AMERICAN BANKRUPTCY INSTITUTE

2018 Annual Spring Meeting

CONCURRENT SESSION

Blurring the Lines: The Advent and Ethics of Multidisciplinary Practice

Hosted by the International and Financial Advisors & Investment Banking Committees

Jerry Henechowicz
MNP Ltd.; Toronto

James Horgan
PricewaterhouseCoopers LLP; Edison, N.J.

Annerose Tashiro
Schultze & Braun GmbH; Achern, Germany

Ian G. Williams
RSM Restructuring; London

2018

BLURRING THE LINES: THE ADVENT AND ETHICS OF MULTIDISCIPLINARY PRACTICE

Washington, D.C.

SATURDAY

APRIL 21, 2018

4:00-5:00 P.M.

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PANELISTS

AMERICAN BANKRUPTCY INSTITUTE

Hosted by the International and Financial Advisors & Investment Banking Committees

Jerry Henechowicz (*Moderator)*
MNP Ltd.
Toronto, Canada

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PricewaterhouseCoopers LLP
New York, NY

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RSM Restructuring
London, England

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Let's Define Multidisciplinary Practice

Multidisciplinary Practice (or "MDP") – "a fee-sharing association of lawyers and non-lawyers in a firm that delivers both legal and non-legal services." BLACK'S LAW DICTIONARY 1112 (9th ed. 2009).

Alternative Law Practice Structure (or "ALPS") – a business structure that has both lawyer and non-lawyer partners but only delivers legal services.

Alternative Business Structure (or "ABS") - an entity that, while providing regulated reserved legal activities, allows non-lawyers to own or invest in law firms for the first time.

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Legal Service Reform

a. Increased competitiveness
b. Efficiency
c. Client satisfaction
d. Cost effectiveness
e. "One stop shop"

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Why Is MDP or ALPS Controversial in the United States?

- Legal ethics considerations
- Fear of competition
    a. Consulting firms' size and reach surpass most law firms
    b. Non-lawyers resonate or connect more with business people as they are in the same discipline
    c. Consulting firms are more flexible

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What Are the Legal Ethics considerations in the United States?

- Principle of independence (Model Rule 5.4)
    a. Sharing of legal fees
    b. Forming a partnership
    c. Payment to the lawyer cannot come from someone other than the client to the extent that will impact the independent judgment of the lawyer
    d. A lawyer cannot be in an entity whose management or control is with a non-lawyer
        i. Ownership interest
        ii. Officer or director
        iii. Right to direct or control professional judgment of the lawyer

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What Are the Legal Ethics Considerations in the United States (*Cont'd*)?

- Unauthorized practice of law (Model Rule 5.5)

  a. Multi-jurisdictional practice
  b. Non-lawyers practicing law

- Confidentiality (Model Rule 1.6)
- Prohibition on advertising (Model Rule 7.2)
- Protections of clients with respect to fees (Model Rule 1.5)
- Conflicts issues

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The ABA House of Delegates Studies This Issue and Has Appointed Several Commissions to Study and Propose Ethics Rule Changes. How Has That Worked Out So Far?

The Kutak Commission focused on the changing landscape of corporate forms (law firms were no longer limited to partnerships) for legal organizations and proposed a rule change that would allow lawyers to "partner" in organizations that had non-lawyer management or ownership.

The ABA House of Delegates rejected any proposal for change based on:

a. Independence principle
b. Lawyer professionalism
c. "Unknown effects"

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The ABA House of Delegates Studies This Issue and Has Appointed Several Commissions to Study and Propose Ethics Rule Changes. How Has That Worked Out So Far? *(Cont'd)*

The ABA MDP Commission proposed to allow MDPs, as lawyers were already working in similar situations to the MDP, so long as those lawyers were bound by the protections of the Model Rules. The ABA MDP Commission studied:

a. Client experience with MDPs
b. International marketplace
c. Current legal services marketplace and how to regulate it
d. Confidential/privileged information protections and conflicts
e. Control and authority
f. Definition of professional services
g. Pro bono obligations

This was rejected by the ABA House of Delegates.

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Multidisciplinary Practice: MDP Commission – Changing Legal Marketplace

- Clients' seeming interest in MDPs
- Continued client interest in more efficient and less costly legal services
- Client dissatisfaction with the delays and outcomes in the legal system as they affect both dispute resolution and transactions
- Clients' growing need in comprehensive solutions to their multidisciplinary problems
- Advances in technology and telecommunications
- Globalization
- New competition through services such as computerized self-help legal software, legal advice sites on the Internet
- The wide-reaching, stepped-up activities of banks, investment companies, and financial planners providing products that embody a significant amount of legal engineering
- The strategy of Big Five professional services firms and their smaller-size counterparts that has resulted in thousands of lawyers providing services to the public while denying their accountability to the lawyer regulatory system

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Who Is for MDPs and ALPs?

Clients

a. Association of Corporate Counsel
   - The American Corporate Counsel Association has adopted a resolution, urging that the ethical barriers to the establishment of multidisciplinary partnerships be dismantled.

   - In addition, the MDP Commission heard supporting testimony from witnesses with respect to the desire of corporate counsel to have the option of purchasing legal services from alternative service providers.

b. Small Business
c. Tax Law Committee of the Young Lawyers Division of the ABA
d. Low and Moderate Income Client Advocates
e. Large Firms with non-lawyer entities as subsidiaries

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What Is the Experience in Jurisdictions that Allow for MDPs?

England and Wales now permit ABS as a result of the passage of the Legal Services Act of 2007 ("**LSA**").

- The LSA permits lawyers to form an ABS that allows external ownership of legal businesses and multidisciplinary practices (providing legal and other services), but with two significant regulatory requirements:
  - ***First***, under the LSA, non-lawyers who want to be owners of law firms must pass a fitness-to-own test.
  - ***Second***, the Solicitors Regulation Authority ("**SRA**") and the Legal Services Board overhauled the regulation of law firms.
- The new SRA Code of Conduct requires that firms have compliance programs in place.

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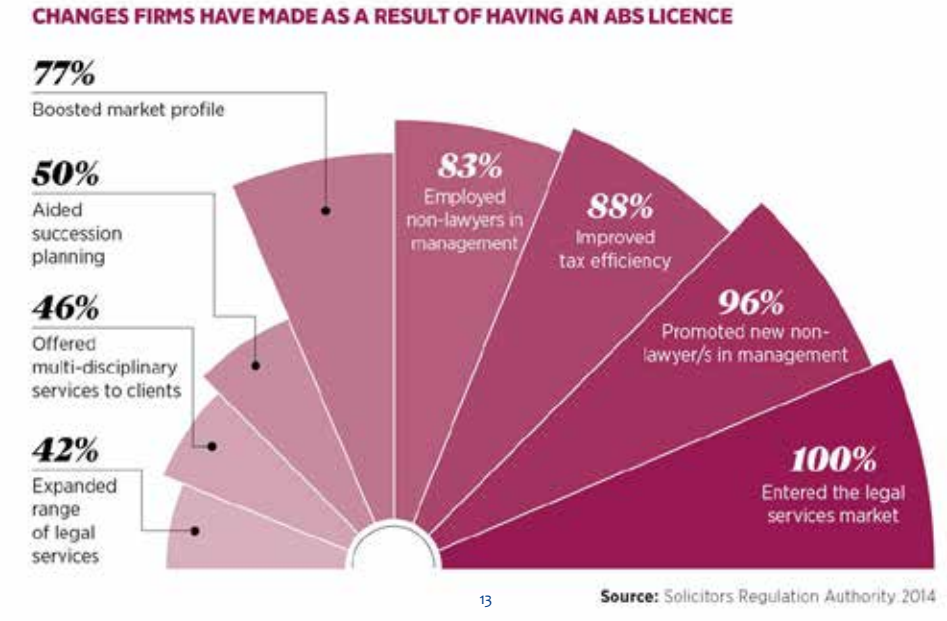
What Is the Experience in Jurisdictions that Allow for MDPs? - Legal Services Act of 2007



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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Germany

- German law permits MDPs between lawyers, accountants and tax advisers following the freedom of profession as protected in Article 12 of the German Constitution and more specifically recognized in Section 59a of the German Lawyers' Act.

- The Professional Rules of Conduct for Lawyers permit a lawyer to work in an MDP with members of other profession. However, in addition to their own conduct rules, those members need to comply with the Professional Rules of Conduct for Lawyers as well.

- In Germany, accountants and tax advisers have Rules of Conduct which are very similar to those of the legal profession. This is the major reason why MDPs with those professions have been allowed.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Germany – Relationship Between the Accounting and the Associated Law Firm

- MDPs are problematic for lawyers, considering the ethical principles that regulate lawyers, particularly those principles governing the independence of lawyers and conflicts of interest.
- MDPs are also problematic for accountants, considering the independence principle of the Germans Accountants Act, which mandates that a majority of managing partners and voting rights be with them.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Germany – Relationship Between the Accounting and the Associated Law Firm

- The conflict of interest rules of the Professional Rules of Conduct for Lawyers apply to the entire firm and cannot be waived by the client because the lawyer is an Organ of the Administration of Justice.
- The conflict of interest rules for accountants are different: the Accounting Act (§49) prohibits accountant from acting if there is a concern that there may be prejudice to the client. The Professional Rules of Conduct for Accountants prohibit the "separation" of conflicting interest, unless all clients agree.
- However, joint activities of all professions are explicitly allowed by all of the regulations of the professions and also by the constitutional court.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Germany

- There are many small MDP firms in Germany which have lawyers, accountants and/or tax advisers as partners.

- The German legislator has ruled that each professional should follow the rules applicable to his/her profession, which means that each professional can only give advice within the limits of his/her abilities. Further, the monopoly on legal advice allows a clear distinction to be drawn between lawyers and non-lawyers.

- **Example**
  The tax advisors can only give his opinion on legal questions as long as they are closely related to the fiscal matter at hand. If it goes any further, the tax advisor has to refer the matter to a lawyer.

  Many lawyers consider it an advantage to belong to MDPs as this enables them to provide better service to their clients.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Germany – Big Four Accounting Firms Enter the Legal Advisory Market

- According to the latest market analysis of Lünendonk & Hossenfelder, MDPs expect an outstanding growth potential in the tax and legal consulting segments.

- The Big Four increasingly invest in the acquisition of consulting firms as well as special consulting teams, entering the legal market and competing with law firms.

- The legal segments of the Big Four are growing rapidly, having generated a growth of 13.6% on average in 2016, whereas law firms only increased their revenue by 5,8% on average (Lünendonk & Hossenfelder, 2018).

- PwC Legal generated a turnover of 81 million Euro (ranking 21st of the German law firms).

- Deloitte Legal increased their revenue by 40% to 36 million Euro in 2016.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Other European countries.

While England and Wales permit law firms to be owned by nonlawyers without , other European countries permit ABS on a more limited scale.

- Scotland (up to 49% nonlawyer ownership)
- Italy (33%)
- Spain (25%)
- Denmark (10%)
- The Netherlands, Poland, Spain, and Belgium permit various forms of MDPs.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Canada

- Some Canadian provinces also have permitted nonlawyer ownership and/or MDP for some time.

- In Quebec, nonlawyers may own up to 50% of law practices, and law firms may engage in MDP. British Columbia permits MDPs.

- Ontario allows lawyers and licensed paralegals to form an MDP with professionals who practice in a profession, trade or occupation that supports or supplements their practice of law or provision of legal service (e.g., accountants, tax consultants, trademark and patent agents, etc.). When a licensee and a professional enter into a formal partnership agreement, it is considered to be an MDP Partnership, which must be approved by the Law Society by application and is subject to regulation and compliance requirements. The licensee must comply with Part III of By-Law 7 of the Law Society of Ontario.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

Australia. In 2001, New South Wales, the most populous state in Australia, became the first Australian jurisdiction to allow ABS when it authorized "incorporated legal practices." New South Wales permits legal practices, including MDPs to incorporate, share receipts and provide legal services either alone or alongside other legal service providers who are not legal practitioners.

Singapore now also permits nonlawyer ownership. The Legal Profession (Amendment) Act 2014 permits lawyers to own businesses called Legal Disciplinary Practices, in which nonlawyers may own up to 25%.

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What Is the Experience in Jurisdictions That Allow for MDPs? *(Cont'd)*

- In the United States, two jurisdictions permit forms of ABS:
  a. the District of Columbia and
  b. Washington State (created the Limited License Legal Technician ("**LLLT**"), "the first independent paraprofessional in the United States that is licensed to give legal advice." LLLTs can own a minority interest in a law firm.

- District of Columbia also allows for lawyers to register as foreign legal consultants and practice foreign law.

- PwC's ILC Legal, LLP:
  - Does not perform any insolvency work
  - Does not practice any U.S. law
  - Owned by foreign member firms who have legal businesses in their home countries
  - Focused mainly on tax services for multinational corporations that have a need for non-U.S. legal services.

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D.C. Rule of Professional Conduct 5.4(b) provides:

A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if: (1) The partnership or organization has as its sole purpose providing legal services to clients; (2) All persons having such managerial authority or holding a financial interest undertake to abide by the [D.C. Bar] Rules of Professional Conduct; (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1; [and] (4) The foregoing conditions are set forth in writing.

D.C. RULES OF PROF'L CONDUCT R. 5.4

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Who Are the Biggest Players in MDP Jurisdictions?

- The Big Four–PwC, Deloitte, Ernst & Young and KPMG–have an average of 2,200 lawyers working for them in 72 countries, with a focus on European market. Their strongest practices consist of legal services related to taxation, immigration, and labor and employment.
- They are also looking to Canada and Asia for growth in legal services.

Big 4 Accounting Firms
Full Legal Practices (FLPs)

	Avg %	Avg of FLPs #
Europe	51%	37#
Canada/S.America	21%	15#
Africa/Middle East	17%	12#
Asia Pacific	11%	8#
Total	100%	72

https://www.alm.com/intelligence/solutions-we-provide/business-of-law-solutions/analyst-reports/elephants-in-the-room-the-big-4s-expansion-in-the-legal-services-market/

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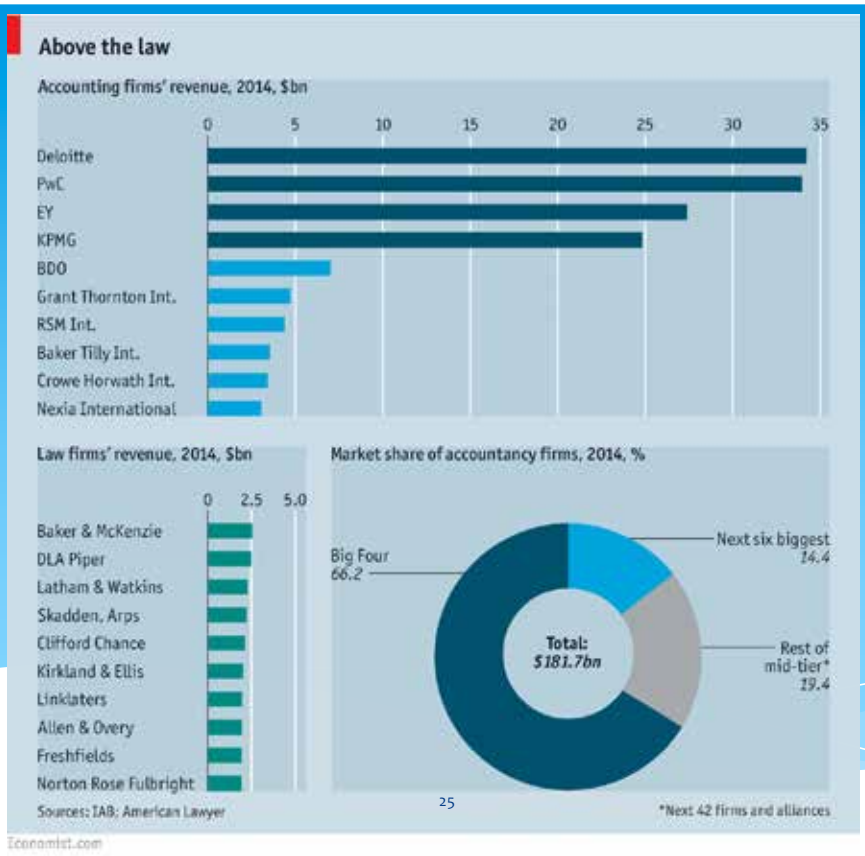

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Are These MDP Players Multi-Jurisdictional As Well?

- **Yes.**
- Broad geographic reach.
- Outside of SOX regulations.
  a. Big Four were not kicked out of the legal market by SOX
  b. Big Four are limited in providing certain service to audit clients by SOX but operate in multiple jurisdictions

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What Types of Legal Services Are Offered?

- Labor and employment-related legal services
- Digital security and data protection
- Dispute resolution
- Immigration
- Tax
- International corporate structuring
- Mergers and acquisitions ("Merger in a Box").

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What Are the Complementary Services Being Offered with Legal Services?

1. Big Four firms will offer to do the advisory work upfront to identify the merger candidate,
2. Tax professionals, along with the lawyers, will do the due diligence to set up the deal,
3. Lawyers will then transact the deal, perhaps with the help of outside financial services companies,
4. Lawyers do the post-merger entity cleanup typically performed by lawyers,
5. Accountants will do the post-entity financial cleanup, and
6. Consultants will then do the post-merger integration.

Cheaper rates for these services because the MDPs are getting all of the work.

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Do These MDPs Offer Restructuring Services?

The Big Four's member firms in developed economies (CA, JP, FR, DE, IT, GB, US) all have accounting/financial advisory related restructuring practices.

Reasons for building up the practice:

- Demand from Fortune 1000 consulting clients
- Global supply chains (increased globalization of industrial supply chains is changing manufacturing, resulting in a growing interdependence of suppliers and manufacturers)
- Consulting client – cross-selling opportunities

BLURRING THE LINES:

THE ADVENT AND ETHICS OF MULTIDISCIPLINARY PRACTICE

Washington, D.C.

Saturday, April 21, 2018

4:00 p.m.– 5:00 p.m.

PANELISTS

Hosted by: **The International Committee** **&** **The Financial Advisors &** **Investment Banking Committee**	
Jerry Henechowicz - Moderator MNP Ltd. *Toronto, Canada*	**James Horgan** PricewaterhouseCoopers LLP *Edison, New Jersey*
Annerose Tashiro Schultze & Braun GmbH *Achern, Germany*	**Ian G. Williams** RSM Restructuring *London, United Kingdom*
The Panel would like to acknowledge the assistance of the following restructuring professionals in preparation of these materials: **Rafael X Zahralddin-Aravena** Elliott Greenleaf *Wilmington, Delaware* **Oksana Koltko Rosaluk** DLA Piper LLP (US) *Chicago, Illinois*	

➢ MULTIDISCIPLINARY PRACTICE: INTRODUCTION

- Multidisciplinary Practice ("**MDP**") – "a fee-sharing association of lawyers and non-lawyers in a firm that delivers both legal and non-legal services." BLACK'S LAW DICTIONARY 1112 (9th ed. 2009).

- Alternative Law Practice Structure ("**ALPS**") – a business structure that has both lawyer and nonlawyer partners but only delivers legal services.

- As more fully discussed below, MDPs and ALPSs are prohibited in the United States but are permitted, subject to certain restrictions, in Europe and other countries. In recent years, the continued prohibition of MDPs has caused extensive debate within the American Bar Association, law schools, and law firms across the United States.

➢ MULTIDISCIPLINARY PRACTICE: PROHIBITION OF MDPS IN THE UNITED STATES

- In the United States, the term "**law firm**" is defined as "a lawyer or lawyers in a law partnership, Professional Corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization." Model Rules of Prof'l Conduct R. 1.0 (1983).

- The legal profession, primarily through the American Bar Association ("**ABA**"), traditionally has focused on two aspects when "separating" lawyers from nonlawyers and preserving the "purity" of the American law firm:

  First, preservation of the independent judgment of lawyers by prohibiting lawyers from partnering with or practicing with nonlawyers.

  Second, prevention of unauthorized practice of law ("**UPL**") by prohibiting nonlawyers from engaging in the practice of law.

- ***Preservation of the Independent Judgment of Lawyers and Protections Against UPL – Genesis***:

  1928: Canons 33 through 35, which prohibited nonlicensed individuals from holding themselves out as legal practitioners, division of fees between lawyers and nonlawyers, and any control or exploitation of professional services of a lawyer by a nonlawyer or nonlaw business entity, were initially developed in 1928 and appeared in the ABA Canons of Ethics. During their reign, the ABA Committee on Professional Ethics and Grievances construed those canons as prohibiting lawyers and nonlawyers from providing services in any one business structure. *See, e.g.*, ABA Comm. on Ethics & Grievances, Formal Op. 201 (1940); Formal Op. 297 (1961).

  1930: In 1930 through 1984, the ABA maintained a Standing Committee on the Unauthorized Practice of Law.

1969: In 1969, the Model Rules of Professional Responsibility replaced the ABA Canons of Ethics, incorporating Canons 33 through 35 as "Disciplinary Rules" ("**DR**") 3-101(A), 3-102(A), and 3-103(A) and further tightened prohibition on lawyer-nonlawyer cooperation through DR 5-107(B), which prohibited the third party who paid for or employed a lawyer to render legal services for another from interfering with the lawyer's professional judgment, and DR 5-107(C), which prohibited a professional corporation from directing or controlling the lawyer's professional judgment.

1973: The ABA Commission on Ethics and Professional Responsibility issued Informal Opinion 1241, which (when read together with other relevant opinions and the broad definition of the practice of law) effectively prohibited lawyers from operating any for-profit business organization in which nonlawyers have a financial or managerial role, if the business of the organization is law or law-related.

1983: The ABA adopted the Model Rules of Professional Conduct (the "**Model Rules**"), which now embodies Rule 5.4 (Professional Independence of a Lawyer), adopted by every state in the United States, expressly prohibiting lawyers from forming MDPs.

- ***Rule 5.4 (Professional Independence of a Lawyer)***:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

> (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
>
> (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
>
> (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
>
> (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

- ***Rule 5.4 Professional Independence of a Lawyer – ABA's Comment***:

[1] The provisions of this Rule express **traditional limitations** on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses **traditional limitations** on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

(Emphasis added.)

- ***Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law)***

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

. . . .

- Although the practice of law is defined differently in each state, most states prohibit individuals from practicing law without a law license as well as corporations and other entity types that may contain nonlawyer shareholders or members.

- ***Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) – Selected ABA's Comment***

  [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

  [2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

  [3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

  . . . .

➢ THE KUTAK COMMISSION

- The ABA Commission on Evaluation of Professional Standards, also known as the "**Kutak Commission**," spent 5 years (from 1983 through 2002) analyzing and revising the Model Rules of Professional Responsibility and ultimately assisting in drafting the Model Rules of Professional Conduct, which were adopted by the ABA House of Delegates in 1983. Several preliminary drafts were produced by the Kutak Commission in the process of writing the Model Rules.

- In May 1981, as part of the final draft of the proposed rules, the Kutak Commission proposed a model rule that allowed lawyers to partner in organizations in which a nonlawyer holds a management interest or where nonlawyers hold stock or interest in the organization.

- The Kutak Commission justified such a proposed change by the complex variety of modern legal services that makes it effectively impossible for the bar to define organizational forms that allegedly guarantee compliance with the ABA Rules of Professional Responsibilities.

- ***The Kutak Commission's Proposed Rule 5.4***

  A lawyer may be employed by an organization in which a financial interest is held or managerial authority is exercised by a nonlawyer, or by a lawyer acting in a capacity other than that of representing clients, such as a business corporation, insurance company, legal services organization or government agency, but only if the terms of the relationship provide in writing that:

  a) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;

  b) information relating to representation of a client is protected as required by rule 1.6 [Confidentiality of Information];

  c) the arrangement does not involve advertising or personal contact with prospective clients prohibited by rules 7.2 and 7.3; and

  d) the arrangement does not result in charging a fee that violates rule 1.5 [Fees].

- **The Kutak Commission's original text of the Comment stated the following**:

  > In its classical form the law firm consisted solely of lawyers, assisted by apprentices and scriveners. Over the course of time the law firm has evolved into a variety of organizations. These include multimember partnerships, firms employing paraprofessionals and professionals of other disciplines, professional corporations, insurance companies that employ counsel who represent insureds, law departments of private organizations and government agencies, legal service agencies and defender organizations, and group legal service organizations in which nonlawyers, or lawyers acting in a managerial capacity, may be directors or have managerial responsibility. Many modern law firms employ nonlawyers to exercise broad managerial authority in the operation of the firm.
  >
  > All such arrangements raise problems concerning the client-lawyer relationship. Given the complex variety of modern legal services, it is impractical to define organizational forms that uniquely can guarantee compliance with the Rules of Professional Conduct.
  >
  > Whatever the form of organization, where nonlawyers exercise managerial authority or have a financial interest in an organization rendering legal services, the requirements of this Rule must be met. Many corporations now have written specifications concerning the authority of general counsel, and legal service organizations have similar definitions of the authority of staff attorneys.

- ***ABA's Response to the Kutak Commission's Proposed Rule***

The ABA House of Delegates expressly rejected the proposed Rule 5.4 for several reasons, among which are:

- interference with lawyer's professional judgment;
- destruction of lawyer's professionalism; and
- other unknown negative effects on the legal profession.

- Ultimately, the ABA House of Delegates adopted a different version of Rule 5.4, based on the provisions in effect prior to 1983.

➢ COMMISSION ON MULTIDISCIPLINARY PRACTICE

- In 1998, the ABA formed a Commission on Multidisciplinary Practice (the "**MDP Commission**"). Its mandate was to study and report on the manner and extent to which professional service firms operated by nonlawyers were seeking to provide legal services to the public.

- The MDP Commission also studied and reported on (1) the experience of clients who had received such services, (2) relevant international trade developments, (3) any potential modifications in the public interest to the existing state and federal legislative framework within which professional services firms may be providing legal services, and to the application of ethics rules to the provision of legal services by professional services firms, and (4) the impact of receiving legal services from professional services firms on a client's ability to protect privileged communications and to have the benefit of conflict-free advice.

- In August 1999, after extensive reflection and analysis, the MDP Commission recommended that the rules of professional conduct, which foreclose MDPs, be relaxed, permitting lawyers to practice and share fees with nonlawyers, subject to safeguards.

- The MDP Commission concluded that there was an interest by clients in the option to select and use lawyers who deliver legal services as part of MDPs and that lawyers already practice in various forms of such relationships outside the United States. Furthermore, the MDP Commission found it possible to satisfy the interests of clients and lawyers by providing the option of an MDP without compromising the core values of the legal profession that are essential for the protection of clients and the proper maintenance of the client-lawyer relationship. To ensure that those values are preserved, the MDP Commission has specifically proposed that a lawyer in an MDP who delivers legal services to the MDP's clients be bound by the rules of professional conduct and all the rules of professional conduct that apply to a law firm also apply to an MDP.

- Nevertheless, the ABA House of Delegates resolved to "make no change, addition or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through 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."

- In response to the 1999 Resolution, the MDP Commission performed further study and, in July 2000, submitted its report and recommendation to the House of Delegates for consideration at the 2000 Annual Meeting because it believed that a vote would be appropriate in light of the MDP Commission's two-year careful study of MDP issues. The MDP Commission also recognized, however, that many of the state and local bars that were studying these same issues would not have completed their review prior to the 2000 Annual Meeting. The MDP Commission, therefore, urged the House of Delegates to consider postponing any action on MDP-related issues until the 2001 Midyear Meeting.

- Since its appointment in August 1998, the MDP Commission has heard the testimony of more than 95 witnesses, received 120 written comments from interested parties and groups, held 9 days of open hearings, and met 10 times in executive sessions. It has received input from bar regulators, both domestic and foreign, and from business and individual clients and groups that represent their respective client views. It has been in contact with the approximately 41 state and local bar associations that are studying issues relating to MDPs.

- In its Recommendation to the House of Delegates (which the House of Delegates also rejected), the MDP Commission recommended that the ABA amend the Model Rules consistent 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, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and pro bono publico obligations.

    3. Regulatory authorities should enforce existing rules and adopt such additional enforcement procedures as are needed to implement these principles and to protect the public interest.

    4. The prohibition on nonlawyers delivering legal services and the obligations of all lawyers to observe the rules of professional conduct should not be altered.

    5. Passive investment in a Multidisciplinary Practice should not be permitted.

- **"Control and Authority":** The legal profession has long acknowledged that lawyers may work in practice settings in which nonlawyers have supervisory authority and in which lawyers do not have an ownership interest (e.g., government law offices, legal aid organizations, prepaid legal services plans, and in-house legal departments). Central to

the ethical provision of legal services in these settings has been lawyers' ability to exercise independent judgment on their clients' behalf.

- The "control and authority" can be satisfied in the context of MDPs in a variety of ways, depending on the practice setting and size.

- The articulation of the precise contours of the structural arrangements, however, should be left to the individual states for adoption in light of particular local concerns.

- There would be powerful incentives for MDPs to establish organizational structures to enable the lawyer members to adhere to the control and authority principle mandated in the Recommendation. In addition to subjecting the lawyers in the MDP to possible disciplinary sanctions, failure to establish these structures might, for example, ultimately lead to the imposition of civil liability.

- **The Meaning of "Professional Services":** The Model Rules do not define the practice of law. The interests of the public, however, would best be protected by defining "professional services" to mean "services rendered by a member of a recognized profession or other discipline that is governed by ethical standards." Identifying the included professions and disciplines should be left to the states' determination. In a comment to the Model Rules, the definition may be supplemented with a list that might include, for example, accountants, certified financial planners, engineers, psychologists, psychiatric social workers, and real estate brokers.

- **Competence:** MDPs will have no detrimental effect upon lawyer competence. The nature of the problems faced by individuals and organizations has become increasingly complex, requiring multidisciplinary assistance and not solely legal advice. The boundaries between the law and other disciplines are blurring. Providing clients with the option of obtaining the assistance they need from a single entity promotes the development of more efficient delivery mechanisms and contributes to lawyer competence by expanding the lawyer's integrated knowledge base.

- ***The Lawyer's Duty to Protect Confidential Client Information***:

  - There may be situations where MDPs should not be permitted to provide both legal and other services to the same client due to different rules governing the disclosure of client information to a third party (e.g., auditors, mental health professionals in cases of suspected child abuse).

  - Just as a lawyer who works jointly on a client matter with a professional services firm must now do, a lawyer in an MDP would have to make reasonable efforts to ensure that a client sufficiently understands that the lawyer and the nonlawyer professional in the MDP may have different obligations with respect to the disclosure of client information and that the courts may treat the client's communications to the lawyer and nonlawyer differently.

- A lawyer in an MDP would not be relieved from the obligation to ensure that the MDP implements safeguards to assure that a nonlawyer who assists a lawyer in the delivery of legal services will act in a manner consistent with the lawyer's professional obligations.

- A lawyer in an MDP would also have to take measures to protect against a potential impairment of the attorney-client privilege arising from the possibility that a client of the MDP would not be properly informed as to the separate functions performed by the MDP or that the members or employees of the MDP would not treat legal matters in a manner appropriate to the preservation of the privilege.

- The lawyer would bear the affirmative responsibility to assure (1) that the communications the lawyer and client intend to be protected by the attorney-client privilege satisfy the jurisdiction's applicable requirements, (2) that the client understands that all other communications are not privileged, and (3) that confidential information obtained from a client in the course of legal representation is not accessible, absent client consent, to members of the MDP not engaged in such representation.

- To address concerns related to the protection of confidential client information, the comment to the amended Model Rule 5.4 should emphasize the need for a lawyer in an MDP to take measures to clarify the lawyer's position within the MDP, its relationship with the MDP's clients, and the obligation of the MDP to protect client and public interests. The measures should include informing clients concerning the lawyer's function as a provider of legal services and the likelihood that the client's communications with nonlawyers in the MDP that are unrelated to the provision of legal services would not be protected by the attorney-client privilege.

- **Loyalty to the Client Through the Avoidance of Conflicts of Interest:** MDPs will not threaten the core value of loyalty to clients through the avoidance of conflicts of interest.

  - The lawyers in an MDP, not the nonlawyer professionals, will determine the application of the conflicts of interest rules to the clients of the MDP seeking legal services.

  - No change to the existing rules on imputation should be made. f the delivery of legal services is involved, each client of an MDP is normally to be considered the client of each lawyer in the MDP, just as each client of a law firm is normally considered to be the client of each lawyer in the law firm.

- **Pro Bono Obligations:** Lawyers in law firms are expected to meet their professional obligations by providing a substantial majority of their pro bono legal services to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the legal needs of persons of limited means. Lawyers in an MDP should fulfill that responsibility in the same way.

- **Passive or Equity Investment:** The Recommendation did not propose any change in the existing prohibitions against third parties holding equity investments in an entity or organization providing legal services. Ownership would be limited to the members of the MDP performing professional services. The Recommendation would not permit an individual or entity to acquire all or any part of the ownership of an MDP for investment or other purposes.

    - In the view of some observers, equity investment poses a particular threat to lawyer independence of professional judgment. Other observers, however, worry that the ban on passive investment may have an unintended effect on law firms. They posit that if any form of MDP practice is ultimately authorized, the ban will put traditional law firms at an economic disadvantage because, as a practical matter, bank financing is their primary source of capital. In contrast, professional services firms and consolidators will be able to draw upon their substantial earnings to finance and even subsidize the operation of their legal services unit. They will also be able to raise capital by going public and/or seeking passive investors.

    - Those observers who urged the Commission to recommend relaxing the ban point to the movement in New South Wales to allow public ownership of law firms and argue that an ownership interest can be structured in such a way as to ensure that all decisions relating to the representation of clients remain under the control and authority of the firm's lawyers. In the end, the Commission chose not to recommend any change.

- **Audit**: In the August 1999 Recommendation, the MDP Commission proposed that the conduct of MDPs with respect to the delivery of legal services and that of the MDPs' lawyers who deliver legal services to the MDPs' clients be subject to audit and certification procedures designed to protect lawyers' independence of professional judgment. The MDP Commission received a number of comments to the effect that the audit and certification procedures were unworkable. Accordingly, it decided not to include them in the 2000 Recommendation.

  It does suggest, however, that a jurisdiction considering amending its rules of professional conduct to permit lawyers and nonlawyers to share fees and enter into a partnership may want to weigh carefully the advantages and disadvantages of audit and regulatory procedures such as those the MDP Commission previously proposed or as others may formulate.

- **Individual Lawyer Regulation:** The MDP Commission's current Recommendation continues the historic tradition of directly regulating only individual lawyers.

- **Changing Legal Marketplace:**

    - Clients' seeming interest in MDPs

    - Continued client interest in more efficient and less costly legal services

- Client dissatisfaction with the delays and outcomes in the legal system as they affect both dispute resolution and transactions

- Clients' growing need in comprehensive solutions to their multidisciplinary problems

- Advances in technology and telecommunications

- Globalization

- New competition through services such as computerized self-help legal software, legal advice sites on the Internet

- The wide-reaching, stepped-up activities of banks, investment companies, and financial planners providing products that embody a significant amount of legal engineering

- The strategy of Big Five professional services firms and their smaller-size counterparts that has resulted in thousands of lawyers providing services to the public while denying their accountability to the lawyer regulatory system

- **The MDP Commission believes that the 2000 Recommendation:**

  - recognizes the realities of a changing marketplace;

  - opens up new avenues of service to clients;

  - responds to the suggestions of consumer advocates; and

  - provides new opportunities for lawyers.

- **Supporters of MDP Commission's Recommendations:** The MDP Commission received letters from numerous parties in supporting of the proposed change, among which were the following:

  - The American College of Construction Lawyers

  - The American College of Real Estate Lawyers

  - The American Corporate Counsel Association

  - Various Sections and Committees of ABA

  - Many State Bar Associations

  - Several State Supreme Court Advisory Task Force and Committees on MJP

  - Various International Associations and Societies

- Law firms
- Low and moderate income advocates
- Business owners and
- MDPs (or a form thereof) themselves, such as APCO Associates Inc.

- **The American Corporate Counsel Association ("ACCA")**:

  - On one hand, in 1991, the Board of Directors of the ACCA adopted a resolution urging that the ethical barriers to the establishment of multidisciplinary partnerships be dismantled. "The American Corporate Counsel Association supports a broader range of choice for clients to select from service providers capable of formulating comprehensive solutions which address not only the legal aspect of their problems but various other facets as well. Subject to resolving important issues of ethics and professionalism in the best interests of the client and the public, such a broader range of choice could include multidisciplinary practices wherein lawyers are affiliated with nonlawyers."

  - On the other hand, certain members of the ACCA (in their individual capacity), some of whom were in-house counsel, voiced concerns over MDPs, explaining that contrary to what some may believe was true, a number of corporations throughout the United States were deeply concerned and disturbed about the multidisciplinary practice trend. Some testimony also revealed that the ACCA's resolution was not an absolute, unqualified, blanket support for the proposal, explaining that it couldn't have been because ACCA passed that resolution in February before it saw the full text and merely wanted to indicate that there was certainly some interest in following this issue, and it was absolutely critical to the Board of ACCA that those ethical and professionalism issues be adequately and properly addressed before the full and blanket approval for this concept would be referenced. The opposition indicated that there were many questions about whether or not the MDP Commission adequately addressed all of those issues and that not all corporations wanted one stop shopping and, instead, wanted expertise, experience, the best lawyers for the job, and undivided loyalty.

➢ 2009 Ethics 20/20 Commission

- In 2009, the ABA created the Ethics 20/20 Commission and gave it explicit instructions to review lawyer ethics rules and regulations across the United States in the context of a global legal services marketplace. The Ethics 20/20 Commission performed a thorough review of the Model Rules and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments. The MDP-related rules were not relaxed as part of the Ethics 20/20 Commission's work.

➢ District of Columbia and Washington State Limited Allowance of MDPs

- In the United States, two jurisdictions permit a form of an Alternative Business Structure ("**ABS**"):

  - **District of Columbia** – allows for lawyers to register as foreign legal consultants and practice foreign law; and

  - **Washington State** – created the Limited License Legal Technician ("**LLLT"**), "the first independent paraprofessional in the United States that is licensed to give legal advice." LLLTs can own a minority interest in a law firm.

- **Rule 5.4 (*Professional Independence of a Lawyer*) of the District of Columbia Rules of Professional Conduct** has permitted lawyers to practice law in a partnership with nonlawyers since its version of the Rules of Professional Conduct came into force in 1991. Rule 5.4(b) has remained unchanged since it was adopted, even though the District of Columbia Rules of Professional Conduct have been extensively amended in other respects. Rule 5.4(b) is not controversial within the District of Columbia legal community—a legal community that includes one of the largest and most active bars in the country. The D.C. Bar is known for its study and review of the legal system and community. The District of Columbia has a well-funded and staffed Office of Disciplinary Counsel, comprised of veteran attorneys and leadership.

- It reads as follows:

  - A lawyer or law firm shall not share legal fees with a nonlawyer, except [in certain traditional, more common instances].

  - A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:

    (1) The partnership or organization has as its sole purpose providing legal services to clients;

    (2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;

    (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;

    (4) The foregoing conditions are set forth in writing.

  - A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

- ***Relevant provisions of the Comment to D.C. Rule 5.4***:

[1] The provisions of this rule express traditional limitations on sharing fees with nonlawyers. (On sharing fees among lawyers not in the same firm, *see* Rule 1.5(e).) These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] Traditionally, the canons of legal ethics and disciplinary rules prohibited lawyers from practicing law in a partnership that includes nonlawyers or in any other organization where a nonlawyer is a shareholder, director, or officer. Notwithstanding these strictures, the profession implicitly recognized exceptions for lawyers who work for corporate law departments, insurance companies, and legal service organizations.

[3] As the demand increased for a broad range of professional services from a single source, lawyers employed professionals from other disciplines to work for them. So long as the nonlawyers remained employees of the lawyers, these relationships did not violate the disciplinary rules. However, when lawyers and nonlawyers considered forming partnerships and professional corporations to provide a combination of legal and other services to the public, they faced serious obstacles under the former rules.

[4] **This rule rejects an absolute prohibition against lawyers and nonlawyers joining together to provide collaborative services, but continues to impose traditional ethical requirements with respect to the organization thus created.** Thus, a lawyer may practice law in an organization where nonlawyers hold a financial interest or exercise managerial authority, but only if the conditions set forth in subparagraphs (b)(1), (b)(2), and (b)(3) are satisfied, and pursuant to subparagraph (b)(4), satisfaction of these conditions is set forth in a written instrument. The requirement of a writing helps ensure that these important conditions are not overlooked in establishing the organizational structure of entities in which nonlawyers enjoy an ownership or managerial role equivalent to that of a partner in a traditional law firm.

[5] Nonlawyer participants under Rule 5.4 ought not be confused with nonlawyer assistants under Rule 5.3. Nonlawyer participants are persons having managerial authority or financial interests in organizations that provide legal services. Within such organizations, lawyers with financial interests or managerial authority are held responsible for ethical misconduct by nonlawyer participants about which the lawyers know or reasonably should know. This is the same standard of liability contemplated by Rule 5.1, regarding the responsibilities of lawyers with direct supervisory authority over other lawyers.

[6] Nonlawyer assistants under Rule 5.3 do not have managerial authority or financial interests in the organization. Lawyers having direct supervisory authority over nonlawyer assistants are held responsible only for ethical misconduct by assistants about which the lawyers actually know.

[7] As the introductory portion of paragraph (b) makes clear, the purpose of liberalizing the Rules regarding the possession of a financial interest or the exercise of management authority by a nonlawyer is to permit nonlawyer professionals to work with lawyers in the delivery of legal services without being relegated to the role of an employee. For example, the rule permits economists to work in a firm with antitrust or public utility practitioners, psychologists or psychiatric social workers to work with family law practitioners to assist in counseling clients, nonlawyer lobbyists to work with lawyers who perform legislative services, certified public accountants to work in conjunction with tax lawyers or others who use accountants' services in performing legal services, and professional managers to serve as office managers, executive directors, or in similar positions. In all of these situations, the professionals may be given financial interests or managerial responsibility, so long as all of the requirements of paragraph (c) are met.

[8] Paragraph (b) does not permit an individual or entity to acquire all or any part of the ownership of a law partnership or other form of law practice organization for investment or other purposes. It thus does not permit a corporation, an investment banking firm, an investor, or any other person or entity to entitle itself to all or any portion of the income or profits of a law firm or other similar organization. Since such an investor would not be an individual performing professional services within the law firm or other organization, the requirements of paragraph (b) would not be met.

[9] The term "individual" in subparagraph (b) is not intended to preclude the participation in a law firm or other organization by an individual professional corporation in the same manner as lawyers who have incorporated as a professional corporation currently participate in partnerships that include professional corporations.

. . . .

- In 1990s, the ABA and state bars constrained the District Columbia's permissive rule to the District of Columbia, finding that a lawyer who is licensed both in a jurisdiction that prohibits partnerships with nonlawyers, as in D.C. Rule 5.4(b), and in a jurisdiction that permits lawyers to form partnerships with nonlawyers, but who practices only in the latter jurisdiction, should not be subject to the prohibition of the jurisdiction where the lawyer does not practice; on the other hand, if a lawyer licensed in two such jurisdictions is engaged in practice in the jurisdiction that prohibits such partnerships, the lawyer must adhere to the restrictions of that jurisdiction. *See, e.g.,* ABA Comm. on Ethics & Prof'l Resp., Formal Op. 360 (1991).

  However, over the last decade, there has been a permissive trend in both the ABA's and individual states' ethics opinions mirroring an overall industry trend and desire for MDPs/ABS. The trend started with opinions that have allowed for fee sharing with firms organized under D.C.'s Rule 5.4(b).

  - In Philadelphia Ethics Opinion 2010-7, the Philadelphia Bar Association Professional Guidance Committee approved fee sharing between a Pennsylvania admitted lawyer and a D.C. law firm that has a non-lawyer partner. *See* Philadelphia Ethics Op. 2010-7, 26 Law Man. Prof. Conduct 556 (2010).

- In 2011, the New York State Bar Association agreed, deciding that a lawyer who principally practices in a jurisdiction that allows partnership with a nonlawyer, and who is also admitted in New York, may ordinarily conduct New York litigation even if in a partnership that includes a nonlawyer who would benefit from the resulting fees; although the New York rules generally prohibit such arrangements, in this case the governing ethical provisions would be those of the other jurisdiction. *See* N.Y. State Bar Ass'n Comm. on Prof. Ethics, Op. 889 (Nov. 15, 2011).

- In 2013, the ABA also concluded that fee sharing between lawyers in ABA model rule jurisdictions (that do not allow nonlawyer partners) with lawyers in jurisdictions that allow nonlawyer partners was permissible. ABA Formal Ethics Op. 464, 29 Law Man. Prof. Conduct 546 (Aug. 19, 2013).

- **Washington State** - Washington is the first state in the country to offer an affordable legal services option to help meet the needs of those unable to afford the services of a lawyer. An LLLT is licensed by the Washington Supreme Court to advise and assist people going through divorce, child custody, and other family law matters in Washington. Look for other practice areas to be approved in the future. Legal technicians consult with and advise clients, complete and file necessary court documents, help with court scheduling, and support clients in navigating the legal system. LLLTs are well trained, experienced, and competent legal professionals who may be able to provide clients with the legal help they need.

  The Limited License Legal Technician Board has ongoing authority to adopt policies for the administration of the LLLT license and to recommend and develop practice areas under authority granted by the Washington Supreme Court under (very lengthy) Rule 28 of the Admission and Practice Rules ("**APR**"). Rule 28, in part, provides:

  > **A. Purpose.** The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.
  >
  > **B. Definitions.** For purposes of this rule, the following definitions will apply:
  >
  > . . . .

(4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

. . . .

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. [It if] is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

(1) Obtain relevant facts, and explain the relevancy of such information to the client;

(2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

(3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

(4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the LLLT Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

(5) Review documents or exhibits that the client has received from the opposing side, and explain them to the client;

(6) Select, complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the LLLT Board; and advise the client of the significance of the selected forms to the client's case;

(7) Perform legal research;

(8) Draft letters setting forth legal opinions that are intended to be read by persons other than the client, and draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;

(9) Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

(10) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G. Conditions Under Which a Limited License Legal Technician May Provide Services

(1) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

(2) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum 12-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the LLLT Board.

(3) Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client.

. . ..

- In February 2018, the LLLT Board filed suggested amendments to APR 28 for consideration by the Washington Supreme Court, which amendments would enhance the scope of the current family law practice area.

➢ SAMPLING OF JURISDICTIONS THAT ALLOW MDPS

- While some countries permit law firms to be owned entirely by nonlawyers, others limit such ownership and most require lawyers to have majority control.

  - England and Wales permit law firms to be owned entirely by nonlawyers
  - Scotland permits up to 49% nonlawyer ownership
  - Italy up to 33%
  - Spain up to 25%
  - Denmark up to 10%
  - Germany, the Netherlands, Poland, Spain, and Belgium permit various forms of MDPs.

- **England**

  - In England, MDP is referred to as an "Alternative Business Structure," in which lawyers engaged in the practice of law combine and share profits with nonlawyers, such as accountants, economists, tax consultants, trademark and patent agents, etc. ABS is allowed under the Legal Services Act of 2007, a legislation known across the world as "radical reforms."
  - A shift in focus is noted/required, from regulating the conduct of individual lawyers, toward regulating the entity providing legal services.
  - The reform has been seen as a threat to the United States by giving law firms in London individually, and the English legal profession collectively, a hitherto unimaginable competitive advantage.

- **Canada**

- Some Canadian provinces have permitted nonlawyer ownership and/or MDP for some time.

- In Quebec, nonlawyers may own up to 50% of law practices, and law firms may engage in multidisciplinary practice. British Columbia permits MDPs.

- An Ontario working group examining nonlawyer ownership has decided against recommending majority ownership by nonlawyers, but is continuing to consider minority ownership by nonlawyers.

- **Australia**

  - Australia has aggressively opened its domestic legal market to incorporated legal practices, MDPs, and nonlawyer investment in law firms, including the first initial public offering of shares in a law firm.

  - While regulations in Australia vary from state to state, incorporated legal practices are permitted under national model laws, as well as in New South Wales, the Northern Territory, Queensland, and Western Australia.

  - In 2001, New South Wales, the most populous state in Australia, became the first Australian jurisdiction to allow ABS when it authorized "incorporated legal practices." New South Wales permits legal practices, including MDPs to incorporate, share receipts and provide legal services either alone or alongside other legal service providers who may, or may not be legal practitioners.

  - The Legal Profession Act 2004 allows for MDPs (although limited form of MDPs existed since 1987) and enables law firms to adopt the publicly traded corporate form.

  - Australian government continues to investigate how regulatory framework can further be adjusted to ensure that Australian lawyers are best position to compete both domestically and abroad.

- **Singapore**

  - Permits nonlawyer ownership. The Legal Profession (Amendment) Act 2014 permit lawyers to own businesses called Legal Disciplinary Practices (or **LDPs**), a form of alternative business structure that provides only legal services, but where nonlawyer-employees are allowed to become owners and share profits up to 25%.

  - Since November 2015, the regulation of all law firms has come under a single legal body—the Legal Services Regulatory Authority ("**LSRA**"), which was launched by the Ministry of Law to license and regulate both foreign and local law firms in Singapore. Previously, the Attorney General's Chambers dealt with foreign firms while the Law Society handled matters relating to local ones. The ministry hopes the integrated system will make it more convenient for law firms to set up offices and for

the new body to ensure that business criteria, such as the names of law practices, foreign ownership, and profit sharing, are applied consistently across the board.

- The LSRA is part of a suite of amendments to the Legal Profession Act, which were passed in November 2014 and came into force in November 2015. The new regime also allowed employees of law firms who are not lawyers to become partners, directors, and shareholders of their firms and share the profits of their firms. The ministry explained that "[t]his will give law practices greater flexibility to attract and retain non-lawyer talent, for example, those with strong management or finance experience, who can add value to the firm's legal practice."

- The Singapore lawyers and foreign lawyers practicing in Singapore are now subject to the same professional disciplinary processes under the ultimate oversight of the Supreme Court.

Multidisciplinary Practice: Recommended Further Reading

- D. Wilkins & M.J. Esteban, *The Integration of Law Into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market,* LAW & SOCIAL INQUIRY (Aug. 3, 2017)

- D. Wilkins & M.J. Esteban, *The Reemergence of the Big Four in Law*, THE PRACTICE, HARV. CTR. ON THE LEGAL PROFESSION (Jan. 2016)

- M. Pender, *Multijurisdictional Practice and Alternative Legal Practice Structure: Learning from EU Liberalization to Implement Appropriate Legal Regulatory Reforms in the United States*, 37 FORDHAM INT'L L.J. 1577 (2014)

- C. Groth, *Protecting the Profession Through the Pen: A Proposal for Liberalizing ABA Model Rule of Professional Conduct 5.4 to Allow Multidisciplinary Firms*, 37 HAMLINE L. REV. 565 (2014)

- L. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 HOFSTRA L. REV. 95 (2014)

- T. Mason & R. Cotton, *Current Reports, ABA Formal Opinion 464 and Nonlawyer Partners: If You Can't Have One, Can You Work with a Firm that Does?* 29 ABA/BNA, LAWYERS' MANUAL ON PROFESSIONAL CONDUCT 26 (Dec. 18, 2013)

- Paul D. Paton, *Multijurisdictional Practice Redux: Globalization, Core Values, and Revising MDP Debate in America*, 78 FORDHAM INT'L L. REV. 2193 (2010)

- G. Nnona, *Multijurisdictional Practice in the International Context: Realigning the Perspective on the European Union's Regulatory Regime*, 37 CORNELL INT'L L.J. 116 (2004)

- Thomas R. Andrews, *Nonlawyers in the Business of Law: Does the one Who Has the Gold Really Make the Rules?* 40 HASTINGS L.J. 577 (1989)