, thus causing a "shifting" conflict-of-interest problem.¹²² The authors argue that an attorney with an equity stake in a client in this situation would seldom be able to give independent and competent legal advice without a conflict of interest; I respectfully disagree.¹²³ Attorneys, as the authors describe, risk defending against a client's malpractice or negligence claims, and an equity stake in that client's business may be an essential tool in proving and awarding higher damages.¹²⁴ Also, a client may be tempted to recover its attorney's equity stake in that client's business by claiming that the attorney violated Rule 1.8(a) of the Model Rules of Professional Conduct.¹²⁵ This claim, the authors assert, could prove troublesome as the attorney would have to prove that the fees the attorney forwent in exchange for a specific equity stake was reasonable; for example, an attorney whose fees would normally equate to \$1,000 having received \$10,000 worth of equity in a client's company may have difficulty proving the exchange was reasonable.¹²⁶ This theory, however, assumes two things: (1) that the fee was beyond what was "standard," and (2) that the client did not realize the situation the client was taking part in when it exchanged fees for equity. To understand this analysis, it is important to

¹²⁰ *Id.* at 525.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*; see also MODEL RULES OF PROF'L CONDUCT r. 1.8 (AM. BAR ASS'N 2018) (stating that a lawyer shall not knowingly acquire an equity stake that is unfair, unreasonable, and adverse to a client).

¹²⁶ John S. Dzienkowski, *supra* note 117, at 525.

first take a step back and look at Rule 1.8(a) as it relates here. Rule 1.8(a) states that an attorney may only enter into a business transaction with a client, or knowingly acquire ownership, possessory, security, or other pecuniary interests adverse to a client, if three elements are met: (1) the transaction and terms the attorney acquires are fair and reasonable to the client, and have been fully disclosed in writing and reasonably understood by the client, (2) the client is advised, in writing, and given a reasonable opportunity to seek the counsel of an independent attorney regarding the transaction, and (3) the client gives informed, written, and signed consent relating to the essential terms of the transaction and the attorney's role in said transaction.¹²⁷ In the hypothetical situation above, what is "standard" in terms of fees is a subjective issue that varies based on several factors, like geographic location, level of experience and skill by the attorney and what a comparable attorney charges for said services, and the value of the specific work for which the fees were forgone in exchange for equity in a comparable situation.¹²⁸ Additionally, the client would have to prove that the attorney violated at least one of the three Rule 1.8(a) elements for the client's argument to hold.¹²⁹ If the terms and transaction were fair to the client, and an independent counselor affirmed the fairness of the transaction, and the client gave their written consent, then this argument would fall apart.¹³⁰ The authors' hypothetical again is one-sided; although an attorney in such a situation *may* have charged more than a "standard" fee, or the attorney *may* have violated one of the three Rule 1.8(a) elements, they are just as likely to have not done either.

The authors also paid particular attention to the possibility of attorneys exposing themselves to liability arising out of a breach of fiduciary duty based on a conflict of interest existing between a business the attorney invested in and another one of their clients.¹³¹ Their concern was that, if a law firm invests into a client's business and that client happens to be a competitor of another client the attorney represents, then the attorney's financial interest in the first client's business may result in a lack of the attorney's fiduciary duty and disfavorment towards the competing client.¹³² By having their financial interest directly tied into one client's business success in *addition* to their interest in the client's legal

¹²⁷ MODEL RULES OF PROF'L CONDUCT r. 1.8 (Am. Bar Ass'n 2018).

¹²⁸ *Id.*

¹²⁹ Dzienkowski & Peroni, *supra* note 117, at 512.

¹³⁰ MODEL RULES OF PROF'L CONDUCT r. 1.8(a) (Am. Bar. Ass'n 2018).

¹³¹ Dzienkowski & Peroni, *supra* note 117, at 539.

¹³² *Id.*

well-being, attorneys may inevitably be setting themselves up for liability by risking being unable to fulfill their professional duty to another client.¹³³ This argument certainly holds merit, as attorneys may, even subconsciously, fail treating a client as fairly as they normally would because that client competes with another client in whom they have a financial interest. An attorney who represents both Ferrari and Lamborghini, but has a major financial stake in Ferrari, may be tempted to give Ferrari more “favorable” treatment—whether that treatment is rooted in legal or business advice—than they would Lamborghini. If so, then they would, in fact, be in direct violation of their fiduciary duties as trust counsel and should face the subsequent repercussions.¹³⁴ As with the previous arguments, however, this is entirely rooted in possibilities. The same attorney could avoid malpractice and negligence liability if he or she is consciously aware of the optics of his or her situation and use that awareness to make careful decisions to not favor one competing client over another. The cost of being overly cautious in this situation is nominal in comparison to not investing in a client simply because there *may* be an issue of unprofessional favoritism.

On a more specific note, the authors later addressed the problems that securities lawyers may face in these circumstances.¹³⁵ The authors rightfully pointed at a security lawyer’s job and the occasional difficult talk one must have with his clients involving a law that may prove difficult for the client to get around, or a disclosure that may cost the client money.¹³⁶ This difficulty, the authors argued, would be made substantially more difficult if attorneys, too, had something to lose by their client’s hardship.¹³⁷ Perhaps the lawyer may be tempted to downplay the negative disclosures, or perhaps may be tempted to suggest a course of action that may not be in the client’s best legal interest but may be in his best financial interest, which inadvertently would be in the attorney’s best interest.¹³⁸

Because the role of a security attorney is rooted in navigating various legal grey areas, his moral and professional compass may be further fogged by his own economic interest in the client’s business.¹³⁹ With an area of law that already involves walking a thin line, do we want to have attorneys shouldering the additional weight of temptations as it relates to choosing to make a less-than-full disclosure to their clients in an effort to secure their own financial interest? An argument may be made

¹³³ *Id.*

¹³⁴ Dzienkowski & Peroni, *supra* note 117, at 455–56.

¹³⁵ *Id.* at 542.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 542–43.

for both sides. On the one hand, where a thin line is walked, perhaps it is best to mitigate the temptation to walk the wrong side of that line. On the other hand, however, there is the reality that those who walk the lines are fully competent adults who are assumed to be of fit moral and ethical character; after all, that is the point of having a fitness and character test for those sitting on the state bar. If we do not trust our attorneys to forego their temptations and perform their jobs as they are expected to, then why do we trust them in the first place? What is the point of going through years of schooling and studying, making sure we mitigate the chances of any kind of social and moral violation in order to be the upstanding citizens that we are required to be to pass the bar, if in the end we are not trusted? I believe, as I have continued to believe throughout this comment, that those attorneys whom the opponents of this topic focus are the same attorneys that would violate various other ethical and legal rules. If it is not this violation, then it may very well be another. I thoroughly believe however, that there are enough competent and ethical attorneys that can be trusted to be as good of a business partner for their clients as they can be counselors.

CONCLUSION

The concept of entrepreneurship is something that is long embedded into the DNA of our country and culture. It is something that many Americans, and immigrants, who come here, strive to achieve. Entrepreneurship is the vehicle by which many of the greatest things we interact with every day are created. Whether it be a kid from the streets of Brooklyn going on to create the world's most iconic coffee chain, a man in his early sixties creating arguably the most famous fried chicken fast-food restaurant, or a group of Stanford graduates introducing a platform for users to show off their artistic photos which would later revolutionize advertising and the way our society views fame, entrepreneurship was behind it. What is more incredible is the fact that entrepreneurship today is much more accessible to anyone that has a phone with a data plan. The path to entrepreneurship is no longer necessarily a rough one; those who want to embark on the journey can begin by creating websites and social media profiles practically for free to kickstart their careers. With organizations such as Ycombinator or Kickstarter, entrepreneurs can connect with the right people and tools to take their business ideas to the next level in ways that may not have been possible ten, twenty, or thirty years ago. If working space is an issue, then entrepreneurs can rent tables and conference rooms for very little money from companies such as WeWork or simply work at one of the tens of thousands of coffee shops

or public spaces around the country that have access to the internet. With entrepreneurship rooted deeply in our country's culture and the rapid increase in access to the technology and tools that allow new and current entrepreneurs to thrive, there is no reason why honest, competent, and moral attorneys should be prevented from investing into the businesses of their clients who embark on their own entrepreneurial journeys.

The topic of this comment is based on a debate that can go around and around far longer than a merry-go-round at a state fair. On the one hand, there are those that can, and do, make valid points of opposition rooted in possibilities of misconduct and wrongdoing.¹⁴⁰ On the other hand, there are proponents—such as myself—of attorneys having the ability to invest in their client's businesses for any variety of reasons; whether that may be foregoing fees, exchanging a certain number of hours for a certain amount of equity, or any other reason. I do admit that there will always be a possibility that attorneys who invested in their client's business may overstep their moral and ethical boundaries and perhaps violate the professional oath that they have taken. That same attorney may use this situation to enhance his or her financial position by perhaps acquiring more equity for services than he or she normally received had he or she simply paid by inflating the cost of the foregone fees. The attorney may also choose to withhold or downplay various disclosures or give less than sound legal advice in order to protect his or her financial interest in a client's company. Attorneys may go so far as sacrificing the legal well-being of one client through their conduct towards another client with whom they are partners with and have an interest in that client's business.

On the other hand, attorneys could forego a fair amount of fees that were normally charged in exchange for a fair amount of equity in a client's business.¹⁴¹ The attorney may make the conscious decision to put forth best effort to maintain a level of transparency regarding business and personal interests with a client in whom the attorney invested in order to uphold fiduciary and moral duties.¹⁴² Attorneys who were capable of breaking the rules may be the same one that puts forth a conscious and ardent effort in upholding moral duties as a trusted counselor to a client, regardless of the financial interest the attorney may have.

To say that no lawyer should be allowed to invest in a client's business because there is a possibility of misconduct by a number of morally deficient attorneys is incredibly unfair to those attorneys who are honest and ethical. This strict restriction based on a fear rooted in

¹⁴⁰ See Dzienkowski, *supra* note 117, at 539.

¹⁴¹ Dzienkowski & Peroni, *supra* note 104, at 416–17.

¹⁴² *Id.* at 431–32.

possibilities are as unfair as saying that no person should be allowed to drive at night because of the possibility that some people may not drive as well as they could during the day. Times have changed and the opportunities that are available today changed with them. Nearly anyone can become an entrepreneur today, and with that reality comes the reality that many more people today need business advice on their new ventures than years past.¹⁴³ Many of these new entrepreneurs may not be in a position to pay hundreds—if not thousands—of dollars in legal fees in order to get basic legal advice such as how to incorporate their companies, form contracts, and other legal services.¹⁴⁴ Some of these people may be more than willing to trade a percentage of equity in their businesses in exchange for invaluable legal advice that could save them hundreds, thousands, or millions of dollars.¹⁴⁵ Those same people may not have otherwise gotten access to this kind of legal advice.¹⁴⁶ At the same time, these attorneys may not have otherwise known about these new ventures in which they could invest early on.¹⁴⁷ Many attorneys are more than willing to forego some legal fees in order to get a percentage in the next Google, Facebook, or Instagram.¹⁴⁸ Those attorneys are not necessarily greedy, evil, or immoral attorneys; they may very well be the most upstanding and ethical attorneys in their field.

Attorneys are always going to be held to an incredibly high standard. There is a reason why law school is known as one of the most grueling graduate programs in the country. Whether it is the challenge of simply getting in to school due to the difficulty of the LSAT, rigorous classes, or sitting for the fear-inducing state bar exam, attorneys are taught from the very beginning that they are expected to act according to a higher standard of ethics and professionalism than is expected of the average person. Quite frankly, anyone that can successfully juggle the workload that comes with being a law student, complete law school, and then survive the state bar examination is more than capable of conduct in accordance with that expected of a moral and ethical professional. It is for these reasons, and many more, that attorneys should be allowed to invest in their clients' businesses so long as they are able to uphold their fiduciary duties as legal counsel.

¹⁴³ See Alton, *supra* note 16.

¹⁴⁴ Dzienkowski & Peroni, *supra* note 104, at 430.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 434.

¹⁴⁸ *Id.* at 433.