LFM

LAW FIRM MAR[illegible]INE

Andrew Finkelstein

Managing Partner of Jacoby & Meyers Law Offices

JACOBY & MEYERS LAW OFFICES

wireLawyer

interview with CEO, Matthew Tollin

Curation Corner

with Cindy Speaker

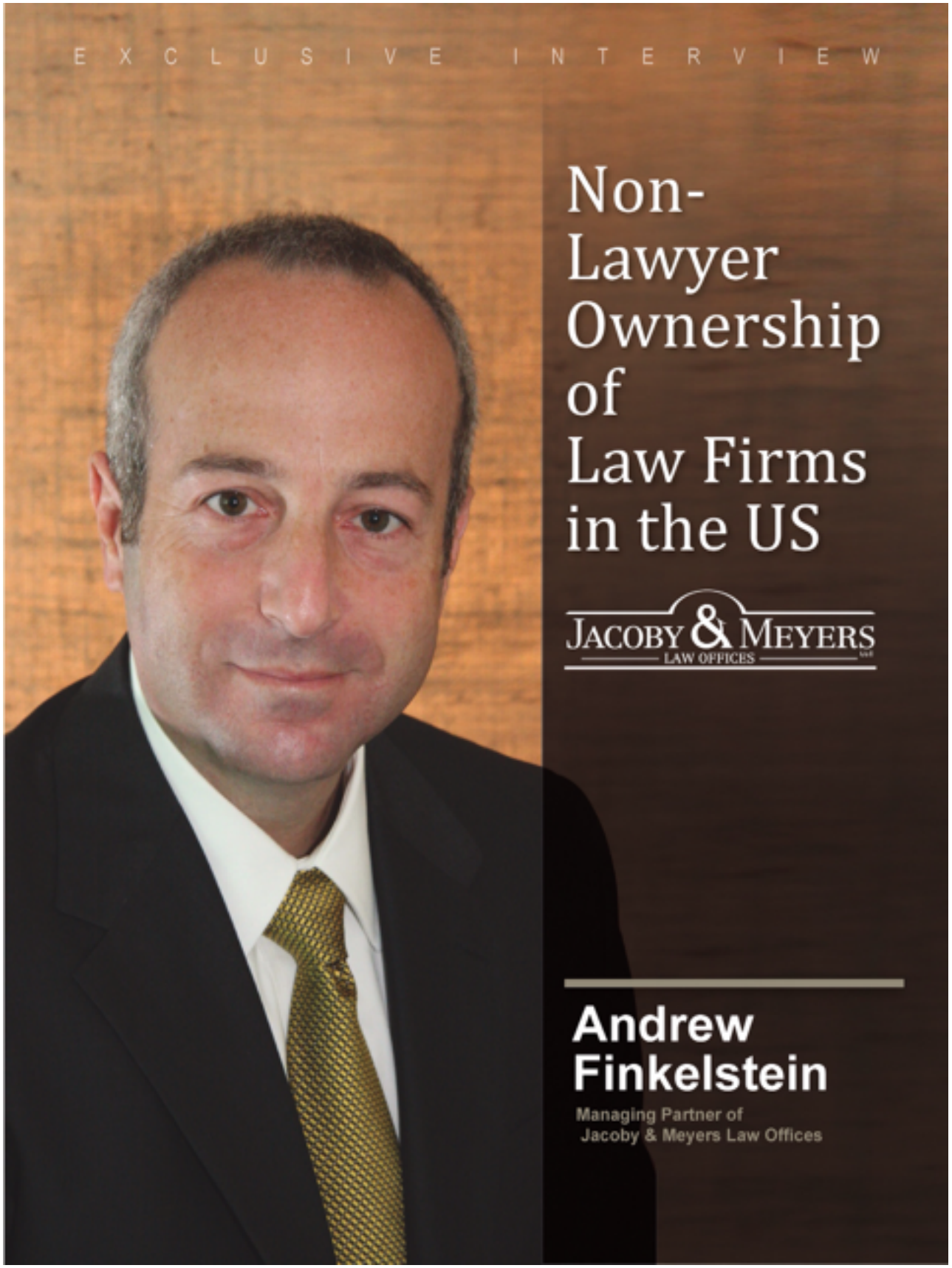
COVER STORY

Andrew Finkelstein

Exclusive Interview

Law Firm Marketing Magazine

Volume 2 | Issue 6


EXCLUSIVE INTERVIEW
Non-Lawyer Ownership of Law Firms in the US
JACOBY & MEYERS
LAW OFFICES
Andrew Finkelstein
Managing Partner of
Jacoby & Meyers Law Offices

Non-Lawyer Ownership of Law Firms in the US
JACOBY & MEYERS LEAD THE WAY

BIOGRAPHY:

Andrew Finkelstein is the Managing Partner of Jacoby & Meyers. He is a noted consumer activist who represents injured people against corporate wrongdoers or irresponsible parties. Mr. Finkelstein has litigated wrongful death and personal injury cases arising from defective drugs and products, automobile accidents, falls caused by defective conditions, dog bites, bus accidents, motor cycle accidents, construction site accidents and air craft crashes. He has handled dozens of multi-million dollar cases. Mr. Finkelstein also served as a Captain of the 9/11 Victim Compensation Fund in a pro bono capacity through Trial Lawyers Care.

Through Mr. Finkelstein's oversight, $10 million was obtained and all legal fees associated with this representation were waived. Mr. Finkelstein was later honored by the Association of Trial Lawyers of America for his leadership participation in the program.

This article is based on a phone interview with Andrew Finkelstein conducted by Cindy Speaker, and supplemented with external research.

Since opening its doors in 1972, legal giant Jacoby and Meyers has been dedicated to providing accessible and affordable legal services for America's middle class. According to the firm's website, the founding partners "believed the vast majority of middle income Americans were underserved by the legal status quo. The wealthy could easily afford expensive legal services, while the poor could turn to free legal aid, but the middle class had practically no options."

As "the largest and most familiar full-service consumer law firm in the U.S.," Jacoby & Meyers is an industry leader in more ways than one. Famous for their storefront business model, the firm provides legal services in nearly all of the 50 states. They are known for constantly innovating the field.

It is not surprising then that Andrew Finkelstein, the sole managing partner of Jacoby & Meyers, is currently spearheading a series of strategic legal maneuvers advocating for the ability of law firms to have non-lawyer entities holding equity in their firm.

JACOBY & MEYERS
LAW OFFICES LLC

The Issue at Hand

In a proudly capitalist economy, the legal field is one of the only professions left in which its proprietors are prohibited from obtaining capital from those outside the field to help grow their businesses. According to Finkelstein, lifting this restriction is "a matter of opening up the opportunities for lawyers to obtain alternative sources of financing for their legal practices. Right now, we are restricted to only traditional forms of financing through loans from banks. There's an entire other structure that every other corporation is entitled to obtain, which is equity ownership or equity investment."

"We brought an action to challenge that for several reasons. First and foremost, it is unconstitutional," Finkelstein says, "That prohibition on attorneys' ability to finance their practices and to grow their businesses should be no different than any other

More specifically, a Bloomberg article points out that Finkelstein believes

> "the bans run afoul of the Commerce Clause of the U.S. Constitution and the firm's rights of free speech and due process."

An International Movement

Banning non-lawyers from holding interest in law firms has been common practice in the legal industry the world over since its inception. But, as with all other industries, change is happening. In 2007, Australian personal injury firm Slater & Gordon opened its doors to public ownership. Theirs is a very basic business model, Finkelstein notes. "They sold a portion of the firm, bring in capital, and then deploy that capital in a way to grow the business... [As a result], they are now the largest provider of legal services in the personal injury field in Australia.

Similarly, according to a Wall Street Journal article, "new British rules intended to expand consumers' access to legal services and spur competition are shaking things up. Changes phased in this year allow British lawyers to team up with insurers or other businesses, and even to solicit outside investments."

Changes to the law in America, however, haven't come quite so easily. Currently, Washington, D.C., is the only legal area in America wherein non-lawyers can own a business interest in a law firm.

Legal Red Tape

In 2011, Jacoby & Meyers initiated three different lawsuits with the federal district courts in three different states—one in New York, one in New Jersey, and one in Connecticut. Initially, they commenced a complaint against Eric Schneiderman, the Attorney General of New York, who would enforce the prohibition against the non-lawyer ownership of equity in law firms. The Attorney General appeared in court to make a motion for dismissal of the complaint for a variety of reasons. Judge Lewis A. Kaplan dismissed the case for procedural reasons.

Jacoby & Meyers appealed Kaplan's ruling to the U.S. Court of Appeals in New York, who agreed that the procedural deficiencies did not warrant the dismissal and that the firm should have been left with an opportunity to re-plead. The appellate court remanded the case, Jacoby and Meyers re-pled, and the action is currently back on Judge Kaplan's desk. At this point, the complaint has been filed, the answer is in, the attorney general has again made a motion to dismiss, and both parties now await Kaplan's decision.

"We are pretty certain that whichever side loses will be appealing to the Court of Appeals," Finkelstein says. "Whoever loses there will likely seek leave to the United States Supreme Court."

The actions in New Jersey and Connecticut are now in a holding pattern, pending the outcome of the New York action. Therefore, the court that will ultimately be resolving the action is the New York Federal District Court.

The Challengers

The primary claim put forward by opponents to the lifting of the ban is that by allowing non-lawyers to own stakes in law firms, the focus of the firms will turn away from their ethical duty to clients to a sole focus on economic gain.
"The theory is that outsiders not subject to the same rules of conduct could influence lawyers' judgments or otherwise erode the profession's ethical obligations of client loyalty and confidentiality," according to a Wall Street Journal article.

Finkelstein couldn't disagree more.

"In any law firm, decisions are economically based as to whether or not to take on a client, and once you've taken them on, what to charge that client. Our duty and obligation of loyalty to a client includes informing them on strategic decisions on their case and whether or not it makes economical sense to take one course of action over another. So the thought that lawyers don't currently engage in strategic decisions that are economically based and that they do it in a vacuum is just ridiculous."

But what's more troubling, according to Finkelstein, is the implication underlying this claim. It appears that opponents are suggesting that "lawyers, who have taken an oath and who are controlled by the ethical boards of whichever state they're in, will somehow lose their moral compass because their employer is not another lawyer but is now a corporate entity... Lawyers first and foremost have a duty to their individual client and [changing] the simple structure of the organization that they work for does not suddenly taint and poison an attorney from carrying out their ethical duty to their client."

"So, those who are detractors to this want to take a blunt instrument and suggest that everybody is incapable of exercising their independent judgment, which is what they're obligated to do, because now suddenly their employer is not a lawyer, it's a non-lawyer."

Guardrails & Moving Forward

Major proponents of the ban's abolition argue that there are plenty of regulations that can successfully be put in place to prevent the potential issues cited by their opponents.

"In Australia, they have certain requirements that if a law firm is going to have ownership by a non-lawyer, there must be certain committees and decision making processes," says Finkelstein. "Solely because someone has an equity ownership in an entity doesn't mean that they have full access to all information. There are plenty of alternative approaches to minimize the risks and concerns through appropriate regulation. And rather than ban all forms of equity investment, we should attack it with a scalpel: see what the biggest concerns are, make sure we have controls in place, and move forward."

History, Repeated

If history is any indicator, Finkelstein and his firm might be on to something. In 1972, Jacoby & Meyers challenged the local bar's code of ethics and ultimately the California Supreme Court ruled that "prohibiting lawyers from giving media interviews violated their right to free speech. In a separate case in 1977, the U.S. Supreme Court ruled in Bates v. Arizona State Bar that attorneys should be allowed to advertise like any other business." As a result of these rulings, Jacoby & Meyers was the first law firm to run a television advertisement in US history. Today, TV is one of the most profitable and widespread advertising sources for law firms across the country.

Once again, Jacoby & Meyers is working on the forefront of an industry-wide revolution. And it would seem that, per their track record, the focus of their business model remains the middle class consumer.

"There's a tremendous unmet legal need in the US economy and [among] US consumers. More consumers need legal services but cannot afford them because we have not attacked the delivery of services," Finkelstein says, "If we attack the delivery of services in an efficient and economical way, we will be able to deliver better services to a larger group of people in a more cost effective way."

Still, Finkelstein recognizes that many of those in the legal field might not be on board with his firm's ideas, for fear that many SML firms might not be able to compete in this "new world" of law. "They need to recognize that there are great opportunities if you are now able to tap into the unmet existing demand for legal services by being able to deliver more services to more people in a more effective way. It should be welcomed, not feared."

Article Written By:
ALYSON WRIGHT
Contributing Writer