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Multidisciplinary Practices: 
Prohibit or Regulate?

Robert A. Stein†

The formation of a multidisciplinary practice, or MDP, is a phenomenon that has arrived with great suddenness. At a recent program on the subject, fewer than 10% of the attorneys in attendance had heard of MDPs more than a year ago. The position to be taken by the organized bar towards MDPs is one of the most important issues facing the legal profession in the United States and throughout the world. Whatever position the bar takes on MDPs, it will have an impact on the practice of law for many years to come. It is sure to influence not only how we practice law, but also how we define ourselves as lawyers and how the public perceives us.

This is an issue whose effect is not limited to only one segment of the bar. It is not a large firm issue or a small firm issue or a specialty issue. The decision to prohibit or regulate MDPs will affect virtually all practicing lawyers, no matter what their practice situation. In addition, the resolution of the MDP issue involves many of the fundamental core values of the legal profession that are not re-examined on a regular basis.

I. INTRODUCTION TO MDPS

Perhaps the best place to begin is to identify what are MDPs. In its simplest form, an MDP is a lawyer or lawyers having nonlawyer partners in a firm or other professional entity that provides legal and nonlegal services. The firm may be controlled by lawyers or nonlawyers. Furthermore, an MDP

† Executive Director and Chief Operating Officer, American Bar Association (ABA). I wish to thank Macarena Tamayo Calabrese for her outstanding assistance in the preparation of this Article. The Article is an adaptation of an address by the author at the University of Minnesota Law School Homecoming CLE Seminar, October 30, 1999. The views expressed in this Article are those of the author and do not express ABA policy unless so indicated.

1. Informal poll of attorneys in attendance at the University of Minnesota Law School Homecoming CLE Seminar, in Minneapolis, MN (Oct. 30, 1999).
involves lawyers sharing their legal fees with nonlawyers. Permitting either scenario is at the root of the clash between opponents and proponents of MDPs. To permit such fee sharing would go against the long adhered-to ethical rules for lawyers. The varying versions of the Model Rules of Professional Conduct that have been adopted in every state now prohibit lawyers from practicing in a firm with nonlawyers who have an ownership interest in the firm, and they prohibit lawyers from sharing legal fees with nonlawyers. There is an exception to that blanket prohibition in the District of Columbia, which is examined later.

For some, the creation of MDPs represents an overt attempt by other professionals to expand their business services into the delivery of legal services. The most prominent of these other professional groups are accounting firms—specifically the Big Five accounting firms that already employ thousands of lawyers in the United States and worldwide. It should be stressed, however, that the issue is much broader than simply accounting firms practicing law. Opponents of MDPs are concerned that if this development is permitted, we could soon have title companies openly practicing real estate law, banks practicing estate planning and probate law, and even large department stores having a legal department where legal services could be purchased.

Proponents of multidisciplinary firms argue that we need to approach client needs in a packaged manner, because clients are seeking this kind of advice. They are accustomed to receiving comprehensive, multi-professional advice on a variety of subjects. However, permitting fee sharing would go against the long adhered-to ethical rules for lawyers.

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4. The "Big Five" are: Arthur Andersen LLP, Deloitte & Touche, LLP, Ernst & Young LLP, PricewaterhouseCoopers LLP and KPMG Peat Marwick LLP. In 1997, the Wall Street Journal reported that: "Ernst & Young ... has 800 tax attorneys on its U.S. staff, double the 400 it had several years ago. Price Waterhouse has around 500 tax lawyers in the U.S. up from 250 three years ago. Arthur Anderson has 1,000 tax attorneys, 20% more than it had in 1994." Elizabeth MacDonald, Accounting Firms Hire Lawyers and Other Attorneys Cry Foul, WALL ST. J., Aug. 22, 1997, at B8. These numbers have only increased over the last three years, especially with the merger of Price Waterhouse and Coopers Lybrand.
subjects in other areas. And, say the proponents, this is what clients will increasingly expect in the area of legal services. Proponents warn that if American lawyers are not able to provide this kind of multi-professional advice, the clients simply will obtain it in other ways. The effect, argue proponents, would be to leave the bar increasingly marginalized and not playing the central and proper role in the provision of legal services.

In short, proponents see the push for MDPs as having gained sufficient momentum that it no longer can be blunted or stopped. Rather, they seek to harmonize the legal practice into the new economic reality while preserving the level of professionalism the public has come to expect in lawyers. Indeed, the phenomenon is occurring worldwide, and is more advanced in many other countries than the United States, where, as stated previously, it is not permitted under the current rules of lawyer conduct although anecdotal evidence suggests it is occurring nonetheless. The proponents say MDPs are necessitated by rapid technological advances, the globalization of capital and financial markets, and greater regulation of commercial activity in this country and throughout the world. Because all of these challenges are multidisciplinary—involving economic issues, financial issues, technology issues, and legal issues—the advice a client needs must draw upon the talented resources of all of these professions in order to be effective.

Proponents say that large corporations expect multidisciplinary advice and, in fact, are demanding it right now. In addition, we are told that new generations of Americans also want this type of advice. Baby boomers are used to getting comprehensive, multidisciplinary information in the services that they purchase. Bundled services are what young generations of Americans are expecting. And, therefore, the legal profession must respond to this expectation. Proponents have used the

6. See id.
9. See UPDATE, supra note 8.
phrase "one-stop shopping" to describe MDPs,\(^{10}\) referring to the fact that an MDP is one place to go to get a variety of professional opinions that bear upon a problem a client might have.

The proponents of multidisciplinary firms say that the restrictions on them in our rules of professional conduct are relics of the early twentieth century, when the economic circumstances were very different, and accordingly, legal problems were very different than now. The proponents assert that those restrictions are no longer appropriate in the present economic circumstances.\(^{11}\)

Opponents, on the other hand, see the advance of MDPs as not only an incursion into the legal client base and a threat to their economic foundation, but as inevitably causing erosion of the quality of professionalism long required and honored in the legal profession. The opponents of multidisciplinary firms are concerned with the ramifications of such an expansion and view it as an encroachment by the Big Five accounting firms into the practice of law. In their view, the audit function of accounting firms has become more mature, limiting growth in that area, and so the accounting firms began to move into an array of consulting services.\(^{12}\) In many of the Big Five accounting firms, the consulting side is as large or larger than the auditing side of the firm already.\(^{13}\) As that consulting business began to develop, it was a natural extension to include consulting involving legal services. Therefore, in the view of the opponents, MDPs represent an attempt by the accounting profession to engage in the practice of law.

Opponents argue that the core values of the legal profession are under attack by the MDP phenomenon. Principally, among these core values is an attorney's primary duty of loyalty to a client.\(^{14}\) In the view of the opponents, that duty of loyalty cannot be discharged adequately if an attorney is an employee of a firm controlled by nonlawyers and that firm is not required to abide by the same rules regarding conflict of interest as the legal profession.\(^{15}\)

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11. *See, e.g.*, id.
13. *See* id.
15. *See* Gibéaut, *supra* note 12, at 47.
Also involved is the issue of confidentiality of client communications.\textsuperscript{16} Opponents argue that there is no comparable duty of confidentiality in other professions. An MDP including lawyers and nonlawyers would, therefore, in their view, breakdown the relationship of trust that must exist between lawyers and clients.\textsuperscript{17}

From the opponents' point of view, this is a critical problem. When the general public thinks of accounting, it primarily focuses on the auditing function. In that regard, the public has come to realize that the auditor is under a duty to disclose problems and discrepancies discovered in the audit with no duty of confidentiality to the client. Lawyers, on the other hand, are perceived by the public as being the client's specific advocate, such that the lawyer is under a duty not to disclose problems or matters harmful to the client. Consequently, opponents argue the merging of accounting and legal profession in a multidisciplinary practice cannot help but raise the question in the mind of the general public as to how one part of a firm must disclose while another part of the firm may not disclose. The result, opponents claim will be a severe loss of confidence in the legal profession and the creation of confusion about the roles of professionals handling their cases.

As a corollary, opponents fear that MDPs would destroy the professional independence of attorneys, the responsibility to make decisions in the best interest of the client, unconstrained by any other interest.\textsuperscript{18} Indeed, they say, since the independence of the attorney is essential to free and independent democracies, MDPs represent a threat to our democratic society.\textsuperscript{19}

Opponents note that the legal profession has well-developed conflict of interest rules that prevent an attorney from representing a client if any other interest would conflict.\textsuperscript{20} Conflict of interest rules are not as stringent in other professions, particularly in the accounting profession, where ac-


\textsuperscript{17} See Address by Gary T. Johnson to the ABA General Practice, Solo and Small Firm Section, Cleveland, Ohio (Oct. 8, 1999).

\textsuperscript{18} See id.


\textsuperscript{20} See MODEL RULES OF PROFESSIONAL CONDUCT Rules 1.7, 1.8, 1.9 (1983).
counting firms may represent clients that have conflicts between them. And, opponents fear, MDPs would violate rules against unauthorized practice of law by permitting nonlawyers, untrained in legal subjects, to provide legal advice.

II. UNAUTHORIZED PRACTICE OF LAW AND MDPs

Adding to the complexity of the issue is the emergence in recent years of firms that are already engaged in what might be considered the practice of law. Firms currently exist that specialize in mergers and acquisitions, advising corporations on a variety of issues including legal issues, in a merger and acquisition context. These firms include investment bankers, economists, and lawyers. In addition, financial planners, who may not be lawyers, give advice, on the application of tax laws to their clients. Human resource companies give advice to their clients about employment practices and the firing of employees. Litigation support firms include technology experts to advise law firms how to manage litigation more effectively by using new technologies.

Many of these firms already providing services that might be considered the practice of law have associations with large accounting firms and benefit from cross-selling. If a firm represents a client in one area, it can encourage that client to use other services, such as their human resources department or their litigation support department.

It should also be noted that the accounting profession already provides legal services in connection with providing tax advice to clients. Federal regulations, which preempt the state unauthorized practice of law statutes, permit accountants to provide tax advice. In recent years, accounting firms have expanded that authority. Currently, accounting firms repre-

21. See Galler, supra note 16.
sent clients in the federal district court, the federal claims court and in other areas that might traditionally be considered to be central to the practice of law. In 1998, the accounting profession successfully lobbied Congress to enact a privilege, similar to the attorney-client privilege, for accountants giving tax advice to clients. Now, in competing for tax business, accountants can offer clients a similar confidentiality privilege to that offered by attorneys.

Some have argued that the best way to deal with the MDP phenomenon is to more strictly enforce the unauthorized practice of law statutes. It should be observed that there have been few prosecutions of Big Five accounting firms or other consulting firms for the unauthorized practice of law. In one of the rare investigations of a Big Five accounting firm in recent years, the unauthorized practice of law committee in Texas recently concluded that it would not file a complaint against Arthur Andersen after an expensive eleven-month investigation. In 1999, the State of Virginia reached the same conclusion with respect to compliance law services offered by a professional services firm.

The issue is far from over, however, accounting firms such as Ernst & Young continue to push the limit on what is acceptable under the current rules. The most recent example is the creation of the law firm McKee Nelson Ernst & Young in Washington, D.C. The law firm not only bears the name of one of the Big Five accounting firms, but more importantly, it is financed by one of the Big Five. This gives rise to the question of whether this loan constitutes a financial interest or ownership in the firm, and, if so, does it constitute the unauthorized practice of law? In addition, the law firm will be physically located in a space adjacent to the accounting firm's

25. See BACKGROUND PAPER, supra note 24.
28. See UPDATE, supra note 8.
30. See id.
According to William Lipton, vice chair of Ernst & Young's tax services, the alliance gives his firm a virtual MDP and "will serve as model for the future, when the barriers [to multidisciplinary practice] do come down." It is apparent both firms are testing the waters to see how far they can push the regulations.

The fact is that, notwithstanding prohibitions by the ethics rules, consulting firms are employing more and more lawyers to provide law-related advice as part of their multidisciplinary service to their clients—thus, blurring even further the lines between consulting and legal services, which has made it more difficult to prosecute these firms for the unauthorized practice of law.

III. INTERNATIONAL MDPS

As noted earlier, the MDP phenomenon is more advanced in some other countries than in the United States. In part this is because the ethics rules in other countries are different than the rules in this country. There are also differences in the historical development of the legal profession in other countries.

England, for example, is thought to be very much like the United States because both have a common law tradition. In fact the practice of law in England is divided between barristers, who are authorized to represent clients in court, and solicitors, who handle other legal transactions. In recent years, solicitors are also authorized to appear in court in many situations. England does not have rules that define the practice of law and prevent nonlawyers from engaging in it. The English statutes relating to the authority of solicitors define the specific tasks they are authorized to do, such as write a deed or will, but the provision is not so broad as to give solicitors exclusive authority to provide legal advice to clients. One of the reasons American law firms have been able to establish offices in London and the rest of the United Kingdom in such large numbers is because there are no laws prohibiting American lawyers from offering legal advice. The only rules that constrain these developments are those of full disclosure to clients and the re-

31. See id.
32. Id. (alterations in original).
quirement that a person offering legal advice cannot misrepresent their qualifications.34

The practice of law rules in civil law countries are also very different from those in the United States. It is common for some activities that are part of or similar to the practice of law to be done by professionals other than lawyers in civil law countries. France, for example, has the profession of the notaire, who need not be a lawyer even though the notaire does many of the things that a lawyer typically does in the United States.35 In addition, the largest firm offering legal services in France currently is one of the Big Five accounting firms.36

IV. CURRENT PROHIBITION OF MDPS

The primary ethical rule currently applicable to multidisciplinary practices is Rule 5.4 of the Model Rules of Professional Conduct.37 The Model Rules, promulgated by the American Bar Association (ABA), have been adopted in some form in every American jurisdiction. Rule 5.4(a) provides that a lawyer or law firm shall not share legal fees with a nonlawyer, subject to some exceptions that are not relevant to this discussion.38 This is a clear prohibition on MDPs sharing legal fees. Rule 5.4(b) provides that a lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.39 This is also a clear prohibition of MDP. Finally, Rule 5.4(d) provides that a lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law if a nonlawyer has any interest therein, is a corporate director or officer, or has the right to direct or control the professional judgment of the lawyer.40 Consequently, Rule 5.4(d) also prohibits an MDP arrangement. All of these sections of Rule 5.4 would have to be modified if MDPs were to be permitted in some form.

34. See BACKGROUND PAPER, supra note 24.
36. The biggest "law firm" in France is FIDAL, which is part of KPMG. See UK and US Firms Among Top Fee Earners in Paris, LAWYER, Oct. 11, 1999, at 3.
38. See id. Rule 5.4(a).
39. See id. Rule 5.4(b).
40. See id. Rule 5.4(d).
Note that nothing in Rule 5.4 or in any of the other rules of professional conduct prohibit a lawyer from working with professionals trained in another discipline, if that cooperation is needed in the representation of a client. A lawyer may employ a professional from another discipline on the staff of a law firm. A lawyer may retain a professional from another discipline, with the client's consent, in connection with the representation of a client. And a lawyer may work with a professional from another discipline if that professional is employed by the client in connection with the matter. Furthermore, a lawyer may own a company employing professionals offering other products created by the nonlawyers. That also does not violate the rules.

What is prohibited is a multidisciplinary practice—an integrated practice in which a lawyer practices law, with a partner who is not a lawyer, or shares fees with a nonlawyer. Those are the critical facts prohibited by Rule 5.4.

The District of Columbia has a slightly different Rule 5.4. In the 1980s, there was a major revision of the Model Rules of Professional Conduct after an ABA report prepared by a Commission chaired by Robert Kutak. The Kutak Commission recommended some liberalization in this area, and the only jurisdiction to adopt this recommendation was the District of Columbia. In the District of Columbia, Rule 5.4, as adopted, permits a lawyer to enter into a partnership and share fees with a nonlawyer if the partnership only provides legal services to a client. If the partnership provides any services other than legal services, then the partnership is not permitted.

The District of Columbia rule permits a law firm to admit an accountant as a partner to assist the firm in their tax practice, or an economist partner to assist it in its antitrust practice. It permits a family law firm to admit a psychologist or psychiatrist as a partner to assist the firm in its family law practice. And it permits a law firm doing government lobbying to admit a lobbyist as a partner, even though that lobbyist is not a lawyer. The D.C. rule, however, requires that the only services provided by the firm be the practice of law. If it produces any other product or engages in any other services, the

41. See Model Rules of Professional Conduct Rule 5.7 (1994).
multidisciplinary partnership would not be permitted in the District of Columbia.

It is interesting to note that the District of Columbia exception has not resulted in many law firms having partners who are not lawyers. In testimony before the ABA Commission on MDPs, the ethics counsel to the District of Columbia Bar offered the opinion that there were two factors responsible for this lack of law firm interest. First, is the requirement that the only purpose of the firm be the practice of law. This would prevent the nonlawyer professional from providing services that are not in support of legal services. Second, an ABA opinion issued in the early 1990s provided that a D.C. law firm having offices in another jurisdiction could not have nonlawyer partners. Since a large number of D.C. law firms have offices elsewhere, that opinion precludes many of the larger firms from having such an arrangement. It should be noted, however, that the D.C. rule would not permit most MDPs, because MDPs involve a sharing of fees and partnership for a range of services and not just the provision of legal services.

IV. COMMISSION REPORT ON MDPs

This brings us to the developments of the past two years. In August 1998, then president of the ABA, Philip S. Anderson, appointed a twelve-person Commission on Multidisciplinary Practice to examine the MDP phenomenon. The Commission is composed of a cross-section of our profession, and it includes lawyers in varying settings of private practice, law professors, and judges. Chairing the Commission is Sherwin Simmons, a lawyer practicing with Steel, Hector, & Davis in Miami, Florida. When the Commission was appointed, the views of the Commission members on MDPs were not known, so that the Commission was not appointed with an expectation that it would reach any predictable outcome. It included prominent and distinguished lawyers, judges and professors, many active in the ethics area, to represent a variety of backgrounds in helping to determine what the profession should do.

45. See id.
46. See BACKGROUND PAPER, supra note 24.
47. Members of the Commission are Carl Bradford, a state court judge in Portland, Maine; Paul Friedman, a U.S. District Court judge in Washington,
The Commission held a number of hearings around the country, and it soon became apparent that the bars of other countries were closely watching what was occurring in the United States. At some of the hearings, bar presidents and executive directors from other countries flew in to testify or observe. I have been told by more than one foreign bar leader that what happens in the United States is going to determine the practice of law worldwide. Therefore, this is not just an American issue—how the legal profession in the United States decides to proceed will impact the rest of the world as well.

The Commission announced early in its activities that it had a number of questions. First, how would clients be harmed or benefited by amending the Model Rules to permit lawyers to enter into MDPs? Second, how would the lawyers' independent professional judgment be impaired by allowing these arrangements? Third, how different are the standards that govern the conduct of accountants and accounting firms? Fourth, if the Model Rules were amended to permit MDPs, what changes

D.C.; Phoebe Haddon, a law professor at Temple Law School; Geoffrey Hazard, a law professor at Pennsylvania Law School and former Executive Director of the American Law Institute; Roberta Katz, CEO of the Technology Network; Caroline Lamm, a lawyer with White & Case in Washington, D.C.; Robert Mundheim, former Dean of the Pennsylvania Law School and a lawyer at Sherman & Sterling; Steven Nelson, a lawyer with the Minnesota law firm of Dorsey & Whitney; Burne Powell, Dean of the University of Missouri-Kansas City Law School; Michael Traynor, a lawyer with Cooley Godward in San Francisco; Herbert Wander, a lawyer with Katten Muchen & Zavis in Chicago; and two ABA Board of Governors Liaisons: Joanne Garvey, a lawyer with Heller Ehrman White & McAuliffe in San Francisco; and Seth Rosner, of counsel to Jacobs, Persinger & Parker in New York. See id.

should be made in the rules to preserve client confidentiality and avoid conflict of interest.\textsuperscript{49} 

After several hearings and meetings, the Commission issued its Report in July 1999.\textsuperscript{50} Nearly all observers were surprised that the Commission came out with a unanimous report. The recommendation of the Commission was that MDPs be permitted, subject to certain restrictions.\textsuperscript{51} The Commission concluded that this is a phenomenon that is already occurring, and the most beneficial approach would be to regulate it and not attempt to prohibit it.\textsuperscript{52} The Commission determined that it would be possible to satisfy the interests of clients and lawyers by authorizing the option of a multidisciplinary firm without compromising the core values of the legal profession essential for protecting clients.\textsuperscript{53} 

In its Recommendation, the Commission recognized the importance of the core values of the legal profession. Its first recommendation was that the legal profession should adopt and maintain rules of professional conduct to protect its core values: independence of professional judgment, protection of confidential client information, and loyalty to clients through avoidance of conflicts of interest.\textsuperscript{54} Nevertheless, the Commission concluded that it should not permit existing rules to unnecessarily inhibit the development of new structures for more effective delivery of legal services and better public access to the legal system.\textsuperscript{55} The Commission’s second recommendation was that a lawyer should be permitted to share legal fees with a nonlawyer, subject to certain safeguards that protect the core values of the profession.\textsuperscript{56} 

The key recommendation was the third, that a lawyer be permitted to deliver legal services through a multidisciplinary practice, defined as a partnership, professional corporation or

\textsuperscript{49} See BACKGROUND PAPER, supra note 24.
\textsuperscript{50} See COMMISSION ON MULTIDISCIPLINARY PRACTICE, AMERICAN BAR ASS'N, REPORT (1999), available at <http://www.abanet.org/cpr/mdpreport.html> [hereinafter REPORT].
\textsuperscript{51} See id.
\textsuperscript{52} See id.
\textsuperscript{53} See id.
\textsuperscript{55} See id.
\textsuperscript{56} See id. Recommendation 2.
other association or entity that includes lawyers and nonlawyers and has, as one but not all of its purposes, the delivery of legal services to a client other than the MDP itself.\footnote{57} An MDP was defined so as to include an arrangement by which a law firm joins with one or more other professional firms to provide services, including legal services, and there is a direct or indirect sharing of profits as a result of the arrangement.\footnote{58}

The Report accompanying the Commission's recommendations noted that as far as professional independence and judgment of lawyers is concerned, there are many current settings in which lawyers already work for nonlawyer employers.\footnote{59} That includes legal departments of government offices and of union sponsored prepaid legal services programs.\footnote{60} In those situations, the Commission noted, the independence of the lawyer has been maintained.\footnote{61}

The Commission did recommend changes to the Model Rules to require that an MDP, if permitted, must agree to the independence of the lawyers in the firm so that a lawyer could not raise a defense to a ethics charge by replying, "I was only doing what my employer told me to do."\footnote{62} An MDP's chief officer must agree not to interfere with the independent judgment of the lawyers in the firm, and to establish and maintain procedures to assure that independence.\footnote{63} The MDP would be required to segregate the client funds, as is now the case with respect to law firms.\footnote{64} The lawyers in the MDP would be required to abide by all the professional responsibility requirements for lawyers.\footnote{65} And the nonlawyers must respect the role and responsibility of the lawyers.\footnote{66}

With respect to confidentiality, the Commission recognized the problem of different professional rules, and concluded it should be dealt with as a matter of disclosure.\footnote{67} For example, if

\begin{footnotesize}
\footnotetext{57}{See id. Recommendation 3.}
\footnotetext{58}{See id.}
\footnotetext{59}{See REPORT, supra note 50.}
\footnotetext{60}{See id.}
\footnotetext{61}{See id.}
\footnotetext{62}{See COMMISSION ON MULTIDISCIPLINARY PRACTICE, AMERICAN BAR ASS'N, APPENDIX A (1999), available at <http:www.abanet.org/cpr/mdpappendixa.html> (proposed Rule 5.1).}
\footnotetext{63}{See RECOMMENDATION, supra note 54, Recommendation 14.}
\footnotetext{64}{See id. Recommendation 14(C).}
\footnotetext{65}{See id. Recommendation 14(D).}
\footnotetext{66}{See id. Recommendation 14(E).}
\footnotetext{67}{See id. Recommendation 9.}
\end{footnotesize}
a lawyer receives information from a client, the lawyer is duty bound not to disclose that information without the client's permission. On the other hand, if a mental health professional learns from a client of the abuse of children, that professional has an obligation to disclose this information to government authorities. The Commission stated that these differences need to be made clear to clients, so that they will know which professional rules will apply depending upon whom they talk to.\textsuperscript{68} The clients must be told who are the lawyers and that communications to them will be held in confidence. The nonlawyers should be clearly identified to clients so that they will know if there is no privilege protecting confidential communications to them.

With respect to conflict of interest, the Commission recommended that a multidisciplinary firm should be governed by the same rules of professional conduct as a law firm.\textsuperscript{69} Application of this recommendation would effectively prevent major accounting firms from operating in the form of an MDP because the Big Five accounting firms would have difficulty complying with the conflict of interest rules applicable to law firms. Indeed, the American Institute of Public Accountants has made a statement about the Commission's Report, indicating that they do not find it very helpful in dealing with the situation.\textsuperscript{70}

The Report of the Commission was issued just before the ABA's annual meeting in August 1999. The Report was directed to the House of Delegates, which is the policy-making body of the ABA. The House is a body of some 530 delegates representing states, counties, ABA sections, and some affiliated organizations.\textsuperscript{71} The discussion of the Commission's Report in the House in August 1999 was very impassioned. While there was no vote on the merits of the Report, I believe it is fair to conclude that the mood was predominantly negative to the Report. A motion was offered, which the Commission itself supported, to defer consideration of the Report to a later meeting of

\textsuperscript{68} See id.

\textsuperscript{69} See id. Recommendation 8.

\textsuperscript{70} See Letter from Olivia F. Kirtley, Chair of the Board, American Institute of Certified Public Accountants, to the Commission on Multidisciplinary Practice (July 30, 1999), available at <http://www.abanet.org/cpr/aicpa2.html>.

\textsuperscript{71} ABA CONSTITUTION AND BYLAWS, RULES OF PROCEDURE HOUSE OF DELEGATES, Article 6 (1999-2000); AMERICAN BAR ASS'N, POLICY AND PROCEDURE HANDBOOK 1 (1998-1999).
the House. This was intended to allow more time to study the Report and understand its implications.

While that motion was on the floor, a substitute motion was offered, which has come to be known as the Florida Resolution, and it was adopted by a margin of about 2 to 1. The Florida Resolution provided:

RESOLVED, [t]hat the American Bar Association make no change, addition or amendment through the Model Rules of Professional Conduct which permits a lawyer to offer legal services to a multidisciplinary practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence, and the legal profession's tradition of loyalty to clients.\textsuperscript{72}

The proponents of the Florida Resolution assert that it represents more than a deferral of consideration of the Report. They assert that it sets a new standard.\textsuperscript{73} That standard is that the ABA will not make any amendments to the Model Rules of Professional Conduct relating to multidisciplinary practices until study demonstrates such changes would further the public interest, without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients.

The Florida Resolution represents the most recent expression of policy by the American Bar Association on this subject. There was further debate about MDPs at the ABA midyear meeting in Dallas in February 2000, but no votes were taken. In March 2000, the Commission issued a revised proposal after reviewing the comments to its original Recommendation.\textsuperscript{74} The


RESOLVED, That the American Bar Association amend the Model Rules of Professional Conduct consisting with the following principles:

1. Lawyers should be permitted to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services. "Nonlawyer professionals" means members of recognized professions or other disciplines that are governed by ethical standards.

2. This Recommendation must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of professional judgment, protec-
new proposal takes a more general approach to amending ethics rules to permit MDPs than the original Recommendation. It would only permit MDPs where lawyers have sufficient control and authority to assure lawyer independence. The revised proposal also differs from the original recommendation in providing that lawyers in an MDP should be restricted to practicing with "members of recognized profession or other disciplines that are governed by ethical standards." The revised proposal requires that it be implemented in a manner that preserves the core values of the profession defined as including "competence, independence of professional judgment, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and pro bono publico obligations."75

Many state bar associations and some local bar associations have established MDP commissions to develop a policy recommendation for the court or legislature in their state having jurisdiction over the rules of professional conduct.77 Most of these commissions will report their recommendations at the annual meeting of their state or local bar association in the spring/summer of 2000. It is anticipated that the House of Delegates will consider the subject again at the Annual Meeting of the ABA in July 2000 in New York.

CONCLUSION

Undoubtedly, the question of whether to regulate or prohibit MDPs is one of the most important issues facing the legal profession in recent times. How this question is answered will not only affect present day lawyers but generations of lawyers to come. The resolution may even change the way we define ourselves and the duties we have to our clients and fellow

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75. Id. Principle 1.
76. Id. Principle 2.
members of the bar. It is evident by the attendance of foreign bar leaders and the testimony they have given that the world's legal community is waiting and watching to see what the American legal profession does in this regard. Whatever the outcome, we are sure to set a global precedent, which makes it all the more important that this issue be studied and resolved with great care. What is surely undeniable is that MDPs are a development that must be addressed by the bar of this country sooner rather than later.