

# American College of Tax Counsel Resolutions Opposing Changes to Model Rules

MAY 11, 1999

## SUMMARY BY TAX ANALYSTS

The Board of Regents of the American College of Tax Counsel has passed two resolutions that would oppose certain changes in the Model Rules of Professional Conduct to permit multidisciplinary practice.

### ===== FULL TEXT =====

AMERICAN COLLEGE OF TAX COUNSEL

Sherwin P. Simmons, Chair

ABA Commission on Multidisciplinary Practice

Steel, Hector & Davis, LLP

200 South Biscayne Boulevard

Miami, FL 33131-2398

RE: ABA Commission on Multidisciplinary Practice

Dear Sherwin,

[1] As you know, the American College of Tax Counsel is an organization comprised of approximately 660 of the leading tax attorneys in the United States. At the meeting of the Board of Regents of the College on April 30, 1999, the Board passed two resolutions regarding the Model Rules of Professional Conduct as they may affect multidisciplinary practice. As Chair of the College, I am sending these resolutions to you for consideration by the ABA Commission.

[2] The resolutions passed by the Board of Regents address two principal concerns: (1) independence of counsel, and (2) duties of counsel to clients and the right of clients regarding competence, confidentiality, loyalty and service. Neither resolution is intended to change the Model Rules and the current interpretation of the Model Rules in various jurisdictions. For

example, the resolutions would not prohibit screens ("Chinese walls") nor would they alter rules such as those in the District of Columbia regarding ancillary business activities.

[3] The resolution passed by the Board of Regents are [sic] as follows:

Resolved by the Regents of the American College of Tax Counsel that the American Bar Association Commission on Multidisciplinary Practice, the ABA Section of Taxation, and the American Bar Association should

(1) oppose any change in the Model Rules of Professional Conduct or in the law of any State that would permit any lawyer or group of lawyers to engage in law practice, except as inside client counsel, if their practice or the unit or entity in which they practice (corporate or other), is owned, managed, or controlled by non-lawyers or if any significant financial interest therein is held, directly or indirectly, by non-lawyers.

(2) oppose any change in the Model Rules of Professional Conduct or the laws of any State that would alter the firm-wide imputation of the client and legal system protections for the duties that require competence, confidentiality, loyalty and service directed to improvement of the law. The term "firm-wide" would include the law practice group and all individuals, units, and other entities with which it is connected by significant financial interest.

[4] "Significant financial interest" shall not include loans made by an independent financial institution.

[5] Specific legislative history considered by the Board in passing these resolutions was as follows: The resolutions are not intended to, and in the opinion of the author, Professor Wolfman, would not impinge adversely on existing rules and laws authorizing confidentiality screening in law practice, nor would adherence to the resolutions prevent or impede the continued evolution of rules and laws related to the screening. Further, the resolutions are

not intended to, and in the opinion of the author, would not preclude modification of existing rules and laws with regards to fee sharing, particularly as may be found appropriate and necessary in the ABA Commission's hypothetical models 2, 3 and 4.

[6] On behalf of the Board of Regents and the College, I wish to thank you for this opportunity to express our views on these issues under consideration by the ABA Commission. I further wish to thank you and your fellow Commissioners for undertaking this timely and important project.

Sincerely,

James E. Merritt

Chair, American College of Tax

Counsel