

NEW JERSEY LAWYER

Volume 13, Number 21

The Weekly Newspaper

May 24, 2004

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'Proud to be a lawyer'

By Harvey C. Fisher

Don't recoil from those who take potshots at the legal profession. Tell them why they're flat-out misguided.

And make sure the public knows that those who broad-brush lawyers as opportunists simply looking to make a fast buck usually are driven by their own self-interests — interests that often don't have the public or clients at heart.

And, yes, tell the world you're proud to be a lawyer and don't be bashful about touting the reasons attorneys make a difference in society's mores and laws.

It was more than just a rah-rah pep talk for the profession Thursday night in Atlantic City from Edwin J. McCreedy after he was sworn in as the 106th president of the New Jersey State Bar Association.

What he had to say is that attorneys must take the offensive against those who've made a virtual cottage industry of treating the legal profession like a pin-cushion.

Attorneys, he said, have plenty of ammunition — their records — to blow away the naysayers and begin reclaiming the high ground in what has become a crucial battle for public opinion.

"You hear little talk about lawyer-pride these days because lawyer-bashing has become so fashionable," he told his black-tie audience of hundreds of lawyers, judges and others. "When doctors blame lawyers for the medical malpractice 'crisis,' the Chamber of Commerce faults attorneys for increased business costs and there is a general call for 'tort reform,' it is easy to become defensive about our profession instead of being proud of it."

The ex-Marine offered fighting words, but in his characteristic matter-of-fact style.

Text of speech, Page 39

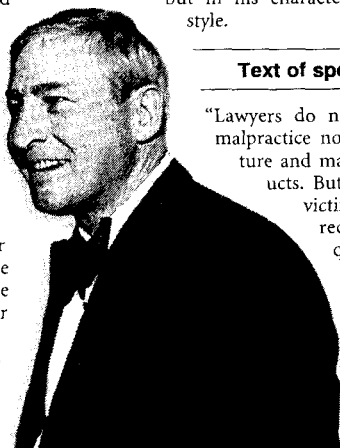
"Lawyers do not commit medical malpractice nor do they manufacture and market defective products. But we ensure that the victims of those who do, receive just and adequate compensation for their injuries."

The message, he suggested, may seem simple, but it simply is not being told enough.

He noted that even the critics come hat in hand when they themselves need a lawyer.

"The very corporations which decry lawyers rely on us for their contracts, their patents, their variances, their tax advice and their employment issues. The doctors

CONTINUED ON PAGE 29



NJSBA fights rule change

By MichaelAnn Knotts

The New Jersey State Bar Association is warning that publicly hanging lawyers out to dry simply based on possibly baseless ethics allegations by disgruntled clients would be a horrendous and costly mistake.

The state's largest attorney organization says a potential court rule change mandating full disclosure of all ethics grievances lodged against attorneys could potentially have devastating repercussions not only for the targeted lawyers, but for those lodging the complaints by making them fair game for malicious-prosecution lawsuits.

In so asserting, the State Bar has come out strongly against the move to eliminate the so-called gag rule provision of Rule 1:20-9. It requires "all participants" in a disciplinary

CONTINUED ON PAGE 29

State courts:

Poritz: All's well

By Harvey C. Fisher

Declaring that the state court system is rolling along in tip-top shape, Chief Justice Deborah T. Poritz says the judiciary still has room for improvement. "We must continue the process of self-examination and self-improvement if we are to continue to excel," she said.

Her comments came during her report for the third consecutive year on the State of the Judiciary during the New Jersey State Bar Association's annual meeting in Atlantic City.

"The New Jersey judiciary is in excellent shape," she said, paying tribute to the state's judges and lawyers who work in the system's trenches.

She focused most of her annual report on three issues — plans to establish a new pilot project for specialized handling of complex commercial cases, efforts by the Family Part to oversee the beleaguered child placement system, and the need to



Chief Justice Deborah T. Poritz

expand the state's drug courts to the remaining eight counties that do not have that alternative judicial process.

Several years ago, the state, responding to requests from lawyers, established the first complex commercial pilot program in Essex and Bergen counties.

Beginning in September, another pilot program involving Burlington, Hudson, Mercer and Ocean vicinages

will be launched, with a general equity judge presiding over cases that usually would have gone to the Civil Division.

"What that means is that one judge will be handling all eligible Track IV commercial cases from beginning to end," she said.

Cases will be eligible for such handling if all parties request it early on, agree to waive a jury trial, use complementary dispute resolution methods and are amenable to expedited discovery.

CONTINUED ON PAGE 28

Federal courts:

Brown: Gloomy

By MichaelAnn Knotts

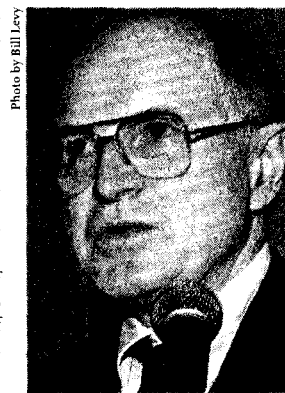
While pointing out the U.S. District Court for New Jersey has had a successful year, a "gathering storm" of financial woes could eventually undermine the ability of courts here and throughout the federal judiciary to provide core functions, reported Judge Garrett E. Brown Jr.

"Budget cuts have resulted in fewer staff and less resources," he told attendees at the New Jersey State Bar Association's annual meeting Thursday in Atlantic City.

At the same time, he praised Clerk William T. Walsh and his staff for working late and on weekends without overtime pay to make up for the shortfall caused by current budget reductions.

A fed judge rips 3rd Circuit, Pages 3 and 7

Brown quoted Chief Judge John G. Heyburn II of the Western District of Kentucky, chairman of the Judicial Conference Budget Committee, who had warned, "The country faces the possibility of a second-class system of justice if the federal courts are not provided adequate funding."



Judge Garrett E. Brown Jr.

CONTINUED ON PAGE 28

Icon dies

William J. Brennan III, one of the stalwarts of New Jersey's legal profession, died last Monday. The son of the late U.S. Justice William J. Brennan Jr., he was president of the New Jersey State Bar Association in 1984-85. See obituary, Page 4.

MEDICAL LAW

Could there be another Nurse Cullen? See special section

State Bar fights gag rule change

CONTINUED FROM PAGE 1

proceeding — from claimants to disciplinary system officials and employees — to maintain confidentiality.

Thousands of lawyers ultimately could be affected if the rule is changed to comply with a request by a lawyer watchdog group, Citizens for Justice in New Jersey, which contends the existing rule is unconstitutional.

That group, which says most complaints against lawyers never see the light of day, last year targeted the rule in *R.M. v. Supreme Court of New Jersey*. The high court, bypassing trial and appellate levels, sent the issue to its Professional Responsibility Rules Committee for administrative review.

That panel held a hearing Friday in Atlantic City and it remains unclear when the committee will issue its recommendation to the justices.

The State Bar made clear to the panel where the lawyer organization stands.

Meanwhile, a Washington, D.C.-based consumer watchdog group, HALT-An Organization of Americans for Legal Reform, said it has advised the committee here that the rule, as generally interpreted, unconstitutionally silences consumers with gripes against lawyers.

The Office of Attorney Ethics' (OAE) grievance form specifies confidentiality must be maintained "during the investigation until and unless a complaint is issued and served. Only at that time does confidentiality end and the matter become public."

And, according to the State Bar, that achieves an appropriate balance between the public's need to be informed about lawyer disciplinary proceedings and the right of accused attorneys not to have their livelihood put in jeopardy by prematurely releasing misconduct allegations.

Twelve percent of filed grievances annually result in formal complaints that become public.

Specifically ...

The State Bar offered several arguments for not changing the rule:

- Making all grievances public, "whether they are baseless or not," would be unnecessarily punitive, as complaints "could be used for spiteful or underhanded purposes," harming innocent lawyers.

- According to the OAE, "the vast majority of grievances are dismissed because they are without merit."

- The goal of the Ethics Diversionary Program, providing a second chance to lawyers who have committed "minor misconduct" but otherwise have unblemished records, would be undercut.

- District ethics committees include public members, ensuring "the trustworthiness and accountability of the current system."

- Changing the rule could affect "another lynchpin of the disciplinary system — immunity from suit for malicious prosecution for those who file grievances."

In support of that last point, the State Bar cited the 1986 New Jersey Supreme Court case *In re Skevin*. While that ruling preceded adoption of the current rule, the decision makes clear the connection between confidentiality and immunity, said the State Bar.

"We have taken extraordinary steps to protect the public interest in ethics disciplinary proceedings by affording to litigants who respect its confidentiality an immunity from suit for malicious prosecution," said the court in *Skevin*, noting, "In exchange, we insist only that the parties who invoke the disciplinary process

respect its concept of confidentiality until a finding is made."

The reason for confidentiality, said the *Skevin* court, is that "even an unsubstantiated charge can, if misunderstood, do irreparable damage to an attorney without any corresponding public benefit."

Violating confidentiality would result in forfeiting immunity from suit, the court warned.

In its comments, the State Bar agreed, noting if lawyers "are to be subjected to the public airing of every grievance, whether they be substantial, scurrilous or just misinformed, then it would be grossly unfair not to allow lawyers the recourse of filing suits for malicious prosecution. In short, if confidentiality falls by the wayside, so should immunity for grievants."

Washington-based HALT, however, urges the court committee to allow grievants to speak freely.

Rallying cry to lawyers: Be proud!

CONTINUED FROM PAGE 1

who blame lawyers for high malpractice premiums turn to us when they form professional corporations, lease office space and collect unpaid bills.

"While we have to defend ourselves from criticism by these groups, politicians, the media and others, all still turn to us in times of trouble. I trust that the irony was not lost on any of you when, two weeks ago, the New Jersey Medical Society went to court, with a lawyer, of course, seeking an injunction against enforcement of new regulations that would make medical malpractice records public."

For many at the State Bar's annual meeting last week, his finger-pointing at the medical profession amounted to just desserts. For the past two years, the Medical Society and many of its members have blamed lawyers for causing doctor's insurance premiums to soar and driving some physicians from the profession.

As the State Bar's president-elect, McCreedy last year testified in Trenton that such accusations are essentially bunk, that doctors who commit malpractice have only themselves to blame, not the attorneys who stand up for victimized patients.

In one succinct sentence, the highly respected trial lawyer from Cranford said a mouthful:

"What we do matters to our clients."

And he added flesh to that bone.

"It is important ... that we continue to remind the governor, the legislature, the business community, the medical profession, the media and the public about all of the good things that lawyers stand for and do. It is easy to cast blame when we advocate for our clients, when we insist on safer products and environments, and when we hold people accountable for their actions. But where others try to fix the blame, we fix the problems.

"We always have and we always will."

He spoke of lawyers, past and present, who have had a major impact on the nation and the state.

He mentioned, for example, William John Kane, director of the state's Lawyers Assistance Program, which

helps attorneys and judges with drug, alcohol, gambling and other problems. McCreedy noted that those at a recent gathering celebrating the program's 10th anniversary were asked how many of them felt Kane had saved their lives.

"At least 40 people stood up. So the next time someone says, 'Did you hear the one about the lawyer who walked into a bar ...?' tell them about Bill Kane!"

Protects public

Sure, he said, there are the bad eggs, but at least in New Jersey there is no profession which "better protects the public from unscrupulous practitioners than ours."

In that regard, he cited the creation 30 years ago by the State Bar of the Lawyers' Fund for Client Protection. The inference was clear: What other profession reimburses people for their losses caused by rogue members?

As the State Bar's president, he said, he hopes to play an instrumental role in adding to members' benefits and services.

Third Circuit tosses Wolin

CONTINUED FROM PAGE 3

Two months before Wolin tabbed Hamlin to help him in the five asbestos cases, Chief Judge Rosemary Gambardella of the Bankruptcy Court for New Jersey appointed him as the "legal representative of present and future holders of asbestos-related demands" in the unrelated matter, *In re G-I Holdings*.

A month after Wolin appointed his advisers, Hamlin filed an application in *G-I Holdings* to have Gross act as his local counsel, which Gambardella approved.

Garth said there is "a substantial likelihood ... that some of the future claimants in *G-I Holdings* will also have claims against one or more of the debtors in the five asbestos cases."

But Fuentes said Gross and Hamlin had no conflict of interest.

"In an asbestos bankruptcy proceeding, all present and future asbestos claims are steered away from the

"It's appalling that a state with such a long-standing tradition of openness and progressiveness continues to support an unconstitutional gag rule that muzzles New Jersey citizens from telling anyone that they have filed a grievance against an attorney, said Suzanne Mishkin, the organization's associate counsel.

The watchdog group claims several other states, including Tennessee, Florida and New Hampshire, recently abandoned confidentiality rules in the interest of "defending the rights of legal consumers."

The organization's statement summarizing its comments to the committee makes no mention of a balance between confidentiality and grievants' immunity from suit, a major point in the State Bar's position.

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He took a semi-veiled but gentle poke at the New Jersey Supreme Court for its decision a couple years ago to institute major changes in civil practice procedures without giving the State Bar much of a role in the decision-making.

"We, as the most frequent users of the court system, should have more to say earlier on in decisions about developing and changing its rules and administration."

But the theme liberally laced throughout his inaugural speech never strayed far from each paragraph.

"There is, in short, a lot for lawyers, for us, to be proud of. During my term as your State Bar president, I am going to remind people of all we have to offer."

And he pulled it all together with his final words:

"Our society is the best in the world, in part, because lawyers have made it that way."

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bankrupt debtor and applied to a properly funded trust approved by the bankruptcy court," he noted.

"The money at stake in *G-I* has no relation whatsoever to the money at stake in any of the five asbestos cases, and the responsibility held by Gross and Hamlin to maximize future *G-I* asbestos claimants' share of the *G-I* trust (emphasis in original) presents no duty with respect to the division of the trusts in the five asbestos cases," he said.

Fuentes also said Wolin was about to issue a key ruling on a plan opposed by bank creditors. He said that according to Wolin, the plan would eliminate more than \$1 billion in debt guaranteed by Owens Corning subsidiaries.

It was at that point, Fuentes said, that a creditor, Kensington International Limited, sought Wolin's recusal.

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