I. INTRODUCTION

Nonlawyer ownership of law firms is a controversial issue. It has been discussed by legal professionals in the United States for close to a century and, most recently, by the American Bar Association (ABA) Commission on Ethics 20/20 (Ethics 20/20), which was charged with “conducting a plenary assessment of the ABA Rules of Professional Conduct and related ABA policies.” As part of this assessment, Ethics 20/20 considered alternative law practice structures in which nonlawyers would have an ownership interest in law firms. A working group was formed that considered “whether lawyers and law firms, in order to better serve their clients, should be able to structure themselves differently than is currently permitted under the Model Rules of Professional Conduct” (Model Rules). After careful study and evaluation, Ethics 20/20 decided not to recommend that the ABA support this change. Although allowed in many
countries and in one jurisdiction in the United States,\textsuperscript{6} it was determined that, “[b]ased on the Commission’s extensive outreach, research, consultation and the response of the profession, there does not appear to be a sufficient basis for recommending a change to ABA policy on nonlawyer ownership of law firms.”\textsuperscript{7}

This Article begins by taking a historic look at the prohibition against nonlawyer ownership of law firms in the United States.\textsuperscript{8} Next, the Article reviews the ABA’s consideration of alternative business structures for law firms at the turn of the twenty-first century,\textsuperscript{9} and it follows with an examination of some of the practice entities that have been embraced outside of the United States.\textsuperscript{10} In Part V, this Article explores the most recent undertaking by the ABA to examine alternative business structures;\textsuperscript{11} and finally, it addresses the various rationales behind the polar positions taken on this issue.\textsuperscript{12} The ultimate question is whether lawyers in the United States are seeking to protect the clients or themselves. This author takes the position that it is the latter.

\section*{II. The History and Development of Nonlawyer Ownership of Law Firms}

A primary purpose of the codes of legal ethics, since their inception in the United States, has been “to protect client rights of confidentiality and loyalty”\textsuperscript{13} and to preserve “the exercise of a lawyer’s independent professional judgment in service to the client.”\textsuperscript{14} To accomplish these objectives, the legal profession’s ethical rules contain provisions designed to safeguard certain values. The Model Rules, on which the individual states’ professional conduct rules are based,\textsuperscript{15} address the matter of

\begin{itemize}
\item \textsuperscript{6} Id.
\item \textsuperscript{7} Id.
\item \textsuperscript{8} See infra Part II
\item \textsuperscript{9} See infra Part III.
\item \textsuperscript{10} See infra Part IV.
\item \textsuperscript{11} See infra Part V.
\item \textsuperscript{12} See infra Part VI.
\item \textsuperscript{13} ABA Comm’n on Multidisciplinary Practice, \textit{Background Paper on Multidisciplinary Practice: Issues and Developments}, PROF. LAW., Fall 1998, at 1, 1 [hereinafter \textit{Background Paper}].
\item \textsuperscript{14} Id. at 6.
\item \textsuperscript{15} “While most states in the United States have adopted the Model Rules, lawyers are not provided with a uniform standard since interpretational differences exist among the jurisdictions, as do differences in the text of some of the rules.” Louise L. Hill, \textit{Gone but (continued)
confidentiality of information in Model Rule 1.6. The comments to Model Rule 1.7, one of several conflict-of-interest rules, address loyalty

Not Forgotten: When Privacy, Policy and Privilege Collide, 9 NW. J. TECH. & INTELL. PROP. 565, 570 n.37 (2011). This is especially true with the 2012 and 2013 revisions to the Model Rules, since the majority of states are just beginning to undertake their consideration. See Samson Habte, Now that Ethics 20/20 Project Is Completed Courts, State Bars Will Determine Its Impact, 29 ABA/BNA LAWYERS’ MANUAL ON PROF’L CONDUCT 282, 282 (2013). The first state to adopt the 2012 Model Rule revisions was Delaware, in January 2013. Id. at 282–83.

16 Titled “Confidentiality of Information,” Model Rule 1.6 currently provides as follows:

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;

(4) to secure legal advice about the lawyer’s compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client; or;

(6) to comply with other law or a court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
as an essential element in the lawyer-client relationship. Model Rule 5.4, a rule that focuses on the professional independence of a lawyer, is designed to limit the influence of third parties. It was Model Rule 5.4

Model Rules of Prof’l Conduct R. 1.6 (2013). Model Rule 1.6, and its commentary, were revised in 2012 as part of Ethics 20/20’s recommendations to the ABA House of Delegates. See Joan C. Rogers, Ethics 20/20 Rule Changes Approved by ABA Delegates with Little Opposition, 28 ABA/BNA Lawyers’ Manual on Prof’l Conduct 509, 509 (2012).

The comments to Model Rule 1.7 begin by providing that “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” Id. R. 1.7 cmt. 1. The essential element of “independent judgment” was added to that of “loyalty” in the 2002 Model Rule revisions. Compare id. R. 1.7 cmt. 1 (2000), with id. R. 1.7 cmt. 1 (2002).


Model Rule 5.4, on professional independence of a lawyer, provides as follows:

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

   (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;

   (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; and

   (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(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 profit, if:

   (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the (continued)
that initially came under close scrutiny in discussions involving nonlawyer ownership of law firms.20

The Model Rules were adopted by the ABA in 1983.21 They were implemented as an alternative to the Model Code of Professional Responsibility (Model Code),22 which replaced the Canons of Professional Ethics (Canons) in 1969.23 The Canons, which were promulgated and adopted by the ABA in 1908,24 did not address the matter of lawyer and

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20 See Levinson, supra note 19, at 140.
22 See Robert J. Kutak, Model Rules: Laws for Lawyers or Ethics for the Profession, 38 REC. ASS’N B. CITY N.Y. 140, 142 (1983) (stating that the Commission proposed the Model Rules in light of criticism with the Model Code). The Model Code, which the ABA replaced with the Model Rules, was criticized as being irrelevant, ambiguous, and contradictory. See id. at 143; see also Nancy J. Moore, Conflicts of Interest in the Simultaneous Representation of Multiple Clients: A Proposed Solution to the Current Confusion and Controversy, 61 TEX. L. REV. 211, 212 (1982); Thomas D. Morgan, The Evolving Concept of Professional Responsibility, 90 HARV. L. REV. 702, 702 (1977). The Model Code is composed of three parts: (1) canons—concise statements setting forth the basic duty of lawyers; (2) ethical considerations—statements of activity and conduct to which practitioners should aspire; and (3) disciplinary rules—statements setting forth minimum standards of conduct that must be met or a lawyer may be subject to disciplinary action. MODEL CODE OF PROF’L RESPONSIBILITY Preliminary Statement (1980). The three parts of the Code are separate but interrelated, serving “both as an inspirational guide” and “as a basis for disciplinary action” when minimum standards are not met. Id.
23 At the time the Model Code replaced the Canons, there was a consensus among the bar that the Canons were incomplete, unorganized, and failed to recognize the distinction between the inspirational and the prescriptive. See Edward L. Wright, The Code of Professional Responsibility: Its History and Objectives, 24 ARK. L. REV. 1, 5 (1970).
24 The Canons of Professional Ethics were adopted by the ABA at its annual meeting on August 27, 1908. WILLIAM M. TRUMBULL, MATERIALS ON THE LAWYER’S PROFESSIONAL RESPONSIBILITY 373 (1957).
nonlawyer partnerships initially. Rather, proscriptions against fee sharing and lawyer and nonlawyer associations arose in amendments to the Canons in 1928, through the addition of Canons 33 through 35. Canon 33 prohibited partnerships between lawyers and nonlawyers if part of the business enterprise was the practice of law. Canon 34 prohibited the division of legal fees with nonlawyers, and Canon 35 cautioned lawyers not to be controlled by a lay entity that “intervenes between client and lawyer.” These prohibitions were carried over into the Model Code in 1969 and subsequently to the Model Rules in 1983.

While proscriptions against fee sharing and lawyer and nonlawyer partnerships were adopted as part of the Model Rules in 1983, a proposed version of Model Rule 5.4 would have allowed lawyers to share fees with nonlawyers, “so long as the nonlawyers agreed not to influence the lawyer’s independent professional judgment and to abide by the rules of

\[26\] Id.
\[27\] Canon 33, titled “Partnerships—Names,” provides as follows: “Partnerships between lawyers and members of other professions or non-professional persons should not be formed or permitted where any part of the partnership’s employment consists of the practice of law.” CANONS OF PROF’L ETHICS Canon 33 (1956).
\[28\] Canon 34, titled “Division of Fees,” provides as follows: “No division of fees for legal services is proper, except with another lawyer, based upon a division of service responsibility.” Id. Canon 34.
\[29\] Canon 35, titled “Intermediaries,” provides in part as follows:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer’s responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer’s relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

Id. Canon 35.
\[30\] MODEL CODE OF PROF’L RESPONSIBILITY DR 3-102(A) (1969); id. DR 3-103(A); id. DR 5-107(B)–(C).
The Commission on Evaluation of Professional Standards, formulated by the ABA in 1977 and referred to as the “Kutak Commission,” put forward a similar version of Model Rule 5.4 in 1982. However, the ABA House of Delegates subsequently rejected this version in favor of a rule substantially similar to the one we have today.

35 The 1982 draft of Model Rule 5.4 provided as follows:

Professional Independence of a Firm

A lawyer may be employed by an organization in which a financial interest is held or managerial authority is exercised by a nonlawyer, or by a lawyer acting in a capacity other than that of representing clients, such as a business corporation, insurance company, legal services organization or government agency, but only if the terms of the relationship provide in writing that:

(a) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship;

(b) information relating to the representation of a client is protected as required by Rule 1.6;

(c) the arrangement does not involve advertising or personal contact with prospective clients prohibited by Rules 7.2 and 7.3; and

(d) the arrangement does not result in charging a fee that violates Rule 1.5.

36 Id. at 5. Purportedly, the “fear of Sears . . . led to the defeat of the Kutak proposal; and Model Rule 5.4 was adopted instead.” Michael Kelly, Comment, Ethical Issues Associated with Multidisciplinary Practices in Texas, 41 St. Mary’s L.J. 733, 743 n.26 (2010) (quoting Susan Poser, Main Street Multidisciplinary Practice Firms: Laboratories for the Future, 37 U. Mich. J.L. Reform 95, 100 (2003)).
Model Rule 5.4 prohibits a lawyer from sharing a fee with a nonlawyer, except under limited circumstances.\footnote{Model Rules of Prof’l Conduct R. 5.4(a) (2003).} It also prohibits a lawyer from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.\footnote{Id.} It precludes a lawyer from practicing in a professional corporation or association if a nonlawyer is a corporate director or officer.\footnote{Id.} There is nothing in the rule that prohibits a lawyer from working with a professional trained in another discipline to assist with a client matter.\footnote{Background Paper, supra note 13, at 6.} A lawyer may also directly employ a nonlawyer on the lawyer’s staff, or own a separate business with a nonlawyer professional that provides nonlaw-related services to the client.\footnote{Id.} What is not permitted under Model Rule 5.4 is “an integrated practice in which a lawyer shares fees with a nonlawyer or enters into a partnership or an analogous relationship with a nonlawyer to deliver legal services to clients.”\footnote{Id.}

III. THE MOVEMENT TO ESTABLISH MULTIDISCIPLINARY PRACTICE

During the 1990s, members of the legal profession noticed that consulting firms were soliciting clients and offering services quite similar to those traditionally offered by law firms.\footnote{See Paul D. Paton, Multidisciplinary Practice Redux: Globalization, Core Values, and Reviving the MDP Debate in America, 78 Fordham L. Rev. 2193, 2206 (2010) (noting that the Enron scandal eliminated any possibility of a large-scale takeover of a law firm by a Big Five accounting firm); see also Mary C. Daly, The Structure of Legal Education and the Legal Profession, Multidisciplinary Practice, Competition, and Globalization, 52 J. Legal Educ. 480, 486 (2002).} Although quelled somewhat by accounting scandals that developed at the time,\footnote{Id. R. 5.4(d)(2) (2002).} some of the services...
offered by these consulting firms were “advice on mergers and acquisitions, estate planning, human resources, and litigation support systems.”

Furthermore, the largest consulting firms were affiliated with the largest accounting firms.

In 1997, the ABA established the Commission on Evaluation of the Rules of Professional Conduct (Ethics 2000) to study and evaluate the Model Rules of Professional Conduct. As part of this movement, in August 1998, Philip S. Anderson, president of the ABA at the time, appointed the Commission on Multidisciplinary Practice (MDP Commission) “to study and report on the extent to which and the manner in which professional service firms operated by accountants and others who are not lawyers are seeking to provide legal services to the public.” The concept of multidisciplinary practice (MDP) is not complicated; it envisions an integrated entity that provides legal services as one of several professional services offered through a single provider.

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45 Background Paper, supra note 13, at 1.
46 Id.
48 ISSUES PAPER, supra note 4, at 5.
50 Paton, supra note 44, at 2200. “Multidisciplinary practice” has been defined as a “partnership, professional corporation or other entity or arrangement, that includes lawyers and nonlawyers, and has as one, but not all, of its purposes the delivery of legal services to a client(s) . . . or that holds itself out to the public as proving nonlegal, as well as legal,
Commission heard testimony and received comments on the issues it was asked to consider, following which, in August 1999, it recommended that the Model Rules be amended to permit multidisciplinary practices, “but with certain safeguards in place to ensure that the core values of the legal profession were maintained.”

The ABA House of Delegates did not act on the MDP Commission’s 1999 recommendation. Rather, it resolved not to permit multidisciplinary practice “unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession’s tradition of loyalty to clients.” In response to resolution by the ABA House of Delegates, the MDP Commission undertook an additional study, hearing more testimony and receiving more comments. Consumer groups, business clients, and others “uniformly contended that the entry of a new, alternative provider of legal services was in the best interest of the

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51 The MDP Commission was asked to analyze the following:

- The experience of clients, foreign and domestic, who had received legal services from professional service firms, and report on international trade developments relevant to the issue;
- Existing state and federal legislative frameworks within which professional service firms were providing legal services, and recommend any modifications or additions to that framework that would be in the public interest;
- The impact of receiving legal services from professional service firms on a client’s ability to protect privileged communications and to have the benefit of advice free from conflicts of interest; and
- The application of current ethical rules and principles to the provision of legal services by professional service firms, and to recommend any modifications or additions that would serve the public interest.

52 Id. at 6; 1999 Report of the Commission, supra note 50, at 223.
53 See ISSUES PAPER, supra note 4, at 6.
54 Id.
55 Id.
This resulted in the issuance of a new report in 2000, again recommending multidisciplinary practice, but only for lawyer-controlled practices. The MDP Commission recommended that “[l]awyers should be permitted to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (multidisciplinary practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services.”

In July 2000, the ABA House of Delegates rejected the recommendation in the MDP Commission’s new report, despite “overwhelmingly positive response from clients and the public.” In fact, a vote on this MDP Commission recommendation “never made it to the floor of the House of Delegates.” Instead, the ABA House of Delegates passed a resolution discharging the MDP Commission with thanks and urging the legal profession to protect its “core values” by continuing to prohibit nonlawyers from sharing legal fees, forming partnerships with lawyers for purposes of practicing law, or owning any interests in law firms. The ABA also instructed its Standing Committee on Ethics and Professional Responsibility to do the following:

[R]ecommend to the House of Delegates such amendments to the [Model Rules] as are necessary to assure that there are safeguards in the [Model Rules] relating to strategic alliances and other contractual relationships with nonlegal professional service providers.

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59 Paton, supra note 44, at 2209.
60 Id.
consistent with the statement of principles in this recommendation.62

Following its charge by the ABA House of Delegates, the ABA Standing Committee on Ethics and Professional Responsibility proposed Report 113 to the ABA House of Delegates at the ABA’s annual meeting.

62 Proceedings for the Annual Meeting, supra note 61, at 25. The principles to which the recommendation referred are as follows:

1. It is in the public interest to preserve the core values of the legal profession, among which are:
   a. the lawyer’s duty of undivided loyalty to the client;
   b. the lawyer’s duty competently to exercise independent legal judgment for the benefit of the client;
   c. the lawyer’s duty to hold client confidences inviolate;
   d. the lawyer’s duty to avoid conflicts of interest with the client;
   e. the lawyer’s duty to help maintain a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice; and
   f. The lawyer’s duty to promote access to justice.
2. All lawyers are members of one profession subject in each jurisdiction to the law governing lawyers.
3. The law governing lawyers was developed to protect the public interest and to preserve the core values of the legal profession, that are essential to the proper functioning of the American justice system.
4. State and territorial bar associations and other entities charged with attorney discipline should reaffirm their commitment to enforcing vigorously their respective law governing lawyers.
5. Each jurisdiction should reevaluate and refine to the extent necessary the definition of the “practice of law.”
6. Jurisdictions should retain and enforce laws that generally bar the practice of law by entities other than law firms.
7. The sharing of legal fees with non-lawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession.
8. The law governing lawyers, that prohibits lawyers from sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law, should not be revised.

Id. at 25–26.
in 2001. Report 113 suggested amendments to the Model Rules, providing guidance, as well as warnings, to lawyers who participate in strategic alliances. As something distinct from multidisciplinary practice, the Standing Committee on Ethics and Professional Responsibility’s proposal expressly allowed lawyers to engage in “‘strategic alliances,’ or mutual referral arrangements with nonlawyers.”

After further consideration and review of the matter of strategic alliances, the ABA House of Delegates adopted modifications to the Model Rules in August 2002, expressly authorizing “reciprocal referral agreements between lawyers and nonlawyer professionals, as well as between lawyers.” To promote the lawyer’s independent professional

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65 ABA Stands Firm on Client Confidentiality, Rejects ‘Screening’ for Conflicts of Interest, 17 ABA/BNA Lawyers’ Manual on Prof. Conduct 492, 494 (2001); 2001 Report of the Standing Committee, supra, note 64, at 175. The Standing Committee on Ethics and Professional Responsibility removed its proposal from debate, however, in response to a request from members of the New York bar. 2002 Report of the Standing Committee, supra, note 63, at 125. The New York State Bar Association filed a last-minute report recommending a proposed Rule 5.8 that addressed contractual relationships between nonlegal professionals and lawyers. Id. at 127–28. This recommendation reflected rule changes that had been adopted in New York allowing lawyers to engage in limited types of cooperative alliances with nonlawyers. Id. at 125. This change sprang from a 388-page study in April 2000 entitled “Preserving the Core Values of the American Legal Profession.” Laura Noroski, Note, New York’s Controversial Ethics Code Changes: An Attempt to Fit Multidisciplinary Practice Within Existing Ethical Boundaries, 76 S. Cal. L. Rev. 483, 495 (2003). Known as the MacCrate Report, after the chair of New York’s Special Committee on the Law Governing Firm Structure and Operation, it concluded that “[m]ultidisciplinary practice between lawyers and nonlawyers is incompatible with the core values of the legal profession.” Id. (quoting Chris Kelleher, MDP Update: The Empire Strikes Back, CPA J., Oct. 2001, at 12, 12). While the MacCrate Report condemned partnerships between lawyers and nonlawyers, it viewed “side-by-side” business arrangements favorably. Id. This was the basis for the New York rule amendments that took effect November 1, 2001, permitting and regulating cooperative business relationships between lawyers and nonlawyers. Id. at 495–96.

judgment, Model Rule 7.2 was amended to prohibit arrangements of this nature that are exclusive, so "that lawyers remain free to make a referral

[hereinafter ABA Delegates Approve Full MJP Package]; see Proceedings of the 2002 Annual Meeting of the House of Delegates, ABA ANNUAL REPORT 49 (Aug. 2002) [hereinafter Proceedings of the 2002 Annual Meeting]. According to M. Peter Moser, the amendment extends beyond agreements with nonlawyer professions to embrace strategic alliances with other lawyers to clarify that referral arrangements among lawyers and law firms are subject to the requirement of client knowledge. Id.

Model Rule 7.2(b)(4) provides as follows:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

MODEL RULES OF PROF’L CONDUCT R. 7.2(b)(4) (2002). Added to the commentary of Model Rule 7.2 was the following new comment:

A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such agreements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Id. R. 7.2(b)(4) cmt. 8.
based on what is best for the particular client.”

Also, the rule provided that referral arrangements must be disclosed to the client, so the client can make a well-informed decision on whether to accept the referral, protecting the core value of informed client consent. Addressing fee structure, revised Model Rule 5.4 stated that a lawyer is precluded from paying a fee to a lawyer or to a nonlawyer solely for a referral, tying the division of fees with a referring lawyer to the mandates of Model Rule 1.5(e). By leaving Model Rule 5.4 essentially intact, the Model Rules “effectively ban[ned] MDPs with provisions designed to prevent or limit the influence by non-lawyer third parties.” Fee sharing with nonlawyers, partnerships with nonlawyers, and the practice of law in a professional corporation, if an interest was owned by a nonlawyer, was prohibited. By doing this, the Model Rules attempted “to prevent a lawyer from being pressured by a non-lawyer to violate ethical duties, since non-lawyers ‘are not subject to the same ethical mandates regarding independence, conflicts

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68 ABA Delegates Approve Full MJP Package, supra note 66, at 479. ABA Standing Committee on Ethics and Professional Responsibility member Thomas M. Fitzpatrick emphasized the need to promote and protect the legal profession’s “core values” of independent judgment and informed client consent. Proceedings of the 2002 Annual Meeting, supra note 66, at 48.


70 MODEL RULES OF PROF’L CONDUCT R. 5.4(c) (2002).

71 Id. R. 5.4 cmt. 8. Model Rule 1.5(e) provides:

(c) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Id. R. 1.5(e) (2013).


73 MODEL RULES OF PROF’L CONDUCT R. 5.4(a) (2013).

74 Id. R. 5.4(b).

75 Id. R. 5.4(d)(1).
of interest, fees and the other important provisions of the [legal]
profession’s code of conduct.”

The rules that govern the conduct of lawyers in the United States are
determined by each individual state. During the 1990s, the only U.S.
jurisdiction to amend Rule 5.4 to allow lawyer and nonlawyer partnerships,
as well as the sharing of fees, was the District of Columbia. In
the District of Columbia, Rule 5.4 was modified to permit partnership and fee
sharing with nonlawyers, although this arrangement was restricted to
organizations that provide legal services to clients as their sole purpose.
The D.C. rule did not permit a lawyer and nonlawyer to enter into a
partnership if a purpose of the organization was to provide nonlegal
services as well, something envisioned in the multidisciplinary practice
concept.

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76 Noroski, supranaote 65, at 510 (quoting Harrison, supranaote 72, at 884).
77 See Stephen Rubin, The Legal Web of Professional Regulation, in REGULATING THE
PROFESSIONS: A PUBLIC POLICY SYMPOSIUM 29, 31–32 (Roger D. Blair & Stephen Rubin
eds., 1980).
78 Background Paper, supra note 13, at 6; Elijah D. Farrell, Note, Accounting Firms
and the Unauthorized Practice of Law: Who Is the Bar Really Trying to Protect?, 33 IND.
79 D.C. Rule 5.4(b) provides:

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

1. the partnership or organization has as its sole purpose
   providing legal services to clients;

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 interest 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 lawyers under Rule 5.1;

4. the foregoing conditions are set forth in writing.

80 See id. R. 5.4(b)(1). Comment 7 to D.C. Rule 5.4 provides as follows:

As the introductory portion of paragraph (b) makes clear, the
purpose of liberalizing the rules regarding the possession of a financial

(continued)
The purpose of liberalizing Rule 5.4 in the District of Columbia was to “permit nonlawyer professionals to work with lawyers in the delivery of legal services without being relegated to the role of employee.”

However, as far as implementation of the rule was concerned, very few law firms in Washington, D.C. were quick to take on nonlawyer partners. It has been suggested that two factors may have contributed to this fact. One is the requirement that the law firm have the provision of legal services as its “sole purpose.” The second factor is an ABA ethics opinion concluding that law firms “with offices in more than one jurisdiction could not have a nonlawyer partner in its Washington, D.C. office.”

To date, the District of Columbia remains the only U.S. jurisdiction to permit law practices with lawyer and nonlawyer partners and the sharing of fees.86 However, in March 2011, legislation was introduced in North Carolina to permit nonlawyers to own an equity interest in incorporated law firms.87 Under the North Carolina scheme, lawyer shareholders are required to own at least 51% of the stock of the professional corporation rendering services. Nonlawyer shareholders are precluded from interfering “with the exercise of professional judgment by licensed attorneys in their representation of clients.”88

Young furnished start-up capital for the firm and leased the firm space in a building it owned. See id.

86 ISSUES PAPER, supra note 4, at 2.
88 N.C. S. 254. As rewritten, the North Carolina statute would state:

Law Firms. – Any person may own up to forty-nine percent (49%) of the stock of a professional corporation rendering services under Chapter 84 of the General Statutes, subject to the following requirements:

(1) Licensees continue to own and control voting stock that represents at least fifty-one (51%) of the votes entitled to be cast in the election of directors of the professional corporation.

(2) All licensees who perform professional services on behalf of the corporation comply with Chapter 84 of the General Statutes and the rules adopted thereunder.

(3) The stock certificates or other written evidence of ownership of any nonlicensee shall bear the following language, in at least 12-point type:

“No nonlicensee shareholder shall interfere with the exercise of professional judgment by licensed attorneys in their representation of clients. If there is an inconsistency or conflict between the duties to the court, to clients, and to shareholders, then that conflict or inconsistency shall be resolved as follows:

1. The duty to the Court shall prevail over all other duties.

2. The duty to the client shall prevail over the duty to shareholders.”

(continued)
court, clients, and shareholders, the duty to the court prevails,\textsuperscript{89} with the
duty to clients coming next,\textsuperscript{90} followed by the duty to shareholders.\textsuperscript{91}

IV. MULTIDISCIPLINARY PRACTICES ABROAD

In light of Ethics 20/20’s treatment of multidisciplinary practice at the
turn of the twenty-first century, few U.S. jurisdictions pursued this course,
or any other form of alternative business structures.\textsuperscript{92} However, this was
not the case in the global legal services marketplace.\textsuperscript{93} The legal
profession in a number of other countries studied, and subsequently
embraced, a variety of alternative business structures.\textsuperscript{94} One of the first of
these was Australia.

A. Australia

The movement toward alternative business structures in law practice
began in Australia in 1994, when legislation in New South Wales
authorized multidisciplinary partnerships.\textsuperscript{95} To ensure compliance with a
law firm’s ethical practices, the legislation provided that legal practitioners

\begin{quote}
(4) Shareholders who hold or control less than five percent
(5%) of the voting stock and who are not employees, directors, or
officers of the professional corporation shall not, solely as a
result of stock ownership, be relevant for a determination of
conflict of interest under Chapter 84 of the General Statutes or
the rules adopted for the regulation of the professional conduct of
licensees.

(5) A qualified retirement or employee stock ownership plan
is deemed to be a licensee for purposes of this section if the
majority of the trustees of the plan are licensees.
\end{quote}

N.C. GEN. STAT. § 55B-6(a2).
\textsuperscript{89} Id. § 55B-6(a2)(3).
\textsuperscript{90} Id.
\textsuperscript{91} Id. This hierarchy of fealty is similar to what is followed in Australia for
incorporated legal practices; there, the duty to the court is primary, followed by an
obligation to clients, and finally, to shareholders. ISSUES PAPER, supra note 4, at 9.

\textsuperscript{92} ISSUES PAPER, supra note 4, at 2.
\textsuperscript{93} Id. at 7.

\textsuperscript{94} Among the countries that have implemented alternative business structures for law
practice are Australia, Canada, England and Wales, France, Germany, the Netherlands,
Scotland, Spain, and New Zealand. Id. at 15–16; Kelly, supra note 36, at 746.

\textsuperscript{95} ISSUES PAPER, supra note 4, at 8.
were to retain at least 51% of the net partnership income.\textsuperscript{96} This 51% rule subsequently came under attack, with “pressure from national competition authorities to reform regulatory structures to create greater accountability and enhance consumer interest and protection.”\textsuperscript{97} The end result was the recognition of “incorporated legal practices, multidisciplinary practices, and nonlawyer investment in law firm entities, including the first initial public offering of shares in a law firm.”\textsuperscript{98} These developments “coincided with the effective end of self-regulation by the legal profession, replaced by a coregulatory system that separates regulatory from representative functions, and legislation that places increased responsibility in the hands of government or government agencies.”\textsuperscript{99}

In Australia, an incorporated legal practice “may provide legal and any other lawful service, except it may not operate a managed investment scheme.”\textsuperscript{100} It may “have external investors and be listed on the Australian Stock Exchange,” and each lawyer who is a legal practitioner must comply with all rules and regulations that govern the legal profession.\textsuperscript{101} The incorporated legal practice must also comply with the Australian Federal Corporations Act, which “include[s] registration with the Australian Securities & Investment Commission.”\textsuperscript{102} Due to these multiple obligations, some issues of fealty arose. In Australia, a corporation’s primary duty is to its shareholders,\textsuperscript{103} whereas a lawyer’s professional duty “is owed first to the court and then to the client.”\textsuperscript{104} Slater & Gordon, “the world’s first publicly listed law firm,”\textsuperscript{105} was careful to provide that, as an incorporated legal practice, “its duty to the court remained primary, that

\textsuperscript{96} Id.
\textsuperscript{97} Id.
\textsuperscript{98} Paton, supra note 44, at 2240–41. Each state or territory in Australia has its own regulatory structure, and those structures vary from jurisdiction to jurisdiction. Id. at 2241. “[I]ncorporated legal practices are permitted under national model laws, as well as in New South Wales, the Northern Territory, Queensland, and Western Australia.” Id.
\textsuperscript{99} Id. at 2241.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{103} Id.
\textsuperscript{104} Id.
\textsuperscript{105} Id.
duties to its clients followed, and that the firm’s obligations to shareholders were last.”

A multidisciplinary partnership, as defined by Australia’s Legal Profession Act 2004, is “a partnership between one or more Australian legal practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services.”

“Each lawyer partner is responsible for . . . the legal services provided by the partnership” and to see that there is compliance with the rules and regulations that govern the legal profession. Furthermore, an Australian legal practitioner can be prohibited from partnering with a nonlawyer who is “not a ‘fit and proper person’ to be a partner or has committed conduct that, if committed by an Australian legal professional, would violate applicable professional conduct rules.”

At the present time, Australia “is aggressively investigating how regulatory frameworks can further be adjusted to ensure that Australian lawyers are poised to compete both from domestic bases and abroad.” Legal services are “making an enormous contribution to Australia’s economy” both nationally and internationally, “particularly in Asian markets, China and Hong Kong.” One commentator has noted:

The fact that the profession is working with government to ensure that ethical considerations are addressed within these new regulatory frameworks is evidence that the simple adoption of an alternative approach to the delivery mode for legal services does not alone mean the

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106 Id.


110 Paton, supra note 44, at 2242. “Uniform legislation and an integrated regulatory framework are being sought to ‘move toward[] a more functional and efficient Australian legal services market.’” Id. at 2241 (quoting John Corcoran, President, Law Council of Austl., The State of the Profession 3 (Sept. 19, 2009) (transcript available at http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20090919TheStateof theProfession.pdf)).

111 Id. at 2242.
abandonment of “core values,” as the MDP debate in North America ten years ago suggested.\textsuperscript{112}

\textbf{B. Canada}

In Canada, multidisciplinary practices are allowed in three provinces: British Columbia, Ontario, and Quebec.\textsuperscript{113} The road taken to arrive at this position on multidisciplinary practice has been described as one “involving political intrigue and overt manipulation.”\textsuperscript{114} The Canadian Bar Association (CBA), whose “primary purpose is to promote the interest of its members,”\textsuperscript{115} established the International Practice of Law (IPL) Committee in 1997 “to monitor the ‘activities, negotiations[,] and developments regarding the globalization of legal practice and the trend toward[ ] multi-disciplinary practices through NAFTA, the World Trade Organization . . . , and the International Bar Association.”\textsuperscript{116}

Pursuant thereto, a 1998 IPL committee report asserted that, “unless [multidisciplinary practice organizations] were controlled by lawyers,” they should not be permitted to provide legal services to clients.\textsuperscript{117} Following this, in May 1999, the Law Society of Upper Canada (LSUC) “imposed a regime for the province of Ontario that regulated the MDP structure and restricted lawyer participation to those [MDPs] in which legal services were the primary service offering.”\textsuperscript{118} However,

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{112} Id. (internal quotation marks omitted).
\item\textsuperscript{113} ISSUES PAPER, supra note 4, at 11.
\item\textsuperscript{114} Paton, supra note 44, at 2211. This notwithstanding, the Canadian Bar Association “is viewed as an ‘important and objective voice on issues of significance to both the legal profession and the public’ and is generally respected by [the] government for its input, although its resolutions are not binding on government or any legal regulator.” Id. (footnote omitted) (quoting About the Canadian Bar Association, CANADIAN BAR ASS’N, http://www.cba.org/CBA/Info/Main (last visited Aug. 19, 2014)).
\item\textsuperscript{115} Id.
\item\textsuperscript{117} Id.
\item\textsuperscript{118} Id. at 2213. The LSUC began its work on multidisciplinary practice in 1997, when the “Futures Task Force” was created “in response to deliberations within two separate Law Society committees on the need to assess the regulation of its members.” Id. at 2216. The regulation of multidisciplinary practices in Ontario was ultimately made up of two Law Society By-Laws: By-Law 25, adopted April 1999, addressing integrated partnership
\end{enumerate}
\end{footnotesize}
“purportedly acting in the public interest,”\textsuperscript{119} the IPL committee revised its view in 1999 and, in a move noted as “embarrassing to the [LSUC],”\textsuperscript{120} recommended that lawyers be allowed to participate in multidisciplinary practices, even if such practices were not controlled by lawyers and were not limited to those of a “legal nature.”\textsuperscript{121}

In August 2000, the CBA ultimately passed a resolution that recommended “provincial regulators adopt rules permitting lawyers to join [multidisciplinary practices] and share fees with nonlawyers.”\textsuperscript{122} While the resolution called for lawyers to have control of the “delivery of legal services” in multidisciplinary practices,\textsuperscript{123} there was no “requirement that lawyers have financial or voting control of the [multidisciplinary practices] themselves,”\textsuperscript{124} something strenuously objected to by the Ontario delegates.\textsuperscript{125} In response to this action, “LSUC representatives embarked on an ultimately successful campaign through the legal press and at the CBA itself to have the will of the CBA national council reversed and a narrower MDP regime with a lawyer-control requirement adopted.”\textsuperscript{126} To this end, “[i]n February 2001, the CBA Council adopted a resolution that ‘clarified’ and amended the August 2000 resolution to require lawyers to have ‘effective control’ over the entire MDP.”\textsuperscript{127}

\textsuperscript{119} Id. at 2211 (internal quotation marks omitted).

\textsuperscript{120} Id. at 2213.

\textsuperscript{121} Id. (citing STRIKING A BALANCE, supra note 116, at 11). The “balance” in the title of the report referred to striking a balance between “two sets of public interests,” which were: “the preservation of lawyers’ role in the administration of justice”; and “freedom of choice, freedom of association, competition and efficiency.” Id. (quoting STRIKING A BALANCE, supra note 116, at 5). “The report suggested that the adoption of a more restrictive regime contradicted what the IPL Committee saw as more important public interests and values.” Id. (quoting STRIKING A BALANCE, supra note 116, at 5).

\textsuperscript{122} Id. at 2214.

\textsuperscript{123} Id.

\textsuperscript{124} Id.; see Comm’n on Multidisciplinary Practice, Canadian Bar Association Resolution 00-3-A, ABA, http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/mdp_canadian_res.html (last visited Aug. 19, 2014).

\textsuperscript{125} Paton, supra note 44, at 2214.

\textsuperscript{126} Id. at 2211.

\textsuperscript{127} Id. at 2215 (citing CANADIAN BAR ASS’N, CBA CODE OF CONDUCT RESOLUTIONS, Res. 01-01-M, at 34–35 (2000), available at https://www.cba.org/CBA/epiigram/february2002/resolutions.pdf). “Effective control would ensure that the business and
While multidisciplinary practices have been permitted in Ontario since 1999, it was not until 2010 that they were permitted in British Columbia and Quebec. The regime in British Columbia is similar to that in Ontario, whereas the regime in Quebec is significantly more liberal. At the turn of the twenty-first century, multidisciplinary practice was discussed in British Columbia, where implementation of the measure was unsuccessfully put to a vote. The reasons offered for rejection of multidisciplinary practice at that time were the protection of “core values of the profession” and “lack of demand within the profession for such a regulatory scheme.” However, the mood shifted and, in 2010, multidisciplinary practice was implemented in British Columbia, calling for lawyers involved in multidisciplinary partnerships to have effective control over the legal services provided, and for nonlawyer partners only to provide services to the public if they “support or supplement the practice of law by the MDP.”

Quebec’s 2010 multidisciplinary practice rules were less restrictive than the multidisciplinary practice regime found in Ontario and British Columbia, representing “a far more liberal multidisciplinary practice regime, requiring simple majority ownership by members of the Barreau du Quebec of the firm through which the professional services are provided of the MDP would be in continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession.”

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128 ISSUES PAPER, supra note 4, at 11.
129 Id.
130 See id. at 11–12.
131 See Paton, supra note 44, at 2225. Proposed changes that would have implemented a multidisciplinary practice rule in British Columbia received a majority vote in December 2001 (fourteen to thirteen of those present and voting), however, a two-thirds majority was required for the new rules to be implemented. Id. The 2001 proposed changes were liberal and would have been “radically different from the restrictive regulatory framework adopted in Ontario.” Id. at 2223.
133 See ISSUES PAPER, supra note 4, at 11.
Nonlawyer members of the multidisciplinary practices must be members of designated “recognized professional bodies,” but “the regulation does not require that their activities ‘support or supplement the practice of law’ in the manner of the Ontario and British Columbia MDP rules.” Firms in Quebec must, however, ensure that all members of the partnership comply with rules of law that permit lawyers to carry out their professional activities, such as those relating to professional secrecy, confidentiality of information, professional independence, and conflicts of interest.

C. England and Wales

At the beginning of the twenty-first century, the legal profession in England and Wales was essentially regulated by the Law Society of England and Wales, representing solicitors, and the Bar Council, representing barristers. Historically, the legal profession was opposed to multidisciplinary practices, but, in 1996, the Law Society “abandoned its traditional opposition to” MDPs and, in 1998, “considered different ways to facilitate MDPs while maintaining adequate regulatory supervision.”

[The Law Society] obliquely acknowledged political pressure to open the field to MDPs, with a representative noting that part of the “Law Society’s intention in continuing to consult on the subject of multi-disciplinary practice is to be in a position to avoid the imposition of

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135 Id. at 12.
136 Id.
137 Id.
138 Id. at 13.
139 See Maimon Schwarzschild, Class, National Character, and the Bar Reforms in Britain: Will There Always Be an England?, 9 CONN. J. INT’L L. 185, 186 (1994). The legal profession in England and Wales recognizes the two branches of barrister and solicitor. See Louise L. Hill, Publicity Rules of the Legal Professions Within the United Kingdom, 20 ARIZ. J. INT’L & COMP. L. 323, 335 (2003). The primary role of barristers is to advocate. Schwarzschild, supra, at 186. Before the Court and Legal Services Act of 1990, barristers had the sole right to practice before the trial courts of general jurisdiction and the appellate courts in England and Wales. See id. The primary role of solicitors is to draft documents, advise clients, and negotiate. Id. Under the Legal Services Act, “while barristers’ rights of audience remained untouched, solicitors satisfying special education and training requirements could obtain advocacy rights in the higher courts.” Hill, supra, at 338. The act also allowed barristers to contract directly with clients. Schwarzschild, supra, at 224.
140 Paton, supra note 44, at 2233.
what might be an unsatisfactory regime should any part of [g]overnment decide to take action." 141

The Law Society agreed to support multidisciplinary practice in 1999 and, subsequently, two interim models were put forward, with the “linked partnership” model being approved in 2000. 142 Under the linked partnership model, nonsolicitors could “become partners in a law firm, so long as the firm’s business remained the provision of legal and ancillary services.” 143

During this period, the Office of Fair Trading (OFT), the United Kingdom’s authority on competition and antitrust, 144 “concluded that restrictions that barred MDPs were unreasonable market restraints that gave rise to inflationary pricing and resulted in an anticompetitive practice in the United Kingdom’s main commercial professions.” 145 In 2001, the OFT indicated that, if the legal regulators “did not change rules to accommodate [multidisciplinary practice], then the government would do so for it.” 146 In fact, that is exactly what happened. Within the legal profession, implementation of multidisciplinary practice rules was delayed by divisions between barristers and solicitors. 147 Barristers campaigned to forestall the changes, 148 while solicitors sought “parliamentary time needed to implement a mixed-partnership model.” 149 Although the legal regulators

142 Id. at 2233–34. The two models put forward by the Law Society as interim steps were the “linked partnership” model and the “legal practice plus” model. Id. at 2234. The legal practice-plus model allowed a solicitor firm to have nonsolicitor partners, but “the main business of which must be the provision of legal and ancillary services.” Id. Under the linked partnership model, fee-sharing agreements between the law firm and other businesses were permitted, although control had to be retained by solicitors. Id. at 2234–35.
143 Id. at 2234 (citing Law Society to Push MDPs Through Early, LAWYER (Nov. 13, 2000), http://www.thelawyer.com/law-society-to-push-mdps-through-early/102942.article).
144 Id. at 2233.
145 Id.
146 Id. at 2232.
147 Id. at 2235.
148 Id.
149 Id. (citation omitted) (internal quotation marks omitted). The Bar Council opposed partnerships between barristers and nonlawyers, among its concerns were matters relating to conflict of interest and that consumer choice in advocacy would be limited. Aubrey (continued)
were making “steps toward[] accommodating change, change did not come quickly enough,” resulting in the adoption of the Legal Services Act (LSA) in 2007, effectively ending self-regulation of the legal profession in England and Wales.

The LSA established a new Legal Services Board “to serve as a ‘single, independent[,] and publicly accountable regulator with the power to enforce high standards in the legal sector, replacing the maze of regulators with overlapping powers’” in England and Wales. Under the LSA, alternative business structures for the delivery of legal services by lawyers and nonlawyers are specifically authorized. Regulatory objectives for the regulation of all legal services are set forth, with “consumer welfare and the public interest as preeminent concerns.”

Pursuant to its authority under the LSA, the Legal Services Board designated the Solicitors Regulation Authority as an approved regulator of alternative business structures, which are permitted to have lawyer and nonlawyer owners.


150 Paton, supra note 44, at 2232.
151 Id. at 2236. The path of the act through the House of Commons and the House of Lords has been described as “tortuous.” Id. at 2239.
152 Id. at 2236 (quoting Legal Services Act Given Royal Assent, MINISTRY OF JUST. (Oct. 30, 2007), http://archive.is/S1MdY).
154 The LSA states the following regulatory objectives:

   (a) protecting and promoting the public interest;
   (b) supporting the constitutional principle of the rule of law;
   (c) improving access to justice;
   (d) protecting and promoting the interests of consumers;
   (e) promoting competition in the provision of services within subsection (2);
   (f) encouraging an independent, strong, diverse and effective legal profession;
   (g) increasing public understanding of the citizen’s legal rights and duties;
   (h) promoting and maintaining adherence to the professional principles.

Legal Services Act 2007, c. 29, § 1(1).
155 Paton, supra note 44, at 2236.
nonlawyer owners and managers and may provide only legal services, or legal services along with nonlegal services. These entities must be licensed and nonlawyer owners and managers are subject to a “fit to own” test. For instance, firms can be licensed as “legal disciplinary practices,” which only engage in legal practice but may be managed by nonlawyers, along with barristers and solicitors. While outside ownership is not permitted in legal disciplinary practices, an alternative business structure may have external investors, although there are limitations and requirements associated with outside owners. Commentators have asserted that these alternative practice structures will give English firms a competitive advantage over firms in the United States as they compete in the market of global financial services. What has been created is “a regulatory landscape that will give law firms in London ‘individually, and the English legal profession collectively, a hitherto unimaginable competitive advantage.’” 

V. RECENT ABA EXAMINATION OF ALTERNATIVE BUSINESS STRUCTURES

In 2009, the ABA created the Commission on Ethics 20/20 “to tackle the ethical and regulatory challenges and opportunities arising from [twenty-first] century” social change and the evolution of law practice. Carolyn B. Lamm, president of the ABA at the time, charged the Commission with conducting a plenary assessment of the ABA Model Rules of Professional Conduct and related ABA policies, and directed it to follow these principles: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.” As part of this

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156 ISSUES PAPER, supra note 4, at 13.
157 Id.
158 Id. at 14. In legal disciplinary practices, nonlawyer management may not exceed 25%. Id.
159 Id.
160 Id.
161 See Paton, supra note 44, at 2240.
163 ETHICS 20/20, supra note 2, at 1; see also Louise L. Hill, Technology—A Motivation Behind Recent Model Rule Revisions, 40 N. KY. L. REV. 315, 315 (2013).
164 ETHICS 20/20, supra note 2, at 1.
165 Id.
assessment, aware that “U.S. lawyers and law firms are increasingly doing business abroad or affiliating with non-U.S. firms that have different business structures than their own firms,”166 Ethics 20/20 “decided to study whether U.S. lawyers and law firms should also be permitted to employ alternative law practice structures in which nonlawyers have an ownership interest.”167 Included in Ethics 20/20’s November 2009 Preliminary Issues Outline was consideration of how “core principles of client and public protection [can] be satisfied while simultaneously permitting U.S. lawyers and law firms to participate on a level playing field in a global legal services marketplace that includes the increased use of one or more forms of alternative business structures.”168 The Working Group on Alternative Business Structures, formed to examine and study these matters,169 heard evidence indicating that “small firms in particular, are increasingly interested in having nonlawyer partners.”170 Examples of law firms likely to take advantage of such arrangements were noted:

[Law firms that focus their practice on land use planning with engineers and architects; law firms with intellectual property practices with scientists and engineers; family law firms with social workers and financial planners on the client service team; and personal injury law firms with nurses and investigators participating in the evaluation of cases and assisting in the evaluation of evidence and development of strategy.]

This conforms to the global trend, where the “overwhelming majority of firms adopting an alternative structure have been small firms.”172


167 Id. As part of this undertaking, how lawyers in the United States should address the differences in rules applicable in different jurisdictions also was to be studied. Id.

168 ISSUES PAPER, supra note 4, at 1 (alteration in original) (quoting ABA COMM’N ON ETHICS 20/20, PRELIMINARY ISSUES OUTLINE 6 (Nov. 19, 2009), http://www.americanbar.org/content/dam/aba/migrated/ethics2020/outline.authcheckdam.pdf).

169 See Id.

170 GORELICK & TRAYNOR, supra note 166, at 2.

171 Id.

172 ABA COMM’N ON ETHICS 20/20, DISCUSSION DRAFT FOR COMMENT: ALTERNATIVE LAW PRACTICE STRUCTURES 1 (Dec. 2, 2011), http://www.americanbar.org/content/dam/ (continued)
As the working group studied and evaluated alternative law practice structures, it identified five possible law practice formulations:

A. Limited Lawyer/Nonlawyer Partnerships with a Cap on Nonlawyer Ownership;¹⁷³
B. Lawyer/Nonlawyer Partnerships with No Cap on Nonlawyer Ownership (The District of Columbia Approach);¹⁷⁴
C. Multidisciplinary Practices that Offer Both Legal and Non-Legal Services;¹⁷⁵
D. Limited Outside Investment in Law Firms;¹⁷⁶ and
E. The Australian Model Permitting Public Trading of Shares in Law Firms.¹⁷⁷

In February 2011, the structures of “limited outside investment in law firms” and “public trading of shares in law firms” were eliminated as

¹⁷³ ⁠Id. at 4. The firm would only engage in the practice of law and nonlawyers would be limited to a minority ownership percentage and required to pass a “fit to own” test. ISSUES PAPER, supra note 4, at 17.
¹⁷⁴ ⁠DISCUSSION DRAFT, supra note 172, at 4. Under this formulation, lawyers would be permitted to become partners and share fees with nonlawyers. Id. at 5.
¹⁷⁵ ⁠Id. at 4. The firm would be permitted to offer both legal and nonlegal services. ISSUES PAPER, supra note 4, at 19. There would be neither a limitation on nonlawyer ownership percentage nor a requirement that a fit-to-own test be passed. See id.
¹⁷⁶ ⁠DISCUSSION DRAFT, supra note 172, at 4. Under this formulation, nonlawyers who are not active members of a law firm would be permitted to invest in the firm, although there would be limitations on the percentage of ownership passive investors could have. ISSUES PAPER, supra note 4, at 19.
¹⁷⁷ ⁠DISCUSSION DRAFT, supra note 172, at 4. Under this formulation, nonlawyers who are not active members of a law firm would be permitted to invest in the firm with no limitation on ownership percentage. ISSUES PAPER, supra note 4, at 19.
viable possibilities. While acknowledging that passive investment in law firms and public trading of shares in law firms were recognized in other countries, Ethics 20/20 felt that they had “little track record, would depart sharply from U.S. traditions, and raised significant ethical concerns among Commission members and certain commentators.”

The working group continued to consider the three remaining law practice formulations and, in April 2011, sought feedback on these options from ABA entities, courts, bar associations, law schools, and individuals. This resulted in the option on “multidisciplinary practice” being eliminated as a viable possibility in June 2011, although it was recognized that multidisciplinary practice, which offers both legal and nonlegal services, is “permitted in a number of countries in which U.S. lawyers and law firms engage in the practice of law.” Therefore, the working group “narrowed” its consideration to the following formulations: “limited lawyer/nonlawyer partnerships with a cap on nonlawyer ownership” and “lawyer/nonlawyer partnerships with no cap on nonlawyer ownership (the District of Columbia Approach).” After further study and evaluation, Ethics 20/20 decided that the former of the two, the more modest and restrictive approach that resembles the legal disciplinary practice in England and Wales, was preferable.

In December 2011, Ethics 20/20 circulated a draft resolution for comment, which called for amending Model Rule 5.4 to permit nonlawyers employed by a law firm, who assist lawyers in the provision of legal services, to have a minority financial interest in the firm and share in its profits. As in the District of Columbia, the resolution required “that the firm engage only in the practice of law.” However, it was more restrictive than the D.C. rules, as there were restrictions on the percentage of the firm a nonlawyer could own, plus nonlawyers had to pass a fit-to-

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178 DISCUSSION DRAFT, supra note 172, at 4.
179 Id.
180 Id.
181 See id.; see also ISSUES PAPER, supra note 4, at 17.
182 DISCUSSION DRAFT, supra note 172, at 5.
183 Id. at 5–6.
184 Id. at 13–14.
185 See id. at 9.
186 Id. at 2.
187 Id. at 9.
188 Id.
own test. To offer “stronger protections consonant with the core professional values of the broader U.S. legal community,” the discussion draft resolution of proposed Rule 5.4(b) provided as follows:

Rule 5.4 Professional Independence of a Lawyer

(b) A lawyer may practice law in a law firm in which individual nonlawyers in that firm hold a financial interest, but only if:

(1) the firm’s sole purpose is providing legal services to clients;

(2) the nonlawyers provide services that assist the lawyer or law firm in providing legal services to clients;

(3) the nonlawyers state in writing that they have read and understand the Rules of Professional Conduct and agree in writing to undertake to conform their conduct to the Rules;

(4) the lawyer partners in the law firm are responsible for these nonlawyers to the same extent as if the nonlawyers were lawyers under Rule 5.1;

(5) the nonlawyers have no power to direct or control the professional judgment of a lawyer, and the financial and voting interests in the firm of any nonlawyer are less than the financial and voting interest of the individual lawyer or lawyers holding the greatest financial and voting interests in the firm, the aggregate financial and voting interests of the nonlawyers does not exceed [25%] of the firm total, and the aggregate of the financial and voting interests of all lawyers in the firm is equal to or greater than the percentage of voting interests required to take any action or for any approval;

189 Id.
190 Id.
(6) the lawyer partners in the firm make reasonable efforts to establish that each nonlawyer with a financial interest in the firm is of good character, supported by evidence of the nonlawyer’s integrity and professionalism in the practice of his or her profession, trade or occupation, and maintain records of such inquiry and its results; and

(7) compliance with the foregoing conditions is set forth in writing.\textsuperscript{191}

\textsuperscript{191} Model Rules of Prof’l Conduct R. 5.4 (Discussion Draft 2011) (alteration in original), available at http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111202-ethics2020-discussion_draft-alps.authcheckdam.pdf. Proposed comments to Draft Resolution Rule 5.4 provided as follows:

[1] This Rule . . . limits sharing of legal fees with nonlawyers. Lawyers sharing legal fees with other lawyers not in the same firm is addressed by Rule 1.5(e). These limitations are to protect the lawyer’s professional independence of judgment. Where someone other than the client pays the lawyer’s fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer’s obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer’s professional judgment.

[2] Paragraph (b) rejects an absolute prohibition against lawyers and nonlawyers sharing legal fees, but continues to impose traditional ethical requirements with respect to such fee sharing. Thus, a lawyer may practice law in a firm where nonlawyers hold a financial interest, but only if the requirements set forth in paragraphs (b)(1)–(7) are satisfied. The requirement of a writing helps ensure that the other conditions are not overlooked in establishing the organizational structure of entities in which nonlawyers have a financial interest.

[3] Paragraph (b) does not permit an individual or entity to acquire all or any part of an interest in a law firm for investment or other purposes. Such an investor would not be an individual nonlawyer in the firm who performs services that assist the law firm in providing legal services under paragraph (b)(2). It thus does not permit a corporation, an investment banking firm, an investor, or any other person or entity to entitle itself to all or any portion of the profits of a law firm.

[4] The term “individual” in paragraph (b) does not preclude the participation in a law firm by an individual professional corporation.

(continued)
[5] Paragraph (b) does not preclude a lawyer from providing “law-related services”, as defined in Rule 5.7, whether through a law firm or other organization. A lawyer shall remain subject to the Rules of Professional Conduct with respect to his or her provision of law-related services pursuant to Rule 5.7 whether or not the entity through which the lawyer provides such services is a partnership or other form of organization in which a financial interest is held by nonlawyers pursuant to this Rule.

[6] Paragraph (b)(3) requires that all nonlawyers having a financial interest in a law firm state in writing that they have read and understand the Rules of Professional Conduct and agree to conform their conduct to the Rules. This accords with the requirement that a partner or lawyer with comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has measures in effect giving reasonable assurance that all lawyers in the firm conform to the Rules. See Rule 5.1. Further, the requirement in paragraph (b)(6) that each lawyer having a financial interest in the firm shall make reasonable efforts to ensure that each individual nonlawyer having a financial interest in the firm is of good character is an ongoing obligation that does not terminate with the admission of the nonlawyer to the partnership or other organization through which the lawyer delivers legal services to clients. The ethical atmosphere of a firm can influence the conduct of all its members, and the lawyer partners may not assume that all those associated with the firm will inevitably conform to the Rules. See Rule 5.1 Comment 3. Due care must therefore be exercised by the lawyers having a financial interest or exercising managerial authority with respect to the admission to the firm of a nonlawyer whose character and fitness may reflect on the integrity of the firm and thereby on the legal profession. Whether a lawyer may be liable civilly or criminally for the conduct of a nonlawyer partner or member of the firm is a question of law beyond the scope of these Rules.

[7] To avoid possible conflicts between a lawyer’s duties and those of a nonlawyer under the ethical rules or law applicable to their conduct, the law firm should not permit a nonlawyer to participate or continue to participate in a matter if the lawyer knows or reasonably should know that the legal or ethical duties of the nonlawyer are inconsistent with the duties of the lawyer or lawyers in the matter.

[8] For purposes of paragraph (b)(5), a financial interest in a law firm shall include, but not be limited to, an interest in the equity or profits of the firm. This provision provides that the nonlawyers cannot control the vote or veto a specific matter by reserving to the nonlawyers (continued)
Feedback received on the discussion draft resolution was varied. Ethics 20/20 received more than two dozen comments, and “negative reactions outnumbered supportive ones by more than a two-to-one margin.” Some felt the proposed changes were “too modest,” while others felt they were “too expansive.” In the end, Ethics 20/20 decided not to recommend that the ABA policy prohibiting nonlawyer ownership of law firms be changed: “ Based on the Commission’s extensive outreach, research, consultation, and the response of the profession, there does not appear to be a sufficient basis for recommending a change to the ABA policy on nonlawyer ownership of law firms.” It was determined “that the case had not been made for proceeding even with a form of nonlawyer ownership that is more limited than the D.C. model.”

the right to approve or disapprove a specific matter when all lawyers vote to approve the matter.

[9] Some sharing of fees is likely to occur in the kinds of organizations permitted by paragraph (b). Subparagraph (a)(4) makes it clear that such fee sharing is not prohibited.

[10] If a lawyer practices law in a partnership or other form of organization in which a financial interest is held by nonlawyers pursuant to this Rule, the lawyer, all such nonlawyers and the entity may be subject to registration or other requirements as may be determined by this jurisdiction.

[11] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer’s professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer’s independent professional judgment and the client gives conformed consent).

Id.

192 Joan C. Rogers, Ethics 20/20 Ditches Idea of Recommending Option for Nonlawyer Owners in Law Firms, 28 ABA/BNA LAWYERS’ MANUAL ON PROF’L CONDUCT 250, 251 (2012).

193 Id.

194 Press Release, supra note 5 (internal quotation marks omitted).

195 Id. (internal quotation marks omitted).

196 Id. (internal quotation marks omitted).

197 Id. (internal quotation marks omitted).
VI. THOSE IN FAVOR AND THOSE AGAINST THE DECISION NOT TO RECOMMEND NONLAWYER OWNERSHIP OF LAW FIRMS

The reaction of the bar to Ethics 20/20’s decision not to recommend change to the ABA policy against nonlawyer ownership of law firms was mixed. Not surprisingly, withdrawal of the issue of nonlawyer ownership from consideration before the ABA House of Delegates had its proponents and its foes. Opponents to the change argued “that nonlawyer ownership is unnecessary, threatens the profession’s core values[,] and will lead to external regulation of the legal profession.”198

A. Opposition to Nonlawyer Ownership

Regarding the issue of necessity, it was asserted that “[t]he commission is proposing ‘change for the sake of change alone,’ without identifying any client-centered justification and without accounting for potential detriments that may flow from the change.”199 Others argued that “[t]here is no demonstrated need for the proposed change, and no reason to believe that clients will be better served by a profession that is open to nonlawyer ownership.”200

Regarding the claim that nonlawyer ownership would present a threat to the profession’s core values, opponents to the change targeted “the potential for interference with lawyers’ independent judgment.”201 There is also “fear that the inevitable chipping away at the profession’s professionalism ultimately will do a disservice not just to the business client[,] . . . but to all clients who seek the trusted and confidential advice of counsel.”202 It will “undermine the attorney-client relationship” and change “a firm from a group of like-minded attorneys zealously pursuing their clients’ interest, into a group with inherently mixed motives and responsibility, where some partners have a professional duty to the client’s interests and others do not.”203

Fear that nonlawyer ownership will lead to the end of self-regulation was also a concern. Opponents to change claimed it would “diminish the profession’s current judicially[ ]based system of regulation by expanding

198 Rogers, supra note 192, at 250.
199 Id. (quoting a comment that the commissioners received from Douglas R. Richmond of Aon Professional Services, Chicago).
200 Id. at 251.
201 Id.
202 Id. (quoting a joint letter sent by general counsels of major U.S. corporations).
203 Id. (internal quotation marks omitted).
the scope of the professional regulation beyond its traditional focus on lawyers, thus making external regulation more likely.”204

B. Proponents of Nonlawyer Ownership

Those in favor of change rue Ethics 20/20’s decision not to put forth a recommendation advocating change, claiming outside ownership in law firms will “benefit consumers by enhancing competition and lowering costs.”205 “[E]xternal ownership [would] bring in competition and new ideas about product delivery, which will lead to better pricing, better access, and more transparency to the consumer.”206 In addition to benefiting consumers, it is contended that external ownership of law firms would “improve law firm governance, and boost U.S. law as an export business.”207

Proponents of change also contend that there is already significant nonlawyer involvement in United States law firms and allowing nonlawyers “to become partners would regularize what is already happening.”208 With remuneration tied to firm performance, “many firms in the United States have nonlawyers in key positions, such as chief financial officers and chief operating officers, who are viewed as important parts of the management team and attend partners meetings.”209 Furthermore, by rejecting all approaches to nonlawyer ownership of law firms, Ethics 20/20 “shows a lack of confidence in lawyers[] being able to function in other environments, and ignores what would be useful to clients.”210 Additionally, proponents contend: “[T]o suggest that only lawyers have ethics is a bit insulting for the rest of society.”211

C. Removing Nonlawyer Ownership from Discussion

In its statement to the public, Ethics 20/20 asserted that change to the ABA policy precluding nonlawyer ownership of law firms was not being put forward because it lacked a “sufficient basis for recommending

204 GORELICK & TRAYNOR, supra note 166, at 3.
205 ISSUES PAPER, supra note 4, at 16.
206 Rogers, supra note 192, at 252.
207 Id. at 250.
208 Id. at 252 (internal quotation marks omitted).
209 Id.
210 Id.
211 Id. (internal quotation marks omitted).
However, by deciding to pull back on the issue of nonlawyer law firm ownership, Ethics 20/20 prevented the question from coming before the ABA House of Delegates. While noting that “reasonable minds can disagree about whether nonlawyers should be able to have an ownership interest in law firms,” Andrew M. Perlman, Ethics 20/20’s chief reporter, stated: “What we saw was not reasonable disagreement . . . [but] entities within the ABA that did not even want us to have the discussion.” Arguably, this is similar to the negative treatment the issue received when the MDP Commission recommended multidisciplinary practice in its report to the ABA House of Delegates in 2000.

212 Press Release, supra note 5. In concluding that the case had not been made for a change in the existing policy on nonlawyer ownership of law firms, two choice-of-law questions were left, which arose from inconsistency among jurisdictions “with regard to the permissibility of nonlawyer owners and partners.” ABA COMM’N ON ETHICS 20/20, INTRODUCTION AND OVERVIEW 8 (Feb. 2013), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20121112_ethics_20_20_overarching_report_final_with_disclaimer.authcheckdam.pdf. “The first question concerned the permissibility of fee-sharing among lawyers in a single firm where the rules applicable to one of the firm’s offices permit nonlawyer owners and the rules applicable to another of the firm’s offices do not. The Commission announced in September 2012, that it had referred this issue to the ABA Standing Committee on Ethics and Professional Responsibility.” Id. The second question, couched as “narrow and technical,” concerned the permissibility of fee sharing among lawyers in a different firm in which the rules applicable to one firm prohibit nonlawyer ownership of law firms and the sharing of legal fees with nonlawyers, and the rules applicable to the other firm permit such ownership and fee sharing. Id. at 9. “The consensus of the Commission was that . . . the authority to divide fees between those two independent firms currently exists in Model Rule 1.5.” Id. (footnote omitted). The Commission noted that such a situation would be unlikely to arise because, in most instances, “two firms could send separate invoices to the client for their work in a matter.” Id. But, “[g]iven the prior referral to the Ethics Committee, the Commission concluded that the Ethics Committee was in the best position to address this question.” Id.

213 ABA COMM’N ON ETHICS 20/20, supra note 212, at 9.

214 Id. Habte, supra note 15, at 283.

215 Id.

216 This notwithstanding, Professor “Perelman expressed optimism that market forces may prod the legal establishment along and revive debate” on matters such as nonlawyer ownership of law firms. Id.

217 Some argue: “There is no demonstrated need for the proposed change, and no reason to believe that clients will be better served by a profession that is open to nonlawyer ownership.” Rogers, supra note 192, at 251.
So, what would constitute a “sufficient basis” for change? For that matter, what would constitute a sufficient basis to discuss the issue of nonlawyer ownership of law firms before the ABA House of Delegates? Those favoring the status quo say change is unnecessary. They fear that change will threaten the core values of the profession and lead to loss of self-regulation. Regarding “necessity,” critics of change may be correct. However, just because alternative law practice structures may be unnecessary does not mean change would not be beneficial. For example, such change will be helpful to the public and small firms and can also make law firms in the United States more competitive in the international marketplace. Over the decades-long course of these discussions in the United States, it appears members of the public have been proponents of change to lawyers’ current practice formulations. Reportedly, restructured law practice formulations could benefit consumers, leading to increased competition and better pricing. In addition, the small firms should not be overlooked, for they are the practice entities most likely to benefit from change. As borders shrink and business and finance becomes more global, the United States cannot afford to be left in the wake of the more progressive legal professions.

There is concern that new formulations of law firm ownership would be a threat to core values of the profession. However, interestingly, this does not seem to be the case. Since permitting nonlawyer ownership or management of law firms in the District of Columbia more than two decades ago, “there have been no disciplinary cases involving interference with lawyers’ professional judgment by nonlawyers.” Nor have any problems of this sort been reported with legal disciplinary partnerships that exist in England and Wales. “There is simply no evidence that the perceived risk of interference has materialized.”

With the legal profession’s “core values” seemingly intact with nonlawyer ownership of law firms, the fear that the profession will lose its self-regulated status is also unavailing. True, alternative law practice structures have led to the surrender of self-regulation in both Australia and

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218 See supra Part VI.A.
219 See supra notes 201–04 and accompanying text.
220 See supra note 56.
221 See supra notes 205–06 and accompanying text.
222 Rogers, supra note 192, at 250.
223 DISCUSSION DRAFT, supra note 172, at 6.
224 Id. at 8–9.
225 Id. at 6.
However, in the United States today, there is already significant external regulation of the legal profession. “[M]any forms of law constrain the conduct of lawyers,” 227 such as the individual courts and federal and state legislatures. 228

This notwithstanding, we have come to view “external regulation [as] an evil to be prevented or minimized,” 229 but in reality, self-regulation is a myth, in that external regulation is already happening. 230 To say additional external regulation would harm the legal profession or the public is pure conjecture. In fact, it may be beneficial to the community at large. For instance, the Legal Services Board of England and Wales, an independent and publicly accountable regulator, 231 sets consumer welfare and public interest as its preeminent concerns, rather than interests of the legal professions and their members. 232

D. Recommendations to the ABA House of Delegates

In making recommendations to the ABA House of Delegates, Ethics 20/20 put forward proposed recommendations for revising the ABA Model Rules in September 2012 and February 2013. In 2012, Ethics 20/20 filed six sets of recommendations for consideration by the ABA House of Delegates in the following four categories: “outsourcing legal services; accommodating increased lawyer mobility; protecting client confidences with use of new technology; and using new technology for legal services marketing.” 233 The ABA House of Delegates approved these recommendations at its August 2012 annual meeting with little or no opposition. 234 In February 2013, with a focus on foreign-licensed lawyers, a second set of proposed recommendations for revising the ABA Model

226 See supra notes 98–99, 151 and accompanying text.
228 Id. at 1147–48.
229 Id. at 1180.
230 See id.
231 See supra text accompanying note 152.
232 See supra text accompanying note 155.
234 Rogers, supra note 16, at 509.
Rules also “breezed through the House [of Delegates].” 235 Apparently, unanimity was important to Ethics 20/20, with existing principles being embraced and contentious issues being avoided. For instance, one commentator was quoted as stating the following: “The standards for permissible virtual law practice they didn’t touch. Nonlawyer ownership, they didn’t touch. National licensure or uniform admission standards, really wasn’t touched. And I think these were all deemed ‘too hot to handle.’” 236

It seems that ABA commissions tend to “define success” based on what recommendations and resolutions the ABA House of Delegates will accept. 237 Thomas D. Morgan, Professor of Law at George Washington University, 238 noted that this is the case “even if[,] by bringing a good idea before lawyers today, they may make later acceptance of an idea more likely.” 239 Professor Morgan noted that some see the work of the MDP Commission at the turn of the century a failure, 240 as “it produced a report that was outstanding but proposed going further than the ABA delegates were prepared to go.” 241 But, far from being a failure, “the MDP Commission succeeded in laying groundwork for changes in Great Britain, Australia, and potentially other parts of the world.” 242 It has been noted that “the profession is moving a lot faster than the organized bar and regulators and the state courts are willing to accept.” 243 However, even if

235 Joan C. Rogers, ABA Approves Ethics 20/20 Proposal s on Foreign Lawyers, Choice of Conflict Rules, 29 ABA/BNA LAWYERS’ MANUAL ON PROF’L CONDUCT 101, 101 (2013). The resolutions considered at the February 2013 ABA midyear meeting focused on several discrete ethics-related issues arising out of globalization. See id. Choice-of-law problems associated with conflicts of interest, as well as the practice authority of foreign lawyers in the United States who are asked to advise clients on foreign or international law issues, were among the matters considered. See id. at 101–03.

236 Habte, supra note 15, at 283 (quoting a statement made by Deborah A. Coleman of Hahn Loeser).

237 Rogers, supra note 192, at 253 (attributing to Thomas D. Morgan, Professor of Law, George Washington University).

238 Id.

239 Id.

240 Id.

241 Id.

242 Id.

243 Habte, supra note 15, at 283 (quoting a statement from Myles V. Lynk, Professor of Law, Arizona State University School of Law, who chairs the ABA Standing Committee on Professional Discipline).
that is true, it stands to reason that informed discussion on alternative law practice structures is called for. Especially in light of the current international climate, avoiding the issue will not make it go away. Judging by the lack of problems that nonlawyer ownership has generated in jurisdictions in which it is embraced, it is difficult to see how deviation from the status quo would result in lack of protection for clients or the public. If anything, it appears that clinging to the status quo is less for the protection of the public, and more for the protection of the established bar.

VII. CONCLUSION

The approach of Ethics 20/20 has been referred to as “minimalist”244 and the outcome as “disappointing.”245 Should Ethics 20/20 have pressed forward with the matter of nonlawyer ownership of law firms, opening discussion and putting the issue to a vote before the ABA House of Delegates? This author would give an affirmative response to that inquiry. Whether ultimately embraced, nonlawyer ownership of law firms is a matter that warrants open exchange.

While there was opposition from segments of the bar to altering the current law practice structure in the United States, other lawyers supported nonlawyer ownership of law firms.246 Interestingly, the claims of the critics, emphasizing a threat to the core values of the profession and threats of losing self-regulation, really have no bite. Perhaps most interesting is the District of Columbia experience, where nonlawyer ownership of law firms has been recognized for over twenty years and there has been “no evidence of adverse consequences.”247

It is significant to note that segments of the public are supportive of allowing nonlawyer ownership of law practices.248 In fact, there is a dearth of public opposition to the matter.249 A review of the colloquy surrounding the discussion reveals a focus on the interests of the legal profession and of individual lawyers, rather than on that of the community at large. Is the legal profession’s resistance to nonlawyer ownership of law firms self-serving? Are lawyers protecting themselves or is it the interest of the

244 20/20 Group Submits Final Proposals, supra note 233, at 309.
245 Habte, supra note 15, at 283 (attributing to Deborah A. Coleman of Hahn Loeser).
246 See supra Part VI.A–B.
247 DISCUSSION DRAFT, supra note 172, at 7. While a more recent experience, the same can be said of the LPD models in England and Wales, where, as of April 2011, no disciplinary problems had been reported. Id. at 12.
248 See supra note 59 and accompanying text.
249 See supra note 59 and accompanying text.
public that is the paramount concern? To this author, it seems likely the scale is tipped in favor of the former. Lawyers are attempting to protect themselves.