

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

DISCLAIMER¹	Germany² <i>Verhoeven Hellwig; Terry</i>	New South Wales³ <i>Scott</i>	D.C. Rule: <i>Gilbert</i>	Holland <i>Gout/ Terry</i>	12/98Law Council Australia <i>Scott</i>	Paris: <i>Mazet; Silkenat</i>	Law Soc. Upper Canada: <i>Collins</i>	IBA: <i>Bower</i>	Kutak Comm'n Proposed Rule	Ca Ba Po
Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Threshold Issues	Th Iss
A. Standards used in evaluating the MDP issue:	protection of L's from competit'n is irrelevant	Not in §; NSW Law Society submissions cite public interest & integrity of regulatory system		client & public protection	maintain L's ethics & P.R.; protect public (<i>i.e.</i> admin. of justice); protect consumer	Mazet says it's good for the public to have lots of Ls	public interest (related to unique L role in system); can't be a turf issue	protection of clients, & public; access to justice; not lawyer protection	Client & public protection	
B. Core Values to Protect?	collab'rater of justice; CCI ⁴	Not in §; Law Soc says stop UPL;reg.sys & L control		CCCI	Policy doesn't list; <i>cf.</i> CCCI in Victoria ⁵		independ- ence; avoid conflicts; privilege	L's role unique in rule of law; CCI	Emphasis on inde- pendence	list CC pri sto sel
C. Same rules for Main&Wall Street lawyers? relevant to both	Same rules; <i>Cf.</i> GmbH; many Main St. MDPs	Same rules	Same rules	Same rules	Same rules		same rules & this is a Main St. issue	Implicit: same rules	Same rules	sam rul rel to l
D-E. Burden of Proof?⁶	--		Implicit: changers	In <u>NOVA</u> , Changers; this issue on appeal	Explicit: keepers must justify ban		Implicit: changers; risks here/ status quo	Unclear; focus is regulators have info	Implicit: keepers	

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New S.Wales	D.C. Rule	Holland	Law Council Australia	Paris	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
Threshold Issues p.2	Threshold Issues, p.2	Threshold Issues, p.2	Threshold Issues,p.2	Threshold Issues,p.2	Threshold Issues,p.2	Threshold Issues,p.2	Threshold Issues, p.2	Threshold Issues, p.2	Threshold Issues, p.2	Th Issu
F. Is there client need or demand for MDPs?	Some; by both Main St. & Wall St.; study being done		Gilbert has not seen much rule use/ problems	<u>NOVA</u> ignored; MDPs do exist (AA, PWC)	Not in policy; <i>cf.</i> Victoria pro & con arguments on pp.8-9	Mazet is skeptical of demand Silkenat says yes	No; he thinks it's supply-driven	some, but view in light of public interest	Not discussed	Ye also sup need inte plin
G. Are US MDP lawyers & non-lawyers offering what would be called legal services if done in a law firm ?	--	<i>Cf.</i> About 10 MDPs created pursuant to lawyer maj. rules		<i>Cf. NOVA</i> case about bar's concerns about 2 Big 5 <i>captives</i> ⁷	<i>Cf.</i> In Victoria, although MDPs are not permitted, there are 2 Big 5 <i>captives</i>		<i>Cf.</i> In Toronto, MDPs are not permitted; E&Y has a <i>captive</i> & more are expected			
H. Personal knowledge of MDPs causing problems?	V: No H: Yes, he described conflict situations he thinks are bad				Not in policy; <i>cf.</i> Victoria p. 9; lists problems of loss of small law firms & possible regulatory costs	Mazet hasn't heard of clients' complaint ; guesses less mal-practice in MDPs		Implicitly endorses view there can be problems; asks regulators to explore this issue		

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
FORMS OF ASSOCIATION ISSUES	Forms of Assoc. Issues	Forms of Association Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	Forms of Assoc. Issues	For Ass. Issu
A. Any limits on who can join an MDP?	Yes; only with a few: acct'ants, taxadvisors "Notars" & patent Ls are the main categories	In §: not generally; altho if bar requests, crt can order L not to partner with criminals or those not fit & proper	No	Yes; § permits MDPS w/ a notary & taxadviser but not an auditor	No; not now in policy; but says LCA should consider limits on those in practice w MDP- Ls.	Yes, per Mazet, now only with a regulated profession he expects a change	Implicit: No	Not listed; tells states to minimize risks to CCI	No	No (W ask said eve tow dri
B. Is the MDP purpose limited to giving "legal services"?	No	Not in §; but the Solicitor rules focus is on legal services	Yes	No	No		Yes	Not specific'l y identified in policy	No	yes Inte wil rec
C. What is an acceptable MDP Name?	Must use names of those in the firm; (see anecdote re addition of lawyer Andersen)	Not in §; Solic. rules have a rule against false & misleadin g names; rules don't say if tradename is	No separate rule	Crt said Big 5 tradename hurts public cuz undercuts idea of L indepd'ce	Not in policy	Can't use trade name (per Batonnier remarks)	No trade names; need name of a L; but can say 'a member of ..Big 5'	Not in policy; cf IBA FLC debate; this was a fight	No separate rule	Inte rep said use of tha ma leg
D. Any requirement for lawyer majority ownership or control, or a separate legal entity?	Yes and no; only needed if use GmbH form, i.e. an LLP; see H examples	Not in §; Solic. rules require that L's be 51% P'ship gross income & L maj. control	No; in fact nonLs could control	No	No limits in policy; requires an A'ment that L honors own rules	Technic'l y separate; wants new clear rules; it's hard to regulate	Yes; need lawyer control	No <i>per se</i> rule; but says this may help protect CCI	No	Ye L c but rec ere con
	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
FORMS OF ASSOCIATION ISSUES	Forms of Assoc. Issues, p.2	Forms of Association Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	Forms of Assoc. Issues, p.2	For Ass. Issu

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

E. Is passive investment permitted?	No; but some experts recommended	? re § (does it depend on what <i>person</i> means in §?)	No, non-L must do profess'al services	No since only some can join	Yes; Sears would work here			Not in policy	Yes (Note "Sears" example in ABA)	
F. Transparency requirements?	No transp	No transp. in §; sol. rules req'd services to be fairly disclosed to clients	No but A'ment must be in writing	Crt said it wasn't given all A'ments; assumed 'bad facts'	Yes to client re services offered by MDP	Yes; at least with respect to the bar; Mazet wants info to clients		Not in policy		No MD A'r but rol MI dis
G. Other forms of assoc. requirements?	If MDP uses GmbH legal form to get LLP, complex rules	§ says nonL doesn't violate this § if non-L conducts business of P'ship that is business of a L								

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
SCOPE OF PRACTICE ISSUES	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues	Scope of Practice Issues
A. Any limits on an MDP lawyer's scope of practice?	No; <i>but see</i> Verhoeven voluntary audit/legal" ban; <i>cf</i> case <u>Allweiler</u>	Not in § or solic. rules	No, other than MDP sole purpose is legal work	No	No	Yes; no legal/audit for same client	No, but mentioned Big 5 concern re SEC/audit	Suggests audit/legal ban might protect CCI		
B. Has there been/would there be a problem of MDP lawyers "opting out" of the regulatory system for Ls?	Some "JDs" don't become lawyers; instead are "assessors"				Not in policy; <i>cf.</i> Victoria report re pressure on UPL system					alr bit pro allo ML wo ma wo
C. Can a regulator effectively limit the UPL activities of non-lawyers?	No; despite a law that act'ants' legal advice should be related to tax, act'ants don't limit their advice				See above	Non-Ls can do ancillary; big fight now is about what this means; bar can't stop it	Implicitly no; cites example of nonL pension drafting (did it as long as it made \$)			Wo tha can enf UP wil pri (bu adv abo to enf

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
A Functional Analysis of MDP Ethics & Discipline Issues	Functional Ethics Analysis	Functional Ethics Analysis	Functiona l Ethics Analysis	Functiona l Ethics Analysis	Functiona l Ethics Analysis	Functiona l Ethics Analysis	Functiona l Ethics Analysis	Functiona l Ethics Analysis	Fune. Ethics Analysis	Fur l E An
A. Must MDP lawyers obey legal ethics rules?	Yes	Yes	Yes	Yes	Yes; this is corner-stone	Yes	Yes	Yes	Yes	Ye
B. Whose ethics rules should MDP non-lawyers use?	Lawyer rules say non-L's must use L rules; H: true only "on paper"	In § non-Ls use some L rules: trust acct, fidelity fund; in sol. rules, uses all L rules	Lawyers ensure nonL's use legal ethics; L supervises		Not clear; policy asks LCA to think further re nonL rule		regulates non Ls by regulating Ls		No mention, so long as Ls can comply w/rules	Inte rep req onl leg ; b L dis
C. What happens when ethics rules clash?	Use stricter rule (Ver. hasn't seen it happen)				Not in policy; <i>but</i> implicit, Ls win			Use rule w/greater protection		
D. Was or should a new entity be created to regulate the MDP?	Not there currently; experts have suggested this idea				Not in policy; <i>cf.</i> Victoria p 22, 1 of 3 models is <i>mega-reg.</i>	When asked, said mega. would be helpful for L-auditor MDPs		No, but asks to have an IBA C'ee monitor		
E. Any unusual malpractice liability issues?	No single MDPpolicy coverage gaps; §/lim				Not in policy; <i>cf.</i> Victoria, much info in report	Didn't know about ins. issues				

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Threshold Ethics Premises	Th Eth Pre
1. Is an MDP lawyer’s obligation to use lawyer ethics rules judged on a case-by-case basis?	Implicit: No	Implicit: No	Implicit: No		Implicit: No		Implicit: No	Implicit: No	Implicit: No	
2. Can an MDP L’s obligations vary depending on the MDP structure?					Says L always must use L rules, no interp.					Pot wo
3. How should the MRPC term “law firm” be defined in an MDP context?	Entire MDP firm since non Ls use legal ethics	in Solic. rules, it’s the whole firm; in §, only for some rules	Entire MDP since non Ls use legeal ethics		No details; cf. Victoria options	Mazet said use same rules for MDPs as for Ls				
4. Does an MDP L’s duty of confidentiality forbid giving info to nonL?	Arguably no; see Hellwig examples	No details	No	One basis of <u>NOVA</u> different confiden. duties of L & auditor	No details but wants privilege in a §; cf. Victoria options pp. 17-18	Yes if an auditor: per Batonnier	Big concern about losing privilege	No solution, but wants clear rules to protect confiden..	Rule didn’t explain, just said keep info protected	if s is n get hel risk pri

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
Threshold Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Ethics Premises, p.2	Eth Pre p.2
5. Should knowledge be imputed from MDP Non-attys to MDP Attys?	Arguably yes; see Hellwig examples; also 1 st v. 2 nd levels		Yes			Mazet ducked ?, said not a problem cuz small firms	Yes; citing the law of agency		Mentions duty, but not details of how it works	
6. Should knowledge be imputed from MDP lawyers to nonlawyers?	Arguably yes; see Hellwig examples; also 1 st v. 2 nd levels	No details	Yes	Implicitly yes since crt saw a conflict in duties of L&auditor	No details	see above answer	Yes; citing the law of agency		No details	
7. Should there be a new rule for MDP lawyers? (Cf. MRPC 1.13)		No details			Policy asks LCA to think about limits on non Ls in an MDP		Asks for further study/ more details		--	
8. Does the MDP L's duty of loyalty require MDP nonlawyers to use the same loyalty rules?			Yes					No solution, but wants clear rules on conflicts; protect client	Mentions independence & confiden., but not loyalty in black letter rule.	

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
Comments about Specific Ethics or MRPC Provisions	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Specific Ethics Rules	Spe Eth Ru
1. Duty of Confidentiality	H. says same rule for Ls&As, Per LT: rule looks absolute but isn't	No details	No special rules		Policy asks to have legal privilege in new §; Scott sees pressures	asks for clear rules	Expressed mostly as concern about privilege	Wants clear rules; protect C, public, & rule of law	Listed in Kutak as a rule L must observe; no details re how	Int wa cle also pro pri
2. Conflicts of Interest & imputation	H: they use imputation; basic rule is almost like US nonconsent ables (1.7a)	No details, but Solic. rules list conflicts as rule nonLs must follow	No special rules		No details; cf. Victoria at 16-17; less here than in others	asks for clear rules		Listed in policy; same as above, but mentions audits as a risk		Int wa cle Pot wo imp 2 b
3. Rules regarding competence	Yes	No details	No special rules							
4. Other Rules or measures for Maintaining Independence & Supervision	"Frei Beruf" concept ingrained; Hellwig & EC re audit maj. rule	No details, other than maj. control	Nothing, other than writing requirem't to ensure issues not forgotten		No special rules; cf. Victoria pp.15-16	asks for clear rules Chambaz (Silkenat) compares L/auditor I. r'ments	thinks this isn't resolved in their approach; L&auditor differ here		Kutak stresses that L must stay indep'dent no special guidelines	Int wa MI to s cor me this
5. Pro Bono Rules	Yes; mandatory	No details	No special rules							
	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
Comments about Specific Ethics or MRPC Provisions, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Specific Ethics Rules, p.2	Spe Eth Ru
6. Client Money Rules, including security funds		Yes, non-Ls must comply even under §	No special rules		No special rule; cf. Victoria pp 10-12					

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

7. Fee Rules	full Fee split ok within MDP	Solic. Rules don't allow unless complies	Permits fee sharing		No special rules; <i>cf.</i> Scott re MDP L fee disclosure		No fee splitting, but cost sharing ok		Says fee must comply w/ rules	
8. Advertising-Marketing Rules	Yes; rules now looser for Ls; Nb. I'm unsure how this works in an MDP	in §, ok for non-L to say he's part of an MDP offering law services, <i>inter alia</i>	No special rules; note no disclosure of MDP required						Says MDP can't result in prohibited ads/solic.; no details	
Miscellaneous	MDPs since 1961; several cases have overturned MDP limits; Witness Ver. is a member of an MDP	After referral to it, Advisory Council told Atty Gen'l to strike Solic. Rules because not justified by public interest	Can have nonlawyer PCs in MDP; few inquiries; only used by pure DC firms cuz ABA opinion re jurisdiction	Appeal was argued Jan. 1999, but I've been told Dutch Antitrust authorities said bar rule illegal	Requires a writing in MDP that L must honor own rules; almost deregulate MDP itself	Asks for common ethics rules; (<i>Nb.</i> I assumed Batonnier remarks about France are re Paris)	Collins is counsel to one of the Big 5; fast growth in E&Y <i>captive</i> ; separate legally, not physically	<i>Nb.</i> I find the IBA policy is the most articulate of all re role of law and access to justice	Rule voted down in ABA House of Delegates after a question re Sears owning law firms	Be pri isn' der like pub it is in jeo

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

	Germany	New South Wales	D.C. Rule	Holland	Law Council Australia	Paris Bar	Law Soc. Upper Canada	IBA	Kutak Proposed Rule	Ca Ba
BOTTOM LINE ADVICE TO CMDP	Harmonize rules; keep lawyer independ., perhaps by L. majority or control r'ments; have audit ban; impute broadly & no screens		She won't recom'nd change; she's paid to be conservative; no history with broader rule		A rule won't work if perceived to protect L's turf instead of public; be clear why independence is important	M decided can't stop the MDP tide, so regulate; MDPs are OK but wants disclosure re lack of indep'dce	Thinks Big 5 practice is inevitable so figure out regulation; asked for further study in Canada			Wo in tur you ad eve g s ad wh car star

ENDNOTES:

1. I prepared the various charts in Appendix B in order to help the CMDP think about the issues and focus on the alternative approaches it has seen. Given the circumstances under which they were prepared, these charts should not be considered an authoritative source about various witnesses' testimony or positions. I have made a good faith effort to accurately represent the testimony of witnesses, but have had to make judgments in order to reduce an hour or hour and half's testimony into these charts and have also organized the testimony according to my vision of the relevant issues. Although I have relied on the witnesses' written submissions and the summary of testimony from the November 1998 hearings which was posted on the CMDP's web page, I also have relied on my own notes from the hearings, in which I tried to capture as much as possible, particularly during the question & answer sessions. Given the quantity of material, however, and the lack of a hearing transcript, it certainly is quite likely that I have made some mistakes or characterized witnesses' testimony in a manner they dislike. I apologize for any such mistakes or mischaracterizations; but thought it worth taking the risk of such mistakes in an effort to help the CMDP synthesize the extensive information it has gathered. Some entries contain the word "implicit" in order to signal that the entry reflects my interpretation of what the witness said because the witness may not have addressed the point directly.

2. Appendices B-1 through B-5 summarize the testimony of witnesses at the November 1998 and February 1999 CMDP public hearings. With the exception of myself, the witnesses listed on Appendices B-2 through B-5 are listed in the order in which they testified. Appendix B-1, on the other hand, presents the witnesses in a different order. Appendix B-1 was intended to collect on one page information about MDP systems currently in place and final and pending bar recommendations. The first set of entries on Appendix B-1 come from entities that have adopted binding provisions that permit some type of MDP. The second set of entries is for groups that have made final recommendations concerning MDPs. The third set of entries is from entities that currently have MDP studies pending, and have shared their preliminary results with the CMDP. As all of the witnesses noted, the preliminary studies are subject to change (and in some cases, such as the Canadian Bar, change is indeed expected.)

It should be noted that MDP studies by the following entities currently are underway: 1) The Law Society of England and Wales; 2) the French Ministry of Justice; 3) British Columbia. The CMDP heard testimony from Witness Allison Crawley and has received a lengthy Consultation Report issued by the Law Society of England and Wales. Because this Report raises questions rather than answering them, and summarizes many possible models, I have not included the Law Society on Appendix B-1, but instead have included Ms. Crawley's testimony with that of the other witnesses. This Report is well worth reading. (The Victoria Legal Ombudsman's Discussion Paper is also particularly useful.) Witness James Silkenat presented materials from a joint ABCNY/Paris Bar conference that includes information from the French system, but I have not yet learned whether any action was taken. I am aware of the fact of the ongoing British Columbia study, but the CMDP has not heard any testimony about this study.

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

There undoubtedly are many more studies also underway. The Law Society of England and Wales's Consultation Report, for example, noted that a study was pending in Denmark. (Note that the chart does not contain a listing for the "existing law" in England, U.S. states using the MRPC, or for European Union countries that use the current CCBE Policy. All of these currently prohibit fee sharing or partnerships with nonlawyers.)

The three groupings in the chart are as follows:

- ENTITIES WITH BINDING PROVISIONS PERMITTING MDPs IN SOME FASHION:
Germany, New South Wales (Australia), The Netherlands, The District of Columbia
- ENTITIES THAT HAVE ISSUED A FINAL REPORT OR RECOMMENDATIONS REGARDING MDPs:
Law Council of Australia (12/98); Paris Bar Council, Law Society of Upper Canada, the IBA, the Kutak Commission Proposed Rule
- ENTITIES THAT HAVE SHARED THE PRELIMINARY RESULTS OF PENDING STUDIES:
Canadian Bar Association, CCBE, Union Internationale des Avocats; (Note: Law Institute of Victoria pending study described in Scott testimony superceded by 12/98 Final Recommendations of the Law Council of Australia)

3. Section 48G of the New South Wales Legal Profession Act 1987 is captioned *Multidisciplinary Partnerships*. This statute is quite liberal and places almost no limits on MDPs. It does, however, say that MDPs are permitted "except to the extent (if any) that the regulations, barristers rules, solicitors rules or joint rules otherwise provide." The New South Wales Solicitors Rules permit MDPs, but in a very restrictive fashion. On June 24, 1997, the Attorney General asked the Legal Profession Advisory Council (a government advisory body) to examine the issues related to §48G and the Solicitors Rules. The Advisory Council concluded that the Solicitors Rules were being used to nullify the reformist amendments in §48G. It concluded that the Solicitors Rules were restrictive and not in the public interest and recommended that the Attorney General declare such rules inoperative. It also recommended that the reference to Solicitors Rules be deleted from §48G to insure that no further rules are promulgated that would hinder the formation of MDPs. See <http://www.nsw.gov.au/lpac.nsf/pages/paper2> [visited March 9, 1998]. In this chart, I refer both to Section 48G, cited as §, and also to the Solicitors Professional Conduct and Practice Rules, cited as *Solic. Rules*.

4. "CCCI" refers to the core values of competence, confidentiality, conflict of interest avoidance, and independence of a lawyer's professional judgment. If only CCI is used, it omits the reference to competence.

5. The reference to "Victoria" refers to the Victoria Ombudsman's Discussion Paper submitted to the CMDP by Witness Scott. This paper articulates the ethics issues a bit differently than my CCCI listing. Under the topic "Ethical Issues" on p. 10, the paper lists "Professional Supervision, Conflicts, Client Legal Privilege." In this chart, I have equated the concepts of privilege and confidentiality, although they are somewhat different. I also have extrapolated the values of competence and independence from the listed value "professional supervision." The word "independence" is mentioned significantly less in this report than in other reports, and the concept is articulated in terms of appropriate professional supervision.

6. For sake of simplicity, I have indicated that the burden either should be on those seeking to change the rule, referred to in the chart as "changers", or on those seeking to keep the status quo, referred to in the chart as "keepers." For a more detailed explanation, see Terry Testimony.

7. I have used the word *captives* in this chart because the word is shorter and fits in the chart spaces better than do terms such as *affiliated law firm*, etc. I intend nothing pejorative by this term. I recognize that there are many different models through which lawyers affiliate themselves with an MDP. See, e.g., Commission Hypotheticals. My use of the term *captive* is not intended to reflect a particular model, but only to refer generally to the *MDP phenomenon*. Given the space limitations in the chart, I chose not to explain the details and nuances of the organizational form, but to use the term *captives* to refer to the phenomenon. Moreover, my use of the word *captive* is not intended to suggest that the particular law firm is in violation of particular bar rules. Most of the firms I have referred to as *captives* contend that they are not violating bar rules and that they split costs, but not fees or profits.

TERRY APPENDIX B1: SUMMARY OF CMDP PUBLIC HEARING TESTIMONY

*Prepared by Prof. Laurel S. Terry, Penn State Dickinson School of Law, ©1999**

Gerard Nicolay, for example, testified that his firm is not a *captive* of PricewaterhouseCoopers. In short, I am not using this term as a *term of art* but as a generic term for the MDP phenomenon.