

## D.C. Bar Adopts Rule of Professional Conduct for Nonlegal Services

*Debate over multidisciplinary practice continues*

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Earlier this year, the District of Columbia amended its Rules of Professional Conduct to include a rule regulating the provision of law-related services. As revised, Rule 5.7 now states that the Rules of Professional Conduct will govern nonlegal services provided in conjunction with legal services. But, when providing nonlegal services, a lawyer must now advise the client in advance that the services are nonlegal and that the attorney-client privilege will not apply.

The comments to the amended rule identify various kinds of "law-related services" to which the rule applies, including "providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical, or environmental consulting."

"That's a salutary rule," says Gregory P. Joseph, New York City, a member of the Section of Litigation's Federal Practice Task Force and past Section Chair. Joseph notes, however, that "although the thrust of the rule is sound, it has glaring drafting problems." He notes, for example, that it is unclear as to when the attorney-client privilege is inapplicable to nonlegal services provided by an attorney.

ABA Model Rule 5.7 raises larger issues con-

cerning whether lawyers may engage in multidisciplinary practices. Proponents of multidisciplinary practice argue that clients in today's marketplace demand more comprehensive services, while opponents cite a variety of potential issues including the impact on professional independence, confidentiality, the attorney-client privilege, and the potential for conflicts of interest.

The District of Columbia rule is identical to ABA Model Rule 5.7, a version of which was first adopted by the ABA in 1991. However, no state ever adopted the original rule, and it was subsequently modified in 1994. Between 1994 and 2005, at least 15 jurisdictions adopted modified ABA Model Rule 5.7. The D.C. Bar appears to join a growing trend; Missouri, for example, recently adopted Rule 5.7, effective July 1, 2007.

ABA Model Rule 5.7(b) defines "law-related services" to include "services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer."

At least seven jurisdictions, however, have declined to follow the ABA rule. Louisiana, for example, rejected ABA Rule 5.7 out of concern that

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it might cause lawyers to believe they were exempt from discipline for misconduct unrelated to the practice of law, and New Jersey refused to adopt it because of concerns about allowing multidisciplinary practice in general. ☐

#### Resource:

Order M-223-05, D.C. Ct. of App. (amending D.C. Rules of Professional Conduct), Aug. 1, 2006, [www.dcbbar.org/new\\_rules/rules.cfm](http://www.dcbbar.org/new_rules/rules.cfm).

ABA Model Rule of Professional Conduct 5.7, [www.abanet.org/cpr/mrpc/rule\\_5\\_7.html](http://www.abanet.org/cpr/mrpc/rule_5_7.html).

Lucian T. Pera, *Grading ABA Leadership on Legal Ethics Leadership: State Adoption of the Revised ABA Model Rules of Professional Conduct*, 30 OKLA. CITY U. L. REV. 637, 780-85 (2005).

Arash Mostafavipour, *Law Firms: Should They Mind Their Own Business?*, 11 GEO. J. LEGAL ETHICS 435 (1998).

Status of Multidisciplinary Practice Studies by State (and some local bars), April 2, 2003, [www.abanet.org/cpr/mdp/mdp-state\\_action.html](http://www.abanet.org/cpr/mdp/mdp-state_action.html).

Florida Bar Issue Paper, *Multidisciplinary Practices, Ancillary Businesses and the Legal Profession* (October 7, 2005), [www.floridabar.org](http://www.floridabar.org), [Click Media Resources](#), [Click Issue Papers](#), [Click Title](#).