

MULTIDISCIPLINARY PRACTICES: ARE THEY ALREADY AMONG US?

It is a typical workday for Jane Doe, tax attorney. She begins the day by logging onto her computer and checking her daily itinerary. The day starts with a section meeting on recent statutory and case law developments in the tax area, followed by a client meeting to discuss the prospective tax implications of her client's company acquiring a new subsidiary. At noon, she has a lunch interview with a law student who is a prospective hire for the upcoming fall class of recruits. Jane's afternoon will consist of endlessly searching through Westlaw, the Internal Revenue Code and Regulations, and tax services to find case law and statutory support for a client's proposed transaction. Then, she must translate her findings into a memorandum for her supervising partner. Her day will finally end with a privileged discussion with another client about his case before the United States Tax Court.

At first glance, this seems like an average day for any attorney—group meetings, advising clients, interviews, research, and memorandums. However, Jane Doe is not the average attorney. In fact, she cannot proclaim to be an attorney at all—even though she completed law school and is a member of her state's bar association—because Jane Doe does not work at X, Y, and Z, Attorneys at Law, but rather at X, Y, and Z, Certified Public Accountants.

Jane Doe is just one example of the current trend of law school graduates turning down law firm offers and signing on with accounting firms.¹ The large international accounting firms, known collectively as the "Big Five," have led the way in changing the traditional attorney

1. The Commission on Multidisciplinary Practice, *see infra* text accompanying notes 28-43, which was established by the American Bar Association ("ABA"), issued a background paper on the development of multidisciplinary practice. The Commission found that accounting firms have increased law school recruiting, vigorously recruited established lawyers, and convinced prominent tax partners to jump ship and join them. ABA Comm'n on Multidisciplinary Practice, *Background Paper on Multidisciplinary Practice: Issues and Developments*, available at http://www.abanet.org/lpm/bodies/mdparticle10800_body.htm (last visited Dec. 7, 2001) [hereinafter *Background Paper*]; *see infra* notes 23-27 and accompanying text.

work environment.² For instance, it is estimated that in the United States more than 2,000 attorneys are employed by these professional services firms.³ In addition, the Big Five are increasingly more dominant overseas.⁴ In 1998, PricewaterhouseCoopers and Arthur Andersen were ranked third and fourth, respectively, in worldwide total number of lawyers.⁵ Furthermore, this trend does not seem to be ending, especially when accounting firms such as Arthur Andersen announce plans of becoming the world's largest law firm.⁶ So what does this mean for the legal profession? First, this growing phenomenon has a name—it has been coined the multidisciplinary practice of law, or MDP for short.⁷ Second, MDP had gone on virtually unnoticed until addressed by the American Bar Association (“ABA”) in 1998, but now has become a bitter struggle over the future of the legal profession.⁸ This Comment evaluates the current debate over MDPs by first looking at their history in Part I, their benefits in Part II, and their opposition in Part III. Then, in Part IV, the Comment addresses whether MDPs already exist in the United States. Finally, Part V focuses on the future of multidisciplinary practice in the United States. Throughout this Comment, the emphasis is on the merger of the accounting profession with the legal profession because, in my opinion, it poses the biggest perceived risk to the traditional law firm practice.

I. WHAT IS AN MDP AND WHERE DOES IT COME FROM?

Multidisciplinary practice is defined as:

[a] partnership, professional corporation, or 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(s) other than the MDP itself or that holds itself out to the

2. The Big Five include Arthur Andersen, Ernst & Young, Deloitte & Touche, KPMG, and PricewaterhouseCoopers. The Big Five “refer to themselves as ‘professional service firms’ rather than accounting firms.” Kylelyn Sansone, *MDPs Cause Controversy*, CINCINNATI BUS. COURIER, Mar. 24, 2000, at 29, available at 2000 WL 13291944; Gary A. Munneke, *A Nightmare on Main Street (Part MXL): Freddie Joins an Accounting Firm*, 20 PACE L. REV. 1, 5 (1999).

3. Dennis M. Echelbarger, *Okay, Lawyers Now It's Your Turn*, LEADERS' EDGE, Jan. 1, 2000, at 2.

4. In 1998, the Big Five reported the following number of non-tax attorneys: PricewaterhouseCoopers 1,663, Arthur Andersen 1,500, KPMG 988, Ernst & Young 851, Deloitte & Touche 586. *Background Paper*, supra note 1.

5. *Id.*

6. Edward Brodsky, *ABA Endorsement of Multidisciplinary Practices*, N.Y.L.J., July 14, 1999, at 3 (“Arthur Andersen has announced its goal of becoming the largest law firm in the world shortly after the year 2000.”).

7. See Robert A. Stein, *Multidisciplinary Practices: Prohibit or Regulate*, 84 MINN. L. REV. 1529 (2000).

8. See *infra* Part I.

public as providing nonlegal, as well as legal, services[.] It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement.⁹

An MDP is essentially the creation of a firm that includes both attorneys and members of other professions, such as accountants.¹⁰ Attorneys would be able to join partnerships and split fees with these non-lawyer professionals.¹¹ Consequently, attorneys entering these types of relationships would be violating their rules of ethical conduct. Rule 5.4 of the ABA Model Rules of Professional Conduct prohibits a lawyer from sharing fees with a non-lawyer, and from forming a partnership with a non-lawyer if an activity of the partnership is the practice of law.¹² The potential violation of ethically proscribed conduct is the central point of the controversy surrounding MDPs.

To completely understand the MDP debate, we must first know how they developed. Originally, the ABA Canons of Professional Ethics did not prohibit lawyers from entering partnerships or sharing fees with non-lawyers.¹³ However, during the period of time following the Great Depression, state bar associations began to actively pursue non-lawyers for the unauthorized practice of law.¹⁴ Moreover, the main individuals charged during this time were accountants.¹⁵ The concern for the blurring of professional lines eventually led to the adoption in 1928 of Canon 33, prohibiting the partnership of lawyers and non-lawyers; Canon 34, prohibiting the division of fees; and Canon 35, prohibiting the control of a lawyer by a lay agency.¹⁶ Canons 33 through 35 re-

9. ABA Comm'n on Multidisciplinary Practice, *MDP Final Report* app. A, available at <http://www.abanet.org/cpr/mdpappendixa.html> (last visited Dec. 7, 2001) [hereinafter *MDP Final Report*].

10. See Stein, *supra* note 7, at 1529-30; ABA Comm'n on Multidisciplinary Practice, *July 2000 MDP Final Report to the House of Delegates*, available at <http://www.abanet.org/cpr/mdpfinalrep2000.html> (last visited Dec. 7, 2001) [hereinafter *Final Report*].

11. Stein, *supra* note 7, at 1529-30; *Final Report*, *supra* note 10.

12. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2000). All jurisdictions with the exception of Washington, D.C. have adopted this rule. See *infra* notes 175-180 and accompanying text; Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 875 (1999).

13. Terry, *supra* note 12, at 874; Charles W. Wolfram, *The ABA and MDPs: Context, History and Process*, 84 MINN. L. REV. 1625, 1639 (2000); ABA Comm'n on Multidisciplinary Practice, *MDP Final Report*, available at <http://www.abanet.org/cpr/mdpreport.html> (last visited Dec. 7, 2001) [hereinafter *1999 Report*].

14. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 90-91 (2000); Wolfram, *supra* note 13, at 1639.

15. Munneke, *supra* note 2, at 2.

16. MODEL CODE OF PROF'L RESPONSIBILITY Canon 33 (1969) ("Partnerships between lawyers and members of other professions or non-professional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law.");

ceived further support in 1937 with the adoption of Canon 47, which stated that "[n]o lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."¹⁷ Thus, the ABA clearly took the position that the accounting and legal professions were separate and distinct.

Although the United States did not believe the two professions could mix, the rest of the world did not necessarily agree. After World War II, MDPs made their first appearance in Germany through the partnering of lawyers and tax accountants; this concept eventually spread throughout Western Europe.¹⁸ Back at home, however, the ABA still did not support the intermingling of accountants and attorneys and solidified that position by carrying over the proscriptions of Canons 33-35 when it adopted the Code of Professional Responsibility.¹⁹ The ABA's actions were supposedly done under the auspices of protecting the public from the unauthorized practice of law.²⁰

Although the ABA generally gave little attention to MDPs, it did consider a change to the Rules during the 1980s. The Commission on Evaluation of Professional Standards, known as the Kutak Commission, made a proposal to change Rule 5.4 to allow MDPs.²¹ However, the proposal was voted down by the House of Delegates after an affirmative response to an inquiry was made as to whether the new rule would allow Sears to write wills.²² Thus, the status of MDPs in America remained unchanged.

Conversely, the accounting profession did not share the ABA's views on adhering to the traditional forms of practice. Historically, the accounting firms' two primary service areas were tax and auditing, yet in an attempt to increase profits, these firms made the decision to expand into other service areas such as financial planning, estate and tax

MODEL CODE OF PROF'L RESPONSIBILITY Canon 34 ("No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility."); MODEL CODE OF PROF'L RESPONSIBILITY Canon 35. Canon 35 states that:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual A lawyer's relation to his client should be personal, and the responsibility should be direct to the client.

Id. See Terry, *supra* note 12, at 874; *Final Report*, *supra*, note 10.

17. MODEL CODE OF PROF'L RESPONSIBILITY Canon 47 (1969); see Wolfram, *supra* note 13, at 1639.

18. Sansone, *supra* note 2, at 29; Kylelyn Sansone, *What Do Lawyers Think?*, LEADERS' EDGE, Jan. 1, 2000, at 1.

19. MODEL RULES OF PROFESSIONAL CONDUCT R. 5.4 (1947); see Terry, *supra* note 12, at 874; Wolfram *supra* note 13, at 1628-29.

20. Dzienkowski & Peroni, *supra* note 14, at 92.

21. See Terry, *supra* note 12, at 875-76; Wolfram, *supra* note 13, at 1629.

22. Terry, *supra* note 12, at 876-77; Wolfram, *supra* note 13, at 1631.

planning and litigation support.²³ This expansion converted these accounting firms into "professional services firms."²⁴ Along with changing the make-up of their services, accounting firms have also changed the make-up of their associates and partners. Law school graduates have become a prime target to perform these new services, especially tax related consulting.²⁵ However, attorneys accepting offers at the Big Five are not treated the same as attorneys in law firms. Big Five employees with law degrees could not hold themselves out as "practicing law" or they would be guilty of ethical violations and of aiding in the unauthorized practice of law.²⁶ Therefore, these individuals "practice tax" instead.²⁷

After years of denial, the ABA finally became concerned by the emergence of the Big Five into the legal profession. In 1998, Jerome Shestack, ABA President, created the "Working Group on Accountants and the Legal Profession" to evaluate MDPs.²⁸ Later, in 1998, then ABA President Philip Anderson took the MDP issue further by appointing the Commission on Multidisciplinary Practice to evaluate and make recommendations on whether to change the Rules of Professional Conduct and allow MDPs in the United States.²⁹ From September 1998 to June 1999, the Commission held hearings in which testimony regarding the prospect of MDPs was given.³⁰ In addition, the Commission established a web site, which monitored the MDP debate and provided all the materials presented during the hearings.³¹ In August of 1999, the Commission made the recommendation to change the Rules of Professional Conduct to allow the development of MDPs, but the Commission's proposal met resistance in the House of Delegates.³² Instead of accepting the Commission's recommendation, the ABA House of Delegates chose to make no changes to the rules "until additional study demonstrates that such changes will further the public interest without

23. See Dzienkowski & Peroni, *supra* note 14, at 104; Munneke, *supra* note 2, at 5; Wolfram, *supra* note 13, at 1636.

24. See Munneke, *supra* note 2, at 5; see generally Sansone, *supra* note 2 (recognizing the expansion of accounting firms in order to meet the clients' multiple needs).

25. See generally *Background Paper*, *supra* note 1 (recognizing the increased number of law students targeted for consulting).

26. See Wolfram, *supra* note 13, at 1644; Dzienkowski & Peroni, *supra* note 14, at 104; Lowell J. Notebloom, *Professions in Convergence: Taking the Next Step*, 84 MINN. L. REV. 1359, 1362-63 (2000).

27. Terry, *supra* note 12, at 881.

28. Notebloom, *supra* note 26, at 1374.

29. ABA Comm'n on Multidisciplinary Practice, *MDP Final Report—Reporter's Notes* app. C, available at <http://www.abanet.org/cpr/mdpappendixc.html> (last visited Dec. 7, 2001) [hereinafter *Reporter's Notes*].

30. *Id.*

31. See ABA Comm'n on Multidisciplinary Practice, Center for Professional Responsibility, at <http://www.abanet.org/cpr/multicom.html> (last visited Dec. 7, 2001).

32. *1999 Report*, *supra* note 13.

sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."³³ Subsequently, the Commission returned to work and resumed hearings on the MDP debate.³⁴

During its two-year study, the Commission developed five different models of possible organizational structures of MDPs.³⁵ These structures include the following: (1) the cooperative model where non-lawyer professionals are employed by lawyers to assist in advising clients; (2) the command and control model where lawyers and non-lawyers can enter partnerships and share fees provided that the firm's sole purpose is providing legal services;³⁶ (3) the ancillary business model where the law firm owns a separate business that provides clients with professional services; (4) the contract model where an independent law firm enters into an agreement with a professional services firm to affiliate services, refer clients, etc.;³⁷ and (5) the fully integrated model where lawyers and non-lawyers are combined into one professional services firm.³⁸ Furthermore, the Commission issued sets of hypotheticals addressing each of these models.³⁹ Then, in July 2000, the Commission on Multidisciplinary Practice issued its final recommendation to the ABA House of Delegates, but "urged" the House to postpone any decision on MDPs until the 2001 Midyear Meeting so all the states could adequately study the issue.⁴⁰ The Commission recommended that lawyers and non-lawyers should be able to enter partnerships delivering both legal and non-legal professional services and share fees as long as attorneys have "the control and authority necessary to assure lawyer independence."⁴¹ Yet again, the ABA did not adhere to the belief that

33. ABA Law Practice Mgmt. Section, available at http://www.abanet.org/lpm/bodies/mdparticle10797_body.htm (last visited Jan. 27, 2002).

34. See *Final Report*, *supra* note 10, at app. ("[T]he Commission has heard the testimony of over 95 witnesses, received 120 written comments . . . held 9 days of open hearings, and met 10 times in executive sessions."). Testimony and written comments are available at the ABA's Center for Professional Responsibility website. See ABA Center for Professional Responsibility, at <http://www.abanet.org/cpr> (last visited Dec. 7, 2001).

35. ABA Comm'n on Multidisciplinary Practice, *PostScript to Feb. 2000 Midyear Meeting*, available at <http://www.abanet.org/cpr/postscript.html> (last visited Dec. 7, 2001); *Reporter's Notes*, *supra* note 29, at app. C.

36. This is the same as the Washington, D.C. Model.

37. The Big Five predominantly use this model in their offices outside of the United States. *Reporter's Notes*, *supra* note 29, at app. C.

38. The fully integrated model "is the 'classic' multidisciplinary practice. It advertises that it provides 'a seamless web' of services, including legal services." *Reporter's Notes*, *supra* note 29, at app. C. Throughout the rest of the paper the emphasis is placed on the fully integrated model.

39. ABA Comm'n on Multidisciplinary Practice, *Hypotheticals and Models*, available at <http://www.abanet.org/cpr/multicomhypos.html> (last visited Dec. 7, 2001).

40. *Final Report*, *supra* note 10; John Gibeaut, *Late-breaking news from the ABA Annual Meeting in New York City . . . ABA Nixes Multidisciplinary Practices*, A.B.A. J., Aug. 2000, at 90, available at <http://www.abanet.org/journal/aug00/amdp.html> (last visited Dec. 7, 2001).

41. *Final Report*, *supra* note 10.

change was needed, and the House of Delegates voted down the Commission's proposal by a vote of 314 to 106.⁴² Moreover, the Commission was disbanded.⁴³

II. WHAT ARE THE BENEFITS OF MDPs?

Because the mere prospect of multidisciplinary practice prompted a two-year national debate, some influential groups must consider MDPs very beneficial. Obviously, the major protagonist of multidisciplinary practice is the accounting industry, specifically the Big Five. In 1998, the four largest accounting firms received domestic revenues in excess of \$30 billion from their consulting services alone.⁴⁴ If attorneys are allowed to legally practice in these types of professional services firms, that amount could easily double. Accounting firms are already servicing clients in many law related areas⁴⁵ and have been successful at doing so.⁴⁶ "A survey of [the International Bar Association's] 183 member countries revealed that in 72% of responding jurisdictions, organisations [sic] other than law firms are currently selling legal services. Accountants . . . were found to be the main threats."⁴⁷ One reason for this success might be that the war between the professions is no longer "lawyers versus non-lawyers" but "lawyers versus lawyers."⁴⁸ As a result, many consider accounting firms to be de facto MDPs, thus, an official authorization of MDPs will necessarily increase the revenues of these professional services firms and most likely will propel the Big Five to achieve their goals of becoming the largest law firms in the

42. Gibeaut, *supra* note 40, at 90.

43. *Id.*

44. Jan Pudlow, *Berlin: Don't Rush to Judgment on Multidisciplinary Practices*, FLA. BAR NEWS, Oct. 15, 1999, at 19.

45. Irwin L. Treiger & William J. Lipton, Written Remarks to the ABA Comm'n on Multidisciplinary Practice (Mar. 11, 1999), available at <http://www.abanet.org/cpr/treiger1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Treiger & Lipton]. "Beyond tax, accounting firms are reported to be hiring lawyers to offer business-related advice to clients in employee benefits, business planning and organization, insolvency, bankruptcy, loan restructuring/workouts, litigation support and alternative dispute resolution." *Id.* Mr. Treiger and Mr. Lipton are co-chairs of the National Conference of Lawyers and Certified Public Accountants. *Id.*

46. See Richard Miller, Oral Remarks to the ABA Comm'n on Multidisciplinary Practice (Mar. 1999), available at <http://www.abanet.org/cpr/rmiller.html> (last visited Dec. 7, 2001) (recognizing that the accounting profession is favorably viewed by seventy percent of its clients); see generally L. Kent Abney, Oral Testimony to the ABA Comm'n on Multidisciplinary Practice (Oct. 9, 1999), available at <http://www.abanet.org/cpr/abney2.html> (last visited Dec. 7, 2001) [hereinafter Oral Testimony of Abney] ("Statistics . . . say . . . the CPA is considered the most trusted professional.").

47. Ronald A. Landen, Comment, *The Prospects of the Accountant-Lawyer Multidisciplinary Partnership in English-Speaking Countries*, 13 EMORY INT'L L. REV. 763, 763 (1999) (alteration in original).

48. Remarks of Treiger & Lipton, *supra* note 45.

world.⁴⁹ Therefore, it is no surprise that the Big Five have taken an active role in the MDP debate.⁵⁰

Although the Big Five are a driving force behind the acceptance of multidisciplinary practice, they are not the sole beneficiaries. Client demand is repeatedly cited as a justification for the allowance of MDPs. According to its final report, the Commission on Multidisciplinary Practice was "firmly convinced that there is substantial evidence of client interest in expanding the universe of legal service providers to include MDPs."⁵¹ Many supporters of MDPs have attacked the ban as protecting the profession rather than the public.⁵² Specifically, during their remarks at the March 11, 1999, hearing on MDPs, Irwin Treiger and William Lipton stated that the question that must be answered is whether "the *public* is best served by having its choice of legal service provider limited to traditional law firms."⁵³ So what does the public want? Clients want competent answers, efficiency, and convenience. In other words, clients demand "one-stop shopping."⁵⁴ One-stop shopping is the catch phrase that has been assigned to a new method of problem solving. One-stop shopping is what drives professional services firms and hinders traditional law firms.⁵⁵ This approach to problem solving combines everything a client needs under one roof. A client will no longer have to hire a law firm for its litigation needs and legal documents, an accounting firm for its auditing and tax needs, and a financial planner for its investment decisions because a single MDP can fulfill all of these needs.

Probably the most obvious advantage of MDPs to clients is the efficiency of both time and cost.⁵⁶ A client only has to schedule one meeting at one location to discuss his or her situation rather than schedule

49. See Brodsky, *supra* note 6, at 3, 9.

50. Four of the Big Five testified. See *infra* note 164 (Arthur Andersen); see *infra* note 106 (Deloitte & Touche); see *infra* note 52 (Ernst & Young); see *infra* note 134 (PricewaterhouseCoopers).

51. *Final Report*, *supra* note 10, at app. A.

52. See Stefan F. Tucker, Remarks to the ABA Comm'n on Multidisciplinary Practice (Feb. 4, 1999), available at <http://www.abanet.org/cpr/tucker1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Tucker]. Mr. Tucker was the chair of the Section of Taxation. See Remarks of Treiger & Lipton, *supra* note 45; Kathryn A. Oberly, Statement to the ABA Comm'n on Multidisciplinary Practice (Feb. 4, 1999), available at <http://www.abanet.org/cpr/oberly1.html> (last visited Dec. 7, 2001) [hereinafter Statement of Oberly]. Ms. Oberly is the Vice Chair and General Counsel for Ernst & Young, LLP. *Id.*

53. Remarks of Treiger & Lipton, *supra* note 45 (emphasis added).

54. See generally Dzienkowski & Peroni, *supra* note 14, at 117-27; Munneke, *supra* note 2, at 5-7.

55. Remarks of Treiger & Lipton, *supra* note 45. "Professional services firms with their roots in the accounting profession are well positioned to offer multidisciplinary services. Lawyers, by virtue of their self-imposed restrictions, are not." *Id.*

56. See Dzienkowski & Peroni, *supra* note 14, at 117-27.

several appointments across town at different offices.⁵⁷ Furthermore, the costs of the services received by the client should be lower in an MDP setting. The client will save on information costs and transaction costs because client information and documentation will not have to be duplicated and distributed to the various service providers.⁵⁸ Accordingly, this could lead to a decrease in billable hours. Attorneys will no longer have to schedule meetings with accountants and other professionals in order to determine the business implications of their legal decisions.⁵⁹ Therefore, in this increasingly fast-paced work environment, MDPs efficiently and conveniently fulfill the needs of their clients, thus allowing their clients to stay competitive in the global marketplace.

Although clients enjoy the cost-effectiveness of MDPs, it is not their main advantage. MDPs can increase competency for their clients. In today's global economy, problems are not "solely 'legal' or 'business.'"⁶⁰ Sophisticated clients want advice on problems involving many aspects other than just the law, such as finance and accounting.⁶¹ "The availability of 'one-stop shopping' for a comprehensive, cross-disciplinary approach to business problems is perhaps the biggest attraction of the multidisciplinary form of practice."⁶² Through multiple professionals working together, MDPs can provide higher quality solutions.⁶³ When seeking advice, many clients will only consult with a lawyer or only consult with an accountant. The client may not realize the drastic effects that a legal decision may have on their financial reporting, or vice versa. By combining all of these services, an MDP can adequately address problems that a client did not know existed.⁶⁴ Also, individuals in different professions usually approach and resolve the same problem in different manners. This variety of perspective can be very beneficial to the client. According to the National Conference of Lawyers and Certified Public Accountants, there are many areas in

57. *Id.*

58. *Id.*

59. *Id.*

60. Statement of Oberly, *supra* note 52, at pt. 1.

61. Remarks of Tucker, *supra* note 52. "There are no 'pure' legal problems today because legal solutions cannot be arrived at in a vacuum." Steven A. Bennett, Remarks to ABA Comm'n on Multidisciplinary Practice (Nov. 13, 1999), available at <http://www.abanet.org/cpr/bennett.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Bennett]. Mr. Bennett was General Counsel of Banc One Corporation. *Id.*

62. Remarks of Treiger & Lipton, *supra* note 45.

63. See *Lawyers and Certified Public Accountants: A Study of Interprofessional Relationships Statements on Practice in the Field of Federal Income Taxation and Estate Planning*, 36 TAX LAW. 26, 27 (1982) [hereinafter *Study of Interprofessional Relations*] ("Clients of lawyers and CPAs are best served when they understand the expertise that members of each profession can apply to clients' problems.").

64. See generally Dzienkowski & Peroni, *supra* note 14, at 118.

which CPAs and attorneys can work together for "the best interests of their clients."⁶⁵ These include "estate planning, tax matters, business insolvency matters, bankruptcy proceedings, legal actions involving accounting matters, establishing and terminating a business, business incorporations and liquidations, mergers, reorganizations, sales and purchases of a business, personal financial management, compensation planning, labor matters, insurance losses and SEC registration."⁶⁶ As professional services firms expand their practice areas, the opportunities for attorneys and CPAs to combine their knowledge and work together will also expand. By their structure, MDPs take advantage of these opportunities in order to benefit their clients. For instance, when professionals in an MDP environment are continuously working together on various projects, they begin to develop working relationships and patterns.⁶⁷ This consistent team effort can create both increased efficiency and higher quality for a client that chooses an MDP over utilizing separate firms for each aspect of the problem.⁶⁸ Thus, "the public will be best served by utilizing the combined skills of both professions."⁶⁹ All things considered, MDPs "offer clients competent, efficient, and cost-effective one stop solutions to global business problems."⁷⁰

Multidisciplinary practice offers numerous benefits, but more importantly, it provides those benefits to a wide variety of individuals and entities. Client demand is not limited to large corporations but extends through all forms of businesses and socio-economic statuses of individuals. For example, the ABA Commission on Multidisciplinary Practice heard testimony and received responses from numerous consumer groups that support the development of MDPs.⁷¹ One group in particular was the Jefferson County Committee for Economic Opportunity.⁷² The group's representative, Theodore Debroy, who also served as President of Consumers for Affordable and Reliable Services of Alabama, stated that low to moderate income individuals were precisely the sector

65. *Study of Interprofessional Relations*, *supra* note 63, at 31. The National Conference of Lawyers and Certified Public Accountants was formed in 1944 "to promote understanding between the professions in the interests of their clients and the general public." *Id.* at 26-27. The members are appointed by the presidents of the American Bar Association and the American Institute of Certified Public Accounting. *Id.*

66. *Id.* at 31.

67. See Dzienkowski & Peroni, *supra* note 14, at 117-18.

68. *Id.*

69. *Study of Interprofessional Relations*, *supra* note 63, at 34.

70. Remarks of Treiger & Lipton, *supra* note 45.

71. See *Final Report*, *supra* note 10, at app.

72. Theodore Debroy, Statement to the ABA Comm'n on Multidisciplinary Practice (Feb. 12, 2000), available at <http://www.abanet.org/cpr/debro2.html> (last visited Dec. 7, 2001) [hereinafter Statement of Debroy]. This committee is a community action agency in Birmingham, Alabama that provides service to low and moderate income families. *Id.*

that needed MDPs the most.⁷³ One of the main problems affecting these individuals is the inability to find quality legal services that are also affordable.⁷⁴ Specifically, Mr. Debro based his assertion on the 1990 ABA Comprehensive Legal Needs Study which found that roughly 40 million moderate income households and 8 million low-income households had experienced a minimum of one situation possibly requiring legal assistance.⁷⁵ However, these individuals rarely utilize the services of an attorney. Mr. Debro stated:

The ABA study reported that nearly 80 percent of low-income respondents and almost 70 percent of moderate-income respondents either handled their issue on their own or took no action at all. The most common reasons for this included the fact that many individuals either did not feel a lawyer would be able to help them, thought the cost was to [sic] high, or simply did not know how to find a good lawyer they could trust. I would add a fourth equally important reason to that list: these Americans, perhaps more than any other group, are intimidated by the thought of going to see a lawyer.⁷⁶

Similarly, the Consumers Alliance of the Southeast shared Mr. Debro's views. "Often, consulting a lawyer is an individual's last resort. The average person is intimidated by lawyers, worries about being taken advantage of, is concerned about the expense of just talking to a lawyer, and generally can't see the positive benefits of having any kind of relationship with a lawyer."⁷⁷

However, both of these organizations see MDPs as a way to improve the perception of the legal profession.⁷⁸ "[T]he central and foremost responsibility of the legal profession is to provide access to justice."⁷⁹ MDPs can provide that access. Many of these consumers who are reluctant to consult attorneys may not carry over that fear to other professionals. Thus, the nonlawyer professionals in a MDP setting could initially attract these clients and expose them to much needed legal advice that they otherwise would not have obtained. Two service

73. *Id.*

74. *Id.*

75. *Id.*

76. Statement of Debro, *supra* note 72.

77. Lora H. Weber, Written Remarks to the ABA Comm'n on Multidisciplinary Practice (Mar. 11, 1999), available at <http://www.abanet.org/cpr/weber1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Weber]. Ms. Weber is the President and Executive Director of the Consumers Alliance of the Southeast. *Id.*

78. See Statement of Debro, *supra* note 72; Remarks of Weber, *supra* note 77.

79. John S. Skilton, Written Testimony to the ABA Comm'n on Multidisciplinary Practice (Aug. 8, 1999), available at <http://www.abanet.org/cpr/skilton.html> (last visited Dec. 7, 2001) [hereinafter Testimony of Skilton]. Mr. Skilton is the Chair of the ABA Standing Committee on the Delivery of Legal Services. *Id.*

areas that are particularly needed are family and juvenile law.⁸⁰ Therefore, many consumer groups encourage the pairing of attorneys with psychologists, social workers, and insurance specialists since these professionals interact more regularly with low and moderate income consumers and are "less inherently intimidating."⁸¹ The Commission on Multidisciplinary Practice received similar support and concerns from other consumer groups such as the American Association of Retired Persons, Electric Consumers Alliance, Consumers First, NAACP, and the Urban League.⁸² All of these groups believe that MDPs are the best way to provide consumers with access to legal services.⁸³ "The end result . . . will be a legal system that is strengthened, not weakened; more consumer-friendly, not less."⁸⁴

Although many individuals support their development, demand for MDPs is not limited to individual clients alone. Both large and small businesses want to enjoy the benefits of MDPs. For example, the American Corporate Counsel Association, an organization consisting of approximately 10,000 in-house corporate attorneys, adopted the position to remove ethical barriers preventing the establishment of MDPs.⁸⁵ Steven Bennett, former General Counsel for Banc One also testified in support of MDPs "noting that in most significant business transactions today, the legal aspect of the deal is simply one facet of a complicated mix of considerations."⁸⁶

Furthermore, small business owners have also expressed support for the allowance of MDPs. The Commission heard from representatives of small businesses that the "backbone" of the American economy could also benefit from the MDP structure.⁸⁷ Small businesses require a variety of services including advice on tax matters, retirement plans, health benefits, workers compensation, finances, and information technology.⁸⁸ MDPs provide the advantages of choice, convenience, and cost-effectiveness to these small businesses.⁸⁹ In his statement before the Commission, George Abbott, a small business owner stated:

Keeping values constant does not require that the form of

80. *Final Report*, *supra* note 10, at app.

81. Statement of Debro, *supra* note 72.

82. *Id.*; *Final Report*, *supra* note 10.

83. Statement of Debro, *supra* note 72; Remarks of Weber, *supra* note 77.

84. Remarks of Weber, *supra* note 77.

85. See *Final Report*, *supra* note 10, at app.; Notebloom, *supra* note 26, at 1393-95.

86. Remarks of Bennet, *supra* note 61. Mr. Bennet specifically referenced the "blurring of the lines" between lawyers and accountants. *Id.*

87. Remarks of Weber, *supra* note 77; George Abbott, Statement to the ABA Comm'n on Multidisciplinary Practice (Feb. 12, 2000), available at <http://www.abanet.org/cpr/abbott.html> (last visited Dec. 7, 2001) [hereinafter Statement of Abbott].

88. Statement of Abbott, *supra* note 87; Remarks of Weber, *supra* note 77.

89. Statement of Abbott, *supra* note 87.

the business unit remain unchanged. The current rules that say where and how a lawyer can practice are simply out of date, and they don't reflect the reality of today's business problems, which are complex and multi-faceted. In the small business world, we have a saying—the customer comes first. Isn't it time for the legal profession to adopt that motto as well? Shouldn't the bar be asking how can it provide clients with what they want and need? I can tell you that most small business owners, myself included, don't care what their lawyer's office looks like or who his or her colleagues are. They just want and need sound, coordinated, reasonably-priced advice from professionals they can trust.

Many small businesses go without proper advise [sic] due to the perceived cost, the inconvenience of trying to, and in some cases the inability to, integrate the input from these advisors, and the feeling that they have no control over the costs that they will incur. This situation could be remedied with the availability of MDPs.⁹⁰

It is evident, as the Commission noted, that there is a substantial client demand for MDPs. However, besides accounting firms and clients, there is one other group that will benefit from multidisciplinary practice. Lawyers can also reap the rewards of a MDP firm. First, MDPs may be able to recast the legal profession into a more favorable view. As mentioned previously, much of the public considers lawyers to be unapproachable and intimidating.⁹¹ MDPs can allow attorneys to demonstrate that they are changing to meet the needs of businesses and individuals in today's society.⁹² Thus, the legal profession will become viewed as more "user-friendly."⁹³ By allowing MDPs, "people would stop thinking lawyers work in ivory towers, oblivious to the world around them. It's a win-win situation."⁹⁴

In addition to benefiting the legal profession, MDPs can benefit lawyers at the firm level. MDPs can achieve for traditional law firms the results that occurred when accounting firms developed into professional services firms.⁹⁵ By allowing non-lawyers to partner with lawyers, firms can expand their services and thus increase their capital.⁹⁶ In particular, MDPs will benefit small firms. The Council of the ABA General Practice, Solo and Small Firm Section expressed their need for MDPs in order to counsel their clients without the inefficiencies of ob-

90. *Id.*

91. *Id.*; Statement of Debro, *supra* note 72; Remarks of Weber, *supra* note 77.

92. Statement of Abbott, *supra* note 87.

93. *MDP Final Report*, *supra* note 9, at app. A.

94. *Id.*

95. See generally Munneke, *supra* note 2, at 4-8.

96. See Dzienkowski & Peroni, *supra* note 14, at 125.

taining advice from nonaffiliated professionals.⁹⁷ In an informal survey of the state bar associations, during the past decade an “overwhelming majority” of ethics inquiries into MDPs has been requested by solo practitioners or small firms.⁹⁸ One example of the need for MDPs in small firms was provided by Phil Stinson, a Philadelphia lawyer practicing in a four-attorney firm.⁹⁹ Mr. Stinson’s firm represents parents of disabled children in health, disability, and special education matters.¹⁰⁰ He relayed that his firm is faced with multidisciplinary interactions on a daily basis.¹⁰¹ In addressing these children’s needs, Mr. Stinson noted that he must consult with many professionals, especially clinical psychologists.¹⁰² If allowed to “join forces” with these psychologists, Mr. Stinson testified that his firm would be able to provide better legal services.¹⁰³ In addition, he stated that his firm would like to expand its office locations but this would only be “financially possible” if it were able to deliver “legal services in a multidisciplinary environment as a product of a market driven economy.”¹⁰⁴

Finally, MDPs can benefit attorneys at the individual level. Increasingly, attorneys are leaving traditional law firms and going to work for professional services firms.¹⁰⁵ Some say this trend is due to the “competitive environment, the emphasis on billable hours, the lack of workplace flexibility, the shortage of training opportunities, and the absence of mentors.”¹⁰⁶ Professional services firms such as Deloitte & Touche cite a flexible work environment, a horizontal management structure, the variety of disciplines, the opportunity to specialize, and the financial rewards as reasons for the switch.¹⁰⁷ The Big Five pride themselves on their “collegial” work environment and often proclaim that “human capital is [their] most important asset.”¹⁰⁸ Thus, MDPs offer two advantages to individual lawyers: it gives them an alternative, maybe better

97. *Reporter’s Notes*, *supra* note 29.

98. *Id.*

99. Philip M. Stinson, Sr., Statement to the ABA Comm’n on Multidisciplinary Practice (Oct. 9, 1999), available at <http://www.abanet.org/cpr/stinson.html> (last visited Dec. 7, 2001) [hereinafter Statement of Stinson].

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. Statement of Stinson, *supra* note 99.

105. *Background Paper*, *supra* note 1.

106. Roger Page, Written Remarks to the ABA Comm’n on Multidisciplinary Practice (Mar. 11, 1999), available at <http://www.abanet.org/cpr/page1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Page] (citing Abbie Willard, Associate Dean of Georgetown Law School). Mr. Page is the National Director of the Washington National Tax Practice for Deloitte & Touche. *Id.*

107. *Id.*

108. *Id.*

suited work environment and it allows them to still be lawyers.¹⁰⁹

III. WHY IS THERE OPPOSITION TO MDPs?

While there are many people who think MDPs are the wave of the future, there is an equal number, if not more, who believe that MDPs are inherently evil. The predominant concern expressed by these individuals is that the allowance of MDPs will erode the core values of the legal profession.¹¹⁰ These values include independence, confidentiality, loyalty, and competence.¹¹¹ During the Commission's hearings, numerous attorneys testified and submitted statements raising concerns about the "blending" of the legal profession with other professions.¹¹² Again, the main professional marriage that most of these lawyers want to prevent is the merger of accountants and attorneys under one firm.¹¹³ "While most of the world has slept, even the world of lawyers, the Big 5 accounting firms have mounted a frontal assault on the legal profession that threatens to destroy the foundation of professional independence, loyalty and confidentiality that the lawyers of America have always promised the public."¹¹⁴

One of the main concerns of opponents of MDPs is that the independent judgment of an attorney will be diminished if the attorney works in an MDP setting, especially one where the attorney reports to non-lawyers.¹¹⁵ "[A]s soon as the power rests with non-lawyers not trained in, not dedicated to, and not subject to discipline for our ethical principles, you will see the independence of the profession fall away."¹¹⁶ Another core value that goes hand-in-hand with independent judgment is client loyalty. Opponents feel that these two values are par-

109. Although attorneys can currently choose to work in professional services firms, their ability to "be lawyers" is removed due to the ethical restrictions.

110. Dzienkowski & Peroni, *supra* note 14, at 135; see *Final Report*, *supra* note 10.

111. ABA Comm'n on Multidisciplinary Practice, *Updated Background and Information Report*, available at <http://www.abanet.org/cpr/febmdp.html> (last visited Dec. 7, 2001).

112. See Gary T. Johnson, Paper Presented to the Assembly of the Michigan State Bar Ass'n (Jan. 22, 2000), available at <http://www.abanet.org/cpr/johnson.html> (last visited Dec. 7, 2001) [hereinafter Johnson Paper].

113. See generally Lawrence J. Fox, *Accountants, the Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs*, 84 Minn. L. Rev. 1097 (2000); Bernard Wolfman, Written Remarks to ABA Comm'n on Multidisciplinary Practice, available at <http://www.abanet.org/cpr/wolfman1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Wolfman] (discussing the threatened professional independence of lawyers).

114. Fox, *supra* note 113, at 1097. Lawrence Fox has been a predominant opponent of the adoption of MDPs. During his testimony to the Commission, he described his "nightmare" where he envisioned the legal profession's decline due to multidisciplinary practice. *Id.*

115. See Bernard Wolfman, Oral Testimony to ABA Comm'n on Multidisciplinary Practice, available at <http://www.abanet.org/cpr/wolfman2.html> [hereinafter Oral Testimony of Wolfman].

116. Lawrence J. Fox, Remarks to ABA Comm'n on Multidisciplinary Practice, available at <http://www.abanet.org/cpr/fox1.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Fox].

ticularly at risk with regards to a firm merger with accountants.¹¹⁷ Specifically, these attorneys note the inconsistent roles of an auditor (accountant) and an advocate (attorney).¹¹⁸ An auditor independently evaluates a company's financial statements and owes a duty to the public to ensure that the reporting is accurate, however, an attorney is a "client's confidential adviser and advocate, a loyal representative whose duty it is to present the client's case in the most favorable possible light."¹¹⁹ The opponents believe that the contrasts between the two roles cannot be reconciled. Furthermore, they seem to have the support of the Securities and Exchange Commission (SEC) on this issue. SEC Commissioner Norman Johnson stated that he found the expansion of accounting firms into legal services "troubling."¹²⁰ In addition, the SEC is reevaluating the ability of accounting firms to perform auditing and consulting services for the same client.¹²¹

The opposition also fears that the problem will be exacerbated in MDP structures where either attorneys report to non-lawyers or where non-lawyers own a portion of the firm.¹²² "[T]he financial interest of owners would affect all those who work for the organization, and it's inevitable that the financial concern of the owner is a potential interference, direct or indirect, with the independent judgment the lawyer must render for his client."¹²³ The critics have warned that the development of MDPs will produce the same results that occurred when physicians began working with non-physicians and when lawyers were hired by insurance companies: independence will be lost.¹²⁴ Moreover, attorneys impute conflict of interest at the firm level, which other professions do not.¹²⁵ Therefore, according to Harvard Law Professor Bernard Wolfman, this suggests that "other firms are willing to place their own commercial, financial interests above what lawyers traditionally have thought must be suppressed in favor of the client. 'It's the difference in the lawyer's willingness to put the absolute interests of the client above his own financial interests.'"¹²⁶

117. See Fox, *supra* note 113, at 1097-104; Remarks of Wolfman, *supra* note 113; Johnson Paper, *supra* note 112.

118. See Fox, *supra* note 113, at 1097-104; Remarks of Wolfman, *supra* note 113; Johnson Paper, *supra* note 112.

119. *United States v. Arthur Young*, 465 U.S. 805, 817-18 (1984).

120. Johnson Paper, *supra* note 112 (quoting statement of SEC Commissioner Norman Johnson on Mar. 6, 1999).

121. Remarks of Wolfman, *supra* note 113.

122. Oral Testimony of Wolfman, *supra* note 115.

123. *Id.*

124. Remarks of Fox, *supra* note 116.

125. Oral Testimony of Wolfman, *supra* note 115.

126. *Id.*; see also Robert L. Ostertag, Testimony to the ABA Comm'n on Multidisciplinary Practice (Oct. 9, 1999), available at <http://www.abanet.org/cpr/ostertag.html> (last visited Dec. 7, 2001) In his testimony, Mr. Ostertag stated that:

Similarly, MDP opponents raise confidentiality as another core value that will be destroyed by the allowance of MDPs. The Rules of Professional Conduct require an attorney to keep client communications confidential except in the case of imminent death or serious bodily harm.¹²⁷ Furthermore, client communications are protected by the attorney-client privilege.¹²⁸ Opponents assert that accountants, particularly auditors, do not have the same motivation to keep their clients' confidences since they also have a duty to the public. As stated by Mr. Fox: "Just when a legal client may most want to preserve a confidence, lawyers working at these accounting firms will be compelled to disclose it—running directly afoul of our most cherished professional value."¹²⁹

Finally, MDP opponents believe that the sheer competence of an attorney practicing with non-lawyers will decrease.¹³⁰ Attorneys working in professional services firms will eventually lose their ability "to recognize necessary law links" and will succumb to the "pressure to create new products" for clients. Thus, an MDP will inhibit an attorney's ability to perform his or her job effectively.

In sum, MDP opponents believe in the superiority of the legal profession and that the Big Five have launched a "guerilla war" against it.¹³¹ They consider lawyers to be distinct and that this MDP scare is an opportunity to reemphasize that distinction. In the words of Lawrence Fox:

[Lawyers] are not just another set of service providers. We are not just another cohort of business consultants. We are not just another kiosk at a one-stop shopping center for financial services.

We are officers of the court

We have responsibilities to improve the civil justice system, to seek improvements in the law, to provide pro bono service to those who cannot afford lawyers, to race to the defense of judges, to enhance the organized bar, to be responsible citizens of our communities.

Indeed, we are a priesthood. Perhaps we have forgotten this

The real inconvenience for the so-called 'full service firms' . . . is that we lawyers are not beholden to them, and we sometimes get in their way because the interests of our clients, which are paramount to us as attorneys, are sometimes different from those of our so-called 'full service firm' friends, or from their approach to problems, or from the goals they hope to attain.

Id.

127. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2000).

128. FED. R. EVID. 501.

129. Remarks of Fox, *supra* note 115.

130. Dzienkowski & Peróni, *supra* note 14, at 141; Remarks of Wolfman, *supra* note 113.

131. See Fox, *supra* note 113, at 1107; Remarks of Fox, *supra* note 116 ("[A]ccounting firms are a one profession wrecking crew, destroying any ethical rules that stand in their path.").

. . . . Perhaps we have left ourselves vulnerable to the takeover that is now upon us by failing to remember our mission and failing to fulfill our responsibilities.

But that does not mean it is too late. The great offensive by the Big 5 could be turned into an advantage. It might not only unite the profession to resist this disastrous incursion, but also motivate us to refocus and rededicate our efforts to recapturing our own professional values.¹³²

As can be imagined, the Big Five did not ignore the call for attorneys to “recapture” the legal profession. Representatives of these professional services firms also presented testimony addressing the effects that MDPs could have on the core values of the legal profession.¹³³ According to these representatives, the core values of the legal profession and the accounting profession are identical.¹³⁴ CPAs are also governed by rules requiring independence, loyalty to clients, and maintenance of confidentiality.¹³⁵ Specifically, accountants are required by AICPA Rule 102 “to exercise objective judgment on behalf of clients.”¹³⁶ In her remarks to the Commission, Kathryn Oberly stated:

I find offensive the suggestion that a nonlawyer professional in an integrated practice would be less sensitive to the need for independent professional judgment The purpose in protecting a lawyer’s independent judgment—to best serve the client’s interests—is as readily understood by nonlawyer professionals as by lawyers.¹³⁷

Furthermore, Ms. Oberly addressed the allegation that lawyers reporting to non-lawyers would have an adverse effect on the lawyer’s independent judgment due to the financial concerns of the non-lawyer owners. She noted that law firms are also operated as businesses in today’s economy, especially considering “billing goals” and “targets for chargeable hours,” yet attorneys are not prohibited from working in firms that experience “multi-million dollar net profits.”¹³⁸

In addition, the professional services firms attacked the MDP oppo-

132. Fox, *supra* note 113, at 1103-04.

133. See *supra* notes 52, 106 and accompanying text; see *infra* notes 134, 164 and accompanying text.

134. Sam DiPiazza, Jr., Written Remarks to ABA Comm’n on Multidisciplinary Practice (Oct. 11, 2001), available at <http://www.abanet.org/cpr/dipiazza.html> (last visited Dec. 7, 2001) [hereinafter Remarks of DiPiazza]. Mr. DiPiazza is the managing partner of Tax Services for PricewaterhouseCoopers. *Id.*

135. *Id.*

136. Statement of Oberly, *supra* note 52.

137. *Id.*

138. *Id.*

nents' belief that accountants are not as loyal to their clients as attorneys.¹³⁹ The representatives mainly focused on how conflicts of interest are handled in the accounting industry. AICPA Rule 102 requires a CPA to "maintain objectivity and integrity and be free of conflicts of interest."¹⁴⁰ If a CPA's or firm's relationship with one client could impair objectivity in regards to another client, the CPA or firm cannot represent both clients.¹⁴¹ Attorneys generally treat direct conflicts the same way.¹⁴² However, when a direct conflict occurs, the CPA can provide full disclosure to the clients, and upon the informed consent of both clients, the engagement can be accepted.¹⁴³ Although the clients consent to the representation, confidentiality must still be maintained.¹⁴⁴ These firms ensure confidentiality and independence by using completely separate engagement teams and installing firewalls to screen the professionals and the information.¹⁴⁵ Unlike legal professionals, accountants do not impute conflicts to the whole firm, but to the individual CPA.¹⁴⁶ Thus, in a professional services firm, an individual can represent a client when another individual in the firm has a client with an indirect adverse interest.¹⁴⁷ The accounting profession believes that the individual owes the duty of loyalty to the client and that there is little risk that the individual will compromise that duty.¹⁴⁸

Finally, the representatives addressed the "most cherished professional value," confidentiality.¹⁴⁹ Again, the AICPA Rules of Professional Conduct were referenced, specifically Rule 301, which requires that "a member in public practice shall not disclose any confidential information without the specific consent of the client."¹⁵⁰ Thus, a CPA is also under an ethical requirement to maintain client confidences. However, the opponents of MDPs assert that an auditor performing the attest function cannot fulfill that requirement.¹⁵¹ Yet, even when performing an audit, a CPA must obtain client consent before disclosing information or he or she will be subject to discipline by the AICPA and a potential damages award.¹⁵² If a CPA is unable to render a clean opinion of an audited financial statement, the CPA must issue a modified

139. Remarks of DiPiazza, *supra* note 134.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Remarks of DiPiazza, *supra* note 134.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Remarks of Fox, *supra* note 115.

150. Remarks of DiPiazza, *supra* note 134.

151. See *supra* text accompanying notes 127-129.

152. Remarks of Page, *supra* note 106.

opinion, disclaim the opinion, or withdraw.¹⁵³ This type of opinion or occurrence serves as a red flag to the business community (similar to when an attorney withdraws from a case), and thus the client must choose between a qualified opinion and disclosure.¹⁵⁴ In either event, the client, not the CPA, must make the decision.¹⁵⁵

Furthermore, an attorney working in an MDP would still be required to keep client information confidential and would still be protected by the attorney client privilege.¹⁵⁶ The privilege to keep communications confidential is between the client and the individual lawyer.¹⁵⁷ If an MDP attorney knew of information necessary for the auditor's opinion, the attorney could not disclose the information without the consent of the client.¹⁵⁸ Moreover, when an attorney requires the assistance of other professionals to render legal advice, the attorney-client privilege can extend to cover those professionals also.¹⁵⁹ Lastly, Congress has decided to provide further protections between an accountant and a client. Accountants have been granted the protection of privileged communications when representing clients in tax matters.¹⁶⁰ Therefore, even Congress is bringing the two professions closer together. "[The opposition has] likened the accounting firms to barbarians at the gates of the legal profession. But the core values of the legal profession—confidentiality, independent judgment, and conflict-free advice—are also central to the accounting profession."¹⁶¹

IV. DO MDPs ALREADY EXIST?

As mentioned, Rule 5.4 of the Rules of Professional Conduct prevents the formation of multidisciplinary practices by prohibiting an attorney from entering a partnership with or sharing fees with a non-lawyer;¹⁶² however, how effectively do these prohibitions work? Are MDPs already in existence? According to the testimony before the

153. *Id.*

154. *See id.*

155. *See id.*

156. *See id.*

157. Remarks of Page, *supra* note 106.

158. *Id.*

159. Statement of Oberly, *supra* note 52.

160. I.R.C. § 7525 (West 2000). The code states that:

With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

Id.

161. Remarks of Page, *supra* note 106.

162. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2000).

Commission on Multidisciplinary Practice and the Commission's recommendation, "multidisciplinary practice is here," at least in some forms.¹⁶³

Probably the closest structure to a true MDP is found in the Big Five accounting firms.¹⁶⁴ These firms employ both lawyers and non-lawyers to render advice to clients, mainly regarding tax issues.¹⁶⁵ Attorneys and CPAs both become partners and both share fees.¹⁶⁶ The individuals working for these professional services firms provide clients with some of the same services that can be obtained from law firms; yet these firms are not guilty of the unauthorized practice of law because they do not create legal documents or hold themselves out as lawyers.¹⁶⁷

Outside the United States, where attorney's ethical rules are not as confining, the Big Five are dominating the legal market.¹⁶⁸ Currently, only Switzerland allows a fully integrated MDP,¹⁶⁹ but Germany, the Netherlands, New South Wales, Australia, and the Law Society of Upper Canada expressly allow forms of MDPs.¹⁷⁰ Similarly, some countries such as France permit a variation of MDPs by allowing captive law firm arrangements.¹⁷¹ For example, PricewaterhouseCoopers in Paris has entered one of these arrangements—the firms are separate but they share clients, office space, supplies, telephones, and computers.¹⁷² "The effect . . . is that the international accounting firms are providing legal services including litigation in ways that are fundamentally indistinct from law firms."¹⁷³ Moreover, other countries are considering permitting MDPs on some level.¹⁷⁴ In sum, the Big Five accounting firms are practicing law abroad and are walking a fine line at home in the United States.

Additionally, in the United States the legal profession has evolved over the years, resulting in the emergence of certain MDP characteris-

163. See Remarks of Tucker, *supra* note 52, at pts. I, IV. See *Final Report*, *supra* note 10.

164. See Richard Spivak, Remarks to ABA Comm'n on Multidisciplinary Practice (Mar. 31, 1999), available at <http://www.abanet.org/cpr/spivak3.html> (last visited Dec. 7, 2001) [hereinafter Remarks of Spivak] ("My firm today is an MDP."). Mr. Spivak is the partner in charge of the North American tax practice of Arthur Andersen, LLP. *Id.*

165. *Id.*

166. See *id.*

167. *Id.* Although attempts have been made to attack the Big Five on the grounds of unauthorized practice of law, they have proven to be unsuccessful. Terry, *supra* note 12, at 882. Charges were brought against the Big Five in Texas and Virginia, but were subsequently dropped. *Background Paper*, *supra* note 1, at pt. II.

168. *Reporter's Notes*, *supra* note 29, at pt. I.B.

169. *Id.*

170. Terry, *supra* note 12, at 883.

171. *Background Paper*, *supra* note 1, at pt. I.

172. *Id.*

173. *Id.*

174. See Terry, *supra* note 12, at 886 (discussing the Law Society of England and Wales, provinces in Canada, and Australia).

tics. One specific evolution occurred in Washington, D.C., where the District of Columbia amended its Rule 5.4 to allow the partnering and fee sharing of lawyers and non-lawyers.¹⁷⁵ The Rule does not permit a fully integrated MDP since it requires the partnership to have a sole purpose of providing legal services.¹⁷⁶ However, the comments provide that CPAs can partner with tax attorneys to perform legal services.¹⁷⁷ One of the Big Five has taken advantage of this amendment. In November 1999, Ernst & Young provided a large amount of capital to five former King & Spalding partners.¹⁷⁸ This capital was used to form the partnership of McKee Nelson Ernst & Young.¹⁷⁹ Although the firm claims to be independent of Ernst & Young, many view this as a “major step . . . toward the eventual establishment of multidisciplinary partnerships that include legal services.”¹⁸⁰ Another MDP-like development occurred when Congress granted the “attorney-client privilege” to tax practitioners.¹⁸¹ These two events seem to suggest that regulatory bodies are finding MDPs more acceptable.

Furthermore, there is additional evidence to support the assertion that MDPs are already among us. For many years in this country, attorneys have been able to form partnerships with non-lawyers, specifically accountants. Consequently, attorneys in these partnerships could not “hold [themselves] out” as lawyers.¹⁸² Nevertheless, attorneys and accountants can be partners, and “the mere fact that a person qualified and holding himself out as an accountant has also been licensed to practice law should not in itself bar him from engaging in all the activities that an accountant may lawfully engage in.”¹⁸³ Moreover, attorneys have always been allowed to employ accountants. “A firm of attorneys

175. D.C. RULES OF PROF'L CONDUCT R. 5.4 (2000); *see also Background Paper, supra* note 1, at pt. III.

176. D.C. RULES OF PROF'L CONDUCT R. 5.4 (2000); *see also Background Paper, supra* note 1, at pt. III.

177. *Background Paper, supra* note 1, at pt. III.

178. *Final Report, Appendix, supra* note 10, at app. pt. B.

179. *Id.*

180. *Id.*

181. *See supra* note 160 and accompanying text.

182. ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 269 (1945) (“In determining whether he is practicing law when he holds himself out only as an accountant, the controlling factor is whether the activity in question is one which would constitute the practice of law when engaged in by one holding himself out as a lawyer.”); ABA Comm. on Prof'l Ethics, Formal Op. 297 (1961).

183. ABA Comm. on Prof'l Ethics, Formal Op. 305 (1962); *see also* ABA Comm. on Prof'l Ethics and Grievances, Informal Op. 1241 (1973) (“lawyer may carry on another occupation, even though it involves legal skills, which is open to non-lawyers.”); ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 272 (1946); Tex. Comm. on Prof'l Ethics, Op.136 (1956), available at http://www.txethics.org/reference_opinions.asp?opinionnum=136 (last visited Dec. 7, 2001) (noting that a lawyer can “use his accounting knowledge and experience in connection with his law practice”).

may hire a certified public accountant as an employee.”¹⁸⁴ As employees, accountants can perform any job except counsel clients on legal matters, directly engage in the practice of law, or appear in court.¹⁸⁵ Each of these arrangements seems very similar to an MDP. In both situations accountants and attorneys are collaborating, the only apparent distinction from an MDP is that under one set of circumstances they can only advise clients on tax matters and under the other, only the lawyer can communicate the advice to the clients.

Even though the ABA and the state bar associations gave attorney-accountant arrangements limited approval, they eventually expanded those limits. Originally, an individual could not hold himself out as a lawyer and an accountant.¹⁸⁶ The ABA Committee on Professional Ethics found that a “dual holding out” violated Canon 27 because it constituted “self-touting” and because there were concerns that an individual who was a partner in both a law firm and an accounting firm would use the entities as “feeder[s]” for each firm.¹⁸⁷ Subsequently, the Committee reconsidered its position. In Formal Opinion 328, it stated:

No disciplinary rule forbids a lawyer to engage simultaneously in another business, profession or endeavor. But DR 2-102(E) prohibits certain conduct by a lawyer while he is carrying on a second business or profession. DR 2-102(E) provides:

“A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.”

Inferentially DR 2-102(E) recognizes the right of a lawyer to engage at the same time in another business or profession, and under the Code it is clear that a lawyer is not necessarily subject to discipline for practicing law and accounting concurrently . . . [T]he lawyer may simultaneously hold himself out as a lawyer and as an accountant provided the requirements of DR 2-102(E) are met¹⁸⁸

184. ABA Comm. On Prof'l Ethics and Grievances, Formal Op. 272 (1946); MODEL CODE OF PROF'L RESPONSIBILITY EC 3-6 (1980) (“A lawyer can employ . . . accountants.”); Tex. Comm. on Prof'l Ethics, Op. 438 (1987), available at http://www.txethics.org/reference_opinions.asp?opinionnum=438 (last visited Dec. 7, 2001).

185. MODEL CODE OF PROF'L RESPONSIBILITY EC 3-6 (1980).

186. ABA Comm. on Prof'l Ethics, Formal Op. 297 (1961).

187. *Id.*

188. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 328 (1972); see also

Thus, these opinions are yet another step toward the allowance of MDPs.

MDPs violate the Rules of Professional Conduct because a MDP usually provides that lawyers and non-lawyers are partners. However, considering its ethics opinions, the ABA does not necessarily object to attorneys and accountants working together or attorneys serving both functions. In more extreme cases, the ABA seems to approve work arrangements that are very similar to partnerships. For instance, the ABA has found that the sharing of office space, a waiting room, and office expenses such as secretarial services and books between an accountant and lawyer was not an ethical violation.¹⁸⁹ Furthermore, in that situation, the attorney and the accountant hired each other for their respective services and occasionally recommended the other's services to clients.¹⁹⁰ Similarly, the Committee on Ethics and Professional Responsibility gave its approval to a lawyer who practiced both of his professions—lawyer and accountant—out of the same office.¹⁹¹ A lawyer

may practice from the same office both as a lawyer and as a member of a law-related profession or occupation, such as . . . [an] accountant, . . . if he complies not merely with DR 2-102(E) but with all provisions of the Code of Professional Responsibility while conducting his second, law-related occupation.¹⁹²

Thus, as long as an individual adheres to the Rules of Professional Conduct and does not misrepresent his or her role to the client, he or she can practice both professions from one office. This seems similar to how a lawyer would operate in a MDP.

Finally, the Connecticut Bar Association has even allowed a situation where an attorney operates a legal and tax-related services law firm in the same office space as an accountant.¹⁹³ In addition to maintaining the law practice, the attorney also works for the accountant doing tax preparation.¹⁹⁴ Although the bar warned that the relationship had "potential for ethical violations," they nevertheless approved it.¹⁹⁵ All of these scenarios basically meet the definition of an MDP.¹⁹⁶ They are all

Oklahoma Bar Ass'n Legal Ethics Comm., Ethics Op. No. 274 (1973), available at <http://www.okbar.org/ethics/274.htm> (last visited Dec. 7, 2001).

189. ABA Comm. on Prof'l Ethics, Informal Decision C-630 (1963).

190. *Id.*

191. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 328 (1972).

192. *Id.*

193. Connecticut Bar Ass'n, Informal Op. 93-11

194. *Id.*

195. *Id.*

196. See *Final Report*, *supra* note 9, at app.

generally associations of lawyers and non-lawyers that are providing both legal and non-legal services. These work arrangements do not include the direct sharing of fees, but the occasional referrals could constitute indirect sharing.

Moreover, regardless of Rule 5.4's prohibition of sharing fees with non-lawyers, attorneys and accountants do share fees and the ABA condones it. In Informal Opinion 1440, the Committee approved the paying of an employee office administrator a base salary plus a bonus based on the net profits of the firm.¹⁹⁷ This compensation arrangement did not cause an ethical violation because the compensation was derived from the net profits of the firm rather than the receipt of specific fees.¹⁹⁸ The New York County lawyers association, relying on ABA Informal Opinion 1440, applied this result to accountants working in law firms.¹⁹⁹

[W]e believe a law firm may employ a tax accountant to work with clients in accounting and tax matters as long as the tax accountant is an employee and does not have an ownership interest in the firm. The firm may pay such an employee a bonus over and above the employee's salary, as long as the bonus is not based on the individual billings of the accountant, but rather is a fixed amount or is based on the profits of the firm . . .

. . .²⁰⁰

Thus, an accountant can receive a bonus based on net profits with the qualification that it is not derived from legal fees associated with the accountant's work. Yet, the net profits of a law firm are derived from legal fees that the accountant indirectly contributed to. In sum, in various structures and situations, lawyers and accountants can work together and even partner; with some restrictions, can provide legal as well as non-legal services; and with one qualification, can directly as well as indirectly share legal fees. Today's legal profession already contains the attributes of MDPs. Maybe, Mr. Tucker was correct when he testified to the Commission that "[m]ultidisciplinary practice is here."²⁰¹

V. WILL THE MDP DEBATE CONTINUE?

Now that the ABA has spoken on the issue, will multidisciplinary practice be able to survive? Although the ABA has won the battle, it

197. ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1440 (1979).

198. *Id.*

199. New York County Lawyers' Ass'n Comm. on Prof'l Ethics, Op. No. 687 (1991), available at 1991 WL 755943.

200. *Id.*

201. Remarks of Tucker, *supra* note 52.

has not won the war. MDP support is ever present, even within the ABA itself.

With the lines between the professions already beginning to blur, [ABA President Philip Anderson] said the House attempted to preserve a status quo that no longer exists. In doing so, . . . the House also risked silencing the ABA's single voice in such matters. . . .

. . . I think the ABA has lost the chance to provide essential leadership on the most crucial issue of our generation.²⁰²

Maybe in the future Jane Doe's legal education will be fully recognized, and she can inform her clients that she is a lawyer. However, she will have to continue to withhold her legal background until the MDP debate comes to a *final* resolution. "Whatever the outcome, everyone agree[s] that lawyers haven't heard the last word on the matter. '[T]his debate is not going to go away.'²⁰³

Kathryn Lolita Yarbrough

202. Gibeaut, *supra* note 40, at 90.

203. *Id.*