

THE FLORIDA BAR RESOLUTION REGARDING  
MULTIDISCIPLINARY PRACTICE AND ANCILLARY BUSINESS

WHEREAS, The Florida Bar has exhaustively studied and debated the merits of amending the Rules Regulating The Florida Bar (the "Rules") and the Model Rules of Professional Conduct to:

1. permit the sharing of fees for legal services with nonlawyers, ("Multidisciplinary Practice"); and
2. clarify the ethical duties of lawyers engaged in business other than the practice of law ("Ancillary Business"); and

WHEREAS, any change to the Rules must be based on the public interest; and

WHEREAS, The Florida Bar recognizes the accelerating rate of socioeconomic change affecting the practice of law;

NOW THEREFORE, be it resolved that:

1. It is in the public interest to preserve the core values of the legal profession and that among these are:
  - a. the lawyer's duty of undivided loyalty to the client;
  - b. the lawyer's duty to competently exercise independent legal judgment for the benefit of the client;
  - c. the lawyer's duty to hold client confidences inviolate; and
  - d. the lawyer's duty of avoiding conflicts of interest with the client.
2. Multidisciplinary Practice is inherently inconsistent with the core values of the legal profession.
3. The Rules were adopted by the Supreme Court of the State of Florida to protect the public interest by preserving the core values of the legal profession and The Florida Bar therefore opposes any amendment to the Rules that would permit the sharing of fees for legal services with nonlawyers or permit nonlawyers to own any interest in a law firm.
4. The core values of the legal profession are essential to the proper function of the American Judicial System.
5. The Florida Bar reaffirms its commitment to vigorously enforce the Rules.
6. The Florida Bar shall provide guidance to those lawyers who wish to engage in Ancillary Business in conformance with the Rules.
7. The Florida Bar shall establish a special commission to study the evolution of the practice of law in the new millennium in the face of accelerating socioeconomic change.
8. The Florida Bar shall oppose any attempt by the American Bar Association to change any of the Model Rules of Professional Conduct which would compromise the core values of the legal profession by permitting the sharing of fees for legal services with nonlawyers or permitting nonlawyers to own any interest in a law firm.

COMMENT TO THE FLORIDA BAR'S RESOLUTION  
REGARDING MULTIDISCIPLINARY PRACTICE AND ANCILLARY BUSINESS

The Florida Bar has endeavored to achieve clarity, simplicity and brevity in its Resolution. This effort has been difficult and time consuming but the current debate on these issues has generated an overwhelming volume of information, argument and opinion. It should be noted that The Florida Bar has been commended for providing a wide range of materials on this debate through its web site, <http://www.flbar.org/newflabar/organization/committees/scanc.html>. Thorough evaluation of this issue has been a prodigious effort. The Florida Bar believes that if it is to communicate effectively, it must distill its message to the very essence of the issues.

The Board of Governors appointed a Special Committee (the "Special Committee") in July of 1997 to study Multidisciplinary Practice and Ancillary Business. Multidisciplinary Practices were understood to be organizations owned by lawyers and non lawyers which provide legal services and non-legal services and share the fees generated from the practice of law. Ancillary businesses were understood to mean separate businesses which do not render legal services but offer goods and services to customers, in which a lawyer has an economic interest.

In August of 1998, the American Bar Association (the "ABA") appointed a Special Commission (the "ABA Commission") to study Multidisciplinary Practices.

After extensive study and taking 60 hours of testimony from 56 national and international witnesses, the ABA Commission issued a Final Report to the ABA House of Delegates in June of 1999. That report recommended that the Model Rules of Professional Conduct be modified to eliminate the prohibition on fee sharing between lawyers and nonlawyers, thereby formally approving for the first time the ethical existence of Multidisciplinary Practices in the United States.

The mission of the Special Committee was expanded to include the evaluation of the ABA Commission's recommendation and an analysis of the MDP issue in Florida. Based on the recommendation of the Special Committee and the resolution of the Board of Governors of The Florida Bar, the Florida delegation to the ABA formally opposed the Final Report of the ABA Commission and presented a Resolution to reject the Commission's proposal.

An amended version of The Florida Bar's Resolution was passed by the ABA in August of 1999 as follows:

"Resolved, that the American Bar Association make no change, addition or amendment to the Model Rules of Professional Conduct to permit a lawyer to offer legal services through a Multidisciplinary Practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."

The Special Committee studied the ABA Report, the record support for its report, its investigatory materials to the extent publicly available, testimony before the ABA Commission and essays and analyses from around the country.

The Special Committee, believing that an answer is frequently best illuminated if strong advocates of differing sides present the best arguments for their respective positions, directed the preparation of Pro and Con Reports presenting the most poignant arguments on each side of the issue. Despite the wide disparity in the ultimate conclusions between the Pro and Con Reports, even the most ardent advocates on each side agreed that any decision for change must be based on the public good.

The members of the Special Committee also agreed on the following principles:

1. The origin of fee splitting prohibitions in Florida are founded on certain core principles which are fundamental to the legal profession's proper function.
2. These principles include the protection of a lawyer's duty of loyalty to a client, the lawyer's duty of independence in making decisions which are in the best interest of the client and no other, including the lawyer; the lawyer's duty to hold client confidences inviolate; the lawyer's duty to act free of impermissible conflicts and the lawyer's duty of competence.

Rule 4-5.4 of the Rules Regulating The Florida Bar and ABA Model Rule 5.4 have long prohibited the sharing of fees generated by the rendition of legal services with non lawyers because of the lawyer's duty of independence and the lawyer's duty to exercise loyalty to the client over and above any duty to the lawyer or to the organization employing the lawyer.

There is no prohibition against a lawyer participating in an Ancillary Business so long as the Rules Regulating The Florida Bar are honored, including but not limited to the Rules prohibiting the sharing of fees generated from the practice of law and the Rules prohibiting the unauthorized practice of law by nonlawyers. The Special Committee recommended to the Board of Governors the adoption of an Ancillary Business Rule designed to clarify the parameters of the ethical obligations of lawyers engaged in Ancillary Business and to protect the public interest by giving parameters to the formal relationship.

The members of the Special Committee, as well as The Florida Bar Board of Governors, agree that the world economy is changing, becoming more consolidated and more globalized. They also agree that it is The Florida Bar's duty to investigate and prosecute any lawyer who is engaged in multidisciplinary practice which endangers the public and violates the Rules Regulating The Florida Bar. These rules include but are not limited to the current rules prohibiting fee splitting, rules prohibiting the unauthorized practice of law, rules of client confidentiality, rules regarding conflicts of interest, rules on advertising and others.