

## Corporate Counsel Organization Highlights

### Anticipating A Bright Future For In-House Lawyers

The Editor interviews **Eric D. Reicin**, Vice President and Associate General Counsel, Sallie Mae, Inc., and the 25th President of the Washington Metropolitan Area Corporate Counsel Association (WMACCA). The views expressed in this interview are solely those of Mr. Reicin in his personal capacity and not necessarily those of the entire membership of WMACCA or his employer, Sallie Mae, Inc.

**Editor:** Your service as WMACCA's 25th President has given you the opportunity to interact with many colleagues in the in-house community, the media, in-house counsel, law firms and regulators on both the state and federal level. As your term comes to a close, do you have a few parting comments about the current and future state of in-house practice?

**Reicin:** This year I have a few thoughts on where I think the in-house practice of law, and for that matter, the practice of law generally might be going over the next 10 or 15 years. I think that we are at the end of several trends and in the infancy of many others. My "educated" predictions for the year 2016 are:

The law firm consolidation trend will continue and major corporations will employ mega-firms only for the most sophisticated litigation, transactional, tax, regulatory and M&A work. Discovery, billing and document work will be viewed as "commodities" to be outsourced to volume and overseas providers. Conflict of interest rules will be largely ineffective. Midsize firms will become less prevalent in major metropolitan markets. Paralegals and para-professionals will handle work that first- and second-year associates used



Eric D. Reicin

to perform.

At the largest corporations, the current practice of in-house counsel "picking" their friends and former colleagues to send work to will end, and the professional procurement groups (also called strategic sourcing groups) will use far more sophisticated modeling, auctions and RFPs. Although everyone will still want "alternative" billing arrangements, complex projects will remain on an "hourly" (time and materials) basis. We will have fond memories of the \$600-an-hour, senior-partner rate, but we will be outraged by a \$300-an-hour, first-year associate rate. These rates will diminish large law firm representation of all but the wealthiest clients.

During the past 20 years, we have seen a dramatic shift in the speed and efficiency of the practice of law with the addition of

each new technology (overnight mail, fax, electronic word processing, electronic legal research, e-mail, e-filing/knowledge management, Internet search, video conferencing and Blackberrys). This trend will continue mostly to the detriment of our personal lives and to the "perceived" benefit of our clients. It will continue to fall to us to encourage our clients to prioritize and recognize when immediate turnaround is required and when further thought is preferable.

The troubling trend of the criminalization of legal malpractice (e.g., HP) and the pressure to waive privilege (exerted by auditors and law enforcement) will continue for the next few years until a backlash results in a more reasonable approach.

Several other jurisdictions will adopt rules similar to the DC rules concerning multi-disciplinary practice (MDP), and, over the next decade, companies will find better ways of creating captive law firms/consulting practices. See, DC Rules of Professional Conduct Rule 5.4 (Professional Independence of a Lawyer). The multi-jurisdictional practice (MJP) debate (e.g., Maryland in-house attorney practicing for her client in California without a California bar license) will move away from the states and become an international MJP debate.

With the changing demographics of our country and the workforce over the next several decades, firms and organizations will see more diversity in their ranks, but not enough. We will underestimate the impact of the baby boomers retiring from practice (given current trends, for the foreseeable future, there will be more baby boomer attorneys retiring in the next decade than new attorneys admitted to

practice).

In-house counsel will continue to gain respect both within the legal community and the business community. The revolving door (movement among government, firms, and in-house) will accelerate over the next decade. In an increasingly regulated environment, individuals with law degrees will populate more of the executive suite than today.

**Editor:** Where can our readers learn more about what the experts think about the future of the legal profession and demography in general?

**Reicin:** I recommend the materials found on the website of the Harvard Law School Program on the Legal Profession (available at [www.law.harvard.edu/programs/plp/](http://www.law.harvard.edu/programs/plp/)), the ABA materials dedicated to the future (available at [www.abanet.org/tech/ltrc/research/futures/home.html](http://www.abanet.org/tech/ltrc/research/futures/home.html)), the Robert Half International Future Law Office website (available at [www.futurelawoffice.com](http://www.futurelawoffice.com)), the Demographic Research website (available at [www.demographic-research.org](http://www.demographic-research.org)), and the University of Michigan Population Studies Center website (available at [www.psc.isr.umich.edu](http://www.psc.isr.umich.edu)).

**Editor:** How can our readers learn more about WMACCA?

**Reicin:** Information about our upcoming CLE programs, corporate counsel forums, networking events and other resources is available at [www.acca.com/php/chapters/index.php?chapter=wmacca](http://www.acca.com/php/chapters/index.php?chapter=wmacca). Your readers can also contact our Executive Director Ilene Reid at (301) 230-1864 or [wmacca@verizon.net](mailto:wmacca@verizon.net).

### ABA President Urges SEC To Curb Pressure On Firms Regarding Privilege

American Bar Association President Karen J. Mathis has urged the U.S. Securities and Exchange Commission to revise its securities law enforcement policies that pressure corporate clients to waive attorney-client privilege, work product protections and legal protections for employees during investiga-

tions.

Ms. Mathis compared SEC policies contained in the so-called Seaboard Report with similar policies outlined in the Department of Justice's 2003 Thompson Memorandum, saying both "have led to a number of profoundly negative consequences." The Seaboard

Report was issued by the SEC in 2001 as a statement of the criteria that the commission would consider in determining whether, and to what extent, companies under investigation should be granted credit for cooperating with commission staff as the agency decides whether and how to take enforcement action. Ms. Mathis proposed specific amendments to the SEC policies in a February 5 letter to Commission Chairman Christopher Cox.

Although the report does not explicitly require companies under investigation to waive legal rights in every situation, the policy has led many SEC staff to regularly pressure companies to waive their privileges during investigations.

"Companies have no choice but to waive when encouraged or requested to do so because the risk of being labeled as 'uncooperative' will have a profound effect not just on the Commission's enforcement action decisions, but on a company's public disclosure obligations, stock price, image and credit worthiness," Ms. Mathis said.

The policy also has undermined corporate internal legal compliance programs, by discouraging company leaders from seeking legal guidance from their lawyers and from conducting internal investigations designed to quickly detect and remedy misconduct, she said. The Seaboard Report, like the Justice Department policy, also erodes

employees' constitutional and other legal rights by pressuring companies to refuse to pay their legal fees or to terminate them unless they agree to waive their Fifth Amendment right against self-incrimination, she said.

Ms. Mathis noted the U.S. Sentencing Commission reversed similar privilege waiver policies in April 2006. She also pointed out that Deputy Attorney General Paul McNulty issued new Justice Department cooperation standards in December 2006 in response to the concerns of the ABA and a diverse coalition of other organizations, ranging from the U.S. Chamber of Commerce to the American Civil Liberties Union, and a prominent group of former senior officials of the Department itself.

Because the new Justice Department policies continue to allow prosecutors to request waiver and to take punitive actions against corporate employees in many cases, Sen. Arlen Specter (R-PA) in January reintroduced legislation he initially introduced last year as the Attorney-Client Privilege Protection Act of 2006. The new bill, S. 186, would bar all federal agencies from pressuring companies to waive their attorney-client privilege or work product protections, or to reduce employee legal rights in return for receiving cooperation credit, while preserving the government's ability to obtain the factual information from companies that it needs to enforce the law.

### WMACCA Schedules Global Issues Forum

The Washington Metropolitan Area Chapter of the Association of Corporate Counsel America this month will present a Global Issues Forum Symposium titled Advising Global Corporations in the 21st Century.

The program will take place on Thursday, March 29 from 9 a.m. to 3 p.m. at a Washington, DC/Northern Virginia site to be announced.

Attorneys from Eversheds and Paul Hastings Janofsky & Walker LLP will

address top issues confronting companies with global operations or who do business internationally, including traps for the unwary in doing transactions, employment law issues, developing an effective and workable compliance program and environment, and protection of intellectual property rights.

For registration information about the symposium, call Ilene Reid at (301) 230-1864 or email [wmacca@verizon.net](mailto:wmacca@verizon.net).

### Fairfax Bar Offering Pro Bono Seminar

The Fairfax Bar Pro Bono Program this month is offering a seminar titled A Thrifty Lesson in Consumer Law.

The program will take place on Thursday, March 15 starting at 4:30 p.m. at the Fairfax County Courthouse Cafeteria, 4110 Chain Bridge Road, Fairfax, VA.

There is no registration fee for the seminar. Participants must agree to

accept three, two-hour intake sessions with Legal Services of Northern Virginia in the coming year.

For details in available CLE credits, see the Bulletin Board on *The Metropolitan Corporate Counsel* website at [www.metrocorpccounsel.com](http://www.metrocorpccounsel.com).

To register for the seminar, call Arlene Beckerman at (703) 246-3779 or email [abeckerman@fairfaxbar.org](mailto:abeckerman@fairfaxbar.org).