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“PRACTICE OF LAW” IN THE NEW MILLENNIUM: NEW ROLES, NEW RULES, BUT NO DEFINITIONS

*Linda Galler**

Participants in the day-long Phyllis W. Beck Chair in Law Symposium were treated to an in-depth examination of the changing roles of lawyers. Each of the formal presentations and colloquies at the Symposium, as well as the casual conversations among attendees and panelists, underscored not only changes in the legal profession, but also growth and expansion into new areas, with new tools and innovative techniques. The discussion of multidisciplinary practice (“MDP”) also highlighted outside pressures that could result in the legal field contracting, as others take away or share in the offering of services historically provided only by lawyers practicing in traditional law firm settings. One of the proposals debated at the Symposium was originally proffered last summer by the American Bar Association Commission on Multidisciplinary Practice (“MDP Commission”) to permit sharing of legal fees by lawyers and members of other professions¹—effectively enabling lawyers to render legal services through multidisciplinary firms that they do not control. As the legal community deliberates whether to adopt such a proposal, or to follow some other course, consideration must be given to a fundamental question: “What is the practice of law?”

Most participants in the current debates minimize the gravity of this question or overlook it entirely. But in deciding whether lawyers may provide legal services outside of traditional law firms, or in prescribing appropriate roles for nonlawyers in the rendering of such services, the concepts of “practice of law” and “legal services” must necessarily and carefully be considered and demarcated. To date, the practice of law has been defined only in rudimentary fashion by vague statutes and court rules as well as haphazard court decisions.² While an “I know it when I see it” approach might have served Justice Stewart’s needs in defining pornography,³ an analogous strategy in defining law practice in

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1. ABA Commission on Multidisciplinary Practice, Report to the House of Delegates (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/mdpfinalreport.html>> [hereinafter MDP Final Report].

2. See generally ABA STANDING COMM. ON LAWYERS’ RESPONSIBILITY FOR CLIENT PROTECTION, 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE (1996); ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, DEFINITIONS OF PRACTICE OF LAW: 1984 SURVEY ON UNAUTHORIZED PRACTICE OF LAW REGULATION (1985).

3. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Justice Stewart asserted that criminal obscenity prosecutions should be limited to hard-core pornography, which he declined to define, stating, “[I] know it when I see it, and the motion picture involved in this case is not that.” *Id.*

the context of MDPs would reduce, or perhaps even negate, the effectiveness or value of any regulatory scheme adopted by the states.

Because its operative provisions repeatedly rely on the performance of "legal services" or the "practice of law" as determinants of the applicability of prescribed ethical obligations, the MDP Commission's recommendations would have little or no effect if adopted without a suitable definition of the practice of law. A broadly drafted definition would have the (desired) effect of subjecting all or most professional services rendered by attorneys in MDPs to lawyers' ethics rules, thereby preserving the core values of the legal profession in MDP settings.⁴ At the same time, however, an expansive definition would preclude or restrict nonlawyers and nonlawyer-controlled firms that employ lawyers from providing services that these individuals or firms have traditionally provided and which arguably do not constitute the unauthorized practice of law. A substantial impediment to the design of a single, generally applicable definition of the "practice of law," then, is created by the conflicting purposes that such a definition would serve and the exclusionary effect that it could have.

This Article proposes that the MDP Commission consider separately and independently its interests in regulating lawyers and excluding nonlawyers. A definition of the "practice of law" could be drafted now, solely for the purpose of regulating lawyers in multidisciplinary firms, while the professional activities of nonlawyers could be addressed separately, at this time or later, for example, by intensifying efforts to enforce unauthorized practice of law ("UPL") statutes. By concentrating initially only on lawyers, the MDP Commission could readily attain its goal of regulating every lawyer who provides legal services—a goal that is both fundamental and immediate. Although a model definition aimed only at lawyers *might* influence courts defining law practice in the context of UPL actions, the definition, by its terms, would not explicitly apply outside the regulation of lawyers.

"LEGAL SERVICES" AND "PRACTICE OF LAW" IN THE MDP COMMISSION REPORT

The MDP Commission declined to define "legal services" and "practice of law" in its report. To facilitate consideration of practice of law issues in the MDP context, however, the MDP Commission Reporter provided possible definitions in an appendix to the report.⁵ If the recommendations are adopted, ABA ethics authorities would draft the actual language of changes to the Model Rules. States, of course, could adopt the recommendations without following the model definitions.

Under the Reporter's model, "legal services" would be defined as "those

at 197. Stewart later regretted having made the remark and predicted that this quote would probably wind up on his tombstone. Al Kamen, *Retired High Court Justice Potter Stewart Dies at 70: Master of Internal Politics Served 23 Years*, WASH. POST, Dec. 8, 1985, at A1.

4. MDP Final Report, Appendix C, Reporter's Notes (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/mdpappendixc.html>>.

5. MDP Final Report, *supra* note 1.

services which, if provided by a lawyer engaged in the practice of law, would be regarded as part of such practice of law for purposes of application of the rules of professional conduct."⁶ "Practice of law" would refer to "the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the [examples listed in the model] on behalf of another."⁷

Together, the terms "legal services" and "practice of law" serve two distinct purposes in the report—one inclusionary and one exclusionary. First, under the recommendations, lawyers in MDPs who deliver legal services to clients would be bound by the same rules of professional conduct that apply to all lawyers who deliver legal services.⁸ Because "legal services" denote services that would be regarded as the practice of law if provided by lawyers admittedly engaged in law practice, accounting firms and attorneys whom they employ could no longer claim not to provide legal services where the professional services rendered by firm lawyers are the same as those rendered by lawyers in law firms. Lawyers' ethics rules would apply equally to both groups. Rendering certain tax services, for example, would subject accounting firm lawyers to rules of professional

6. MDP Final Report, Appendix A (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/mdpappendixa.html>>.

7. *Id.* The examples listed in the model are as follows:

- (a) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, wills, codicils, instruments intended to affect the disposition of property of decedents' estates, documents relating to business and corporate transactions, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;
- (b) Preparing or expressing legal opinions;
- (c) Appearing or acting as an attorney in any tribunal;
- (d) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;
- (e) Providing advice or counsel as to how any of the activities described in subparagraph (a) through (d) might be done, or whether they were done, in accordance with applicable law;
- (f) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

Id. This definition of "practice of law" is modeled after District of Columbia Rule 49. *Id.*

8. MDP Final Report, Recommendation, at Recommendation 5 (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/mdprecommendation.html>> ("A lawyer in an MDP who delivers legal services to the MDP's clients should be bound by the rules of professional conduct."); *see also id.* at Recommendation 8 (treating all clients of MDPs as lawyer's clients for purposes of applying conflict of interest rules, including imputation). Under Recommendation 11, MDP lawyers should not represent to the public or to specific clients that their services are not legal services if the same services would be considered the practice of law if provided by a lawyer in a law firm. *Id.* at Recommendation 11. According to the MDP Commission Report, disclosure to clients that a professional firm is not rendering legal services would avoid misunderstandings by clients regarding the applicability of protections customarily offered by an attorney-client relationship. *Id.* Moreover, overt recognition that a licensed attorney is providing legal services on behalf of an MDP would subject the attorney to the rules of professional conduct. *Id.* at Recommendation 5. In addition, it would bring the MDP firm within the regulatory jurisdiction of the courts. *Id.* at Recommendations 12, 14.

conduct even though nonlawyers may lawfully provide the same services. On the inclusionary side, then, the two terms would contribute to increasing the number of practitioners, and broadening the range of services, covered by the legal profession's rules of conduct.

On the exclusionary side, the MDP Commission recommendations would prohibit nonlawyers, in multidisciplinary firms or otherwise, from delivering legal services.⁹ Because legal services are defined by reference to activities that would constitute the practice of law if rendered through law firms, nonlawyers could not provide any of the services themselves—even, apparently, if nonlawyers already provide those services within the bounds of the law. Thus, for example, tax services that would be the practice of law if rendered by a law firm lawyer would be limited to lawyers under the definition. Multidisciplinary firms could provide the services, but only through lawyers. The MDP Commission has been criticized for suggesting a definition of the practice of law that would preclude nonlawyers from engaging in tax-related services,¹⁰ and has responded that it did not intend to use the term to limit nonlawyer activity.¹¹

The MDP Commission's failure to address the problem of *authorized* practice of law by nonlawyers highlights the conflict between the need to apply the definitions broadly, in order to cover lawyers, and narrowly, in order to exclude services traditionally (and lawfully) provided by nonlawyers and lawyers alike.

WHY A BROAD DEFINITION OF "PRACTICE OF LAW"?

Lawyers have an interest in regulating lawyers. Both history and current practice support the notion that self-regulation serves legitimate purposes.¹² Professional codes are instructional documents that advise lawyers how to behave and define the implications of their actions.¹³ Codes reinforce preexisting inclinations, for example, by enabling lawyers who do not wish to assist clients in questionable transactions to decline on the grounds that the rules do not permit them to go forward.¹⁴ A professional code, moreover, constitutes a source of prescriptive rules supported by sanctions such as professional

9. *Id.* at Recommendation 4 ("Nonlawyers in an MDP, or otherwise, should not be permitted to deliver legal services.").

10. See John C. Evans, et al., *Multidisciplinary Practice: Is It the Wave of the Future, or Only a Ripple?*, 66 DEF. COUNS. J. 460, 463-64 (1999) (discussing Resolution of Board of Directors of American Institute of Certified Public Accountants ("AICPA") about MDP Recommendations).

11. MDP Commission, Updated Background and Informational Report and Request for Comments (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/febmdp.html>>. The MDP Commission has requested comments on whether it should include a definition of the practice of law in any subsequent recommendation. *Id.*

12. See MONROE H. FREEDMAN, UNDERSTANDING LAWYERS' ETHICS 2-5 (1990) (discussing effectiveness of codes of professional conduct for lawyers).

13. See Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669, 682 (1978) (describing functions of professional codes).

14. *Id.*

discipline; the existence of sanctions has a deterrent effect.¹⁵ Rules ultimately should be motivated by the public importance of lawyers' actions, although cynics might argue that professional codes are the product of selfish and anti-competitive motivations.¹⁶

Lawyers' codes are rooted in a set of core values, which comprise the foundation of the profession's unique role in society. These core values include: independence of professional judgment, protection of confidential client information, loyalty to clients through avoidance of conflicts of interest, competence, and service toward improving the law.¹⁷ By acting in accordance with rules of professional conduct, lawyers uphold these core values and protect the interests of individual clients and the public in general.

Lawyers in all U.S. jurisdictions are subject to regulation by the authorities which admit them to practice.¹⁸ Attorneys employed by accounting firms, however, claim that they are not subject to lawyers' ethics rules because they do not practice law. Despite their legal training, admission to the bar, work experience in law firms, and the nature of professional services rendered, these lawyers claim to be outside the reach of professional regulation.¹⁹ By clarifying that lawyer-like services are indeed legal services, the MDP Commission Report

15. *Id.*

16. CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* § 2.6.1 (1986).

17. *See, e.g.*, ABA Commission on Multidisciplinary Practice, Written Remarks of Bernard Wolfman (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/wolfman1.html>> (referencing Professor Wolfman's testimony before commission); MDP Final Report, Appendix C, Reporter's Notes (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/mdpappendixc.html>>; MDP Commission, Updated Background and Informational Report and Request for Comments (visited Dec. 28, 1999) <<http://www.abanet.org/cpr/febmdp.html>>. The MDP Commission Reports do not include in discussions of core values the issue of service to the improvement of the law, a point of great concern to Professor Wolfman. *Id.*

18. Attorneys who engage in tax practice also must comply with Treasury regulations, referred to as "Circular 230," that govern practice before the Internal Revenue Service, *see* 31 C.F.R. § 10 (1999), and are also subject to the rules of the United States Tax Court, which expressly adopts the ABA Model Rules. T.C. Rule 201(a). In addition, the Internal Revenue Code imposes civil penalties on lawyers who fail to meet prescribed standards for accuracy in rendering tax advice or who aid or assist others in understating tax liabilities. *See, e.g.*, I.R.C. §§ 6694, 6695, 6701 (West Supp. 1999) (outlining penalties).

19. This approach arguably is inconsistent with ABA Formal Opinion 328, which states that lawyers who engage in a second occupation that is so law-related as to involve some practice of law are held to the standards of the bar in the second occupation. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 328 (1972). Numerous state bar ethics committees have opined similarly. *See, e.g.*, California State Bar Standing Comm. on Professional Responsibility and Conduct, Formal Op. 1999-154 (1999), available in 1999 WL 692059 (stating that attorney offering investment advisory services is subject to California Rules of Professional Conduct); Pennsylvania Bar Ass'n Comm. on Legal Ethics and Professional Responsibility, Informal Op. 90-157, available in 1990 WL 709670 (stating that lawyer engaged in law and accounting practices must conduct nonlegal practice in compliance with lawyers' professional rules when second occupation involves law-related activities). *Cf.* ABA Comm. on Ethics and Professional Responsibility, Informal Op. 83-1497 (1983) (indicating Model Code does not prohibit lawyer/physician from practicing both law and medicine, even from same office, or from serving same client/patient as both lawyer and physician, if distinction between service as a lawyer and physician is made clear and lawyer/physician otherwise complies with Model Code with respect to furnishing legal advice).

would return these lawyers to the proverbial fold. All law school graduates who are admitted to practice and provide legal services to clients would be subject to professional regulation on the same basis and without regard to the environments in which they practice.²⁰

Similar considerations motivated the adoption of ABA Model Rule 5.7, governing ancillary businesses engaged in by lawyers.²¹ These businesses are designated "law-related services" and lawyers who provide them are subject to the rules of professional conduct regardless of whether their activities involve the provision of legal services.

WHY A NARROW DEFINITION OF "PRACTICE OF LAW"?

As a general rule, nonlawyers are prohibited from practicing law.²² Nonlawyer professionals, however, do provide many of the same client services as lawyers. Some of these services are not considered the practice of law when rendered by nonlawyers, even though the same services might routinely be rendered by lawyers. For example, in some states, preparation by nonlawyers of real estate transfer documents does not constitute the practice of law.²³ Other services admittedly constitute the practice of law but lawfully may be performed by nonlawyers pursuant to statutory or regulatory authorization. For example, federal regulations permit nonlawyers to represent clients before the U.S. Patent

20. In this respect, as pointed out by one participant in the Symposium, being a lawyer would be like original sin. Like the state of sin that characterizes all human beings as a result of Adam's fall according to Christian theology, the state of being a lawyer for regulatory purposes would characterize all law school graduates who are admitted to practice, regardless of whether they considered themselves engaged in the practice of law. Giving up professional licenses would not extricate former lawyers and their firms from difficulties imposed by rules of lawyers' ethics because of susceptibility to UPL actions. Moreover, if states adopted the MDP Commission Recommendations, firms with any lawyers would have to provide legal services through those lawyers.

21. Proponents of Model Rule 5.7 were concerned that nonlawyers might infringe on the independence of the legal profession and that nonlawyer control could affect lawyers' professional responsibility obligations. Arash Mostafavipour, *Law Firms: Should They Mind Their Own Business?*, 11 GEO. J. LEGAL ETHICS 435, 436 (1998). Among the factors cited in support of regulating ancillary businesses were: "(1) threats to the profession's obligations to society; (2) conflicts of interest arising out of lawyers' dual roles; (3) difficulties in disciplining non-lawyers who represent ancillary businesses; and (4) uncertainties surrounding the application of the attorney-client privilege." *Id.* at 439. Opponents emphasized the benefits of one-stop shopping. *Id.* at 436-37.

22. Arizona apparently is the only state without a law prohibiting nonlawyers from giving legal advice. According to a recent article in the National Law Journal, a state statute banning the unauthorized practice of law expired in 1984 and was never reenacted. Bob Van Voris, *Disbarred, Unbowed*, NAT'L L.J., Nov. 15, 1999, at A1. A state supreme court rule governs in-court appearances, but does not affect out-of-court behavior. *Id.*

23. See, e.g., In re Opinion No. 26 of Comm. on Unauthorized Practice of Law, 654 A.2d 1344 (N.J. 1995) (finding that public interest justifies permitting activities that would be practice of law if engaged in by lawyers, such as conducting residential real estate closings and settlements, without presence of attorneys); *Cultum v. Heritage House Realtors, Inc.*, 694 P.2d 630 (Wash. 1985) (holding that act of licensed realtor in completing a form earnest money agreement constituted practice of law, but was not unauthorized).

Office²⁴ and the Internal Revenue Service.²⁵ Finally, there are services that have not been tested in the courts. For example, certain aspects of nonlawyer mediators' practices could be considered the practice of law.²⁶

The AICPA has criticized the MDP Commission for capturing within its definition of "practice of law" services "that historically and properly have been performed by AICPA members and their firms," in particular tax related services.²⁷ The AICPA has also argued that "[u]nder this new definition, accountants may find themselves suddenly charged with the unauthorized practice of law in areas of their practice which, under federal law, they have specifically been given the right to practice."²⁸ The latter argument is specious.²⁹ The general point reflected in the AICPA's critique, however, is that nonlawyers practicing in areas that have neither been adjudicated as the unauthorized practice of law nor generally excluded from laymen's activities would be subsumed in the legal profession's exclusive domain.

RECONCILING THE LEGAL PROFESSION'S INTEREST IN A BROAD DEFINITION WITH THE CONCERNS OF NONLAWYERS

The AICPA and others at risk advocate a narrow definition of "practice of law" as a means of protecting their livelihoods. And although lawyers have the opposite interest from a financial perspective, courts have traditionally—and legitimately—drawn definitional lines by considering the best interests of the

24. Under 35 U.S.C. § 31 (1994) and 37 C.F.R. § 1.31 (1999), a registered attorney or any other individual authorized to practice before the United States Patent Office may represent an applicant for a patent. In *Sperry v. Florida*, 373 U.S. 379 (1963), the Supreme Court held that the federal statute and regulations preempt states from enjoining nonlawyers who are registered to practice before the Patent Office from preparing and prosecuting applications, notwithstanding that such activity may constitute practice of law under state law. *Id.* at 403.

25. Under Circular 230, attorneys, certified public accountants (CPAs), enrolled agents, and enrolled actuaries are permitted to practice before the Internal Revenue Service ("IRS"). 31 C.F.R. pt. 10. Attorneys and CPAs are authorized by virtue of their professional credentials. 5 U.S.C. § 500 (1994); 31 C.F.R. § 10.3(a), (b). Enrolled agents may engage in IRS practice by demonstrating competence in tax matters through a written examination or by virtue of having been employed by the IRS. 31 C.F.R. § 10.4. Actuaries are enrolled by the Joint Board for the Enrollment of Actuaries and may practice before the IRS only as to employee plan matters. 31 C.F.R. § 10.3(d). Circular 230 makes reasonably clear that it does not authorize the practice of law by those whom state law does not authorize. 31 C.F.R. § 10.32.

26. See, e.g., Joshua R. Schwartz, Note, *Laymen Cannot Lawyer, But is Mediation the Practice of Law?*, 20 CARDOZO L. REV. 1715 (1999); Jonathan A. Beyer, *Practicing Law at the Margins: Surveying Ethics Rules for Legal Assistants and Lawyers Who Mediate*, 11 GEO. J. LEGAL ETHICS 411 (1998). Professor Carrie Menkel-Meadow addressed this question briefly in her remarks. See Carrie Menkel-Meadow, *The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Non-Partisanship in Lawyering*, 72 TEMP. L. REV. 773, 803-08 (1999).

27. See Evans, *supra* note 10, at 465-64 (discussing AICPA Resolution).

28. *Id.*

29. Because Circular 230 expressly permits practice by nonlawyers in matters before the IRS, states may not prohibit nonlawyers from engaging in such practice. See *Sperry v. Florida*, 373 U.S. 379, 403 (1963) (holding that federal statute supersedes state UPL rules as to practice before the United States Patent Office).

public rather than the professional groups whose finances are at stake.³⁰ Thus, restricting the practice of law to lawyers is generally thought to provide these benefits to the public: competent representation by trained professionals, commitment to ethical obligations enforced by disciplinary regulations, and protection of confidential information.³¹ In specific instances, courts may find that the public interest is served by permitting nonlawyers to render client services.

If the organized bar adopted broad definitions of practice of law and legal services in the MDP context that effectively prohibit nonlawyers from performing otherwise permissible activities, the profession would be vulnerable to accusations that its motivation was to protect, or expand, its own turf, rather than to act in the best interests of the public.³² Rebutting such accusations would entail carefully articulating the public or client interests that are served by prohibiting nonlawyers from performing particular client services. Sweeping generalities would be neither helpful nor productive when a particular type of service could be pointed to, such as preparation of residential real estate contracts, and credible arguments made that client needs can be met without lawyers. Only detailed and carefully thought-out exclusions would respond to naysayers and advance the interests of consumers of ambiguous services.

It is not in the best interests of the legal profession to engage in a particularized debate at the present time. UPL statutes already provide a means for dealing with law practice by nonlawyers. The bigger challenge today is to confirm that lawyers must abide by lawyers' rules when providing lawyers' services to clients, thereby assuring that the protections offered by the lawyer-client relationship are maintained. The legal profession's core values—loyalty, confidentiality, independence of judgment, competence, and improving the law—must be safeguarded when lawyers enter into practice in new areas, use new techniques, or offer client services in non-traditional practice environments. Moreover, drafting precise boundaries between what is and what is not law practice when conducted by nonlawyers would be a complicated and time-consuming endeavor that would not ultimately benefit the legal profession because defining a particular activity as not the practice of law would weaken the

30. See, e.g., *Fifteenth Judicial District Unified Bar Ass'n v. Glasgow*, No. M1996-00020-COA-R3-CV, 1999 WL 1128847, at *6 (Tenn. Ct. App. Dec. 10, 1999) ("The purpose of the statutory prohibition against the unauthorized practice of law protects the public by ensuring that the public receives high quality legal services."); *Duncan & Hill Realty, Inc. v. Dep't of State*, 405 N.Y.S.2d 339, 344 (N.Y. App. Div. 1978) (stating that unauthorized practice of law statute "was not enacted for the benefit of lawyers but for the protection of the public").

31. See Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 *FORDHAM L. REV.* 2581 (1999) (providing illuminating discussion of UPL and critique of its underlying rationales).

32. See, e.g., John S. Dzienkowski & Robert J. Peroni, *Shaping the Future of Law: ABA's Multidisciplinary Practice Proposals Will Stymie the Growth of MDP's, 'Golden Age' is Over*, *LEGAL TIMES*, Aug. 2, 1999, at 27 ("Any action by the ABA to try to stop the MDP trend would amount to an anticompetitive guild rule."); see also Rocco Cammarere, *Invasion of the MDPs: Your Livelihood at Risk?*, *N.J. LAW.*, May 24, 1999, at 1, available in *LEXIS* (referring to battle over MDP as "a turf war").

argument that lawyers should be regulated when they engage in it.

CONCLUDING THOUGHTS

The MDP Commission Report has precipitated enthusiasm for challenging nonlawyers by aggressively prosecuting UPL cases against large accounting firms and others. While such litigation undoubtedly would consume time and resources, it would respond to circumstantial allegations rather than to generalities. Rules or statutes also could be drafted to delineate the boundaries of permissible law-related activities by nonlawyers in particular situations. Formal guidelines, however, are neither a necessary component of, nor an obligatory counterpart to, regulations governing lawyers. The move to regulate lawyers should not be hamstrung by conceptual difficulties in defining which activities may or may not be engaged in by those outside of the profession.

Lawyers who refuse to abide by professional rules of conduct ultimately may pose a greater threat to the preservation of core values than do nonlawyers who engage in borderline activities. Therefore, the legal profession should concentrate its initial efforts on regulating lawyers who practice outside of traditional law firm environments. By clarifying that lawyer-like services are indeed legal services and that lawyers who provide them engage in law practice, all lawyers would be subject to lawyers' ethics rules and the public interest that is served by professional regulation would be protected.

