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Ethical Issues Associated with Multidisciplinary Practices in Texas.

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COMMENT

ETHICAL ISSUES ASSOCIATED WITH MULTIDISCIPLINARY PRACTICES IN TEXAS

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I. INTRODUCTION

In 2000, the American Bar Association House of Delegates voted to uphold the ban on multidisciplinary practices (MDPs) set out in Rule 5.4 of the Model Rules of Professional Conduct (Model Rules), seemingly ending the discussion of permitting their

use.[1] But in summer 2009, the current ABA President, Carolyn B. Lamm, announced the creation of the Ethics 20/20 Commission to review the Model Rules in the context of globalization.[2] According to Lamm, this review is necessary because "'[t]he law is in a vastly different place than it was even five years ago, let alone 10, 15 or 20 years ago.'"[3] Although Lamm did not specifically argue for changes to the Model Rules to allow MDPs, she recognized that "'a lot of places have implemented [them], and the sky has not fallen.'"[4] More recently, Michael Traynor, a co-chair of the 20/20 Commission, acknowledged that the Commission is

1. *See* ABA, HOUSE OF DELEGATES ANNUAL MEETING 7/11/00 TRANSCRIPT—MDP (July 2000), http://www.abanet.org/cpr/mdp/mdp_hod_transc.html (recording the 2000 vote on MDPs in the House of Delegates) (used with permission); James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, *available at* http://www.abajournal.com/magazine/article/off_the_mat (reporting that the vote "emphatically slammed the door on a recommendation that the Model Rules of Professional Conduct be amended to endorse the principle of permitting attorneys to jointly practice and share fees with nonlawyer professionals").

2. *See* James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, *available at* http://www.abajournal.com/magazine/article/off_the_mat (discussing President Lamm's creation of the Ethics 20/20 Commission for the purpose of conducting a full review of the Model Rules and identifying developments regarding MDPs at state and international levels); James Podgers, *Ethics 20/20 Eyes Global Change*, A.B.A. J., Mar. 2010, at 67, *available at* http://www.abajournal.com/magazine/article/ethics_20_20_eyes_global_change (emphasizing that the goals of the Ethics 20/20 Commission are "to adapt ethics rules for U.S. lawyers to changes in the world" and to "address[] the legal ethics challenges arising out of advances in technology and increasing globalization"). For information regarding the preliminary issues the Ethics 20/20 Commission plans to consider, see COMM'N ON ETHICS 20/20, ABA, PRELIMINARY ISSUES OUTLINE (2009), *available at* http://www.abanet.org/ethics2020/outline.pdf (noting that "[a]lternative business structures" abroad "raise ethical and regulatory questions for U.S. lawyers and law firms of all sizes").

3. James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, *available at* http://www.abajournal.com/magazine/article/off_the_mat.

4. *Id.* The ABA maintains a list of foreign MDP activity, providing links to the countries' bar associations. CTR. FOR PROF'L RESPONSIBILITY, ABA, SUMMARY OF FOREIGN MDP ACTIVITY, Aug. 24, 2009, http://www.abanet.org/cpr/mdp/mdp-summ_fore_act.html. Currently, Australia, South Africa, France, Spain, the Netherlands, Germany, Ireland, Switzerland, and parts of Canada expressly permit some form of MDP. *See* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 493–96 (2005) (detailing the development of MDPs internationally).

looking at alternative business structures, including MDPs.[5]

The concept of lawyers and nonlawyers practicing together in an MDP originated in Germany after World War II and has since gained support across Europe and in other parts of the world.[6] In the wake of the international growth of MDPs, many American lawyers are arguing against the ban on MDPs in the United States, contending that MDPs are necessary to stay competitive in the global marketplace.[7] Proponents of MDPs also argue that they "are already here," in the form of professional service firms and

5. *See* James Podgers, *Ethics 20/20 Eyes Global Change*, A.B.A. J., Mar. 2010, at 67, *available at* http://www.abajournal.com/magazine/article/ethics_20_20_eyes_global_change (reporting on the mission of Ethics 20/20, and noting Co-Chairman Michael Traynor's statement that "'MDP is on the table'").

6. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 113–14 (2000) (noting that since World War II, lawyers and tax accountants in Germany have been allowed to practice together). Changes in the German laws regarding MDPs now permit a lawyer to form an MDP with other professionals, such as tax advisers, auditors, and sworn-in accountants. *Id.* at 113; *see also* James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, 66, *available at* http://www.abajournal.com/magazine/article/off_the_mat (reporting on the advancements of multidisciplinary practice in the United Kingdom, Belgium, France, and Australia, and noting that "[t]hese developments will have a dramatic impact on lawyers in the United States"); CTR. FOR PROF'L RESPONSIBILITY, ABA, SUMMARY OF FOREIGN MDP ACTIVITY, Aug. 24, 2009, http://www.abanet.org/cpr/mdp/mdp-summ_fore_act.html (listing foreign jurisdictions that allow MDPs or some variation, including parts of Canada, Brussels, the Netherlands, and New South Wales). For an in-depth analysis of the development and regulation of MDPs in Germany, see Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000).

7. *See* Ann L. MacNaughton & Gary A. Munneke, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L. REV. 665, 668–69 (2001) (contending that the creation of interdisciplinary teams is one solution to dealing with commercial and regulatory complexities created by globalization); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 496 (2005) (maintaining that because the large accounting firms take advantage of relaxed rules outside the U.S. and participate in MDPs abroad, American lawyers "continue supporting accountant-lawyer MDPs in the United States, so that their firms can stay competitive in the global market"); James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, 66, *available at* http://www.abajournal.com/magazine/article/off_the_mat (reporting comments made by attorneys at a conference sponsored by the ABA Center for Professional Responsibility, conveying concern about U.S. law firms' "ability to compete with increasingly agile legal providers in other countries").

"boutiques."[8] These virtual MDPs are able to offer law-related services while avoiding the rules prohibiting MDPs.[9] In addition, despite the ABA's rejection of MDPs, some American jurisdictions have relaxed the prohibition and have allowed limited professional collaborations.[10]

In an MDP, a client can seek the advice of several professionals with experience in different disciplines (for example, accounting,

8. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 506–17 (2005); *see also* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 300 (noting a continued growth of entities that "skirt the rules prohibiting MDPs").

9. *See* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 300 (acknowledging the existence of professional organizations that offer legal or law-related services).

10. *See* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 497–98 (2005) (noting that Washington, D.C., allows "fee sharing and partnership agreements between lawyers and non-lawyers" and New York permits side-by-side arrangements between attorneys and nonattorneys). The District of Columbia is the only United States jurisdiction that has amended its Model Rule 5.4 to allow a limited form of MDP, with specific limitations and requirements. *See* Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Practice*, 13 GEO. J. LEGAL ETHICS 217, 243–44 (2000) (recognizing that the amended rule's limitations, coupled with "flat prohibition" in other jurisdictions, has prevented many D.C. area firms from taking advantage of what the rule allows). The D.C. rule allows lawyers to form partnerships and share fees with nonlawyers, as long as the *sole purpose* of the organization is the provision of legal services; the rule allows a nonlawyer to join a law firm, but does not allow a lawyer to join a partnership whose sole purpose is not the provision of legal services. *See* D.C. RULES OF PROF'L CONDUCT 5.4 (2007) (stating that a lawyer or a law firm may form a partnership or other organization and share fees with a nonlawyer if the nonlawyer "performs professional services which assist the organization in providing legal services to clients . . . [and t]he partnership or organization has as its sole purpose providing legal services to clients"). New York was the first state to address MDPs directly, adopting provisions in 2001 allowing strictly regulated business relationships between lawyers and nonlawyers. *See* Laura Noroski, Note, *New York's Controversial Ethics Code Changes: An Attempt to Fit Multidisciplinary Practice Within Existing Ethical Boundaries*, 76 S. CAL. L. REV. 483, 484–85 (2003) (asserting that the provisions are a "compromise[] that attempt[s] to reconcile the changing economy and client demand with the core values of the legal profession" by sanctioning a specific type of practice that allows lawyers and nonlawyers to work together in a structured framework); John Caher, *Multidisciplinary Practice Rules Adopted by State: New York Takes Lead on Lawyer-Nonlawyer Partnerships*, 226 N.Y. L.J. 17 (2001), *available at* 7/25/2001 N.Y.L.J. 1, (col. 4) (Westlaw) (describing the new provisions). New York State Rules of Professional Conduct Rule 5.8 encompasses this compromise, allowing a lawyer or law firm to contract with "a nonlegal professional or nonlegal professional service firm" to offer clients legal services performed by lawyers and nonlegal services. N.Y. RULES OF PROF'L CONDUCT R. 5.8 (2009).

finance, or real estate) who are working together in a single business.[11] Under the ABA Model Rules of Professional Conduct, in particular Model Rule 5.4, a lawyer is prohibited from sharing legal fees with a nonlawyer as well as from forming "a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."[12] Under Rule 5.4, law firms are faced with several restrictions, including: (1) a pro-

11. *See* Nancy B. Rapoport, *Multidisciplinary Practice After* In re Enron*: Should the Debate on MDP Change at All?*, 65 TEX. B.J. 446, 446 (2002) (explaining the basic idea and structure of MDPs); Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 276 ("Generally, MDPs are considered to be combinations of law firms and accounting or consulting firms. One reason for this combination is the increasing desire for 'one-stop shopping' among consumers for both legal and professional services.").

12. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009). Rule 5.4, regarding the professional independence of a lawyer, states:

> (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.

Id. Rule 5.4 is intended to prevent "an integrated practice in which a lawyer shares fees with a nonlawyer or enters into a partnership or an analogous relationship with a nonlawyer to deliver legal services to clients." COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, BACKGROUND PAPER ON MULTIDISCIPLINARY PRACTICE: ISSUES AND DEVELOPMENTS (Jan. 1999), *available at* http://www.abanet.org/cpr/mdp/multicomreport0199.html.

hibition on admitting nonlawyers to the partnership, (2) a prohibition on entering joint ventures with or being acquired by nonlegal service providers, and (3) a prohibition on nonlawyer stockholders sharing profits of the firm, which generally prevents firms from raising equity capital from public or private investors.[13] According to a comment to Rule 5.4, the justification for these limitations is to protect the professional independence and judgment of lawyers.[14] The majority of objections to allowing MDPs involve ethical issues as well as the standards of conduct governing lawyers and how they will be affected by the new practices.[15]

In January 2000, the State Bar of Texas's Board of Directors approved a report prepared by the Texas Task Force on MDP, which declined to accept the Commission on MDP's proposal from the previous summer to allow MDPs to practice law, noting that

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13. *Cf.* MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009) (outlining permissible activity between lawyers and nonlawyers). To understand what is prohibited under Rule 5.4, it is helpful to know what is allowed:

> A law firm may provide, or combine with nonlawyers to provide, nonlegal services. They may recommend providers to clients, who then hire the nonlawyers separately .... A firm may also enter into a contractual or cooperative relationship with independent nonlawyer providers or provide such services "in-house" either through lawyers who have expertise in nonlaw fields (dual practice) or through nonlawyers who are employees of the law firm.... Finally, nonlawyer clients may employ in-house lawyers to provide legal services to them, so long as they do not also provide legal services to other clients.

GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1116 (4th ed. 2005).

14. MODEL RULES OF PROF'L CONDUCT R. 5.4 cmt. 1 (2009). *But see* 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT § 5.4:102 (2d ed. Supp. 1996) (discussing "the potential impairment of the lawyer's independent professional judgment," but concluding that the "concerns were addressed in other rules, however, and need not have resulted in a broad ban [on MDPs]").

15. *See, e.g.*, Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 287–88 (pointing out that objections to MDPs "revolve around ethical issues and the standards of conduct which govern lawyers"); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1364 (2003) (explaining that objections to MDPs center on maintaining the lawyer's professional independence, maintaining confidentiality of client information, and ensuring affiliations with nonlawyer professionals are not used as avenues for self-referral); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 499 (2005) (discussing arguments against MDPs).

the practices "[have] not been adequately justified."[16] The task force also asserted that MDPs should not be allowed in Texas until evidence is brought forward and studies "demonstrate[] that the public interest will be furthered."[17] Proponents of MDPs are concerned that if lawyers are unable or unwilling to remain competitive in the ever-changing global market for legal services, they may become marginalized or even displaced completely.[18]

While the ethical concerns cited by the opponents are legitimate and deserve attention, the combination of the benefits associated with MDPs, the growing trend of jurisdictions permitting them, and the effect of globalization on the legal profession justifies permitting MDPs with proper control and regulation.[19] As an alternative to enforcing the prohibition on MDPs, Texas Bar officials should attempt to regulate them under the Texas Disciplinary Rules of Professional Conduct.[20]

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16. ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html. For more detailed information regarding the ABA Commission on MDP's June 1999 proposal to allow MDPs, see COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES (1999), *available at* http://www.aba net.org/cpr/mdp/mdpfinalreport.html.

17. ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html.

18. Ann L. MacNaughton & Gary A. Munneke, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L. REV. 665, 707–08 (2001); *see* DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 818, 820 (5th ed. 2009) (arguing that the best long-term strategy to regulate legal services "is one that can adequately adapt to competitive forces"); Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 298–99 (2003) (maintaining that "American firms may lose business, as non-legal services align with European firms," creating "a department store approach to meeting the corporate needs" of demanding clients).

19. *See, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 205–07 (2000) (concluding the changes in the global economy justify permitting and regulating MDPs "[i]f the United States is to remain a center of global commerce"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 504–05 (2005) (citing meeting client demand and providing more efficient and less costly services to clients as among the arguments in support of MDPs); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 268 (2000) (asserting that while the "ethical considerations and potential conflicts will be a hurdle for MDPs," they can exist while preserving the core values of the legal profession).

20. *See, e.g.*, Anthony J. Luppino, *Multidisciplinary Business Planning Firms:*

This Comment discusses the trends and developments in MDPs while focusing on the ethical considerations that must be addressed before permitting them. Part II discusses the general background and history of the MDP debate, including some background on the ABA's Commission on Multidisciplinary Practice, and the Texas prohibition of MDPs by Texas Disciplinary Rule of Professional Conduct 5.04. Part III examines the growing trend toward MDPs, both domestically and abroad, and analyzes the debate over allowing them. Part IV emphasizes the benefits associated with allowing lawyers and nonlawyers to work together to provide integrated services to clients through an MDP. Part V focuses on the ethical considerations that are the center of the argument against MDPs, including professional independence of lawyers, conflicts of interest, and confidentiality, all of which must be examined and addressed before MDPs can be permitted in Texas. Part VI summarizes the options of the State Bar of Texas in deciding how to deal with MDPs and focuses on the need to regulate MDPs to achieve a balance between the benefits associated with these practices and the protection of the public and clients' interests.

II. BACKGROUND

A. *The American Bar Association and Multidisciplinary Practices*

According to the ABA Commission on Multidisciplinary Practice (Commission on MDP),[21] a multidisciplinary practice is

Expanding the Tent Without Creating a Circus, 35 SETON HALL L. REV. 109, 116–17 (2004) (proposing changes to the Model Rules using a multidisciplinary business planning firm as a model); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 516 (2005) (recommending that regulating MDPs would allow the public to take advantage of their benefits "while restricting their shortcomings and potential harm to the profession," as opposed to doing nothing, which would allow lawyers to "find ways to get around the rules, and let [large accounting firms] overshadow the legal profession"); *see also* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 127 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (determining that bar officials and regulators should attempt to regulate MDPs rather than prohibiting them outright).

21. The Commission on MDP was created in 1998 by ABA President Philip S. Anderson to study the issue and determine whether it was desirable to permit MDPs in the United States. *New to You, Commission on Multidisciplinary Practices: The FAQs on MDPs*, YOUNG LAW. (ABA), Nov. 1999, at 3, *available at* http://www.abanet.org/

defined as:

> a partnership, professional corporation, or other association or entity that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing nonlegal, as well as legal, services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, including legal services, and there is a direct or indirect sharing of profits as part of the arrangement.[22]

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yld/tyl/nov99/newtoyou.html. In 1999, the Commission on MDP submitted its report, including its recommendation to allow lawyers to partner with professionals from other disciplines by amending the current Model Rules, applying legal ethics rules to MDPs, and regulating them through state courts. *Id.*

22. COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES app. A (1999), *available at* http://www.abanet.org/cpr/mdp/mdpfinal report.html; *accord* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 276 (defining MDPs as "a group of entities engaging in a variety of professional services where at least one of the entities is engaged in the practice of law"); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1367 (2003) (describing an MDP as "an organization owned wholly or partly by nonlawyers that provides legal services directly to the public through owner or employee lawyers"). The Commission on MDP developed six models for MDPs. (1) The "Cooperation" or "Status Quo" Model "allows law firms to offer multidisciplinary services" through nonlawyer employees or contracts with nonlawyers. The nonlawyers would be entitled to the firm's profits, but the nonlawyers could not "be owners of the law firm or share directly in the legal fees." (2) The "Ancillary Business Services" Model is based on Model Rule 5.7 and "involves lawyers and nonlawyers owning ancillary businesses together and the law firm sending clients to these businesses for non-legal services." (3) The "Command and Control" Model (District of Columbia Model) allows partnerships and fee-sharing between lawyers and nonlawyers in an MDP whose sole purpose is to provide legal services. The nonlawyers in the MDP must follow the D.C. Rules of Professional Conduct. (4) The "Contract" Mode allows a law firm to enter a contract with another professional-services firm. The contract identifies what each firm contributes to the arrangement. Consequently, there is an indirect sharing of services and funds between the law firm and the nonlegal services firm, but this model does not permit the direct sharing of fees. (5) The "Joint Venture" Model allows "two separate firms to affiliate through a contractual relationship." The "joint venture entity" (MDP) is kept separate and apart from the law firm and the nonlaw firm. The fees generated and received by the joint venture entity are then distributed to the law firm and nonlaw firm. (6) The "Fully Integrated MDP" Model is a "fully integrated partnership or professional corporation with lawyer and non-lawyer owners offering client services." This model gives both lawyers and nonlawyers the freedom to practice and "determine the extent to which they own the firm, share in profits, manage the decisions of the firm, and provide legal and non-legal services." John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 153–74 (2000). *See generally* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under*

These types of MDPs have been prohibited in the United States for almost a century.[23] The prohibition of lawyers forming partnerships with nonlawyers came about in 1928 when Canons 33 to 35 were added to the original 1908 Canons of Ethics.[24] In 1969, this express prohibition against MDPs was reinforced when the ABA adopted the Model Code of Professional Responsibility.[25] In 1983, when the Model Rules of Professional Conduct replaced the Model Code, Rule 5.4 became the new express prohibition of MDPs and fee-sharing with nonlawyers.[26]

One Roof?, 2000 COLUM. BUS. L. REV. 275, 278–87 (asserting that there are pros and cons to each model, but no empirical evidence supporting the adoption of any one particular model—a result of the ban on MDPs, which "has precluded any valuable case studies here in the U.S.").

23. *See* Michael S. Ariens, *American Legal Ethics in an Age of Anxiety*, 40 ST. MARY'S L.J. 343, 412 (2008) (stating that among the additional Canons of Ethics adopted by the ABA in 1928 "most concerned issues of the economics of the profession," including, for example, Canon 33, which addresses the use of partnership names, Canon 34, which considers the division of fees, and Canon 35, which discusses lay intermediaries).

24. *See* Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 100 (2003) ("In 1928, the ABA added Canons 33 through 35 .... These provisions prohibited fee sharing and partnering with non-lawyers if the partnership practiced law. Canons 33 through 35 also prohibited lawyers from being employed by non-lawyers for the purpose of serving clients other than the employer."); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1366 (2003) (noting that Canons 33 through 35 prohibited partnerships and fee-sharing for legal services between lawyers and nonlawyers); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 484 (2005) (commenting that the addition of Canons 33 through 35 in 1928 were the first direct prohibitions against partnerships and fee-sharing between lawyers and nonlawyers).

25. *See* Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 100 (2003) (pointing out that "when the ABA adopted the Model Code of Professional Responsibility in 1969, it included DR 3-102 and DR 3-103, which prohibited lawyers and non-lawyers from sharing legal fees or forming a partnership" if the partnership's activities included the practice of law); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1366 (2003) (recognizing that the ABA's "prohibition against fee sharing and partnerships between lawyers and nonlawyers continued when [it] adopted the Model Code of Professional Responsibility in 1969").

26. *See* Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1366–67 (2003) (noting the continued prohibition on fee-sharing and partnerships between lawyers and nonlawyers with the adoption of the Model Rules in 1983).

> In 1983, the Kutak Commission, which drafted the new Model Rules of Professional Conduct to replace the Model Code, proposed a rule that would have lifted the prohibition on fee sharing and partnering with non-lawyers, subject only to the caveat

In 1998, the ABA created the Commission on Multidisciplinary Practice after accounting firms began "acquiring or forming partnerships with law firms in Europe."[27] The Commission on MDP concluded that the American legal profession could not ignore this development and it could not rely upon the existing rules of professional conduct to regulate emerging practices.[28] Some of the major elements of the Commission on MDP's recommendation include:

> (1) Applying the legal profession's ethics and practice rules to MDPs.
> (2) Regulating MDPs through the highest court in each state.
> (3) Binding lawyers working in MDPs to the Rules of Professional Conduct, especially those rules concerning conflicts, confidentiality and professional independence.
> (4) Requiring MDPs to be registered with the highest court of the state before fee-sharing and partnerships with nonlawyers are permitted.
> (5) Maintaining the prohibition against nonlawyers practicing law.
> (6) Treating clients of an MDP as clients of the lawyers with regard to rules of conflicts of interest.[29]

In recent years, "[s]ignificant debate has taken place at both the ABA level and within state bar associations . . . regarding whether

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that the arrangement not interfere with the lawyer's duties of independent judgment, confidentiality, appropriate advertising, and avoidance of improper fees. However, the "fear of Sears" . . . led to the defeat of the Kutak proposal; and Model Rule 5.4 was adopted instead.

Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 100 (2003).

27. James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 117 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf.

28. *See id.* at 117–18 (noting that the Commission on MDP's report recommended amending the Model Rules to allow fee sharing and partnerships with nonlawyers). In its recommendation to the House of Delegates in July 2000, the Commission on MDP argued that as long as lawyers have the control and authority necessary to assure professional independence while rendering legal services, they should be allowed "to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice)." COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES (2000), *available at* http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html.

29. *See* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 118–19 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (outlining the key elements of the Commission on MDP's proposal).

lawyers should be permitted to form multidisciplinary practices."[30] Today, the argument is the same. Those in opposition to amending the Model Rules to allow MDPs believe that the core values of the legal profession will be destroyed,[31] while those who support MDPs believe that the "MDP represents a fundamental

30. 1 RONALD E. MALLEN & JEFFREY M. SMITH, LEGAL MALPRACTICE § 4:13 (2010) (noting the ethical concerns that might arise if law firms and ancillary businesses are allowed to merge); *see also* ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html (outlining approaches adopted by various state and local bar associations with regard to MDPs); ABA, HOUSE OF DELEGATES ANNUAL MEETING 7/11/2000 TRANSCRIPT—MDP (July 2000), http://www.abanet.org/cpr/mdp/mdp_hod_transc.html ("[T]he Colorado Bar Association and the Denver Bar Association Boards of Governors approved [the] concept [of] MDPs, provided that they be done in a way to protect the public interest and preserve our core values.") (used with permission). In July 2000, the ABA House of Delegates agreed to "take no actions that in any way discourage further discussion of Multi-Disciplinary Practice . . . until a more substantial number of state and local bar associations and ABA entities currently studying MDP have had an opportunity to conclude their studies." ABA, MDP RECOMMENDATION (2000), *available at* http://www.abanet.org/cpr/mdp/mdprecommend ation7-00.html.

31. *See* Anthony J. Luppino, *Multidisciplinary Business Planning Firms: Expanding the Regulatory Tent Without Creating a Circus*, 35 SETON HALL L. REV. 109, 167 (2004) (examining the charge by MDP opponents that participation in an MDP could threaten a lawyer's professional independence because of a focus on the bottom line); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 499–504 (2005) (addressing the criticisms that MDPs cannot be effectively regulated, and that they threaten a "lawyer's ability to exercise professional judgment," create client confusion over when the attorney-client privilege applies, and increase the likelihood of ethical problems arising from conflicts of interest); Lawrence J. Fox, *Delegates: Save Us from Ourselves*, NAT'L L.J., June 21, 1999, at A23 (challenging the Commission on MDP's "report calling for an end to the prohibition on lawyers' sharing fees with nonlawyers," claiming this will lead to "the destruction of professional independence"). A scenario often used by opponents to illustrate the risks associated with allowing MDPs is if Wal-Mart or Sears opened a law firm in each of their stores, offering a limited number of legal services, such as handling divorces, contract disputes, and wills. *See* 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT § 5.4:102 (2d ed. Supp. 1996) (presenting the potential dangers that could arise in this situation and how they could be prevented or mitigated). The danger of unauthorized practice of law by nonlawyers arises in traditional law firms today, but "[l]awyers in the Sears [or Wal-Mart] example would need to be especially careful . . . but that is no reason to prohibit such an enterprise altogether." *Id.* In a Wal-Mart law firm, nonlawyers inevitably would be exposed to client confidences, but this commonly happens in traditional firms and is controlled by Model Rule 5.3, defining the responsibilities of lawyers with regard to managing nonlawyers. The risk is of influencing a lawyer's judgment by nonlawyer managers or partners, but "these concerns [are] addressed in other rules . . . and need not have resulted in a broad ban." *Id.*

change[] in the way lawyers will serve their clients."[32] The debate revolves around one main issue: if "law firms and ancillary businesses [are] allowed to merge" and offer both legal and nonlegal services, "what ethics rules should apply to those entities"?[33]

B. *Application of ABA Model Rule 5.4 to Texas*

The State Bar of Texas adopted Model Rule 5.4 and implemented Texas Disciplinary Rule of Professional Conduct 5.04 to preserve the "professional independence of a lawyer."[34] According to the comments following the Texas Rule, "[t]he principal reasons for these limitations are to prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting nonlawyers in the practice of law."[35] The Texas Disciplinary Rules of Professional Conduct use the same language as

32. Ann L. MacNaughton & Gary A. Munneke, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L. REV. 665, 690–91, 696 (2001) (questioning whether "client and public interests are best served by ethics rules that preclude innovation"); *see also* Rees Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 504–06 (2005) (addressing the arguments supporting MDPs, including client demand for integrated services, the ability to provide services more efficiently but with fewer costs, and the need to stay competitive globally). For an examination of how the provision of multidisciplinary services is an effective way to aid the marginalized poor and thus should be part of the MDP debate, see Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787 (2002).

33. 1 RONALD E. MALLEN & JEFFREY M. SMITH, LEGAL MALPRACTICE § 4:13 (2010); *see also* Ann L. MacNaughton & Gary A. Munneke, *Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?*, 47 LOY. L REV. 665, 690 (2001) (explaining that the debate over MDPs focuses on "whether accounting firms, financial institutions, real estate companies, department stores, and publishing houses should be allowed to own law firms and/or employ lawyers to offer legal and/or consulting services").

34. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon 2005); *see also* Robert P. Schuwerk & John F. Sutton, Jr., *Commentary on the Texas Disciplinary Rules of Professional Conduct*, *in* TEXAS LAWYERS' PROFESSIONAL ETHICS 1-2 (3d ed. 1997) (pointing out that Texas has followed the ABA over the years in promulgating its ethical rules). *See generally* Franklin Jones, Jr., *The Texas Code of Professional Responsibility: The "Texanization" of the A.B.A. Code*, 23 BAYLOR L. REV. 689 (1972) (discussing the similarities and differences between the ABA Model Rules of Professional Conduct and the Texas Disciplinary Rules of Professional Conduct).

35. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04 cmt. 1.

Model Rule 5.4.[36] Paragraph (a) contains the prohibition on the sharing of attorneys' fees between lawyers and nonlawyers.[37] Paragraph (b) contains the ban on entering "a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."[38] By implementing Rule 5.04, the State Bar of Texas adopted the majority view prohibiting MDPs.[39]

III. TREND TOWARD MULTIDISCIPLINARY PRACTICES

Internationally, several jurisdictions—including parts of Canada, Australia, South Africa, France, Spain, the Netherlands, Germany, and Switzerland—allow some form of MDP.[40] In the United

36. *Compare* TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04 (outlining the Texas rules concerning the professional independence of lawyers), *with* MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009) (outlining the ABA Model Rules concerning the professional independence of lawyers).

37. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04(a); *see also* Robert P. Schuwerk & John F. Sutton, Jr., *Commentary on the Texas Disciplinary Rules of Professional Conduct, in* TEXAS LAWYERS' PROFESSIONAL ETHICS 1-101 (3d ed. 1997) (examining the ethics rule that prohibits the practice of sharing fees between lawyers and nonlawyers).

38. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04(b); *see also* Robert P. Schuwerk & John F. Sutton, Jr., *Commentary on the Texas Disciplinary Rules of Professional Conduct, in* TEXAS LAWYERS' PROFESSIONAL ETHICS 1-102 (3d ed. 1997) (discussing the ethics rule that prohibits a partnership between a lawyer and a nonlawyer if any of the services of the partnership is legal in nature).

39. *See* TEX. YOUNG LAWYERS' ASS'N, TEXAS LAWYERS' PROFESSIONAL ETHICS 7-1–7-7 (3d ed. 1997) (providing a comparison table for Texas Rules to the current ABA Model Rules). *Compare* TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04 (tracking the language of the Model Rule), *with* MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009) (prohibiting certain partnerships and the sharing of fees between lawyers and nonlawyers).

40. *See* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 493–96 (2005) (emphasizing that "[p]roponents of MDPs often look to Europe to find examples of the partnerships' success" because "MDPs are allowed in various capacities across Europe"); *see also* James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 65, 66, *available at* http://www.abajournal.com/magazine/article/off_the_mat (acknowledging the regulatory structures in the United Kingdom, Australia, and the European Union that have modified their rules to allow some form of MDP); ABA CTR. FOR PROF'L RESPONSIBILITY, SUMMARY OF FOREIGN MDP ACTIVITY, Aug. 24, 2009, http://www.abanet.org/cpr/mdp/mdp-summ_fore_act.html (listing foreign jurisdictions that allow MDPs or some variation, including Ontario, Brussels, the Netherlands, and New South Wales). For more information regarding MDPs in Canada, see generally COMM. ON MULTI-DISCIPLINARY PRACTICE AND THE LEGAL PROFESSION, CANADIAN BAR ASS'N-ONTARIO, MULTI-DISCIPLINARY PRACTICE: MAKING IT WORK FOR LAWYERS (2000), *available at* http://oba.org/en/pdf/mdpreport.pdf (including information regarding forms of MDPs, their effect on lawyers, the benefits and risks associated with MDPs, and several

Kingdom, the enactment of the Legal Services Act of 2007 created a regulatory structure that allows "legal disciplinary practices—law firms whose professional rosters may be up to 25 percent nonlawyers—and alternative business structures, which will encompass [MDPs], external ownership of legal businesses, and just about any combination of lawyers and nonlawyers in between."[41] In Australia, "multidisciplinary practices and incorporated legal practices with outside ownership" are permitted.[42] Also, lawyer-accountant MDPs have functioned successfully for many years in Germany.[43] These international developments should serve as a guide for the ABA and state bar associations in the United States.[44]

Although no state has expressly permitted fully integrated MDPs,[45] some jurisdictions allow combinations of lawyers and

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recommendations).

41. James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 66, *available at* http://www.abajournal.com/magazine/article/off_the_mat.

42. *Id.* Australia is also the home of the world's first publicly traded law firm. *Id.*

43. *See* Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547, 1560 (2000) (noting that recognition of MDPs came from Germany's courts and that, since then, MDPs have been codified in legislation and the legal ethics rules). According to Terry, bar associations in the United States could learn from the way MDPs are permitted and regulated in Germany.

> Because Germany has had MDPs for a much longer time period than many of the jurisdictions currently considering the issues, it is worthwhile for these jurisdictions to look to Germany's experience.... Germany's history shows that it is possible for lawyers to work together with nonlawyers to provide multidisciplinary services to clients without impeding the public interest or hurting those clients.

Id. at 1623.

44. *See* James Podgers, *Ethics 20/20 Eyes Global Change*, A.B.A. J., Mar. 2010, at 67, *available at* http://www.abajournal.com/magazine/article/ethics_20_20_eyes_global_change (reporting that the Ethics 20/20 Commission will "take a close look at practice and ethics developments for lawyers in Europe and other parts of the world"); SPECIAL COMM. ON THE LAW GOVERNING FIRM STRUCTURE AND OPERATION, N.Y. STATE BAR ASS'N, PRESERVING THE CORE VALUES OF THE AMERICAN LEGAL PROFESSION: THE PLACE OF MULTIDISCIPLINARY PRACTICE IN THE LAW GOVERNING LAWYERS (2000), *available at* http://www.law.cornell.edu/ethics/mdp.htm ("[D]ecisionmakers in the United States can look abroad to see how MDP has worked there, and to gain an understanding of concerns and regulatory issues that may be of general relevance both here and abroad.").

45. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 497 (2005). The Commission on MDP defined the "fully integrated" model as "a single professional services firm, whose ownership, management, and profits are shared by lawyers and nonlawyers." Also, nonlawyers are permitted to have managerial authority "over all aspects of the MDP's provision of legal

nonlawyers to work together.[46] In Washington, D.C., a partnership agreement between lawyers and nonlawyers is allowed as long as it is "structured as a law firm that provides legal services."[47] Because of these changes, Washington, D.C., is regarded as a pioneer in MDP regulation and legislation[48] and

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services to the clients of the MDP." COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, UPDATED BACKGROUND AND INFORMATIONAL REPORT AND REQUEST FOR COMMENTS (Dec. 1999), *available at* http://www.abanet.org/cpr/mdp/ febmdp.html.

> [In a fully integrated MDP,] [t]here is a single professional services firm, XYZ Integrated, with organizational units such as accounting, business consulting, and legal services. It advertises that it provides "a seamless web" of services, including legal services. The legal services unit may represent clients who either retain its services but not those of any other unit of the firm or retain its services as well as the services of other units in the firm. In the latter case, the legal and nonlegal services may be provided in connection with the same or different matters.

Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 226 (2000).

46. *See* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 497–98 (2005) (discussing the approaches taken by different American jurisdictions, and noting that most state bar associations have committees studying MDPs); ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html (outlining approaches adopted by various state and local bar associations with regard to MDPs).

47. Karel Ourednik IV, *Multidisciplinary Practice and Professional Responsibility After Enron*, 4 FLA. COASTAL L.J. 167, 175–76 (2003); *see also* D.C. RULES OF PROF'L CONDUCT 5.4(b)(1) (2009) (stating that a lawyer or a law firm may form a partnership or other organization and share fees with a nonlawyer if the nonlawyer "performs professional services which assist the organization in providing legal services to clients . . . [and t]he partnership or organization has as its sole purpose providing legal services to clients").

48. The District of Columbia was the first jurisdiction in the United States to modify its version of Model Rule 5.4 to allow partnerships and fee-splitting with nonlawyers, amending 5.4(b) in 1991. Karel Ourednik IV, *Multidisciplinary Practice and Professional Responsibility After Enron*, 4 FLA. COASTAL L.J. 167, 175 (2003). However, the D.C. Rule has limitations:

> It restricts lawyer and nonlawyer partnerships and the splitting of legal fees to organizations that provide legal services to clients. In other words, it does not permit an accountant and a lawyer to enter into a partnership or share legal fees if the principal purpose of the organization is to provide non-legal services. But, as the Comments to the rule make clear, it does permit "certified public accountants to work in conjunction with tax lawyers or others who use accountants' services in performing legal services."

Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 243–44 (2000). In the Updated Background and Informational Report from the

could be used as an example for other states that are interested in allowing MDPs or some form of them.[49] In 2001, the New York State Bar became the first state to address MDPs directly by implementing a rule that allowed regulated business alliances between attorneys and nonattorneys.[50] The revised provisions rejected fully integrated MDPs, "but supported 'side-by-side' arrangements between lawyers and non-lawyers."[51] New York

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Commission on MDP, the Commission examines the MDP model used in Washington, D.C., as a possible alternative to the current prohibition. *See* COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, UPDATED BACKGROUND AND INFORMATIONAL REPORT AND REQUEST FOR COMMENTS (Dec. 1999), *available at* http://www.abanet.org/cpr/mdp/febmdp.html (stating the D.C. model allows "a lawyer to form a partnership and share legal fees with a nonlawyer subject to certain clearly defined restrictions," which include: (1) "the firm . . . must have 'as its sole purpose' the provision of legal services," (2) "the nonlawyer must agree 'to abide by these rules of professional conduct[,]'" (3) the lawyers involved with a financial interest or managerial power must accept the responsibility over the nonlawyers, and (4) "these conditions must be set forth in writing" (quoting D.C. RULES OF PROF'L CONDUCT R. 5.4(b)(1)–(4) (1999))).

49. *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 91-360 (1991) (addressing the issue of "what ethical rule should govern when lawyers are partners in a law firm that, as permitted by the D.C. rule, includes nonlawyer partners, but are also members of the bar of another jurisdiction whose rules forbid such partnerships"). *But see* Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 244 (2000) (explaining that because of the requirement that the sole purpose of the partnership must be providing legal services to clients and because of the problems multistate law firms would have dealing with "the permission afforded in the Washington D.C. version [and] the flat prohibition in the rest of the United States," few firms are able to take advantage of the D.C. Rule).

50. Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1363 (2003). The New York changes added two new disciplinary rules: DR 1-106 and DR 1-107. Disciplinary Rule 1-106 (now New York State Rules of Professional Conduct Rule 5.7) emphasizes "that nonlawyers cannot direct or regulate the professional judgment of lawyers in rendering legal services or take any action that would compromise an attorney's ability to protect client confidences." Disciplinary Rule 1-107 (now New York State Rules of Professional Conduct Rule 5.8) "impose[s] specific limitations on contractual relationships between lawyers and nonlawyers." John Caher, *Multidisciplinary Practice Rules Adopted by State: New York Takes Lead on Lawyer-Nonlawyer Partnerships*, 226 N.Y. L.J. 17 (2001), *available at* 7/25/2001 N.Y.L.J. 1, (col. 4) (Westlaw).

51. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 498 (2005); *see* Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 292–95 (2003) (discussing the regulations of attorneys under the New York rules). For more information on side-by-side arrangements like the ones permitted in New York, see Sydney M. Cone III, *Views on Multidisciplinary Practice with Particular Reference to Law and Economics, New York, and North Carolina*, 36 WAKE FOREST L. REV. 1, 12 (2001).

and Washington, D.C., are not alone in their consideration of MDPs; California, Colorado, Georgia, Maine, and South Dakota are considered pro-MDP because they either have recommended support for MDPs or have taken up a vote on the matter.[52]

IV. BENEFITS OF MULTIDISCIPLINARY PRACTICES

Proponents of MDPs say one of the most important benefits of multidisciplinary practices is the ability of one firm to deliver "an integrated team approach to serving client interests."[53] This "one-stop shop approach" would allow clients to address and solve many complex corporate problems with the use of professionals with experience in different fields.[54] Another benefit of multidisciplinary services is the overall efficiency, which results in savings of time and money for consumers and the delivery of a

52. *See* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 498 (2005) (analyzing how various states have addressed the MDP issue and noting which states have avoided the debate); *see also* Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 107 (2003) ("[A]ll but six state bar associations or state supreme courts [as of 2003] had created task forces that have studied . . . the MDP issue."). For further details regarding the reports and recommendations from any state, see ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (April 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html.

53. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 117 (2000). Proponents of MDPs argue that the restrictions placed upon lawyer and nonlawyer partnerships and fee sharing are outdated and have hindered the delivery of reasonably priced and efficient professional services. *New to You, Multidisciplinary Practice: The FAQs on MDPs*, YOUNG LAW. (ABA), Nov. 1999, at 3, *available at* http://www.abanet.org/yld/tyl/nov99/newtoyou.html; *see also* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 298 ("There has been an increasing demand for 'one-stop shopping.'"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 504–05 (2005) (asserting that clients of all types want the convenience of getting integrated services in one place).

54. *See* Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 295–96 (2003) ("With coordinated input from several different fields utilizing the maximum resources, clients are likely to receive quality innovative solutions."); *see also* Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 791–95 (2002) (pointing out that the services an MDP can offer are effective in aiding society's marginalized classes).

higher quality end product.[55] Practicing in an MDP can lead to lower production-related costs because the firm is able to handle certain services internally rather than paying for them on the open market or sending the client to deal with them elsewhere.[56] This will result in a reduction of transaction costs as well as costs associated with "research, contracting, coordination, monitoring, and information." [57] Also, clients using MDPs are more likely to have both their legal and nonlegal issues identified and addressed by the broad range of professionals available in an MDP.[58] The demand is not generated solely by the big accounting and other professional firms; small firms and even solo practitioners are interested in the possibility of practicing in MDPs.[59] Given these

55. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 118–19 (2000) (asserting that the increased efficiency of an MDP "translates into a savings of time or money"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 505 (2005) (explaining that quality of service to clients increases because of better coordination and communication between service providers).

56. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 120–21 (2000) (emphasizing the benefits clients of MDPs would realize through the reduced production-related costs, including lower prices and "the increase in quality of the services that MDPs can provide, i.e., the greater specialized skills of the professional personnel in the MDP and the improved technological capabilities").

57. Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 297 (2003).

58. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 121 (2000) ("Working together in a team approach, lawyers and nonlawyers will be more sensitive to their respective issues and are likely to formulate and promote a more comprehensive definition of client problems.").

59. *See* GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1120 (4th ed. 2005) (explaining that when small-town lawyers and solo practitioners "closely cooperate with accountants and other professionals," they provide "better service to their clients," and "the lawyers in these arrangements note that they thereby get clients that they would not otherwise"); Ritchenya A. Shepherd, *ABA Position May Boost Solos and Small Firms*, 221 N.Y. L.J. 112 (1999), *available at* 6/14/99 N.Y.L.J. 1, (col. 3) (Westlaw) (asserting that the Commission on MDP's recommendation to permit MDPs "may actually have the most impact on solo and small-firm practice" because "[l]awyers in areas such as tax, family law and elder care want to form closer ties with accountants, counselors and financial advisors"). The "Main Street MDP" has been touted as a type of practice that could deliver more comprehensive, efficient services to clients, especially in the area of family law and estate planning. *See* Susan Poser, *Main Street Multidisciplinary*

benefits, it is clear that there is a demand for multidisciplinary services, and many clients will seek such services abroad or in MDP-friendly states domestically if the Texas Disciplinary Rules of Professional Conduct are not amended to allow lawyers to participate in MDPs.[60]

V. ETHICAL CONSIDERATIONS OF MULTIDISCIPLINARY PRACTICES

Most of the objections to MDPs involve how the new practices would affect ethical issues and the governing standards of conduct.[61] The ABA and many state bar associations have emphasized that the purpose of the rules of professional conduct is

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Practice Firms: Laboratories for the Future, 37 U. MICH. J.L. REFORM 95, 97 (2003) (advocating a "narrower, more focused MDP rule" allowing only the Main Street MDP, which would provide an opportunity to "take an incremental approach to introducing and testing the MDP concept").

60. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 123–24 (2000) ("The demand for multidisciplinary services exists and many clients will continue to seek such services elsewhere abroad and domestically if the U.S. ethical rules do not allow lawyers to participate in delivering them."); Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 U. MICH. J.L. REFORM 95, 109 (2003) ("[T]hose testifying before the MDP Commission strongly agreed that significant demand for MDPs existed . . . ."); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 506 (2005) ("If the United States' legal profession is going to stay globally competitive, MDPs seem to be a requisite."); Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 295 (2003) (explaining that consumer demand for a one-stop shop approach is driving the MDP trend). *But see* GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1120 (4th ed. 2005) ("The degree of the demand is, however, somewhat speculative given the current prohibition.").

61. *See, e.g.*, Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 287–88 (acknowledging that ethical issues and standards of conduct are among the main objections to MDPs); *see also* Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1364 (2003) (explaining three reasons for supporting the ABA's anti-MDP stance as (1) preserving the professional independent judgment of lawyers, (2) avoiding unauthorized practice of law by nonlawyers, and (3) "ensuring that attorneys do not use affiliations with nonlawyer professionals as self-referral feeders"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 499 (2005) (discussing the arguments against MDPs); Gary Spencer, *Bar Opposes Non-Lawyers Sharing Fees*, 221 N.Y. L.J. 123 (1999), *available at* 6/29/99 N.Y.L.J. 1, (col. 3) (Westlaw) (reporting the New York State Bar's concern that changing the legal and ethical rules will compromise the profession).

to preserve the "core values" of the legal profession,[62] including: (1) the duty of loyalty to the client, (2) the duty to exercise independent legal judgment, (3) the duty to maintain client confidentiality, and (4) the duty to avoid conflicts of interest.[63] Those who oppose MDPs argue that allowing them would have several ethical implications for the lawyers involved, including: (1) impairing the lawyer's professional independent judgment, (2) increasing conflicts of interest, and (3) increasing the chances of a fundamental conflict between the lawyer and the nonlawyer's duty of confidentiality.[64]

A. *Professional Independence of Lawyers*

Throughout the history of the American legal profession, a main focus of legal ethics and professional responsibility has been "to preserve and protect the exercise of a lawyer's independent professional judgment in service to the client."[65] The ABA has

62. *See* ABA, HOUSE ADOPTED REVISED RECOMMENDATION 10F: HOUSE OF DELEGATES ACTION (2000), *available at* http://www.abanet.org/cpr/mdp/mdprecom10f.html ("The law governing lawyers was developed to protect the public interest and to preserve the core values of the legal profession, that are essential to the proper functioning of the American justice system."). In a recommendation to the House of Delegates, the State Bars of Illinois, New Jersey, New York, Florida, and Ohio as well as the Bar Association of Erie County and the Cuyahoga County Bar Association, joined to propose revisions to the rules governing lawyers to implement several principles favorable to MDPs while emphasizing the importance of preserving the "core values" of the legal profession. *Id.*

63. *See* Edward Brodsky, *ABA Endorsement of Multidisciplinary Practices*, 222 N.Y. L.J. 9 (1999), *available at* 7/14/99 N.Y.L.J. 3, (col. 1) (Westlaw) (reporting the ABA Commission on MDP identified three major areas for concern: (1) "MDPs would threaten lawyers' professional independence of judgment to determine their clients' and their own legal obligations," (2) "MDPs may threaten the ability of lawyers to protect confidential client information," and (3) "MDPs may also impede the lawyer's duty of loyalty and create conflicts of interest").

64. *Id.*; *see also* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 499 (2005) (asserting that opponents of MDPs and fee-sharing claim that their concern is preserving the core values of the legal profession).

65. COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, BACKGROUND PAPER ON MULTIDISCIPLINARY PRACTICE: ISSUES AND DEVELOPMENTS (Jan. 1999), *available at* http://www.abanet.org/cpr/mdp/multicomreport0199.html; *see* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 288–89 (recognizing that the large accounting firms employ hundreds of attorneys and that those firms' interest in making money may conflict with a lawyer's fiduciary duty to provide a client adequate representation); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices*

emphasized its concern for the professional independence of lawyers by including, at least seven times, references to professional judgment and independence.[66]

To protect the professional independence of lawyers in Texas, the State Bar adopted Rule 5.04, using language similar to that in the ABA's Model Rule 5.4.[67] Subsection (c) continues the protection of the lawyer's exercise of professional independent judgment by forbidding any "person who recommends, employs, or pays the lawyer" on behalf of another to direct or influence the lawyer.[68] Subsection (d) prohibits lawyers from "practic[ing law] with or in the form of a professional corporation or association" if a nonlawyer either owns any interest in the entity, acts as a corporate officer or director, or has the right to "direct or control the professional judgment of a lawyer."[69] To further illustrate the

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and What They Can Teach Us About the Ongoing Debate, 83 N.C. L. REV. 481, 499 (2005) (discussing the assumption by opponents of MDPs that a lawyer's independence will erode if he works under the supervision of a nonlawyer).

66. *See* MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 12 (2009) ("Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves."); MODEL RULES OF PROF'L CONDUCT R. 1.7 (2009) (stating the conflict of interest rules in the context of current clients); MODEL RULES OF PROF'L CONDUCT R. 2.1 (2009) (stating the rules for when a lawyer acts as an advisor); MODEL RULES OF PROF'L CONDUCT R. 4.2 (2009) (stating rules for communicating with a person represented by counsel); MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009) (stating the rules to help protect the professional independence of a lawyer); MODEL RULES OF PROF'L CONDUCT R. 5.7 (2009) (stating the responsibilities regarding law-related services); MODEL RULES OF PROF'L CONDUCT R. 8.2 (2009) (stating the rules that apply to judicial and legal officials); *see also* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 499 (2005) (finding that the exercise of "professional judgment free from outside influence" has such importance that "concepts of professional and judgmental independence are reiterated at least seven times in the Model Rules").

67. *Compare* TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04 (expressing the limitations on sharing legal fees with nonlawyers in Texas), *with* MODEL RULES OF PROF'L CONDUCT R. 5.4 (2009) (expressing the Model Rules' limitations on sharing fees with nonlawyers).

68. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04(c); *see also* TEX. YOUNG LAWYERS ASS'N, TEXAS LAWYERS' PROFESSIONAL ETHICS 1-102 (3d ed. 1997) (reiterating the policy of protecting the lawyer's professional independent judgment by forbidding others from attempting to direct or regulate the lawyer's decisions); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT § 5.4:401 (2d ed. Supp. 1996) ("The concern underlying [ABA Model] Rule 5.4(c) is that a lawyer's relationship to third parties may interfere with the independence of his legal advice.").

69. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04(d); *see* TEX. YOUNG LAWYERS ASS'N, TEXAS LAWYERS' PROFESSIONAL ETHICS 1-102 (3d ed. 1997) (noting prohibitions

meaning of the Rules, the Professional Ethics Committee of the Supreme Court of Texas issues written opinions on ethical questions raised by Texas attorneys.[70] In Opinion 498, the Committee addressed the issue of whether an attorney employed by a corporation not owned solely by other attorneys is permitted to prepare estate-planning documents and provide other legal services for the corporation's customers.[71] According to the Committee, the lawyer's participation in this type of an arrangement—where the corporation receives compensation for the lawyer's legal services—clearly violates Rule 5.04(a).[72] More directly related to MDPs, the Committee in Opinion 493 held that "a lawyer may not establish an L.L.P. or other partnership with one or more nonlawyer professionals if one of the activities of the L.L.P. or other partnership would be to provide legal services."[73]

Opponents of MDPs rely on the assumption that "allowing nonlawyer partners in law firms would increase the pressure to earn profits and inevitably result in interference with a lawyer's professional independent judgment."[74] Any interference with the

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on practicing in a professional corporation if a nonlawyer either owns an interest in the association or has the right to direct the lawyer's professional judgment).

70. TEX. CTR. FOR LEGAL ETHICS AND PROFESSIONALISM, TEXAS ETHICS OPINIONS intro. & foreword (2000). For brief summaries of the opinions issued by the Texas Commission on Professional Ethics, see TEX. YOUNG LAWYERS ASS'N, TEXAS LAWYERS' PROFESSIONAL ETHICS ch. 3 (3d ed. 1997).

71. Tex. Comm. on Prof'l Ethics, Op. 498, 58 TEX. B.J. 38, 38 (1995).

72. *Id.* at 38–39 (concluding "[a]n attorney may not enter into an arrangement with a corporation that is not a professional corporation owned solely by licensed attorneys" where the attorney is a salaried employee of the corporation, regularly provides legal services to the corporation's customers, and the corporation receives compensation for those services).

73. Tex. Comm. on Prof'l Ethics, Op. 493, 57 TEX. B.J. 622, 622 (1994). In this case, a Texas lawyer wanted to expand his services, focusing on transactional matters, contracts, property, and oil and gas. He proposed to establish an L.L.P. consisting of professional engineers, accountants, bookkeepers, and other people with specializations in land-related services. The partners of the L.L.P. would share the office space, expenses, and revenue. This is a textbook example of an MDP, which is prohibited in Texas under Rule 5.04. *Id.*

74. Victoria V. Kremski, *Serving Clients in a Multidisciplinary Practice: As MDPs Become a Reality, Attorneys Must Strictly Uphold the Core Values of Their Profession*, MICH. B.J., Oct. 2001, at 32, 34; *see also* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 288–89 (considering the argument that "the primary motive of . . . accounting and consulting firms is the bottom line—to make money—while lawyers' motives are tied to some greater good, whether that be protecting the client or protecting the public at large"); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 899 (1999) (stating that MDPs create a risk that a "lawyer's professional judgment

lawyer's independence and judgment has the potential for negatively affecting the individual client using the lawyer's services.[75] Below is an example of nonlawyer interference with a lawyer's professional judgment:

> Suppose a nonlawyer businessperson, aiming to profit from the need for moderately priced, standardized legal services establishes a business that employs lawyers to provide the needed services. There may be a tendency for the nonlawyer manager to set time limits on the attorneys in order to improve profits by increasing the volume of cases handled. Such pressures from the employer could create a potential conflict of interest for the lawyer who owes his client loyalty, but is also concerned about his own job performance.[76]

Although the examples and assumptions concerning the lawyer's ability to maintain his or her professional independence and judgment are valid, this possibility of interference by a nonlawyer exists under the present system, in situations such as when insurers use their staff attorneys or hire outside lawyers to defend their insureds.[77] These situations still raise concerns about the lawyer's

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could be pressured and perhaps compromised").

75. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 899 (1999) (suggesting that "[a]ny loss of independence potentially has consequences" for the client receiving legal services, society, and the rule of law).

76. Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1369 (2003). Gordon provided another example with a real estate development partnership between a nonlawyer realtor and a lawyer. The realtor invests much of the firm's resources in a client's real estate project and then asks the lawyer partner to evaluate whether the project complies with the law. The lawyer could find himself in a conflict of interest between the partnership and the client. *Id.* at 1369–70; *see also* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 891–92 (1999) ("The concern is that lawyers ultimately would follow the dictates of their employers, who don't understand client needs, rather than following their own judgment."). Terry acknowledged a related argument that the erosion of a lawyer's independence resulting from MDPs could potentially undermine the rule of law, which is critical to a democratic country. Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 892 (1999).

77. *See* Unauthorized Practice of Law Comm. v. Am. Home Assurance Co., 261 S.W.3d 24, 26, 27 (Tex. 2008) (holding that insurers may use staff attorneys to defend their insureds if the interests of the insured and insurer are congruent); 2 GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT § 5.4:401 (2d ed. Supp. 1998) (describing the typical situations including when "insurance companies hire lawyers for their insureds, parents hire lawyers for their children, and corporations hire lawyers for corporate employees"); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary*

ability to preserve his or her professional independence and judgment; however, the Model Rules and the Texas Disciplinary Rules of Professional Conduct already address them.[78] Given the current rules, which allow for nonlawyer involvement in some situations in the delivery of legal services, the outright ban on MDPs to protect a lawyer's independent professional judgment seems unreasonable.[79] It is possible to implement a rule that would be tailored specifically to protect the professional independence of lawyers in an MDP setting. For example, Texas Disciplinary Rule of Professional Conduct 1.12 is aimed at protecting client confidences when the client is an organization rather than an individual.[80] It follows that a similar regulation

Practices in a Changing Legal Profession, 36 IND. L. REV. 1363, 1370 (2003) (explaining that lawyers practicing in the private sector are often influenced by nonlawyers, such as situations "when an insurance company provides counsel to defend an insured or when a corporation pays the legal expenses to defend an employee").

78. *See* MODEL RULES OF PROF'L CONDUCT R. 1.7(b), 1.8(f), 5.2(a), 5.4 (2009) (emphasizing the importance of protecting lawyers' professional independence (Rule 5.4) and judgment in situations involving conflicts of interest with current clients (Rules 1.7 and 1.8) and responsibilities of a subordinate lawyer (Rule 5.2)); TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(c) ("A lawyer may represent a client ... if ... the lawyer reasonably believes the representation of each client will not be materially affected ...."); TEX. DISCIPLINARY R. PROF'L CONDUCT 1.08(e) ("A lawyer shall not accept compensation for representing a client from one other than the client unless ... there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship ...."); TEX. DISCIPLINARY R. PROF'L CONDUCT 5.02 ("A lawyer is bound by these rules notwithstanding that the lawyer acted under the supervision of another person ...."); TEX. DISCIPLINARY R. PROF'L CONDUCT 5.04(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.").

79. *See* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 116 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (discussing the situations in which nonlawyers are involved in the delivery of legal services and how "[t]he profession simply expects the lawyer in such an arrangement to comply with the rules it has adopted to address those situations"); *accord* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 872, 899 (1999) (explaining that a reasonable alternative to the outright prohibition of MDPs would be to allow them, so long as state bars develop "special rules to protect a lawyer's independence in an MDP context").

80. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.12; *see* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 899 (1999) (emphasizing the use of ABA Model Rule 1.13, the ABA equivalent of Texas Disciplinary Rule 1.12, as a "specifically-tailored ethics rule" providing guidance with regard to implementing "the traditional rules in a corporate counsel setting," and a similar rule could be crafted that "provides guidance about how to protect independence in an MDP setting").

could provide guidance about how lawyers in an MDP setting must protect their professional independence.[81]

Thus, for MDPs to work effectively in Texas without jeopardizing the professional independence of lawyers, strict adherence to the current rules would be essential, and a specifically tailored rule for MDP settings would help to provide guidance. Lawyers in Texas and across the world face threats to their independent professional judgment, and it is up to each lawyer to make sure his or her judgment is not influenced by others. Rather than prohibiting MDPs to preserve this judgment, the State Bar of Texas should enforce the current rules and allow lawyers the freedom to work with professionals in other disciplines and specializations.

B. *Conflicts of Interest*

Another potential ethical problem associated with an MDP involves the increased likelihood of conflicts of interest.[82] Under Texas Disciplinary Rule of Professional Conduct 1.06, a lawyer is allowed to represent multiple clients in the same matter or represent opposing parties *only if* "(1) the lawyer reasonably

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81. Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 899 (1999) (asserting, in the context of Model Rule 1.13, that a specific rule for the MDP setting "could address issues such as direction of an MDP lawyer's judgment and who sets the MDP lawyer's compensation, among other issues").

82. *See, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 181 (2000) (acknowledging the concerns over conflicts of interest that might arise in an MDP, but pointing out that large firms practicing multijurisdictionally face similar issues); Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 290–93 (comparing the conflict of interest "problems that would be encountered by [an] MDP . . . to the problems that a large law firm encounters in practice today"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 501–02 (2005) (describing the conflicts of interest that could develop in an MDP setting as "conflicts between different professional obligations and conflicts between devotion to the client and devotion to the partnership"). *See generally* Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 259–60 (2000) (explaining the purpose of conflict of interest rules as providing clients with "a reasonable expectation of attorney loyalty"). For more detailed information regarding conflicts of interest and their regulation, see generally Richard A. Epstein, *The Legal Regulation of Lawyers' Conflicts of Interest*, 60 FORDHAM L. REV. 579 (1992); Jonathan R. Macey & Geoffrey P. Miller, *An Economic Analysis of Conflict of Interest Regulation*, 82 IOWA L. REV. 965 (1997).

believes the representation of each client will not be materially affected; and (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any."[83]

Texas Disciplinary Rules of Professional Conduct 1.06(f), 1.07(e), and 1.08(i) all provide that "[i]f a lawyer would be prohibited by [these Rules] from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct."[84] These rules emphasize the principle of imputed disqualification, which prohibits lawyers associated with a firm from representing a client if one of the lawyers in the firm would be prohibited from representing that client.[85] When the rules regarding the imputation of conflicts of interest are applied to MDPs, the ethical issues become more complicated.[86] Factors such as the extent the MDP represents

83. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(c) (covering conflicts of interest in general); *see* Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 301–02 (2003) (recognizing that an attorney "must provide clients with legal representation that is free of any conflict of interest, which could compromise the attorney's loyalty," and that a problematic situation arises "when an MDP is acting as an independent auditor of a client's financial statements while also performing legal services for the same client").

84. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(f) (covering the general conflict of interest rules); TEX. DISCIPLINARY R. PROF'L CONDUCT 1.07(e) (acknowledging the conflict of interest caused by an intermediary); TEX. DISCIPLINARY R. PROF'L CONDUCT 1.08(i) (addressing the conflict of interest arising from prohibited transactions). The Model Rules contain a similar rule. Model Rule 1.10 provides that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so." MODEL RULES OF PROF'L CONDUCT R. 1.10 (2009).

85. *See* NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 300 (4th ed. 2008) ("The rationale for the rule of imputed disqualification is based on the fact that lawyers practicing in a firm have access to firm files and have mutual financial interests."); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 260–61 (2000) ("Imputation rules prevent all lawyers in a firm from representing a client that any one of them practicing alone would be prohibited from representing because of a conflict of interest.").

86. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 185 (2000) (questioning whether an MDP's lawyers should be required to check for "conflicts against all of the existing and former clients and matters of non-legal service providers in the MDP"); *see also* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing*

competing clients, the size of the MDP, the type of disciplines or business services offered, and the scope of the legal and nonlegal services provided by the MDP[87] all affect the importance of and the need to address the imputation rules.[88]

The concern for MDPs is that accountants and other specialists do not follow the imputation principle when dealing with conflict of interest situations.[89] American law firms that have an

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De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate, 83 N.C. L. REV. 481, 502 (2005) (contending that a related argument is whether imputed disqualification would work at all in a large MDP setting because of the impossibility of avoiding "conflicts of interest internal to the firm").

87. *See, e.g.*, Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 502–03 (2005) (asserting a firm of hundreds of attorneys would find constructing a "firewall" between a conflicted lawyer and the firm easier than would a large firm "with a variety of professionals and their potentially conflicting duties"); Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 302 (2003) (positing that "the scope and complexity of the financial interests of MDP firms" may prevent conflict-free service even to clients seeking nonlegal services, especially if the number of clients is great); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 268 (2000) (maintaining that ethical issues and conflicts will increase as MDPs expand globally).

88. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 186 (2000) ("The imputation rules may need to be revised to reflect the modern realities of legal practice conducted by large, multi-jurisdictional organizations operating in a global economy.").

89. *See* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 111 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (noting that contrary to a lawyer's ethical rules, "an accountant's conflict of interest is not automatically imputed to the other members of the accounting firm"); *see also* Daniel R. Fischel, *Multidisciplinary Practice*, 55 BUS. LAW. 951, 965 (2000) (suggesting that a rule of imputed disqualification "would have prevented the big . . . accounting firms from growing to their present size"). This conflict between lawyers and accountants was described by the United States Supreme Court in *United States v. Arthur Young & Co.*:

> [T]he private attorney's role [is] as the client's confidential adviser and advocate, a loyal representative whose duty it is to present the client's case in the most favorable possible light. An independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

United States v. Arthur Young & Co., 465 U.S. 805, 817–18 (1984).

international presence are placed at a competitive disadvantage because the international MDP firms are not required to follow the imputed conflict of interest limitation.[90] As the Supreme Court realized in *United States v. Arthur Young & Co.*,[91] under the conflict of interest rules, a lawyer must address the client's needs and owes a duty of loyalty only to the client, whereas, for example, an accountant is required to maintain independence from the client and owes a duty of allegiance to the public in general as well as to the corporation's stockholders and creditors.[92] While the Model Rules require firms to impute conflicts of interest to the entire firm, the American Institute of Certified Public Accountants (AICPA) rules attempt to ensure objectivity of individuals and would allow one accounting firm to represent multiple sides of a direct conflict, so long as there is informed consent.[93] These differences in professional obligations and requirements in dealing with clients and conflicts of interest are causes for concern for those who oppose MDPs.[94] To address the competing obligations

90. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 185–86 (2000) (opining that the imputation rules could prevent many large law firms and accounting firms from offering MDP services, as the firms "would have to consider all of the present and former clients of all service providers in the MDP for purposes of determining whether a conflict exists for the legal department," and that "the imputation rules may need to be revised to reflect the modern realities" of large firms with a global presence); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 261 (2000) ("[A] minor conflict of interest involving an associate in the United States can be imputed to a partner in Europe and prevent the partner from accepting a case.").

91. United States v. Arthur Young & Co., 465 U.S. 805 (1984).

92. *Id.* at 817–18; *see, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 181 (2000) (acknowledging that opponents of MDPs argue that accounting firms have different conflict of interest rules and that the firms resolve conflicts using firewalls and client consent); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 502–03 (2005) (emphasizing the difference between lawyers and accountants in dealing with the imputed disqualification requirement).

93. Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 291 (pointing out the rules promulgated by the AICPA prohibit representation involving conflicting interest, but allow an accounting firm to represent clients that are in direct conflict provided the firm informs the clients and obtains their consent).

94. *See id.* (noting that because the two professions regulate conflicts of interest differently, MDPs face additional problems if accounting and legal services are both

of different professions found in MDPs, the State Bar of Texas should apply the conflict of interest rules consistently to both law firms and MDPs.[95]

In addition, conflicts of interest in an MDP setting are likely to arise between the attorney's duty of loyalty in representing his client and the duty the attorney has to the professional partnership, corporation, or entity.[96] In an MDP controlled by nonlawyers, the attorney partners "might be forced to base their decisions on partnership demands rather than on the rule of law" or the needs of each individual client.[97] This type of situation could lead the attorney to violate Texas Disciplinary Rule of Professional Conduct 1.06, which prohibits a lawyer from working

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offered); *see also* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 901–02 (1999) (stating "the differing standards lawyers and accountants use to determine the presence of a conflict of interest" create an additional conflict of interest problem that must be addressed in an MDP setting because while "[l]awyers recognize indirect conflicts of interest ... accountants only recognize direct conflicts of interest").

95. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 186–87 (2000) (concluding that fairness and maintaining "competition among different types of legal service providers" dictate treating law firms and MDPs similarly).

96. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 503 (2005) (noting the tension between a lawyer's duty to act in the best interest of the client and the duty of loyalty to a lawyer's partners created by a partnership agreement with other professionals). *Compare* TEX. DISCIPLINARY R. PROF'L CONDUCT pmbl. ¶ 2 (requiring a lawyer as an advocate to "zealously assert[] the client's position under the rules of the adversary system"), *and* TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03 cmt. 2 (stating the lawyer's duty to act in the client's best interests), *with* LARRY E. RIBSTEIN & JEFFREY M. LIPSHAW, UNINCORPORATED BUSINESSES AND ENTITIES 187–97 (4th ed. 2009) (examining the fiduciary duty between the agent and the agency or the partner and the partnership), *and* UNIF. P'SHIP ACT § 301, 6 U.L.A. 101 (2001) (establishing that "[e]ach partner is an agent of the partnership for the purpose of its business"). *See generally* AM. INST. OF CERTIFIED PUB. ACCOUNTANTS CODE OF PROF'L CONDUCT (1988), *available at* http://www.aicpa.org/About/code/index.html (outlining general duties of certified public accountants to clients, entities, and the public).

97. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multi-discipline Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 503 (2005); *see also* Gianluca Morello, *Big Six Accounting Firms Shop Worldwide for Law Firms: Why Multidisciplinary Practices Should Be Permitted in the United States*, 21 FORDHAM INT'L L.J. 190, 226 (1997) (pointing out that a conflict may arise if a lawyer in an MDP has a client who could be better served by a professional outside the firm though another professional at his firm offers the same service).

for a particular client if the lawyer's interest or his responsibility to others could limit or negatively impact the representation.[98]

Supporters of MDPs argue that the Model Rules (and by extension, the Texas Rules) allow lawyers to represent clients in these conflict of interest situations as long as the client consents after full and adequate disclosure.[99] In the July 2000 Report to the House of Delegates, the Commission on MDP asserted the idea that "amending Rule 5.4 to permit lawyers and nonlawyers to share fees and join with nonlawyer professionals will not threaten the core value of loyalty to clients through the avoidance of conflicts of interest."[100] To address the conflict of interest problem, the Commission on MDP proposed that the Model Rules apply to both lawyers and nonlawyers in an MDP and "every client of an MDP be treated as the client of every lawyer in the MDP."[101]

98. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06; *see also* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 503 (2005) (explaining that MDPs controlled by nonlawyers could lead to a violation of Model Rule 1.7, which prohibits an attorney from representing a new client if a concurrent conflict of interest exists).

99. *See, e.g.*, TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(c) (providing a client-consent exception to conflict of interest rules); MODEL RULES OF PROF'L CONDUCT R. 1.7(b) (2009) (providing an informed-consent exception to the general rule prohibiting representation of clients with concurrent conflicts of interest); James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 111 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (suggesting that because rules exist allowing attorneys to cure conflicts of interest, a lawyer can work under those same rules in an MDP).

100. COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES, REPORT AND RECOMMENDATION (July 2000), *available at* http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html; *see also* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 290 (contending the conflict of interest problems an MDP would face are similar to the problems already encountered by large law firms today).

101. *See* COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES, REPORT AND RECOMMENDATION (July 2000), *available at* http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html (proposing that the lawyers, not the nonlawyers in an MDP "determine the application of the conflicts of interest rules" to clients seeking legal services from the MDP); Corinne N. Lalli, Note, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN'S J. LEGAL COMMENT. 283, 302 (2003) (agreeing that "all clients in an MDP [should] be treated as the lawyer's clients for purposes of conflicts of interest" but because of an MDP's scope of practice, "completely conflict-free services may be difficult to achieve").

C. *Confidentiality*

Opponents of MDPs also argue that the lawyer's duty of confidentiality will be hindered in an MDP setting.[102] This argument is based on an incorrect assumption that attorneys are prohibited from sharing confidential client information with nonlawyers without any exceptions, but in fact, lawyers share client information with "secretaries, experts, paralegals, and others who assist in rendering legal advice to the client."[103] Under Texas Disciplinary Rule of Professional Conduct 5.03, confidentiality is preserved because lawyers are required to instruct nonlawyers to follow the Rules of Professional Conduct and not disclose any information relating to the client's legal matters.[104] Rule 5.03 deals with the situation of lawyers using nonlawyers in their law firm.[105] It seems logical that this rule also applies to nonlawyers working in an MDP, and if the lawyers working in the MDP fail to follow the confidentiality rules, they will be subject to discipline.

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102. *See, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 177 (2000) (acknowledging that opponents of MDPs claim that client information would be shared between lawyers and nonlawyers in an MDP, "thus compromising the ethical duty of confidentiality and destroying the protection of the attorney-client privilege"); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 892 (1999) (noting the "fundamental conflict between a lawyer's duty of confidentiality and an auditor's duty to the public"); *see also* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 112 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (maintaining there is uncertainty regarding the protection of client communications to a nonlawyer in an MDP).

103. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 177–78 (2000).

104. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.03(a) ("[A] lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . . ."); *see also* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 178 (2000) ("Confidentiality and the privilege are preserved because, under Model Rule 5.3, the lawyer must instruct the nonlawyers . . . of the duty not to disclose information relating to the representation of clients on legal matters.").

105. TEX. DISCIPLINARY R. PROF'L CONDUCT 5.03(a); *see also* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 178 (2000) (explaining that the application of Model Rule 5.3 "has force because a lawyer can be disciplined if his or her nonlawyer associates reveal confidential client information").

The "core value" of client confidentiality involves three different concepts: (1) the ethical duty of confidentiality, (2) the attorney-client privilege, and (3) the work-product doctrine.[106] First, though subject to certain narrow exceptions, the ethical duty of confidentiality requires attorneys to protect and "maintain the confidentiality of information 'relating to the representation'" of their clients, under all circumstances.[107] Second, the attorney-client privilege is considered a rule of evidence that addresses "when a lawyer may be compelled in court or other official proceedings or investigations to reveal information received in confidence from a client."[108] Third, the work-product doctrine is a discovery rule established by the United States Supreme Court in *Hickman v. Taylor*,[109] which prevents the discovery of any materials prepared by the attorney "in anticipation of litigation."[110] There is a general exception to the duty of confidentiality if the client gives informed consent.[111]

The key in dealing with client confidences in a law firm or an MDP is that "the client must be informed from the start that the privilege may not attach to the communications with non-lawyers for the purpose of obtaining non-legal advice."[112] In *United States*

106. NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 98–99 (4th ed. 2008).

107. *Id.* at 99; *see also* TEX. DISCIPLINARY R. PROF'L CONDUCT 1.05(b)(1) ("[A] lawyer shall not knowingly . . . [r]eveal confidential information of a client . . . to . . . a person that the client has instructed is not to receive the information; or . . . anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.").

108. NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 99 (4th ed. 2008). For more information regarding the attorney-client privilege and its scope, see 8 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2292, at 554 (McNaughton ed., 1961).

109. Hickman v. Taylor, 329 U.S. 495 (1947).

110. *Id.* at 508, 513–14; *see* NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 99 (4th ed. 2008) ("[T]he work product doctrine is designed to preserve the proper functioning of the adversarial system—to allow attorneys to prepare their cases without fear that material prepared in anticipation of litigation will be available to the opposing side.").

111. *See* NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 105 (4th ed. 2008) (providing an example of the consent exception); *see also* TEX. DISCIPLINARY R. PROF'L CONDUCT 1.05(c) (establishing eight situations where a "lawyer may reveal confidential information").

112. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 178 (2000) ("It is imperative that MDPs clearly explain whether or not the client is obtaining legal services

v. Frederick,[113] the Seventh Circuit dealt with the issue of an individual who was both an attorney and an accountant providing legal representation to a corporation in addition to preparing its tax returns.[114] The court observed that the attorney served a dual role in that he prepared the tax returns, which is not considered the practice of law, as well as represented the client in a matter involving the IRS, which is considered the practice of law.[115] The attorney-client privilege protects any communication between the attorney and the client if *legal* advice or services are being given.[116] If the communication or document is found to be a "dual purpose document," in that it was created for use in preparation of litigation as well as other nonlegal professional services, it will not be protected under the attorney-client privilege or the work-product doctrine.[117] The Supreme Court in *Young* declared that there is no common law accountant's privilege[118] and, in *Frederick*, noted "a taxpayer must not be allowed, by hiring a lawyer to do the work that an accountant . . . normally would do, to obtain greater protection from government investigators than a taxpayer who did not use a lawyer as his tax preparer would be entitled to."[119] The rule established in *Frederick* states that documents prepared by a lawyer solely for use in actual or potential litigation will remain privileged under the work-product

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and whether or not the privilege will apply to the services.").

113. United States v. Frederick, 182 F.3d 496 (7th Cir. 1999).

114. *Id.* at 499; *see also* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 178–79 (2000) (discussing *United States v. Frederick* and its application to confidentiality in an MDP setting).

115. *See Frederick*, 182 F.3d at 499–500 (explaining the appellant's dual role as both attorney and accountant for the client).

116. *See* 8 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2292, at 554 (McNaughton ed., 1961) (explaining the evidentiary rule of attorney-client privilege).

117. *See Frederick*, 182 F.3d at 501 ("[A] dual-purpose document . . . is not privileged; otherwise, people in or contemplating litigation would be able to invoke, in effect, an accountant's privilege, provided that they used their lawyer to fill out their tax returns.").

118. United States v. Arthur Young & Co., 465 U.S. 805, 817–19 (1984); *see also* Couch v. United States, 409 U.S. 322, 335 (1973) ("[N]o confidential accountant-client privilege exists under federal law, and no state-created privilege has been recognized in federal cases."); *Frederick*, 182 F.3d at 500 ("There is no common law accountant's or tax preparer's privilege . . . .").

119. *Frederick*, 182 F.3d at 500 (citing United States v. Lawless, 709 F.2d 485, 487–88 (7th Cir. 1983)).

doctrine, while any documents prepared by any professional (accountant, realtor, lawyer) not specifically for litigation will not be privileged.[120] According to one commentator, "This case is very troublesome for MDPs seeking to do dual-purpose representations in the tax area."[121]

If the State Bar is to permit MDPs in Texas, several issues regarding confidentiality must be addressed.[122] An integrated-services MDP, offering both legal and nonlegal services, must explain to clients that the communications and documents prepared by the attorneys in preparation for litigation will remain protected, while the communications and documents prepared by professionals, even attorneys, for a nonlegal services will not be protected under the attorney-client privilege.[123] One recommendation is for MDP firms with nonlawyer partners to use strict confidentiality agreements to ensure the protection of client confidences.[124] "Further, recognizing the realities of the marketplace, any firm that could not maintain confidentiality would fare poorly in the marketplace and would not remain competitive for long."[125] Regardless of the method chosen, lawyers and nonlawyers in MDPs must agree to protect the information that would be kept confidential if the client had gone to a traditional law firm.

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120. *See id.* ("The information that a person furnishes the preparer of his tax return is furnished for the purpose of enabling the preparation of the return, not the preparation of a brief or an opinion letter. Such information therefore is not privileged."); John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 179 (2000) ("This case illustrates a potential ambiguity in the law when both representations arise in the MDP, and a need to fully inform the client of the scope of the privilege.").

121. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 179 (2000).

122. *See* Victoria V. Kremski, *Serving Clients in a Multidisciplinary Practice: As MDPs Become a Reality, Attorneys Must Strictly Uphold the Core Values of Their Profession*, MICH. B.J., Oct. 2001, at 32, 33–34 (evaluating confidentiality issues and the attorney-client privilege in an MDP setting, and stating "current case-law governing privilege issues may be inadequate to protect a client in an MDP world").

123. *Arthur Young*, 465 U.S. at 817–20.

124. *See* Victoria V. Kremski, *Serving Clients in a Multidisciplinary Practice: As MDPs Become a Reality, Attorneys Must Strictly Uphold the Core Values of Their Profession*, MICH. B.J., Oct. 2001, at 32, 33–34 (proposing the use in MDPs of strict confidentiality agreements between clients and nonlawyer partners).

125. *Id.* at 33–34.

VI. TEXAS'S OPTIONS IN DEALING WITH MDPS GOING FORWARD

The State Bar cannot ignore the trend toward MDPs any longer.[126] There is an increasing number of business entities operating as "virtual MDPs."[127] These organizational structures exist in the United States and are operating close to the ethical line regarding MDPs, fee-sharing with nonlawyers, and the unauthorized practice of law. This is forcing the ABA and state bar associations to address the problem to retain control over the regulation of the legal profession.[128] Ignoring MDPs would result in a division of the legal profession into two groups of lawyers, one regulated and one unregulated.[129] The regulated group of lawyers would be the ones who are in traditional law firms and admit that they are engaged in practicing law and providing legal services to

126. *See, e.g.*, Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 516 (2005) (asserting that "[t]he MDP debate is not going away" and to ignore the problem and do nothing is not preferable).

127. Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 300 (noting the growth of "organizational structures which skirt the rules prohibiting MDPs"); *see also* Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 506–07 (2005) (discussing "de facto MDPs," which do not conform to the ABA's definition of an MDP but represent organizations in which lawyers and nonlawyer professionals work together offering integrated services). Hawkins lists as de facto MDPs, "large, professional service firms with corporate clients and smaller, more individual-service-based boutiques." Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 506–07 (2005).

128. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 206 (2000) (contending that the legal profession could lose the ability to shape the delivery of services by MDPs if it maintains the status quo); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1384 (2003) (urging that the Enron scandal was a lesson to be learned, and that supporting guidance from the ABA is crucial so "so that clients are protected"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 506 (2005) (offering the view that because "MDPs are already here," the legal profession must have the ability to "regulate MDPs on its own terms" to survive).

129. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 920 (1999) ("This parallel world of lawyers—some regulated and some unregulated—will only become larger as MDPs proliferate. [The division] will breed disrespect for the law and legal ethics rules, and it may create a race to the bottom.").

clients.[130] This group would remain bound by the applicable ethics rules, such as avoiding conflicts of interest, preserving professional independence, and preserving client confidences.[131] On the other hand, lawyers who are practicing in "virtual MDPs" must claim that they are not engaged in the practice of law to avoid being disciplined for violating Rule 5.04.[132] These lawyers would be considered unregulated and "might consider themselves free to ignore legal ethics rules they disagree with or consider inconvenient."[133] Obviously this is not a desirable result, and many commentators believe the division of lawyers into these groups will become more of a problem as the MDP trend continues to grow.[134]

Another option is to attempt to stop the use of MDPs.[135] Currently, the ABA and the majority of state jurisdictions,

130. *See id.* (stressing that lawyers who acknowledge that they are practicing law are "subject to the applicable ethics rules").

131. *See id.*; *see also* Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 287 ("[M]any of the people performing law-related services targeted by [unauthorized practice of law] statutes in . . . accounting and consulting firms are actually lawyers . . . . This fact emphasizes the failure of the status quo option to deal with lawyers who are performing law-related services beyond the realm of legal regulation.").

132. *See* Karel Ourednik IV, *Multidisciplinary Practice and Professional Responsibility After Enron*, 4 FLA. COASTAL L.J. 167, 192 (2003) (noting that attorneys working for accounting firms can claim they are practicing tax instead of law, though they are doing the same work as law firms, and "avoid[] penalties, such as loss of their licenses for practicing law with nonlawyers"); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 920 (1999) (explaining that the ban on MDPs forces lawyers in MDPs to assert they are not practicing law to avoid discipline for violating ethics rules); Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 287 (explaining the growth of virtual MDPs around the country and that "currently no rules govern these entities and contractual alliances").

133. Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 920 (1999).

134. *See* Daniel R. Fischel, *Multidisciplinary Practice*, 55 BUS. LAW. 951, 974 (2000) (warning that ethical rules will provide less protection from competition as MDPs that offer legal services proliferate "both in other countries where the practice is permitted and in the United States by firms evading the prohibition on fee sharing so long as clients demand one-stop shopping from integrated service providers"); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 920 (1999) (describing the growth of the parallel world of regulated and unregulated lawyers as dangerous).

135. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 920 (1999) ("Many commentators rely on this option, arguing that the ABA or some other entity should simply enforce the [unauthorized practice] laws against these lawyers (and nonlawyers) practicing together in an MDP.").

including Texas, are following this approach by enforcing the existing rules regarding fee-sharing with nonlawyers and professional independence of lawyers.[136] While the ethical concerns in opposition to MDPs are legitimate, the ABA and state bar associations must deal with the issues MDPs raise rather than simply prohibiting them.[137] Supporters of MDPs believe that the continued prohibition relates more to "economic protectionism" and a fear of losing control of the profession, rather than ethical concerns and client protection.[138] Also, attempting to stop MDPs by enforcing a strict prohibition will have a detrimental effect on the influence of the American legal profession.[139] State bar associations and the ABA can no longer regulate lawyers in the United States by ignoring the changes occurring globally.[140] Regardless

136. *See generally* ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html (providing a state-by-state description of MDP regulations).

137. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 174 (2000) (agreeing that the ethical concerns are legitimate but rather than simply prohibiting MDPs, "the bar should deal forthrightly with these difficult and important issues, and fashion specific, narrow rules to preserve the core values of the legal profession").

138. *See, e.g.*, Daniel R. Fischel, *Multidisciplinary Practice*, 55 BUS. LAW. 951, 974 (2000) ("Although defenders of the ban on fee sharing [and MDPs] have attempted to cloak their arguments in the rhetoric of 'professionalism,' 'lawyer's independence,' and the 'public interest,' their goals are no different from any other trade union or interest group pursuing economic protectionism."); James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 127 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (explaining the opposition to MDPs is a result of a fear that the big accounting firms "will wrestle control of the legal services market from established law firms rather than client protection"); Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1384 (2003) (responding to the claims of MDP opponents by insisting that "the legal community and its clients would be better served if the ABA would endorse MDPs and concentrate its efforts on determining the most effective way for attorneys to operate multidisciplinary practices").

139. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 205 (2000) (stating that ethical rules must reflect modern business realities so that American lawyers can be "competitive in delivering legal services to the world's business entities"); James Podgers, *Off the Mat: After a Beat-Down Nine Years Ago, Multidisciplinary Practice May Get Another Look from the ABA*, A.B.A. J., Aug. 2009, at 66, *available at* http://www.abajournal.com/magazine/article/off_the_mat (reporting that U.S. lawyers are concerned about the growing global trend toward allowing MDPs and how that affects the influence of the American legal profession).

140. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the*

of whether this option is desirable, it is not possible to completely stop MDPs.[141]

In 1961, the ABA Committee on Professional Ethics stated that a lawyer can practice law in a professional corporation or association without violating the ethics rules, "provided appropriate safeguards are observed."[142] The Committee further concluded that "[it] is the substance of the arrangement not the form which will be controlling in determining whether the ethical restraints imposed on the legal profession have been violated."[143] It seems logical that this could be analogized to allowing lawyers to practice in an MDP setting, so long as certain safeguards are observed. Texas should attempt to "regulate MDPs to take advantage of their benefits to the public while restricting their shortcomings and potential harm to the profession."[144] The State Bar of Texas Task Force on MDPs asserts that to justify allowing MDPs, there must be empirical evidence that the public interest will be furthered.[145] Furthering the public interest can be

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American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century, 69 FORDHAM L. REV. 83, 205 (2000) ("The ABA and state bars can no longer regulate American lawyers in a vacuum that ignores the changes brought about by the growth in international business transactions."); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 279 (2000) ("As other countries move toward multidisciplinary practices, the ABA should not sit idly by and let market forces dictate how American lawyers practice law.").

141. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 922 (1999) (pointing out that it is unlikely that a court will rule against one of the large accounting firms on an unauthorized practice of law claim); Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 300 (acknowledging that because of the growth of "virtual MDPs" here in the United States, as well as the trend toward permitting MDPs internationally, the MDP trend will continue); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 483 (2005) (predicting that as long as clients demand the services MDPs offer, lawyers and nonlawyers alike will "find ways to offer such services, and the push for the legalization of MDPs will continue").

142. ABA Comm. on Prof'l Ethics, Formal Op. 303 (1961).

143. *Id.*

144. Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 516 (2005).

145. ABA, STATUS OF MULTIDISCIPLINARY PRACTICE STUDIES BY STATE (AND SOME LOCAL BARS) (Apr. 2, 2003), http://www.abanet.org/cpr/mdp/mdp-state_action.html. "The public interest includes providing legal services consistent with a high, enforceable level of ethics, confidentiality, and loyalty to the client in a cost-effective

accomplished through proper regulation of MDPs and the lawyers involved.[146]

While the ethical concerns addressed above deserve attention, they should not lead the bar to prohibit MDPs altogether.[147] There are ways to approach the task of establishing proper regulations to allow MDPs while still preserving the core values of the legal profession.[148] To properly regulate MDPs, the State Bar of Texas must decide whether the current rules are sufficient. Some commentators believe the current rules are enough to protect and preserve the core values if the attorneys in MDPs adhere to the existing ethical standards.[149] While depending on the current rules would provide the easiest method for allowing

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manner for all those needing legal services." *Id.*

146. For example, Germany has permitted MDPs for several decades now, and the experience there reveals proper regulation makes it possible for lawyers and nonlawyers to work together in one MDP firm and provide integrated services to clients without hurting the public interest. For a thorough examination of the German MDP model, see Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547, 1623 (2000).

147. *See* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 174 (2000) (declaring that the bar should deal with these concerns through regulation); Daniel R. Fischel, *Multidisciplinary Practice*, 55 BUS. LAW. 951, 974 (2000) ("The legal profession should welcome MDPs as creating new career and economic opportunities for its members."); Anna Snider, *Lawyers Wary of Accountant-Client Privilege*, 220 N.Y. L.J. 12 (1998), *available at* 7/17/98 N.Y.L.J. 1, (col. 3) (Westlaw) (reporting one U.S. lawyer as saying, "Legal consumers would potentially benefit from alliances between accounting and law firms.... [T]hese alliances could possibly be subject to regulation as opposed to absolute prohibition. The bar should work to find a way for these alliances to work as opposed to spending its time fighting the very idea of combinations between lawyers and accountants.").

148. *See* DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 820 (5th ed. 2009) (asserting that questions regarding MDPs such as "Is this good for lawyers?" or "Is this good for clients?" are for the market to decide, but we should be asking whether allowing MDPs is "good for the rest of us, 'us' being citizens who count on lawyers to be guardians of the law and who cannot always count on market forces for protection"). For more analysis of the questions regulators should consider when implementing new rules to allow MDPs, see generally David Luban, *Asking the Right Questions*, 72 TEMP. L. REV. 839 (1999).

149. *See* Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 268 (2000) (advocating an adherence to existing standards in the Model Rules, which serve to "protect the core values of the legal profession"); Victoria V. Kremski, *Serving Clients in a Multidisciplinary Practice: As MDPs Become a Reality, Attorneys Must Strictly Uphold the Core Values of Their Profession*, 80 MICH. B.J. 32, 33 (2001) (advancing the idea that attorneys would be able to best serve the public and their clients in an MDP if they adhere to "the core values of [the] profession and [apply] them to the everyday tasks involved in practicing law").

MDPs, it is simply not enough to change Rule 5.04 to allow them; more must be done to address the ethical considerations addressed above. Thus, if Texas is to permit MDPs, there must be specific rules in place to regulate the lawyers involved to preserve the core values of the legal profession and protect clients.[150] Commentators who support permitting MDPs with increased regulation by the state bars have different points of view as to the method, degree, and scope of regulation.[151] For example, the focus of any discussion of regulation must be to find a balance between protecting the public interest through proper regulation of lawyers and MDPs, while permitting MDPs and the clients who use them to enjoy the benefits associated with them.[152]

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150. *See* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 127 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (recommending that the legal profession and the accounting profession work together toward ethical standards that would prevent lawyers in MDPs from being "placed at risk of violating client-protective ethical rules that apply to lawyers"); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 898 (1999) (warning that before a jurisdiction lifts its ban on MDPs, it should examine "its ethics rules to determine how they apply in the new MDP environment and whether the rules must be modified"). In 2000, the Commission on MDP argued that while MDPs cannot be ignored anymore, the state bar associations cannot rely on the existing rules to regulate MDPs. *See* COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES, REPORT AND RECOMMENDATION (July 2000), *available at* http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html (urging the ABA House of Delegates to adopt a recommendation to amend the Model Rules regarding MDPs while acknowledging the necessity of "the states' promulgation of rules embodying the Commission's Recommendation" and suggesting that identifying applicable professions and disciplines should be up to the states' determination).

151. *See, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 204 (2000) (suggesting that "the profession should turn to implementing 'audits' or peer review of all entities that deliver legal services, including law firms," to maintain and preserve the core values and protect the public interest); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 516 (2005) (concluding that the best way to properly regulate MDPs is to implement regulation slowly, "allow[ing] certain combinations of professionals" to work "in size-restricted settings"); Stuart S. Prince, Comment, *The Bar Strikes Back: The ABA's Misguided Quash of the MDP Rebellion*, 50 AM. U. L. REV. 245, 274 (2000) (encouraging the adoption of the Commission on MDP's proposal, but advocating two exceptions: omission of the proposed audit requirement for nonlawyer-controlled MDPs, and alteration of Rule 1.7 "to allow MDPs to more effectively operate").

152. The regulation "must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of

Texas should examine and combine aspects of the New York and Washington, D.C. models with parts of the recommendation issued by the Commission on MDP.[153] The restrictions added to Washington, D.C. Rule of Professional Conduct 5.4, such as (1) requiring the firm's sole purpose to be the provision of legal services, (2) requiring nonlawyers "with managerial authority or holding a financial interest" working in these firms to follow the rules of professional conduct, (3) requiring the lawyers "with managerial authority or holding a financial interest" to maintain responsibility over nonlawyers, and (4) setting forth conditions in writing, could be incorporated into the Texas Disciplinary Rules of Professional Conduct.[154] These restrictions would permit lawyers and nonlawyers to work together, while still preserving the core values of the legal profession. Also, as in New York, Texas should not go as far as to permit "fully-integrated" MDPs, which would allow both lawyers and nonlawyers to "own the firm, share in the profits, manage the decisions of the firm, and provide legal and non-legal services."[155] While allowing some forms of MDPs and

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professional judgment, protection of confidential client information, [and] loyalty to the client through avoidance of conflicts of interest . . . ." COMM'N ON MULTIDISCIPLINARY PRACTICE, ABA, REP. TO THE HOUSE OF DELEGATES (July 2000), *available at* http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html.

153. Under the Commission on MDP's recommendation, the current ethical rules must apply to MDPs as they apply to law firms, the lawyers working in an MDP are still required to follow the current Model Rules of Professional Conduct, and all MDP clients must be treated as clients of lawyers for conflict of interest situations. These are three of the recommendations the Commission on MDP made, but these three could be applied in Texas to allow for some MDPs, while still ensuring the core values of the legal profession are protected. *Cf.* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, 4 RICH. J.L. & PUB. INT. 101, 118 (2000), http://rjolpi.richmond.edu/archive/Volume_IV_Issue_2.pdf (exploring various models of MDPs). Under the New York model, two disciplinary rules protect the professional independent judgment of lawyers in rendering legal services and impose limitations on nonlawyers and lawyers. John Caher, *Multidisciplinary Practice Rules Adopted by State: New York Takes Lead on Lawyer-Nonlawyer Partnerships*, 226 N.Y. L.J. 17 (2001), *available at* 7/25/2001 N.Y.L.J. 1, (col. 4) (Westlaw). Under the D.C. model, the restrictions on MDPs require the firm's sole purpose to be the practice of law and extend the current rules to certain nonlawyers working in an MDP. D.C. RULES OF PROF'L CONDUCT R. 5.4(b)(1)–(3) (1999).

154. D.C. RULES OF PROF'L CONDUCT R. 5.4(b)(1)–(4) (1999). These restrictions were added to D.C. Rule 5.4 to allow MDPs without jeopardizing the core values of the legal profession. It seems logical that Texas could also include similar restrictions, with similar effect.

155. *Cf.* John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal*

applying specific restrictions to them, Texas would be able to maintain control over the regulation of the legal profession and preserve its core values, while still providing clients integrated services through multidisciplinary practices.

VII. CONCLUSION

Although some would say the interest has lessened,[156] given the developments both here in the United States concerning the heated debate over MDPs,[157] and globally, in countries expressly permitting MDPs (and benefiting from American clients who desire one-stop shopping), it is clear that multidisciplinary practices are here and a demand for them exists.[158] The ethical

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Services in the Twenty-First Century, 69 FORDHAM L. REV. 83, 171 (2000) (evaluating the "fully-integrated" MDP model).

156. *See* PAUL T. HAYDEN, ETHICAL LAWYERING: LEGAL AND PROFESSIONAL RESPONSIBILITIES IN THE PRACTICE OF LAW 369 (2d ed. 2007) ("The dust seems to have settled for now on this issue. Time will tell whether the organized bar in various states will move toward continued acceptance of MDP, or whether the 'separateness' of law practice will continue to exert its strong gravitational pull in opposition to MDP."); GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1122 (4th ed. 2005) ("[A]fter (1) the ABA's failure to endorse the Commission's recommendations; (2) the Enron scandal; and (3) changes in law prohibiting auditors of a company's financial statements from also providing legal services to the company; much of the enthusiasm for change has waned, at least for now.").

157. *See generally* ABA, HOUSE OF DELEGATES ANNUAL MEETING 7/11/00 TRANSCRIPT—MDP (2000), http://www.abanet.org/cpr/mdp/mdp_hod_transc.html (discussing the Commission on MDP at the House of Delegates Annual Meeting in July 2000) (used with permission); SPECIAL COMM. ON THE LAW GOVERNING FIRM STRUCTURE AND OPERATION, N.Y. STATE BAR ASS'N, PRESERVING THE CORE VALUES OF THE AMERICAN LEGAL PROFESSION: THE PLACE OF MULTIDISCIPLINARY PRACTICE IN THE LAW GOVERNING LAWYERS (2000), *available at* http://www.law.cornell.edu/ethics/mdp.htm (reporting the ways in which MDPs can work effectively while preserving the core values of the legal profession).

158. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 919 (1999) (explaining that "a consensus emerged [at the Commission on MDP] that there is at least some client and lawyer demand for MDPs"). In New York, the Special Committee on the Law Governing Firm Structure and Operation identified six main factors that tend to favor the trend of allowing MDPs: (1) increased complexity of legal issues; (2) increased market regulation and consumerism; (3) the development of expert systems "that simulate the decisions an experienced professional would make about a given fact pattern"; (4) "[t]he lack of a consistent definition of the practice of law," which "makes it difficult to enforce unauthorized practice statutes"; (5) "[t]he possibility of liquidity at a multiple of earnings" creates an interest by nonlawyers in having an ownership interest in a law practice; and (6) "the immense economic power of the major accounting firms," which have "spent huge sums in lobbying for changes in rules that would allow them to practice law and any other profession they thought was profitable." SPECIAL COMM. ON THE LAW GOVERNING

considerations are real and must be properly addressed and regulated before MDPs are permitted, but the benefits that will be associated with the new type of practice will justify the change.[159] Among the benefits often cited is that providing both legal and nonlegal services to clients in an integrated professional services firm will provide the public better service through a cost-effective "one-stop shop" approach.[160] MDPs make sense for the legal profession as well as its consumers.[161]

The State Bar of Texas must step in and address this issue,

FIRM STRUCTURE AND OPERATION, N.Y. STATE BAR ASS'N, PRESERVING THE CORE VALUES OF THE AMERICAN LEGAL PROFESSION: THE PLACE OF MULTIDISCIPLINARY PRACTICE IN THE LAW GOVERNING LAWYERS (2000), *available at* http://www.law.cornell.edu/ethics/mdp.htm (setting forth this analysis in Chapter 10: Identifying and Appraising the Factors Looking Toward Change 293).

159. *See, e.g.*, Daniel R. Fischel, *Multidisciplinary Practice*, 55 BUS. LAW. 951, 954 (2000) (describing the organized bar's opposition to MDPs as "misguided and ultimately futile," and welcoming MDPs "as creating new opportunities . . . for its members"); Peter C. Kostant, *The Future of the Profession: A Symposium on Multidisciplinary Practice: Breeding Better Watchdogs: Multidisciplinary Partnerships in Corporate Legal Practice*, 84 MINN. L. REV. 1213, 1267 (2000) (contending that MDPs "can improve the effectiveness of legal services by allowing corporations to select the services they need"); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 504–05 (2005) (exploring the benefits of MDPs, which include the increased ability to meet client demands and provide them more efficient and less costly services).

160. *See, e.g.*, John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 117 (2000) ("[T]he major benefit of multidisciplinary services is the delivery of an integrated team approach to serving client interests—in other words, providing clients with a 'one-stop shopping' approach for problems requiring services in different fields."); Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 891 (1999) (listing "one-stop shopping" among the advantages of MDPs and explaining that MDPs provide "better service []because of the broader expertise of the service-providers and closer cooperation of an interdisciplinary team"); Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 300 (pointing out that a client's most significant cost savings result from the sharing of resources); Rees M. Hawkins, Comment, *Not "If," but "When" and "How": A Look at Existing De Facto Multidisciplinary Practices and What They Can Teach Us About the Ongoing Debate*, 83 N.C. L. REV. 481, 505 (2005) (stating that costs for clients and the entity decrease and services become more efficient as a result of the coordination and communication between service providers in an MDP).

161. *See* Kellye M. Gordon, Note, *Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession*, 36 IND. L. REV. 1363, 1384 (2003) (claiming that guidance from the ABA regarding MDPs would better serve the legal profession and provide protection to its clients).

rather than waiting for other jurisdictions to initiate progress.[162] Texas should implement a plan to fully examine the ethical considerations—such as protecting the professional independent judgment of lawyers, avoiding conflicts of interest, and protecting client confidentiality—and determine how these can be protected as core values to the legal profession, while still permitting lawyers and nonlawyers to work together in integrated MDPs.

162. Since the ABA voted to uphold the ban on MDPs in 2000, the decision has been left up to each state. *See* GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING 1122 (4th ed. 2005) (stating that as of 2004, twenty-four states considered but declined to change their rules to permit MDPs, and five jurisdictions have signaled an openness to a more liberal approach to MDPs).