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Diversity – Law Firms

Leading Our Legal Profession With High Ethical Standards

The Editor interviews M. Karen Thompson, Partner, Norris, McLaughlin & Marcus, P.A. Questions about this article can be directed to her at mkthompson@nmm-law.com.

Editor: Congratulations on being named one of N.J.'s leading women in law and business. Please tell us about your accomplishments.

Thompson: Admitted in N.Y. and N.J., I have been practicing law for 25 years. For most of my legal career, I have been with Norris, McLaughlin & Marcus, where I became an equity partner in 1987. I've also been certified as a Civil Trial Attorney by the New Jersey Supreme Court since 1987. I was privileged to be appointed by Governor Whitman to the N.J. State Commission of Investigation. Created by statute, the Commission's role is to investigate corruption in government and public office, as well as investigate activities of organized crime. My six years on the Commission was a fascinating experience.

I have been selected to serve on a number of N.J. Supreme Court Committees. Currently I am on the Advisory Committee on Judicial Conduct, which investigates complaints against sitting judges for improper conduct or violations of the Code of Judicial Conduct. Fortunately, because we have a good judiciary in N.J., most complaints are quickly resolved.

Editor: Please share a few of your reflections about the ethical issues that in-house lawyers face today.

Thompson: In the wake of Sarbanes-Oxley, one could speak volumes about ethical concerns that in-house lawyers now face related to corporate governance, but I think it would be more prudent to leave such discussion for the experts in that area.



M. Karen Thompson

I will say that in-house counsel, like many of us, often may not have time to reflect adequately upon ethical issues because they are assaulted by so many other concerns in their day-to-day practice. One issue comes to mind which repeatedly surfaces in my employment litigation practice. It arises in situations in which both the company and one or more of its supervisors or managers are sued, which occurs regularly in discrimination or wrongful discharge cases.

Frequently it is beneficial for the company to adopt a joint defense with its employees in such cases. It falls to in-house counsel to hire outside counsel, investigate the matter and help develop the defense strategy. It has surfaced in more than one case that I have seen that the supervisor or manager who is sued perceives that the in-house counsel is also representing his or her interests, which may include individual liability or loss of employment. The ethical problem arises because the supervisor or manager may share confidential information with the in-

house counsel, or may feel that counsel should act to protect the employee's individual interests, oblivious to the fact that the in-house counsel's sole obligation is to represent the corporation.

I have seen claims of unethical conduct and malpractice brought against in-house counsel by disgruntled employees, especially where a case started with a joint defense, but then the company opted to separate its defense from the employee's after the investigation was completed. In light of such potential civil liability, in-house counsel needs to have a heightened awareness of the ethical issues associated with joint defenses. In-house counsel should make it clear from the outset, preferably in writing, that he or she does not represent the employee, even if the company and that employee are represented by the same outside counsel. Then, if the investigation reveals a problem in a joint defense, in-house counsel can be reasonably certain that there truly is no conflict between the corporation's and the employee's interests.

Editor: Can you tell us something about your firm's history?

Thompson: Since its founding in 1953, Norris, McLaughlin & Marcus has evolved into a full-service firm for the business community. Last year was particularly exciting because the firm celebrated its 50th anniversary with gala events for all employees and alumni attorneys. Our growth over the past 25 years has been phenomenal. When I started with the firm in 1979, I was only its 13th attorney. We now have more than 80 attorneys working at our offices in Somerville and Manhattan. Our growth plan contemplates more than 100 attorneys over the next three years, most notably in our burgeoning intellectual property practice, as well as commercial litigation. In addition, the firm is the N.J.

member of an international consortium of law firms, called Meritas, which is comprised of 192 firms in 66 countries. This expands our base from which to draw in helping our Fortune 500 clients address complex multi-jurisdictional problems. It is exciting to be part of such a wonderful group of people.

Editor: What doors have been opening for women since you began practicing?

Thompson: Since I was admitted to the bar in 1978, I have seen tremendous advances for women in the profession. One example that has been particularly obvious to me as a litigator has been the increase in women in the judiciary.

Twenty-five years ago, no women had ever served on the New Jersey Supreme Court. Only one woman was on its appellate court and a mere handful of women sat in the trial courts around the state. Now, our Chief Justice is a woman, and there are two female Associate Justices. The head of our appellate court for the past 10 years or so has been a woman, and a number of women serve in the Appellate Division. Women serve as assignment judges and the numbers on the trial bench have grown.

In addition, opportunities for women both within corporate law departments and law firms have grown tremendously. We have also seen more women in leadership roles in bar associations and other professional associations. For example, in 1980, we had our first woman president of the N.J. Bar Association. She then became the first woman to be appointed as a Justice on the state's Supreme Court.

One of the positive factors contributing to these enhanced opportunities has been the recognition that women often have dual goals of pursuing a career and raising a family, and a willingness to accommodate those dual goals, such as those firms which have created "mommy-tracks" for female associates with children. While there is still a long way for women to go, and we still see statistics that women do not advance to equity partnership as rapidly as men at many firms, it's been gratifying to see that progress is finally being made.

Editor: Have government procurement policies and corporate commitments to diversity contributed to opening doors for women?

Thompson: First, let me emphasize that a woman must be just as qualified as a man. All things being equal in terms of qualifications, I believe that the current focus on diversity does play a positive role for

women, particularly if there is a government contract involved or an entity has an expressed goal to diversify. I know that I have benefited personally when female CEOs and female in-house counsel have gone out of their way to hire women to handle litigation for their companies, whether due to a corporate commitment to diversity, or their own personal commitment to advance women in key roles.

Editor: What practical tips do you have for a woman entering the legal profession?

Thompson: My advice is not limited to women. For anyone who is just starting out, "Be Yourself" is the best advice that I can give. For women, I would add, "Don't approach things as a woman and then a professional. Approach them first as a professional."

It is also important for young attorneys to focus on where they want to go. One way to do that is to identify a mentor. Whether you are in a legal department at a corporation or working for a law firm, do an analysis of the attorneys who are where you want to be. If the corporation or firm does not have a formal mentoring program, arrange a meeting with the person who you think is a good role model and ask if he or she would be willing to mentor you.

We have a formal mentoring program at our firm, which has worked effectively for those who have availed themselves of it. I certainly wish that I had had the benefit of a more formal program when I started. I was helped, however, because our firm has always had an open door policy. I'm pleased to say that during all stages of my career I have always felt comfortable going into any partner's office to talk about not only a particular legal issue, but also my professional aspirations.

Editor: Would you encourage attorneys to participate in professional and civic associations and on judicial committees?

Thompson: If such activities are consistent with their career goals, absolutely. As a litigator, I greatly benefited from my service on Supreme Court Committees such as Civil Practice, Trial Attorney Certification Board, and ethics, as well as serving as president of the Somerset County Bar Association. More importantly, service on these committees allowed me to contribute in a meaningful way to a profession that has been very good to me. By drawing on my years of experience, I hopefully have facilitated the formulation of better rules of

court, enhanced performance by our judiciary and improved criteria to become a certified trial attorney.

Of course, there are a variety of other ways that attorneys can serve the community. Providing legal services to victims of 9/11, to the needy or to non-profit enterprises are but a few examples. I would encourage each attorney to evaluate her goals, talents and interests and how best to use them in public service. Besides the benefit to the community, public service provides a forum to meet people who are either in influential positions or whom you can emulate, people who may be good for you to know professionally and personally. I have developed strong friendships through my involvement in public service.

Editor: Thank you for sharing your insights about opportunities for women in the legal profession. Please give our readers an example of gender-based issues in the broader context of labor and employment law.

Thompson: Gender-based issues are always arising in the labor and employment context. Sexual harassment is just one example. Litigation in this area is a big concern for corporate America. At least in N.J. and a number of other jurisdictions, the courts have been extremely diligent in protecting and enhancing the rights of women who are subjected to gender bias, disparate pay or sexual harassment. While the statutes, of course, provide the letter of the law, in N.J. our judiciary has gone out of its way to interpret such statutes liberally (perhaps some would say have gone overboard) and thereby have enhanced the statutory protections afforded to employees.

This makes N.J. a challenging state in which to practice employment law, particularly on the defense side. In a climate where Supreme Court decisions interpreting the law against discrimination are pro-employee, it is very important to have an experienced attorney defend the matter.

The need for competent counsel does not start after the litigation hits. A prudent employer will already have sought counsel to help create and enforce corporate anti-harassment policies and to conduct the training that is now judicially mandated for management under recent Supreme Court rulings. An employer will not be deprived of certain defenses if it has such training, coupled with a good anti-harassment program and vehicle for handling employee complaints. So, a successful defense to an employee's complaint of discrimination starts a lot earlier than the day the company is served with the summons and complaint.