Federal Bar Council News

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From The President

Cocktail Receptions

By Steven M. Edwards

The Federal Bar Council has initiated a new series of cocktail receptions — with entertainment — designed to enable lawyers and judges an opportunity to meet and get to know each other outside of the formal courtroom setting and to enjoy exceptional programs that emphasize music, theater, and art.

The first event took place on June 6 in Courtroom 506 of the old courthouse and featured a performance "Mozart on Trial" by the Chamber Music Society of Lincoln Center. With the assistance of a piano and string quartet, composer Bruce Adolf analogized the structure of Mozart's Concerto in G minor to a modern trial.

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The Judiciary

N.Y. Senatorial Candidate Rick Lazio Speaks With FBC News About Judicial Appointments

By Brian M. Cogan and Claude G. Szyfer

In an exclusive interview with the *Federal Bar Council News*, Congressman Rick Lazio (R-NY), the Republican candidate for the Senate seat being vacated this year by Senator Daniel P. Moynihan (D-NY), provided his views and opinions regarding appointments to the federal judiciary. Congressman Lazio asserted that if elected, he would strive to find the most experienced and qualified candidates, with the right mix of keen intellect and appropriate judicial temperament.

Congressman Lazio stated that he would continue the practice of appointing merit selection panels to make recommendations on potential district court nominees. In particular, Congressman Lazio said that the panel members would include individuals who had "great experience with the federal court system [and] strong backgrounds as attorneys or public servants" and "persons with the ability to evaluate the qualifications of candidates" for judicial appointment.

With regard to the making of nominations between the two Senators in the state, Congressman Lazio said he believed that it was somewhat premature to discuss any form of definitive arrangement with respect to the selection of judges. In the past, when the Senators

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The Second Circuit

Trio Of Administrators With Valuable Experience

By Lisa Margaret Smith

The Second Circuit is fortunate to have three intelligent, industrious, and impressive women in its pivotal management positions. For the first time in over a year, the offices of Circuit Executive, Clerk of the Circuit, and Assistant Circuit Executive for Legal Affairs became permanently filled earlier this year, providing a strong foundation

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From The President

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The second event took place in the same room on September 26. It featured a performance by actor, lawyer, and playwright Henry Miller of "Clarence Darrow for the Defense," a re-creation of Clarence Darrow's summations in *People v. Kidd*, *People v. Darrow*, and *People v. Leopold and Loeb*.

A third event is scheduled to take place at Christies on October 26, and it will feature a lecture by an expert on rare books, manuscripts, and prints.

These events are open to Council members and the judiciary and, at the present time, are free. If they are successful, the Council hopes to have them on a more frequent basis.

The Judiciary

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have been from different parties, they have abided by an informal system whereby the Senator whose party controlled the White House was afforded three of four recommendations for open district court judgeships, while the other Senator was afforded one of the four recommendations. Congressman Lazio said he believed that something similar to that system or an alternative with slight modifications would be appropriate, but that it should be something to be discussed with Senator Charles Schumer (D-NY). Congressman Lazio noted that he felt that he had developed a "good relationship" with Senator Schumer based on their work in the House, and that he believed there was a "basis of trust" to work together and have the best candidates for judicial appointment selected.

When asked whether he felt it was appropriate for the President to reject candidates for judicial appointment based on ideology or political affiliation, Congressman Lazio expressed the hope that the President, whether it be either Governor Bush or Vice President Gore, would adhere to the same standards Congressman Lazio would seek to promote. Specifically, Congressman Lazio said that he would seek to nominate the "most qualified, and experienced jurists," who had the right mix of "intellect, judicial temperament, and a keen analytical mind." The Congressman did state that it was fair to probe a nominee's ideological background if such views would affect the ability of the nominee to make reasoned judgments from the bench. He added that candidates for judicial appointment would likely come from the state bench, attorneys in private practice, and academia.

The Congressman stated that he would not utilize any sort of litmus test or focus upon a specific issue to reject or promote a nominee for judicial appointment. He said that use of such a litmus test would undermine his specific goal of finding the most experienced jurists, "with the right temperament and keen intellect." Unacceptable candidates would be rejected if they failed to have those qualities identified by Congressman Lazio as important. In addition, Congressman Lazio said that it was appropriate to consider diversity on the federal bench when making nominations, and that his merit selection panel would endeavor to find such candidates with the hope of increasing diversity on the federal bench.

Congressman Lazio thanked the Federal Bar Council for an opportunity to express his views on these matters, and stated that he had gained an increased appreciation for the work of the various bar associations during the campaign. The *Federal Bar Council News* also contacted First Lady Hillary Rodham Clinton's staff to arrange for an interview, but her staff canceled the interview due to scheduling conflicts and had not arranged a new date by the time this newsletter went to press.

The Second Circuit

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for the Second Circuit's administrative functions.

Circuit Executive

Karen Greve Milton, the Circuit Executive of the Second Circuit, was formally appointed on April 7, 1999, although she had been acting Circuit Executive since January of that year, a position she assumed after only five months as the Assistant Circuit Executive for Legal Affairs. Shortly after her appointment she also became acting Clerk, and until the appointments earlier this year of Roseann MacKechnie to the Clerk's position and Elizabeth Cronin to the post of Assistant Circuit Executive for Legal Affairs, Ms. Milton had the responsibility for all three functions.

Despite this daunting challenge, upon her appointment she hit the ground running. One of Ms. Milton's first obligations was to prepare for the annual Circuit Judicial Conference, a massive undertaking, and she fulfilled her responsibilities at the conference in June 1999 with grace and poise. Largely as a result of Ms. Milton's efforts, Continuing Legal Education (CLE) credit became available for some of the programs at the conference, which injected a new energy and dynamic in the presentations. That effort continued this year, making the event even more valuable to the bar members in attendance at the conference.

The Circuit Executive may best be described as being the Chief Administrative Officer of the Court of Appeals, with additional Circuit-wide responsibilities and oversight. The Circuit Executive is appointed by the Judicial Council, for which she serves as Secretary. The Circuit Executive is also Secretary to the Second Circuit Judicial Conference, Secretary and a non-voting member of Merit Selection Panels for Bankruptcy Judges, and Secretary to all Judicial Council and most Court of Appeals committees. As Circuit Executive, Ms. Milton also oversees the Judicial Conduct complaint process for the Court of Appeals and the Circuit. Thus, if the Chief Judge were to form a committee to investigate an allegation of judicial misconduct, Ms. Milton would serve as Secretary to the committee. She also serves as the executive assistant to the Chief Judge, handling any project which the Chief Judge requests her to oversee.

In her position as Circuit Executive, Ms. Milton has the responsibility to coordinate all budget, procurement, automation, personnel, and library matters for the Circuit. She meets weekly with unit heads and Senior Managers, including the Clerk of Court and the Assistant Circuit Executive for Legal Affairs, utilizing a team approach to preventing and dealing with problems.

If this were not enough, Ms. Milton also has the responsibility to handle space and facility issues, not only for the Court of Appeals, but throughout the Circuit. She also is involved in developing and implementing Court policies as they relate to staffing and other administrative matters.

The most challenging aspect of Ms. Milton's job so far, other than having to fill all three administrative positions at one time, has been to meet all the various statistical reporting requirements, which are constant, and which deal with almost every aspect of her responsibilities and the Court's functions.

Ms. Milton is a graduate cum laude of the University of Pennsylvania, with a J.D. from Case Western Reserve School of Law, where she served as an editor of the Law Review. Immediately before undertaking the position as Assistant Circuit Executive for Legal Affairs in September 1998, Ms. Milton was the first Director of the CitiBar Center for CLE, a department which she created for the Association of the Bar of the City of New York in 1996, and which helped to prepare her for the task of getting CLE credit for the Judicial Conference programs. Before that position, Ms. Milton was General Counsel to the New York State Temporary Commission of Investigation. Ms. Milton also has served as an Assistant Commissioner in the New York City Department of Investigations (DOI), where she supervised a legal staff which conducted investigations into allegations of corruption among officials and employees of the City, as well as Inspector General of DOI, investigating complaints against DOI employees. Before her stint at DOI, she was an Assistant Commissioner for Tax Enforcement in the New York State Department of Taxation & Finance, where she oversaw the Tax Investigations Division. In that position she supervised legal, investigative, and clerical staffs in four offices throughout New York State. After leaving law school she was an Assistant District Attorney for New York County for six years, serving in both a trial bureau and in the Rackets Bureau in that office.

Ms. Milton reports that each of her past positions has helped her to prepare for her current duties, but that the position as Director at the CitiBar CLE Center was the most valuable. It prepared her not only to deal with the process of obtaining CLE credit, but also gave her an opportunity to get to know a large cross-section of the bar, and to create a new functioning department whose budget increased from $50,000 to almost $500,000 during her two year tenure. The value of this experience is underscored by the Circuit's recent decision to centralize the budget from each of the various Circuit departments into a unified budget governed by the Circuit Executive.

Circuit Clerk

On February 22, 2000, Roseann MacKechnie was appointed the Clerk of the Second Circuit, thereby relieving a portion of Ms. Milton's burdens. Ms. MacKechnie, who had been a career prosecutor in the Office of the District Attorney in Brooklyn before her appointment, brings extensive administrative and appellate experience to her new job. The Clerk's position requires her to manage the operation of the Court of Appeals and oversee the Clerk's Office staff of approximately 50 people. Her office supervises the processing of all proceedings of the Court, making sure that all transactions are recorded properly, and that all filings and court practices comply with the Federal Rules of Appellate Procedure, as well as the local rules. In order to handle this part of the job, Ms. MacKechnie is currently directing the process of moving the Clerk's Office staff from an outdated case management program to a new case management system developed especially for the Second Circuit. This major project is the most dramatic innovation in the Clerk's Office in 20 years, and will positively impact not only

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the functioning of the Clerk, but also the work of the rest of the Circuit and its administration.

The Clerk's office also oversees the Court's calendar and the distribution of appellate briefs to the judges assigned to each panel. Ms. MacKechnie's staff insures that proceedings in the courtroom run smoothly, and that the parties are notified promptly of the Court's decisions. The Clerk of the Court also provides assistance whenever it is needed to the active, senior, and visiting judges who sit on the Court of Appeals, to make their jobs easier. As Clerk of the Court, Ms. MacKechnie works very closely with the Circuit Executive and various staff attorneys, including the Assistant Circuit Executive for Legal Affairs, on issues of mutual concern.

Ms. MacKechnie is undaunted by these challenges, and finds that her extensive experience as a trial and appellate attorney, and as a supervisor, Unit Chief, Deputy Bureau Chief, Bureau Chief, and Executive Assistant District Attorney in the Kings County District Attorney's Office, have well prepared her for the administrative tasks that face her. She is accustomed to dealing with a government bureaucracy and with having limits on both budget and staff. Ms. MacKechnie's background as an appellate lawyer and supervisor dealing with attorneys on both sides of a case, as well as the judges and court staff, have given her an appreciation for both the Court and the practitioners before the Court, and she is keenly aware of the need for the Clerk to serve both. The adjustment from supervising lawyers to supervising non-legal staff, and learning the vast operation of the Clerk's Office, with its responsibility for huge numbers of docket entries every single day, have presented challenges which Ms. MacKechnie has faced with creativity and good humor.

Ms. MacKechnie, a cum laude graduate of LeMoyne College in Syracuse, New York, spent 22 years in the Brooklyn District Attorney's Office after graduating from Syracuse Law School and before her current appointment. In the District Attorney's Office she tried several cases, briefed and argued hundreds of appeals from criminal convictions, decisions on motions, and habeas corpus petitions, and supervised thousands of appellate briefs and motions that were filed and argued in both state and federal court. She has argued numerous cases in the New York Court of Appeals and the United States Court of Appeals for the Second Circuit. After working her way through the ranks of the District Attorney's Office, including being the first to head the Juvenile Crime Unit in 1986-1987, she ended her career in the DA's Office as the Executive Assistant District Attorney in charge of the Appeals Bureau, serving District Attorney Charles Hynes. In that position she supervised some 45 appellate lawyers, 5 paralegals, and 10 support staff. She also served as counsel to the District Attorney and his executive staff on legal and policy issues. Ms. MacKechnie is an adjunct professor at Brooklyn Law School, where, since 1985, she has taught Legal Research and Writing, and Appellate Advocacy. In her typical unassuming way, she expresses amazement at having the opportunity to serve the courts in her new capacity as Clerk of the Second Circuit.

Legal Affairs

Elizabeth Cronin, Assistant Circuit Executive for Legal Affairs, received the most recent of the three appointments. She began her position on March 20, 2000, after nearly 14 years at the Westchester County District Attorney's Office. As the Assistant Circuit Executive for Legal Affairs, Ms. Cronin reports to the Circuit Executive and is responsible for recruiting, hiring, and supervising the attorneys as well as the administrative staff in the Second Circuit's Staff Attorney's Office, Civil Appeals Management Program, and Administrative Attorney's Unit. The hiring process is daunting, as the Circuit receives approximately 400 applications each year for just a dozen staff attorney positions. The supervisory responsibilities encompass some 25 attorneys and 6 other staff, and involve administering and overseeing the production of all legal work required by the Court of Appeals, except the work of the elbow law clerks who work directly for the judges. Ms. Cronin's duties include reviewing the work product of the pro se and motions law clerks, processing criminal and civil procedural motions, reviewing bench memos, representing the Court in related administrative office advisory groups and committees, and developing training programs for the staff. Ms. Cronin also has the responsibility to provide legal and administrative advice to the Court and its committees, as well as to the Circuit Executive's Office.

During the recent period when the Circuit was under a judicial emergency, a backlog of pro se cases developed. Since Ms. Cronin was appointed that backlog has lessened, and one of her goals is to eradicate it entirely in the upcoming year, so that the Court can return to its proud tradition of not having any backlog of undecided cases.

The Assistant Circuit Executive for Legal Affairs also has the responsibility to investigate allegations of judicial and attorney misconduct in the Circuit, and to

report to and advise the Chief Judge and the Circuit Executive regarding those allegations. Ms. Cronin is well prepared for this responsibility as a result of her experience as a prosecutor. After graduating from Fairfield University in 1980, she attained her J.D. at Pace University School of Law in White Plains in 1983. She worked as a Staff Attorney and Judicial Law Clerk for the Superior Court in New Haven, Connecticut, for one year, then spent two years with Rapaport & Benedict, a general practice law firm in Stamford, Connecticut. She joined the Westchester County District Attorney's Office in 1986, eventually becoming Deputy Bureau Chief of both the Child Abuse and Sex Crimes Bureau, and the Domestic Violence Bureau. Her supervisory experience in those positions included supervising attorneys, domestic violence and child abuse aides, and secretaries and law clerks, and prepared her well for the challenges that she now confronts as Assistant Circuit Executive for Legal Affairs. She credits her experience as a litigator for preparing her to make quick decisions, and to being able to deal with the judges on the Court, anticipating what they want and need without compromising the case at hand.

Colleagues

The qualities that these three women bring to their positions go beyond the information in their resumés and job descriptions. They are gracious, warm, energetic, and intensely committed to the tasks at hand. They are supportive of and friendly with each other, leading the observer to conclude that they are colleagues in the truest sense of the word. They all speak of the great respect they have for the active and senior judges on the Circuit, whom they find to be extraordinarily hard working, serious, and dedicated. They report that all of the judges have been extremely approachable and generous with their time while these three administrators have been attempting to learn the new tasks that face them. Ms. Milton notes that former Chief Judge Newman, current Chief Judge Winter, and soon-to-be Chief Judge Walker have all been extremely active in making the administrative side of the Court more effective and efficient, and she credits their leadership for the recent success that has been achieved in these areas.

Guidance For Lawyers

The Circuit, with the assistance of these three administrators, is planning to launch a Web site in the future, which they hope will provide an easy way for members of the bar to get answers to the many questions that arise on a daily basis. When asked if they had any guidance for practitioners in the Second Circuit, they overflowed with suggestions, which included the following: (1) Check the Federal Rules of Appellate Procedure, and the local rules, before calling the Clerk or the Circuit Executive with a question; (2) A lawyer who is going to be unavailable during any part of the time during which oral argument may be scheduled should notify the Court well in advance, because once the date for oral

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argument is scheduled it is a firm date which is unlikely to be subject to rescheduling, especially on short notice; (3) If a lawyer signs up to be on the pro bono panel for civil cases, or the Criminal Justice Act panel for criminal defendants, then be sure to accept assignments; if the lawyer becomes unable to accept such assignments, or if the lawyer's circumstances (e.g., telephone number, address, firm affiliation) change, the lawyer should notify the Court.

These three women intend to persist in developing and implementing innovations within the administration of the Second Circuit, in the hope that the Second Circuit will continue to set the standard for all the Circuits, not only in its legal decisions, but also in its administration. The Second Circuit is fortunate to have this triumvirate handling the many administrative responsibilities that permit the Court to complete its task both efficiently and well.

The Second Circuit

Connecticut's New Mediation Program

By Elizabeth Cronin

The Court of Appeals for the Second Circuit has instituted a pilot mediation program in the District of Connecticut for counseled federal civil appeals. The program, which was announced by Chief Judge Ralph K. Winter on June 21, became operative on July 5. Litigants in civil appeals from the District of Connecticut will now be given the opportunity to participate in this innovative project by allowing them to select a private Connecticut mediator from a designated panel, or alternatively, they will be required to attend a conference with staff counsel in the Civil Appeals Management Program (CAMP) at 40 Foley Square in Manhattan. Fourteen private mediators are currently participating in the program.

Within 15 days of the filing of a Notice of Appeal, the Court will require litigants to either elect to participate in the new Civil Appeals Pilot Mediation Program or to schedule a case conference with Court staff in New York. All parties must agree upon a private mediator and if they are unable to do so within the time allotted, the case will automatically be scheduled for a case conference with CAMP.

The program is intended to provide parties appealing civil judgments from the Connecticut federal court the opportunity to settle the case through mediation by qualified and skilled mediators who are from the District of Connecticut and are familiar with federal practice in the district court and the Court of Appeals. All costs of the private mediation sessions will be borne by the parties.

According to Chief Judge Winter, "The Court of Appeals over the years has noticed that the settlement rate of appeals from district courts outside the metropolitan New York City area often is lower than those from the Southern or Eastern Districts of New York." The purpose of the pilot program is to enable parties appealing judgments from Connecticut federal court to settle their cases by meeting with local mediators who are familiar with the practices and procedures of the federal courts as well as those of the locality.

All civil counseled cases from the District of Connecticut, except habeas corpus petitions and where the United States is a party, are eligible to participate in this pilot program. The program will run for a full year until July 6, 2001 and will be evaluated throughout the year. Depending on the success of the pilot program, the Court may expand the membership of the mediator panel.

Mediators Wanted

In January 2000, the Court of Appeals publicly announced that it was seeking qualified individuals to serve as appellate mediators in this program. Applicants are required to be licensed attorneys, members of the Court of Appeals bar and experienced in federal trial and appellate practice. Each private mediator who is now participating in this program was selected following an on-site interview with the Court's senio staff. The panel comprises individual attorneys from all over the State of Connecticut who have extensive and varied civil experience.

Questions about the pilot program may be directed to Elizabeth Cronin, Assistant Circuit Executive, Legal Affairs (212) 857-8800 or Karen Greve Milton, Circuit Executive (212) 857-8700.

Federal Practice

The Eastern District's Pro Bono Web Site

By Bennette Kramer

The Eastern District of New York, like other district courts, has sought to attract attorneys who are willing to represent pro se parties in civil litigations. To facilitate the appointment of pro bono attorneys and communicate the substance of cases available to these attorneys, the Eastern District of New York has set up

a Web site that provides a wealth of information about the procedures for representation of pro se litigants and the cases themselves. Magistrate Judge Robert M. Levy, along with Eastern District Pro Se Staff Attorneys Cecelia Volk and Aliza Silber, other Pro Se Office staff members, and the Eastern District's computer technicians, have worked to make the Web site comprehensive and accessible. Magistrate Judge Levy sees the Web site as one step along with other efforts that will make pro bono cases more available to lawyers interested in taking these cases. He welcomes questions and suggestions on improving the Web site. To expand the network of interested lawyers, the Eastern District expects to link up to probono.net, a public interest group that links lawyers with deserving pro bono cases.

The Web site itself — http://www.nyed.uscourts.gov/probono/ — is clearly laid out and simple to work through. An Adobe Acrobat Reader is required to view and print case-related materials. The Web site contains the rules and procedures for appointment of attorneys, eligible cases listed by type and then by name, the docket sheet and selected pleadings for individual cases, names of Pro Se Office staff members, court locations, mailing lists, a "What's New?" section, and a link allowing access to probono.net. A section providing answers to frequently asked questions is under construction.

The Plan

The Pro Bono Plan sets forth the procedures for appointment of pro bono counsel, procedures for discharge or withdrawal of representation, responsibilities of the appointed attorney, compensation for expenses, and other available compensation. The plan contains a description of the application form and how a firm or individual lawyer may apply. The judge assigned to the case determines whether pro bono counsel is appropriate and signs an order of appointment as soon as practicable after the action has been assigned. The plan describes the obligations of the appointed attorney upon acceptance of the appointment, emphasizing the need to analyze the case and determine whether it should be litigated in federal court or in another forum, if at all. Cecilia Volk, Pro Se Staff Attorney, says that any interested lawyer can take a case — prior registration is not necessary. The registration process will occur at the time of the appointment.

Finally, the plan discusses the availability of compensation for expenses approved by the assigned judge by the Eastern District Civil Litigation Fund, a nonprofit corporation formed for the purpose of providing support to pro bono attorneys. The Eastern District Civil Litigation Fund will pay necessary expenses (such as transcript costs, filing fees, subpoena fees, and discovery costs) upon approval by the judge. The Eastern District Civil Litigation Fund also works to assist the Pro Se Office to channel pro se litigants to other fora or other governmental services that might more effectively resolve the pro se litigant's problems.

Case Information

The Web site contains case information separated into the categories of cases including student loan default, Section 1983, Title VII Employment Discrimination, diversity, Bivens actions, habeas corpus applications, and collection of damages. The case listings within each category include summaries of the legal claims, factual background, procedural posture, and the work remaining for an appointed lawyer.

In addition, the docket sheet and pleadings are available on the Web site. With Adobe Acrobat, a prospective or assigned counsel can open the docket sheet and complaint or other pleadings and print them out, eliminating the need for interested or appointed counsel to go to the courthouse or for the Pro Se Office to copy and mail pleadings. Ms. Volk says that cases are placed on the list as soon as possible after a judge signs the order for appointment of counsel and removed as soon as a lawyer has accepted an appointment.

Other Features

The "What's New?" section of the Web site provides a list of cases in the order in which appointment orders have been signed by a judge. By clicking on a listed case, prospective counsel can reach the case summary and the pleadings.

In sum, the Web site provides an extensive view of the procedures for taking a pro bono case and a comprehensive picture of available cases. It is well worth a visit.

Focus On:

Chief Judge Mukasey

By Wendy Mirsky

Earlier this year, Judge Michael B. Mukasey became the Chief Judge of the Southern District of New York. At the outset of his tenure, Chief Judge Mukasey took some time to outline his plans and the goals that he hopes to accomplish as Chief Judge.

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Chief Judge Mukasey believes that his agenda as Chief Judge is guided in large part by the mission of the Southern District courts and judges themselves: to decide cases efficiently and fairly. In this regard, his overriding goal as Chief Judge is to facilitate the accomplishment of the Southern District's mission as efficiently as possible and with as much openness as possible.

The principle project that Chief Judge Mukasey currently anticipates the court will face while he is Chief Judge is the implementation of an electronic filing system in the Southern District. Chief Judge Mukasey also views the establishment of an electronic filing system as the court's primary challenge: It will be the court's task to re-write the pleading and filing rules to accommodate the commencement of cases by electronic filing.

Chief Judge Mukasey said that the Administrative Office of the United States Courts in Washington, D.C., has developed an electronic filing system that it expects to roll out to a group of federal courts, including the Southern District, next year. Although the Administrative Office will roll the system out as a packaged system, it will be left to the Southern District to implement the commencement of cases by electronic filing in the manner most appropriate and efficient for the district.

Chief Judge Mukasey said that the Southern District is fortunate to have excellent examples of electronic filing programs on which to model its program in the electronic filing systems of the Eastern District of New York and the Bankruptcy Court for the Southern District of New York. He added, however, that unlike the pilot systems established in those courts, the electronic filing system that will be implemented in the Southern District will be on a non-experimental basis. Indeed, the Southern District will be among the first wave of courts to implement an electronic filing system on a non-experimental basis.

Chief Judge Mukasey expects that the smooth establishment and implementation of an electronic filing system will be one of the biggest challenges that the court will face while he is Chief Judge. In that regard, he expects that developing a system that will allow for necessary exceptions to the electronic filing rules, such as exceptions for pro se plaintiffs and for prisoners, will be a highly challenging task. To do this, Chief Judge Mukasey said that once the Southern District has implemented its electronic filing system, it will maintain a two-tiered, or dual, system of filing, both traditional and electronic, until the time that electronic filing is readily accessible to all litigants.

Information Technology

Chief Judge Mukasey also discussed the function of computers in the courtroom and the role that he expects information technology will play in the future. He noted that the Southern District already has significant capability for accommodating computers and other information technology in the courtroom, particularly the new courthouse in Manhattan. Chief Judge Mukasey does not believe that computers are either a necessary or desirable component of every case. He stated, however, that in his experience, new technology, such as real-time reporting, can be highly useful in increasing the efficiency of trials and the speed with which judges can issue rulings.

In his new role as Chief Judge, Chief Judge Mukasey has taken on more involvement in overseeing and servicing on-going committees of the court and of the Second Circuit. He now plays a significant role in determining how the Southern District accomplishes its mission of deciding cases fairly and efficiently. While Chief Judge Mukasey has maintained the same criminal case load for which he was responsible before assuming the position of Chief Judge, he has taken a diminished civil case load to allow him to focus more of his attention on his administrative responsibilities.

New Appointments

Laura Taylor Swain Sworn In As Southern District Judge

By Stephen L. Ratner, Stacey Creem, and Steven Katz

Judge Laura Taylor Swain has been sworn in as a Federal District Court Judge for the Southern District of New York. Her appointment caps an illustrious career as a United States Bankruptcy Judge and litigator.

Judge Swain, who grew up in Brooklyn, New York, has been a United States Bankruptcy Judge for the Eastern District of New York since 1996. From 1983 to 1996, Judge Swain was an attorney with the New York law firm of Debevoise & Plimpton, concentrating in ERISA, executive compensation, and employment law. Additionally, Judge Swain served as one of the members of the New York State Board of Law Examiners from 1986 to 1996, and was responsible for drafting the New York State Bar Examination.

Judge Swain received her A.B. degree, cum laude, from Harvard-Radcliffe College in 1979. After earning



Judge Laura Taylor Swain

her J.D. degree from Harvard Law School in 1982, she served as a law clerk for the Honorable Constance Baker Motley, then Chief Judge of the United States District Court for the Southern District of New York.

Senator Charles E. Schumer has lauded Judge Swain's nomination to the federal bench. "Laura Taylor Swain has already proved herself to be a valuable, thoughtful member of the Federal Judiciary," said Senator Schumer. Responding to Judge Swain's leadership roles in various New York religious and community organizations, including Episcopal Charities and Diocese of New York, Grace Church in New York, and the Community Partnership Charter School, Senator Schumer stated, "Judge Swain has accumulated vast and diverse experiences in New York's legal and religious communities. These experiences place her in an ideal position to serve the people of New York with fairness and compassion."

New Appointments

Gerard E. Lynch Is New Southern District Judge

By Stephen L. Ratner, Stacey Creem, and Steven Katz

Columbia Law School Professor Gerard E. Lynch was recently sworn in as a judge in the U.S. District Court for the Southern District of New York. Prior to his appointment, and since 1977, Judge Lynch has been a professor at Columbia Law School. Judge Lynch held the Paul J. Kellner Professorship, and he is a renowned expert in the areas of criminal law, constitutional theory, and legal ethics. In addition to his scholarship, Judge Lynch served as Vice Dean of the law school from 1992 to 1997, and he chaired various law school committees and received numerous awards for teaching excellence.

During his tenure as a professor, Judge Lynch held various other public and private sector positions. For example, since 1992, he was part-time counsel at

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the New York office of Covington and Burling. From 1990 to 1992, he was the Chief of the Criminal Division of the U.S. Attorney's Office for the Southern District of New York. From 1988 to 1990, he was Associate Counsel to Independent Counsel Lawrence E. Walsh, where he served as a special prosecutor investigating the Iran-Contra scandal. In addition, Judge Lynch was an Assistant U.S. Attorney for the Southern District of New York from 1980 to 1983 and Chief Appellate Attorney in 1983.

Judge Lynch also has been deeply involved in public service. He has served as Special and Chief Counsel to various New York City and New York State Commissions dealing with government integrity and contracting issues. In 1999, he was Counsel to Independent Counsel Carol Elder Bruce, where he investigated allegations regarding Interior Secretary Bruce Babbit.

In 1987 and 1988, he was Associate Independent Counsel to Independent Counsel James C. McKay, where he investigated Attorney General Edwin Meese's alleged involvement in the Wedtech scandal. He also has served as a consultant and advisor to various civil liberties organizations, including the American Civil Liberties Union and the New York Civil Liberties Union. In addition, Judge Lynch has served on various committees for the New York State Bar Association and the Association of the Bar of the City of New York. Moreover, he has served on the Advisory Committee to the Second Circuit Rules Committee and the Committee on Revision of Local Criminal Rules for the United States District Court for the Eastern District of New York.

In addition to his professional expertise, Judge Lynch is a prolific and well-respected legal scholar and author. He has published numerous academic and popular articles on topics ranging from criminal and RICO law to constitutional issues, sentencing guidelines, plea bargaining, and the judiciary.

During the years 1975-76, Judge Lynch clerked for the Honorable Wilfred Feinberg, Judge for the Second Circuit Court of Appeals, and went on to clerk for the Honorable William J. Brennan, Jr., of the United States Supreme Court during 1976-77.



Judge Nicholas G. Garaufis

Judge Lynch received his bachelor's degree, summa cum laude, from Columbia College in 1972, and his J.D. degree from Columbia University School of Law in 1975. During law school, he received the John Ordronaux Prize for graduating first in his class and the Lawrence S. Greenbaum prize for winning the Harlan Fiske Stone Moot Court competition. He was also a James Kent Scholar.

New Appointments

Nicholas G. Garaufis Joins Eastern District Bench

By Stephen L. Ratner, Stacey Creem, and Steven Katz

Nicholas G. Garaufis was sworn in as a District Court Judge for the Eastern District of New York on September 11, 2000. Judge Garaufis has a varied practice in both private and public service.

Prior to his appointment, Judge Garaufis was Chief Counsel of the Federal Aviation Administration and served as the top legal advisor to the FAA Administrator since 1995. At the FAA, Judge Garaufis developed important safety and security initiatives, testified before both houses of Congress, and reviewed all FAA major regulatory and legislative proposals. His wide-ranging practice areas included regulation and certification, litigation, procurement, enforcement, international law, airports and environmental law, legislation, and personnel law.

From 1986 to 1995, Judge Garaufis was counsel and legal advisor to Queens, New York, Borough President Claire Schulman. As counsel, he advised Borough President Schulman on legal and aviation matters and was the director of intergovernmental relations. He also served as trustee of the New York City Employees Retirement System.

Prior to serving as counsel to Borough President Schulman, Judge Garaufis worked in private practice from 1978 to 1986. His practice included environmental law, litigation, real estate, trusts and estates, and not-for-profit corporation law.

From 1979 to 1995, concurrent with his other legal positions, Judge Garaufis served as pro bono counsel to Congressman Gary L. Ackerman, counseling the Congressman on environmental litigation and federal election law issues.

Before going into private practice, Judge Garaufis worked as an Assistant Attorney General in the Department of Law for the State of New York from 1975 to 1978, where he focused on federal appeals, labor preemption, procedural due process, and habeas corpus issues. As a prosecutor, Judge Garaufis was involved in several significant cases, one of which was New York Telephone Co. v. N.Y. State Department of Labor, 440 U.S. 519 (1979), a case that upheld the right of New York State to grant unemployment compensation to workers engaged in industrial controversies.

From 1974 to 1975, Judge Garaufis worked as an associate at the New York law firm of Chadbourne Parke, Whiteside & Wolff.

Judge Garaufis earned his A.B. degree from Columbia College in 1969 and his J.D. degree from Columbia University School of Law in 1974, where he was co-founder and Managing Editor of the Columbia Journal of Environmental Law.

Judge Garaufis's varied background in both private and public service will serve him well as he joins the Judiciary in the Eastern District of New York.

Legal Practice

Multijurisdictional Issues

By Bruce A. Green

In July 2000, the new ABA President, Martha Barnett, announced the formation of an ABA Commission on Multijurisdictional Practice. The commission will focus on the work of lawyers and law firms practicing in multiple state and federal jurisdictions. It will research, study, and report on the application of current ethics and bar admission rules to lawyers' multijurisdictional work. In forming the new commission, Ms. Barnett responded to recommendations made by participants at a symposium held at Fordham Law School in March of this year.

The Fordham symposium was co-sponsored by the ABA Center for Professional Responsibility, the law school's Stein Center for Law and Ethics, and several other organizations. It brought together state judges, heads of regulatory organizations, bar leaders, practitioners, and legal academics to discuss the status of law practice across state lines, the specific problems encountered by clients and their lawyers under the current regulatory processes, and possible resolutions to these problems. A report summarizing the discussions at the symposium, together with various writings prepared prior to the symposium, is available on the ABA's Web site. This article draws on that report.

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UPL Laws

The problems identified by symposium participants are rooted in Depression-era state laws regulating the unauthorized practice of law (UPL). The UPL laws apply not only to non-lawyers but also to out-of-state lawyers. New York lawyers were reminded of this by the California court decision in *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court of Santa Clara County*, 949 P.2d 1 (Cal. 1998), which applied California's UPL law to a New York law firm. The firm had rendered services relating to a commercial dispute that was subject to arbitration in California under that state's law. The law firm's services included advising a New York company and its California affiliate, filing an arbitration claim in California, and negotiating a settlement of the dispute before proceedings commenced. The law firm's services were rendered partly in California, but primarily in New York. Nevertheless, the firm's conduct was held to be in violation of California's UPL law.

Although it was the *Birbrower* decision that has fueled the most recent concerns within the bar, and that inspired the ABA Center to organize the symposium at Fordham, concerns about how state UPL laws might apply to interstate law practice are not new. On the contrary, the ABA Standing Committee on Unauthorized Practice of Law identified many of the problems of "multiple state practice of law" in 1971.

The 1971 ABA report began with the recognition that "[i]n recent years the transfer of certain attorneys from state to state has greatly increased. The business of big government and national corporations crosses state lines. Our citizens have become very mobile. It is common today to have a single economic and social community involving more than one state." The multistate and interstate nature of law practice posed a regulatory problem because "[t]he question as to where an individual may practice law is determined according to the law of each separate state," and many states required out-of-state lawyers to take and pass the state bar examination to practice in the state. The committee recommended that the problem be studied and that "consideration be given to a limited admission to the bar of the new domicile of the lawyer already admitted to practice in a sister state."

Participants at the Fordham symposium three decades later found that the problems were more pronounced. Not only do lawyers relocate from state to state over time, but, in far greater number, lawyers at any point in time are engaged in practices that cut across state lines.

Transactional Lawyers

The most serious concerns related to the work of transactional lawyers. At least two states specifically permit out-of-state lawyers to perform legal work in the state incidental to work in the lawyer's home state. For the most part, however, state UPL laws make no provision for out-of-state transactional lawyers who come to the state in the course of "doing a deal." Further, state court decisions interpreting the UPL laws are few and far between.

Although transactional lawyers may not be specifically forbidden from performing incidental work in states where they are not licensed, they may not be specifically authorized to do so, either. Lawyers may perceive themselves to be at risk in situations where, from the client's perspective, they ought to be able to render services relating to multiple states. In some of these situations, cautious lawyers may put clients to the expense of retaining lawyers from each of the affected states.

Problems For Advocates

Interestingly, participants at the Fordham symposium concluded that, even though all state and federal courts allow for admission pro hac vice, litigators who work in different states are not immune from problems. Some of these relate to the limited reach of the provisions for pro hac vice admission in state court proceedings. These provisions confirm the conventional understanding that, without judicial authorization, a lawyer may not appear before a court of a state in which the lawyer is not licensed. But, this leaves many unanswered questions for advocates working in contexts analogous to litigation or related to litigation.

For example, does the UPL restriction also forbid out-of-state lawyers from appearing in an administrative proceeding, in a court-authorized arbitration, in a private arbitration, or in a mediation that takes place in the state? Does the restriction apply to conduct undertaken in the state in anticipation of a possible state-court litigation — e.g., interviewing the client, conducting investigation and research, drafting documents, or attempting to negotiate a resolution of the dispute? Does the restriction apply to a lawyer who, in connection with a proceeding in a jurisdiction where the lawyer is admitted, engages in conduct, such as witness interviews or depositions, in another state? If the UPL laws apply in any of these contexts, the practical effect may be to exclude out-of-state practitioners entirely,

since (as *Birbrower* illustrates) pro hac vice admission may be unavailable.

Other problems for litigators arise because, even in contexts where the reach of individual state UPL laws is relatively clear, they may be excessively restrictive. According to Peter R. Jarvis, who prepared a paper on this subject for the Fordham symposium, the discretionary nature of pro hac vice admission in some jurisdictions "can lead to unpredictable and potentially inappropriate results." Further, the requirement in most jurisdictions that local counsel be involved in the representation may increase costs unnecessarily in some cases, such as where the law in issue is not unique to the state. Finally, the pro hac vice process may not accommodate lawyers who have valuable advice or assistance to provide behind the scenes.

The Road To Reform

Participants at the Fordham symposium identified three broad goals for reforming the existing regulatory system. First, there is a need to promote greater uniformity in how states address the work of out-of-state lawyers. Second, there is a need for greater clarity, so that lawyers have more guidance about what they may or may not do in relation to a state where they are not licensed. Third, restrictions on the work of out-of-state lawyers should be liberalized so as to serve the relevant state regulatory interests in a manner that is not simply exclusionary and that, recognizing the changing nature of clients' legal needs, accommodates the legitimate interests of clients in retaining counsel of choice and in obtaining effective and economical legal assistance.

Additionally, participants identified various avenues to explore to achieve these broad goals. Possibilities include: uniform state laws setting forth the restrictions on out-of-state lawyers more narrowly and more clearly; uniform state laws permitting out-of-state lawyers to receive permission to render a broader array of legal services in the state; and uniform state laws allowing out-of-state lawyers more liberally to be admitted to the state bar for general purposes.

For now, the prospects for regulatory reform are in the hands of the new ABA commission. The writings developed at the Fordham symposium should give the commission a head start, but much work remains to be done.

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such services. When the ABA took the position that lawyers working as employees for accounting firms could not appear in Tax Court, the Antitrust Division accused the ABA of engaging in anticompetitive activity, and the Tax Court permitted the practice.

The Antitrust Division's position was not surprising given the long history of successful attacks by federal antitrust authorities against certain ethical rules of other professions. For example, in *American Medical Association v. Federal Trade Commission*, 638 F.2d 443, 449 (2d Cir. 1980), the Second Circuit found that the AMA's restrictions on MDPs "had the purpose and effect of restraining competition . . . and restricted physicians from developing business structures of their own choice." In *Federal Trade Commission v. Indiana Federation of Dentists*, 476 U.S. 447, 462 (1986), the Supreme Court ruled the antitrust laws did not permit a professional organization "to preempt the working of the market by deciding for itself that its customers do not need that which they demand." In *National Society of Professional Engineers v. United States*, 435 U.S. 679, 696 (1978), the Court held: "[W]e may assume that competition is not entirely conducive to ethical behavior, but that is not a reason, cognizable under the Sherman Act, for doing away with competition."

In 1983, the Kutak Commission proposed a wholesale revision of the Code of Professional Responsibility, which ultimately became the ABA's Model Rules of Professional Conduct. Included in the commission's proposal was a provision that would have permitted all forms of MDPs so long as independence of professional judgment and client confidentiality were not impaired. The ABA House of Delegates rejected the proposal, however, when it was suggested that it would permit Sears to write wills as well as sell insurance.

Nevertheless, as we approached the turn of the century, the economic forces favoring MDPs continued to grow with the major accounting firms hiring thousands of lawyers and MDPs proliferating outside the United States. In 1998, the ABA created a commission to determine whether the Model Rules should be changed to permit MDPs. After studying the matter for a year, that commission unanimously recommended that MDPs be permitted, subject to certain minor restrictions. The ABA House of Delegates deferred action on the commission's proposal pending further study by state and local bar associations.

Two Committees

The New York State Bar Association had already taken up the issue by establishing a committee chaired by Robert Haig. The Haig Committee

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concluded that there should be further exploration of the opportunities presented by MDPs with a view toward permitting them unless insuperable obstacles appear. The New York State Bar Association House of Delegates summarily rejected that suggestion, however, and appointed another committee chaired by Robert MacCrate.

The MacCrate Committee issued its report in April of this year. While the report proposed certain changes to the rules to permit lawyers to offer non-legal services and to enter into contracts with non-lawyers to provide services on a systematic and continuing basis, it recommended a continuation of the rules that prohibit lawyers from becoming partners or employees of non-lawyers in an MDP. In June, the New York State Bar Association House of Delegates adopted a resolution approving the MacCrate Committee report and issued a press release stating that it had "overwhelmingly rejected proposals of multi-national conglomerates that would permit them to directly provide legal services."

In July, the ABA House of Delegates agreed with the New York State Bar Association's position, rejecting the recommendation of its own commission.

The Rationale

What is the rationale for prohibiting MDPs? To put it differently, is it really necessary to prohibit all MDPs even if clients want them? Yet another way to ask the question is why should lawyers be subjected to different rules than other professions who have been told (by lawyers) that they cannot prohibit MDPs?

In its 387-page report, the MacCrate Committee essentially articulated three reasons for prohibiting MDPs: (1) lawyers and non-lawyers have different confidentiality obligations; (2) the conflict of interest rules governing lawyers and non-lawyers are different; and (3) MDPs would compromise the independence of the legal profession. None of these reasons withstands analysis.

Confidentiality

According to the MacCrate report: "The lawyer's obligation is particularly broad . . . because it covers substantially all information learned in the course of a representation." Moreover, confidential communications between a lawyer and a client are guarded by the attorney-client privilege. The report noted that "[c]ommunications with members of other professions may have no or limited privileges, or privileges subject to exceptions unlike those applicable to lawyers."

The entire premise is simply wrong. Disciplinary Rule 4-101 applies only to "confidences" and "secrets," and lawyers can and often do disclose information about their work that does not fall into that category, as the many books, publications, movies, and television shows concerning our profession demonstrate. All professions require confidentiality where the client demands it, and many professions — such as investment banking — employ far more elaborate security measures than lawyers to preserve client confidences.

More fundamentally, there is no reason to believe that a court would not recognize the attorney-client privilege in the context of an MDP. Law firms can employ non-lawyers without losing the privilege; what difference does it make if the lawyers work for the non-lawyers instead of the other way around? It is well-established that confidential communications with in-house counsel may be privileged even though they work for non-lawyers.

Even if there were some risk that the attorney-client privilege would be less secure in an MDP (and that remains to be demonstrated), clients can decide whether that is a risk they are willing to take. The attorney-client privilege can always be waived. If a client determines that the advantages of an MDP outweigh the risk that confidences will not be maintained, what business do lawyers have telling clients they cannot make that choice?

In an effort to press the argument in concrete terms, the MacCrate report notes that "lawyers in all jurisdictions are forbidden to disclose past frauds in which they were not involved," while "federal legislation and possibly professional standards require an auditing accountant to ensure disclosure of frauds that could materially affect the audited corporation's financial statements, including completed frauds not involving the accountant." Aside from the fact that this concern affects only those clients that are audited public companies, it is a complete red herring. Assuming the fraud is of sufficient magnitude to require disclosure, it is hard to believe that the non-MDP lawyer would do anything other than advise the client to disclose it (and would be well-advised to withdraw from the representation if the client refused to do so).

If a client wishes to preserve the option of non-disclosure, it can always decide not to use the MDP it hires for litigation to audit its books. Alternatively, it can (and probably would) hire a lawyer not affiliated with its auditor to represent it in cases involving past undisclosed frauds. Any difference, real or imagined, between the disclosure obligations of accountants and lawyers who are hired by public corporations that have

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committed undisclosed frauds is hardly a reason to prohibit all MDPs.

Conflicts

The MacCrate report observed that "whenever a conflict of interest disqualifies one lawyer in a firm, the firm and all its lawyers are disqualified." It then went on to say: "The more complex a firm's practice becomes, the more likely it is that conflicts of interest will arise, and the more advanced its procedures for checking conflicts must be." From this it concluded: "Bringing non-lawyers into a firm raises problems under the principle imputing conflicts throughout the firm" and "[e]xempting nonlawyers from the principle could dilute .s effectiveness."

Who said anything about exempting non-lawyers? The principle of conflict imputation can be applied to MDPs in the same way that it is applied to law firms. Indeed, the MacCrate report recognized that "multiprofessional firms can avoid violating any profession's conflicts rules by following the most restrictive rule applicable to any of its members."

Furthermore, the notion that MDPs would necessarily have more conflicts than law firms is specious. The proliferation of conflicts is largely a question of size and has little to do with whether lawyers and non-lawyers are affiliated in some way. It is unlikely that a two-person MDP will have more conflicts than a 1,000 person law firm, and the use of such a flimsy argument simply underscores the weakness of the case for prohibiting MDPs.

ndependent Judgment

The MacCrate report expressed concern that in an MDP nonlawyers with the power to do so could impair a lawyer's freedom to exercise independent professional judgment on a client's behalf. It is worth noting that this is exactly the argument that the lawyers in the federal enforcement agencies and on the courts ridiculed when other professions tried to use it as a justification for prohibiting MDPs. The legal profession must ask itself the question: Why does competition policy trump concerns about the exercise of independent judgment in all sectors of the economy except the law?

More fundamentally, it is difficult to understand why the pressures that might impact a lawyer's ability to exercise his or her independent judgment would differ depending on whether the lawyer worked for a law firm or an MDP. Law firms and MDPs are in business to make money. Presumably, the proper exercise of independent judgment makes for happier clients, which in turn enhances profitability to the same extent in both a law firm and an MDP. There are always situations in which a client's inability to pay might create pressure to limit the services provided, but there is no basis for assuming that law firms are less likely to succumb to such pressure than MDPs.

The Real Concern

So long as lawyers and non-lawyers are in different firms, or lawyers control the activities of non-lawyers with whom they are affiliated, their roles may be kept separate. Work that can be done equally well by either lawyers or non-lawyers can be assigned to lawyers. Efforts by non-lawyers to infringe on the lawyers' turf can be met with charges of unauthorized practice of law.

To the extent that lawyers and non-lawyers operate within the same firm, and there is work that could be performed by either equally well, there will be an incentive to assign the work to the person who can do it more cheaply, particularly if non-lawyers have an equity interest in the firm. The distinctions between lawyers and non-lawyers will inevitably blur. The net result could be less work or lower fees for lawyers.

The question is whether clients will be better off. It seems to me that this is something that clients should decide. If the concerns expressed in the MacCrate report have any validity, the demand for MDPs should be limited, or they will likely disappear altogether.

The vehemence with which many members of the organized bar oppose MDPs suggests that this is not likely to happen. MDPs are thriving outside of the United States. They are also growing in the United States, notwithstanding rules prohibiting them, with lawyers joining accounting firms and financial institutions in droves. If MDPs were not such a threat, no one would care.

The opponents of MDPs are fighting a losing battle and they look bad in the process. While claiming to uphold lofty ideals and core values, they are simply reinforcing the negative perception that many non-lawyers have of the profession. Those of us who would prefer not to practice in MDPs might be better off trying to figure out ways of competing with MDPs effectively, as opposed to excluding them from the marketplace.

Author's Note: The views expressed in this article are those of the author and are not intended to reflect the position of the Federal Bar Council, which has not taken a position on this issue. Source materials used for this article include articles by Bruce Green, James W. Jones and Bayless Manning, and Charles W. Wolfram in The Future of the Profession: A Symposium on Multidisciplinary Practice, 84 Minn. L.Rev. 1083 (June 2000).

To MDP Or Not To MDP: That Is The Question

By Steven M. Edwards

Many lawyers are up in arms about multidisciplinary practice groups, or MDPs. MDPs are firms in which lawyers and non-lawyers practice together. The New York Code of Professional Responsibility prohibits lawyers from engaging in the practice of law as partners with or employees of non-lawyers — effectively limiting the viability of MDPs.

How these restrictions came about and whether they should be continued are among the most important issues that confront the profession as it moves into the 21st century.

Background

The first ABA Canons of Ethics, adopted in 1908, did not prohibit MDPs. That prohibition grew out of a movement to make it illegal for attorneys to practice law as employees of corporations — a common practice at the turn of the century, particularly among foreign-born lawyers. The elite members of the established bar apparently were concerned that the ability of corporations to advertise and provide referrals would place them at a competitive disadvantage, driving down their fees.

Following the passage of laws prohibiting corporations from employing attorneys to render legal services, the ABA and various states adopted disciplinary rules that prohibited lawyers from practicing law in partnerships with non-lawyers, practicing in entities owned by non-lawyers, sharing legal fees with non-lawyers, providing compensation to non-lawyers for referrals, and practicing law under the names of non-lawyers. Bar groups also successfully lobbied for legislation prohibiting the unauthorized practice of law.

Notwithstanding these measures, by the second half of the 20th century lawyers and non-lawyers were performing many similar activities — particularly outside of the litigation context. Perhaps the most significant area of overlap was "tax consulting," which accounting firms began to offer in the 1950s. Bar groups claimed that this constituted the unauthorized practice of law, but the courts rejected these contentions. Accounting firms then began to hire lawyers to assist in providing

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