BACK TO THE FUTURE ALONG THE HUDSON: IS THE NEW YORK STATE OF MIND CONFUSED ABOUT MDPS?

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The ability of lawyers to participate in multidisciplinary practices is a complicated issue, which gives rise to many structural and ethical problems. In the article below, Dean Powell critiques the New York State Bar Association's attempt to resolve these problems. Through a comparison of the ABA's Commission on Multidisciplinary Practice Report with the NYSBA's Special Committee on the Law Governing Firm Structure and Operation, Dean Powell argues that the NYSBA attempt is without ingenuity and fails to give a fresh approach to the decade-old debate on multidisciplinary practice. Dean Powell then concludes that the ABA's approach is the only scheme that comprehensively regulates all lawyers who are licensed to practice, regardless of the context or content of their work.

I. INTRODUCTION

Each year since 1969, the graceful wooden ship, *Clearwater*, sails along the Hudson River. By name and presence it symbolizes to the half million residents of the Hudson River's shores that the cities and towns along the waterway have a common future—that is, they have a future if they can live in harmony with the ecosystem whose center is the Hudson River.

On the banks of the Hudson River, the symbolism does not go unnoticed. There, *The Clearwater Festival*, which takes its name from the ship, draws upwards of 20,000 people to celebrate the promise that *clear water* might some day be the legacy of the historic Hudson and its tributaries. And last year there was an added treat: the album, "*Clearwater Live*,"[1] presented various artists in celebration of the environmental cause that has given rise to the festival. Among the artists appearing was Pamela Means, whose song, "Truth," had much to say beyond providing

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1. CLEARWATER LIVE (Siren Songs Records & Music Publishing 2001).

a chorus for the festival's environmentalist.[2] In lyrics that reverberated the length of the Hudson Valley—through towns such as Kingston, Poughkeepsie, Peekskill, Tarrytown, and all the way to New York City—Means called these geographically and historically linked centers (and the Nation) to the realization that there is a price to be paid for complacency. She sang that those who sit comfortably—ostensibly doing nothing—also bear responsibility for social atrophy. In words that echoed powerfully off the banks of the Hudson River, she sang of the scourge of drug addiction, but her deeper message to all was that we are ultimately responsible for what we do and do not do:

Hangmen build boats
They have no shame
Forty ounces for your pain
Addiction breeds complicity
Is it accidental it affects the inner city?
Hey, truth is ammunition
Hey, truth is ammunition[3]

Mean's reminder would not have had so sharp an edge, had it not been for another, truly disappointing ode to complacency wafting out of out-state New York about the same time. In a bold retreat from the future, the New York State Bar Association (NYSBA) Special Committee on the Law Governing Firm Structure and Operation (The MacCrate Committee) issued a report in April 2000 that underscored why several of the most pressing structural and ethical problems facing the New York (and the U.S.) legal profession remain intractable.[4] Under the guise of reforming lawyer-practice regulations to address demands that lawyers be permitted to engage in multidisciplinary practice,[5] the NYSBA[6] in ac-

2. Acknowledgment is gratefully given to the Siren Songs website for this description of the Clearwater Festival, which I have liberally embroidered, without attempting to distort or embellish. *Id.*, *available at* http://www.sirensongs.com/clearwater.html (last visited Oct. 24, 2002).

3. PAMELA MEANS, *Truth*, *on* CLEARWATER LIVE, *supra* note 1 (printed lyrics available at http://www.pamelameans.com/lyrics/truth.com (last visited Oct. 24, 2002)).

4. New York State Bar Ass'n Special Comm. on the Law Governing Firm Structure and Operation, Report, *Preserving the Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers* (2000), *available at* http://www.web.archive.org/web/200008/7032321/whatsnew/maccrate.pdf (last visited Oct. 24, 2002); *see also* John Caher, *MDP Debate Heats Up in Cooperstown*, N.Y. L.J., June 27, 2000 (noting that "Robert MacCrate, former president of both the State Bar and the ABA and chairman of the special committee, urged the New York organization to take a national leadership role").

5. The ABA COMM'N ON MULTIDISCIPLINARY PRACTICE REPORT TO THE HOUSE OF DELEGATES (2000) [hereinafter REPORT TWO], recommended to the ABA House of Delegates that, among other initiatives: "[l]awyers be permitted to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services."

The Commission had previously issued a preliminary report. ABA COMM'N ON MULTIDISCIPLINARY PRACTICE REPORT TO THE HOUSE OF DELEGATES (Aug. 1999) [hereinafter REPORT ONE].

6. The NYSBA House of Delegates approved the report on June 24, 2000. *See* Caher, *supra* note 4, at 1.

tuality sought to return the legal profession to the 1990s.[7] Rushing headlong into the past, the report offers a view of the legal profession more suited for a Potemkin village or, at best, a small village in the Catskills,[8] than the streets and suites of even a midsize American city—not to mention lawyers competing in a global economy.[9]

What the NYSBA Report lacks in substance, however, it more than makes up for in volume. Nor can its intent be mistaken: to relegate the legal profession's dialogue about multidisciplinary lawyering to a decades-past time warp.[10] The NYSBA Report would return the legal profession to an era when it was thought that the only answer to the increased frustration lawyers were voicing to restrictions on lawyer competitiveness was to let lawyers become realtors, insurance brokers, and *accountants* on the side.[11] So long as a lawyer maintained separate doors for their law and their ancillary businesses, and pretended that clients could not make the connection, harmony prevailed.

The reality, however, is far different. The NYSBA offers a pleasant enough view of the boats and barges on the Hudson River, but it cannot hide the fact that there is another view. That alternative view, from the town squares and city halls of the area's cities, reveals the truth about what may appear to be only a glacially changing life on shore. Cities and towns up and down the Hudson River, no less than throughout the Hudson River Valley, are aggressively moving to redefine and invigorate themselves. Spurred by the technological and communications innova-

7. On March 1, 1990 (effective January 1, 1991), the District of Columbia Court of Appeals adopted a version of ABA MODEL RULE 5.4(b), permitting fee sharing between a lawyer and a nonlawyer, if the sole purpose of the ancillary practice was to provide legal services. *See* D.C. RULES OF PROF'L CONDUCT R. 5.4(b) (2002).

8. *But see* Gianluca Morello, Note, *Big Six Accounting Firms Shop Worldwide for Law Firms: Why Multi-Discipline Practices Should Be Permitted in the United States*, 21 FORDHAM INT'L L.J. 190, 220 (1997) (noting that dual or multidisciplinary legal practice has long been strongly rooted in small-town practice).

9. The global economy, as described by futurist John Naisbett, is ever-increasing in size decentralization, speed, and the efficiency of its down-sized groups.

> This is the direction in which all companies are headed, as the advantages of doing business anywhere anytime, through any medium will be possible for the individual entrepreneur and small companies as well. They will compete on a stronger footing in the global marketplace. Information is, indeed, power, and as more and more information becomes available to the individual through telecommunications systems, individuals will be empowered as never before.

JOHN NAISBETT, GLOBAL PARADOX: THE BIGGER THE WORLD ECONOMY, THE MORE POWERFUL ITS SMALLEST PLAYERS 12 (1994).

10. From the time of the earliest American lawyers, there has been an enduring tradition of what we ethicists used to call "dual practice"—a type of practice in which a lawyer provides legal services as well as something else, such as insurance sales, real-estate sales, title-insurance sales, accounting, banking, lobbying, etc. At one moment, for example, the same person would provide legal advice to a client, and at another moment would attempt to sell the same person (or someone else) a life-insurance policy. "Dual practice," which lawyers have conducted and today continue to conduct all across the country, now goes by the longer and fancier title of "ancillary business practice," but the issues for a solo or small-firm practitioner remain the same.

Charles W. Wolfram, *Comparative Multi-Disciplinary Practice of Law: Paths Taken and Not Taken*, 52 CASE W. RES. L. REV. 961, 963–64 (2002).

11. *See generally* Burnele V. Powell, *Flight from the Center: Is It Just or Just About the Money?,* 84 MINN. L. REV. 1439 (2000).

tions that have accelerated and intensified our social and economic life, the Sullivan County Chamber of Commerce[12] speaks for the Catskill Region when it describes the concerns that are driving it to keep pace with the demands of economic globalization.[13]

Not surprisingly, the views of the locals are worlds apart from the scenes of picturesque retreats and scenic vistas observed by the region's well-heeled tourist. Those who witness the more prosaic aspects of life in the Hudson River Valley are not surprised to learn that the region's most recent job trends mirror economic changes that are being experienced worldwide. The most rapid areas of growth are: healthcare; insurance; education; engineering and management; business services; wholesale trade in nondurable goods; executive, legislative & general government; public justice; public order & safety; and special trade contractors.[14] The region's ten rapid growth areas, moreover, represent in microcosm the economy's shift towards service and information-based production—production that is increasingly driven by government and operating worldwide.

But while the Catskills confront the sociopsychological "tsunami"[15] of globalization, the NYSBA responds with all of the vision and courage of a medieval guild.[16] Under its approach to the profession's business and economic concerns, lawyers are allowed to engage in multidiscipli-

12. Although not itself located on the Hudson River, Sullivan County is one of the areas of the Hudson River Valley where citizens are working aggressively to confront the new economic reality. As its business community has noted:

> The Sullivan County Chamber of Commerce and Industry was established for the purpose of bringing together the business and professional interest of the county, permitting them to accomplish collectively what none could do individually. The Chamber promotes and advances the commercial, financial, industrial and civic interests of its membership to improve business and build a better community in which to live and work.

Sullivan County Chamber of Commerce, *About Us*, *at* http://www.catskills.com/ (last visited Oct. 29, 2002).

13. Even a cursory look at the Catskill website makes this point. There, we are told:

> Sullivan County boasts of a very productive workforce. . . . In a recent labor analysis performed by PF Resources, a site selection and location-consulting firm out of Dallas, TX, a pool of 82,700 people were identified as an available workforce in the Sullivan County area. Those persons exhibited among the highest rankings of 7,700,000 workers surveyed by PF Resources nationwide. Sullivan County employees exhibited the most experience in computer operations, information processing, sales, data processing, technicians and moderate experience in manufacturing, industrial machine and materials handling. Clearly, Sullivan County's workforce is ready for the changing demands of the new technological market place today.

Demographics, *at* http://www.catskills.com (last visited Oct. 29, 2002).

14. *Id.*

15. The metaphor of civilization being swamped by successive tidal waves of technology-driven information leading—in fact and in perception—to an increased rate of change which we experience as the Information Age is that of the futurist, Alvin Toffler, who popularized it through his book. ALVIN TOFFLER, THE THIRD WAVE (1980) (with the agricultural and industrial revolutions representing the first two waves).

16. Of course, no disrespect is meant to legitimate guilds such as the Twisted Stitches of New York Knitting Guild organized exclusively to advance the interest of its membership through emphasis on its common interest, educational opportunities, and encouragement of deeper involvement through national organizations. Twisted Stitches is, thus, distinguished from organizations, such as bar associations, which ostensibly act on behalf of the legal profession and the public. *Twisted Stitches of Central New York Knitting Guild*, *at* http://home.twcny.rr.com/wilson/TSCNY/ (last visited Mar. 22, 2002).

nary service-deliveries in combination with nonlawyers in name only. This constricted approach to multidisciplinary practice tells lawyers that what they need most is the discipline not to think in interdisciplinary terms. Model Rule 5.4's prohibition on lawyers sharing equity with nonlawyers[17] remains wholly intact, but is supplemented by new provisions that attempt to codify under the term "strategic alliances"[18] activities that are already permitted under the American Bar Association (ABA) Model Rules.[19] As under prior rules, however, rather than providing a new vision for a new reality, the NYSBA effectively accepts Means's censure: "They have no shame."[20] Lawyers can work with other professionals so long as those professionals are subordinated, either as clients or as consultants.[21] NYSBA-style Multidisciplinary Practices (MDPs), therefore, amount to little more than the recodification of understandings under which lawyers have worked for years.[22] With much fanfare, they give lawyers what they have long had: the right to agree with other professionals that they will reciprocate with referrals for any referrals received.[23]

On the other hand, what the NYSBA rejects is true multidisciplinary practice, as defined by the Commission on Multidisciplinary Prac-

17. Model Rule 5.4 provides, in pertinent part, that:

(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; . . .

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer[;] . . . and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan . . . .

(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[;] . . . a nonlawyer is a corporate director or officer thereof; or a nonlawyer has the right to direct or control the professional judgment of a lawyer.

MODEL RULES OF PROF'L CONDUCT R. 5.4 (1983).

18. *See infra* text accompanying notes 47–49.

19. *See infra* comparison chart, at MODEL RULES R. 5.4; *infra* notes 51–54 and accompanying text.

20. *See supra* note 2.

21. As the report put it, multidisciplinary practice would be permitted so long as there are no "partnerships with nonlawyers . . . [or] any degree of ownership or control over the practice of law [by the nonlawyer]." New York State Bar Association, News Release, State Bar Committee Report Would Permit Lawyer/Nonlawyer "Side by Side" Business Arrangements, *available at* http://www.web.archive.org/web/20000815201749/ (May 2, 2000), http://www.nysba.org/media/newsreleases/2000/mdp.html. (May 2, 2000).

22. *See generally Terminology and Models, Model 3: The Law-Related Services/Ancillary Business Model*, REPORT ONE, *supra* note 5, at C3 ("This type of arrangement is permitted under Model Rule 5.7 (Responsibilities Regarding Law-Related Services).").

23. *See generally Terminology and Models, Model 1: The Cooperative Model, id.* at C2. ("This model reflects the current state of affairs in the United States and is not a multidisciplinary practice under the definition adopted by the Commission.").

tice (the Commission).[24] Just how far short of the real thing New York falls was recently summarized by the *Daily Tax Report* in an article erroneously headlined: "New York Becomes First to Allow Multidisciplinary Business Affiliations."[25] The article concludes that:

> The new rules differ appreciably from the proposal voted down by the ABA in that they categorically prohibit nonlawyers from holding any ownership or managerial interest in law firms; sharing legal fees with lawyers; or directing or regulating the professional judgment of lawyers or otherwise compromising lawyers' duty to safeguard client interests.[26]

Misleading about the article is not simply its failure to recognize that, in actuality, the NYSBA rejected, in total, the concept of MDP. Compounding that error, it also failed to recognize that the recommendation of the Commission, itself, had prohibited nonlawyers from *controlling* lawyers. Indeed, a comparison of the NYSBA proposal with the Commission's reveals that the Commission prohibited nonlawyers from "direct[ing] or regulat[ing] the lawyer's professional judgment"[27] or "otherwise compromising lawyers"[28] in any way. Thus, whatever else might be said about the NYSBA's approach, to proponents its appeal lies not in what it newly permits, but in what it continues to prohibit.

More specifically, *ownership*[29] and *managerial control*[30] by nonlawyers are the litmus test by which the NYSBA asserts that the purity of the legal profession is to be maintained. Lawyer practice beyond the structure of the traditional law firm is permitted, but only subject to "safeguards for the public to protect against the risks of nonlawyer involvement in the practice of law."[31] One looks in vain, however, for a

24. *See infra* app. A (Recommendation 3: definition of MDP); REPORT ONE, *supra* note 5 (Recommendation 3: "[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").

25. DAILY TAX REPORT, July 30, 2001, at 64.

26. *Id.*

27. REPORT ONE, *supra* note 5.

28. *Id*.

29. As used here, "ownership" means the right "to use and enjoy property, including [the] right to transmit it to others." BLACK'S LAW DICTIONARY 1260 (4th ed. 1951). Thus, ownership is not an absolute condition, but one that, for example, may be held subject to legal rights existing in another or otherwise limited by law.

30. As used here "managerial control" is defined as daily nonsubstantive control of the workplace. It does not include the right to interfere with a lawyer's exercise of independent judgment. The distinction between management activities and decisional activities is the one that for almost twenty-five years has been recognized by the Supreme Court of the United States as required "to assure that the hearing examiner exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency." Butz v. Economou, 438 U.S. 478, 513 (1978). In a like fashion, Model Rule 1.7(a)(2), "Conflict of Interest: General Rule," speaks to the underlying prohibition as a matter of loyalty, stating, in pertinent part: "A lawyer shall not represent a client if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer." MODEL RULES OF PROF'L CONDUCT R. 1.7 (1983).

31. *See* MODEL RULES R. 5.4; *cf. infra* text accompanying note 50.

meaningful expression of the reported "decision to give New York bar members the authority to form limited multidisciplinary alliances and other cooperative 'contractual relationships' with nonlawyers."[32] One finds, instead, rules that provide no increase in opportunities for lawyers to work as peers with other professionals. Nor, in any tangible sense, is there meaningful relief provided either lawyers or clients in the areas of real estate, probate and trust, tax, or any of the other practice areas from which representatives advised the Commission of their desire to overcome the inefficiencies of serving clients through the coordination of nonaffiliated firms.[33]

Rather than the needed relief, the NYSBA provides little more than bureaucratic requirements for papers and pedigrees. The *paper requirement* is a limitation of the class entitled to establish reciprocal relationships with lawyers to individuals who have earned a college degree[34] and are governed in their professions by a code of ethics.[35] The *pedigree requirement* is that the New York Appellate Division, alone, is to certify which professionals qualify to enter into cooperative "contractual relationships" with lawyers.[36] Ultimately, then, it is clear that the NYSBA proposal, like the view of that Potemkin village given Catherine the Great, is an elaborate and impressive shell, but a shell nonetheless.

Thus, what might well have been an opportunity for the NYSBA to assert itself as one of the leaders of the legal profession ended in a transparent, but more conservative rehashing of the Washington, D.C. Bar's pathbreaking 1990 report on Ancillary Practice.[37] Lacking the vision to lead, it was alternatively open to New York simply to stand aside. The ABA House of Delegates had, after all, voted 354 to 153,[38] to reject the Commission on Multidisciplinary Practice's recommendation calling for amendment of Model Rule 5.4 to permit lawyers and judicially approved

32. DAILY TAX REPORT, *supra* note 25.

33. REPORT TWO, *supra* note 5, at 1–2.

34. S*ee infra* Comparison chart (Model Rule 5.4 "Defining Compatible Professions").

35. *See supra* note 25.

36. By way of personal observation, what is most interesting about the Appellate Division certification requirement is that it is exactly the procedure that opponents to the Commission criticized the Commission for adopting, arguing instead that the Commission's report could only pass muster if it identified beforehand which other professionals would qualify for participation in an MDP practice. Oh, but that was then; this is now!

37. The District of Columbia, alone among jurisdictions in the United States, has adopted a modified form of the Model Rules R. 5.4, "Professional Independence of a Lawyer." *See supra* note 7. The D.C. provision allows lawyers to establish law firms wherein lawyers and nonlawyers can share fees, but only when the firms are organized for the purpose of delivering legal services. The limitation, restricting law firms from allowing nonlawyer equity participation except for purposes of delivering legal services, has had the practicable effect of discouraging the creation of such ancillary practice firms. *See infra* notes 54–55 and accompanying text (reviewing Rule 5.4 of the D.C., Rules of Professional Conduct).

38. John Gibeaut, *ABA Nixes Multidisciplinary Practice*, A.B.A.Net. (July 11, 2000), *at* http://www.abanet.org/journal/current/mdp.html.

professionals to join in equity partnerships.[39] The NYSBA missed the opportunity to endorse a true MDP proposal—one that would have recognized that no setting where lawyers and other professionals are not equals can truly ever be described as anything other than separate, and no relationship of forced separateness could ever be described as anything but unequal.

Instead, the NYSBA muddied the debate by promoting its MDP proposal, which was anything but, as a means to multidisciplinary legal practice. It was, in fact, a proposal so obviously repetitive of the arguments that members of the NYSBA had advocated from the very outset of the Commission's work and so totally devoid of consideration of the countervailing ideas to which the Commission had been exposed,[40] that the real wonder is why the NYSBA did not bring its proposal forward for debate before the ABA House of Delegates the preceding year, 1999.

II. FROM "POTEMKIN" TO POUGHKEEPSIE

Notwithstanding the NYSBA's failure to advance a real MDP structure, the fact remains that the *Alpha Jurisdiction*[41]—the jurisdiction that emerges first with a regulatory scheme for MDPs—will set the tone and pace for lawyer regulation in the modern era. The need, however, is for a substantially more forthcoming and imaginative response than was provided by the NYSBA. Such a response will require more than simply occupying the field in an ultimately doomed attempt to preclude later, more progressive jurisdictions from advancing more flexible solutions. It will require a regulatory proposal that reflects that the legal profession is entitled to a response that is as thoughtful and expansive in its analysis and vision as was the Commission in its challenge.[42]

The place to begin such an analysis is with a comparison of the major provisions of the Commission's Report and the NYSBA Report. Juxtaposition of the competing provisions will aid the search for truth and, thus, facilitate understanding. As important, however, it will make clear that when it comes to the question "Which jurisdiction has earned the

39. The Recommendation, in pertinent part, "would change that policy to permit lawyers to share fees and join with nonlawyers in a practice that delivers both legal and nonlegal professional services ('Multidisciplinary Practice' or 'MDP') provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services." Memorandum from the American Bar Association Standing Committee on Specialization, to the Commission on Multidisciplinary Practice (Mar. 17, 2000).

40. The most glaring of such ideas was the Commission's consideration of the "gray lawyers," phenomenon, having to do with the need for the legal profession to assure that lawyers who are already practicing law in multidisciplinary settings (e.g., accounting firms) are brought within the lawyer regulatory framework, even though such lawyers may protest that they are not practicing law, but, instead, "doing tax work." *See* REPORT ONE, *supra* note 5, Recommendation "Ownership and Control;" *infra* app. A.

41. *See* Burnele V. Powell, *Looking Ahead to the Alpha Jurisdiction: Some Considerations That the First MDP Jurisdiction Will Want to Think About*, 36 WAKE FOREST L. REV. 101 (2001).

42. *See supra* note 5 and accompanying text.

right to be called the *Alpha Jurisdiction* of MDP?," any claim that New York might make must be explained, with apologies to Billy Joel, as coming down to: "I don't have any reasons, I've left them all behind, 'Cause I'm in a New York state of mind.'"[43]

Below, nine provisions of the newly amended New York Code of Professional Responsibility[44] are summarized, as is a provision advanced by the Commission, prohibiting the unauthorized practice of law. The NYSBA provisions are what NYSBA President Steven C. Krane[45] characterized as a "useful compromise on the multidisciplinary practice . . . because they allow professionals to work together and to coordinate their efforts in a structured framework 'without giving away the store.'"[46] More specifically,[47] the "compromise" codifies the New York strategic alliance scheme through provisions on:

Ownership and Control—prohibiting ownership or managerial interest by nonlawyers in a law firm (including passive investment[48]);

Lawyer Independence—reminding[49] lawyers that nonlawyers may not be allowed to interfere with the exercise of their professional judgment;

Judicial Regulation—explaining that lawyers and law firms are subject to discipline;

Lawyer-Client Communications—requiring written communications to and consent by clients with respect to the client's rights under strategic alliances;

Protection of Core Values—reaffirming the need to preserve the core values of the legal profession;

Lawyer/Nonlawyer Fee-sharing—prohibiting nonlawyers from sharing legal fees or being paid referral fees;

Defining Compatible "Professions"—requiring that the "professionals" who are eligible to enter into strategic alliances with lawyers must, minimally, be college graduates, government licensed, and operate under an ethics code;

43. BILLY JOEL, NEW YORK STATE OF MIND (Columbia 2002).

44. The so-called strategic alliance amendments to the New York Code of Professional Responsibility were based on the NYSB's recommendation. They were codified at N.Y. COMP. CODES R. & REGS. tit. 22, §§ 1200 *et seq*. (2002).

45. Krane was quoted in the DAILY TAX REPORT, *supra* note 25.

46. The point regularly missed by so many is that there is no "store" to be given away. As lawyers, we are professionals. As professionals our duties must be to aid the courts in the administration of justice and the protection of the public and, thereby, to serve the sole interest of the profession. For an expanded response to Krane's financial argument, see Powell, *supra* note 11, at 1443–47 (former Senator Dale Bumpers's remark that, "[w]hen you hear somebody say 'This is not about money,' it's about money").

47. *See supra* notes 30–31 and accompanying text.

48. The Commission Report One, unlike the NYSB Report, specifically precluded passive investment in an MDP. *See infra* note 53 and accompanying text.

49. It is unclear whether the attempt to "remind" lawyers is meant to be advisory or prohibitory.

Scope of the Ethics Rules—explaining that lawyers are subject to ethics rules when delivering nonlegal services;

Lawyer Advertising—prohibiting lawyers from using the names of nonlawyers in their law firm titles; and

Unauthorized Practice of Law—prohibiting lawyers from engaging in or assisting others in the unauthorized practice of law.

Using this summary of the key provisions, consider, then, the following comparison of the ABA Commission on Multidisciplinary Practice Report to the House of Delegates (July 1999) (Report One) and the Report of the NYSBA Special Committee on the Law Governing Firm Structure and Operation:

Current ABA Model Rule[50]	**MDP Commission**	**New York State Bar**
R. 5.4 (lawyer-nonlawyer partnerships and fee sharing generally prohibited).[51]	**Ownership and Control**. "A lawyer should be permitted to deliver legal services through a Multidisciplinary Practice (MDP), 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 two or more other	**1-106** Nonlawyers are not to direct or regulate lawyers in the exercise of their professional judgment.

50. The ABA Model Rules for Professional Conduct were adopted on August 2, 1983 to replace the association's Model Code of Professional Responsibility, adopted in 1969. As "models" these proposed standards lack the force of law but constitute recommendations that many jurisdictions, including the Supreme Court, have relied on and in many instances adopted, in whole or in part, as governing law.

51. A lawyer or law firm shall not share legal fees with a nonlawyer . . . form a partnership with a nonlawyer if any of the activities or the partnership consist of the practice of law . . . 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 . . . [nor] practice with or in the form of a professional corporation or association authorized to practice law for a profit . . . .
MODEL RULES OF PROF'L CONDUCT R. 5.4 (1983).

52. *Id.*

	professional firms to provide services, including legal services, and there is a direct or indirect sharing of profits as part of the arrangement." REPORT ONE, supra note 5, Recommendation 3. . . . . "A lawyer acting in accordance with a nonlawyer supervisor's resolution of a question of professional duty should not thereby be excused from failing to observe the rules of professional conduct." *Id*. Recommendation 6. . . . . "As a condition of permitting a lawyer to engage in the practice of law in an MDP not controlled by lawyers, the MDP should be required to give to the highest court with the authority to regulate the legal profession in each jurisdiction . . . . (the "court"), a written undertaking, signed by the chief executive officer (or similar official) and the board of directors (or similar body)." *Id*. Recommendation 14; *see also id*. Recommendation 12 (the "gray lawyering" prohibition, forbidding formation of any entity involv-	

53. *See also* The Recommendation, Report and Reporter's Notes, "Commission Hearings and Deliberations," at C2 (noting: "The proposed changes to the model Rules of Professional Conduct have the added benefit of making it clear that lawyers who currently work in accounting or professional services firms and who offer services that would be considered legal services if offered by a law firm are subject to professional regulation and discipline. Nothing in the Commission's Recommendation would permit a nonlawyer to offer legal services.").

	ing lawyers in the practice of law, except in an MDP[53]); *id*. Recommendation 14(A) (certification of noninterference); *id*. Recommendation 10 (the *respondeat superior* obligation; stating that nonlawyers are not to direct or regulate lawyers in the exercise of their professional judgment).	
R. 5.4 (lawyer-nonlawyer partnership).[52]	**Passive Investment**. **"**Allowing fee-sharing and ownership interest in an MDP does not change the rules of professional conduct prohibiting fee-sharing and partnership in any other respect, including the current provisions limiting the holding of equity investments in any entity or organization providing legal services." *Id*. Recommendation 13.	
R. 5.4 (independent professional judgment).[54]	**Lawyer Independence**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5; *see also id*. Recommendation 14(B) (certification of noninterference, which provides that the MDP will establish, maintain and enforce procedures designed to protect a lawyer's exercise of independent professional judgment on behalf of a client from interference by the MDP, any mem-	Nonlawyers are not to compromise an attorney's ability to protect client confidences.

54. MODEL RULES R. 5.4

	ber of the MDP, or any person or entity controlled by the MDP).	
Preamble, Paragraph 9 ("[T]he legal profession is unique . . . because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.").	**Judicial Regulation of: (A) Lawyers**. "The members of the MDP delivering or assisting in the delivery of legal services will abide by the rules of professional conduct." *Id*. Recommendation 14(D). **(B) MDPs**. "An MDP that fails to comply with its written undertaking shall be subject to withdrawal of its permission to deliver legal services or to other appropriate remedial measures ordered by the court." *Id*. Recommendation 15.	Lawyer ethics standards are to be applied to a lawyer or law firm, as appropriate.
R. 1.6 (confidentiality).[55]	**Lawyer-Client Communications**. "To the extent that the delivery of nonlegal services to a client is compatible with the delivery of legal service to the same client and with the rules of professional conduct, a lawyer should be required to make reasonable efforts to ensure that the client sufficiently understands that the lawyer and nonlawyer may have different obligations with respect to disclosure of client information and that the courts may treat the client's communica-	The burden rests on lawyers to explain to clients any nonlegal aspects of the lawyer's operations.

55. "[A] lawyer shall not represent a client if . . . the representation of that client will be directly adverse to another client . . . [nor] if the representation of [that] client [] may be materially limited by the lawyer's responsibilities to another client, a former client, or to a third person, or by a personal interest of the lawyer." MODEL RULES OF PROF'L CONDUCT R. 1.7 (2002).

	tions to the lawyer and nonlawyer differently." *Id*. Recommendation 9. **Lawyer-Client Communications: Generally**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5.	
R. 5.4 (independence)[56]; **R. 1.1** (competence)[57]; **R. 1.6** (confidentiality)[58]; **R. 1.7(b)** (loyalty—avoiding conflict of interest)[59]; and **R. 6.1** (*pro bono publico*).[60]	**Protection of Core Values**. "The legal profession should adopt and maintain rules of professional conduct that protect its core values, independence of professional judgment, protection of confidential client information, and loyalty to the client through avoidance of conflicts of interest, but should not permit existing rules to unnecessarily inhibit the development of new structures for the more effective delivery of services and better public access to the legal system." *Id*. Recommendation 1. "A lawyer should be permitted to share legal fees with a nonlawyer, subject to certain safeguards that prevent erosion of the core values of	**1-107** Because of the need to protect and preserve the core values of the legal profession we reaffirm our professional obligations. **PART 1200.6** Because of the need to protect and preserve the core values of the legal profession, lawyers must be honest, etc.

56. *See supra* note 51 and accompanying text.

57. "A lawyer shall provide competent representation to a client." MODEL RULES OF PROF'L CONDUCT R. 1.1 (2000).

58. *See supra* note 55 and accompanying text.

59. *See supra* note 31 and accompanying text.

60. "A lawyer should aspire to render . . . pro bono publico legal services per year. . . . In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." MODEL RULES OF PROF'L CONDUCT R. 6.1 (2000).

	the legal profession." *Id*. Recommendation 2. **Core Values**. "The legal profession should adopt . . . rules of professional conduct that protect its core values, independence of professional judgment, protection of confidential client information, and loyalty to the client through avoidance of conflicts of interest, but . . . not permit existing rules to unnecessarily inhibit . . . new structures for the more effective delivery of services and better public access to the legal system." *Id*. Recommendation 1.	
R. 5.4 (fee-sharing, lawyer-nonlawyer partnership, and independent professional judgment); **R. 5.5** (unauthorized practice of law).[61]	**Lawyer/Nonlawyer Fee-sharing**. "A lawyer should not share legal fees with a nonlawyer or form a partnership or other entity with a nonlawyer if any of the activities of the partnership or other entity consist of the practice of law except that a lawyer in an MDP controlled by lawyers should be permitted to do so and a lawyer in an MDP not controlled by lawyers should be permitted to do so subject to safeguards similar to those identified in paragraph 14 [certification to and audit by the highest court]." *Id*. Recommendation 12.	Lawyers are subject to the "imposition" of limitations on contractual relationships between themselves and nonlawyers.

61. "A lawyer shall not: . . . practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." *Id.* R. 5.5.

	"An MDP that fails to comply with its written undertaking shall be subject to withdrawal of its permission to deliver legal services or to other appropriate remedial measures ordered by the court." *Id*. Recommendation 15; *see also id*. Recommendation 2 (limitation on sharing fees).	
R. 5.4 (fee-sharing, lawyer-nonlawyer partnership, and independent professional judgment)	**Lawyer/Nonlawyer Fee-sharing (Nonlawyer Ownership).** "A lawyer should be permitted to deliver legal services through a Multidisciplinary Practice (MDP), 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 two 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." *Id*. Recommendation 3 . . . . "A lawyer acting in accordance with a	Lawyers are prohibited from arrangements in which nonlawyer professionals have ownership or investment interest in a law practice.

62. *See supra* note 53.

	nonlawyer supervisor's resolution of a question of professional duty should not thereby be excused from failing to observe the rules of professional conduct." *Id*. Recommendation 6. . . . . "As a condition of permitting a lawyer to engage in the practice of law in an MDP not controlled by lawyers, the MDP should be required to give to the highest court with the authority to regulate the legal profession in each jurisdiction in which the MDP is engaged in the delivery of legal services (the 'court'), a written undertaking, signed by the chief executive officer (or similar official) and the board of directors (or similar body)." *Id*. Recommendation 14; *see also id*. Recommendation 12 (the "gray lawyering" prohibition, forbidding formation of any entity involving lawyers in the practice of law, except in an MDP[62]); *id*. Recommendation 14(A) (certification of noninterference); *id*. Recommendation 10 (the *respondeat superior* obligation).	
	Compatible "Professionals". "Nonlawyer professionals" means members of recognized professions or other disciplines that are governed by ethical stan-	Lawyers are prohibited from contractual relationships with nonlawyer professionals who are *unapproved by the Appellate Division*.

	dards. REPORT TWO, *supra* note 5, Recommendation 1; *see also* REPORT ONE, *supra* note 5, app. C, Reporter's Notes, C12 ("The Commission does not take a position on whether . . . to limit nonlawyer membership in MDP's to other professionals, although it does note [examples] in Comment 2 to the draft Model Rule 5.8 . . . [viz., 'accountancy, economic forecasting, financial planning, lobbying, psychological counseling, social work, consulting, architecture and design, and tax preparation']. The Commission believes that *the regulatory authorities in each state should be free to determine* whether or to what extent it is in the public interest to limit nonlawyer membership in MDPs.") (emphasis added).	
R. 7.2(c) (Advertising).[63]	**Lawyer Advertising**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." REPORT ONE, *supra* note 5, Recommendation 5.	Lawyers and nonlawyers shall not give or receive compensation for referrals, but reciprocal referrals are not prohibited. **PART 1200.7** Professional Notices, Letterheads and Signs cannot include Nonlawyers.
Unauthorized Practice of Law		
R. 5.4 (fee-sharing, lawyer-nonlawyer part-	**Creation Rule**. "A lawyer should be permitted to share legal fees with a	Lawyers and other professionals shall not share fees.

63. "A lawyer shall not give anything of value to a person for recommending the lawyer's services . . . ." MODEL RULES R. 7.2(c).

nership, and independent professional judgment); **R. 5.5** (unauthorized practice of law).	nonlawyer, subject to certain safeguards that prevent erosion of the core values of the legal profession." *Id*. Recommendation 2. . . . . "[E]xcept that a lawyer in an MDP controlled by lawyers should be permitted to do so and a lawyer in an MDP not controlled by lawyers should be permitted to do so subject to safeguards similar to those identified in paragraph 14 [certification to and audit by the highest court]." *Id*. Recommendation 12.	
R. 1.5(e) (division of fees); M.R. 5.1 (Responsibilities of a Partner or Supervisory Lawyer); **R. 5.2** (Responsibilities of Subordinate Lawyer); **R. 5.3** (Responsibilities Regarding Nonlawyer Assistants).	**General Rule: Referral Fees**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5. "All rules of professional conduct that apply to a law firm should also apply to an MDP." *Id*. Recommendation 7; *see also id*. Recommendation 10 (*respondeat superior* obligation).	Lawyers shall not give or receive financial or other tangible benefits for referrals to or from nonlawyers. **PART 1200.8** Lawyers shall not give or receive financial or other tangible benefits for referrals to or from nonlawyers or nonlawyer entities.
R. 1.1 (stating that lawyers must act competently).[64]	**General Rule: Ancillary Interest**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5.	Lawyers must disclose any ancillary contractual relationship to clients for whom nonlawyer services are provided.

64. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." *Id*. R. 1.1.

	"In connection with the delivery of legal services, all clients of an MDP should be treated as the lawyer's clients for purposes of conflicts of interest and imputation in the same manner as if the MDP were a law firm and all employees, partners, shareholders or the like were lawyers." *Id*. Recommendation 8; *see also id*. Recommendation 10 (*respondeat superior*).	Lawyers may contract to provide legal and nonlawyer services, only with nonlawyers approved by the highest court.
R. 1.4(b) (Communication).[65]	**Communication Rule**. "To the extent that the delivery of nonlegal services to a client is compatible with the delivery of legal service to the same client and with the rules of professional conduct, a lawyer should be required to make reasonable efforts to ensure that the client sufficiently understands that the lawyer and nonlawyer may have different obligations with respect to disclosure of client information and that the courts may treat the client's communications to the lawyer and nonlawyer differently." *Id*. Recommendation 9. **General Rule: Communications**. "A lawyer in an MDP who delivers	**PART 1205** Lawyers must provide clients with a "Statement of Client's Rights in Cooperative Business."

65. "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id*. R. 1.4(b). See also the recently proposed amendment to the commentary to Model Rule 1.5 that discusses the withholding of information from a client and notes the general rules: "A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person." ETHICS 2000 COMMISSION ON THE EVALUATION OF THE RULES OF PROFESSIONAL CONDUCT (November 2000 Report). While this article was in preparation, the ABA amended the Model Rules.

	legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5.	
R. 5.5(b) (Unauthorized Practice of Law).[66]	**Unauthorized Practice of Law**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5; *see also id*. Recommendation 14(B) (certification of noninterference, which provides that the MDP will establish, maintain and enforce procedures designed to protect a lawyer's exercise of independent professional judgment on behalf of a client from interference by the MDP, any member of the MDP, or any person or entity controlled by the MDP).	Nonlawyers shall not have any role or authority over a lawyer.
R. 1.7(b) (conflict of interest: general rule)[67]	**Conflict of Interest**. "A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct." *Id*. Recommendation 5. "All rules of professional conduct that apply to a law firm should also apply to an MDP." *Id*. Recommendation 7.	Lawyers must disclose nonlegal: education, services, contractual relationships, and the nature and extent of services available through any contractual relationship.

66. *See supra* note 61 and accompanying text (unauthorized practice of law).
67. *See supra* note 31 and accompanying text (conflict of interest).

III. TRUTH IS AMMUNITION

Upon review, the New York state of mind turns out to be an unreflective repackaging of well-rehearsed and timeworn responses in a now decade-old debate.[68] The water is murkier—not clearer—as a result of the NYSBA's effort. As a response to Mean's call to action,[69] it is a proposal that, no doubt, causes many in the legal profession to understand why her rhetorical question is so powerful: "Is it accidental it affects the innocent?"[70]

Challenged by proponents of MDP to stop being negative and, instead, to offer a meaningful response to the Commission's Report,[71] the NYSBA must be commended for its willingness to put something—anything—on the table for debate. Regrettably, however, staying with the *Clearwater* metaphor, the NYSBA Report accomplishes little more than to allow it to say that it is at the festival. It is not an organizer, a featured performer on stage, has no role shipboard, and ultimately has failed to address the needs of the thousands who line the shore or the millions who populate the Hudson River Valley. Beyond merely being in attendance, the NYSBA must eventually address itself to the three questions that the American legal profession has a right to expect to have answered by one of its major associations:

Absent a real MDP, how can the legal profession achieve a flexible regulatory scheme that provides lawyers wider options for the efficient delivery of their professional services to the public (*i.e.*, financial, economic, business, and conceptual planning)?

Absent a real MDP, how can the legal profession achieve a unified and uniformly regulated legal profession—one that is free of the growing threat of gray lawyers?[72]

Finally, how can the legal profession release the pent-up entrepreneurial talents of lawyers—especially, the traditional small and solo-practitioners and young lawyers who have been educated in, and in many instances have become use to working in, team-oriented environments?

On the considered responses to these questions ride the answer to what will remain the central question of lawyer regulation for the next decade. Ironically, too, the collapse of investor confidence as a result of Enron's financial wrongdoing should, in the long run, intensify pressures on the legal profession to respond. Although the immediate public and regulatory scrutiny is on the accountants, it will not go unnoticed for long that there have for years been hundreds, if not thousands, of lawyers

68. *See supra* note 38 and accompanying text (ancillary practice).
69. *See supra* note 3 and accompanying text ("Truth is Ammunition.").
70. *Id.*
71. *See supra* note 5 and accompanying text ("Is It Just?").
72. *See supra* notes 41, 63 and accompanying text ("Gray lawyering").

working behind the scenes in companies like Enron and in the law firms that service them.

There should be no surprise, then, that when the time comes to look comprehensively at the regulation of lawyers, the starting point will be the kind of MDP model that was originally advanced by the Commission. It is the only vision thus far that contemplates a legal profession that comprehensively regulates all lawyers who are licensed to practice, regardless of the context or content of their work.[73] And it is the only scheme that would subject all lawyers working outside traditional law firms (or as corporate counsel) to the requirement to certify to the court the adequacy of their practice environment, subject to a confirmation by audit.[74] Only such a scheme offers the prospect for a flexible regulatory scheme that provides lawyers wider options for the efficient delivery of their professional services to the public. Moreover, only such a scheme could prove flexible enough for future contingencies to allow the release of the legal profession's entrepreneurial talents in a continuously changing, increasingly complex, and ultimately global economic environment.

Truth is ammunition!

73. *See supra* note 40 and accompanying text.
74. *See* app. A, *infra*, Recommendation 14(H).

APPENDIX A

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIDISCIPLINARY PRACTICE
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

RESOLVED, that the American Bar Association amend the ABA Model Rules of Professional Conduct consistent with the following principles:

1. The legal profession should adopt and maintain rules of professional conduct that protect its core values, independence of professional judgment, protection of confidential client information, and loyalty to the client through avoidance of conflicts of interest, but should not permit existing rules to unnecessarily inhibit the development of new structures for the more effective delivery of services and better public access to the legal system.
2. A lawyer should be permitted to share legal fees with a nonlawyer, subject to certain safeguards that prevent erosion of the core values of the legal profession.
3. A lawyer should be permitted to deliver legal services through a Multidisciplinary Practice (MDP), 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 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.
4. Nonlawyers in an MDP, or otherwise, should not be permitted to deliver legal services.
5. A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct.
6. A lawyer acting in accordance with a nonlawyer supervisor's resolution of a question of professional duty should not thereby be excused from failing to observe the rules of professional conduct.
7. All rules of professional conduct that apply to a law firm should also apply to an MDP.
8. In connection with the delivery of legal services, all clients of an MDP should be treated as the lawyer's clients for purposes of conflicts of interest and imputation in the same manner as if the MDP were a law firm and all employees, partners, shareholders or the like were lawyers.

9. To the extent that the delivery of nonlegal services to a client is compatible with the delivery of legal service to the same client and with the rules of professional conduct, a lawyer should be required to make reasonable efforts to ensure that the client sufficiently understands that the lawyer and nonlawyer may have different obligations with respect to disclosure of client information and that the courts may treat the client's communications to the lawyer and nonlawyer differently.
10. A lawyer in an MDP who delivers legal services to a client of the MDP and who works with, or is assisted by, a nonlawyer who is delivering nonlegal services in connection with the delivery of legal services to the client should be required to make reasonable efforts to ensure that the MDP has in effect measures to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.
11. A lawyer in an MDP should not represent to the public generally or to a specific client that services the lawyer provides are not legal services if those same services would constitute the practice of law if provided by a lawyer in a law firm. Such a representation would presumptively constitute a material misrepresentation of fact.
12. A lawyer should not share legal fees with a nonlawyer or form a partnership or other entity with a nonlawyer if any of the activities of the partnership or other entity consist of the practice of law except that a lawyer in an MDP controlled by lawyers should be permitted to do so and a lawyer in an MDP not controlled by lawyers should be permitted to do so subject to safeguards similar to those identified in paragraph 14.
13. Allowing fee-sharing and ownership interest in an MDP does not change the rules of professional conduct prohibiting fee-sharing and partnership in any other respect, including the current provisions limiting the holding of equity investments in any entity or organization providing legal services.
14. As a condition of permitting a lawyer to engage in the practice of law in an MDP not controlled by lawyers, the MDP should be required to give to the highest court with the authority to regulate the legal profession in each jurisdiction in which the MDP is engaged in the delivery of legal services (the "court"), a written undertaking, signed by the chief executive officer (or similar official) and the board of directors (or similar body), that:

(A) it will not directly or indirectly interfere with a lawyer's exercise of independent professional judgment on behalf of a client;

(B) it will establish, maintain and enforce procedures designed to protect a lawyer's exercise of independent professional judgment on behalf of a client from interference by the MDP, any member of the MDP, or any person or entity controlled by the MDP;

(C) it will establish, maintain and enforce procedures to protect a lawyer's professional obligation to segregate client funds;

(D) the members of the MDP delivering or assisting in the delivery of legal services will abide by the rules of professional conduct;

(E) it will respect the unique role of the lawyer in society as an officer of the legal system, a representative of clients and a public citizen having special responsibility for the administration of justice. This undertaking should acknowledge that lawyers in an MDP have the same special obligation to render voluntary *pro bono publico* legal service as lawyers practicing solo or in law firms;

(F) it will annually review the procedures established in subsection (B) and amend them as needed to ensure their effectiveness; and annually certify its compliance with subsections (A)–(F) and provide a copy of the certification to each a lawyer in the MDP;

(G) it will annually file a signed and verified copy of the certificate described in subsection (F) with the court, along with relevant information about each lawyer who is a member of the MDP;

(H) it will permit the court to review and conduct an administrative audit of the MDP, as each such authority deems appropriate, to determine and assure compliance with subsections (A)–(G); and

(I) it will bear the cost of the administrative audit of MDPs described in subparagraph (H) through the payment of an annual certification fee.

15. An MDP that fails to comply with its written undertaking shall be subject to withdrawal of its permission to deliver legal services or to other appropriate remedial measures ordered by the court.