

# The MDP Commission Needs Your Advice!

## Major Points About MDP

- In the past, each profession had fairly well-defined roles. In recent times, the distinctions have begun to blur as many service providers have expanded their services to better meet the needs of their clients. An example of this phenomenon is lawyers being employed by accounting firms and using their experience and training to serve the needs of their employers. But are they “practicing law”?
- The “practice of law” is difficult to define.
  1. Whatever it is, only lawyers can do it.
  2. But many activities that involve the application of law to facts are allowed to be performed by lay persons because those activities have been, by statute or rule, excluded from the *unauthorized practice of law*.
  3. So, there are many instances where lay persons are doing things that historically constituted the practice of law, but their activities are permitted or condoned and are not classified as the unauthorized practice of law.
  4. Even where this is not the case, UPL violations are difficult to police, particularly when the clients are well served and do not complain, which is generally so.
- Many forms of Multidisciplinary Practice are already in everyday use in Virginia and are permitted under the present rules.
  1. Referral networks through which members of different professional disciplines refer clients to one another.
  2. Lawyers hire other professionals to help serve the lawyer’s clients either as permanent members of their staff, or *ad hoc* independent contractors.
  3. Law firms may own a separate (ancillary) business to provide services to law firm clients and others, e.g., title insurance agency or consulting firm.
  4. Accounting firms hire lawyers who (acting as a lay person) advise clients on matters relating to a wide variety of subjects such as taxation, regulatory compliance, or estate planning.
  5. Lawyers currently practice law in institutions owned or controlled by nonlawyers, e.g., in-house corporate counsel, staff counsel for insurance companies and staff counsel for legal services organizations.
- Lawyers presently cannot share legal fees with nonlawyers; neither can a nonlawyer have any ownership interest in a law firm. Virginia Rule of Professional Conduct 5.4. This rule is designed to protect a lawyer’s independence and is a key impediment to the implementation of fully integrated MDPs.
- Some lawyers have suggested that MDP will reduce the efficacy of the following “core values”:
  1. Independence—Can a lawyer function independently in an environment controlled by nonlawyers?
  2. Loyalty—Will MDP lawyers and MDP firms observe the legal profession’s strict conflict of interest rules?
  3. Confidentiality—Will clients of a MDP suffer greater risk that the attorney-client privilege will be lost or waived?
- How important are these “core values” to clients? There is no empirical data, but should clients be permitted to choose between business arrangements that provide more or less protection in this regard? Is there a difference between office practice and court work as far as the need for the “core values” is concerned?
- Assuming that lawyers in MDPs must comply with all legal ethics rules, what are the *possible models for MDPs*?
  1. **Lawyer-Controlled, Law-Related MDPs**—Lawyers can practice in any entity the work of which is limited to law-related services as long as lawyers control the entity (which can have nonlawyer partners). Example: Law firm has an architect as a partner.
  2. **Lawyer-Controlled, General MDPs**—Lawyers can practice in any entity, the work of which can include any professional services, as long as lawyers control the entity (which can have nonlawyer partners). Example: Law firm has an accountant/partner who performs separate, non law-related accounting services.
  3. **Fully Integrated MDPs Employing Only Licensed Professionals**—Lawyers can practice in any entity, the work of which can include any professional services, even if other professionals control the entity. Example: Lawyer practices law in an engineering firm.
  4. **Fully Integrated MDPs**—Lawyers can practice in any entity, the work of which can include any services, even if nonlawyers control the entity. Example: Lawyer forms an MDP with a certified financial planner (who is not licensed or regulated by the state) to provide estate planning services.
- We, as the bar, have only three options in dealing with MDP:
  1. Do nothing (and possibly suffer consequences similar to CRESPA).
  2. Try to enforce existing regulations more rigorously (but reported violations are almost nil and the expense could be enormous).
  3. Try to find a way to regulate lawyers who practice in these unconventional settings.

# MDP Survey

The MDP Commission encourages every attorney to review the short article on the preceding page and fill out the survey form below. Please respond by May 31, 2001.

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| 1. After what you may have already read, as well as reviewing the accompanying summary of Major Points about MDP, do you have enough information to express an opinion in favor of or against MDPs? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. If not, would you like to :  |                          |                          |
| a) be contacted by a member of the commission studying the issue?   | <input type="checkbox"/> | <input type="checkbox"/> |
| b) receive additional written information?<br><i>(if "yes" here, please fill in mailing information below)</i>  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Referring to the enclosed summary of Major Points about MDP document, which of the three options outlined would you favor:   |                          |                          |
| a) Do nothing   | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Enforce existing rules and regulations more rigorously (recognizing the added cost and questionable effectiveness involved in this course of action)   | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Find a way to regulate lawyers who practice in unconventional setting—i.e., approve some form of MDP   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. If you are in favor of MDP, which of the following models described in the enclosed summary of Major Points about MDP (not currently in existence) would you like to see implemented:            |                          |                          |
| a) Lawyer-Controlled, Law-Related MDPs  | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Lawyer-Controlled, General MDPs  | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Fully Integrated MDPs Employing Only Licensed Professionals  | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Fully Integrated MDPs  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Do you have clients who have indicated they would like to have available the kind of "one stop shopping" for several needed professional services that could be delivered through an MDP?        | <input type="checkbox"/> | <input type="checkbox"/> |

Please add any comments or suggestions you may have for consideration by the MDP Study Commission: \_\_\_\_\_

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Name (optional): \_\_\_\_\_

Address (if you wish to have more information mailed to you) \_\_\_\_\_

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Return this survey by fax or mail to

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