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Probate Roundtable – a sample scenario from the twisted mind of Charlie Robinson

Scenario Upper right quadrant No UPL and full MJF

October 25th, 2017 and a law graduate in Winter Park Florida has just completed the national bar examination administered on-line during the 30 day time period in which each graduate must take the exam. The examination has tested for competency in client interviewing, mediation, and practice management as well as other legal skills.

The examinees knowledge of substantive law based on the database of state laws that appear on the national exam is measured as “acceptable.”

She completes the 2-day exam, and is notified that she has passed upon finishing the exam.

A message appears on her computer stating

“Welcome to the practice of law. You are eligible to practice anywhere. In order to practice in any state, you must present your uniform national number and required credentials, including proof that you have adequate malpractice coverage. You must use your National ID number for all communications sent in your role as lawyer. In any

multidisciplinary practice setting, you must inform your customer in advance in writing that you are part of a multidisciplinary service delivery team and that the customer should assume that what is left of attorney-client privilege will not protect these communications.

Following the MJP Report approved by the ABA House of Delegates in the summer of 2002, the regulation of lawyers has changed substantially. In 2004 the US Supreme Court decided that state bar licensing exclusivity was unconstitutional as a violation of the commerce clause of the US Constitution. The court also decided that the GATS agreement required full international reciprocity for all lawyers in all nations who executed the agreement. UPL statutes were declared unconstitutional and the world was freed forever from efforts to define law practice.

The National Commission on Uniform State Laws was pressed into emergency service to present a 2-year study on differences in state statutes affecting commerce. As a result the legislatures of all states reluctantly passed legislation to follow the recommendations for uniform state laws.

The United Supreme Court's decision took Florida by surprise. First statute to go was Section 733.304 disqualifying nonresident nonrelatives from serving as personal representative, followed by the adoption in full of the Uniform Probate Code and the Uniform Principal and Income Act.

Since state law was now subsumed by uniform laws, the various Florida RPPTL committees focused on serving the death and dirt lawyer as a trade association searching for more and more ways to keep transactional lawyers relevant to

the needs of the public for planning and transactional services.

The Florida Supreme Court mandated the Florida Bar RPPTL Section (as a public service) to draft the pro se rules of Probate and Guardianship Procedure. Now contested probate and trust administration matters make up the majority of the cases handled by attorneys exclusively.

Multidisciplinary trust and estate planning and administration “clinics” started soon after the MJP/UPL Supreme Court decision. These clinics are made up of fiduciary specialist lawyers, accountants, and investment companies utilizing state of the art technology. Most are aimed at high net worth customers but the coordinated efforts of these sophisticated multidisciplinary entities make quality services available from concept to final distribution.

The trend for national licensure in the legal profession is based on the medical profession model. Once that model was in place there was no longer a need for mandatory state bars and all state bars are now voluntary. State bars compete with outside Continuing Education providers, handle lawyer discipline as assigned by the National Director of Bar Admissions, and lobby with the other trade associations on a state, national, and international level.

With UPL removed as an issue for MJL and MDP concerns, the market changed rapidly for trust and estate services.

Congressional legislation established the National Board of Bar Examiners.

The screen alerted the new lawyer to additional information.

“We know that most of you will practice as new lawyers at or near your homes since the idea of “brick and mortar” presence of national law firms became obsolete.

Many of you will practice web-based law giving advice to clients you have neither met nor seen. Others of you will most certainly work from local cost center areas in a national practice with calls routed from a central messaging center. It is important that you become aware of the ABA’s national state law database that you are required to use as you practice law.”

The most common firm configuration is now “virtual.” The “virtual firm” assembles multidisciplinary teams with appropriate expertise for each matter. When the matter is concluded, the virtual firm dissolves.

To facilitate the building of your professional relationships, several virtual Inns of Court that will provide opportunities for you to meet virtual colleagues will soon contact you.

The American Bar Association leadership is pleased to note that membership has finally reached one million members, most of whom are lawyers.