Do you have a question about legal ethics that affects your practice? ETHICSearch can help. For quick and confidential research assistance click here to send us your questions.

Going. Going. Gone! Or may a lawyer provide legal services as an item in a charitable auction?

By Peter H. Geraghty
Director, ETHICSearch

Your local school holds a charitable auction every year to raise money for the school arts program. You would like to offer your services to draft a will for the highest bidder as an auction item.

Can you do so?

Ethics opinions that address this question typically analyze the issues under their respective state's versions of ABA Model Rules of Professional Conduct 1.1*Competence*, *1.7 Conflicts of interest: Current Clients*, *5.4 Professional Independence of a Lawyer*, *Rule 7.2 Advertising* and *Rule 7.3 Direct Contact with Prospective Clients*.

I. State Bar Opinions: Qualified approval

There are several state bar opinions that come to differing conclusions on this question. Those that permit a lawyer to donate their services in an auction do so on a qualified basis. See, e.g. Nebraska State Bar Opinion 06-11 (2007) that withdrew an earlier Nebraska Formal Opinion 92-4 (1992). Nebraska Opinion 06-11 states as follows:

> …[A]n attorney may donate legal services to a charitable organization if all of the following requirements are met:
>
> 1. Services only in the lawyer's area of competence are donated;

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2. The specific service and identity of the lawyer are disclosed;

3. The lawyer retains the right to decline for conflicts of interest or other ethical reasons the representation in which case the lawyer will refund in full the auction price paid by the client; and

4. All communications regarding the auction comply with the above requirements and are not false or misleading. – Nebraska State Bar Opinion 06-11 at page 2.

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Some of the State Bar opinions that do not approve of lawyers making services available as an auction item (see below) argue that it is violative of Rule 7.2's prohibition against giving something of value to a person for recommending a lawyer's services and that purchasers of the auction item may be misled about the qualifications of the lawyer providing the services. Nebraska Opinion 06-11, discussing an earlier unpublished Nebraska informal opinion that reversed its conclusions in Formal Opinion 92-4 refutes these concerns stating:

…In the informal opinion this committee discussed the reasons for prohibiting donations of legal services, specifically that there was the possibility that a lawyer would be giving something of value to the charity in return for the charity recommending the lawyer's services, and that misleading statement could be made about the attorney, resulting in the selection of an attorney on an uninformed basis. It determined that the issue of a referral fee seemed to apply more appropriately to a lawyer paying a fee to a third party to recommend that lawyer to a paying client. Here, the client pays something of value to the charity and the lawyer receives nothing other than the satisfaction of doing a good deed. It further determined that the possibility of misleading information being communicated to the bidders could be adequately protected against by the attorney in the wording of the auction item that the services would only be in the lawyer's area of competence, that the attorney retains the right to decline the service for conflicts or other ethical problems in which case the price would be refunded by the

attorney, and that communications regarding the auction not be false and misleading.

For other State Bar opinions that provide a similarly qualified approval, *See* Hawaii Opinion 31 (1992) California State Bar Opinion 1982-65 (1982), Ohio (Cincinnati) Opinion 91-92-04 (undated) and Philadelphia Opinion 80-35 (undated). South Carolina Opinion 91-35 (1991) stated:

> It is not unethical for a lawyer to donate legal services under the circumstances set forth above. However, to avoid misleading the recipient of donated services, the donating lawyer must offer the services with certain express qualifications, clarifications, and reservations including:
>
> 1. The nature and scope of the services donated should be defined with reasonable specificity.
> 2. The services donated may not be appropriate for all prospective bidders (e.g., a successful bidder for a "simple" case may have circumstances whereby a more elaborate estate plan would be recommended which would warrant a substantially higher fee).
> 3. Circumstances may exist that would preclude the lawyer from performing the services for the successful bidder (e.g., a conflict of interest).
> See Also Alabama Opinion 90-51 (1990):
>
> …[A]n attendant consideration is the fact that, having made the donation, the legal service becomes somewhat open ended in that it is impermissible for a lawyer to accept employment on behalf of a client when any limitations are imposed, by the person recommending or paying for that employment (when it is someone other than the client) to restrain or restrict the scope of the representation. In short, if the purchaser of the Will should need a complex estate plan then you would be required to provide complete legal services in reference thereto. It would be inappropriate, and ethically impermissible for you to limit the gift to a "simple will" when the purchaser might need something altogether different. Accordingly, such a gift is fraught with danger for the attorney and we would suggest, as an alternative, that a cash donation of comparable value be made.

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The Alabama Opinion also stated that public policy considerations might have some effect on the types of services that could properly be offered through such an auction:

> …The Commission has opined in the past that it is impermissible for an attorney to donate a "free divorce" to a charitable cause due to the general proposition that a lawyer's first obligation should be to support the sanctity of marriage and not to promote the dissolution of marriage. Public policy and the appearance of impropriety are important considerations in that regard.

II. State Bar Opinions: Disapproval

Opinions that disapprove of the practice include Ohio Supreme Court Opinion 2002-5 (2002)
(6/14/02) The opinion stated:

> A lawyer should not donate legal services to be auctioned or used as a prize drawing at a fund raiser for a charitable organization. Under DR 2-103(B), a lawyer's donation of legal services to be auctioned or used as a prize drawing at a fund raiser for a charitable organization is a giving of a thing of value which secures employment of the lawyer. Under DR 5-107(B), a lawyer's agreement with a charitable organization to provide legal services to an unknown silent auction bidder or an unknown winning ticket holder may improperly limit the exercise of the attorney's independent professional judgment as to whom to accept as clients and what services to provide. Further, under DR 2-101(A)(1), it is misleading for a lawyer to donate legal services that he or she may not be able to provide because of other disciplinary rules, such as 6-101 (A)(1), DR 5-101(A)(1), DR 5-105, and DR 2-101(F)(1), governing competence, conflicts of interest, and solicitation.

New Hampshire Opinion 1990-91/2 (1991) (because of the numerous ethical dangers surrounding such donations i.e. competence, conflicts of interest, etc., the lawyer should avoid making such donations even though the rules do not expressly prohibit the lawyer from doing so.) For other opinions that

disapprove of the practice, See, Nassau County Opinion 97-11 (12/17/98) that stated:

> A lawyer may not draw a valid will for an organization's members as part of a "Make A Will" program. Both the New York State Bar Association and the American Bar Association have issued opinions on similar topics; both have opined that donating a legal service for charitable fund-raising is ethically impermissible. The following topics are at issue and are discussed below: (1) improper solicitation; (2) a lawyer's discretion and judgment as to selection of clients; (3) the competence of the lawyer to handle the needs of all participants attending a "Make a Will" program; (4) whether donating legal services to charity violates the Code provision that a lawyer may not receive anything of value from a third person in exchange for recommending the lawyer's employment; (5) intelligent selection of counsel by a client; (6) confidentiality; and (7)conflicts of interest.
>
> A lawyer may not prepare wills for the members of a charitable organization as part of a fund-raising "Make a Will" event in which members will pay the organization for the lawyer's donated legal services. The lawyer may, however, co-operate with the charity in presenting and advertising a program in which he will discuss the importance of making a will.

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See Also New York State Bar Opinion 524 (1980), Bar of the City of New York Opinion 81-22 (undated), Monroe County, NY Opinion 1 (undated), Kentucky Opinion E-239 (1981), and Maryland Opinion 80-43 (undated).

ABA Informal Opinion 1250 (1972) stated that a lawyer may not participate in an auction because to do so would violate the applicable advertising and solicitation provisions (DR 2-101 Publicity in General and DR 2-103 Recommendations of Professional Employment) of the ABA Model Code of Professional Responsibility.

Conclusion

State Bar ethics opinions come to differing conclusions on this issue. As

always, it is crucial to check the ethics opinions, rules of professional conduct and case law that have been adopted or issued in the applicable jurisdiction.

ETHICSearch is intended to stimulate awareness of ethical problems and illustrate the varying approaches of different jurisdictions. It is not intended as legal advice. The ABA Model Rules of Professional Conduct and the opinions discussed are advisory only; the ethics rules, laws and court decisions of your jurisdiction may dictate a different result.

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ABA continues to push for legislation protecting the attorney-client privilege

The ABA continues to fight to reverse U.S. Department of Justice and other federal government agency policies that erode the attorney-client privilege, the work product doctrine and employee legal rights during government investigations.

In written testimony submitted to the Senate Judiciary Committee in conjunction with a recent hearing on the Justice Department's McNulty Memorandum, the ABA outlined why it is still concerned about the department's new corporate cooperation standards and their harmful effect on these fundamental legal protections.

The McNulty Memorandum – issued last December to replace the department's previous cooperation standards outlined in the Thompson Memorandum – continues to "pressure companies and other organizations to waive their privileges as a condition for receiving cooperation credit during investigations," stated the ABA.

The new policy also is detrimental to the constitutional and other legal rights of employees because it, like the Thompson Memorandum, continues to pressure companies "to forgo paying their employees' legal fees during investigations or to take other punitive actions against them long before any guilt has been established."

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Attorney-client privilege "is the bedrock of the client's rights to effective counsel and confidentiality in seeing legal advice," noted the ABA. It helps companies act legally by allowing and encouraging them to seek counsel on how best to comply with the law. Further, it helps facilitate self-investigation into past behavior.

In order to protect the privilege and employees' Sixth and Fifth Amendment rights, the ABA encourages Congress to enact legislation such as S. 186 and H. R. 3013, sponsored by Sen. Arlen Specter and Rep. Robert Scott, respectively, which would reverse the harmful government waiver policies.

The ABA's concerns are consistent with those expressed to the Senate Judiciary Committee on July 30 by a group of nine former senior Justice Department officials. After concluding that "the McNulty Memorandum maintains the fundamental flaws of the prior regime," the former officials endorsed the pending legislation.

In its testimony, the ABA noted that the July letter "reflects the growing consensus emerging in the legal and business communities – and among many top former law enforcement officials – that a legislative remedy is needed to reverse the growing 'culture of waiver' caused by the McNulty Memorandum and the other similar federal policies."

The nine officials who signed that July letter comprise a bipartisan group of former attorneys general, deputy attorneys general and solicitors general including Edwin Meese, Dick Thornburgh, Stuart Gerson, Carol Dinkins, Jamie Gorelick, Walter Dellinger, Theodore Olson, Ken Starr and Seth Waxman.

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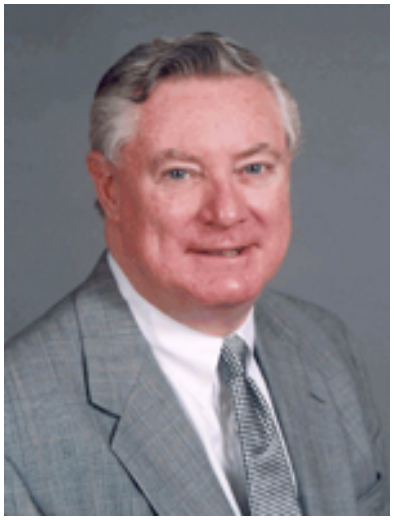
Criminal cross examination tips from Terence MacCarthy



Terence MacCarthy is synonymous with effective cross-examination. For 41 years, he has headed of the Federal Defender's Office in Chicago and is among the top CLE instructors in the nation owing to his lectures on cross-examination technique. MacCarthy is the author of *MacCarthy on Cross-examination*.

MacCarthy recently shared his thoughts on cross-examination with YourABA.

Why is cross-examination so difficult to master?

The difficulty lies in the state of the art. How cross-examination is taught and what is being taught, is not particularly good.

Cross-examination, as I see it, has gone through three major stages. If you read the cross-examinations by the greats of past years, their style and method was all wrong—they were using questions; asking open ended questions of witnesses.

Somewhere around 1970, either NITA or the National Criminal Defense College, perhaps a combination of both, changed us and we went to a second style: the traditional leading question— "You went to the store, isn't that correct?"

The current problem is that lawyers are still using one or a combination of these two methods.

There is a new, third method. The use of simple statements: "You went to the store." This is much more efficient, and particularly helpful in telling your story.

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In your book, you mention that Perry Mason is a wonderful actor, but a terrible cross-examiner. What do you mean by that?

The way he cross-examines is not correct. Perry Mason asks open-ended questions of witnesses. He can get away with it because he's writing his own script and the witnesses cooperate; but the style he uses leaves much to be desired.

How do you win over jurors and overcome their preconceived notions about trials?

The first thing a trial lawyer must do is learn to communicate—it is the most important trial skill. The next step is to get the jurors to like you. If you do that, they will give you the greatest gift imaginable: the gift of credibility. In other words, they will believe what you say. If you do not have credibility, you should think about getting your case settled.

How do you build that credibility? Be honest. You have to treat not only the jurors but everyone in the courtroom with respect. If you do not, they will perceive it.

Lastly, communicate properly with the jury. Look them in the eyes. How about smiling? Also, you must pay attention to your body language. It is essential.

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How can a lawyer use body language and how is it useful? What is the number one body language mistake you see lawyers commit in the courtroom?

The number one mistake is not using enough body language. There have been exhaustive studies done on body language. It is necessary to tell a story, and that is what you do in cross-examination—tell a story. In doing so, you must "paint pictures." The way you do that is not only through words, but you do it with your body, as well.

Some lawyers shy away from using a blackboard in the courtroom. In your opinion, it's a great strategic tool. Why should lawyers consider using one?

A trial lawyer should use anything that aids communication. Any sort of demonstrative evidence or equipment aids communication. Today people are into Powerpoint and other tools. I am old fashioned and still like the blackboard —it is much easier to use and it always works.

There is magic in the simple, ordinary blackboard. When we were very young and impressionable, we saw teachers as all knowing. We took what they said as the word of God. Where did they put that information? On a blackboard! We can still smell the chalk dust in our nostrils. The blackboard is a great device in the courtroom.

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One issue of concern to defenders is media access to court. What are your thoughts on achieving a fair trial and allowing press access?

That's a very good question and a difficult one to answer! You have two conflicting constitutional rights: the freedom of the press and the right of a defendant to a fair trial. Both must be preserved. Actually in most cases this is not a problem.

I suggest the news media take a hard look at press coverage of trials in England. I think it is quite good. They make a concerted attempt to preserve a defendant's right to a fair trial. I think they do it with little sacrifice to the right they have, and should have, to report the proceedings.

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President signs loan forgiveness bill advocated by ABA

Late last month, President George W. Bush signed H.R. 2669, the College Cost Reduction and Access Act of 2007, into law. Among the provisions of the law is the income-based repayment program for public service, for which the ABA has strongly advocated for several years.

Under the program, borrowers of student loans who are working in qualified public service would repay loans at an affordable percentage of their income and, after 10 years of service, would have the balance of their loans cancelled.

"It is in our interest to invest in those who serve the public," stated ABA President William H. Neukom in a prepared statement. "Today's signing into law of the College Cost Reduction and Access Act is an important first step in helping those—including lawyers—who choose a career in public service, by giving them new tools to cope with crushing educational debts. It will help our nation's best and brightest pursue public service jobs in the law and in other fields."

The provision was one of the recommendations of the ABA Commission on Loan Forgiveness and Repayment Assistance, which was formed in 2001.

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The average law school student graduates with nearly $80,000 of debt just from law school. Given the average starting salary of a public interest lawyer is roughly $40,000, loan repayment can claim 40 percent of a borrower's take home pay. Naturally, this forces many to leave public service for higher paying jobs.

Under the new income-based program, monthly payments are capped at 15 percent of discretionary income.

The law includes prosecution and public defense, as well as "legal advocacy in low-income communities at a non-profit organization." In addition to lawyers, other public service jobs are included in the new law, P.L. 110-84. Many of the provisions took effect Oct. 1.

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Set goals, avoid procrastination: Keys for effective time management

It's good to have goals, especially in the practice of law. That was the message from Margaret Spencer Dixon, a lawyer and time management consultant, who spoke at the Second Annual GP/Solo Fall Conference earlier this month in Philadelphia.

Spencer Dixon, who has chaired the Time Management Interest Group of the ABA Law Practice Management Section, explained that goals are not only critical to the practice of law, but also an important step in becoming organized. "Goals help lawyers evaluate the relative value and priority of various projects and tasks," she said.

She outlined the five elements that goals need in order to serve as effective guideposts. Goals must be:

- Specific and measurable
- In writing
- Deadline-driven
- Balanced between challenging and attainable
- Personally adopted

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Goals, whether for a solo practice or a larger firm, need to be ones that the lawyer makes his or her own. "Some things work for some and seem outlandish to others. The key is for lawyers to find what works for them," Spencer Dixon said. She noted that lawyers also need to be able to make organizational goals their own so they are committed to achieving them.

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Keeping life in balance

Spencer Dixon encouraged her audience to make a conscious choice to counterbalance work with regular rest and relaxation, encouraging activities such as sailing, horseback riding, rock climbing, skiing, surfing or snowboarding that incorporate a slight element of danger. "It's hard to be worrying about a court case or client meeting when you're taking in high waves or schussing down a mountain. These activities clear your mind."

She also discussed avoiding procrastination. "Procrastination can be a real problem for lawyers because as a group we are smart people who are trying to be perfect. Lawyers who procrastinate need to realize that it is possible to change and that living a non-procrastinating life is better than living with it." She said that the most important part of any project is to start.

A mind-set readjustment helps avoid procrastination. Spencer Dixon suggests replacing "I must…" with "I choose to …", changing "this project is huge" to "I'll do one small task," and "I have to be perfect" to "I can be human."

Watching the number of hours worked is important to ensure time away from the office. "If I work from eight in the morning until six in the evening, I've worked 10 hours. If I decide to work until seven, I've increased my work time by 10 percent. At the same time, though, I've decreased the number of hours with family or personal projects by 25 percent. That trade off is not effective day after day."

Spencer Dixon suggests a slow but steady approach to making changes in work style. "Improve one habit at a time. Aim for continuous improvement over the long term."

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Visibility and design count but with Web sites content is king

Having a professional Web site is a basic for lawyers and law firms today, according to Brett Osterhout of Thomson FindLaw. Osterhout spoke at the GP/ Solo Second Annual Fall Conference in Philadelphia earlier this month.

Noting that 70 percent of American adults use the Internet regularly, compared to 51 percent in 2000 and 12 percent in 1995, Osterhout pointed out that 91 percent of college-educated people use the Internet and 93 percent of homes with incomes of $75,000 or more are online.

He said that an effective, professional site will attract qualified clients while providing content that is helpful to clients and non-clients alike. With so many people using the Internet, the challenge is in creating a site to reach specific clients.

The three main components of a successful site are visibility, design and content. Of the three, Osterhout said, "Content is king."

And content needs to reinforce a lawyer's expertise with relevant, fresh information, he said. "People will come to your Web site for information. You

need to provide it in a way that is usable to them."

Doing so means coordinating content with design and search-engine optimization. "Design allows you to capture attention by focusing on how you want to portray yourself to your clients and prospective clients."

Osterhout suggests that good design means making the site easy for visitors to navigate in order to answer questions they have and find contact information. "Design elements that support organization add clarity and communicate subtly that the firm represented by the site is easy to work with and organized."

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Part of Web site development is developing a program so the major search engines include the site in their searches. The top three search engines – Google, Yahoo and Microsoft – account for 80 percent of all searches. Google alone account for 47.5 percent of searches.

Web site developers submit individual pages in a site to the major search engines, asking to be included. A page's ranking, or how high near the top it appears in the list of results, depends on the quality of links and indexable content.

As Osterhout explained it, a lawyer might want to have a landing page for a frequently searched term that leads to a practice area that she controls. For example, a person might search for a lawyer who handles custody cases in a specific geographic area. A landing page on custody issues would then direct the person to a page with content on the webmaster's family law practice. Both the family law page and the custody page can be listed with the search engines.

He pointed out that a Web site can be considered an advertisement. As a result, appropriate disclaimers should be used and subjective claims should be avoided. The same standards that apply to other print and promotional materials should be applied to the Web.

Osterhout recommends that lawyers continue to educate themselves about the Web and seek a reputable partner to help develop and manage a site.

For information on the ABA Model Rules regarding advertising, Osterhout

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suggested visiting www.abanet.org/cpr/mrpc_toc.html. For information on state ethics rules, go to www.abanet.org/legalservices/clientdevelopment/adrules, and for news or updates, visit www.abanet.org/cpr/professionalism/lawyerAd.html.

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Blogging: Ethical considerations for the lawyer, legal implications for the client

Just how rampant are blogs? How and why would you use them? And – perhaps most important – why should I care?

These were some of the myriad issues discussed during a recent CLE program, "Blogging: Ethical Considerations for the Lawyer, Legal Implications for the Client," sponsored by the Law Practice Management Section; General Practice, Solo and Small Firm Division; and the ABA Center for Continuing Legal Education.

Panelist Tim Stanley, CEO at Justia, Inc., in Palo Alto, Calif., tracks the rampant escalation of the creation of blogs, and says that there are now between 15,000 and 20,000 lawyer blogs. He cites the relative ease in creating and putting up blogs, as well as the low- or no- cost in building and maintaining them as reasons for the boom. Still, the popularity of blogs has surprised people, he said.

What is a blog? A blog is an online publication in the form of a log or journal that is usually accessible by the public. Most blogs provide news, commentary on a particular subject, or function as a personal journal.

Stanley shared a tip on creating a successful blog. Those that are more personal in nature – where a sense of the blogger's personality comes through – tend to do well, advised Stanley.

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Fellow panelist Robert Ottinger, founder of The Ottinger Firm, offered other suggestions for business-related bloggers. "Associate yourself with the best people in the field," including technological and marketing folks, Ottinger relayed. This way, blogging lawyers can focus their time on writing blogs and lawyering. One way to stand out, Ottinger continued, is to determine one's audience and make sure you write to them at their level.

The impact of blogs is increasing as quickly as the blog phenomenon is growing. It's now common to get quoted and be promoted in traditional media through one's blog.

Moderator Micah Buchdahl, vice chair of the ABA's Law Practice Management Section, cautions that blogs can be a labor issue within your firm as well as raise ethical considerations. Buchdahl noted how some of the ABA model rules of professional conduct apply to blogging.

It's important to have policy relative to blogs in one's workplace, just as one would have policy on use of the Internet or of electronics such as e-mail, stressed William W. Bowser, a partner in the employment law section at Young Conaway Stargatt and Taylor in Wilmington, Del., who has represented both private and public employers on a range of labor and employment matters. Blog policies should be updated and passed along periodically to employees.

A portion of the materials used in connection with the CLE is available free of charge online. The entire program, along with its printed materials, is available through the ABA WebStore .

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Practical, common sense advice toward civility in law practice

Lawyers have bemoaned the lack of civility in the legal profession for some time. Almost 70 percent of lawyers surveyed for "The Pulse of the Legal Profession," a comprehensive ABA study in 2006 surveying the opinions of 800 lawyers, believe that "lawyers have become less civil to each other over time."

Author Robert D. Kraus explores this widespread frustration and offers some helpful suggestions to address the situation in "Toward Civility in Civil Law," that appears in the May/June issue of *Business Law Today*. While his article focuses on business lawyers, Kraus' straight-forward, common sense advice can be applicable to those practicing law of any kind.

1. Be courteous.

2. Return calls and e-mails promptly and as promised, or communicate any delay.

3. Be considerate of other's schedules.

4. Meet deadlines; inform others of any necessity to break the agreed-upon schedule.

5. Use temperate language.

6. Honor promises and agreements, whether on procedural or substantive matters.

7. Avoid making promises and commitments that cannot be kept.

8. Avoid deceptive or misleading practices.

9. Communicate clearly.

By applying even a subset of these principles, lawyers "can elevate their own reputations, enhance their service to their clients, and help the profession as a whole regain a degree of the respect and honor it once attracted, and is still

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due, from [business] clients as well as the general public," wrote Kraus.

To read the full article "Toward Civility in Civil Law," which includes a detailed description of Kraus' principles of civility, download visit here.

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Borrowers and lenders reap consequences in mortgage lending

The current subprime mortgage crisis is unique because it affects both borrowers and lenders. Both groups believed the good times of the bullish real estate market would continue to roll—not anymore.

The upward momentum of housing prices has reversed with individuals and financial institutions severely impacted. How did this state of affairs come to exist?

Two recent ABA CLE programs looked at the current situation in search of answers. The first, "Subprime in Prime Time: What Business Lawyers Need to Know About the Subprime Mortgage Crisis," examines the underlying changes to securing mortgages that led to today's real estate market woes. The second, "The Subprime Lending Industry: Bankruptcy Issues Raised in the Restructuring of an Industry," details the repercussions of the current crisis on the home mortgage industry.

Subprime lending refers to making mortgage loans to individuals who have less than perfect credit. Traditionally, individuals or families needed to have a minimum of 20 percent in cash to put down on a home as well as exceptional

credit to qualify for a mortgage.

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As the profitability of mortgages increased, loan originators as well as banks steadily increased the pool of mortgage holders by making loans to those whose credit was less than perfect, or subprime.

Richard F. DeMong, the Virginia Bankers Professor of Bank Management, McIntire School of Commerce, University of Virginia, points out in "Subprime in Primetime" that the current crisis stems from the transfer of risk.

In the current mortgage situation, banks or loan originators sold mortgages to packagers who in turn sold groups of mortgages to investors in the secondary mortgage market. At each stage in the transaction, the new owners of the mortgages believed that another party had taken on most of the risk and that they had no risk themselves.

DeMong points out that transferring risk leads to changes in behavior and that these changes can lead people astray.

Several factors contributed to the current crisis, he notes. Lowering credit standards, teaser rates, overly optimistic borrowers and investors, and fraud are all involved. Many borrowers took on obligations greater than they could afford because of the attractive very low interest rates they received initially. The thinking seemed to be that their income would go up so they could manage the payments and the value of the property would likewise increase so they could sell the property at a profit if they payments became too burdensome.

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At the same time, investors became accustomed to regular dividends on their mortgage-backed securities.

When rising interest rates and declining home prices impacted the ability of borrowers to continue making payments, investors began exiting the market.

The "Subprime Lending Industry" program further looks at the dynamics that created the current crisis and the results for lenders.

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Questionable practices, such as the use of the "no doc" loan, attracted mortagage applicants with dubious qualifications. No doc means that the buyer or buyers state their income and that the loan originator takes their word without asking for documentation. Too many individuals exaggerated their incomes to qualify for a larger mortgage in order to afford a bigger home.

Coupled with artificially low initial rates, these loans undermined the solidity of the mortgage market. Once individuals failed to meet their obligations, investors began backing away from mortgage securities, causing the market for subprime mortgages to decline. Some originators are unable to place lower-rated mortgage securities with investors and some originators are finding that it cost more to originate loans than the selling price.

The result is that 15 out of the 25 top subprime mortgage lenders in 2006 have either been acquired, are seeking buyers or have shut down. Those subprime lenders who are still in operation have implemented new underwriting, operational and portfolio controls to manage their exposure.

There is talk of both congressional action and the promise of far greater controls at the front end to prevent the subprime crisis from spreading to other parts of the economy.

The ABA CLE of "Subprime in Primetime: What Business Lawyers Need to Know about the Subprime Mortgage Crisis" is available at http://www.abanet.org/cle/programs/t07spt1.html.

The ABA CLE on "The Subprime Lending Industry: Bankruptcy Issues Raised in the Restructuring of an Industry" is available at http://www.abanet.org/cle/programs/t07spt1.html. Materials are available at http://www.abanet.org/cle/programs/nosearch/materials/2007/t07tslcm_intro.pdf.

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ABA Web Store a winning Web site, says Web Marketing Association

The ABA Web Store, http://www.ababooks.org, earned the 2007 Best Associations Website Award from the Web Marketing Association in its annual international WebAwards competition.

"This award demonstrates the success of the ABA Web Store in not only improving the member buying experience, but it also reinforces the relevance, quality, and value of both ABA content and the ABA brand," said Bryan Kay, director of ABA Publishing.

Each site considered by the Web Marketing Association is judged on a 10-point scale in seven categories, including design, innovation, content, technology, interactivity, copywriting and ease of use. Nominations are submitted by interactive agencies and Web site marketing departments in more than 33 countries around the world.

Automated Graphic Systems, the company that took on the challenge of redesigning the ABA Web Store in 2004, worked closely with the Association to create the online storefront. AGS shares in the award.

This latest award comes on the heels of the Web site being selected as one of Internet Retailer's top 500 Retail Web Sites.

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The ABA asks: “What is the biggest challenge facing lawyers?”

ABA members at the Annual Meeting in August shared their thoughts on October’s Question of the Month. What do you think?

Express your thoughts on the ABA discussion board

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Members speak: challenges facing lawyers