GEORGIA SET TO IMPLEMENT TRANSITION TO LAW PROGRAM

The Supreme Court of Georgia has cleared the way for a mandatory “transition into law practice” program in that state. The Court approved necessary rule changes on February 8, 2005, allowing the program to begin in January 2006. The Board of Governors of the State Bar of Georgia had earlier approved an implementation plan for the program.

The transition program, which will affect about 1,200 new lawyers who take the Summer 2005 bar examination, is designed to “assist beginning lawyers ... in acquiring the practical skills, judgment and professional values necessary to practice law in a highly competent manner.” It is based upon a pilot project involving about 100 mentors and 100 beginning lawyers, which was conducted from 2000-2002.

Newly admitted lawyers will be matched with another lawyer, who has at least five years of experience, for the first year after their admission to practice. New lawyers practicing in an office with more experienced lawyers will typically be matched with a lawyer from the same office. Those practicing in other settings will be matched with a mentor selected by the program or placed into a mentoring group.

The mentoring program will be supported by an enhanced continuing legal education program. Each new lawyer and mentor will submit a mentoring plan for the new lawyer’s first year of practice, and both will have to certify at the end of the first year of practice whether the new lawyer has satisfactorily completed the mentoring plan. Among other things, the mentoring plan is expected to provide for regular contact between the new lawyer and mentor, with continuing discussions of various topics, including ethics and professionalism, law

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Prosecution Ethics Center Collects State Law Research Links at New Website

The National Center for Prosecution Ethics, affiliated with the National College of District Attorneys, has launched a website that provides links to ethics rules and advisory opinions in each state, as well as links to other relevant state websites. The website will soon include topical indices for advisory opinions and disciplinary cases relevant to lawyers practicing in the criminal justice field.

In addition to the general access areas, the website will include other ethics materials available only to prosecutors.

(Readers may visit the new NCPE website at www.ethicsforprosecutors.com.)
Nearly 50 University of South Carolina law students participated last summer in a voluntary judicial observation program in state courts.

Created by the South Carolina Chief Justice’s Commission on the Profession and administered by the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law, the program matched students with participating judges for several weeks on a voluntary basis.

The goal of the program according to G. Dewey Oxner, Jr., a former president of the South Carolina Bar and vice-chair of the Commission, is “to allow law students to observe how lawyers conduct themselves in a courtroom and in chambers with a judge. The perspective they receive is different than if they are present as clerks for a law firm. Most importantly, the program gives students an opportunity to discuss with a judge what is appropriate or inappropriate behavior.”

Despite the lack of compensation or academic credit, the experience was popular among students. Because the program was conducted over the summer, most students were able to be placed with judges in their hometown or in a city where they had a summer job.

Each judge arranged a work schedule with the assigned student. Many students were given several weeks off from a summer job to attend court full-time during the period. Others split the day at court and at a law firm.

Prior to participating in the program, each student was required to attend an ethics seminar at which topics such as conflicts of interest and confidentiality were discussed.

“We encountered very few ethical problems, especially given that this was a very temporary job at the court and many of the students were working at local firms,” said Rob Wilcox, director of the NMR&S Center. “I think judges went out of their way to try to work out an acceptable arrangement that would allow the student to benefit, without creating an unacceptable ethics problem.”

Wilcox said that response to the first year of the program was very positive from both students and judges. A survey of both judges and students at the end of the summer showed that most considered a two or three week observation period as adequate in length for the purposes of the program.
IN PRACTICE

RECENT CASES HIGHLIGHT JUDICIAL CONCERN FOR CIVILITY AMONG LITIGANTS, COUNSEL (AND EVEN EACH OTHER)

Civility is usually mentioned in published opinions only in response to a perceived shortcoming on the part of someone who has appeared before the court. We are reminded, from time to time, however, that, although it may be unusual to find explicit praise of excellent advocacy in a court opinion, true excellence does exist.

In a refreshing change from the focus on negative behavior, Delaware Superior Court Judge William C. Carpenter, Jr., recently closed an unpublished opinion on a very different note, informing the clients directly that “I do not believe that in my ten years on the bench I have had finer attorneys practice before me. Both Mr. [Richard] Wallace and Mr. [Peter] Kahana were not only gentlemen but excellent advocates for their clients. . . . [T]hey both exhibited the highest degree of advocacy and civility expected of our profession. . . .” Christiana Marine Service Corp. v. Texaco Fuel and Marine Marketing Inc., 2004 WL 42611 (Del. Super. Ct. 2004).

Lawyers in many parts of the nation undoubtedly would attest that the good practices observed by Judge Carpenter are more the rule than the exception, even if they are left largely unrecorded. Unfortunately, not all the news is good. Other recent opinions offer reminders that civility concerns extend not only to counsel, but also to litigants and even to fellow members of the court.

In People v. Ehlert, 811 N.E.2d 620 (Ill. 2004), the Illinois Supreme Court provided an unusual window into the emotion surrounding a division between the majority and dissent. In reversing a murder conviction, the majority expressly criticized the tenor of the opinion written in dissent. The dissenting justices “clearly disagree with our conclusion in this matter,” wrote the majority, “and we feel compelled to ... comment on the disparaging tone and tenor they use in their opinion.... We acknowledge that on any particular issue conscientious jurists can respectfully disagree .... However, these justices should do so in a civil and judicious manner. The dissent ... filed today borders on demagoguery when the dissenting justices choose to cross the bounds of collegiality by insisting that the members of the majority have ‘irreponsib[ly]’ ignored evidence ... and ‘disingenous[ly]’ warped the standard of review in order to free a convicted murderer. Suffice it to say, it is difficult for this court to expect practitioners to engage in civility in the practice of law when members of this court are unwilling or unable to engage in respectful legal discourse in a published opinion.”

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“PROFile” is published by the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. News items, short articles, or information on upcoming events pertaining to professionalism or related legal ethics issues should be submitted to Professor Robert M. Wilcox, University of South Carolina School of Law, 701 S. Main Street, Columbia, SC 29208 (Center@law.sc.edu).

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The case involved a mother who had been charged with the murder of her newborn child. The majority’s distaste for the tenor of the dissent apparently began with the first line of the dissent, which stated that “For all practical purposes, it is now legal in Illinois for a parent to murder his or her newborn infant.”

The conduct of a pro se litigant attracted the attention of a concurrence in *Gleason v. Isbell*, 145 S.W.3d 354 (Tex. Ct. App. 2004). The concurring judge cautioned the judiciary to ensure that even pro se litigants adhere to the same responsibility as lawyers “to act with respect and dignity in their dealings with the court... Even though judges, on a personal level, might be willing to suffer insults and personal attacks...they must, by virtue of their office, protect the dignity of the court from such offensive and unacceptable conduct.”

Other recent decisions have addressed the relationships of counsel with third parties and with witnesses. In *Attorney Grievance Commission of Maryland v. Link*, 844 A.2d 1197 (Md. 2004), a lawyer was accused of verbally abusing a customer service representative at a state agency. The Maryland court indicated that a lawyer could be disciplined for conduct toward any member of the public if the behavior is of a type that “may breed disrespect for the legal profession and potentially for the courts.” The court, however, declined to find an ethical violation where the conduct was “inappropriate and unfortunate, [but] neither criminal nor conduct of the kind that the harm or potential harm flowing from it is patent.”

A prosecutor’s treatment of witnesses caught the attention of the court in *Commonwealth v. Poplawski*, 852 A.2d 323 (Pa. Super. Ct. 2004), although the issue did not appear to factor directly into the court’s grant of post-conviction relief. The court reminded the prosecutor of a duty to treat witnesses in a civil, professional and courteous manner at all times, noting that “the prosecutor’s cross-examination as a whole was marked by an unusually high number of argumentative, sarcastic and irrelevant questions, loaded with unnecessary editorial commentary on the witness’s answers.”

A Wisconsin prosecutor fared somewhat better in *State v. Johnson*, 681 N.W.2d 901 (Wis. 2004), as the court denied post conviction relief, finding that a prosecutor’s cross-examination was a proper attempt to undermine the witness’s credibility and not an improper attempt to bolster another witness. A concurring opinion, however, suggested that by allowing the prosecutor to ask whether another witness was lying, the court had taken “a step backwards in our pursuit of promoting civility in the courtrooms of this state.”

An aggressive response to a motion for sanctions earned a rebuke from the Texas Court of Appeals. Plaintiffs’ appeal of a decision dismissing a medical malpractice action was deemed frivolous. The court then characterized the plaintiffs’ response to a defense motion for sanctions as an “ad hominem” and “a vitriolic political attack” that justified an award of attorneys’ fees. The offending language by the plaintiffs in their response to the motion was a statement that “[t]he relief sought by [the movant] and his counsel is part of a concerted effort by the Texas Medical Association, the Texas Medical Liability Trust, and other entities to intimidate and harass deserving parties such as the Appellants.” *Lookshin v. Feldman*, 127 S.W.3d 100 (Tex. Ct. App. 2003.)
Representatives from legal education, bar admissions, and a lawyer assistance program told an audience of law school faculty and administrators that there is a need for a more consistent and deliberate approach to mental health and substance abuse issues among law students and lawyers.

Meeting at the annual conference of the Southeastern Association of Law Schools on Kiawah Island, S.C., the panel urged every law school to adopt a clear set of practices for addressing these issues when they arise.

Don Carroll, executive director of the North Carolina Lawyer’s Assistance Program, noted that not every case should be handled the same way. However, he stressed that the goal in each case should be to get students to a trained counselor who can evaluate whether a problem exists and, if necessary, work with the student to obtain treatment.

In describing the extent of the current problem, Carroll cited surveys showing that, although law students enter school with average rates of depression, the percentage of third-year law students exhibiting signs of depression may be several times the average.

Cravens Ravenel, the immediate past chair of the South Carolina Committee on Character and Fitness, and a Columbia lawyer, said that a large majority of lawyer disciplinary matters involve a mental health or substance abuse problem. Moreover, a bar applicant with an untreated problem is not likely to be approved for bar admission. In contrast, Ravenel said, a student who has acknowledged a problem early enough to progress through a course of treatment before taking the bar exam is more likely to receive a favorable decision.

Jeff Brauch, dean of Regent University School of Law in Virginia Beach, discussed efforts by his school to encourage students to reflect on the values of lawyering and on how their important moral perspectives should not be abandoned in their work as lawyers.

Rob Wilcox, director of the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina, moderated the panel.

(For further information on studies of depression and alcohol abuse among lawyers and law students, see Connie Beck, et al., Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers, 10 J. L. & Health 1 (1996).)
The deadline for submissions in the Second Annual Warren Burger Prize essay contest, sponsored by the American Inns of Court Foundation in connection with the Nelson Mullins Riley & Scarborough Center on Professionalism, is June 15, 2005. The author of the winning essay on a topic of legal excellence, civility, ethics, or professionalism will receive a $5,000 cash prize and the winning essay will be published in the *South Carolina Law Review*.

The Foundation awarded the first Warren Burger Prize in October 2004 to Professor Stephen D. Easton of the University of Missouri–Columbia. The award was presented at the Foundation’s annual Celebration of Excellence dinner, hosted by United States Supreme Court Associate Justice Stephen G. Breyer in Washington, D.C. Professor Easton’s winning essay was entitled “My Last Lecture: Unsolicited Advice for Future (and Current) Lawyers.”

The annual essay contest is named in honor of the late Chief Justice, who championed the establishment of the American Inns of Court in the 1980s to promote civility, ethics, and professionalism among the nation’s lawyers and judges.

*(Further information on contest rules is available at www.innsofcourt.org.)*