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# The Metropolitan Corporate Counsel®

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## Carolyn Lamm, ABA President: Meeting Today's And Tomorrow's Challenges

*The Editor interviews Carolyn Lamm, President, American Bar Association.*

**Editor: How did the ABA contribute to your development as a lawyer?**

**Lamm:** I found the ABA tremendously beneficial. My background at the ABA started in the late 1970s when I was a young lawyer at the Department of Justice. Having been chair of the Federal Bar Association's Young Lawyers Committee, I moved from there to become the chair of the ABA's Young Lawyers Division, where I participated in many of its significant committees.

I have served in the ABA House of Delegates since 1982, first as a young lawyer representative from the District of Columbia and then moved up to chairing major standing committees and serving on the Board of Governors and then the Executive Committee.

The ABA is very attractive to young lawyers today for the same reasons it attracted me. It makes them better lawyers. They enhance their reputations and build their skill sets by participating in its seminars and programs, writing articles, and becoming involved in the work of its committees. Young lawyers who are working hard need to have these doors opened for them. Through the Young Lawyers Division they even have the ability to influence ABA policy. In fact, many years ago the ABA recognized the importance of encouraging participation of young lawyers in policy making and for every state delegation in our House of Delegates with five or more members one of them must be under 35.

**Editor: What does the ABA offer corporate counsel?**

**Lamm:** Their participation is highly valued by the ABA. It permits the ABA to factor their perspectives into the formulation of its policies, including those relating to the access to justice and rule of law issues.

Many of the leaders on some very important issues in the ABA have been corporate counsel. In fact, several of my predecessors as ABA President previ-



Carolyn Lamm

ously served as general counsel of major companies, including Bill Paul (former General Counsel of Phillips Petroleum) and Bill Ide (former Senior Vice President, General Counsel, and Secretary of Monsanto Corporation). Ramona Romero of DuPont who served as president of the Hispanic National Bar is a tremendous contributor to our diversity efforts. And, we have many examples of corporate counsel that have led the ABA Business Law and Litigation Sections.

**Editor: Does the ABA have special committees for corporate counsel?**

**Lamm:** Yes, we have committees of corporate counsel in various ABA sections, including our Sections of Business Law, Litigation, and Administra-

tive Law & Regulatory Practice, and our General Practice, Solo & Small Firm Division. I headed a task force that included corporate counsel from many different corporations that looked at what ABA needs to do to make it more attractive to corporate counsel and we are now prioritizing and implementing its suggestions.

**Editor: Tell us about your law practice and how it provides useful insights to you as President of the ABA?**

**Lamm:** I have for decades been involved in international arbitration, primarily in host state investor dis-

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*Some of the major issues on which the ABA has focused attention are of particular interest to corporate counsel.*

*Examples of these are discussed on pages 7 and 8 of this issue.*

## Carolyn Lamm

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putes, but also do some regular commercial international arbitration and international litigation. Therefore, I was very pleased when the ABA House of Delegates adopted a major resolution this past August (ABA Resolution 114) that (1) supports the use of commercial arbitration to resolve disputes involving international business transactions; (2) supports legislation to aid in the enforcement of commercial arbitration agreements and awards; and (3) opposes legislation that would invalidate pre-dispute agreements to arbitrate international commercial disputes.

Because of where my cases come from and where I've been preparing them, I have had the ability to observe close-up what's going on in the legal profession in many other countries and to see the impact of globalization.

I have seen legal changes in other countries that profoundly impact the profession. The legal services acts in the UK and Australia are examples. The EU and individual members like France are looking at innovative ways to structure legal practices and even giving thought to listing law firms on their stock exchanges. And the world is getting smaller. You have people offering legal services everyday from places like Bangalore and Manila to our clients in the United States over the Internet.

Technological advances and globalization have changed our profession in ways not yet reflected in our ethics codes and regulatory structure. Technologies such as e-mail, the Internet and smart phones are transforming the way we practice law and our relationships with clients, just as they have compressed our world and expanded international business opportunities for our clients.

Those are significant developments that can't be ignored because our clients, even if they are U.S. entities, do work outside the United States and deal with foreign lawyers in varying situations and have the latitude to make many choices about who to work with and why.

These developments raise important questions that can't be ignored by the profession. Should we change the way we do things? Should we regulate the way these things are done? Or should we decide to do nothing?

These are the kinds of profound issues which triggered my formation of the ABA Commission on Ethics 20/20 as I assumed the leadership position at the close of the association's 2009 Annual Meeting in Chicago.

The Ethics 20/20 Commission will review lawyer ethics rules and regulation across the United States in the context of a global legal services marketplace. Its work will be guided by three simple principles: protect the public, preserve core professional values, and maintain a strong, independent and self-regulated profession. Reshaping the U.S. legal profession to better serve clients and lawyers in this evolving environment will require a clear vision of the future.

The members of the Ethics 20/20 Commission were selected from ABA members across the spectrum of the legal profession. Co-chairs are Jamie S. Gorelick, former deputy attorney general of the United States, and Michael Traynor, former president of the American Law Institute. Jamie practices in the areas of

defense and other government contracts and national security in Washington, D.C., and Michael is a Berkeley lawyer who litigates intellectual property and First Amendment issues.

Other commission members are Stephen Gillers, a professor at New York University School of Law; Jeffrey B. Golden of London; George W. Jones Jr. of Washington, D.C.; Senior Justice Elizabeth B. Lacy of the Supreme Court of Virginia; Judith A. Miller of San Francisco; Judge Kathryn A. Oberly of the District of Columbia Court of Appeals; Roberta Cooper Ramo, a past ABA president; Herman Joseph Russomanno of Miami; Theodore Schneyer, a professor at the University of Arizona; Carole Silver, executive director of the Georgetown Law Center for the Study of the Legal Profession; Frederic S. Ury of Fairfield, Conn.; Chief Justice Gerald W. VandeWalle of the North Dakota Supreme Court; and Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit. Liaisons to the commission are Donald B. Hilliker of Chicago, representing the ABA Center for Professional Responsibility; Steven C. Krane of New York, representing the ABA Board of Governors; Robert E. Lutz II, a professor at Southwestern Law School in Los Angeles, representing the ABA Task Force on International Trade in Legal Services; and Philip H. Schaeffer of New York, representing the ABA Standing Committee on Ethics and Professional Responsibility. The commission's reporter is Keith R. Fisher, who was a visiting professor for 2008-09 at Franklin Pierce Law Center, Concord, N.H. Elynn S. Rosen, senior counsel in the ABA Center for Professional Responsibility, staffs the commission.

**Editor: Another subject that is of concern is the impact of the economic crisis on the profession.**

**Lamm:** That's right and it has a great deal of immediacy because it's happening right now. Lawyers are impacted and the public is impacted. We immediately responded in very pragmatic ways. We started a jobs board on the ABA website with links to all of the known legal jobs providers. We have started a recession portal where we have information and materials on hot recession topics, including job searches, networking, insurance, career transitioning, practice management and stress management.

The economic recession has left many lawyers in reduced or deferred employment or out of jobs, while many Americans suffer from legal problems related to the recession, such as evictions, foreclosures, bankruptcies and family disruption caused by financial hardship. We must preserve a strong, independent legal profession that will continue to work to benefit our clients and serve the larger public good. We need to help lawyers and the public weather this storm and move forward. That's why I created the American Bar Association Commission on the Impact of the Economic Crisis on the Profession and Legal Needs.

**Editor: Tell us more about the Economic Crisis Commission.**

**Lamm:** I have asked Allan J. Tanenbaum of Atlanta to head a new commission to explore how lawyers can reorganize themselves to cope with the transforming economy in the short run, and how the

profession can position itself to better withstand financial downturns over the long term. I am urging the new commission to move quickly to address in practical ways the impact our national economic distress is having on lawyers now.

Allan has advised me that the new commission will assemble ideas and facilitate approaches for projects that can be implemented quickly and that may build on existing collaborations with other bar-related national organizations. Among ideas under consideration are exploring ways to connect underutilized lawyers with people in need of legal services, creating panels of lawyers available to research issues for out-of-state firms, building on lawyer placement services and expanding judicial intern projects.

Other members of the Economic Crisis Commission are Dean Erwin Chemerinsky, University of California Law School, Irvine; Thomas Clay of Altman Weil, Inc., Newtown Square, Pa.; M. Joe Crosthwait Jr., Midwest City Okla.; Dean Joanne Epps of Temple University Beasley School of Law, Philadelphia; Michael S. Greco of Boston, a past ABA president; Peter E. Halle, Washington, D.C.; James W. Jones, Hildebrandt International, Washington, D.C.; Bernice K. Leber, New York; Matthew Nelson, Los Angeles; Owen C. Pell, New York; Allan F. Ramsaur of Nashville; Stephen D. Susman, New York; Mark H. Tuohey, Washington, D.C.; and Dean Patricia D. White, University of Miami School of Law, Coral Gables.

**Editor: I also understand that you have given a high priority to diversity.**

**Lamm:** Last year's ABA president Tommy Wells held hearings around the United States to get input from various diverse lawyers about whether we as an association and a profession were doing enough to promote diversity. We also had a summit on diversity.

On the basis of this and other input, we concluded that gender, race and ethnicity are still significant glass ceiling issues and that pipeline problems still discourage those who are thought to be "different" from attending law school. Regardless of physical attributes or age, lawyers should be able to practice and excel on the basis of their talent, work ethic and devotion to their clients.

Therefore, the ABA is reinforcing its already strong commitment to a diverse legal profession through a new Diversity Commission to review the findings and recommendations from the diversity summit organized in June by immediate past-president Wells to identify programs and activities that can be implemented in the coming bar year. The commission will work with other ABA entities focused on diversity issues to carry those recommendations forward.

The commission will come up with a report that will prioritize its recommendation. Building a more diverse legal profession is not a quick-fix, short-term goal. It is an ongoing campaign, one in which the ABA has been engaged for decades, and which we are committed to continue as long as it takes. We will be doing some concrete things this year to make a difference. We are going to do a significant teleconference webinar series with listening groups in cities with law firms and corporate law departments and a person to lead a discussion by each group.

We are going to focus on practical

things such as networking and internal and external marketing. By internal marketing we mean letting people within your organization know what you can do, what you want to do, that you want to work with them and that you are dedicated to performing well. External marketing focuses on how to build a reputation by doing articles and by being personally involved in programs and seminars and by going to meetings and meeting people.

Last year, White & Case and the National Asian Pacific American Bar Association offered an all-day seminar in New York on how to be a success. It was attended by an estimated 200-250 senior associates and young partners. It is the kind of an approach we feel the ABA should use, but because the skills to achieve success and build a reputation are the same for every lawyer, we want to reach out to all lawyers, including those in corporate law departments, in public interest organizations and in academia.

**Editor: Final question: We'll touch more on this in the roundtable discussion, but the ABA is known for exercising leadership in answering major legal questions of the day. Right now there are many questions swirling around regulation of the legal and financial professions. What should lawyers know about what the Association is doing?**

**Lamm:** The ABA has always provided leadership in the development of professional standards and the law, and we continue to do so. These are busy days for our Governmental Affairs Office, the ABA Center for Professional Responsibility, and ABA members with expertise in regulatory affairs. We have a superb task force focused on financial regulations – the ABA Task Force on Financial Markets Regulatory Reform – that is coordinating the ABA's response to financial reform proposals and helping to craft ABA communications to Congress and the Administration on these issues. In addition, our House of Delegates just passed a resolution in August (ABA Resolution 301) prepared by the Task Force that endorses eight key principles for reforming U.S. financial institutions and markets in order to avoid another financial meltdown. I have written to key senators and congressional members to convey the ABA's views, and we are actively working with various legal and business coalitions in an effort to protect the confidential lawyer-client relationship and avoid over-regulation of lawyers. For example, we are collaborating with the Association of Corporate Counsel, the U.S. Chamber of Commerce, and other business and legal groups in an effort to apply the Justice Department's August 2008 privilege waiver reforms to all other federal agencies through a possible Presidential executive order. In addition, we are working to roll back the recent Federal Trade Commission "Red Flags" rule dealing with identity theft to the extent that it was improperly applied to lawyers. Also, we recently filed an amicus brief with the U.S. Supreme Court in the *Milavetz* case in an effort to reverse the unconstitutional provisions in the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act. In these and many other ways, we are committed to ensuring that reform attempts do not lead to inadvertent – or intentional – over-regulation of the legal profession.