

**BRINGING MULTI-DISCIPLINARY PRACTICES TO MOTOWN: HOW ONE-STOP
SHOPPING WILL HELP DETROIT'S INDIGENT POPULATION**

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INTRODUCTION

In 1966, E. Clinton Bamberger, the first director of the Office of Economic Opportunity Legal Services Program, noted that “[l]awyers must uncover the legal causes of poverty, remodel the system which generates the cycle of poverty and design new social, legal, and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope, and ambition.”¹ Forty-two years later, lawyers have at their disposal a tool that can change the lives of the indigent population: non-profit multidisciplinary practices (“MDPs”).

Currently, the American Bar Association (“ABA”) Model Rule of Professional Conduct 5.4 prohibits lawyers from forming MDPs. Rule 5.4 bars lawyers from sharing legal fees with non-lawyers, forming partnerships with non-lawyers, or working for a partnership owned, at least in part, by non-lawyers.² This means a lawyer cannot offer other services besides legal services—i.e. medical services or social work services—from a single legal office.³ Since the 1980’s, the ABA has investigated the continued viability of the rule in the face of a changing, more integrated legal profession. In 1999, the ABA’s Commission on Multidisciplinary Practice proposed amending Rule 5.4 to allow for MDPs, but the House of Delegates rejected the proposal and Rule 5.4 remains unfortunately in place.⁴

In 2002, Stacy L. Brustin, an Associate Dean at the Catholic University of America, Columbus School of Law, wrote an article analyzing MDPs in the non-profit setting, adding a previously unrecognized segment of the legal community to the debate over MDPs.⁵ Ms. Brustin suggested that MDPs could be a beneficial tool to deliver legal services to indigent clients “who

¹ E. Clinton Bamberger, first Director of the OEO Legal Services Program, Speech to National Conference of Bar Presidents (Feb. 8, 1966).

² MODEL RULES OF PROF’L CONDUCT R. 5.4 (2004).

³ LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 651-52 (2005).

⁴ Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories for the Future*, 37 MICH. J. L. REFORM 95, 103-04 (2003).

⁵ Stacy L. Brustin, *Legal Services Provision through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787 (2002).

are traditionally marginalized from the United States legal system.”⁶ In the six years since her article, all jurisdictions except two continue to ban MDPs, regardless of the benefits they could provide for the indigent population. Perhaps a face needs to be added to Ms. Brustin’s suggestion. The face is the City of Detroit, Michigan. Detroit has a poverty rate of 31.4 percent,⁷ an unemployment rate of 8.2 percent,⁸ and a 52.5% of Detroit’s residents are uninsured or Medicaid eligible.⁹ Its residents could benefit from the one-stop shopping MDPs provide.

Michigan remains married to an old-fashioned way of looking at MDPs, ignores the needs of its citizens, and continues to follow the ABA by enforcing a total ban on MDPs.¹⁰ Opponents of MDPs assert justifications such as the need to retain professional independence, preventing the unauthorized practice of law, protecting client confidences, and potential conflicts of interest.¹¹ Such reasoning ignores the potential benefits MDPs could bring to Detroit’s indigent population. As lawyers, should we be more concerned with protecting our own professional territory or helping individuals to rise out of poverty? While certainly maintaining client confidentiality is of utmost importance, should we just categorically ban MDPs or work collaboratively to determine an approach that protects confidences and helps individuals that desperately need a wide range of services? The answers seem obvious: Michigan should follow the bold lead of Washington D.C. and New York to allow, in some form, MDPs. Furthermore, existing professional conduct rules remain to protect any additional ethical concerns.

⁶ *Id.* at 791.

⁷ *Income Climbs, Poverty Stabilizes, Uninsured Rate Increases*, U.S. CENSUS BUREAU NEWS, Aug. 29, 2006, http://www.censusbureau.biz/Press-Release/www/releases/archives/income_wealth/00741XXXX.

⁸ *Metropolitan Area Employment and Unemployment Summary*, UNITED STATES DEPARTMENT OF LABOR, March 19, 2008, <http://www.bls.gov/news.release/metro.nr0.htm>.

⁹ *Strengthening the Safety Net in Detroit and Wayne County*, DETROIT HEALTH CARE STABILIZATION WORKGROUP, August 7, 2003, http://www.michigan.gov/documents/ReportofDetroitHealthCareStabilizationWorkgroup_1_70764_7.pdf.

¹⁰ See MICH. RULES OF PROF’L CONDUCT R. 5.4 (1988).

¹¹ See generally Brustin, *supra* note 5 (outlining the critiques of MDPs that are largely responsible for the ban remaining in place).

Part I of this paper details the unmet social and legal needs of the indigent population, with a specific focus on Detroit. Part II outlines the history of MDPs, including the pros and cons to relaxing ethical rules prohibiting MDPs in the non-profit sector. Part III describes specific jurisdictions and organizations that have either amended their ethical rules to allow for MDPs or have incorporated a form of multidisciplinary work into their respective organizations. Finally, part IV proposes an amendment to the Michigan Rules of Professional Conduct to allow for MDPs that will create a workable framework to benefit Michigan's indigent clients.

I. UNMET LEGAL NEEDS OF DETROIT'S INDIGENT POPULATION

The following statistics are meant to provide a glimpse into the life of a low-income individual in Detroit, and the problems such individuals may face on a daily basis. Similar people can be found all across the United States. Because the needs are so varied, as outlined below, MDP one-stop shopping would create "one accessible location" which would provide a wide range of services to individuals who live in poverty and are often isolated from resources that could assist them.¹² As such, when reading the following information about the residents of Detroit, bear in mind how convenient and holistic MDPs would be for these people.

A. The Social Troubles of the Motor City

In 2005, Detroit statistically tied with Cleveland as the two cities with the highest proportion of people in poverty—an astronomical 31.4 percent.¹³ This has increased from a poverty level in 1999 of 26.1 percent.¹⁴ At any given time, there are up to 13,000 homeless individuals in Detroit and possibly an additional thirty to fifty thousand people who do not have

¹² Brustin, *supra* note 5, at 792.

¹³ *Income Climbs, Poverty Stabilizes, Uninsured Rate Increases*, *supra* note 7.

¹⁴ *State and County QuickFacts, Detroit, Michigan*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last visited Apr. 23, 2008).

their own place to live, but are housed by friends or family.¹⁵ Eighty-five percent of these homeless individuals face some type of mental disability.¹⁶ Minor criminal offenses prevent homeless individuals from obtaining employment.¹⁷ Without state identification, homeless people cannot receive state food assistance.¹⁸ Such identifications are nearly impossible for homeless individuals to obtain, because one must show three state-sanctioned documents with the person's name.¹⁹ The lack of government-housing and bureaucratic red tape frustrate efforts of advocates to obtain housing for the homeless population.²⁰ At the end of 2005, 9,000 Detroit residents were on waiting lists for public housing vouchers, as demand for emergency shelter had increased 22 percent along with a 30 percent increase in the need for food aid.²¹

In January 2008, the Detroit area had the highest unemployment rate of all U.S. metropolitan areas with populations above one million in the country—8.2 percent.²² The Detroit area also lost the most jobs in 2007: 29,7000. According to the 2000 Census, Detroit's median household income was over \$15,000 less than the average household in the rest of Michigan, and Detroit's per capita income was nearly \$8,000 less.²³

Detroit faces severe crises in both health care and education. Male life expectancy is 64.5 in Detroit, compared to 73.5 throughout the rest of Michigan.²⁴ Since 1997, five hospitals and twenty primary care clinics have closed in Detroit.²⁵ Over fifty-two percent of Detroit

¹⁵ Joe Kohn, *Concern for the homeless*, THE MICHIGAN CATHOLIC, January 27, 2006.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Homeless get more funding; Detroit's federal money rises \$2.1 million to \$22.28 million, but providers say it is not nearly enough for 2006*, DETROIT NEWS, Dec. 21, 2005.

²² *Metropolitan Area Employment and Unemployment Summary*, *supra* note 8.

²³ *State and County QuickFacts, Detroit, Michigan*, *supra* note 14.

²⁴ *Strengthening the Safety Net in Detroit and Wayne County*, *supra* note 9.

²⁵ *Id.*

residents are uninsured or Medicaid eligible, compared to 22.5 percent statewide.²⁶ Detroit ranks first out of 687 cities for preventable hospitalization for those aged 40-64, sixth for ages 18-39 and twenty-third for ages 0-17.²⁷ Drop-out rates in Detroit are equally as alarming. In 2006, Detroit's graduation rate was a dismal 21.7 percent.²⁸ Out of the nation's fifty largest school districts, Detroit's was the worst, with the next closest over 16 percentage points greater.

B. A Nationwide Need for More Legal Aid Attorneys

With greater access to attorneys, many of Detroit's citizens in any one of the above situations could be assisted. However, nationwide, access to attorneys for the indigent population remains virtually closed. Congress created the Legal Services Corporation ("LSC") in 1974 in order to provide equal access to the justice system, regardless of economic status.²⁹ The LSC recognizes that effective legal representation can help meet the needs of low-income people in a variety of situations, such as providing "protection from abusive relationships, safe and habitable housing, access to necessary health care, disability payments to help lead independent lives, family law issues including child support and custody actions, and relief from financial exploitation."³⁰ Such problems are exactly what the people of Detroit face every day.

Approximately one million cases per year are rejected by LSC-funded legal aid programs due to lack of funding.³¹ This figure does not include those individuals who have unsuccessfully sought help from non-LSC clinics, people who received service, but not the service they actually needed, or those people with legal needs who never contacted any legal aid service.³² In 2002

²⁶ *Id.*

²⁷ *Id.*

²⁸ Greg Toppo, *Big-city schools struggle with graduation rates*, USA TODAY, June 20, 2006.

²⁹ LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA 1 (2005), <http://www.lsc.gov/JusticeGap.pdf>.

³⁰ *Id.*

³¹ *Id.* at 5.

³² *Id.* at 5-6.

there were approximately 6,500 legal aid attorneys in the United States.³³ According to the 2000 census, there are over 45 million individuals that live at 125 percent poverty level or below throughout the country.³⁴ That leaves one attorney per 6,861 low-income people.³⁵ However, in 2002, there were approximately 536,000 non-legal aid attorneys in the United States, leaving one attorney per 525 people.³⁶ The gap in services cannot be denied. Only 20 percent of those in need of legal assistance actually receive it.³⁷ By allowing MDPs in the non-profit sector, low-income individuals will have greater access to attorneys because they will encounter attorneys in other areas of their lives, such as at their doctor's offices or during visits with their social workers. MDPs will increase access for the low-income population.

II. WHAT ARE MULTI-DISCIPLINARY PARTNERSHIPS?

Michigan adopted Professional Conduct Rule 5.4 in 1988.³⁸ In pertinent part, Michigan Rule 5.4 provides:

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer . . .³⁹
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit . . .⁴⁰

³³ *Id.* at 16.

³⁴ *Id.*

³⁵ DOCUMENTING THE JUSTICE GAP IN AMERICA, *supra* note 29, at 16.

³⁶ *Id.*

³⁷ *Id.* at 18.

³⁸ MICH. RULES OF PROF'L CONDUCT R. 5.4 (1988).

³⁹ There are three circumstances under the Michigan Rules of Prof'l Conduct which allow for fee sharing: "(1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons; (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement." MICH. RULES OF PROF'L CONDUCT R. 5.4(a) (1988).

⁴⁰ There are three circumstances in which a lawyer cannot form a for-profit corporation with non-lawyers: if "(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; (2) a nonlawyer is a corporate director or

The language of Michigan’s rule is virtually identical to that of ABA Model Rule 5.4.⁴¹ Explaining the genesis of the Model Rule provides insight into why Michigan chose to adopt similar language, and why most jurisdictions have continued to follow the ABA and prohibit MDPs. While state bars are not required to adopt rules promulgated by the ABA, the ABA “strongly influences the view of most state bar associations, and courts.”⁴²

A. The History of ABA Model Rule 5.4

The ABA Commission on Multidisciplinary Practices defines MDP as:

[A] partnership, professional corporation, or other association or entity that includes lawyers and non-lawyers and has as one, but not all, of its purpose the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing non-legal, as well as legal services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as a part of the arrangement.⁴³

Model Rule 5.4 prohibits MDPs in all forms. In the early 1980’s, the ABA appointed a commission to analyze existing Rules of Professional Conduct.⁴⁴ The Commission, named the “Kutak Commission,” proposed revisions to Rule 5.4 which would have allowed a lawyer to be employed in an organization not entirely owned by lawyers.⁴⁵ MDPs would have been allowed, provided the lawyer still retained professional independence and followed the Model Rules regarding “confidentiality, solicitation, and fee determination.”⁴⁶ The ABA overwhelmingly rejected the proposed revision.⁴⁷ The reasons for rejection included the belief that mega-

officer thereof; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.” MICH. RULES OF PROF’L CONDUCT R. 5.4(d) (1988).

⁴¹ See MODEL RULES OF PROF’L CONDUCT R. 5.4 (2004).

⁴² Lerman & Schrag, *supra* note 3, at 23.

⁴³ Laura Noroski, *New York’s Controversial Ethics Code Changes: An Attempt to Fit Multidisciplinary Practice Within Existing Ethical Boundaries*, 76 S. CAL. L. REV. 483, 490 (2003).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

accounting firms would begin to open legal offices, which would economically threaten the viability of traditional legal firms.⁴⁸

In 1998, the ABA formed the Commission on Multidisciplinary Practice.⁴⁹ The Commission was tasked with studying professional service firms operated by non-lawyers who offered legal services to the public.⁵⁰ The ABA created the MDP Commission as a result of competition from mega-accounting firms.⁵¹ European accounting firms were hiring lawyers to serve their corporate clients, so the ABA decided to study MDPs in order to not lose corporate clients to multi-service international MDPs.⁵² The debate centered on accountants and large corporate clients; all debate since the creation of the Commission has largely ignored benefits that smaller, public interest MDPs could provide.⁵³

In March 1999, Commission proposed five different models of MDPs.⁵⁴ First, under the “Cooperative Model,” there would be no significant changes to the status quo. Rule 5.4 would remain unchanged and prohibitions against fee sharing would also remain in force.⁵⁵ However, lawyers could hire non-lawyers to assist them with clients, and could directly retain non-lawyers.⁵⁶ Second, the “Command and Control Model” is loosely based on the version of Rule 5.4 that Washington D.C. adopted.⁵⁷ Lawyers could form partnerships with non-lawyers and share legal fees in restricted circumstances.⁵⁸ Third, the “Ancillary Business Model” allows a

⁴⁸ *Id.*

⁴⁹ Noroski, *supra* note 43, at 494.

⁵⁰ *Id.* at 495.

⁵¹ Poser, *supra* note 4, at 101.

⁵² *Id.* at 102.

⁵³ *Id.*

⁵⁴ Kellye M. Gordon, Friend or Foe: The Role of Multidisciplinary Practices in a Changing Legal Profession, 36 *IND. L. REV.* 1363, 1379 (2003).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

law firm to operate an ancillary business.⁵⁹ The ancillary business would provide non-legal services to clients, and non-lawyers would be partners with lawyers in that business.⁶⁰ Under this model, lawyers were instructed to make sure all clients understood the two businesses were distinct and the ancillary business provided no legal services.⁶¹ Fourth, under the “Contract Model,” a non-legal corporation and a law firm could join together under contract to service clients.⁶² The law firm would remain controlled by lawyers, but would accept clients from the non-legal corporation.⁶³ Lastly, under the “Fully Integrated Model,” one firm exists, which is comprised of many units; one unit provides legal services.⁶⁴

In 1999, the Commission recommended amending Rule 5.4 in order to adopt the “Fully Integrated Model.”⁶⁵ The Commission acknowledged the core values of the legal profession: “independence of professional judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflict of interests.”⁶⁶ Even in light of these professional values, the Commission preferred regulating MDPs as opposed to a total prohibition on them.⁶⁷ The ABA House of Delegates rejected the recommendation.⁶⁸ In fact, the ABA postured that Rule 5.4 should be revised to strengthen the prohibition of MDPs, as they were “illegal alliances between non-legal entities adversely affecting the legal profession.”⁶⁹ In 2000, the ABA issued Resolution 10F, noting the ABA’s ban on MDPs would remain in force, but that the ABA Ethics Committee could work with individual state Bar Associations to draft rules

⁵⁹ *Id.* at 1380.

⁶⁰ Gordon, *supra* note 54, at 1380.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Poser, *supra* note 4, at 103.

⁶⁶ *Id.*, quoting ABA Comm. on Multidisciplinary Practice, Reporter’s Notes (1999), available at <http://www.abanet.org/cpr/MDPappendixc.html>.

⁶⁷ Poser, *supra* note 4, at 103-04.

⁶⁸ Noroski, *supra* note 43, at 495.

⁶⁹ *Id.*

regulating alliances and contractual relationships with non-legal service providers.⁷⁰ The ABA's hesitancy to adopt revisions to Model Rule 5.4, even in light of several proposed revisions over the last twenty-five years, demonstrates the continued concerns many members of the legal profession have about allowing MDPs. Such concerns, however, continue to analyze MDPs from a client's perspective—specifically from the perspective of an indigent client.

B. Analyzing MDPs from the Indigent Client's Perspective Would Silence MDP Critics

The criticisms of MDPs largely center on the traditional role of an attorney and the protectionist idea that the core of the legal profession will be destroyed with MDPs. However, when analyzed from an indigent client's perspective it becomes clear a workable framework can be created for the non-profit MDP, as opposed to maintaining a categorical ban.

Indigent clients would save a great deal of time, experience a “continuity of care,” and experience greater efficiency if MDPs were allowed.⁷¹ For a low-income individual, finding adequate transportation and day care in order to pursue legal and non-legal services can be daunting. With MDPs, a client would not have to travel from agency to agency, but could be holistically serviced in one comfortable location and would no longer be forced to abandon referrals because of a lack of time or financial ability.⁷² Furthermore, the situations which cause clients to seek representation are increasingly multi-dimensional, especially with indigent clients.⁷³ A client may need financial advice, guidance as to social services available through the State, psychiatric counseling, or job placement services. It is in light of the potential benefits to

⁷⁰ *Id.* at 496.

⁷¹ Brustin, *supra* note 5, at 792.

⁷² *Id.*

⁷³ John Paul Lucci, *New York Revises Rules to Permit Limited MDPS: A Critical Analysis of the New York Approach, the Future of the MDP Debate after Enron, and Recommendations for other Jurisdictions*, 8 *FORDHAM J. CORP. & FIN. L.* 151, 163 (2003).

the clients that all criticisms of MDPs must be analyzed, given that “[m]ultidisciplinary practice is consistent with the legal profession’s core value of public service.”⁷⁴

1. *Preservation of a Lawyer’s Professional Judgment and Protecting Against the Unauthorized Practice of Law*

The ABA’s consistent obstinacy to amending Rule 5.4 ignores the public service aspect of the law, and is motivated by a desire to maintain control and autonomy over access to legal services and “the billions of dollars of fees they produce annually.”⁷⁵ Critics of MDPs contend that if an attorney has contractual and financial obligations to non-lawyers, the attorney will lose his or her ability to exercise professional judgment.⁷⁶ Simply put, if a non-lawyer can “call the shots” in any partnership, an attorney may have to obey the directive of a non-lawyer as to how best to deal with the legal concerns of their clients. Similarly, critics contend that a MDP might reduce the zealous advocacy lawyers give to their clients, as the focus of the MDP “shifts from high-quality representation to the bottom line.”⁷⁷ For example, a non-lawyer may place artificial timelines on an attorney, thereby increasing the profits of the MDP by taking on more cases, as opposed to allowing the attorney, in his or her own discretion, to place the appropriate and needed amount of time on a specific client’s case.⁷⁸

⁷⁴ Thuy Wagner, Ellen Lawton, & Lauren Smith, *The Lawyer is in: Why Some Doctors are Prescribing Legal Remedies for their Patients, and How the Legal Profession can Support this Effort*, 12 B.U. PUB. INT. L.J. 505, 508 (2003).

⁷⁵ Lucci, *supra* note 73, at 176.

⁷⁶ *Id.* at 172.

⁷⁷ *Id.* at 173. See also Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369, 412 (2004) (positing that critics are also concerned that MDPs “would do for law what managed care has done for medicine.” In the 1960s, licensed physicians were subject to ethical rules that prohibited them from working for organizations where profits were shared by non-physicians. The rule was similarly based on concerns over professional independence. Because of the spiraling costs of health care, the federal government took action and eliminated the ethical prohibition, and now “lay control of managed health care has become the norm, and has significantly constrained physicians’ income and autonomy.”).

⁷⁸ Gordon, *supra* note 54, at 1369.

While valid, the ABA’s MDP Commission did offer suggestions as to how to avoid non-lawyers threatening the professional independence of a lawyer in their MDP.⁷⁹ MDPs could create bylaws that specify that lawyers are the only individuals that can make decisions regarding legal services to clients.⁸⁰ Or, lawyers could operate in separate divisions, or units, apart from other practitioners—i.e. the “Fully Integrated Model.”⁸¹ Some state ethics committees have required that lawyers working for multi-service agencies adhere to the Code of Professional Responsibility if policies of the agency conflict with the Code.⁸² However, the best solution to maintain professional independence is continual “education, training, and supervision” of non-lawyer members of a MDP as to the responsibilities of lawyers and their unique professional ethics rules.⁸³

Most importantly, ABA Model Rule of Professional Conduct 5.3 already details the ethical responsibilities lawyers have regarding non-lawyer assistants. The same rule could apply to non-lawyer service providers within the MDP: the lawyers shall make “reasonable efforts to ensure that the [MDP] has in effect measures giving reasonable assurance that the [non-lawyer’s] conduct is compatible with the professional obligations of the lawyer” and the lawyers “shall be responsible for conduct of [non-lawyers] that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.”⁸⁴ Extending Rule 5.3 to non-lawyers in MDPs is a natural fit and would also alleviate concerns regarding aiding in the unauthorized practice of law through an MDP.

⁷⁹ Brustin, *supra* note 5, at 860.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 861-62.

⁸³ *Id.* at 863.

⁸⁴ MODEL RULES OF PROF’L CONDUCT R. 5.3 (a), (c) (2004).

Under ABA Model Rule of Professional Conduct 5.5, lawyers are prohibited from aiding in the unauthorized practice of law.⁸⁵ The Comments to Rule 5.5 note that “limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.”⁸⁶ Critics of MDPs argue that the partnerships will create a higher risk of lawyers aiding in the unauthorized practice of law by allowing non-lawyers to provide legal services. However, under Model Rule 5.3, a lawyer would violate the Rule if they assisted a non-lawyer in violating the Rules of Professional Conduct by allowing the non-lawyers to engage in the unauthorized practice of law.

Furthermore, in a non-profit, holistic setting, there would not be the “turf war” that might occur between mega-accounting firms and corporate law firms. If an indigent individual came to a MDP, the individual’s needs would be easily separated: the lawyer would address any legal concerns, the medical expert would address any physical or psychological needs, the job placement advisor would work with the individual to secure employment, and the food bank would provide meals. Each individual profession within the MDP would have clearly defined roles, and as such, the risk of a non-lawyer dictating the judgment and performance of a lawyer would be virtually non-existent.

2. *Protecting Client Confidences*

The Model Rules are explicit and detailed in their guidance on protecting the confidences of clients.⁸⁷ A lawyer cannot reveal client confidences without the informed consent of the client.⁸⁸ And certainly, just because a client is indigent does not lessen the importance of confidentiality. Critics of MDPs argue that MDPs create a setting in which lawyers may be

⁸⁵ “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or *assist another in doing so.*” MODEL RULES OF PROF’L CONDUCT R. 5.5 (2004), emphasis added.

⁸⁶ MODEL RULES OF PROF’L CONDUCT R. 5.5 cmt. 2 (2004).

⁸⁷ See MODEL RULES OF PROF’L CONDUCT R. 1.6 (2004).

⁸⁸ *Id.*

forced to divulge client confidences with non-lawyers in order to keep the partnership running smoothly. For example, the lawyer has a fundamental duty of confidentiality, but in a MDP setting with accountants, the accountant has a duty to go public in certain situations under U.S. securities law.⁸⁹ Potential disclosures could be inadvertent, or, as the ABA posits, more deliberate, if non-lawyer owners “demand access to confidential client information when formulating corporate policy or strategy.”⁹⁰

The Model Rules regarding client confidentiality would not need to be amended in any way in a MDP setting. The Rules already allowed for a waiver of confidentiality if the client gives informed consent. The ABA defines informed consent as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”⁹¹ By its very definition, holistic healing requires collaboration between lawyers and non-lawyers, and such collaboration would benefit the clients. As such, from the beginning of the relationship, the lawyer should, in great detail, explain the nature of the MDP and the possible need to share information with non-lawyers. In addition to a face-to-face explanation, the MDP could use retainer forms to “outline[] the unique aspects of multidisciplinary practice” and have the client sign retainer agreements for each service.⁹² The MDP lawyer could also require “clients to sign a separate release authorizing the lawyer to speak with nonlawyer staff members about the case” and that the release can be withdrawn at any time.⁹³ Furthermore, the lawyer must be sure the client understands that some professionals

⁸⁹ Lucci, *supra* note 73, at 173.

⁹⁰ Gordon, *supra* note 54, at 1372.

⁹¹ MODEL RULES OF PROF'L CONDUCT R. 1.0(e) (2004).

⁹² Brustin, *supra* note 5, at 841.

⁹³ *Id.*

within the MDP may have different duties regarding confidentiality.⁹⁴ For example, a social worker may have to report child abuse if he or she learns of the abuse, but a lawyer does not.⁹⁵ Again, sharing such information at the beginning of the relationship, and getting informed consent from the client, will ensure Model Rule 1.6 remains enforced in the MDP setting, while simultaneously facilitating the collaboration needed to provide holistic healing for indigent clients.

Furthermore, from a management side, partners in MDPs could begin the partnership by detailing, in writing, the types of information that will be held in the strictest confidence and how this information will remain confidential.⁹⁶ Of course, such pre-conceived agreements about confidentiality could be waived with a client's informed consent. Lastly, similar to concerns about retaining professional independence, training and education are indispensable for a MDP.⁹⁷ Again, pursuant to Model Rule 5.3, non-lawyers could be required to follow the ethical rules regarding confidentiality for lawyers, provided they are consistent with their own profession's ethical standards.

3. *Avoiding Conflicts of Interest*

Critics of MDPs argue that the Model Rules stringent conflicts of interest rules would be threatened by MDPs.⁹⁸ When Enron collapsed in 2001, MDP critiques were thought to have had a “victory” of sorts. Because the lucrative consulting contract Arthur Andersen—an accounting firm—had with Enron, a conflict of interest was created, which led to the collapse of Enron.⁹⁹ Essentially, critics argued that if an accounting firm that provided no legal services could create

⁹⁴ *Id.* at 841-42.

⁹⁵ *Id.* at 842.

⁹⁶ *Id.* at 838-39.

⁹⁷ *Id.* at 839-40.

⁹⁸ See MODEL RULES OF PROF'L CONDUCT R. 1.7-1.10, 1.11, 1.13 (2004).

⁹⁹ Lucci, *supra* note 73, at 194.

such a conflict of interest by employing non-accountants, the conflicts of interest in a MDP that did provide some legal services would create similar irreconcilable conflicts and that such partnerships would be “colossal mistake[s].”¹⁰⁰ Enron is a “cautionary tale[] of what can happen if lawyers cede ethical decisions to accountants and corporate managers.”¹⁰¹

Potential for conflicts still exist in the MDP setting, albeit in a different tone, given that MDPs in the non-profit sector would be not be motivated by the bottom line and battles for corporate control.¹⁰² First, MDPs must follow Model Rule 1.7, which outlines rules on conflicts between current clients. Rule 1.7 would not change in a non-profit MDP. A lawyer could not represent a client if the representation of one client would be “directly adverse” to another client or if there is a “significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”¹⁰³ MDPs would also have to follow Model Rule 1.9, which addresses conflicts with former clients. The lawyer could not represent a person in the “same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.”¹⁰⁴ Similarly, MDPs would have to follow Model Rule 1.18, which provides for lawyers’ duties to prospective clients. Rule 1.18 might prohibit a lawyer from representing an individual whose interests are “materially adverse to those of a prospective client in the same or a substantially related matter.”¹⁰⁵ A non-profit MDP would simply need to create a conflict checking mechanism to avoid potential conflicts, just as any law firm would have to do.

¹⁰⁰ *Id.*

¹⁰¹ Rhode, *supra* note 77, at 412.

¹⁰² Brustin, *supra* note 5, at 824.

¹⁰³ MODEL RULES OF PROF’L CONDUCT R. 1.7(a) (2004).

¹⁰⁴ MODEL RULES OF PROF’L CONDUCT R. 1.9(a) (2004).

¹⁰⁵ MODEL RULES OF PROF’L CONDUCT R. 1.18(c) (2004).

Admittedly, the conflicts problem potentially becomes more acute with the addition of non-legal service providers to a partnership.¹⁰⁶ Could a lawyer represent an individual who has interests adverse to a client of another of the MDPs providers?¹⁰⁷ For example, a woman takes advantage of the mental health services at an MDP, and then her husband comes to the legal department to file for a divorce.¹⁰⁸ Such a situation would serve as a detriment to the holistic approach, and would likely chill clients from waiving confidences in order to receive all the needed services a non-profit MDP could provide. However, there is a practical solution. The MDP could “treat all clients of the MDP as clients of the lawyers for purposes of identifying or imputing conflicts.”¹⁰⁹ The MDP could create a written policy that would require “all nonlawyers to refrain from providing services to someone whose interests are directly adverse to a current or former client of the legal department” and vice versa.¹¹⁰ Another acute example of the need to effectively identify conflicts is that of domestic violence.¹¹¹ Imagine if a victim of domestic violence was seeking the services of an MDP and the perpetrator visited the same MDP for non-legal services.¹¹² The safety of the victim client would most certainly be in jeopardy.

However, adopting such strict conflict rules could serve as a detriment to the overall goal of non-profit MDPs—servicing the indigent population. In a community with minimal resources, individuals could be denied necessary services because of strict conflict rules, when in reality a conflict may not materially affect the client’s interests.¹¹³ This could be addressed by allowing screening mechanisms to be used in non-profit MDP.¹¹⁴ The Model Rules already

¹⁰⁶ Brustin, *supra* note 5, at 854.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 855.

¹¹⁰ *Id.* at 856.

¹¹¹ *Id.* at 857.

¹¹² Brustin, *supra* note 5, at 857.

¹¹³ *Id.*

¹¹⁴ *Id.* at 857-58.

permit screening to avoid conflicts in four explicit instances: legal secretaries and law students,¹¹⁵ government attorneys,¹¹⁶ work done as a judge or a law clerk,¹¹⁷ and prospective clients.¹¹⁸ Furthermore, the Rules allow implicitly for screening if a lawyer agrees to create a screen in order to obtain informed consent from the client.

The ABA Model Rules of Professional Conduct define screening as “the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.”¹¹⁹ The use of screening is allowed under the Rules in order to promote worthy goals: government service, clerking as law students, and talking openly with prospective clients. It certainly would be a worthy goal to foster holistic healing and increasing the availability of legal services for the poor. Amending the Model Rules to allow for screening in a non-profit MDP is appropriate.

While critics of MDPs remain steadfast in their opposition, two jurisdictions, Washington D.C. and New York, have acknowledged the concerns, yet have amended their rules of professional conduct to allow for some version of MDPs. Furthermore, because the concerns about MDPs lessen, or are easily addressed, in the non-profit sector, the creative approaches to holistic advocacy that currently exist could only be strengthened by lifting the ban on MDPs.

III. TWO BOLD JURISDICTIONS AND CREATIVE HOLISTIC HEALING APPROACHES

Model Rule 5.4 appears to apply to all MDPs, even those non-profit organizations.¹²⁰ While Rule 5.4(d) specifically only mentions for-profit organizations, there is no clarification in

¹¹⁵ See MODEL RULES OF PROF'L CONDUCT R. 1.10 cmt. 4 (2004).

¹¹⁶ See MODEL RULES OF PROF'L CONDUCT R. 1.1 (2004).

¹¹⁷ See MODEL RULES OF PROF'L CONDUCT R. 1.12 (2004).

¹¹⁸ See MODEL RULES OF PROF'L CONDUCT R. 1.18 (2004).

¹¹⁹ MODEL RULES OF PROF'L CONDUCT R. 1.0(k) (2004).

¹²⁰ Brustin, *supra* note 5, at 801.

the comments or history of the Rule that suggest it would not apply to the non-profit sector.¹²¹ The ABA has at least amended 5.4 to allow for the sharing of court-awarded attorney fees where the nonprofit organization “employed, retained or recommended employment of the lawyer in the matter.”¹²² However, Michigan has not adopted such a provision. But that provision alone does not go far enough. Washington D.C. and New York took the bold step of departing from the ABA and amending their Rules to allow for MDPs.

A. Washington D.C.

In 1991, Washington D.C. became the first jurisdiction to allow MDPs in some form, including fee sharing.¹²³ In Washington, D.C. there are four conditions that must be met before a lawyer is allowed to practice law in a partnership or organization where managerial authority is exercised by a non-lawyer: (1) the organization’s sole purpose must be to provide legal services; (2) the managerial non-lawyers must agree to abide by the D.C. Rules of Professional Conduct for lawyers; (3) lawyers are responsible for non-lawyers as if the non-lawyers were lawyers under 5.1; and (4) the agreement must be in writing.¹²⁴ The purpose of the Rule amendment was to “provide essential services to clients already receiving legal services.”¹²⁵ The “Command and Control Model” suggested by the ABA is loosely based on the version of Rule 5.4 that Washington D.C. adopted.¹²⁶ Lawyers could form partnerships with non-lawyers and share legal fees in restricted circumstances.¹²⁷

¹²¹ *Id.* at 802-03.

¹²² MODEL RULES OF PROF’L CONDUCT R. 5.4(a)(4) (2004).

¹²³ Brustin, *supra* note 5, at 807.

¹²⁴ *Id.* at 808, quoting D.C. RULES OF PROF’L CONDUCT R. 5.4 (2007).

¹²⁵ *Id.* at 809.

¹²⁶ Gordon, *supra* note 54, at 1379.

¹²⁷ *Id.*

In Washington D.C. a psychologist can work with family law attorneys, an accountant with tax attorneys, and presumably a medical doctor with health law attorneys.¹²⁸ Non-lawyers can become partners in a law firm provided it does not have offices in more than one jurisdiction, but such individuals cannot direct or regulate a lawyer's judgment in providing legal advice.¹²⁹ Very few firms have taken advantage of D.C.'s leniency for two likely reasons: (1) the organization's sole purpose has to be legal and (2) if there is a law office in more than one jurisdiction, there cannot be a non-lawyer partner in the D.C. office.¹³⁰

However, there are non-profit MDPs in D.C. that have seemingly taken advantage of D.C. Rule 5.4 and offer a variety of services to clients. D.C. Rule 5.4 has been implicitly read to provide exemptions to the four requirements for "those providing legal services within a non-profit, public interest setting."¹³¹ Bread for the City ("BFC"), a non-profit organization in Washington D.C., is an example of an organization that benefits from D.C.'s allowance of MDPs. BFC provides several services for Washington D.C.'s low-income population, including a food pantry, a clothing room, a medical clinic, a social services office, a legal clinic and various other advocacy programs.¹³² The legal clinic both refers clients other BFC services, and accepts in-house referrals.¹³³ Essentially, if an individual comes into the legal office, the attorney will ask them if they are interested in any of BFC's other services.¹³⁴ If so, there will be a general intake form completed to determine eligibility.¹³⁵ The legal clinic also employs a legal

¹²⁸ John D. Messina, *Lawyer + Layman: A Recipe for Disaster! Why the Ban on MDP Should Remain*, 62 U. PITT. L. REV. 367, 373-74 (2000).

¹²⁹ *Id.* at 374-75.

¹³⁰ *Id.* at 375.

¹³¹ Brustin, *supra* note 5, at n.135.

¹³² Bread for the City, *About our Services*,

<http://www.breadforthe-city.org/NETCOMMUNITY/Page.aspx?pid=201&srcid=183> (last visited Apr. 23, 2008).

¹³³ E-mail from Margie Sollinger, Staff Attorney, Bread for the City, to Jessica L. Zimbelman (March 25, 2008) (on file with author).

¹³⁴ *Id.*

¹³⁵ *Id.*

clinic liaison to the social service department, and that attorney does casework for both areas and serves as the bridge between the two departments.¹³⁶ BFC has an executive board, Executive and Deputy directors and department managers.¹³⁷ The legal clinic is managed by a legal clinic director, and not by any other department director.¹³⁸ However, if there are cross-over issues, or a referral is needed, the BFC legal clinic attorneys can talk to one of the other department heads.¹³⁹ BFC is providing holistic care to an underserved portion of our population and could serve as a model to existing legal aid clinics in Detroit.

B. New York

In 2000, in the midst of the ABA's debate on MDPs the New York State Bar Association issued the MacCrate Report, which posited that partnerships between non-lawyers and lawyers could not be created in a way that would preserve the core values of the legal profession.¹⁴⁰ However, the report did suggest that "'side-by-side' business arrangements" between lawyers and non-lawyers might be workable.¹⁴¹

In July 2001, the Chief Administrative Judge of New York's Appellate Divisions issued an order which created new sections of the New York Lawyer's Code of Professional Responsibility to permit "cooperative business relationships" between lawyers and non-lawyers.¹⁴² While New York's rules do not allow for "one-stop shops," the rules provide certain situations in which a lawyer can provide non-legal services, as well as guidance as to when lawyers and non-lawyers can enter into contractual relationships.¹⁴³

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ E-mail from Margie Sollinger, *supra* note 133.

¹⁴⁰ Noroski, *supra* note 43, at 495.

¹⁴¹ *Id.*

¹⁴² *Id.* at 496.

¹⁴³ *Id.* at 497-98.

Attorneys who provide non-legal services are subject to New York's rules in three situations: (1) when the non-legal services are not distinct from the legal services, (2) when the client may reasonably believe the non-legal services receive the protections of the attorney-client privilege, or (3) when a law firm owns or controls a firm which is providing non-legal services.¹⁴⁴ The rule clarifies that non-legal services are those which, if practiced by a non-attorney, would not create a charge of the unauthorized practice of law.¹⁴⁵ Lawyers are allowed to provide non-legal services, provided the client clearly understands that the services are non-legal services and the attorney-client privilege does not attach to those services.¹⁴⁶ Such clarity is only created by communicating the fact to the client in writing.¹⁴⁷ Providers of non-legal services are still prohibited from regulating the "professional judgment of the lawyer."¹⁴⁸

The more detailed addition to New York's code is the rule which allows for contractual relationships between lawyers and non-lawyers. Disciplinary Rule 107 states:

[A] lawyer or law firm may enter into and maintain a contractual relationship with a non-legal professional or non-legal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm, as well as other non-legal professional services.¹⁴⁹

There are several conditions that must be met before such contractual relationships are allowed. First, the Rule only applies to lawyers who want to provide legal services to a client referred from a non-lawyer or the lawyer wants to refer a client to a non-lawyer.¹⁵⁰ The criticism of this approach is that the relationship becomes so close that the non-lawyers and lawyers begin to

¹⁴⁴ *Id.* at 498.

¹⁴⁵ *Id.*

¹⁴⁶ Noroski, *supra* note 43, at 499.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 499-500, quoting N.Y. CODE OF PROF'L RESPONSIBILITY DR 1-107(A) (2007).

¹⁵⁰ *Id.* at 500.

“commingle tasks.”¹⁵¹ Second, only five types of non-lawyers are allowed to form relationships: “architects, certified public accountants, professional engineers, land surveyors, and certified social workers.”¹⁵² The rule also allows the Appellate Division to add additional professions, provided the profession requires education and work experience “tantamount to a college degree” and the profession has an ethics code that the profession is required to follow.¹⁵³ Third, non-lawyers are still prohibited from holding any ownership or supervisory right connected to the legal services of the lawyer or law firm.¹⁵⁴ Similarly, a lawyer still cannot share legal fees with a non-lawyer.¹⁵⁵ Fourth, the relationship must be disclosed to the client, in writing, before receiving a referred client or referring a client.¹⁵⁶ Lastly, New York’s rules on advertising have been slightly altered. The lawyer can provide information about his or her provision of non-legal services, but must not include the name of the non-legal service provider.¹⁵⁷

While New York’s rule appears to only provide for contractual referral situations between a limited number of professions, the inclusion of social workers in the enumerated potential partnerships is encouraging to the non-profit sector. Legal aid attorneys will seemingly begin to take advantage of their ability to form a more permanent and established referral relationship with social workers. Hopefully such attorneys will also petition the Appellate Division to add more service providers—such as doctors—to the list of approved professions. With such additions, New York may soon have a vibrant non-profit MDP community.

C. Unique Approaches in the Social Service Setting

¹⁵¹ *Id.*

¹⁵² Noroski, *supra* note 43, at 500.

¹⁵³ *Id.* at 501.

¹⁵⁴ *Id.* at 501-02.

¹⁵⁵ *Id.* at 502.

¹⁵⁶ *Id.* at 503.

¹⁵⁷ *Id.* at 504.

The social service setting provides unique opportunities to help individual clients in a holistic manner. An individual with various needs, especially within the indigent population, might not have an initial impulse to see an attorney, as such a process can seem intimidating and unfamiliar. However, if an individual had legal advice available to them when taking advantage of other social services, the holistic ideal could be met.

A tremendous example of such an organization can be found in Boston, at the Boston Medical Center.¹⁵⁸ The Center serves a low-income population, where over half of the patients' incomes are below the poverty level.¹⁵⁹ The Pediatrics Department chairman was concerned that the child patients, and their families, were not receiving their basic housing, nutrition, safety and healthcare needs.¹⁶⁰ As such, the chairman founded the Family Advocacy Program, which incorporated lawyers into the clinical treatment team, to help address the "institutional barriers" pediatricians face when trying to meet patient needs.¹⁶¹ The Family Advocacy Program incorporates lawyers who practice in public benefits, access to health insurance, housing, family law, immigration issues, and education law.¹⁶² Further, for those areas not covered by the expertise of the Program lawyers, the Program created a network of other advocacy services, to be used for advice and possible referrals to the outside organization.¹⁶³

An example of a Program beneficiary helps to demonstrate the benefits of the Program. A twelve-year-old child "showed symptoms of depression, mood disorder, and post-traumatic stress disorder compounded by significant development delays, including selective muteness."¹⁶⁴ The child was neglected by her mother, witnessed domestic violence perpetrated by father, was

¹⁵⁸ Wagner, Lawton, & Smith, *supra* note 74.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 505, 507.

¹⁶² *Id.* at 509.

¹⁶³ *Id.*

¹⁶⁴ Wagner, Lawton, & Smith, *supra* note 74, at 511.

in foster care for five years, and then was placed with her grandmother, who had possibly allowed unsanctioned visits with the mother.¹⁶⁵ The Program attorneys helped advise the doctors with regards the “permanent guardianship process, for guidance on helping the grandmother obtain public benefits like food stamps, transitional assistance and supplemental security income, and for advice about possible child protection issues.”¹⁶⁶ Any other child or family without the assistance of the Program might not have obtained such a holistic approach to fix the physical symptoms of this child. While Massachusetts Rule of Professional Conduct 5.4 is virtually identical to the Model Rule, it appears that the Program operates based on referrals from the medical providers.

The Family Advocacy Program has expanded since 1993 and has morphed into a national network: the Medical Legal Partnership for Children (“MLPC”).¹⁶⁷ There are thirty-three programs in 20 states similar to the Family Advocacy Program which benefit from the MLPC.¹⁶⁸ The MLPC serves to consolidate policy advocacy efforts, as well as provide best-practices information to the network’s programs.¹⁶⁹ There is one such program in Ann Arbor, Michigan, called the Ann Arbor Pediatric Advocacy Initiative.¹⁷⁰ The Initiative is a collaboration between lawyers and health-care providers to provide holistic care on issues such as obtaining social security benefits, unsafe housing, predatory lending, education, immigration and citizenship issues, domestic violence, food stamp benefits, and driver’s license issues.¹⁷¹ The Initiative

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Sylvia Pagan Westphal, *Lawyers Help Patients Solve Problems*, WALL ST. J., April 11, 2006, at D3.

¹⁶⁸ *Id.*

¹⁶⁹ Maura King Scully, *Is There a Lawyer in the House?*, NORTHEASTERN LAW MAGAZINE, Summer 2006, <http://www.slaw.neu.edu/magazine/06summer/trends.html>.

¹⁷⁰ Ann Arbor Pediatric Advocacy Initiative, *Partnership Sites*, <http://www.mlpforchildren.org/partnershipsites.aspx> (last visited Apr. 23, 2008).

¹⁷¹ Ann Arbor Pediatric Advocacy Initiative, *Advocacy Services*, <http://www.pediatricadvocacyinitiative.org/advocacy.htm> (last visited Apr. 23, 2008).

obtains their clients by referral from its medical partners.¹⁷² Given that most MLPCs operate based on referrals, it seems that the programs could only be strengthened and used to aid more low-income individuals if the MLPCs could be housed in one building, with service providers in frequent, daily contact.

Law school clinics also provide an excellent example of organizations that work closely with other service providers because full partnership is not available.¹⁷³ In Michigan, one such clinic is Michigan State University College of Law's Chance at Childhood Program. The Program's mission is to "promote and protect the well-being of children and families through integrated education and advocacy."¹⁷⁴ The program is a collaboration between MSU College of Law and the MSU Graduate School of Social Work.¹⁷⁵ The clinic serves three purposes: "1) training of students seeking careers in child welfare, 2) legal representation to children, and 3) consultation to practitioners and community members."¹⁷⁶ This approach provides a more holistic look at the lives of children—encompassing both their psychological, environmental and legal needs, which is exactly what non-profit MDPs could bring to a community at large.

D. More Can be Done for Detroit

While law school clinics and medical-legal partnerships provide much needed services for the people of Michigan, more can be done, especially in the City of Detroit, by completely lifting the ban on MDPs for the non-profit sector. For example, the Legal Aid and Defender Association ("LADA") "provides free civil legal services to low- and moderate-income people

¹⁷² Ann Arbor Pediatric Advocacy Initiative, *How to Get Legal Assistance from the PAI*, <http://www.pediatricadvocacyinitiative.org/contact.htm> (last visited Apr. 23, 2008).

¹⁷³ Rhode, *supra* note 77, at 395-96.

¹⁷⁴ Michigan State University Chance At Childhood Program, *The Program*, <http://chanceatchildhood.msu.edu/about.html> (last visited Apr. 23, 2008).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

and seniors” in southeast Michigan, including Detroit.¹⁷⁷ Some of the civil matters LADA provides representation for include landlord-tenant issues and parental visitation problems.¹⁷⁸ However, imagine if a client came to LADA with a complaint against his or her landlord because of uninhabitable conditions—lead paint or mold. While LADA can currently assist with the legal ramifications and procedures, it would be of great benefit to the client if, in that same visit to that same building, the client could receive a medical examination to ensure the conditions of the housing unit had not created a sickness or disease. Or, imagine if a client visited LADA with a desire to end a parent’s visitation rights, because of suspected abuse. Again, LADA can currently assist the client with his or her legal rights, but that client could not receive the necessary mental health counseling at the same time. MDP one-stop shopping would help these individuals, as well as allowing LADA to help even more Detroit residents to rise out of poverty.

IV. AMENDING MICHIGAN RULE 5.4

The statistics in Part I are not just statistics—they are real people with real problems. Legal aid lawyers can only do so much to assist all of these individuals in their daily struggles. To do more, Michigan lawyers should be willing to allow for an amendment of Rule 5.4 to allow for MDPs in the non-profit sector. Such practices are best suited to “respond to the myriad needs of those who are poor or marginalized by their social, medical, or psychological circumstances.”¹⁷⁹

As such, Michigan Rule of Professional Conduct should be amended as follows, with proposed new language in bold:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that

¹⁷⁷ Legal Aid and Defender Association, *Need a Lawyer?*, http://www.ladadetroit.org/legal_services.htm (last visited Apr. 23, 2008).

¹⁷⁸ *Id.*

¹⁷⁹ Brustin, *supra* note 5, at 792.

(1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share fees in a partnership or other form of organization which meets the requirements of paragraph (b).

~~(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.~~

(b) A lawyer may practice law in a partnership or other form of organization in which a financial interests is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to the client, but only if:

(1) The partnership or organization has as its sole purpose providing legal and nonlegal services to low- and moderate-income individuals in a non-profit setting;

(2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;

(3) The lawyers who have a financial interests or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were nonlawyer assistants under Rule 5.3;

(4) ~~(e)~~ A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(5) Lawyers or nonlawyer service providers may be timely screened from any participation in matters and apportioned no part of the fee therefrom in situations that may create conflicts of interest as described under these Rules.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Section (d) does not apply to professional corporations or associations practicing law in the non-profit sector.

CONCLUSION

By adopting the proposed amendment to Rule 5.4, Michigan will create a better legal system for its indigent population. This very valuable tool will allow the Michigan Bar to lead the nation by allowing non-profit MDPs. The proposed amendment will still protect the professional independence of lawyers, while simultaneously protecting client confidences and guarding against conflicts of interest. Given the benefits the people in Detroit could gain from MDPs and the holistic healing they provide, Michigan must amend Rule 5.4 to provide opportunity and hope for those individuals who need it most. After all, public service is a core value of the legal profession, and should be valued as such.