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NH Rule Changes Proposed in Wake of Enron

By Michael Cousineau

New Hampshire businesses would be better protected legally if corporate lawyers were required to report alleged wrongdoing of employees under new ethical rules for attorneys under consideration, an attorney said.

"It's going to save the company money," said Manchester attorney Peter Beeson, a member of the New Hampshire Bar Association's Ethics Committee.

The committee has provided a list of recommendations to the state Supreme Court's Advisory Committee on Rules, which plans to hold a public hearing Dec. 13 before the court itself decides next year what changes to adopt. Proposed changes include requiring a company attorney to report suspected misconduct up the chain of command.

"The lawyer becomes some sort of a policeman in terms of misconduct in the company," said Beeson, a former state prosecutor now in private practice with the Devine Millimet law firm. "Under current rules, there is no mandate that misconduct by a mid-level corporate employee be brought to the attention of the board of directors."

Now, it might be an "awkward situation for a lawyer to be in" because he might deal with that mid-level manager on an almost daily basis, Beeson said.

"The rule makes it an easier one for lawyers," he said. "The theory is the lawyer owes its duty only to the company and not the individual employee."

The rule change could help the company avoid being investigated, charged with a criminal offense or sued by shareholders, Beeson said.

He said the state bar association spent about five years working on the recommendations after the American Bar Association had tackled a review of its model rules "in the wake of Enron and Tyco and WorldCom" financial scandals.

Rolf Goodwin, the rules revision initiative coordinator on the bar panel, termed the work "a pretty comprehensive rewrite" of the rules of professional conduct.

"The current rules were adopted in 1986 and obviously the world has changed a little since then," he said, citing the Internet as one example.

"The whole purpose of the rules is to protect the public and set a minimum standard for what lawyers can't do," Goodwin said. "If they violate the rules, they can lose their license."

Another rule change would give attorneys "a limited right of public rebuttal if they think their client has been unfairly prejudiced by either the opponent or any third party," Beeson said. A lawyer could, for instance, rebut allegations by neighbors that his client was arrested a number of times on drugs.

Another change would set parameters for law firms that want to branch into law-related fields, such as financial services. Financial service clients, for instance, wouldn't enjoy the same attorney-client privilege that they would with legal matters.

One area the committee couldn't agree on was whether a lawyer referring a client to another attorney could do that and "take a fee for it without doing any work in return," Beeson said. He called it "an incentive" to refer cases "to lawyers who really know how to handle them."

Laura Kiernan, the state Judicial Branch's communications director, said people will be allowed to give their views at the public hearing at the Supreme Court at 1 p.m. Dec. 13. "After that, the rules committee makes a decision on which of these, if not all, to recommend to the Supreme Court for adoption," said Kiernan (who happens to be married to Beeson). The public will get another period of time to comment before the Supreme Court makes a final decision.

For more information about all of the proposed rule changes, go to www.courts.state.nh.us/committees/adviscommrules/index.htm