



## Multidisciplinary Practice: Three-Dimensional Client Service

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### Abstract

*The practice of law with other professionals in a multidisciplinary practice ("MDP") has become controversial, as the American Bar Association has debated whether to modify rules that prohibit partnerships of lawyers and non-lawyers. In this article, the authors describe a model of MDP in which a psychologist, financial planner, workplace consultant and attorneys practice together, but not in the form of a business partnership. This model which is consistent with existing rules, offers clients considerable advantages in coordination of services and provides benefits for the practitioners as well. The article describes the ethical, professional and business safeguards that have proven useful in a MDP, permitting the professionals to provide more 'three-dimensional service' to their clients.*

One of the most intense debates within the American Bar Association in recent years has centered on the question of multidisciplinary practice (MDP). <sup>2</sup> The major issues in this debate are whether lawyers be permitted to (a) share legal fees with nonlawyers in a firm, and (b) practice in a firm in which nonlawyers occupy a position of governance. <sup>3</sup> The ABA's Commission on Multidisciplinary Practice unanimously recommended changing the Model Rules of Professional Conduct (1983) that currently prohibit lawyers from practicing in partnerships with nonlawyers. However, in July 2000, the ABA House of Delegates voted by a three-to-one margin to reject the Commission's report, thereby reaffirming existing ethical principles that bar such partnerships.

Many lawyers and other professionals in the United States have criticized the delegates' decision that lawyers in Canada, Europe, Asia, and Africa are permitted to practice in MDPs. The world's largest accounting firms (based in the U.S.) are, in effect, also the world's largest law firms - several of them employ more than 3,000 lawyers each, providing tax law advice that complements the firm's legal and accounting services. The very success of these accounting firms, however, became one of the reasons cited by lawyers who opposed the ABA Commission's recommendation. They feared that the U.S. law firms would also be acquired by huge businesses, with those lawyers thus losing their independence to function as members of a profession with unique ethical guidelines. <sup>4</sup>

The ABA's decision does not prevent individual states from adopting a different stance regarding MDP. The rules of legal ethics in the United States are promulgated on a state-by-state basis, with the ABA holding, as a legal matter, only advisory status. Most states, however, have adopted the ABA's Model Rules of Professional Conduct, and it is unlikely that - in the near future, at least - many states will depart from the judgment of the ABA House of Delegates.

However, notwithstanding the ABA's decision, many law firms have created subsidiaries to provide related services (such as investment management advice) <sup>5</sup>, while law firms routinely involve financial experts, CPAs, engineering experts, economists, medical professionals, and mental health professionals as consultants on their cases. In many firms, these relationships become so interconnected that the professionals occupy space within the firm's office suite.

In our view, there are many advantages to be gained from multidisciplinary practice, the most important of which is better meeting the needs of the clients. As a practicing psychologist (Richard Wolman) and lawyer (David Hoffman), we have found that working closely together - not only with each other but with other professionals such as a financial planner, a workplace consultant, a clinical social worker, and others - provides better, more three-dimensional service to our clients and a more fulfilling professional experience for ourselves.

life. The purpose of this article is to describe a form of MDP - one that is fully permissible under existing ABA rules - and the reasons why lawyers and other professionals might wish to practice that way.

The form of practice we are describing bears no resemblance to the multinational mega-accounting firm. We work with ordinary businesses and people going through such everyday crises as divorce, termination, or business partnership disputes. And our perspective is informed not only by theory but by our own work - a multidisciplinary practice in which a psychology practice, a financial planning firm, and a workplace consulting practice share space with a law and dispute resolution firm.<sup>6</sup>

We are often reminded of the Maine farmer who was once asked if he believed in infant baptism. "Be it?" he said. "Hell, I've seen it done." Well, we both believe in MDP and have seen it done.

### Client-Centered Practice

Ask any client, and they will likely agree that it often makes sense to consider more than one professional viewpoint when trying to resolve a particular problem. The multidisciplinary model is familiar to us from the practice of medicine, where professionals from a variety of fields bring their unique views to bear on the treatment of illness.

For purposes of this article, it is worth distinguishing three types of arrangements by which lawyer and nonlawyer professionals might work together. First, we suggest the term "interdisciplinary practice" for those situations in which there is routine collaboration of lawyers and nonlawyer professionals. They work on one another on a particular case, but might find themselves working individually or with an altogether different set of professionals on another case. Second, we suggest the term "team-based interdisciplinary practice" for those situations in which a lawyer works with the same group of nonlawyer professionals on most of their cases or a substantial number of cases. (This form of practice has become common in certain parts of the United States, where lawyers, financial professionals, and therapist/coaches have adopted the "Collaborative Divorce" model to create multi-professional teams.) Finally, we suggest the term "multidisciplinary practice" or "MDP," in which the lawyer and nonlawyer professionals not only work on cases together, but also share an office suite and some form of marketing (such as a web site).

In our view, there are significant advantages to all of these collaborative forms of practice. In the remainder of this article, we will focus on MDPs, because this is the form of practice with which we are most familiar. We believe, however, that much of what follows applies to at least the team-based interdisciplinary practice approach.

1. Efficiency. The transaction costs of providing advice to clients are reduced in an MDP because professionals can easily communicate with one another. To be sure, the internet and other technological improvements in communications make it easier for professionals to collaborate even if we do not meet in an office space. However, the task of scheduling meetings and conference calls for busy professionals adds to the overhead of service delivery. Moreover, email and telephone conference calls (even video conferencing) are often a poor substitute for face-to-face contact. Social scientists have found that we communicate more information about our views by our affect, body language, and intonation than by our choice of words.<sup>7</sup> Most of that information is lost when we do not meet in person. Sharing information creates multiple opportunities for conferencing throughout the day that would otherwise be hard to arrange. We have found, therefore, that we can work together more efficiently in one office because it enables us to sit down with each other, and with our clients, and give each other undivided attention.

Frequent in-person contact has also increased our familiarity with each other's perspectives, and those of our colleagues from other professions. Rather than breeding contempt, this familiarity has induced trust, a deep respect for each other, and an ability to communicate with each other more efficiently. For example, in a recent case involving a divorce client, the client's adolescent son went out in ways that led to a physical altercation and a restraining order against the client. We developed a coordinated approach that quickly resulted in treatment for the son, appointment of a guardian ad litem, and (once those arrangements were in place) dismissal of the restraining order. All of this was done effectively, in our view, because our team members could instantly communicate and have a high confidence in each other, borne of successful prior collaboration.

2. Quality of service. We have found that working closely together on multiple cases enhances the quality of our advice to clients. Our experience has been that divorce clients, in particular, usually need a combination of counseling to deal with the emotional upheaval of the process, plus legal advice and financial planning services. If the clients have young children (or even older children), the clients

need advice or coaching on how to reduce the impact of divorce on the children. By working together in a coordinated team, we do a better job of addressing these needs.

Collaboration in an MDP enhances the quality of our service because it broadens our perception of issues relevant to the problem at hand and produces synergies during the development of coordinated advice. The field of law has much to learn from the field of psychology and vice versa. The same is true of the disciplines of other professionals with whom we work. When we look at a client's problems through the lens of another discipline, we can identify dimensions that might otherwise have escaped our notice. An MDP provides a more three-dimensional way of seeing our clients, understanding their needs, and assisting them.

When a client is working with various non-interacting professionals, there is always the risk that they will get conflicting advice, or decide to proceed in a direction that is at cross-purposes with the direction recommended by another professional. It seems obvious, perhaps, that a lawyer would wish to understand the psychological implications for his or her client of various alternative courses of action. If so, it is more astonishing that so few lawyers do. Similarly, a therapist's work with a patient is often enhanced by a greater understanding of the patient's legal predicament and the options and constraints imposed by the legal system.

The quality of a lawyer's work is enhanced when the psychological stressors and dilemmas in our clients' lives are being addressed by an experienced mental health professional. Lawyers are not qualified to treat, and often do not understand, the psychological complexities of their clients, but they are themselves asked by their clients to function, in effect, as *de facto* therapists because of the difficult situation.

Similarly, psychologists are not qualified to assist with their patients' financial planning or legal issues. Most CPAs would consider themselves poorly equipped to provide advice about the complex dynamics of the workplace. All of these professionals, however, working closely together in appropriate cases can provide a higher quality of assistance than any of the individuals could separately, and a better service than that of professionals who are not accustomed to collaborating with one another.

**3. Overcoming barriers to service delivery.** It is frequently the case that clients do not receive the services they need - often because of financial constraints, a major factor in most divorces and other disputes. Often, however, the reason for missing services is the client's lack of familiarity with options, or a lack of information.

This is frequently the case with regard to the use of financial planners, for example. Our clients' financial woes are often one of the most significant stressors in their lives. Yet most of our clients have not engaged the services of a financial planner. They typically know very little about what such planning entails and do not understand how, even in the context of an expensive divorce, they might benefit from opportunities for joint gains (such as the reduction of taxes) and planning for the future.

In our work with businesses and non-profit organizations, we have seen enormous, and yet untapped, opportunities for enhancing the success of the organization with workplace consulting. Yet many business managers and executives resist the idea of seeking such advice because it seems like an admission of failure. Likewise, many people view the prospect of engaging a lawyer with anxiety and mistrust because it is still, unfortunately, a social stigma associated with treatment by a mental health professional.

One of the advantages, therefore, of working together in one office is that it enables us to introduce our clients to other professionals more easily, so that the clients can make informed decisions and decide, on the basis of a brief (and often no-cost) meeting, whether to make an appointment and engage that professional.

### **Ethical Constraints**

If practicing in the form of an MDP is such a good idea, why then are so few people doing it? The primary reason is that, with the ABA's rejection of its Commission's recommendations about multidisciplinary practice, lawyers have assumed that all forms of MDPs are impermissible. This is not the case.

For many years, lawyers and nonlawyers have shared office suites and worked closely together. The rules that have emerged to regulate this form of practice are fairly straightforward.

1. Business relationships. The rule prohibiting lawyers from sharing fees with nonlawyers<sup>8</sup> not only prohibits the formation of a partnership or other business entity with nonlawyers (if the partnership or business provides legal services); it also regulates the use of referral fees. Lawyers are permitted to pay (or receive) such fees only with full disclosure to the client and the client's consent.<sup>9</sup> In addition, under the new rules, lawyers who work closely with nonlawyers must avoid the types of significant financial entanglements (such as loans, variable-rate leases, and expense-sharing based on revenue) that could create a "*de facto*" partnership. In our work, we maintain separate business entities, with no shared fees, and no referral fees exchanged between us or the other professionals with whom we collaborate.

2. Governance. One of the cardinal principles of legal ethics is that the lawyer must be free to exercise his or her independent judgment on behalf of the client.<sup>10</sup> In our office, there are weekly meetings with all the professionals who share space in our suite. None of us, however, gets a vote on any aspect of our office practices.

3. Client confidences. Although the rules described above relating to business relationships and governance are unique to lawyers' ethics, all of the professions represented in our office suite have rules for protecting client confidences.<sup>11</sup> Thus, when professionals work together in teams, regardless of whether they practice in the form of an MDP, they must discuss with their clients the question of what information, if any, may be shared with the other professionals in the team. In our work, we ask clients for a waiver of confidentiality for such discussions with other professionals if we believe such discussions are necessary. When we consult with each other about our cases, we refrain from giving identifying information unless we have such a waiver. We maintain separate filing systems and separate computer systems so that client confidences are thoroughly protected.

The flip side of the client-confidence issue involves the rules and statutes regarding mandatory reporting (such as those that require mental health professionals to report child abuse or neglect, or those that require lawyers, in some jurisdictions, to report misconduct by other lawyers). Mental health professionals must give a 'Miranda'-like warning to their new clients concerning the therapists' status as mandatory reporters. These reporting duties cannot be avoided by contract arrangements (such as waivers or disclaimers), and therefore when mental health professionals work with others, all of the professionals in the team must be mindful of the consequences of sharing information about clients or potential clients.

With few exceptions, the attorney-client privilege is deemed waived regarding any communication between attorney and client in the presence of a third party. However, if a nonlawyer expert or other professional has been retained by the attorney, rather than directly by the client, the likelihood that the expert will be deemed to have derivative privilege is greater.<sup>13</sup> The retained expert who has communicated with the client, then communicates in turn with the client's attorney, may also qualify for, in addition, the other professional (such as a psychologist) may have an independently recognized confidentiality privilege.

From the standpoint of ethics, it is essential that the client be fully informed about these matters. Clients often share with us their most personal secrets, and we have a professional responsibility to protect that information. When the clients are embroiled in conflict, they may be seeking resolution, but they are also at risk of adversarial proceedings in which depositions, subpoenas, and trial testimony could become the mechanism by which confidential information is required to be disclosed and is not fully protected.

The duty to safeguard this information begins at intake - even before a formal relationship has been established. It is often our practice to include in initial meetings with potential clients representatives from two or more disciplines. When doing so, however, it is important to inform the client at the outset of what is privileged and what is not. In our client engagement letters, we include information about confidentiality and inform our clients that we will ask their permission before disclosing any information about their case to the other professionals with whom we work.

4. Conflicts of interest. Lawyers must avoid conflicts of interest, such as representing clients with opposing interests. It is not clear, however, whether, from the standpoint of legal ethics, a conflict of interest arises when lawyers who maintain separate practices in a shared suite represent parties with conflicting interests (such as the husband and wife in a divorce case).<sup>15</sup> It would seem that any conflict - if it is a conflict - could be waived by the clients after full disclosure by the lawyers. The practical issue, however, for those sharing space is: how does one determine whether there is such a potential conflict without disclosing the names of clients? The mere fact that a client is receiving legal services is, in most cases, confidential. (For example, a wife may not wish her husband to know that she is considering divorce, and therefore the lawyer that she sees must do his or her utmost to protect the confidentiality of her visit to the lawyer.) One practical solution is to engage the services of another

appropriate professional (preferably one who is geographically removed from the site of the practice therefore less likely to have contact with those who are using the MDP's services) for the sole purpose of serving as a "black box" clearing house for conflict information.<sup>16</sup> Such an arrangement would include a contract barring the professional from making any disclosure of the information other than to the client providing the information that such a conflict exists. The success of such an arrangement requires the timely transmission of information to the vendor about potential cases before one of the professionals in the suite takes on the engagement.

5. Communications with the public. Because of the importance of attorney-client privilege and the prohibition of the unauthorized practice of law, it is vitally important that clients and potential clients understand who is a lawyer and who is not. Any group of professionals sharing an office suite, a web site, or marketing its services together, must, therefore, explain clearly the nature of each professional's relationship with each other.<sup>17</sup> It is all too easy for professionals, who are required to consider the relevant boundaries of our roles, to forget that our clients are usually not as familiar with these matters as we are.

We have adopted the term "affiliate" to describe the relationship between the law firm and the professional with whom the firm has space-sharing relationships. Such terms are not self-defining, however, therefore an explanation is usually needed regarding the terms that MDPs use to describe the professional relationships within the firm.<sup>18</sup> Erring on the side of more information, rather than less, is a good goal for ensuring that the public understands what services are provided by each professional. For example, the web site for the Boston Law Collaborative, the nature of the practice and the relationships with other professionals is explained in several places.

6. Fiduciary responsibility to the client. Lawyers and other professionals must remain mindful, however much we may believe in the value of MDP that our job is to serve our clients. In some cases, our responsibility to clients may mean that we should strongly urge using the services of an MDP, even if a client is initially reluctant to do so. In other cases, we should defer to the client's choice not to do so. Our belief that practicing in the form of a MDP is socially useful, or useful to most clients, cannot be allowed to color our global judgment of what is best for each individual client.

Likewise, referrals must be made with an application of the professional's independent judgment as to who is an appropriate referral for the particular client.<sup>19</sup> Lawyers and other professionals in a MDP naturally tend to refer clients to each other. They know each other and trust each other. The most appropriate referral, however, may be someone who is not part of the MDP.

### **A 'Three-Dimensional' Approach to Serving Clients**

Many clients come to us in a state of anxiety, panic, disbelief, anger, or confusion. It would be naive to think that any client could be fully aware of the best approach to the solution of his or her problem. These issues have to be discussed, explained and explored. This is the point at which the MDP model demonstrates its strength.

In a particular situation, for example, the impediments to resolution may have little to do with the legal dimensions of the situation. Rather, the emotional state of one or both of the parties may be so overwhelming that decisions about family and children, as in the case of a custody dispute, are impaired. With the input of a psychologist in a MDP, the emotional dimensions of the situation become manageable and the client can begin to think in a more rational and useful mode, thereby focusing more effectively on the tasks at hand.

Similarly, in a divorce situation, a client may become confused and frightened in the face of final financial decisions that need to be made immediately, and that will affect his or her life far into the future. The financial expert of the MDP can help that person sufficiently unravel the mysteries of economics that thoughtful and protective choices can be made.

The benefits of the multidisciplinary practice, however, are greater than just being able to easily and quickly consult with another professional. The contribution of each of these professionals - lawyer, psychologist, financial planner, or workplace consultant - is further enhanced and informed by the fact that these experts educate each other on an ongoing basis. Consequently, when any new client appears, whoever meets and talks with that client is already a more thorough and perceptive listener, ready with the totality of the person seeking service. This expansion of the professionals' skills and perspectives adds a great deal - we believe, based on our own experience - to career satisfaction.

On intake, one must be attuned to the needs of the potential clients because we will have a different conversation depending on what role they wish us to play. Our work includes serving in some mediator, arbitrator, or in some other neutral dispute resolution role. If a potential client is seeking advocacy or consulting services, however, different rules regarding confidentiality and disclosure apply. Accordingly, our role when screening new cases involves a form of triage, not only as to the professional, but also as to type of service. Adopting the analogy of the multidoor courthouse (that provides both litigation and other dispute resolution options), a MDP can become a multidoor professional services office, with the potential client participating in the decision of whether he or she needs a team-based approach, or the services of just one of the people in the team.

Because MDP is not yet a widespread form of practice for lawyers and other professionals, there are few ethics opinions regarding the matters addressed in this article.<sup>20</sup> Until we have more explicit guidance, however, lawyers and other professionals who practice in this form should take certain precautions. First, engagement letters with clients should make it clear what services are, and are not, being provided. Letters should also clarify the relationships between those who share office space, including who is providing legal services (and who is not). Second, the professionals in the suite should execute an agreement that addresses such issues as the protection of client confidences, avoiding conflicts of interest, non-exclusive referrals, and financial matters. Third, lawyers and other professionals should have separate business cards and stationery, thereby reflecting the separate nature of their practices. They should additionally ensure that brochures and web sites fully and accurately describe the nature of their various professionals' individual practices and their relationships. Finally, guidance from appropriate regulatory officials should be sought regarding any arrangements that seem to venture into uncharted territory.

### Conclusion

We predict that the use of MDPs will increase in the years ahead. We strongly believe in their use in appropriate cases. We believe that the MDP approach not only produces better results for the client but also produces more durable results - agreements and other resolutions that stand the test of time because they are based on a fuller picture of our clients' needs and interests. Feedback to date from our clients has been thoroughly positive. We believe that, in the years ahead, many forms of MDP will emerge - the model we have described in this article is only one such form. We express the ideas expressed in this article with the hope that our experience will be useful to others who seek to develop new and more humane models of practice.

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### References:

1. The authors wish to thank the following Boston Law Collaborative colleagues for their assistance: paralegal Katharine Liu and intern Sarah Walsh for help with research and editing, and Dina Ben-Israel, Dina Brill-Cass, Melissa Filgerleski, Juliana Hoyt, Diana Kierein, Olive Larson, Susan Miller, V. Shemin, and Daniel Sinrod for valuable contributions to the discussion of the issues addressed in this article.
2. "A practice that delivers both legal and nonlegal professional services." COMM. ON MULTIDISCIPLINARY PRACTICE, REP. TO THE HOUSE OF DELEGATES, at 1 (2000).
3. These issues speak to the core values of the lawyer's profession: independence from influence, loyalty to the client. The principle of lawyers' independence in fee sharing, ownership, and management with respect to nonlawyers is affirmed by the ABA Model Code of Professional Responsibility (1983) and the ABA Model Rules of Professional Conduct (1983).
4. "During the debate in the ABA House of Delegates, a member asked whether the proposed rule on nonlawyer participation in law firms would allow Sears Roebuck to own a law firm. The rule, on behalf of the proponents of the Model Rules, was 'Yes.' The House thereupon adopted a resolution rejecting the proposal and reinstating the substance of the Model Code of Professional Responsibility." Harold L. Levinson, Collaboration Between Lawyers and Others: Coping with the ABA Model Rule on Nonlawyer Participation, 36 WAKE FOREST L. REV. 133 (2001).
5. In Ethics Committee Opinion 1999-B, the Boston Bar Association (BBA) went so far as to say

firm may *own* an affiliated business entity that provides law-related services [services that may be provided as part of legal representation by lawyers or nonlawyers to customers] who may or may not be clients of the law firm." (italics added) BBA ETHICS COMMITTEE OPINION 1999-B, at 1 (1999).

6. Boston Law Collaborative, LLC is a corporation that provides law and dispute resolution services. It has a space-sharing arrangement with three other professionals, each of whom has a separately incorporated practice.

7. In his book, *Silent Messages* (1971), Dr. Albert Mehrabian reports that the elements of communication carry these relative weights (at least from the recipient's point of view): verbal (words) - 7 percent (voice tone) - 38 percent; visual (facial expressions & body language) - 55 percent.

8. "Sharing offices with an independent nonlegal business is permitted if there is not a fee-sharing arrangement..." ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT §91:601 (4-2-1998).

9. "The Model Code does not prohibit a lawyer from recommending the services of one client to another client as long as full disclosure of any financial relationship is made." Business Dealings with Client: Operation of Law-Related Business from a Law Office, 801 Informal Opinion 1482, 330 (1982).

10. "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." Victoria Kremski, *Serving Clients in a Multidisciplinary Practice*, 80 MICHIGAN BAR JOURNAL 10, 32 (2001) at <http://www.michbar.org/journal/home.cfm?viewtype=archive&volumeid=23>.

11. See, e.g., Rule 4.01 of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct; Section 301 of the American Institute of Certified Public Accountants' Code of Professional Conduct; and Rule 1.6 of the American Bar Association Code of Professional Conduct.

12. "The duty of confidentiality can be satisfied by requiring that lawyers explain to all of their clients (in writing) the different confidentiality duties that apply to the client's communications with nonlawyer MDPs." UNDERSTANDING THE DEBATE OVER MULTIDISCIPLINARY PRACTICE. VIRGINIA BAR JOURNAL (2002).

13. "When agents are not retained or supervised by the attorney, the privilege is hard to maintain. Therefore, an attorney would be well advised to ensure that expert[s]... are employed directly by the attorney rather than by the client, and that such experts communicate their findings directly to counsel rather than to the client." EDNA SELDAN EPSTEIN, AMERICAN BAR ASSOCIATION, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE 157 (4th ed. 2001).

14. Privilege also applies where the communication between the lawyer and the other professional is deemed necessary to assist the attorney to reach a better understanding of the facts and provide an opinion to the client. *Id.*

15. "Lawyers who share office space *may be* precluded from representing clients with adverse interests." (italics added) ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT §91:601 (4-29-1998).

16. "The complicated relationships that MDPs pose make an automated conflicts check system a good idea, even for smaller firms." Victoria Kremski, *Serving Clients in a Multidisciplinary Practice*, 80 MICHIGAN BAR JOURNAL 10, 32 (2001) at <http://www.michbar.org/journal/home.cfm?viewtype=archive&volumeid=23>.

17. "Lawyers in an office-sharing situation usually must use their own individual letterhead, business cards, and telephone numbers." ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT §91:601 (4-29-1998).

18. Without such explanation, the term "affiliate" could potentially be confusing. See Harold L. Lasker, *Collaboration Between Lawyers and Others: Coping with the ABA Model Rules After Resolution* 157 (WAKE FOREST L. REV. (2001)).

19. In a hypothetical case in which a Law Firm and Non-Law Firm enter into a mutual referral agreement which "each firm will refer clients to the other as appropriate, but each firm will be free to refer clients to other firms as well."

other firms if indicated by the best interests of the client," L. Harold Levinson decided that since referral agreement is non-exclusive, [it] is therefore not itself improper." Harold L. Levinson, *Coll Between Lawyers and Others: Coping with the ABA Model Rules After Resolution 10F*, 36 WAK FOREST L. REV. 133 (2001).

20. A few informal ethics opinions address the operation of law-related businesses from a law o the sharing of office space. See ABA Informal Opinion 1482; ABA §91:601.

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