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COMMENT: A LAW FIRM'S RESPONSE TO MULTI-DISCIPLINARY PRACTICE

Dale C. LaPorte[†]

Other participants today have very ably described the potential reach of multi-disciplinary practice ("MDP"). My comments will address how law firms might, and I would maintain, should, respond to this phenomenon.¹

Let me give you a little background on the perspective that I have on this. Our law firm is based in Ohio, although we maintain a national practice. In our Cleveland and Columbus offices, there are eighty partners, and there are roughly 185 lawyers in our law firm. I regret to tell you that most of those 185 people are younger than I am. So while I think I could wait out the MDP developments and finish my own career without really being impacted to too great an extent, our firm has lots of people in their thirties and forties who are concerned about this issue. We also have to think about students we are recruiting from the law schools who are asking themselves many of the same questions that you are hearing today.

I don't know that I could characterize our firm as either Main Street or Wall Street but, as a regional law firm, I will tell you that we feel a need to respond affirmatively to the challenges that are posed by the expansion of services that other professional firms are offering. This does not refer just to the accountants, but also includes consultants and others who are moving gradually in a horizontal direction and in many cases are taking on responsibilities that historically have been the province of law firms.

These external challenges cover a variety of disciplines. Tax is obviously an area where the accounting firms have done a very good job of marketing their expertise. Litigation support is another. The

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¹ This Commentary was delivered at the Ault Symposium on Professional Responsibility and Multi-Disciplinary Practice at Case Western Reserve University School of Law on November 9, 2001. Subsequent events, particularly the bankruptcy of Enron Corporation and its likely effect on the accounting profession, are not discussed here. Clearly, the issue of multi-disciplinary practice, the threat to lawyers from accounting firms, and the appropriate response by the legal profession will all be affected by the developing story of Enron.

one I find most troubling is an area that lawyers traditionally viewed as their sacred turf. It is the role of business adviser, the insider standing beside the CEO, CFO, or general counsel while key business decisions are being made at an early stage in a transaction or proceeding. Whether it happens to involve litigation or a transaction, many see that role for lawyers gradually diminishing, and instead being assumed by another professional service adviser. In some cases, the business lawyer's role is cut back to papering a transaction structured by others.

There are different ways that law firms of all sizes can respond to this threat. The easiest way is obviously to ignore it and hope it goes away. Even with mounting pressures on accounting firms to cut back on their non-audit services, I don't think this response is adequate. Some lawyers believe that state bar prohibitions on unauthorized practice will protect lawyers. While I believe that state bar rules will retard the progress of MDPs, I do not believe these barriers will ultimately protect our profession and our business from these external challenges. There are simply too many ways that non-lawyers can operate on the fringes of the legal market for unauthorized practice rules ever to be truly effective.

A more aggressive approach taken by some lawyers has been to start thinking along multi-disciplinary lines as part of their own business. A lot of law firms are doing this now across the country. A firm in Florida now operates approximately twelve different ancillary businesses as a supplement to its offering of legal services to clients. This is a way for lawyers to prepare for the day, if that day comes, when law firms, accounting firms, consulting firms, insurance brokerages, and other professionals are all able to offer a multiple group of services to their clients. Now, that day may be a year off, five years off, or ten years off. But if lawyers wait until the external threat becomes a reality before they respond to it, our profession may be so far behind that we will never catch up. The question the gentleman asked in the earlier session about the impact of MDPs on a personal injury practice is pretty telling. Put yourself in the position of the consumer who requires the assistance of a lawyer after suffering an injury. If one has the opportunity to go to a traditional law firm that offers only legal services, or, in the alternative, has an opportunity to go to a multi-faceted firm that offers a variety of the services that that person needs, there is certainly a reasonable chance that the prospect of one-stop shopping will be a decisive factor. Does that mean that the traditional practice will be eliminated altogether? Probably not. I do think, however, that lawyers of all types and in firms of all sizes are going to find themselves squeezed by this increasing tendency of

other people to move into parts of what was formerly the lawyer's area.

It is not easy to start an ancillary business, but there are some areas where I think law firms of all sizes can make some inroads and provide distinct value to their clients. Some examples of services that law firms have found to be attractive ground for expansion include: real estate consultation, intellectual property utilization, government relations, and technology consultation. In most of these areas, there are Cleveland-based law firms that today maintain a separate or integrated ability to offer services to their clients. I don't know of anybody in our region that is as multi-faceted as the Florida firm I referred to, but people are thinking along these lines, and I think, by and large, early results are pretty encouraging.

I want to make a couple of key points about ancillary businesses. First, it makes sense for lawyers to focus on areas of services that are in some way tangential to legal services. It is more likely that law firms will have a higher level of comfort where such a relationship exists and it's in these areas where lawyers can probably offer the highest value to clients. It is also prudent to stay away from commodity-type services that can be offered on an inexpensive basis by non-lawyers who have been doing this for their entire business lives.

As has been mentioned numerous times this morning, there are a lot of rules that impact on lawyers' ability to provide ancillary services, and they really encompass a wide variety of areas. The most common areas for possible mistakes usually relate to one of the following: non-lawyers can't supervise lawyers in the performance of legal services; non-lawyers can't share in fees generated from the performance of legal services; lawyers can't pay other people for referrals; and attorney-client privilege is frequently unavailable in the context of providing ancillary services. Most of the guidelines are fairly obvious. But careful scrutiny is required to avoid what could be serious ethical issues.

The biggest issue for lawyers can be summed up with the following question: "Is the MDP idea something that we are doing only for our own economic benefit and/or our economic survival, or is this an idea where the advantages that might inure to a client outweigh the disadvantages?" Others have mentioned some of the principal advantages. The client is able to deal with familiar people, people that know the business and know some of the pros and cons of working in a particular direction. It is probably true that services that are ancillary to the provision of legal service can be offered by law firms or related entities in a more efficient and effective fashion because of some of those synergies that can be developed.

In my mind, the most significant negative factor associated with MDPs is the threat that the lawyer's judgment will be clouded on the issue of whether or not a client should go in a particular direction on a transaction by reason of the possibility that moving in that direction will generate ancillary work for a related entity. Independent judgment is fundamental to our ability to advise a client wisely and is not something that we should compromise in any fashion. So if one feels that his or her independence is clouded by the possibility that additional profit for the lawyer will result from the client's use of a related entity, I think that's where the law firm or the lawyer has to stop and consider recommending that the client use a third party for the necessary services or suggest the need for an independent legal assessment of the situation.

At our firm, we have created a government relations affiliate, which operates as a wholly-owned subsidiary and is staffed by non-lawyers. Government relations or lobbying is a particularly sensitive area because these services are frequently performed by both lawyers and non-lawyers. In fact, we offer lobbying services both through our law firm and through our affiliate. Under these circumstances, it is obviously important that clients of either firm understand with whom they are dealing and the rules that apply in dealing with that particular entity. At our firm, we also intend to look for additional opportunities to serve our clients through other ancillary businesses.

In conclusion, I think by and large, lawyers are well behind the accounting firms and the consulting firms in our introduction of these services. I remain optimistic that there is an opportunity for law firms to gradually close the gap that exists and effectively compete with other professionals. At the end of the day, if and when the rules change, we want to compete on a level playing field with the accounting firms and consulting firms and operate under the same rules.