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# Is Meaningful Regulation of Lawyers in Multidisciplinary Firms Possible?

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# Is Meaningful Regulation of Lawyers in Multidisciplinary Firms Possible?

## **Abstract**

If the legal profession embraces multidisciplinary practice (MDP) and allows fee-sharing with nonlawyers, there is a risk that its values, independence, and professionalism will fall prey to market pressures and control by outsiders. On the other hand, rejecting MDP means risking losing business to the multidisciplinary firms already established. The question is whether there is a compromise that provides meaningful regulation of lawyers practicing in multidisciplinary firms.

## **Keywords**

multidisciplinary practice, fee sharing, legal ethics, regulation of attorneys

## **Disciplines**

Legal Ethics and Professional Responsibility | Legal History

## Is meaningful regulation of lawyers in multidisciplinary firms possible?

By Denise D. J. Roy

**E**XPERTS ON multidisciplinary practice (MDP) tell those of us on the Minnesota State Bar Association's task force on MDP that our recommendations are certain to be controversial. If we in the legal profession embrace MDP and allow fee-sharing with nonlawyers, we risk that our values, independence, and professionalism will fall prey to market pressures and control by outsiders. On the other hand, if we reject MDP in favor of traditional, insular practice structures, we risk losing our shirts to the vast, global, multidisciplinary firms that have set out to conquer the world. It seems that whichever

**L**EARN MORE ABOUT multidisciplinary practice issues at the MSBA's web site, [www.mnbar.org](http://www.mnbar.org), and at the web site of the ABA's commission on MDP, [www.abanet.org/cpr/multicom.html](http://www.abanet.org/cpr/multicom.html). To provide information or communicate your position to MSBA's MDP task force, contact Mary Grau at [mgrau@statebar.gen.mn.us](mailto:mgrau@statebar.gen.mn.us) or (612) 278-6322 or Joni Fenner at [jfenner@statebar.gen.mn.us](mailto:jfenner@statebar.gen.mn.us) or (612) 278-6307.

path the bar chooses will threaten the demise of the legal profession as we know it.

Even with those bleak alternatives, there is good news. Lawyers are in demand. Clients still, and perhaps more than ever, need and value our skills and judgment. Most still get their legal services the old-fashioned way — significant segments of the bar remain largely unaware of the MDP controversy. What scares many of us, however, is that a growing number of clients prefer to take delivery of legal services through “one-stop-shopping” offered by the “Big Five” accounting firms (or “professional services” firms, as they prefer to be called). Those firms employ about 5,000 lawyers in the United States, and they are hiring at a pace that far outstrips law firm employment.

Apparently reasoning in part that if you can't beat 'em, join 'em, the American Bar Association's tax and business law sections have endorsed the basic concepts underlying fully integrated MDP as

recommended by the ABA's commission on multidisciplinary practice. Interest in MDP is not limited to lawyers who represent large, sophisticated clients. The ABA's general practice, solo, and small-firm section also has endorsed more liberal MDP. Its members see opportunity to improve and expand service to clients through MDP. I'm told that some practitioners in Minnesota already participate in multidisciplinary alliances arguably involving fee sharing.

Cynicism about such under-the-table arrangements, as well as about the effectiveness of current rules to curb unethical behavior in general, seems to underlie the position of many MDP proponents. In their view, lawyers' core values and independence are already severely compromised by economic pressures as well as by control exercised by insurance companies, clients, and corporate employers. Moreover, these proponents observe that MDP is already alive and well, as illustrated by newly formed McKee Nelson Ernst & Young, a law firm that is capitalized by a loan from, shares office space with, and bears the name of Ernst & Young, the giant accounting and consulting firm. Proponents of MDP are concerned that forbidding fee sharing keeps the details of MDP arrangements hidden, making

them difficult to evaluate and regulate.

Others question whether “capitulation” is an honorable and effective answer to ethical shortcomings in the legal profession. Wouldn't it be better to enforce the rules already in place? However, as a failed attempt to prosecute Arthur Andersen in Texas demonstrates, the bar, prosecutors, and courts do not have the resources or po-

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litical support to combat unauthorized practice and fee sharing violations. The more optimistic strategy of the ABA commission posits that permitting fully integrated but regulated MDP will increase transparency and bring backsliding lawyers fully under the regulatory tent.

Attractive as that might be, we can't be sure such regulation would be effective. As it is, we retain some control over our profession, at least in the short run. If we refuse to change our ethical rules to sanction expanded MDP, it will make a real difference in what the Big Five can do in the United States, for instance. Their lawyers will have to continue treading carefully to avoid unauthorized practice of law and ethics rule violations.

**I**N THE LONGER RUN, though, with lawyers on the defensive in the worldwide growth of MDP and concerned about their public image here in the United States, holding fast to the status quo could be even more risky. A central question for the MDP Task Force, then, is whether we can find a compromise providing meaningful regulation of lawyers practicing in multidisciplinary firms. Another important question is whether any of the considerable effort being poured into this issue will help expand access to legal services to those who cannot afford it. Whatever happens, lawyers, as a group, aren't likely to become obsolete or be reduced to soulless technicians. ☐

