

5-2002

# Practicing Law Across Geographic and Professional Borders: What Does the Future Hold?

Gary A. Munneke

*Pace Law School*, [gmunneke@law.pace.edu](mailto:gmunneke@law.pace.edu)

Follow this and additional works at: <http://digitalcommons.pace.edu/lawfaculty>



Part of the [Legal Ethics and Professional Responsibility Commons](#)

---

## Recommended Citation

Ann L. MacNaughton & Gary A. Munneke, Practicing Law Across Geographic and Professional Borders, 65 Tex. B.J. 436 (2002), <http://digitalcommons.pace.edu/lawfaculty/631/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact [cpittson@law.pace.edu](mailto:cpittson@law.pace.edu).



# Practicing Law Across Geographic and Professional Borders

*What Does the Future Hold?*

By Ann L. MacNaughton and Gary A. Munneke

**A** new global business reality is transforming the practice of law.<sup>1</sup> Nowhere is this transformation more apparent than in the areas of multijurisdictional and multidisciplinary practice.<sup>2</sup> These two trends, toward practice across jurisdictional boundaries on the one hand and across professional boundaries on the other, are engaging the attention of lawyers everywhere. Recent events involving Enron Corporation and the Arthur Andersen accounting firm have raised new questions about the efficacy of these emerging trends and remind lawyers that these issues retain their currency.

## An Evolving Marketplace

Four aspects of the new economy are changing how business enterprises perceive and manage legal and business risks: (1) a context of constant rapid change; (2) the trend toward collaborative law and cooperative problem-solving; (3) complex challenges that require interdis-

ciplinary solutions; and (4) transformational implications of the ongoing revolution in electronic communication, information management, and problem-solving.

**1. Constant Rapid Change** — A context of constant rapid change combined with widely differing values around the world is producing an evolution in business mores. This shift in turn contributes to conflicting standards governing business conduct worldwide.<sup>3</sup> What

*A more fully developed version of this article appears at Vol. 47, No. 2, Loyola Law Review, p. 665.*

this means to lawyers is that they face an increased risk of inadvertently violating jurisdictional laws, professional standards, administrative rules, or client expectations.<sup>4</sup> Business transactions increasingly do not fall neatly within the geographic boundaries of a single jurisdiction; business in today's world typically crosses state lines, and increasingly

international boundaries. The advent of e-commerce promises, or threatens, depending on one's point of view, to produce a marketplace without geographic boundaries.<sup>5</sup>

**2. Emergence of Collaborative Trends** — Globalization of business and a parallel consolidation of marketplaces create a business environment in which today's competitor may be tomorrow's joint venturer, partner, or merged

entity. When such events combine with revolutionary changes in technology, old models for solving problems, like yesterday's computers, can become obsolete. Business venturers in the interconnected global marketplace of the 21st century will increasingly emphasize dispute avoidance strategies, cooperative business solutions, sophisticated models for cost-shared

dispute resolution, and systems for creating competitive advantage through collaborative conflict management.<sup>6</sup>

The Chinese symbol for "crisis" may be useful in understanding the transformational changes occurring in today's networked business world, and how they impact the role of lawyers. That symbol is made up of two pictographs that, taken individually, mean "danger" and "opportunity." Both danger and opportunity are present to lawyers serving business enterprises that are redesigning themselves with new strategies, structures, and systems to compete by "working beyond their boundaries."<sup>7</sup>

Our present network of merged entities, joint ventures, strategic alliances, and global trading sectors brings together a community of people with sharply differing values, experiences, and expectations. Managed well, this diversity can generate new solutions and tremendous productivity.<sup>8</sup> Managed poorly, the conflict creates fertile soil for misunderstandings; disagreements over how best to accomplish even agreed objectives; polarized disputes that consume massive quantities of time and money; and ultimately failed ventures and lost opportunities.<sup>9</sup>

**3. Complex Challenges Require Interdisciplinary Solutions** — Commercial and regulatory complexities often require interdisciplinary solutions from teams of professionals with an appropriate blend of business, legal, and relevant technical training and experience.<sup>10</sup> In environmental cases, for example, interdisciplinary solutions have been developed for tort, contract, regulatory enforcement, and community disputes.<sup>11</sup> Trial counsel competencies are essential but not sufficient in many environmental disputes. Engineering and other technical expertise, mediation and facilitation skills, communication and information management capabilities, and accounting expertise also may be required. Many other practice areas are experiencing the same kind of interdisciplinary evolution.

*New Competitors Are Meeting the Need for Interdisciplinary Solutions* —

These competitors are offering integrated professional services to address problems that may have legal aspects through firms that are not necessarily owned by lawyers.<sup>12</sup> How can Texas lawyers compete effectively to serve their clients in this environment, if hobbled by out-dated rules that do not constrain their competitors?

Considering this question in 1999, the Business Law Section of the State Bar of Texas commented:

The advice we give is almost always a mixture of practical or technical business advice, common sense,

ships, thus attracting and retaining the best members of other professions to work with us, or permitting us to join with them, and facilitating ever closer coordination of our joint efforts in advising our clients on the wide range of considerations, both legal and non-legal, involved in avoiding or resolving legal, business, and personal problems or engaging in particular transactions.

At the same time we recognize the challenge of distinguishing precisely between what is legal advice

## WHAT IS "MDP"?

"MDP" clearly means different things to different people. For example, "multi-disciplinary practice," "multidisciplinary profession," and "multidisciplinary problem-solving." For more information about what is going on in other countries, concerns about protectionism and antitrust issues, MJP practice, core values, dangers and opportunities, and what practitioners fear in connection with these issues, get the book published last year by ABA Law Practice Management Section, Gary A. Munneke and Ann L. MacNaughton, *Multidisciplinary Practice: Staying Competitive and Adapting to Change*. It can be ordered online at [www.abanet.org/lpm/catalog/511-0450.html](http://www.abanet.org/lpm/catalog/511-0450.html), or at a discount through the State Bar of Texas Law Office Management Program by calling (800)204-2222, Ext. 1300.

and experience, together with advice on the legality or legal consequences of the possible solution to the problem or the contemplated transaction or its structure. In functioning as such givers of advice many of us, or our firms, already have significant, established working relationships with other professionals, including not just accountants but engineers, property appraisers, financial consultants, and business and management consultants, to name just a few. At present these are informal relationships that do not involve sharing of legal fees or joint ownership of professional entities, a part of whose business is the practice of law; but all of us see the potential benefit to our clients and our own practices of being able to formalize these relation-

and what is practical or common sense business, personal, or other professional advice; but we already function with that lack of precision as we join informally with other professionals in advising our current clients. We think that our profession is able to arrive at such distinctions and apply them effectively and practically in the MDP setting while preserving the core values discussed above, and that the potential benefit to the clients justifies the effort.<sup>13</sup>

**4. Electronic Technology Revolution** — Finally, the technology revolution continues to expand dramatically the interpersonal one-on-one, one-to-many, and many-to-one connectedness around the world. We can move our bodies, our voices, our images, and our information around the globe at will. E-mail has

replaced telephone and fax as the preferred method of communication in many instances.<sup>14</sup> Now, videoconferencing is becoming as common today as e-mail was then. Attention is shifting to development of advanced web-based knowledge management and information sharing applications that enable more effective global compliance with regulatory requirements, transmission of advice and work product, paperless discovery, online dispute resolution, web-based marketing and sales, and myriad other purposes. Lawyers and others in firms of every size — the biggest of the big and the smallest of the small — are finding new ways every day to connect to clients, the public, and each other through the Internet.

### Current Events and Future Trends

Current events and future trends do not provide a basis for predicting the future, but they do provide a basis for

helping to shape it.<sup>15</sup> A knowledge of current trends can help Texas lawyers identify and evaluate possible future developments, which in turn makes it possible to develop strategic plans that start with the *preferred* end in mind.<sup>16</sup>

The question for professional service providers, including law firms, is not whether they will provide multidisciplinary services in this world, but whether they will be able to deliver such services efficiently, economically, and competently, while at the same time protecting ethical standards of confidentiality, loyalty to clients, and avoidance of interest conflicts.

The question of whether and how to deliver services in the context of this new global reality does not apply just to law firms in the business and commercial arena. Lawyers who practice in other substantive areas also will experience this transition from representing every aspect of a client's case to participating with a team of professionals to solve problems that may include legal aspects.<sup>17</sup>

Global transformation of business reality, coupled with the high transaction and opportunity costs of adversarial litigation and arbitration processes, has led to an increased focus on cooperative business solutions where costs may be lower, processes may be faster, and parties expect strengthened relationships, enhanced efficiencies, and other value from the dispute resolution process itself.<sup>18</sup>

The prevailing U.S. model has been to escalate a dispute to a higher authority (judge, jury, senior management) for a decision about who is right and who is wrong. When the objective of the parties is to maximize long-term value, however, rather than to minimize transaction costs, a conflict avoidance win-lose model may not be the best approach. Taking the opportunity to pause, sit back, and reconsider how to go forward in light of a perceived conflict offers opportunity for creativity and development of new solutions.

Winning a rights or power contest rarely creates new value, but can create high costs.<sup>19</sup> As a dispute escalates, com-

munication between disputants begins to shut down, emotions become more intense, and positions become less flexible. As time and attention is diverted from original goals to the dispute instead, individual egos become more attached to winning (or not losing). Costs in terms of dollars, lost opportunities, and damage to important relationships all spiral upward.

Even where litigation and assisted settlement costs may be roughly equivalent, joint problem-solving results may be of much greater value than a trial verdict. If saving costs is good, adding bottom-line value is better. At their most effective, assisted negotiation strategies produce results that create new value, such as new or improved products, brand, or customer relationships.

### Trend Toward Multijurisdictional Practice

Global transformation of business reality includes substantial and significant delivery of legal and other professional services across state and national borders. Business organizations often operate offices and conduct business in numerous states and foreign countries. Individuals may have employment, residences, children, and assets in multiple jurisdictions. At the same time, different jurisdictions impose individual licensing processes and rules against the unauthorized practice of law (UPL).<sup>20</sup> On the global stage, restrictions on the right to practice may limit the effectiveness of American lawyers or the ability of American companies to compete both domestically<sup>21</sup> and also abroad.<sup>22</sup>

Recent efforts at enforcement by the Texas UPL Committee illustrate some of the challenges to prosecuting new competitors in the marketplace, whether they are multidisciplinary firms owned by accountants or self-help publishers offering "wills in a box" for sale at grocery store check-out counters. Although the Texas results were prompted by aggressive enforcement efforts of the Texas UPL Committee, there is no reason to think that similar efforts in other juris-

## TRADEMARK & COPYRIGHT SEARCHES

**TRADEMARK** - Supply word and/or design plus goods or services.

### SEARCH FEES:

COMBINED SEARCH - \$315  
(U.S., State, Expanded Common Law and Internet)  
TRADEMARK OFFICE - \$135  
STATE TRADEMARK - \$140  
EXPANDED COMMON LAW - \$165  
DESIGNS - \$210 per International class  
COPYRIGHT - \$180  
PATENT SEARCH - \$450 (minimum)

### INTERNATIONAL SEARCHING

#### DOCUMENT PREPARATION

(for attorneys only - applications,  
Section 8 & 15, Assignments, renewals.)

**RESEARCH**-(SEC - 10K's, ICC, FCC,  
COURT RECORDS, CONGRESS.)

**APPROVED** - Our services meet  
standards set for us by a D.C. Court  
of Appeals Committee.

*Over 100 years total staff experience—not  
connected with the Federal Government.*

**GOVERNMENT LIAISON SERVICES, INC.**

200 North Glebe Rd., Suite 321

Arlington, VA 22203

Phone: (703) 524-8200

FAX: (703) 525-8451

*Major credit cards accepted.*

**TOLL FREE: 1-800-642-6564**

**WWW.TRADEMARKINFO.COM**

Since 1957

dictions would not meet a similar fate.<sup>23</sup>

Texas apparently has abandoned recent efforts to prosecute two accounting firms facing UPL complaints. Its UPL Committee filed a complaint against Arthur Andersen in 1997, alleging that the accounting firm engaged in the unauthorized practice of law by preparing documents, assisting in corporate mergers and acquisitions activity, engaging in estate planning, giving compensation advice, and litigating in Tax Court. The matter was dismissed without comment 11 months later. Around the same time, inquiry commenced into the possibility of similar unauthorized practice by Deloitte & Touche, but no formal proceeding was ever commenced. Cases in other jurisdictions have fared no better.<sup>24</sup>

When Parsons Communications and Nolo Press, publishers of *Quicken Family Lawyer* and various other self-help publications, respectively, were notified by the Texas UPL Committee that questions had been raised about whether their publications might violate Texas

authorized practice of law.<sup>28</sup> The logic underlying the legislative action is perhaps revealed in this quote from Nolo's web site:

What justification is there to allow a herd of Texas lawyers — many of whom have an obvious economic interest to suppress self-help law publications — to investigate whether to ban Nolo's books and software? Texas lawyers themselves claim they have the power to investigate Nolo "to protect the Texas public."<sup>29</sup>

As far as we can tell, the answers are that the Texas UPL Committee is controlled by lawyers, its investigation of Nolo was initiated by lawyers and the public has not been consulted through hearings or otherwise.<sup>30</sup> Is Nolo Press correct when it suggests that the lawyer-controlled Texas UPL Committee is more interested in protecting the monopoly presently held by lawyers than it is the interests of the public? The action of the Texas Legislature to overturn the *Nolo* decision sug-

ate in Texas.<sup>31</sup> Because Internet websites can be located anywhere, and because creation of the sites themselves often involves collaboration of both legal and technology professionals, this emerging type of service delivery system is inherently multi-professional and multijurisdictional.

If Texas lawyers are unable or unwilling to take action to make changes that can help them become and remain competitive in the evolving marketplace for professional services, changes will occur without our input or involvement. We may find ourselves marginalized in the marketplace, or worse yet displaced completely from the workplace.<sup>32</sup>

### Trend Toward Multidisciplinary Practice

Debates are raging in state and local bar associations over whether to permit lawyers in the United States to share fees with other professionals through multidisciplinary professional (MDP) firms such as exist in Europe, Canada, and elsewhere.<sup>33</sup> While MDP clearly means different things to different people,<sup>34</sup> much of the debate has focused on whether accounting firms, financial institutions, real estate companies, department stores, and publishing houses should be allowed to own law firms and/or employ lawyers to offer legal and/or consulting services.

Perhaps the most important question is whether client and public interests are best served by ethics rules that preclude innovation in joint service delivery enterprises among lawyers and other professionals.<sup>35</sup> Most business problems that benefit from the skills and experience of lawyers also require application of other professional skills and experience. Depending on the nature of any particular situation, strategic preparation for negotiation or mediation, for example, may benefit from multidisciplinary teaming among attorneys and mediators, engineers and accountants, information management and systems experts, communications specialists and psychologists,

## WHAT IS GOING ON IN OTHER STATES?

Many states are still studying the questions of whether and to what extent should the rules that prevent attorneys from sharing fees or business entity ownership with non-lawyers be changed. Some states have decided against any change, at least for now. Many states are still studying the issues. States that are considering changes their rules to permit some form of fee-sharing between lawyers and other services providers include: Colorado, District of Columbia, Georgia, Maine, Michigan, Minnesota, South Carolina, and Utah. A state-by-state summary is at: [http://www.abanet.org/cpr/mdp\\_state\\_summ.html](http://www.abanet.org/cpr/mdp_state_summ.html). See generally [www.mdpcentral.org](http://www.mdpcentral.org).

UPL laws, Parsons responded formally and was found to have violated those laws.<sup>25</sup> Nolo Press responded through its website.<sup>26</sup> The Texas Legislature acted within months to nullify a Texas Supreme Court decision by enacting new law characterizing the product as "not the practice of law."<sup>27</sup> The Texas statute now expressly exempts publications and products such as those published by Quicken and Nolo Press from the unau-

gests that the right to publish legal information extends to the Internet and that access to such information is sound public policy.

The debate as to whether the Texas UPL Committee looks after the interests of the public or the interests of lawyers undoubtedly will continue, but in one sense it is irrelevant to the question of online information, because Parsons and other service providers are free to oper-

## UNAUTHORIZED PRACTICE OF LAW

AN IN-DEPTH LOOK AT THE ISSUE

and others working together to identify and evaluate dispute dynamics, barriers to settlement, litigation risks, and effective strategies for achieving agreement. In fact, regardless of the substantive practice area, modern lawyers often provide services that involve more than one professional advisor.

A number of commentators have argued that change is inevitable or already underway.<sup>36</sup> Numerous bar associations have discussed how change can best be structured and implemented.<sup>37</sup> The debate continues unabated between those who view MDP as an attack on the core values of the legal profession itself and those who believe that MDP represents a fundamental changes in the way lawyers will serve their clients in the new millennium.

Although in July 2000, the American Bar Association voted to oppose any effort to permit fee sharing and lay control over legal businesses,<sup>38</sup> the debate

over MDP did not subside.<sup>39</sup> In 2001, New York became the first state to adopt ethical rules designed to deal with the reality of multidisciplinary practice.<sup>40</sup> The president of the State Bar of Texas, Broadus Spivey, opined in a February 2002 *Texas Bar Journal* column that Enron surely was the death knell of MDP.<sup>41</sup>

Much of the opposition to the MDP concept emerged from state bar associations concerned about the potential threat to professional values posed by so-called one-stop shopping professional service firms, and some states took steps to reinforce their prohibitions against lawyers practicing with nonlawyers.<sup>42</sup> On the other hand, many state and local bar association task forces and committees produced reports much more favorable to MDP.<sup>43</sup> The result has been a slow balkanization of the legal profession. Such divergent approaches to MDP have implications for MJP, because the less similar the rules and standards are from

one jurisdiction to the next, the less likely different jurisdictions will be willing to accommodate cross-border practice.

### What Exactly Is "the Practice of Law"?

Implicit in discussions about multidisciplinary and multijurisdictional practice is a more basic question: What is the practice of law? To focus on the licensing of lawyers, who are authorized to practice law, and the corollary unauthorized practice of law, begs a fundamental question. If those authorized to engage in the practice of law provide legal services, then what services are legal and what services are not? Any services provided by a lawyer? Any services provided by a lawyer, where the lawyer was engaged because legal training and experience added perceived value? Something more narrow? Advice regarding legal rights, risks, and obligations? Litigation risk analysis? Trial

## LAWYER'S PROFESSIONAL LIABILITY INSURANCE



[www.gilsbar.com](http://www.gilsbar.com)

Gilsbar, Inc.  
P.O. Box 998  
Covington, LA 70434  
1-800-445-7227 ext. 885

You should get to know Gilsbar.  
After all, we're practically Neighbors  
...and we've been serving Attorneys since 1959.

Now, we are CNA's Regional Administrator for the  
Lawyer's Professional Liability Insurance Program.

Prompt. Professional. Price Sensitive.

For a quick and free premium indication, please call  
1-800-445-7227, ext. 885 or visit [www.gilsbar.com](http://www.gilsbar.com)

**GILSBAR**

Insurance Services

See the benefits — Feel the values.

CR-02-008

advocacy? Document drafting? Mediation?

Almost any list of tasks that are typically performed by lawyers finds an analog in the tasks performed by non-lawyers. Beyond a professional monopoly to represent others in court, there is little consensus about what work, if any, should fall exclusively within the purview of lawyers.<sup>44</sup> This lack of clarity concerning what constitutes authorized practice makes it virtually impossible to define what constitutes unauthorized practice. Absence of a definition of the practice of law in turn impacts enforceability and colors the MDP and MJP debates.

### Conclusion

Our networked global community places high a value on dispute avoidance strategies, and dispute resolution methodologies that preserve or enhance important relationships. Commercial and regulatory complexities often require interdisciplinary solutions. It is no accident or mere coincidence that ADR, MJP, and MDP trends all are emerging in this context. These trends support the development of cooperative solutions through coordinated interdisciplinary teamwork among team members and stakeholders who may be geographically remote but work together closely through electronic communication and information-sharing tools and systems.

The legal profession is re-inventing itself in the face of increasing demands for integrated professional services and cooperative business solutions such as early case analysis, assisted negotiation strategies, and enterprise-wide solutions. International competition in global markets for client service is creating pressure for change. Delivery of legal services in the United States is constrained, at least as to U.S. lawyers, by economic considerations that have no counterpart in many other nations. Multijurisdictional interstate, international, and e-commerce transactions add to the complexity of the situation.

Important questions such as how to further the public interest without sacrificing or compromising lawyer inde-

pendence, and how to protect the legal profession's tradition of loyalty to clients, are being addressed and will be answered as this process of change unfolds. As the State Bar of Texas Business Law Section Advisory Report pointed out, this will permit "attracting and retaining the best members of other professions to work with us, or permitting us to join with them, and facilitating ever closer coordination of our joint efforts in advising our clients on the wide range of considerations, both legal and non-legal, involved in avoiding or resolving legal, business, and personal problems or engaging in particular transactions."<sup>45</sup>

In search of improved client service models, multidisciplinary solutions providers are creating new strategic alliances, and bright lines among professional services firms are beginning to blur. This is not simply an issue over whether accounting firms should own law firms, though that issue did bring substantial attention to the issue. Perhaps in the wake of the Enron and Arthur Andersen situations, the fundamental conflict between providing services that rest on a core value of public disclosure (such as audit services) and services that rest on a core value of client loyalty and confidentiality (such as legal and business consulting services) will be better understood. While relevant to the question of *how* to create effective MDPs, however, none of that is relevant to the question of *whether* to create them.

In the final analysis, lawyers must remember that they bring something of value to transactions. The knowledge and skills of those trained in the law will always have a place in resolution of complex problems, because human problems by their nature have legal implications. Whether the legal profession finds ways to ensure that lawyers can participate in and contribute to evolving problem-solving models remains to be seen. Texas lawyers collectively can stick their heads in the sand, or make choices about what the future looks like. The opportunity is ours, and the time is at hand.

### Notes

1. See generally, Ann L. MacNaughton, *Multidisciplinary Trends in an Evolving Marketplace: Practicing With Other Professions*, in Gary A. Munneke and Ann L. MacNaughton, *Multidisciplinary Practice: Staying Competitive and Adapting to Change* [hereinafter Munneke and MacNaughton], American Bar Association (2001); Gary A. Munneke, *Seize the Future: Forecasting and Influencing the Future of the Legal Profession*, American Bar Association (2000) (book summarizes the 1999 ABA conference of the same name, which attempted to identify the forces that are bringing significant change to the legal profession ) [hereinafter *Seize the Future*].
2. For a discussion of *multijurisdictional* practice issues, see 65 Tex. Bar J. 240 (March 2002); also see, See Anthony E. Davis, *Multijurisdictional Practice by Transactional Lawyers; Why the Sky Really Is Falling*, in Munneke And MacNaughton, at 33, 38-40 (in a limited fashion, the North American Free Trade Agreement already gives the right of lawyers from one signatory state to open offices and to practice their own national law within the other members states; the multinational equivalent is the General Agreement on Tariffs and Trade).
3. See, e.g., work product of the International Standards Organization, at <http://www.iso.ch/welcome.html>.
4. See, e.g., *Birbrower, Montalbano, Condon & Franks, P.C., et al v. Superior Court of Santa Clara County*, 17 Cal 4th 119, 949 P. 2d 1 (1998 ), *cert. denied*, 525 U.S. 920 (1998).
5. See generally, ABA E-Commerce & ADR Task Force, [http://www.law.washington.edu/ABA\\_eADR\\_home.html](http://www.law.washington.edu/ABA_eADR_home.html); Reinventing Work: The Professional Service Firm 50, Alfred A. Knopf (1999); Alliance Advantage, Harvard Business Press (1999); Tom Peters, *Circle of Innovation: You Can't Shrink Yourself to Greatness*, Alfred A. Knopf 1997; Gary Hamel and C.K. Prahalad, *Competing for the Future*, Harvard Business School Publishing (1994).
6. Such approaches to dispute resolution will in many cases replace adversarial processes such as civil litigation as a problem-solving tool. This does not mean that litigation as a dispute resolution system will disappear, only that businesses will increasingly turn to other methods of settling problems, and that litigation increasingly will be perceived merely as one of a number of options available to parties. With a variety of choices to make, the adversarial process will not drive business behavior as it sometimes does today.
7. See, e.g., Shell Oil Company, *Networked Community Fieldbook* (Version 0.2 April 1998) at vii-viii.
8. See Ann L. MacNaughton, *Multicultural Conflict Management and Dispute Avoidance in ABA Guide to International Business Negotiations* (American Bar Association 2000); Ann L. MacNaughton and David Victor, *Conflict Management and Cross-Cultural Awareness in*

- The International Business of Exploration (Am. Assn. of Petroleum Geologists 2000).
9. Indeed, in the business context, parties are likely to view problem resolution in terms of transaction costs. A system of dispute resolution may be technically efficient as a problem-solving tool, but if it is inefficient economically, it may not be a viable approach. Lawyers tend to view their services as necessary to business transactions, whereas their clients may view legal services as techniques that either increase or decrease overall transaction costs. Thus, if the lawyer's services are perceived to make a transaction more expensive, business people will seek out approaches that accomplish their objectives at a lower cost in the final analysis.
  10. See Munneke and MacNaughton 5, *supra*. note 2, at 4 ("In reality, lawyers practice with a variety of different professionals every day. These interdisciplinary relationships are different depending on the substantive area of practice, but the common theme is that legal problems in our complex modern society often require more than one service provider.") *Id.*
  11. See generally, Ann L. MacNaughton and Jay G. Martin, Environmental Dispute Resolution: An Anthology of Practical Solutions (ABA pub. pending July 2002); Ira Feldman, *The Inevitability of Multidisciplinary Practice*, *supra* note 49. Also see American Bar Association Section of Environment, Energy & Resources Statement on MDP, <http://www.abanet.org/enviro/hottopics/practice.html>.
  12. See, e.g., Susan Hackett, A Primer on Multidisciplinary Practice (Am. Corporate Counsel Assn. 2000) at 9, on-line at the American Corporate Counsel Website <http://www.acca.com/advocacy/mdp/hackett.html> (hereinafter Hackett); Randy Myers, Lawyers and CPAs: How the Landscape is Changing (American Institute of Certified Public Accountants 2000).
  13. Texas Business Law Section Advisory Report at 5 (citing Gary A. Munneke, *Lawyers, Accountants, and the Battle to Own Professional Services*, 20 Pace Law Review 73). According to the State Bar of Texas Department of Research and Analysis there were 3,898 members of the Business Law Section as of December 1999.
  14. As in-house counsel to a major multinational energy company in the middle 1980's, co-author MacNaughton required all outside counsel to shift routine communications from typed or faxed correspondence to e-mail. E-mail communication, a relatively new tool then, has become a common business communications tool by now.
  15. See generally *Seize the Future*, *supra* note 2; [www.futurelaw.com](http://www.futurelaw.com). ("Because we live in an incredibly complex system, we can neither know nor control all the variables, and we cannot eliminate the element of uncertainty from our decisions. We can, however, make rational decisions about what we do based on what we know and observe. The uncertainty principle tells us that there is not one predestined future but many alternative futures.... If we recognize more plausible courses, we can act in a way that maximizes our interests in the future. And we may even be able to influence which alternative future comes to pass.") *Seize the Future* at 4-5.
  16. See Stephen R. Covey, *The 7 Habits of Highly Effective People* at 95-144 (1989).
  17. The primary focus of this article is on the business and commercial aspects of multidisciplinary and multijurisdictional practice. In this environment such issues are endemic to the delivery of professional service. This does not mean that small firm practitioners in traditionally local practice areas will be immune from this phenomenon. See, e.g., Ann L. MacNaughton, *MDP: Dangers And Opportunities for Solo Practitioners*, Flying Solo (American Bar Association, 4th ed. 2001); Norman K. Clark, *Multidisciplinary Practice: What It Will Mean to Smaller Firms*, in Munneke and MacNaughton, *supra*. note 1, at 93. The American Bar Association Model Rules of Professional Conduct [hereinafter Model Rules], Rule 2.1 (1983) states that in exercising professional judgment, "a lawyer may refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation." Thus, the lawyer's responsibility goes beyond the legal issues; yet if the lawyer lacks knowledge of non-legal considerations in a case, competent representation would seem to require that the lawyer consult with other professionals who possessed such knowledge. See Model Rules, Rule 1.1 and Comments.
  18. See generally Edward A. Dauer, *Manual of Dispute Resolution: ADR Law and Practice* (Shepard's/McGraw-Hill, 1995) at notes 56-91 and accompanying text; Ury, Brett & Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass 1988) [hereinafter Ury, Brett & Goldberg] at 170-71. In pursuit of dispute resolution strategies that preserve important relationships and other corporate resources, CPR Institute for Dispute Resolutions was established in 1979 as a coalition of general counsels and law firms who agree to use "ADR" processes prior to instigating civil litigation with each other; see [www.cpr.org](http://www.cpr.org) for CPR Pledge and related information.
  19. See Ann L. MacNaughton, *MDP and ADR: Multidisciplinary Trends in an Evolving Marketplace*, State Bar of Texas Corporate Counsel Section Annual Meeting CLE Program (San Antonio: June 23, 2000) at note 5 and accompanying text. See also Ury, Brett & Goldberg, *supra*, note 18, at 3-19 (dynamic differences between rights and power contests). Like "suicide," "fratricide," and "matricide," our English word "decide" derives from a Latin root word *caedere* meaning "to cut or kill," and the Latin *de plus caedere* yielding "*decidere*," translated as "to cut off," and *decedo*, "to die." See Webster's Ninth New Collegiate Dictionary (1988) at 240, 272, 330. When we make a "decision," we select one alternative and "kill off" or "cut off" the other(s). By contrast, the Latin root "*resolvere*" means to reduce or loosen and contains the word "solve." When we "resolve" a dispute, we analyze its component parts, reduce them to their simplest form, and find a solution that satisfies (and ideally optimizes value to) each party.
  20. See generally, Susan Hackett and Ann L. MacNaughton, 65 Tex.B.J., p. 240 (March 2002). Also see Bruce A. Green, *Assisting Clients with Multi-State and Interstate Legal Problems: The Need to Bring the Professional Regulation of Lawyers into the 21st Century*, Symposium on the Multijurisdictional Practice of Law, [www.abanet.org/cpr/mjp\\_bruce\\_green\\_report.html#Application](http://www.abanet.org/cpr/mjp_bruce_green_report.html#Application), (even a cursory review of the 50-state compilation makes plain that these laws vary considerably from state to state: some are criminal and some are civil; some are statutory and some are court rules; some simply proscribe "the practice of law" by those who are not licensed in the state, while others make some attempt, at least in general terms, to define "the practice of law.")
  21. See Anthony E. Davis, *Multijurisdictional Practice by Transactional Lawyers; Why the Sky Really Is Falling*, *supra* at note 2.
  22. See Chris Arnheim, *Multidisciplinary Firms: Why Global Firms Need to Provide Much More than Legal Advice*, Munneke And MacNaughton, *supra* note 1 at 89.
  23. See generally Deborah Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 Stanford L.Rev. 1 (1981). Professor Rhode makes a powerful case against the exercise of lawyers' professional monopoly to enforce state prohibitions against unauthorized practice. Although the article is now 20 years old, it retains its vitality in the current discussions about multijurisdictional practice. ("Legal historians may ultimately treat the bar's unauthorized practice campaign as both a product and a casualty of the Depression. The same forces that gave rise to the bar's economic concerns generated a set of governmental structures and societal adjustments that made the profession's aspirations to monopoly increasingly anachronistic.... Almost from conception, the unauthorized practice movement has been dominated by the wrong people asking the wrong questions. Enforcement of sweeping prohibitions has rested with those least capable of disinterested action.... Particularly at a time when lawyers are justifiably concerned about their public image, the bar itself has much to gain from abdicating its role as the self-appointed guardian of the professional monopoly. Given mounting popular skepticism about unauthorized practice enforcement, prudential as well as policy considerations argue for greater consumer choice.") *Id.* at 97-99.
  24. See generally Ward Bower, *The Case For MDPs: Should Multidisciplinary Practices Be Banned or Embraced?* Munneke and MacNaughton, *supra* note 3, at 81.
  25. Texas UPL Committee v. Parsons Communica-



- tions, [cite] (N.D. Tex., Dallas Div.) Technology, Inc. (finding that "Quicken Family Lawyer was engaged in the practice of law and enjoining its sale in Texas).
26. <http://www.nolo.com/texas/Vigilante.html>; also see In Re Nolo Press/Folk Law, 991 S.W.2d 768 (1999).
  27. House Bill 1507, 1999 Tex. ALS 799, Gen Laws 799, 1999 Tex. Ch. 799, approved by the Governor June 19, 1999).
  28. *Id.* (the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney).
  29. Comments of Mark Ticer, chair of the Dallas Unauthorized Practice of Law Committee, as reported in *The Wall Street Journal*, March 26, 1998.
  30. [www.nolo.com/texas/Vigilante.html](http://www.nolo.com/texas/Vigilante.html).
  31. As technology continues to advance, the sophistication of legal websites undoubtedly will increase. Using powerful search engines and analytical tools operating in an interactive environment, the information provider will be able to do more than tell the reader about wills; it will be able to create a custom will for the customer instantly. These websites are not some futuristic vision; in fact, a number of e-lawyering websites were operating in the spring of 2001. See, e.g., [www.legalquestion.com/ask-a-question.html](http://www.legalquestion.com/ask-a-question.html), <http://ask-a-lawyer.com>; [www.nolo.com/oiforms/index.html](http://www.nolo.com/oiforms/index.html); [www.willworks.com](http://www.willworks.com); <http://whatisthelaw.com>; [www.cybersettle.com/introduction.html](http://www.cybersettle.com/introduction.html); [www.lawyers.com](http://www.lawyers.com), [www.netattyy.com](http://www.netattyy.com), as reported in William Hornsby, *Improving the Delivery of Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm*, American Bar Association (2000).
  32. See Charles F. Robinson, *Stampede to Extinction*, from *Seize the Future*, *supra* note 3, at 133.
  33. A state-by-state summary is at [www.abanet.org/cpr/mdp\\_state\\_summ.html](http://www.abanet.org/cpr/mdp_state_summ.html). See generally [www.mdpcentral.org](http://www.mdpcentral.org).
  34. For example, "multi-disciplinary practice," "multi-disciplinary profession," and "multi-disciplinary problem-solving."
  35. ABA Model Rule 5.4 has been adopted virtually verbatim in almost every American jurisdiction. See [www.law.cornell.edu/ethics](http://www.law.cornell.edu/ethics) (digital library contains codes and rules setting standards for the professional conduct of lawyers and commentary on the law governing lawyers, organized on a state by state basis). Rule 5.4 prohibits lawyers from sharing fees with a nonlawyer, form a partnership with a nonlawyer if any of the activities involves the practice of law, permitting a nonlawyer manager or owner from directing the lawyer's independent professional judgment, or practice in a professional corporation or association authorized to practice law for profit if a nonlawyer owns an interest therein. See *supra* note 28, Model Rules, Rule 5.4.
  36. See, e.g., Charles L. Briebant, *Is It the End of the Legal World as We Know It?*, in Munneke and MacNaughton at 63; Mary C. Daly, "Legal Initiatives of Accounting Firms in Europe and the United States," in Munneke and MacNaughton, *supra* note 2, at 47; Ira Feldman, *The Inevitability of Multidisciplinary Practice*, Fall 1999 J. of Environmental Law & Practice 47; Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 Geo. J. Legal Ethics 217 (2000); Mary C. Daly, *The Dichotomy Between Standards and Rules: A New Way of Understanding the Differences in Perceptions of Lawyer Codes of Conduct by U.S. and Foreign Lawyers*, 32 Vand. J. Transnational Law 1117 (1999); Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 Minn.L.Rev. 1115 (2000); Gary A. Munneke *A Nightmare on Main Street: Freddie Joins an Accounting Firm*, 1999 Pace L.Rev. Symposium Issue 1 (2000); Laurel Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?* 72 Temple L.Rev. 869 (1999); Laurel Terry, *German MDPs: Lessons to Learn*, 84 Minn.L.Rev. 1547 (2000); Comment (Katherine L. Harrison, *Multidisciplinary Practices: Changing the Global View of the Legal Profession*, 21 U. Pa. J. Int'l Econ. Law 879 (2000); Ann L. MacNaughton, *Multidisciplinary Trends in an Evolving Marketplace*, in Munneke and MacNaughton, *supra* note 2, at 9; Gary A. Munneke, *Lawyers, Accountants, and the Battle to Own Professional Services*, Corporate Counsel Review, Special Edition (Feb. 2000) at 39.
  37. See *supra*, note 69, and accompanying text. Also see, e.g., April 28, 2000 Advisory Report on Multidisciplinary Practice From the Council and Committee Chairs, Business Law Section, State Bar of Texas (hereinafter Texas Business Law Section Advisory Report (copy on file with co-author MacNaughton) ("many of us, or our firms, already have significant, established working relationships with other professionals, including not just accountants but engineers, property appraisers, financial consultants, and business and management consultants ... these are informal relationships that do not involve sharing of legal fees or joint ownership of professional entities ... but all of us see the potential benefit to our clients and our own practices of being able to formalize these relationships, thus attracting and retaining the best members of other professions") *Id.*
  38. See [www.abanet.org/leadership/delegates.html](http://www.abanet.org/leadership/delegates.html) (site visited March 15, 2001). For a thorough discussion of the House debate, action and aftermath, see Mona Hymel, *Multidisciplinary Practice: The States Weigh In*, Tax Notes, Vol. 88, No. 2 (Monday, July 10, 2000), at 261, and Sheryl Stratton and Lee A. Shepard, *American Bar Association Says No to Multidisciplinary Practice*, Tax Notes, Vol. 88, No. 3 (Monday, July 17, 2000), at 311.
  39. See Robert R. Keatinge, *Multidisciplinary Practice ("MDP")*, *Commentary by Robert R. Keatinge*, 29 Colorado Lawyer 9 (September 2000).
  40. These rules are incorporated in the New York Code of Professional Responsibility. Model Rule 5.4 is incorporated in New York DR 3-102, DR 3-103 and DR 5-107. See Part 1200 of Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York.
  41. See, e.g., reports from Illinois, New York and Florida (Florida even commissioned a pro-MDP and an anti-MDP report, but followed the advice of the anti-MDP contingent).
  42. See links to various state and local bar reports and recommendations at [www.mdpcentral.org](http://www.mdpcentral.org). For example, Utah State Bar—MDP Task Force Report (March 13, 2001), [www.utahbar.org/sites/mdp/html/mdp\\_task\\_force\\_report.html](http://www.utahbar.org/sites/mdp/html/mdp_task_force_report.html); State Bar of Wisconsin Report of the Multidisciplinary Practice Committee to the Board of Governors (July 14, 2000), [www.wisbar.org/bar/reports/mdp.pdf](http://www.wisbar.org/bar/reports/mdp.pdf); Minnesota State Bar Association Multidisciplinary Practice Task Force Report and Recommendations As Adopted by the MSBA General Assembly June 23, 2000, [www2.mnbar.org/mdp/convention/mdp/mdp\\_report\\_5-3-00.pdf](http://www2.mnbar.org/mdp/convention/mdp/mdp_report_5-3-00.pdf); Report to the Board of Governors of the Colorado Bar Association and the Board of Trustees of the Denver Bar Association (May 2000), [www.cobar.org/mdp/reportoc.htm](http://www.cobar.org/mdp/reportoc.htm); State Bar of Arizona Multidisciplinary Practice Recommendations (May 19, 2000), [www.azbar.org/attorneyresources/mdp\\_recommends.cfm](http://www.azbar.org/attorneyresources/mdp_recommends.cfm).
  43. Even this monopoly to represent others in court is eroding. For example, non-lawyers are authorized to represent others in bankruptcy and tax court.
  44. Texas Business Law Section Advisory Report, *supra* note 21.
- Ann MacNaughton** is the general counsel of Sustainable Resolutions Inc. and principal in Peterson Risk Consulting, a unit of Navigant Consulting, Inc. She is a past chair of the State Bar of Texas Corporate Counsel Section, and serves on the council of the ADR Section. She also serves on the council of the ABA Law Practice Management Section and chairs its MDP/MJP Committee.
- Texas lawyer **Gary Munneke** is the Charles A. Frueauff Professor of Law, Pace University School of Law. He is a past chair of the ABA Law Practice Management Section, and serves as its delegate to the ABA House of Delegates.