

Multidisciplinary Practice and the Core Values of the Legal Profession



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Multidisciplinary practice is a hot topic these days. Some say it offers the promise of a more effective way to deliver legal and related services to individuals and small businesses; others predict that it will further erode the independence of lawyers. Which is correct? Frankly, I don't know.

A Special Commission of the American Bar Association, which for the last year has studied multidisciplinary practice (MDP), has defined an MDP 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 public as providing nonlegal, as well as legal, services." The ABA commission suggests as an example an organization in which a lawyer, a social worker and a certified financial planner provide both legal and nonlegal services to older clients about estate planning, nursing home care and living wills. In essence, MDPs would include any arrangement by which a law firm would join with firms of other professions to provide services, including legal services, where there is direct or indirect sharing of profits among the lawyers and nonlawyers.

At this time, the legal ethics rules of all 50 states prohibit fee sharing among lawyers and nonlawyers, thus effectively prohibiting MDPs. Only the District of Columbia permits fee sharing and partnership with nonlawyers for the purpose of delivering legal services.

Who is pushing for changes that permit MDPs? It appears that the big five accounting firms are strongly interested in promoting changes to the legal ethics rules that would permit lawyers employed by those accounting firms to render legal services to those firms' clients. The big five accounting firms employ thousands of lawyers, but the activities of those lawyers are limited to "consulting" services. On the other hand, in some jurisdictions there appears to be substantial interest among sole practitioners and small firm lawyers, who believe that a partnership with a tax accountant, a financial planner, and/or an insurance broker may be able to offer more effective "full service" to individuals and small business clients. Do the advantages of "one stop shopping" offer the potential for more benefit or harm to

clients? Some suggest that the professional independence of judgment, which is required of all lawyers, may be compromised when the lawyer works for an employer that is managed and controlled by nonlawyers. Others question whether an MDP might make it more likely that there could be inappropriate disclosure of confidential attorney-client information. If a client's information is disclosed to a nonlawyer, has the attorney-client privilege been waived? What about the inherently conflicting duties between a lawyer and an auditor? The lawyer has an obligation to maintain in confidence his or her client's secrets, while the auditor has a public duty to uncover and disclose.

As you can see, there are many significant issues, and we are only beginning to explore them fully. The ABA Commission on Multidisciplinary Practice concluded that there could be appropriate safeguards enacted that would permit a lawyer to deliver legal services to the clients of a multidisciplinary practice without endangering the core values of the legal profession or the client interests they are designed to protect. The commission presented a report to the ABA House of Delegates in August that affirmed that nonlawyers, whether in an MDP or otherwise, should not be permitted to deliver legal services. It recommended that the rules be changed to permit lawyers to share legal fees with nonlawyers, provided that all rules of professional conduct that apply to a law firm should also apply to an MDP. After heated debate, the ABA House of Delegates voted to defer action on the commission's recommendations pending further study.

I hope each lawyer in Virginia will try to learn as much as possible about the concept of multidisciplinary practice and the issues involved. The Virginia State Bar, with representatives of the statewide voluntary bar associations, plans to establish our own broad-based group to study these issues in Virginia. We want to be certain that changes, if and when they occur, are changes that we, as lawyers, approve and believe to be in the best interests of our clients. If changes are not in the best interests of our clients and the public, we need to be well-educated so that we can articulate the basis of our objections to those who might seek to effect such changes in other forums. ☞