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## Legal Education and Financial Planning: Preparation for the Multidisciplinary Practice Future

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## ARTICLE

### LEGAL EDUCATION AND FINANCIAL PLANNING: PREPARATION FOR THE MULTIDISCIPLINARY PRACTICE FUTURE

GEORGE STEVEN SWAN\*

#### I. INTRODUCTION

The following pages address the growing drive toward multidisciplinary practice (MDP) for attorneys. They identify the Big Five accounting firms as the engine of this drive.<sup>1</sup>

Accounting firms have, for quite some time, engaged in legal practice overseas,<sup>2</sup> and they have been apprehended as muscling in on the practice of law domestically<sup>3</sup> as well. Accountants are also beginning to reach into the financial planning profession.<sup>4</sup> Yet, attorneys have traditionally coveted the financial planner role for themselves.<sup>5</sup> Indeed, there are currently a variety of structural devices whereby the bar is already offering financial planning to the public.<sup>6</sup>

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1. George Steven Swan, *The Political Economy of Interprofessional Imperialism: The Bar and Multidisciplinary Practice, 1999-2000*, 24 J. Legal Prof. 151, 153-54 (2000).

2. *Id.* at 154-56.

3. *Id.* at 158-59.

4. *Id.* at 159-61.

5. *Id.* at 163-66.

6. *Id.* at 166-69. It is reported that the 2001 *Jobs Rated Almanac* designates financial planning as the overall best job in America. Sarah O'Brien, *Planners Average*

### A. *The Developments of 2000*

This analysis is inspired by the arresting convergence of four completely independent events that took place in the middle of last year. The first two events that are reviewed herein are acts by the Securities and Exchange Commission (June 2000) and the American Bar Association (July 2000) that temporarily retarded the MDP push. Prompted by these acts, this article discusses the prospect of law schools incorporating courses toward the Certified Financial Planner ("CFP") credential-preparatory examination into Juris Doctor ("JD") degree programs. Relevant to this discussion are the second two events of major importance in the recent dialogue concerning MDPs. First, during June 2000, the Certified Financial Planner Board of Standards seems to have accommodated the registration therewith of law schools' formal Financial Planning Certificate Programs preparatory to the CFP Board's rigorous certification examination. Second, during July 2000, the Board of the Financial Planning Association publicly recommitted itself to the CFP mark as a foundation of the profession of financial planning.

### B. *The Opportunity of 2001*

The ensuing discussion reviews for legal educators of 2001 the process whereby a school's financial planning curriculum may become registered with the CFP Board. This registration would enable students who have mastered this curriculum to take the Board's examination toward the CFP credential. It appears that a law school's Financial Planning Certificate Program for JD candidates could be presented in a single semester. Additionally, much of the financial planning subject matter that is demanded by the Board is already offered by American law schools for JD candidates.

### C. *Caveat*

It is important to carefully distinguish two different certifications involved in the following discussion. A Financial Planning Certificate Program certifies, on behalf of the school, that the student has completed outlined studies in financial planning. A totally distinct type of

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\$\$\$ix-Figure Pay, InvestmentNews, Sept. 11, 2000, at 1. (The Financial Planning Association's on-line Career Center can be found on the F.P.A.'s website at [www.fpanet.org/career](http://www.fpanet.org/career).) The Bureau of Labor Statistics reportedly estimates an increase in the percentage of financial planners between 1998 and 2008 of 40%. J. Fin. Plan., Nov. 2000, at 30. It is interesting to note, however, that the *2000 Jobs Rated Almanac* reportedly ranked the financial planner at only seventeenth among all American jobs. Alex J. Stockham, *Top Job*, Ticker, Dec. 2000, at 16.

certification is granted when the CFP Board's CFP credential certifies, on behalf of the Board, a party who commands not only the requisite educational background, but also the requisite ethical and practice backgrounds, and who has passed the Board's CFP examination.

## II. THE MULTIDISCIPLINARY PRACTICE TREND

### A. *The Emerging Idea of MDP*

During the previous century, Congress erected regulatory walls segregating banks and insurance companies, investment banks, stock brokerage firms, and securities firms.<sup>7</sup> However, two years ago President Clinton executed the Financial Services Modernization Act<sup>8</sup> which served to erode these barriers. This statute repealed portions of the Glass-Steagall Act of 1933,<sup>9</sup> which restricted the affiliation of banks and insurance companies. This 1999 enactment likewise amended the Bank Holding Company Act of 1956,<sup>10</sup> which also contained restrictions against the affiliation of banks and insurance companies. At present, a pressing, widespread threat to the legal profession arises ominously<sup>11</sup> from banks, which now offer a variety

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7. See James M. Benson, *The Next Wave of Success in the Financial Services Industry*, J. Fin. Serv. Prof., May 2000, at 40, 41.

8. Pub. L. No. 106-102, 113 Stat. 1341 (1999). See also Commerce Clearing House, *Financial Services Modernization: Gramm-Leach-Bliley Act of 1999: Law and Explanations* (1999). According to Dr. Gary S. Becker, winner of the Nobel Prize in Economics in 1992:

Now there is a worldwide deregulation of banking. The deadweight costs for any one country trying to maintain regulatory banking and finance when capital markets are becoming more global would have been enormous, so it is not surprising that one by one countries have been forced to open up their capital markets.

Competition and Cooperation: Conversations with Nobelists about Economics and Political Science 193 (James E. Alt et al eds., 1999).

9. 12 U.S.C. § 78 (1994) (repealed 1999).

10. 12 U.S.C. § 1843 (1994), amended by Pub. L. No. 106-102, 113 Stat. 1341 (1999).

The Gramm-Bliley Financial Modernization Act will serve as a catalyst to hasten the convergence of the financial service marketplace. This will change sales compensation practices to account for the preferences of the players' insurance companies, securities firms, and banks.

Regulations and compliance practices affecting sales compensation will become more consistent among these players, thus reflecting the convergence of financial services from the consumer perspective.

John M. Wellborn & Paul D. Laporte, *Marketing and Regulatory Trends That Will Affect Sales Compensation*, J. Fin. Serv. Prof., Nov. 2000, at 62.

11. See John Gibeaut, *MDP in SEC Crosshairs: Accounting Firms May Cool Their Urge to Merge*, A.B.A. J., Apr. 2000, at 16, 18. Everybody wants to get into the act:

of fresh planning products and services. The deregulation of major sectors of the nation's financial services economy, hitherto mutually isolated, has led to the blurring of the lines between the banking, law, and insurance sectors as a result of the financial industry's efforts to offer consumers one-stop shopping.

Multidisciplinary practice for lawyers may be defined as a partnership or entity encompassing attorneys and non-attorneys with one (yet not all) of its purposes being that of delivering legal services to a client (other than itself), or holding itself out to the public as a provider of non-legal, in addition to legal, services.<sup>12</sup> Often, MDPs are styled as, but not exclusively described as, large accounting firms including a law department to serve the accountants' clients.<sup>13</sup> Such an enterprise affords multiple professional services. The more fully integrated versions of MDPs present services such as accounting, auditing, consulting, and legal assistance.<sup>14</sup> In such a fully integrated MDP, these services are usually offered by captive law firms, or through attorneys serving as employees who provide legal services subject to the supervision of non-attorneys.<sup>15</sup>

As early as the eighteenth century, major investors routinely conferred with their attorneys prior to major undertakings.<sup>16</sup> Today, such consultations are probably done through a committee that supplements lawyers with lobbyists, political consultants, and public relations advisors.<sup>17</sup> Much speculation has surrounded the possibility of lawyers partnering and sharing fees relative to divorce with psycholo-

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For the last 15 years, the Schwab Institutional unit of Charles Schwab & Co. has enjoyed unprecedented growth with minimal competition in the market for advisory clearing and custodial services. But in recent months, five well-established brokerage firms, Raymond James Financial Services, DLJ direct, Bear Stearns & Co., Ameritrade Holdings Corp. and E\*Trade, have all launched advisory-services units.

*Five Big Firms Enter the Advisor Market*, Fin. Advisor, Nov./Dec. 2000, at 24. This includes the downscale end of the financial planning market. Jeff Benjamin, *H&R Block Ready to Test Its Advice Gambit: Tax Preparers Trained for Work as Advisers*, InvestmentNews, Nov. 27, 2000, at 6.

12. See Jim Hill, *Multidisciplinary Practice Issue Awaits Further Discussion: ABA Will Revisit at Dallas Meeting*, Gavel, Dec. 1999/Jan. 2000, at 3.

13. See Laurie Fullerton, *Lawyers, Judges Indicate Ethical Concerns with MDPs*, Mass. B. Assn. Law. J., Mar. 2000, at 7.

14. *Id.*

15. Neil W. Hamilton, *MDPs: View the Bigger Picture*, Nat'l L.J., Apr. 24, 2000, at A23.

16. Thomas Ferguson, *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems* 30 (1995).

17. *Id.*

gists and financial planners.<sup>18</sup> There certainly is a department store type of attraction to visiting an office where clients can enjoy financial advice, or accounting services, in addition to legal counsel.<sup>19</sup> Under the MDP model, a client could discuss estate planning with an attorney, consult a financial advisor within the same firm on investments, and then hire an in-house accountant to prepare a tax return.<sup>20</sup>

### B. *The Problematical Application of MDP*

Exclusion of non-attorneys from the provision of law-related services is a twentieth-century phenomenon. This is largely a result of the development and growth of the organized bar associations during the third and fourth decades of the past century.<sup>21</sup> Since its 1878 inception, the American Bar Association has resisted any steps in the direction of allowing non-attorneys (except under specific and limited circumstances) to deliver routine legal services to the public. Overall, the ABA has proved to be successful in curtailing potential competition.<sup>22</sup> Alone among common law nations in this regard, America proscribes non-attorneys from handling certain extra-courtroom representation.<sup>23</sup> (In Ontario, Canada, for example, non-lawyers routinely afford representation in traffic courts and before workers' compensation boards.<sup>24</sup>)

Business lawyer Marc C. Laredo, who is with Faxon & Laredo of Boston, Massachusetts, is Vice-Chairman of the Massachusetts Bar Association Business Law Section.<sup>25</sup> Posits Laredo:

From a consumer standpoint, I could see a real benefit to going to a divorce lawyer and a family therapist and a licensed social worker and an estate planner and certified financial planner all in one-stop shopping . . . [so] when you're going through that traumatic event of divorce, you don't have to go to five different providers.<sup>26</sup>

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18. Joan H. Strand, *Multidisciplinary Practice*, Wash. Law., Mar./Apr. 2000, at 8.

19. Dennis G. Kainen, *Legalization of MDPs Fails to Protect Core Value of Legal Profession*, The Bulletin, Apr. 2000, at 1, 6 (The Bulletin is the official newspaper of the Dade County Bar Association).

20. Susan R. Miller, *Dade Bar Comes Out Against MDPs; No Stand from Broward and Palm Beach*, Miami Daily Bus. Rev., Mar. 31, 2000, at B1, B3.

21. Marc-Georges Pufong, 94 Am. Pol. Sci. Rev. 724 (2000) (reviewing Herbert M. Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work* (1999)).

22. *Id.*

23. *Id.*

24. *Id.*

25. Dick Dahl, *MDPs May Be Inevitable But Lawyers and Accountants Say Issues Must Be Settled First*, Mass. B. Assn. Law. J., Jan. 2000, at 1, 12.

26. *Id.* at 13 (quoting Marc C. Laredo).

The April 3, 2000 report of the Ohio State Bar Association Special Committee on Multidisciplinary Practice and the Legal Profession<sup>27</sup> recognized:

Law firms today are engaged in a broad array of services delivered through wholly owned ancillary business entities that are "consulting" in non-traditional legal services. Title companies have been around a long time, and now law firms consult in health care, insurance, business development, investment services and governmental relations. Law firms employ countless non-lawyers to provide these services, employees who are salaried and under the firm's supervision and control. They are not partners in our firms, do not share profits and do not perform legal services for the client. Lawyers have structured their services through utilization of non-lawyers so as not to be in conflict [with] or in violation of the disciplinary rules and so as not to compromise their independence of judgment to the client. A recurring question when exploring an MDP entity is whether independence of judgment to the client is compromised to the extent of irreparable harm to the attorney-client relationship and sacrificing the core values of that relationship.<sup>28</sup>

### III. LAW FIRMS CATER TO A DIVERSE SERVICES DEMAND

Some law firms exploit their client contacts by rolling their trusts and estates practice into new, interdisciplinary, full-service estate planning departments.<sup>29</sup> Bingham Dana, a Boston-based firm, searches for hybrid practice appeal through a joint venture with Legg Mason, Inc., an investment advisor.<sup>30</sup> This affiliation offers to swelling numbers of high net worth clients a gamut of investment management and trust administration services.<sup>31</sup>

The non-lawyer arm of Littler Mendelson P.C. (a San Francisco, California-based firm) is becoming by far that firm's largest revenue source.<sup>32</sup> A half-owned subsidiary of Littler Mendelson launched in 1998, Employment Law Training, Inc., utilizes firm attorneys to pre-

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27. The Ohio State Bar Association's Special Committee on Multidisciplinary Practice and the Legal Profession's Final Report of 17 May 2000 to the Council of Delegates at the Annual Convention in Toledo can viewed at the OSBA website: [www.ohiobar.org](http://www.ohiobar.org).

28. Report of the Special Committee on Multidisciplinary Practice and the Legal Profession, 73 Ohio St. B. Assn. Report 410, 412-14 (Apr. 24, 2000).

29. Karen Hall, *New Money, New Rainmakers: Trust and Estate Lawyers Tap into Success of Internet Millionaires*, *Fulton County Daily Rep.*, July 13, 2000, at 5, 7.

30. *Id.*

31. *Id.*

32. Michael D. Goldhaber, *As ABA Debates, MDPs Are Spreading*, *Nat'l L.J.*, July 10, 2000, at A1.

sent office seminars on employment law,<sup>33</sup> and generates \$200,000 in billings monthly.<sup>34</sup> A crucial advantage to a subsidiary of this type lies in the freedom to raise capital.<sup>35</sup> Lazard Frères, the investment bank, invested \$15 million in ELT in return for approximately half of ELT's equity.<sup>36</sup>

Duane, Morris & Heckscher L.L.P. (of Philadelphia) commands 30 non-attorney professionals engaging in, *inter alia*, registering corporations and registering trademarks overseas.<sup>37</sup> Hale & Dorr L.L.P. (of Boston), in 1999, created a subsidiary named "The HR Dept."<sup>38</sup> This subsidiary meets the needs of tech startup clients lacking payroll, benefits, and employee handbook services.<sup>39</sup> Womble Carlyle Sandridge & Rice P.L.L.C. (of North Carolina) and Dickinson Wright P.L.L.C. (of Detroit) have built inside their respective law firms thriving office technology consultancies.<sup>40</sup> In 1995, Wilentz, Goldman & Spitzer (of Woodbridge, N.J.) established a subsidiary known as Pro Agents, Inc.,<sup>41</sup> which represents fifty-five professional baseball players.<sup>42</sup> In short, law firm managers spurred by competition are creating non-legal side businesses in hopes that firm clients will pay for advice concerning investments, multimedia design, asset management, or the storing of documents.<sup>43</sup>

Some law firms even reinvent themselves as venture capitalists and raise their own funds.<sup>44</sup> Early last year, Akin Gump Strauss Hauer & Feld L.L.P. (based in Dallas) raised five million dollars from its partners with which to invest in startup companies.<sup>45</sup> California firms such as Ventura Law Group (Menlo Park) and Wilson Sonsini Goodrich & Rosati (Palo Alto), began, years ago, to invest by agreeing to swap services for equity in startup clients.<sup>46</sup>

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33. *Id.*

34. *Id.*

35. *Id.* at A11.

36. *Id.*

37. *Id.* at A1.

38. *Id.* at A10.

39. *Id.*

40. *Id.*

41. Matt Fleischer, *A Game of Their Own*, Nat'l L.J., May 15, 2000, at A1.

42. *Id.*

43. *Id.* at A8.

44. Raymond Hennessey, *Lawyer Set Up Funds to Back Start-Up Clients*, Wall St. J., July 13, 2000, at C22.

45. *Id.*

46. *Id.*

Last July, the three-year-old Seattle-based environmental law boutique firm Marten & Brown L.L.P. incorporated.<sup>47</sup> It demoted partners to salaried employees, issued stock to every attorney, and presented stock participation rights to non-legal staff.<sup>48</sup> Leaders aspired to position themselves for a time when attorneys would be able to share ownership equity with non-legal professionals and staff.<sup>49</sup> They believed their structure allowed enhanced flexibility to start ancillary businesses, such as a Brown Fields Redevelopment Company (to deal with contaminated land use) and a policy and dispute resolution center.<sup>50</sup>

#### IV. THE BIG FIVE BLITZKRIEG

##### A. *The Big Five Bugle Sounds the Charge*

The parties who ignited the inextinguishable MDP debate are the Big Five accounting and financial services firms:<sup>51</sup> Arthur Andersen, PricewaterhouseCoopers, KPMG, Deloitte Touche Tohmatsu, and Ernst & Young. Arthur Andersen affiliates with its international law network, Andersen Legal, which has more than 2,860 lawyers practicing law outside the United States. Arthur Andersen also employs some 750 law school graduates inside the U.S.<sup>52</sup> PricewaterhouseCoopers affiliates with Landwell, which is based in London.<sup>53</sup> Landwell has approximately 1,500 lawyers globally. In addition to the attorneys employed by Landwell, PricewaterhouseCoopers employs another 1,500 attorneys and law school graduates worldwide. KPMG engages 3,300 lawyers between KPMG itself and its affiliate, Klegal, which is based in Paris. Deloitte & Touche employs more than 800 lawyers within America alone.<sup>54</sup>

During last year's Big Five recruiting season, Deloitte Touche Tohmatsu aimed at hiring two hundred fifty graduates of law schools in America for jobs in the U.S., plus another one hundred or so inter-

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47. Ritchenya A. Shepherd, *Firm Issues Stock Options to Staff*, Nat'l L.J., July 31, 2000, at A17.

48. *Id.*

49. *Id.*

50. *Id.*

51. Siobhan Roth, *ABA Debates While MDPs Stampede Ahead*, Fulton County Daily Rep., Feb. 23, 2000, at 5.

52. Geanne Rosenberg, *Move Over, Baker & McKenzie: Big 5 Have Arrived—in a Big Way!*, Nat'l L.J., May 29, 2000, at B6.

53. *Id.*

54. *Id.* Deloitte carries between 600 and 700 attorneys in Europe, even though it remains alone among the Big Five in failing yet to launch its own law firm in the crucial United Kingdom market. See Sean Farrell, *Deloitte Is Only Big 5 Firm with No U.K. Law Firm. How Come?*, Nat'l L.J., Oct. 30, 2000, at B6.

national students for its recently mushrooming global law network. PricewaterhouseCoopers looked to recruit some two hundred twenty law students.<sup>55</sup> Ernst & Young's recruiting goal hit one hundred law school graduates.<sup>56</sup>

Lawrence J. Fox, a partner at the Philadelphia-based firm of Drinker, Biddle & Reath, warns that the Big Five attack on the legal profession attained a new plateau of firepower when Ernst & Young launched a "latter-day Tet Offensive" by forming the law firm of McKee, Nelson, Ernst & Young,<sup>57</sup> for this law firm is the first law firm in this country to encompass a Big Five name.<sup>58</sup> Although Ernst & Young does not own this Washington, D.C. law firm, this new partnership, seen as a forerunner of things to come, is backed by an Ernst & Young loan.<sup>59</sup> The partnership, born in November 1999, marks an experiment in erecting a Big Five-associated law firm on American soil.<sup>60</sup> On every front, Ernst & Young is expanding its part in the law-related market, with its American law firm, its law network overseas, a lobbying firm, and a strategic alliance boasting startup planning to market goods and services to in-house law departments as well as to law firms.<sup>61</sup>

Where one of the Big Five leads, the others are likely to follow.<sup>62</sup> Indeed, Andersen Legal has taken its initial step toward developing a U.S. legal capacity. It has forged a strategic alliance between Andersen Legal's Singapore firm and Weil, Gotshal & Manges (of New York).<sup>63</sup> This represents the first substantial affiliation between a Big Five-linked law firm and a major, traditional American law firm.<sup>64</sup> This alliance signals a fresh approach to establishing an American law capacity deeper than an informal referral relationship.<sup>65</sup> The Big Five

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55. Geanne Rosenberg, *Trying to Keep Up with Starting Law Firm Pay Is Tough for the Big 5*, Nat'l L.J., Oct. 23, 2000, at B6.

56. *Id.*

57. Lawrence J. Fox, *A Wolf in Sheep's Clothing: Ernst & Young 'Independent' Firm Mocks Law Profession and Its Values*, Fulton County Daily Rep., Jan. 20, 2000, at 7.

58. Geanne Rosenberg, *Ernst & Young First to Take MDP Plunge: Will it Stand Up Over Time?*, Nat'l L.J., June 26, 2000, at B9.

59. Margaret A. Jacobs, *Accounting Firms Covet Forbidden Fruit: Piece of U.S. Legal Market*, Wall St. J., May 31, 2000, at B1, B4.

60. Geanne Rosenberg, *Andersen Legal Breaks New Ground with Weil Gotshal Deal*, Nat'l L.J., Aug. 14, 2000, at B8.

61. Geanne Rosenberg, *Will Others Follow Ernst & Young on its Forays into Legal Services?*, Nat'l L.J., Sept. 25, 2000, at B7.

62. *Id.*

63. Rosenberg, *supra* note 60, at B8.

64. *Id.*

65. *Id.*

scorn to conceal their paramount goal of competing head-on with the premier American law firms.<sup>66</sup> For now, the Big Five's lawyers are fancied as "practicing tax".<sup>67</sup>

### B. *The Independence Standards Board*

Even while the American Bar Association and state bars nationwide debate multidisciplinary practice, the Securities and Exchange Commission ("S.E.C.") stands resolutely behind its position that, relative to public companies, no outside auditor may engage in any attorney-client relationship with a client.<sup>68</sup> The Big Five submit that the tax services and other services provided by Big Five attorneys to clients are solely advisory, and do not equate to legal practice. Nevertheless, the Big Five continue to lobby forcefully for the regulatory clearances requisite to the practice of law in the United States.<sup>69</sup>

The Independence Standards Board ("I.S.B.") is comprised of eight members, half from the Big Five. It was created via agreement between the S.E.C. and the American Institute of Certified Public Accountants ("A.I.C.P.A.") in 1997, and serves as an industry advisory. The A.I.C.P.A., which is the foremost trade association for certified public accountants, is the funding source of the Independence Standards Board.<sup>70</sup>

The I.S.B. has been conducting separate studies regarding evolving firm structures and law practice by accountants.<sup>71</sup> Last year, in Discussion Memorandum 99-4, entitled *Legal Services*,<sup>72</sup> the Independence Standards Board was appraising everything from whether to absolutely ban auditors of public companies from delivering legal services to S.E.C. audit clients, to recommending that practically every such restriction be lifted.<sup>73</sup>

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66. Jacobs, *supra* note 59, at B1.

67. Tunku Varadarajan, *Why is the ABA Afraid of a Little Competition for Lawyers?*, Wall St. J., July 24, 2000, at A27.

68. Geanne Rosenberg, *Prof. Allen and the ISB: Helping Decide the Legal Services Issue*, Nat'l L.J., June 12, 2000, at B6.

69. *Id.*

70. *Id.*

71. Gibeaut, *supra* note 11, at 18.

72. International Standards Board, *Discussion Memorandum 99-4: Legal Services* (Dec. 1999). See, e.g., *Preserving Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers*, Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation, Apr. 2000, at 163-65, [hereinafter *MacCrate Report*].

73. Rosenberg, *supra* note 68, at B6.

Needless to say, the S.E.C. retains the last word.<sup>74</sup> Indeed, in a January 2000 Securities Regulation Institute conference speech in San Diego, S.E.C. chief accountant Lynn E. Turner revealed that the S.E.C. plans a review of the International Standards Board itself.<sup>75</sup> Turner has even questioned whether the Board truly is independent,<sup>76</sup> given that three of the Board's eight members are Big Five CEOs.<sup>77</sup>

## V. THE SECURITIES AND EXCHANGE COMMISSION

### A. *The Blitzkrieg Sputters in June 2000*

The Securities and Exchange Commission may yet assuage the bar's fears of an imminent Big Five invasion of the legal profession.<sup>78</sup> On June 30, 2000,<sup>79</sup> the S.E.C. released a series of proposed amended regulations<sup>80</sup> which would have the effect of tightening accounting procedures.<sup>81</sup> The S.E.C. is aiming at banning accounting firms from offering their clients both auditing and consulting services.<sup>82</sup>

Under the proposed amended regulations of June 30, 2000, the S.E.C. will not recognize an accountant as independent (with respect to an audit client) if the accountant is not, or would not be perceived by reasonable investors to be, capable of the exercise of impartial and objective judgment on every issue embraced by the accountant's engagement.<sup>83</sup> An accountant lacks independence if the accountant provides certain non-audit services to an audit client or an audit client's affiliate.<sup>84</sup> This is true even if the audit client accepts ultimate responsibility for the work performed or decisions that are reached.<sup>85</sup>

Such non-audit services include "[p]roviding any service to an audit client or an affiliate of an audit client that, in the jurisdiction in which the service is provided, could be provided only by someone

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74. *Id.*

75. Gibeaut, *supra* note 11, at 18.

76. *Id.*

77. *Id.*

78. *Id.* at 16.

79. 65 Fed. Reg. 43,147, 43,194 (July 12, 2000) (to be codified at 17 C.F.R. pts. 210 & 240).

80. 65 Fed. Reg. 43,147 (July 12, 2000).

81. Keith Girard, *Accountants: Time for Some Soul-Searching*, InvestmentNews, July 24, 2000, at 2.

82. James E. Copeland, Jr., *Accounting Ain't Broke, So Don't Fix It*, Wall St. J., July 25, 2000, at A22.

83. 65 Fed. Reg. at 43,190.

84. 65 Fed. Reg. at 43,192.

85. *Id.*

licensed to practice law.”<sup>86</sup> And in an appendix,<sup>87</sup> the S.E.C. lists these services that are delivered by professional accounting firms:

1. Corporate and commercial legal services to national and international companies worldwide.
2. Assistance to law departments and general counsel to enhance and measure performance.

#### *Litigation Support*

1. Case management.
2. Expert accounting and financial reporting witnesses.
3. Damages experts and witnesses.
4. Environmental litigation experts.
5. Securities litigation experts.
6. Antitrust services.
7. Construction disputes.
8. Service of detailed data to provide cost-effective, proactive strategies and solutions to complex business disputes.<sup>88</sup>

According to Northwestern University Professor of Law John Heinz, legal departments erected to afford litigation support and to handle mergers and acquisitions unfortunately trigger precisely the sort of conflicts of interest that the S.E.C. fears.<sup>89</sup>

#### *B. Big Five Vulnerability Internationally*

Observe that the S.E.C. relies upon the rules of various jurisdictions to identify what type of work constitutes legal services.<sup>90</sup> The aforementioned June 30, 2000 proposals called into question whether Big Five delivery *abroad* of legal services could run afoul of the S.E.C.’s independence standards.<sup>91</sup> The S.E.C.’s position is that the June 30 proposals would not alter the rules regarding legal services.<sup>92</sup> Consequently, under the S.E.C.’s auditor independence legal services ban, the Big Five’s massive law networks *overseas* might not be adequately separate from the audit firms to satisfy the S.E.C.,<sup>93</sup> given that many of

86. *Id.*

87. 65 Fed. Reg. at 43,194 (Appendix A).

88. 65 Fed. Reg. at 43,195 (Appendix A).

89. Sarah A. Klein, *Rule Would Force CPAs to Count on Low-Margin Biz*, InvestmentNews, Aug. 21, 2000, at 14.

90. Geanne Rosenberg, ABA, *SEC Raise Major Barriers Blocking Accountants’ Expansion*, Nat’l L.J., July 24, 2000, at B7.

91. *Id.*

92. 65 Fed. Reg. at 43,172.

93. Rosenberg, *supra* note 90, at B7.

the Big Five-related law firms lease realty, utilize technology, and accept referrals from (and jointly market with) accounting firms.<sup>94</sup>

The S.E.C. sought the public's input on this question with the following:

We request comment on whether providing legal services to an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there any particular legal services that should be exempted from the rule? Does making the rule's application depend upon the jurisdiction in which the service is provided leave the rule subject to any significant uncertainty, or pose the prospect of any significant complexity or unfairness? *Should there be any exception for legal services provided in foreign jurisdictions? If so, why?*<sup>95</sup>

Nor was the S.E.C. the solitary institution during 2000 to slow the Big Five Blitzkrieg.

## VI. THE AMERICAN BAR ASSOCIATION

### A. *The Blitzkrieg Falters in July 2000*

On July 7, 2000, the American Bar Association Board of Governors began to permit attorneys to contract with other professionals to provide non-legal services, but left untouched prohibitions on fee sharing and non-attorney firm ownership.<sup>96</sup> By the next week there appeared to be a gathering sentiment within the American Bar Association leadership to sustain the ban against MDPs.<sup>97</sup> In fact, some members of the House of Delegates sensed that anti-MDP sentiment had been building since April 26, 2000, which was the date of the Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation, *Preserving the Core Values of*

94. *Id.*

95. 65 Fed. Reg. at 43,172 (emphasis added).

CPAs firms are . . . being held under the microscope of the SEC, which is angling to renew its regulation of the accounting industry. Steered by chairman Arthur Levitt, the SEC, in its efforts to protect investors, is taking a long, hard look at the accounting industry. While the SEC's focus thus far has been on large firms with lucrative consulting contracts with audit clients, the SEC could more stringently regulate the accounting industry, severely limiting the products and services firms can offer accounting clients.

Michael O'Reilly, *CPAs Have Entered the Financial Services Arena—But Will They Score?*, Ticker, Nov. 2000, at 37, 42.

96. James Podgers & John Gibeaut, *Push Is On for MDP Vote*, A.B.A. J. (New York Annual Meeting Daily Rep.), July 8, 2000, at 1, 6.

97. Wendy Davis, *ABA Expected to Veto MDP Moves for Second Year*, Fulton County Daily Rep., July 11, 2000, at 1.

*the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers.*<sup>98</sup> (This exhaustive, 388-page document is known as the MacCrate Report.<sup>99</sup>)

On July 11, 2000, the House of Delegates voted on a resolution jointly sponsored by Florida, Illinois, New Jersey, New York, and Ohio.<sup>100</sup> By a significant margin, multidisciplinary practice was spurned.<sup>101</sup>

### B. *The Resolution of the House of Delegates*

By a tally of 314 to 106,<sup>102</sup> the House of Delegates recommended:

RESOLVED, That the American Bar Association adopts the following statement of principles: each jurisdiction is urged to revise its law governing lawyers to implement the following principles and preserve the core values of the legal profession:

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; and
  - d. the lawyer's duty of avoiding . . . conflicts of interest with the client; and
  - 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.

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98. *MacCrate Report*, *supra* note 72. See also Geanne Rosenberg, *In 11th-Hour Move, MDP Issue Is Back on ABA's Summer Schedule*, Nat'l L.J., June 19, 2000, at B9.

99. Wendy Davis, *ABA Emphatically Rejects MDPs*, Nat'l L.J., July 24, 2000, at A5.

100. *Id.*

101. *ABA Rejects Idea Backing Multidisciplinary Practices*, Wall St. J., July 12, 2000, at A8.

102. Mark D. Killian, *ABA Rejects Multidisciplinary Practices*, Fla. Bar News, Aug. 1, 2000, at 1.

The 314-106 vote at the New York sessions of the association's annual meeting came after a coalition of state and local bars went head-on against the ABA Commission of Multidisciplinary Practice, which had pushed for relaxation of professional conduct rules to allow lawyers and other disciplines to join together as single businesses.

John Gibeaut, *It's a Done Deal: House of Delegates Vote Crushes Chances for MDP*, A.B.A. J., Sept. 2000, at 92.

2. All lawyers are members of one profession subject in each jurisdiction to the law governing lawyers.
3. The Model Rules of Professional Conduct and other forms of the law governing lawyers were adopted was developed [sic] to protect the public interest by preserving and to preserve the core values of the legal profession, and the core values of the legal profession that are essential to the proper functioning of the American judicial 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. Multidisciplinary practice in the form of permitting [the] sharing of legal fees with non-lawyers or permitting . . . the ownership and control of the practice of law by nonlawyers threatens are [sic] inconsistent with the core values of the legal profession.
- [8]. The American Bar Association shall make no change to any of the Model Rules of Professional Conduct to permit lawyers to share legal fees with non-lawyers or to permit law firms directly or indirectly to transfer ownership or control to nonlawyers over entities practicing law.
- [9]. 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.
- [10]. Lawyers should be permitted to enter into interprofessional contractual arrangements with nonlegal professionals and nonlegal professional service firms for the purpose of offering legal and other professional services to the public, either on an ad hoc or on a systematic and continuing basis, provided no nonlawyer has any ownership or investment interest in, or managerial or supervisory right, [or] power of position in connection with, the practice of law by any lawyer or law firm.

**FURTHER RESOLVED**, That the Standing Committee on Ethics and Professional Responsibility of the American Bar Association shall, in consultation with state, local and territorial bar associations and interested ABA sections, divisions, and committees undertake a review of the Model Rules of Professional Conduct ("MRPC") and make recommendations . . . to the House of Delegates such amendments to the MRPC as are necessary to assure that there are safeguards in the MRPC relating to strategic alliances and other contractual relationships with nonlegal professional service providers consistent with the statement

of principles in this Recommendation regarding the safeguards in the Model Rules of Professional Conduct required for strategic alliances and other contractual relationships with nonlegal professional service providers to be consistent with the above statements of principles, which safeguards, at a minimum, shall include the following: No non-lawyer may have any ownership or investment interest in, or managerial or supervisory right, power or position in connection with, the practice of law by any lawyer or law firm when lawyers and law firms enter into interprofessional contractual arrangements with nonlegal professionals and nonlegal professional service firms for the purpose of offering legal and other professional services to the public, either on an ad hoc or on a systematic and continuing basis.

**FURTHER RESOLVED**, That the American Bar Association recommends that:

1. in jurisdictions that permit lawyers and law firms to own and operate nonlegal businesses, no nonlawyer or nonlegal entity involved in the provision of such services should own or control the practice of law by a lawyer or law firm or otherwise be permitted to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person.
2. State bar associations and other entities charged with attorney discipline should reaffirm their commitment to enforcing vigorously their respective law governing lawyers.
3. Jurisdictions should retain and enforce laws that generally bar the practice of law by corporations and voluntary associations.
4. Each jurisdiction should reevaluate and refine to the extent necessary the definition of the "practice of law."

**FURTHER RESOLVED**, That the Commission on Multidisciplinary Practice be discharged with the Association's gratitude for the Commission's hard work and with commendation for its efforts [and] substantial contributions to the profession.<sup>103</sup>

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103. House of Delegates 2000 Annual Meeting, A.B.A. Rep. 10F (2000). Meanwhile, on Nov. 29, 2000, the Law Society of Upper Canada (in Ontario—home to approximately 50% of Canadian attorneys) adopted a regulation geared to restrict multidisciplinary practice. Geanne Rosenberg, *To the North, Canadians Confront Attorney-Accountant Affiliations*, Nat'l L.J., Dec. 12, 2000, at B7.

Under the new rules, the Law Society broadly defines a law firm as "affiliated" with a non-law firm if the firms "regularly join together for the joint promotion and delivery of respective services to the public." The society precludes fee and profit sharing and requires that affiliated law firms, among other things, be owned and controlled by lawyers, disclose to the Law Society financial relationships and management agreements with non-law firms, disclose their relationship to clients and get written consent after advising the client of possible prejudice or loss of client privilege, and

### C. *The Big Five Rejoinder*

Not even a plea from incoming ABA President Martha W. Barnett could halt the tide that was rolling against integrated practices.<sup>104</sup> However, in the wake of the House of Delegates' determination, the Big Five Goliaths stood adamant. Tony Williams, the unbowed worldwide managing partner at Andersen Legal, responded: "I'm not sure whether it's irrelevant or insulting, but it's certainly one or the other."<sup>105</sup>

Attorneys at the Big Five legal affiliates discussed the possibility of federal regulatory intervention.<sup>106</sup> The Ernst & Young International's London-based vice-chair of tax and legal services, Andrew Jones, averred: "The essential issue is whether the lawyers can determine the future of their marketplace alone, or whether there's any weight or interest within the United States in consumer choice."<sup>107</sup> Jones added: "I wonder at what point the trade commission becomes involved in these discussions."<sup>108</sup>

## VII. THE CERTIFIED FINANCIAL PLANNER

### A. *The Financial Planning Profession*

#### 1. *A New Profession Is Born*

The Big Five play (as seen in Section IV(A), *supra*) the intransigent eight-hundred pound gorilla in the saga unfolding apace in 2001. Nevertheless, one hundred years ago the accounting profession in this nation lacked prestige. A lack of performance standards for the profession resulted in accounting reports not being well regarded for their accuracy.<sup>109</sup> However, a program was eventually developed for Certi-

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maintain separate practice location and documents and data. The regulation treats affiliated law firms and non-law firms as one for conflicts where services are jointly provided.

*Id.* By-laws to implement this new regulatory scheme were to be issued in 2001. *Id.*

104. Gibeaut, *supra* note 102, at 92.

105. Geanne Rosenberg, *Accounting Legal Affiliates Criticize ABA's Proposal to Restrict MDPs*, Nat'l L.J., July 31, 2000, at B6.

106. *Id.*

107. *Id.*

108. *Id.*

109. Edwin P. Morrow, *Recruiting Smarter*, J. Fin. Plan., July 2000, at 48, 50.

Prior to the merger wave of the 1890s, accountants and auditors, particularly those who had come from Great Britain, benefited from the brewers boom of the 1880s. During this period British capital was attracted to America especially for the purposes of investing in breweries. In such far-flung locations as St. Louis, Chicago, San Francisco, Baltimore, Milwaukee, Denver, Springfield, Indianapolis, and other locations, brewing companies were

fied Public Accountant certification.<sup>110</sup> Gradually, this elicited accountancy majors from the academic community. Business professors' research won esteem for the accountancy vocation.<sup>111</sup>

Nowadays, nearly every survey of wealthy investors discloses that, among professionals, certified public accountants take precedence in trustworthiness, while attorneys typically place second, and financial advisors are third.<sup>112</sup> At present, most new entrants to the account-

formed and as a consequence accounting investigations and subsequent audits of considerable length were required.

James T. Anyon, an English bred early CPA leader, suggests that the "back parlor" (moonlighting) nature of many American accounting practices raised doubts among the public about the quality, ability and character of early native accountants. He noted that accountants were viewed as "men of figures"—those who dealt in and loved figures for themselves, who calculated balances in accounts, prepared elaborate statements, and looked for errors. Accountants were viewed as the type of persons who thought figures, sometimes juggled them, and always wrote and talked them.

Gary John Previts & Barbara Dubis Merino, *A History of Accounting in America: An Historical Interpretation of the Cultural Significance of Accounting* 91 (1979).

110. Morrow, *supra* note 109, at 50.

111. *Id.*

The AAA [American Accounting Association], through the work of various committees and its sponsorship of research monographs, sought [in the mid-twentieth century] to provide a conceptual framework for financial accounting theory. The AAA, a national organization for collegiate accounting educators, until quite recently, virtually ignored managerial accounting. The National Association of Accountants (NAA) provided much of the research support for academics interested in the cost and managerial accounting areas. This division is significant because for many years it was assumed that the type of information useful to managers had little significance for external users. In assessing the impact of the contributions made by academics in each area, one must keep in mind that the NAA did not attempt to prescribe accounting methods. Acceptance of academic research depended primarily on its utility and relevance to management. In this scenario, it is quite likely that standards could be established through academic research. In the financial accounting area, the situation was not the same. Principles were set by authoritative bodies to meet specific needs; although academic research might influence the development of principles, academic research did not establish standards.

Previts & Merino, *supra* note 109, at 273-74.

112. John J. Bowen, Jr., *CPA Partnering: You Would Do Well to Develop Strategic Alliances with CPAs*, *Fin. Plan.*, June 2000, at 181. Cf. Cort Smith, *The New Wealthy*, *Inv. Advisor*, Nov. 2000, at 46, 52 (U.S. Trust Co. survey of affluent Americans in the technology sector finds they get financial advice first from CPAs, second from fee-based investment managers, third from attorneys, and fourth from financial planners). Sometimes accountants *become* financial advisors: "[W]hile most potential competitors have failed to elbow into the business, CPAs and accountants are

any profession derive from undergraduate institutions awarding degrees in accounting or business.<sup>113</sup> The experience of the accounting calling prefigures the financial planning profession's evolution.<sup>114</sup>

Legal professionals suffer a dearth of knowledge with respect to the varied levels of certification and training in the financial services fields,<sup>115</sup> and attorneys typically have a limited idea of the degree of training demanded of a financial professional.<sup>116</sup> The legal profession, if facing a multidisciplinary future, would do well to acquaint itself with the multidimensional financial planning profession.

In principle, at least, a financial planner is a one-stop money authority<sup>117</sup> who commands a quantum of information on everything.<sup>118</sup> She disinters her clients' past financial crimes, assists her clients in formulating new goals, and draws a map to reach these

successfully branching out into financial advice and planning, touting the one advantage paramount to every client—an open, trusting relationship.”

O'Reilly, *supra* note 95, at 38. Although the transition from CPA to CFP demands a major commitment of time, funds, and resources, over 5,000 CPAs have earned the CFP title. *Id.* at 38, 40. Also, every Big Five accountancy firm has launched an investment advisory business of its own. *Id.* at 40.

113. Morrow, *supra* note 109, at 50.

The war years [of World War II] had the effect of suspending debate over the quality of accounting education. But a natural process did occur that, in fact, raised the level of education of those entering the profession. The GI Bill, combined with the ever-increasing number of white-collar jobs within the postwar economy, created an enrollment explosion in collegiate education. Therefore, despite the inability of accountants to establish uniform minimum educational requirements, the percentage of college graduates entering the profession rose from 60 percent in 1936 to 75 percent in 1955.

Previts & Merino, *supra* note 109, at 281-82.

114. “Of particular importance, from 1960 through 1977, membership in the AICPA [American Institute of Certified Public Accountants] increased from 37,000 to 134,000. This expansion in the ranks of the AICPA in less than two decades suggests that the contemporary self-view of the modern professional warrants reexamination and reidentification.” Previts & Merino, *supra* note 109, at 305. The website of the American Institute of Certified Public Accountants is [www.aicpa.org](http://www.aicpa.org).

115. See Ohio State Bar Ass'n, Report of the Ohio State Bar Association Special Committee on Multidisciplinary Practice and the Legal Profession, Exhibit B (2000).

116. *Id.* But 53 attorneys took the November 2000 CFP examination. Raymond Fazzi, *Disenchanted with the Law: Some Lawyers Find Being a Financial Advisor is More Satisfying*, *Fin. Advisor*, Jan. 2001, at 59. This was up from only 40 the previous year. *Id.*

117. Jane Bryant Quinn, *Making the Most of Your Money* 828 (1991).

118. *Id.*

goals.<sup>119</sup> Under the planner's meticulous care, scattered savings and investments might blossom into prosperous tomorrows.<sup>120</sup>

In 2001, anyone may circulate business cards that describe one's occupation as "Financial Planner."<sup>121</sup> Yet, for years it has been authoritatively advised to those persons seeking financial planning counseling that they seek such professional counseling from a Certified Financial Planner ("CFP").<sup>122</sup> These practitioners (CFPs) have successfully completed exacting coursework covering every aspect of personal finance, and, in addition, CFPs are required to meet continuing education standards.<sup>123</sup>

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119. *Id.*

120. *Id.*

121. Jane Bryant Quinn, *Help! What Am I Doing?*, Newsweek, Sept. 13, 1999, at 47.

122. *Id.* Among certified financial planners, one view is virtually unanimous:

Whoever is picked to head their group had better protect the CFP mark come hell or high water. . . . The CFP Board of Standards in Denver hopes to hire a search firm this week to find a new president, and CFPs want to make sure the new leader will work harder to protect the designation's prestige.

David Brand, a former co-executive director of the Financial Planning Association who expressed an interest in the job last summer, confirmed this week in an interview with *InvestmentNews* that he is a contender for the job. He now says he's "extraordinarily interested" and plans to formally throw his hat in the ring, but he declined to comment further.

"The thing that's most important is that the new president protects the interest of the CFP practitioners—most importantly that there be no diluting of the CFP mark," says David Feldman, a CFP with Wechter Financial Services in Parsippany, N.J.

Sarah O'Brien, *CFPs to Board: Defending our Designation Comes First*, *InvestmentNews*, Oct. 9, 2000, at 3.

123. Quinn, *supra* note 121, at 47. The CFP Board of Standards is applying to the U.S. Patent and Trademark Office to register "CFP" and "CERTIFIED FINANCIAL PLANNER" as certification marks. These initially were registered as service marks. *CFP Board to Launch Consumer Education Campaign to Promote CFP Trademarks*, *J. Fin. Plan.*, Nov. 2000, at 20.

For planners seeking a formalized training program, the CFP designation provides the most comprehensive and generic industry training. Since one of the requirements for obtaining the mark is to go through an education program covering a mandated range of topics, would-be planners have an opportunity to receive adequate training in the full spectrum of planning disciplines, which is especially valuable both for novices and for planners entering from other industries.

Jeffrey H. Rattiner, *Getting Started as a Financial Planner* 51 (Kathleen A. Peterson ed., 2000).

## 2. *Certified Financial Planners Today*

At its July 2000 business meeting in Chicago, the Financial Planning Association (“FPA”) Board passed this resolution:

The FPA Board reaffirms that all who hold themselves out as financial planners should be CFP licensees and rededicates itself to promoting the CFP mark as the cornerstone of the financial planning profession. The FPA Board directs staff to send a consistent and persistent internal and external message that reflect this.<sup>124</sup>

Shortly thereafter, FPA President Roy Diliberto reaffirmed that a founding principle of the Financial Planning Association is the advancement of the Certified Financial Planner Marks.<sup>125</sup>

There are many ethical, competent professionals without the CFP designation who provide quality financial planning services to clients. FPA desires to serve all who aspire to achieve excellence in their financial planning careers, yet, at this time in our short history, we are compelled to make the observation that “branding” that competence and excellence through a universally accepted designation is in our profession’s best interest. While we will maintain our flexibility and nimbleness to review options and change directions for the betterment of our profession, we believe the CFP designation is best positioned to help us. We want all financial planners who, in practice and philosophy, concur with the tenets and underpinnings of the CFP marks to be members of FPA. We want all who seek to enter the profession of financial planning to become CFP licensees and we will put our best foot forward in helping any member to become one.<sup>126</sup>

The number of persons holding the CFP credential reached an all-time high at 35,312 in January 2000.<sup>127</sup> Of CFPs, 88.2 percent hold a

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124. *FPA Board Reaffirms Focus on CFP Marks*, J. Fin. Plan., Aug. 2000, at 18. As the Financial Planning Association concentrates upon the Certified Financial Planner, the Society of Financial Service Professionals constitutes an *umbrella* organization wholly composed of credentialed financial service professionals. Most of the Society’s members command more than one such designation. *Society Represents a Growing Diversity of Professional Disciplines*, J. Fin. Serv. Prof., Sept. 2000, at 28. More than 92% boast the Chartered Life Underwriter (C.L.U.) credential; more than 64% hold the Chartered Financial Consultant (Ch.F.C.) credential; more than 10% are CFPs; more than 3% are JDs; and nearly 2% carry the CPA title. The website of the Society of Financial Services Professionals is available at: [www.financialpro.org](http://www.financialpro.org).

125. Roy T. Diliberto, *Moving the Profession Forward*, J. Fin. Plan., Sept. 2000, at 10.

126. *Id.* at 12. Still more recently, at the September 10-12, 2000 FPA national conference (the “Success Forum 2000” in Boston), President Diliberto characterized the wedding of the Financial Planning Association to the Certified Financial Planner credential as a “done deal”. Karen Hansen Weese, *Better Than One*, Inv. Advisor, Oct. 2000, at 16.

127. *Number of CFP Licensees Reaches All-Time High*, J. Fin. Plan., Mar. 2000, at 20.

bachelor's (or more advanced) degree; 83.3 percent practice financial planning; and 24.7 percent are female.<sup>128</sup> CFPs (but not CFPs exclusively) organize in President Diliberto's Financial Planning Association.<sup>129</sup>

## B. The CFP Marks

### 1. The Certified Financial Planner Board of Standards

More than any other body, the Certified Financial Planner Board of Standards has ordained ethics, competence, and professionalism in the financial planning field.<sup>130</sup> Prior to certification, the prospective CFP must, *inter alia*, disclose past or pending litigation or agency proceedings, and stipulate to the right of the Certified Financial Planner Board of Standards to enforce its Code of Ethics and Professional Responsibility.<sup>131</sup> The two-day<sup>132</sup> Certification Examination<sup>133</sup> extends for ten hours and encompasses three major case problems.<sup>134</sup> Since the beginning of this year, examinations reflect topics identified

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128. *Id.* Details are available at the CFP Board's website: [www.CFP-Board.Org/presslcpro.html](http://www.CFP-Board.Org/presslcpro.html).

129. The website of the Financial Planning Association is [www.fpanet.org](http://www.fpanet.org).

The must-have certification for practitioners wanting to denote their financial planning specialization is the Certified Financial Planner (CFP) designation. Held by more than 35,000 planners, this is the best-known mark that the public associates with the financial planning profession. The press often includes the CFP designation along with a planner's name after a quote in a newspaper or magazine. Since the mark is the predominant one among financial planners who hold designations, industry representatives who are CFP licensees tend to have more clout with regulators.

Rattiner, *supra* note 123, at 50.

130. Nigel Taylor, *The CFP Board Should Return to its Roots: Efforts to Duplicate Existing Regulations in Order to Become an SRO Are Futile*, *Fin. Advisor*, Sept.-Oct. 2000, at 136. "The sweeping reorganization of the CFP Board of Standards undertaken by Chair Patti Houlihan is continuing with far-reaching implications for the professional regulatory organizational committees, with the goal of streamlining its decision-making structure."

*Houlihan Shakes Up CFP Board*, *Fin. Advisor*, Nov./Dec. 2000, at 23.

131. Certified Financial Planner Board of Standards, *General Information Booklet* at 4, 25 [hereinafter *Booklet*]. See, e.g., Phillip Roitman, *Code of Ethics and Professional Responsibility for Financial Planners* (4th ed. 2000).

132. *Booklet*, *supra* note 131, at 14.

133. See Bruce Most, *The New CFP Examination: Pass or Fail?*, *Fin. Plan.*, Sept. 1993, at 57.

134. *Booklet*, *supra* note 131, at 14.

through a job analysis update of 1999.<sup>135</sup> Naturally, the Certification Examination is never graded on a curve.<sup>136</sup>

The CFP Board shares licensing agreements with organizations in Australia,<sup>137</sup> Canada, France, Germany, Japan, New Zealand, Singapore, South Africa, Switzerland, the United Kingdom,<sup>138</sup> and other countries. A CFP licensee in good standing who is a resident in any such affiliated country may apply for reciprocity in the U.S. by passing the initial four-hour portion of the CFP Certification Examination, adhering to the CFP Board's Code of Ethics and Professional Responsibility, and meeting the license fee.<sup>139</sup> (Although the financial planning profession has been recently created in Canada,<sup>140</sup> by the end of 1999, Canada's more than ten thousand CFPs represented an even greater percentage of CFP mark holders in Canada than in the United States!).<sup>141</sup> It is also worth noting that the International CFP Council

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135. *Id.* at 14, 27.

The Board of Examiners is currently analyzing the results of a study that serves as the foundation for the CFP certification process, the Job Analysis Study. Information gathered from this study will be used to ensure that the CFP Certification Examination and the CFP Board's model curriculum adequately cover topics and issues of relevance to financial planning, as it is practiced today.

Approximately every five years, the CFP Board conducts a Job Analysis Study to determine the importance of various tasks performed by CFP Practitioners and the knowledge needed for those tasks. Adjustments are then made to the CFP Board's model curriculum and the CFP Certification Examination as necessary. The CFP marks are unique among financial planning credentials in that the CFP certification requirements are based on regularly conducted research of how financial planning practices are evolving.

*Job Analysis to Shed Light on Current Practice of Financial Planning*, CFP Board Report, May/June 2000, at 1.

136. *Booklet*, *supra* note 131, at 21.

137. *See, e.g.*, Julie Bennett, *Financial Planning Down Under*, J. Fin. Plan., July 2000, at 114. Among the 4,000 practicing financial planners who are members of the Financial Planning Association of Australia, 2,388 bear the Certified Financial Planner credential. *Id.* at 115. John Andrews, of Hillross Financial Services (Victoria, Australia), shares insight into the development of the financial planning field in Australia. John Andrews, Letter to the Editor, J. Fin. Plan., Nov. 2000, at 14. The website of the Financial Planning Association of Australia (unaffiliated with the F.P.A. in the United States) is: [www.fpa.asn.au](http://www.fpa.asn.au).

138. *Booklet*, *supra* note 131, at 6.

139. *Id.* Cf. International Survey of Investment Adviser Regulation (Marcia L. MacHarg & Barton B. Clark eds., 2d ed. 1999).

140. Robert P. Goss & Neal E. Sullivan, *What Can We Learn from Canada's Financial Planning Experience*, J. Fin. Plan., Apr. 2000, at 104, 105.

141. *Id.* at 106. The Canadian Association of Financial Planners is available at: [www.cafp.org](http://www.cafp.org).

held the Council's biannual meeting over April 11-14, 2000, in Cape Town, South Africa.<sup>142</sup> The Council's twelve member countries included the aforementioned ten, plus Malaysia and the United States.<sup>143</sup>

In 1994, the United States Supreme Court reviewed the practice of Silvia Safille Ibanez<sup>144</sup> in *Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy*.<sup>145</sup> Silvia Safille Ibanez was a Florida lawyer who simultaneously listed herself as a Certified Financial Planner and a Certified Public Accountant.<sup>146</sup> In this case, the Supreme Court acknowledged that "Certified Financial Planner" and "CFP" are well-established and federally-protected marks, and that these are deemed the titles the most recognized within the financial planning profession.<sup>147</sup>

## 2. Lawyer Preparation for the CFP Marks

Assess the foregoing evidence in light of the ABA's Annual Meeting, at which a recommendation which would have permitted lawyers and non-lawyers to form multidisciplinary practices (as seen in Section VI(B), *supra*) was rejected. The House of Delegates' July 11 Resolution effectively said "no thanks" to partnering with either accountants or financial planners.<sup>148</sup> To whatever extent JDs cannot *partner* with non-JD CFPs, the more valuable it is (legal educators might conclude)

142. *International CFP Council Meets*, J. Fin. Plan., June 2000, at 24.

143. *Id.* Meanwhile, the first International Financial Planning Annual Conference was held in Kuala Lumpur, Malaysia, on August 14-15, 2000. *International Financial Planning Conference 2000*, J. Fin. Plan., Nov. 2000, at 24. More information in regard to that conference is available at [www.fpam.org.my](http://www.fpam.org.my). (Covering that Kuala Lumpur affair was the September 2000 issue of *Global Voice*, the Financial Planning Association's international newsletter published bimonthly. That issue is available at the F.P.A.'s website: [www.fpanet.org/inter/issue\\_detail.cfm](http://www.fpanet.org/inter/issue_detail.cfm)).

144. George Steven Swan, *The Political Economy of Professional Regulation: Ibanez v. Florida Dept. of Bus. and Prof. Reg. Bd. of Acct.*, 19 J. Legal Prof. 121 (1994-1995). See also Edward L. Birk, *Protecting Truthful Advertising by Attorney-CPAs— Ibanez v. Florida Dept. of Bus. and Prof. Reg. Bd. of Acct.*, 23 Fla. St. U. L. Rev. 77 (1995).

145. 512 U.S. 136 (1994).

146. *Id.* at 144.

147. *Id.* at 147 (citing Financial Planners: Report of Staff of United States Securities and Exchange Commission to the House Committee on Energy and Commerce's Subcommittee on Telecommunications and Finance 53 (1998), *reprinted in* Financial Planners and Investment Advisors, Hearing before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, 100th Cong., (2d Sess., 1988)).

148. *Observer: Thanks, but No Thanks*, J. Fin. Plan., Sept. 2000, at 23. Of course, CFPs and CPAs can strategically ally. See Bowen, *supra* note 112, at 181.

that the JD be the CFP. A similar sentiment was expressed nearly a half-dozen years ago:

The majority of financial planners today are certified financial planners, stockbrokers, insurance agents and accountants. Conspicuously absent from this list are lawyers, most of whom have yet to add financial planning to their practices. Yet lawyers are uniquely qualified for such services and could provide them as an additional help to their clients. In an already crowded profession, attorneys could offer financial planning services as a means of distinguishing themselves. The value-added appeal of a comprehensive approach allows the lawyer-planner to boost revenues while better serving the client.<sup>149</sup>

A Financial Planning Certificate Program at the law school level, therefore, appears to become all the more pressing.

After all, the MacCrate Report itself recognizes that it is not uncommon for attorneys to be dually licensed in their professions. Attorneys often practice (or are qualified to practice) an extensive array of other callings, and the MacCrate Report acknowledges that these callings include financial planning.<sup>150</sup> A then record number of examinees—approaching two thousand—faced the November 1999 Certified Financial Planner Certification Examination. The increase in the number of examinees is derived from the growing ranks of professionals who are certified in other fields, but who are moving into financial

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149. Nick Woodall, *Lawyers as Planners: The Complete Legal Practice*, Fin. Plan., Mar. 1995, at 136. See also Evan Guillemain, *Lawyers and Accountants Enter Financial Planning*, Fin. Plan., Dec. 1990, at 74. Some law firms had already entered financial planning. Amey Stone, *Law Firms Take On Planners' Business*, Fin. Plan., Oct. 1992, at 30. But John Blake (author of *The Role of the Attorney in Financial Planning* (1990)) predicted that lawyers would decline to flock to financial planning because financial planning lacks (being labor intensive) exceptionally high profit margins. *Id.* at 75.

150. *MacCrate Report*, *supra* note 72, at 98. The National Securities Markets Improvements Act divides the regulation of investment advisors between the federal government and the states. Title III thereof, the Coordination Act, lays down rules relative to registration. Pub. L. No. 104-290, 110 Stat. 3416 (1996). Any attorney, CPA or CFP desiring the title of "financial planner" for marketing purposes should register with either a state securities regulator, or with the U.S. Securities and Exchange Commission. Joseph C. Cascarelli, *Practical Summary of the Regulatory Environment for Registered Investment Advisors*, J. Fin. Serv. Prof., Nov. 2000, at 46, 55. A late 2000 study by the research firm Cerulli Associates (of Boston) discerned a steady push by attorneys and investment accountants to provide more full-service financial shops. This leads to a sharp increase in the proportion of Registered Investment Advisors who do not actually manage assets. *Registered Advisers Not Managing Assets*, InvestmentNews, Dec. 4, 2000, at 2.

planning.<sup>151</sup> (Traditionally, CFP candidates came from the ranks of the insurance and securities fields.)<sup>152</sup>

Tens of thousands of financial services sales personnel purport to practice financial planning.<sup>153</sup> Nonetheless, there were, as of August 31, 2000, just 35,863 CFPs.<sup>154</sup> In 1999, 4,433 individuals sat for the CFP examination, compared with only 3,303 during 1996, and 2,123 during 1995.<sup>155</sup>

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151. *CFP Certification Is Booming*, Fin. Plan., Feb. 2000, at 15.

As the twenty-first century opened, the transformation of the industry's field force from life insurance agent to financial planner was in full swing. Short of leaving the business, that change appears to be the only available rational choice given the relative decline of traditional whole life on the one hand and the increased demand for "nearby" alternatives on the other hand. The pace of the change is startling. While the rate of growth of the number of insurance agents and brokers fell to virtually zero in the 1990s as against an average gain of three to four percent in the previous three decades, the individual agent has become distinctly more educated and better able to serve the broadening market.

Francis H. Schott, *Toward Financial Services: Life Insurance at the Turn of the Millennium*, J. Fin. Serv. Prof., Nov. 2000, at 80, 81.

152. Taylor, *supra* note 130, at 137. At the American College (of Bryn Mawr, Penn.) between 1996 and 1999, the CFP registration more than doubled while Chartered Life Underwriter (C.L.U.) registration declined. Schott, *supra* note 151, at 81-82.

153. See James A. Barry, Jr., *Playing Favorites*, Fin. Plan., Oct. 2000, at 240.

There are approximately 36,000 CFP licensees in the country. In Florida alone, more than 40,000 CPAs are now licensed to sell securities, mutual funds, annuities, life insurance, etc., through a broker-dealer and receive commissions. The same individuals could also be registered investment advisers and charge fees for services rendered. Hundreds of thousands of very qualified and caring individuals have opted to make the life insurance business a career. They also hold some very impressive designations—Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC)—which must be respected. Nor should we neglect the stockbrokers, bank trust officers and tax planning attorneys who also play an integral part in the planning process.

*Id.* Cf. Bruce P. Conrad & Bob Brown, *Unsettling Accounts: A New Study Shows That Many Certified Public Accountants Lack the Knowledge They Need to Succeed as Financial Planners*, Fin. Plan., Oct. 2000, at 47.

154. Kenneth B. Hitchner, *Half the Test-Takers Fail July CFP Exam*, Fin. Plan., Oct. 2000, at 28.

155. Andrew Gluck, *Wireheads on Campus: Those Big, Bad Firms Are Filling the Seats at CFP Training Courses Around the Country*, Inv. Advisor, June 2000, at 18, 20. Doug Nogami, media relations manager for the Certified Financial Planner Board of Standards, records that 2,250 examinees were scheduled for the November 17-18, 2000 examination. *CFP Exam: Sum of its Parts is Equal to the Whole*, InvestmentNews, Nov. 27, 2000, at 12.

Of the 1,920 people taking the November 1999 examination, fifty-four percent passed, compared with the historical fifty-six or fifty-seven percent who have passed the examination since its November 1991 inception.<sup>156</sup> In March 2000, sixty-two percent of 1,440 examinees passed; but in July 2000, only 784 of 1,487 examinees succeeded (fifty-three percent). In considering the level of difficulty of the Certified Financial Planner Certification Examination verified by these figures, bear in mind the powerful spur to pass felt by many of the examinees: a 2000 CFP Board of Governors survey revealed that more than twenty percent of CFPs receive a monetary incentive from their companies for their examination success.<sup>157</sup>

Meanwhile, skeptical legal educators are familiar with state bar examinations. Hence, they must probingly query the especially informative *first-time examinees'* passage rate, which measures a slender fifty percent.<sup>158</sup>

## VIII. A LAW SCHOOL FINANCIAL PLANNING CERTIFICATE PROGRAM

### A. Registration of a Financial Planning Curriculum

As of June 2000, section III A1.2.1 of the Criteria for Registration of a Financial Planning Curriculum with the CFP Board<sup>159</sup> provides, in relevant part:

THE INSTITUTION SHALL BE CURRENTLY ACCREDITED BY A REGIONAL ACCREDITING AGENCY RECOGNIZED BY THE U.S. DEPARTMENT OF EDUCATION AND SHALL BE A FOUR-YEAR DEGREE-GRANTING INSTITUTION OR A GRADUATE DEGREE-GRANTING INSTITUTION.

Applications from institutions accredited by a national institutional or a specialized accrediting body recognized by the U.S. Department of Education shall be considered on a case-by-case basis. Such institutions must offer four-year degrees and/or graduate degrees, preferably in disciplines related to personal financial planning, and must demon-

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156. *CFP Certification Is Booming*, *supra* note 151, at 15 (57%); Hitchner, *supra* note 154, at 28 (56%).

157. Hitchner, *supra* note 154, at 28.

158. Certification and Accreditation Programs Directory: A Descriptive Guide to National Voluntary Certification and Accreditation Programs for Professionals and Institutions 22 (Michael A. Paré ed., 1st ed. 1996). The waiting period for the receipt of scores is six weeks. *Id.*

159. Certified Financial Planner Board of Standards, Inc., Criteria for the Registration of a Financial Planning Curriculum with the CFP Board (June 2000) [hereinafter *Criteria*].

strate compliance with other criteria to the satisfaction of the Board of Examiners.<sup>160</sup>

This language conspicuously appears to open the door to registration with the Board for Financial Planning Certificate Programs in law schools generally.

There is no Registered Program Application processing fee. The CFP Board of Examiners considers Registered Program Applications in mid-January, mid-June, and mid-September,<sup>161</sup> with the application deadline at least six weeks prior thereto.<sup>162</sup> The application packet goes to the CFP Board's Education and Examination Director. (In 2000, that Director possessed both a CFP and a JD.) The Board of Examiners' decision may be expected within six months.<sup>163</sup> Upon disapproval, an applicant may resubmit an application at any time. Provisional registration is for one year, while registration normally runs for three years.<sup>164</sup>

Certificate programs require a minimum of fifteen semester credit hours in the Financial Planning core topics.<sup>165</sup> The official head of the program or department (such as the dean of the law school) need *not* have the CFP.<sup>166</sup> Who might participate in such law school programs? What would be the fit of such coursework within the established JD curriculum?

### B. A Law School's Financial Planning Semester

The CFP Board-minimum examination-preparatory course program (fifteen semester hours) represents few enough credit hours to be compressed into a single spring semester. A more realistic CFP examination-preparatory program of eighteen semester hours could also conceivably be accomplished in a single semester. The CFP preparatory program could cover six law school courses: The Financial Planning Process and Job Knowledge; Insurance; Investments; Taxation;

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160. *Id.* at 10. "A law school may offer an educational program designed to emphasize certain aspects of the law or the legal profession." American Bar Association, Standards for Approval of Law Schools, Standard 301(c).

161. CFP Board Registered Program Application Information at 2 [hereinafter *Information*].

162. *Id.* The complete list of registered programs is available at: [www.CFP-Board.org/cert\\_edpro.html](http://www.CFP-Board.org/cert_edpro.html).

163. *Criteria*, *supra* note 159, at 5.

164. *Id.* at 6.

165. *Id.* at 11.

166. *Information*, *supra* note 161, at 10.

Retirement; and Estate Planning.<sup>167</sup> (The Financial Planning Association offers a student-level membership fee for any student in a CFP Board-registered program, regardless of the student's full- or part-time status.)

Thereafter, the successful Financial Planning Certificate Program veterans might take the CFP exam in July, while all the material is still fresh in their minds. The application deadline of June 1, therefore, is ideal.<sup>168</sup> Of course, there is no time limit between completion of a Financial Planning course program and the taking of the CFP exam itself.<sup>169</sup> Hence, a Financial Planning Program does not interfere with scheduling bar examination preparation.

The Financial Planning Certificate Program courses (or, at a minimum, the core courses which, broadly, are bar examination subjects) can be variously offered year-round for the convenience of law school students scheduling JD work. An additional annual Financial Planning Semester project (simultaneously presenting all program courses) could serve to recruit primarily transient students.

What must a Certificate Program schedule contain? The one hundred six CFP Board-required topics, along with hundreds of carefully broken-down subtopics, entail ten pages of text,<sup>170</sup> and cover approximately six general fields.<sup>171</sup> The Taxation (topics 49 - 65)<sup>172</sup> and Estates (topics 77 - 106)<sup>173</sup> material is already (or ought to be) nearly covered in the respective law school courses of Federal Taxation and Wills, Trusts and Estates. Additionally, every JD candidate should want to take both of these courses for practice and for bar examination preparation anyway. Already, forty-six of the required one hundred six topics are in the bag.

Given the CFP Board's Taxation and Estate Planning topics, the interlocking respective law school courses of Federal Taxation and Wills, Trusts and Estates constitute the core of a busy Financial Planning semester. Such interlocking courses feed directly into one another, and reinforce one another dramatically (even disregarding any extra Financial Planning "common ground"). These interlocking core courses provide the sharp perspective whereby students would concurrently study (and so more speedily grasp) their substantive

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167. *Booklet*, *supra* note 131, at 56.

168. *Id.* at 17.

169. *Id.* at 7.

170. *Id.* at 27-36.

171. *Id.* at 56.

172. *Id.* at 32-33.

173. *Id.* at 34-36.

Financial Planning Certificate Program “satellite” courses (Insurance, Investments,<sup>174</sup> and Retirement).

Concededly, a concentrated financial planning semester requires a strenuous student effort. Yet, these mutually reinforcing courses build themselves into a unit. Material in each subject helps explain material in all the others. Contrast this with the less-interrelated hodgepodge of subjects covered in the substantive courses of any standard law school freshman year! (And somehow most 1Ls do manage to pass.)

Moreover, financial planning semester students working toward the July CFP examination would be experienced “second-half” (or even “final term”) JD candidates, and these students would likely carry a high morale thanks to proximately confronting their common obstacle (the CFP exam). The bulk of transient students, together for many hours weekly, might quickly bond. Their atmosphere, viewed most optimistically, might be less that of a desultory, post-first-year law school semester, and more that of an enthusiasm-filled first semester MBA program. A remarkable six out of seven persons signing up to take the CFP examination-preparatory program fail to earn that title.<sup>175</sup> However, law students represent a population with the ability to persevere through the most rigorous educational programs and to surmount examination challenges.

At least one recent precedent for a law school associating itself with the CFP credential is the association of the National Academy of Elder Law Attorneys and the Certified in Long Term Care (CLTC) credential.<sup>176</sup>

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174. See, e.g., James E. Grant, *Getting Started in Investment Planning Services* (2d ed. 1999).

175. Shelley A. Lee, *A Tale of Two Graduates*, *J. Fin. Plan.*, June 2000, at 62, 73.

176. Linda Koco, *LTC Designation Program Unveiled at Conference*, *Nat'l Underwriter*, Nov. 23, 1998.

The program leading to a CLTC designation gives the Long-term care insurance producer the critical information needed to succeed in a highly regulated and competitive environment. The program is also appropriate for professionals dealing in the field of long-term care, including: accountants, attorneys, bank trust officers, financial planners, healthcare professionals, and security brokers.

Corporation for Long-Term Care Certification 12 (1998-2000). The website of the Corporation for Long-Term Care Certification is: [www.ltc-cltc.com](http://www.ltc-cltc.com). The lofty legal hierarchy is too proud to willingly recognize hands-on workday expertise. See, e.g., *North Dakota Court Says CFP Designation Not 'Professional Occupation'*, *J. Fin. Plan.*, Mar. 2000, at 18. The Supreme Court of North Dakota held not to be professional (for malpractice statute of limitations purposes) a Certified Financial Planner who was (1) holding the associate degree; (2) had passed the National Association of Securities

## IX. CONCLUSION

### A. *The Immediate Situation*

The preceding discussion has addressed the growing drive toward multidisciplinary practice (MDP) for attorneys, identifying the Big Five accounting firms as the engine of this drive. Reviewed herein were initiatives by the Securities and Exchange Commission (June 2000) and American Bar Association (July 2000) which temporarily impeded the MDP march. Thus, this article addressed the increasingly attractive prospect of law schools incorporating courses toward the Certified Financial Planner credential into their degree programs. If attorneys cannot yet *partner* with the non-JD financial professionals, attorneys can *be* these financial professionals.

The twenty-first century JD-CFPs will do well to embody the long-time concept of the attorney as the premiere generalist in a broadly fragmented society. JD-CFPs can pull together multifaceted theoretical expertise and tie together practical plans of action.<sup>177</sup> Should not law schools regularly produce these JD-CFP multidisciplinary professionals? "If a law faculty is not omni-competent, who is?"<sup>178</sup>

### B. *The Longer-Term Outlook*

In any case, the struggle of last summer over MDP is far from the last of the conflicts over the rules germane to the legal profession. It was in 1985 that Cornell Law Professor Charles W. Wolfram proposed that the American Law Institute take the daunting challenge of crafting a Restatement of the Law Governing Lawyers.<sup>179</sup> This undertaking bears the dubious distinction of constituting one of the most labor- (and time-) intensive projects ever promoted by the Institute.<sup>180</sup>

Moreover, the Ethics 2000 Commission has labored since 1997 on the most comprehensive update of the ABA Model Rules of Professional Conduct<sup>181</sup> since the Model Rules were adopted during 1983.<sup>182</sup>

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Dealers Series Seven and Sixty-three examinations; and (3) yearly, was completing fifteen hours of continuing education courses. *Kuntz v. Muehler*, 603 N.W. 2d 43, 47 (N.D. 1999). But that opinion relied heavily upon attainment of the career-preparatory bachelor's degree as a hallmark of a professional. *Id.* By such criteria, the extensively schooled JD-CFPs of the twenty-first century might actually be styled "super-professionals".

177. Martin Mayer, *The Lawyers* 92 (1967).

178. *Id.*

179. Richard C. Stanley, *The Restatement of the Law Governing Lawyers: Lawyer Regulation Coming of Age*, 48 La. B.J. 1, 22 (2000).

180. *Id.* See Restatement (Third) of the Law Governing Lawyers (1998).

181. Model Rules of Professional Conduct (1983).

(The Ethics 2000 Commission, previously, was formally known as the Commission on Evaluation of the Rules of Professional Conduct.)<sup>183</sup> The ABA's policymaking House of Delegates must adopt any revisions of the Model Rules,<sup>184</sup> which serve as the basis for most of the state codes regulating professional conduct by attorneys.<sup>185</sup>

Chancellor of the Philadelphia Bar Association Doreen S. Davis warns the bar that "we cannot simply circle the wagons and pretend that time is not on the side of MDPs."<sup>186</sup> The 2000-2001 President of the ABA, Martha Barnett, was sworn in on July 11,<sup>187</sup> although her official duties were not to begin until July 20.<sup>188</sup> She addressed the House of Delegates, opining that the MDP debate has been alive for sixty or seventy years.<sup>189</sup> "It has come to the House before and the House action is, frankly, not determinative."<sup>190</sup> President Barnett believes that the issue is going to be resolved within a couple of years:<sup>191</sup> "But in truth it's not an issue resolved by any action the ABA took today."<sup>192</sup>

"What's past is prologue."<sup>193</sup>

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182. Mark Hansen, *Countdown to Controversy: Ethics 2000 Recommendations Are Not Likely to Make Everyone Happy*, A.B.A. J., Aug. 2000, at 90.

183. *Id.*

184. *Id.*

185. *Id.* See, e.g., *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation* (Deborah L. Rhode ed. 2000).

186. Doreen S. Davis, *Phila. Bar Thinks MDPs Can Work*, Nat'l L.J., July 10, 2000, at A24.

187. Jan Pudlow, *Florida's Barnett Takes Seat as ABA President*, Fla. Bar News, Aug. 1, 2000, at 1.

188. *Id.* at 11.

189. Killian, *supra* note 102, at 18.

190. *Id.*

191. *Id.*

192. *Id.*

193. William Shakespeare, *The Tempest*, Act II, sc. 1, line 2101.