

## **MULTIDISCIPLINARY PARTNERSHIPS: WHO'S AFRAID OF THE BIG BAD WOLF?**

by Michael Simmons, M.A., LL.M.  
Fellow, Class of 1996

Both the American Bar Association Commission on Multidisciplinary Practice and the English Law Society have tried to pre-empt the position by approving lawyer-led multidisciplinary practices (MDPs). Provided that the professional standards are those of the bar, everything will be sweetness and light. Is this realistic? We talk about the Big Five as accountancy firms, but they are already far beyond that. What they are is an agglomeration of different professional services and disciplines. They are determined to add legal services to that menu. Is anyone sufficiently confident to think with their huge buying power they can be stopped?

At the end of the day, does it really matter? I hear so much about the unauthorised practise of the law, as though it were akin to cannibalism. The truth is that all professional rules, and those of lawyers are no exception, can be divided into two categories:

1. Those that benefit the profession.
2. Those that benefit the public.

The former, make no mistake, are destined for the scrap heap. In the United States, it may take five years or more for state bar associations to come round, once the present ABA proposals are approved. That particular war is already lost. However, those professional rules that are in the interest of the public will be preserved, and possibly even strengthened.

The question is going to be who oversees the new MDPs? One possibility is that each partner will be governed by his

or her own professional association. Frankly, this is a messy solution, and is likely to give rise to conflicts. The alternative is the creation of a new regulatory body in each jurisdiction. Can you imagine the scramble for each profession's regulator to come out on top? Whoever it is, is probably no big deal, as the regulation is more important than the regulator. We have already seen non-accountants leading the Big Five firms, so do not be at all surprised if the lawyers triumph after all!

I identify four areas of difficulty for MDPs, which I classify as the "Four Cs," as follows:

1. Client privilege.
2. Custodianship of client funds.
3. Confidentiality.
4. Conflict of interests.

1. *Client privilege* attaches to the lawyer on the client's behalf. It is equivalent to that of the priest in the confessional. I cannot see it being extended to accountants, management consultants, actuaries and others, so that privileged material will have to be stored safely in the offices of the lawyers alone in order that privilege can be preserved. When the IRS or Inland Revenue raids the MDP, they will have access to the accountants' files, but the lawyers' files will be closed to them. Obviously, this will not be an easy distinction to make, but it is down to efficient office procedure.

2. *Custodianship of client funds*. The rules relating to trust funds and client accounts of lawyers are probably set at the highest among all the professions. These rules are for the client's protection. Lawyers' standards will therefore prevail.

3. *Confidentiality*. There has been a recent case in England between Prince

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Jefri of Brunei and KPMG. Prince Jefri originally instructed KPMG as his forensic accountants in a large case against the Manoukian Brothers with whom he was in contention. Subsequently, the Brunei Investment Authority instructed KPMG, when it was considering a claim against Prince Jefri in relation to misuse of its assets. KPMG felt that it could erect Chinese walls and create a safe system, whereby there would be no leakage of Prince Jefri information obtained in the Manoukian action to those investigating on behalf of BIA. The case went to the House of Lords, the English Supreme Court, and over three trials, the verdict was 2 to 1 that ad hoc Chinese walls were ineffective and did not give Prince Jefri the complete security and peace of mind to which he was entitled.

This means that confidentiality is going to cause continual problems, especially as firms get bigger and there is scope for information accidentally coming into the wrong hands within the firm. Frankly, it is not a problem which effects MDPs alone. Once again, effective office procedures should provide the answer with Chinese walls erected in advance and not defensively to meet an existing problem.

4. *Conflict of interest.* I have deliberately left to the end the hardest nut to crack. We have to deal with three types of conflict, as follows:

(a) Commercial Conflict.

If you audit Pepsi Cola, there is no way that you can audit Coca Cola. If you act in insurance defense, do not expect to act for plaintiffs, where your insurance client is indemnifying the defendant.

(b) Legal Conflict of Interest.

I had the responsibility of writing a paper on this subject in relation to MDPs. I started by collecting together the rules of

most relevant professions. Not surprisingly, lawyers were in the lead. If there is a conflict situation, you can act for neither party.

The other professions adopted a much less definite stance. The typical answer was that, if you diagnosed a conflict, you had to get the consent of both parties in writing to continue to act for them. However, often as a footnote, if you felt that the conflict was insuperable, you probably should cease acting.

Going back to the Jefri/KPMG case, accountants dealing in forensic work were put on the same level as lawyers in relation to conflict. It is unacceptable. However, the position of accountants dealing with other types of work was left open. Clearly, if lawyers have their way, the standard of lawyers in relation to conflict of interest, will apply throughout the coming MDPs.

(c) Conflict caused by the Auditor's special duties.

Lawyers simplistically owe their duty to their client. The auditor of a corporation is appointed by the directors, but owes her duty to shareholders. There is a requirement to blow the whistle, if dirty work is uncovered. In that situation, the lawyer must stay silent.

There is a possibility that this problem, a difficult one, may be resolved by outside intervention. Noises have been made by Brussels in the European Union that the audit function must be separated, even in a pure accountancy firm, from all others. In MDPs which are so much more varied, this may be an absolute requirement. Progress at Brussels, as so often is the case when you actually want them to do something, is painfully slow.

In the United States, the SEC has stated that it will not allow auditors of compa-

nies under its control to carry out legal and other conflicting services for them. This could easily be extended across the whole corporate sector, and will avoid what is a true and potentially embarrassing conflict problem.

We are told that MDPs are in the public interest. They may well be in relation to the High Street. The client on Saturday morning can park his car, have his corns cut, his cat neutered, his accounts signed off and his estate plan prepared, while his parking is validated and he receives one bill for all these different services.

The Big Five will tell you that there is an enormous unmet demand also throughout the business world. I doubt it. If the identity of the person doing the work is immaterial, and the client is relying on the firm name, this is perhaps true. However, if your company is on fire, you want the best. For the time being almost throughout the world, the best lawyers are still in law firms. You go for the individual and not the firm. This may change over time, but we will have to wait and see.

We certainly live in interesting times. I am looking forward to the moment when Arthur Andersen elects its first lawyer as chairman. If you can't beat 'em.....

*Michael Simmons is a partner in Finers (London) and a consultant on professional practice problems.*

## NOTES FROM BOB

You may start counting your blessings, this will be my last message and my last annual meeting as President of the College.

It has been fun and interesting as well as a privilege to serve as President for the last three and one-half years. I hope you have been satisfied.

Among the changes that occurred:

1. The College successfully made a transition to a new Executive Director, and what an Executive Director she is! Alice is superb! She makes the College hum and as a result my tenure has passed quickly. Thank you, Alice, for all that you have done.

2. The College has inducted a total of 164 members from 38 states, the District of Columbia, and four countries. We will induct 20 more this September in Denver. I have had the unique experience of observing the collection of talent which you all represent. I have also had the great personal pleasure of getting to know you.

3. The College initiated Sustaining Membership and now have 49 enrolled. Your resources have permitted us to upgrade the programming at the annual meetings. Thank you.

4. The College has moved to its new home at the University of Denver Law School. We have started to cooperate with the graduate practice management program and there is wonderful potential for the future. We all owe the University our appreciation.

5. We will be rolling out our COLPM web page shortly which has been made available to us through the generosity of West Publishing.

I wish to thank the officers and trustees for their confidence, support and labors over these past three plus years. No one ever said no. Many went beyond what we should ever expect from their volunteer service.

Lowell Rothschild will become COLPM President at the Annual Meeting. He is a uniquely able and proven leader of the bar. Combined with the energy and

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emerging technologies to improve workflow, leverage knowledge, and add value to our client relationships. This includes work on our intranet and extranet initiatives, evaluating specialized software and hardware solutions and doing some long-term "visioning" as to the firm's direction in the technological arena. Judging by my experience to date and my contacts throughout the country, there seems to be a critical need for a function like this within firms and I'm privileged to be part of breaking this "new ground" at Winston and Strawn.

OK, thanks for sticking with me. On to the mush...

I'm a bit of a "late boomer" (in many areas, as it turns out). I married my beautiful wife Joy when I was 40 and almost three years ago, we were blessed with the birth of our daughter Marley. We are expecting our second offspring sometime around Thanksgiving and Marley hopes that she's having a sister (she says that she's scared of brothers!). I truly love being a husband and a father and "blooming" late rather than never has really paid off for me!

Like most of us, my time for hobby-like activities is not vast, but I do like my early morning runs (sometimes pushing a stroller), cooking and doing projects around our 65-year-old Evanston, IL abode. I also have an unexplainable interest in industrial design, especially in those things created to make some aspect of our lives just a bit easier or more enjoyable. (When I get to know you better, I might show you my rather unusual collection of inventor obituaries!) Most of all, I get a real kick out of making people laugh and when you have a face like mine, it's not all that difficult! And come to think of it, neither was writing this profile.

Now wake up, it's over!

## DENVER MEETING BULLETIN BOARD

**DATES**  
SEPTEMBER 24 - 25, 1999

**LOCATION**  
Denver Hyatt Regency Hotel

### FRIDAY INFORMAL RECEPTION

6:30 - 8:00 PM

Hosted by: **Holland & Hart**  
H&H Technology Tours  
Lead by John Tredennick

### HOTEL REGISTRATION DEADLINE

**AUGUST 27th**

Rates: \$135 Single; \$145 Double  
Phones: 303/295-1234 or 800/233-1234  
Fax: 303/296-2954  
(Rates available September 23-26)

### EVENT REGISTRATION DEADLINE

September 20th

### INDUCTION DINNER

September 25th

Black Tie

### MORE INFO? LOST YOUR PACKET?

Contact: Alice Atkins  
Ph: 303/216-9732  
Fax: 303/278-6967

Email: [aliceatkins@sprintmail.com](mailto:aliceatkins@sprintmail.com)

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## NEARY TO FACILITATE SATURDAY PROGRAM

*“Change: It’s both Personal and Professional”*

Building on last year’s highly successful and interactive “Envisioning Our Future” program and using the scenarios developed then and others to be created this year, Peter J. Neary, Ph.D., Principal, Peter J. Neary Associates, and formerly the Center for Creative Leadership’s Director for it’s “Leadership at the Peak” program, will lead the day-long adventure, “Change: It’s both Personal and Professional.”

Peter Neary was a moving force behind the Center for Creative Leadership’s program for top-level executives, *Leadership at the Peak*. During the past two years, he spearheaded the Center’s custom leadership development work for lawyers, law firms and corporate legal departments. Prior to joining CCL, Dr. Neary served as Director of the Aspen Institute’s Executive Seminar Program, a humanities based seminar program for senior executives. He also served as Executive Director of the National Paideia Center at the University of North Carolina, Chapel Hill.

Over the years, Peter has consulted in the areas of ethics, leadership, senior executive teambuilding (executive committees) and organizational culture. He holds a Ph.D. in Social Ethics and Masters Degree in American History, Philosophy and Theology.

## WEBCITES

Here are a few Web sites that have articles on multidisciplinary practice. You might want to check them out in advance of the Denver meeting.

[abanet.org/cpr/multicom/html](http://abanet.org/cpr/multicom/html): ABA Commission on Mutidisciplinary Practice.

Contains the full text of the Commission’s report as well as all supporting documents.

*rclaw.com*: MDP program panelist Charlie Robinson’s site. Find articles in the Future of the Practice section.

*altmanweil.com*: Altman Weil site. Find articles in the publications section, under “strategic planning.”

*hildebrandt.com*: Hildebrandt, Inc. site. See publications section.

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**Annual Induction Weekend**  
Denver, Colorado, September 24 - 25, 1999  
**Schedule of Events**

**FRIDAY, SEPTEMBER 24, 1999**

<u>Time</u>	<u>What/Where</u>	<u>Participants/Speakers</u>
6:30 - 8:00 PM	Informal Reception, <i>Holland &amp; Hart</i>	All

**SATURDAY, SEPTEMBER 25, 1999**

<u>Time</u>	<u>What/Where</u>	<u>Participants/Speakers</u>
8:00 - 8:30 AM	Continental Breakfast <i>Grays Peak - HCC Qwest</i>	Fellows, Honorary Fellows, Inductees
8:30 - 9:30 AM	Hospitality/Continental Breakfast <i>Executive Suite 2101</i>	Guests
	“Change: It’s Both Personal and Professional” <i>Grays Peak - HCC Qwest</i>	<b>J. Harris Morgan,</b> Morgan and Gotcher
8:30 AM	“The Human Side & Impact of Change” (Including Change Style Indicator)	<b>Peter J. Neary, Ph.D.,</b> <b>Principal,</b> Peter J. Neary Associates
12:30 - 2:00 PM	Lunch on Your Own	
2:00 - 4:00 PM	“The Future at Hand: Multi-Disciplinary Practice Arrives” <i>Interactive Discussion &amp; Debate</i>	Panelists: <b>David Andrews,</b> The David Andrews Partnership, Grant Thornton <b>Ward Bower,</b> Altman, Weil, Inc. <b>F. Leary Davis,</b> Campbell University <b>Randy Lewis,</b> Hildebrandt, Inc. <b>Charles F. Robinson,</b> Law Offices of Charles F. Robinson <b>Michael D. Simmons,</b> Finers, Solicitors <b>Sherwin P. Simmons,</b> Chair ABA Commission on Multi- Disciplinary Practice
		Facilitator: <b>Peter J. Neary</b>
6:30 - 7:30 PM	Black Tie Reception <i>Moulin Rouge</i>	All
7:30 - 9:00 PM	Black Tie Dinner, Induction and Recognition of Sustaining Members <i>Moulin Rouge</i>	All

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**ANNUAL INDUCTION WEEKEND**  
Denver, CO September 24 - 25, 1999

**EVENTS REGISTRATION FORM**

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(Please print clearly)

Attendee \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Province \_\_\_\_\_

Zip/Postal Code \_\_\_\_\_ Country \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Guest Name \_\_\_\_\_

Arrival Date \_\_\_\_\_ Departure Date \_\_\_\_\_

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Please indicate the events you will be attending:

**Friday, September 24, 1999**

\_\_\_\_\_ Informal Reception (6:30-8:00 PM)      \_\_\_\_\_ Attendee      \_\_\_\_\_ Guest

**Saturday, September 25, 1999**

\_\_\_\_\_ Continental Breakfast (8:00-8:30 AM)      \_\_\_\_\_ Attendee

\_\_\_\_\_ Hospitality/Breakfast (8:30-9:30 AM)      \_\_\_\_\_ Guest

\_\_\_\_\_ Program (8:30 AM-4:00 PM)      \_\_\_\_\_ Attendee

\_\_\_\_\_ Formal Reception (6:30-7:30 PM)      \_\_\_\_\_ Attendee      \_\_\_\_\_ Guest

\_\_\_\_\_ Formal Dinner/Induction (7:30-9:00 PM)      \_\_\_\_\_ Attendee      \_\_\_\_\_ Guest

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1 Attendee x \$200 = \$200 + \_\_\_\_\_ # of Guests x \$150 = \$\_\_\_\_\_ = \$\_\_\_\_\_  
(Amount Enclosed)

Please make check payable to:      **College of Law Practice Management**

Mail this form and check to:      Alice Tully Atkins  
College of Law Practice Management  
1110 12th Street  
Deadline: **September 20, 1999**      Golden, CO 80401

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