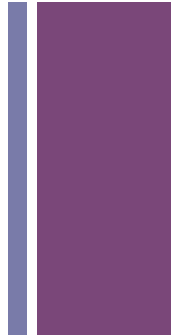


Legal, Ethical and Risk
Management
Considerations in
Interdisciplinary Dispute
Resolution Practice
Arrangements

Lisa Renee Pomerantz, Attorney at Law
80 Orville Drive, Suite 100
Bohemia, NY 11716
Tel: 631-244-1482 Fax: 631-567-0611
lisa@lisapom.com
www.lisapom.com

+ Agenda

- What legal and ethical considerations potentially apply to various licensed or credentialed professionals in interdisciplinary dispute resolution processes?
- How are the structuring and marketing of interdisciplinary dispute resolution services affected?
- What are the implications for engagement letters, insurance coverage and other practical issues?



+ The Legal Profession

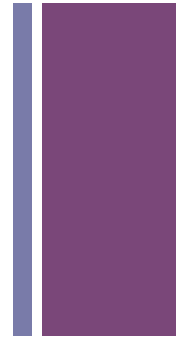
- Rule 5.3: Lawyer's Responsibility for Conduct of Nonlawyers
 - Employed by law firm
 - Retained by law firm
- Rule 5.4: Professional Independence of a Lawyer
 - Fee-sharing generally prohibited
 - Nonlawyer cannot be principal of firm that provides legal services
 - Nonlawyer cannot "direct or control" lawyer's professional judgment

+ The Legal Profession (cont.)

- Rule 5.5: Unauthorized Practice of Law
 - Lawyer cannot aid nonlawyer in unauthorized practice
 - “Practice of law” not well-defined
 - Per Judiciary Law §484, includes preparation of wills, deeds, pleadings, appearing in court
 - Representation of clients in mediation or arbitration may not be “legal services”
- Rule 5.7: Responsibilities Regarding Nonlegal Services
 - Rules apply to nonlegal services unless attorney-client relationship disclaimed and services provided are distinct from legal services and clearly not legal in nature
 - Query: Is mediation as practiced by attorneys within the scope of legal services (See memo)

+ The Legal Profession (cont.)

- Rule 5.8: Contractual Relationship Between Lawyers and Nonlegal Professionals
 - Permits limited multi-disciplinary practice arrangements with designated nonlegal professionals: architects, CPAs, professional engineers, land surveyors and certified social workers
 - Lawyer's professional independent judgment must be preserved
- Rule 7.2: Payment for Referrals
 - Prohibits fee-splitting even within multi-disciplinary practice arrangements

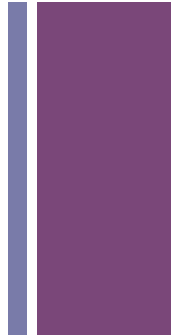


+ The Legal Profession: Other Relevant Considerations

- Rule 8.4: General prohibition on illegal or dishonest conduct
- Engagement letter requirements
 - In writing
 - Mandatory disclosure of client's rights
 - Can't disclaim liability for malpractice
 - Mandatory arbitration of fee disputes
- Type of entity limitations (also applicable to other licensed professionals)
 - Sole proprietorship
 - Partnership
 - PC, PLLC or PLLP
- Entity naming restrictions (no trade names)
- Rule 7.3: Advertising and solicitation restrictions

+ New York Rules for Other Professions Applicable to Interdisciplinary Arrangements

- Rule 29.1 (General Provisions)
 - Prohibits referral fees
 - Prohibits fee sharing
 - Prohibits unauthorized practice or inappropriate delegation
 - Regulates advertising



+ New York Rules for Other Professions (cont.)

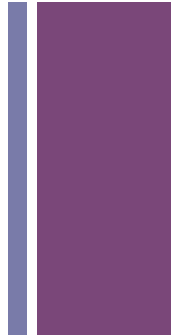
- Rule 29.2 (Health professions other than M.D. or P.A., including marriage and family therapy, mental health counseling, social work, psychology)
 - Regulates use of trade name to require disclosure of providers
- Rule 29.10 (Public accountancy)
 - Regulates naming of firm
 - Prohibits performing services outside of licensure
 - Regulates referrals
 - Regulates use of CPA designation in providing other services
 - Prohibits fee sharing with non-professionals

+ New York Rules for Other Professions (cont.)

- General business entities cannot provide “professional services”, except to its own employees
- General business entities can provide management services to professionals
- Professional entity cannot serve as management services entity
- Interdisciplinary professional entity generally not permitted

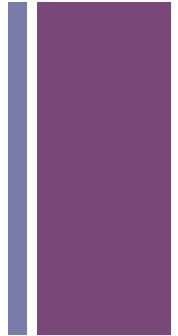
+ Regulation of Divorce Financial Planners

- Subject to privately set standards and oversight by ADFP
- Also subject to standards regulation based on professional designation
- Ethical standards are more generally stated
 - Competence
 - Objectivity
 - Avoid conflicts of interest, etc.



+ Structuring of Interdisciplinary Services

- Interdisciplinary professional entities generally prohibited
- Subcontracting to provide other professional services probably not permitted
- Interdisciplinary entities to provide “non-professional services”, including mediation, coaching, facilitation, perhaps permitted
- General business entities can provide management services to professional entities

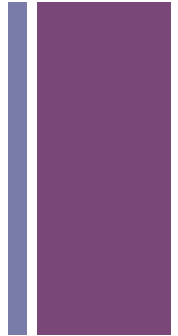


+ Marketing of Interdisciplinary Services

- Beware of trade name and advertising restrictions
- Colocation, jointly sponsored events and cross-referrals permitted
- Cross-promotional advertising may be permitted

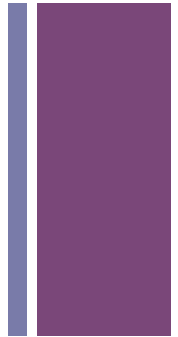
+ Risk Management in the Interdisciplinary Context

- Engagement letters
 - Comply with applicable regulations and standards for your field
 - Identify client
 - Specify services to be provided (and those not to be provided)
 - Specify dispute resolution mechanisms



+ Insurance Issues

- Ensure services covered
- Identify who is covered
- Consider cross-indemnification or additional insured provisions
- Fully disclose areas of practice in insurance application
- Obtain general liability insurance



+ Conclusion

- Numerous regulatory obstacles exist to interdisciplinary practice
- Structure professional arrangements in light of constraints
- Minimize risk
 - Be transparent with the client
 - Provide excellent service
 - Avoid conflicts of interest

