



## **MESSAGE FROM THE NYCLA PRESIDENT JAMES B. KOBAK JR.**

### **Update on NYCLA Ethics Institute**

In the fall of 2008, NYCLA's Board of Directors approved the establishment of an Ethics Institute to act as an umbrella entity for NYCLA's ethics activities. The Institute was also charged with:

- Serving as a liaison to the ethics-related committees of other bar associations;
- Enhancing the ethical components of continuing legal education programming;
- Providing advice to NYCLA regarding the positions it should take on matters of ethics and professional responsibility; and
- Promoting publication opportunities for NYCLA and the members of the Ethics Institute's Board of Advisors.

I am grateful for the dedication and hard work of Lewis Tesser, director of the NYCLA Ethics Institute, Bari Chase, CLE director, and the members of the Ethics Institute's Board of Advisors, comprising judges, academics, disciplinary committee members and practitioners, all of whom have contributed to the Institute's success.

### **Umbrella to NYCLA Committees**

The Ethics Institute serves as an umbrella entity to the following NYCLA committees:

- **Task Force on Professionalism**

In January, NYCLA issued the Task Force on Professionalism's Report, which identified the issues and concerns relating to professionalism and ethical behavior of members of the legal profession and recommended solutions. As the Report notes, "One predominant theme was an expressed need and desire for mentoring. This need appeared to exist not only among those in small or individual practices but also among larger firms or institutions, whose formal mentoring programs were sometimes felt to be lacking or potentially compromised by the employer/employee relationship." The Report recommended that NYCLA institute a mentoring program.

A sub-committee of the Task Force and CLE Institute developed a Pilot Mentoring Program that pairs seasoned attorneys with mentees. The program launched in January of this year and provides participants with CLE credits through their active involvement in educational programs. Additionally, mentors are meeting with their mentees in person, via phone and by email on an as-needed basis. This summer, mentors and mentees gathered at a Staten Island Yankees game for a social evening to cement previous relationships and foster new ones. Based on feedback received from participant surveys, plans are currently underway to institutionalize the program beyond the pilot stage in early 2011. The Task Force's new chair, Ronald C. Minkoff, said, "I look forward to expanding the mentoring program as well as exploring professionalism initiatives in which NYCLA works with local law schools on bar admission and character and fitness issues."

- **Professional Discipline Committee**

During the past year, the Committee has been studying the appropriateness and feasibility of performing pre-licensure criminal background checks on applicants for admission to the bar and the comparative penalties and settlement options among the various state agencies regulating professional licensure.

- **Professional Ethics Committee**

The Committee responds to hotline calls regarding ethical issues and issues ethics opinions. Recent opinions are: Ethics Opinion 740 - Use of the title "partner" in connection with law firm practice; Ethics Opinion 741- Lawyer learns after the fact that a client has lied about a material issue in a civil deposition; and Ethics Opinion 742 - The practice of limited scope representation, also known as ghostwriting, under the new New York Rules of Professional Conduct. NYCLA was the first bar association to publish ethics opinions and under its current chair, Barry Temkin, continues to issue thoughtful, cutting-edge opinions, as well as provide emergency guidance to New York lawyers by responding to hotline calls

### **Continuing Legal Education**

Since its inception, the Ethics Institute has sponsored 17 CLE programs. The programs, all with legal ethics as their foundation, evaluated ethical obligations as they are applicable to various substantive fields of law, including criminal, litigation, matrimonial, tax, real estate and construction, estates and trusts, insurance and intellectual property. Additionally, programs have focused on the new Disciplinary Rules and avoiding ethical pitfalls at the office holiday party. In a special program last fall, "Shysters, Sharks and Saviors: Are Legal Ethics Immoral?," Ethics Institute Director Lew Tesser moderated a program featuring Randy Cohen, "The Ethicist" of *The New York Times Magazine* section, and Professor Bruce Green, Louis Stein Chair Professor at Fordham University School of Law. Last year, the Institute co-sponsored a live/phone program with the Dade County Bar Association, "Ethical Issues for Lawyers with Multi-Jurisdictional Practices," which provided practical guidance for New York and Florida attorneys and was a sold-out success in New York City.

Coming up on October 25, another program will feature prosecutors and defense attorneys exploring the provocative issue of "Is Criminal Lawyering About Truth?"

The 2010/2011 programming calendar will continue to focus on the ethical obligations applicable to such substantive fields as employment law, alternative dispute resolution and immigration law. "Just One Click Away" will examine the ethical issues surrounding email and social networking sites, while another program will delve into the professional disciplinary process.

### **Advice on NYCLA Positions**

The Ethics Institute has advised the NYCLA Board on (or is currently researching) the following subjects. My predecessors and I have found their presence and willingness to delve into issues on sometimes short notice invaluable:

- The ABA's proposal to amend Rule 1.10(e) of the Model Rules re the screening of attorneys moving laterally from one law firm to another and avoiding the imputation of conflicts;
- The FTC's proposed Red Flags rule;
- A proposed amendment to the New York Lien Law (authorizing an attorney to attach a charging lien to awards and settlement proceeds that clients receive through ADR and settlement negotiations);
- The relationship between age discrimination against attorney job applicants and the Rules of Professional Conduct, i.e., What should lawyers do when online employment forms ask questions they think are impermissible?;
- A recommendation that Rule 3.8 "Special Responsibilities of Prosecutors and Other Government Lawyers" be amended to govern the conduct of prosecutors in criminal matters where they learn of new, credible and material evidence indicating that the convicted defendant is likely innocent;
- Reforming New York State's financial disclosure requirements for attorney-legislators;
- Whether Professional Ethics Committee opinions should incorporate public comment; and
- Whether the New York Court of Appeals should adopt rules regarding the registration of in-house lawyers who are licensed and in good standing elsewhere.

### **Liaison with Ethics Committees of Other Bar Associations**

The Ethics Institute has worked or is currently working with other bar associations on:

- the ABA Ethics 20/20 Commission;
- development of an approach for coordinating with other bar associations around the state in advocating change and responding to proposed legislation or professional responsibility rules affecting the practice of law;
- the lack of a uniform system of attorney disciplinary among the departments in New York; and
- proposal of rules to permit in-house counsel to serve their clients in New York when admitted elsewhere and agreeing to be subject to the disciplinary rules of New York,

#### **Publications to Help Practicing Lawyers**

A sub-committee of the Ethics Institute's Board of Advisors has prepared the just released *The New York Rules of Professional Conduct, Rules and Commentary*, Oxford University Press, 2010. This will be a major, practical and easily researchable guide for ethics questions for New York lawyers. In addition, articles by Ethics Institute Board members have been published in *Bloomberg Law Reports*, including: "The New New York Rules of Professional Conduct," "Who Is the 'Lawyer' Governed by New York's Disciplinary Rules," "Attorney Ethics and Real Estate Issues" and "When a Client Wants to Give Something of Value to the Attorney," which was nominated as "one of the best contributed articles in the fourth quarter of 2009."

Through all these activities, the Ethics Institute is building on NYCLA's history of keeping the issues of ethics and professionalism at the forefront and providing resources, practical guidance and role models for its members and the New York legal profession.