MULTIDISCIPLINARY PRACTICE: MINNESOTA MOVES FORWARD

BY EDWARD J. CLEARY

Few, if any, professional debates in recent years have prompted the soul-searching that MDP has. . . . [It] has emerged as perhaps the major professional debate of the new century.[1]

To recap what has become a tortured history, the ABA created a Commission on Multidisciplinary Practice in 1998 which shocked the profession by recommending in June of 1999 that the Rules of Professional Conduct should be amended to allow for multidisciplinary practice. These amendments would have resulted in the sharing of fees with nonlawyers (other than the already permitted sharing of fees pursuant to a compensation or retirement plan under 5.4(a)(3), MRPC) within an entity that provided legal services for profit. Many believe that such a change in the way lawyers handle fees would lead almost certainly to an erosion of the core values of the profession, resulting in the loss of ownership and control of law firms and, finally, in the loss of professional independence of the lawyers involved.

After the commission's recommendation was shelved for further study in the summer of 1999, many states, including Minnesota, created committees or task forces to study and debate the issue in depth.[2] The Minnesota MDP Task Force consisted of 27 members who met on numerous occasions throughout 1999 and 2000. Eventually the Task Force recommended to the MSBA's General Assembly in June of 2000 that MDPs should be allowed in Minnesota under carefully delineated circumstances. Only weeks later, in July of 2000, the ABA headed in the opposite direction, rejecting the recommendation of the ABA Commission that multidisciplinary practice be allowed under the ABA Model Rules and disbanding the commission. As a result, Minnesota, as well as the other states who had studied the issue in depth and had concluded that at least some form of multidisciplinary practice should be authorized, was now faced with the decision of whether to proceed in the face of ABA opposition.[3]

THE MINNESOTA PROPOSAL

The Minnesota proposal, as adopted in principle by the MSBA's General Assembly in June of 2000 and as adopted in the form of specific proposed rule amendments in June of 2001, differs from the unsuccessful recommendation offered a year ago by the ABA Commission in one key respect. The ABA proposal did not require that a specific percentage of ownership interest be held by the lawyers within a multidisciplinary practice, saying that although lawyers in the MDP should have the control and authority necessary to assure lawyer independence, "the control and authority principle looks to substance not form." Minnesota's proposal is more specific. The recommended amendments to Rule 5.4 of the Minnesota Rules of Professional Conduct governing the "Professional Independence of a Lawyer" would provide that:

> (e) Notwithstanding the foregoing provisions of this Rule, a lawyer may form and practice in a partnership, a professional firm or other association that is a multidisciplinary practice which meets the following requirements:
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> (1) A majority percentage of ownership in the entity must be held by lawyers licensed to practice law and practicing law in that entity;
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> (2) Only lawyers in the entity shall be engaged in the practice of law;
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> (3) The lawyers practicing in the entity must ensure that they retain the control and authority necessary to ensure lawyer independence in the rendering of legal services;
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> (4) The lawyers practicing law in the entity must obtain an affirmative written agreement signed by each member of the entity that there will be no interference with the lawyers' independence of professional judgment or with the client-lawyer relationship; and
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> (5) The nonlawyer owners must be professionals actively practicing their professions in the entity and may not be passive investors.

In addition to these amendments, the General Assembly approved an amendment to 1.10, MRPC, providing "that the clients of nonlawyer professionals who are partners or employees of a firm shall be regarded as clients of the lawyers of the firm" for purposes of imputed disqualification. Finally, amendments were offered to terminology in several areas including in the defining of professionals as "individual licensed professionals who are governed by promulgated codes of ethical conduct," thereby limiting the types of occupations of nonlawyers that will be permitted within an MDP.

OTHER STATES

By August of 2001, approximately one-half of the states had weighed in on MDPs in the wake of the ABA rejection of the proposal a year earlier. These states were fairly evenly divided as to their views on multidisciplinary practice.[4] A review of these states makes it apparent that there are few regional alliances on either side of the issue. While the dividing line may not be between north and south or east and west, it is noteworthy to observe that the most populous states (Florida, Illinois, New Jersey, Pennsylvania, Texas and New York) are opposed to multidisciplinary practice. What does this trend portend, if anything? Is it significant that the Association of the Bar of the City of New York would have allowed lawyers and nonlawyers to form partnerships as long as the legal work was controlled by the attorneys while the New York State Bar voted down such a proposal? A description of the lawyers in New York accurately reflects the Minnesota experience as witnessed by the members of the

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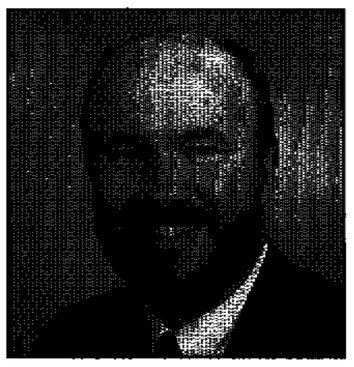

Minnesota MDP Task Force:

> New York's bar has been anything but unified on the issue. Some practitioners are strongly opposed to any liberalization of the rules on interdisciplinary linkages, while others would have eliminated virtually all of the current barriers. Even among the organized bar there was dissension.[5]

Unlike New York, however, members of the Minnesota MDP Task Force for the most part found themselves convinced that, although they had begun their service on the task force with serious reservations concerning any changes to the rules, all but a few were led through study, discussion, and research to believe that some changes were necessary and proper. Just as in New York, a few members of the task force remained opposed to any changes to the status quo, while a few others "would have eliminated virtually all of the current barriers." The overriding view, however, was that a balance needed to be struck, ensuring that the core values of the profession were protected while acknowledging and, indeed, confronting, the changes in the business climate nationally and internationally that have already occurred and continue to occur on a daily basis.

The MSBA will be filing a petition with the Minnesota Supreme Court regarding the recommended changes to the Rules of Professional Conduct in the months ahead. No one involved in the process in Minnesota leading up to this point has taken these recommendations lightly. A number of forces influence an individual's viewpoint on this topic; professional experience, current law practices, philosophical attitudes towards the role of a lawyer, and personal beliefs of what the future holds for the legal profession are just a few of the factors that lead one to support or oppose the proposed changes in ethical precepts. It seems clear that whatever happens in Minnesota, the states will continue to agree to disagree on this issue. □

NOTES

1. *John Caher, "New York Adopts Nation's First Official MDP Rules,"* New York Law Journal, 7/25/01.
2. *For a list of members of the MSBA Task Force on Multidisciplinary Practice, see* Bench & Bar *(September 1999) at page 13.*
3. See Cleary, *"Multidisciplinary Practice: One Year Later,"* Bench & Bar *(September 2000), p. 18.*
4. *As of August 1, 11 states (Arizona, Colorado, Georgia, Indiana, Maine, Minnesota, North Carolina, South Carolina, South Dakota, Utah, and Wisconsin) and the District of Columbia, were listed by the* ABA as moving towards changes that would allow multidisciplinary practice; 15 states (Arkansas, Florida, Illinois, Kansas, Kentucky, Maryland, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, and West Virginia) had or were in the process of voting down multidisciplinary practice. For an update on action taken on the issue of multidisciplinary practice state-by-state, see the website for the ABA *Center for Professional Responsibility at* www.abanet.org/cpr/multicom.
5. *Caher,* ibid.