Attorney Discipline and the Rule of Law

By Sam Phillips

For the past year, Missouri Supreme Court Chief Justice Michael Wolff and Missouri Bar President Ron Baird have been leading a civics refresher course in Missouri, reminding lawyers and non-lawyers about separation of powers, the role of courts in America, and the rule of law. As I was thinking about their effort, I was reminded of some lessons I learned on a recent trip to Eastern Europe. On that trip it became especially clear to me that one of the best ways that we, as lawyers, support the rule of law is to submit to it. Specifically, it seemed to me that an attorney discipline system not only protects the public and encourages confidence in our profession; it actually provides powerful evidence to the public that the rule of law is paramount in our society.

In 2004, I traveled to the Republic of Moldova to work with the American Bar Association's rule of law initiative in Eastern Europe. Through that program, the Central European and Eurasian Law Initiative (CEELI), hundreds of American lawyers and judges have traveled to Eastern Europe and Central Asia to foster an attitude within the local legal profession that the rule of law should consistently prevail. Some Eastern European countries had transitioned from feudal rule to Soviet-style totalitarianism, and had limited exposure to the rule of law as Americans know and appreciate it. As the Soviet system fell apart, Eastern Europeans eagerly anticipated new freedoms and new rights. Lawyers led the way in the creation of laws regulating commerce and preserving the peace, while trying to protect newly gained civil liberties.

Unfortunately, great apprehension of corruption remained, sometimes within the legal profession. I had the great honor to work closely with Moldovan attorneys, the Moldova Bar Association and their ethics committees, and the Moldova Supreme Court to help address those concerns about corruption and to professionalize the attorney discipline system. Their challenge, as the country emerged from a culture of pervasive corruption, was to create an efficient and transparent legal system, including an attorney discipline system that reduced risks of cronyism. Many lawyers were convinced that the attorney discipline system was rigged; as I understood it, they also believed most legal systems were subject to corruption. My challenge was to assist the Moldova bar in creating an attorney discipline system that would instill confidence not only in the integrity of the legal profession, but ultimately the rule of law.

As we worked through various ideas for a successful system, we agreed on some basic principles. We all agreed that a fair and transparent attorney discipline system is essential to any effort to promote the rule of law. We recognized that, to most non-lawyers, lawyers embody the law. With that understanding, we recognized that in a society where public corruption had almost been a way of life, lawyers' willingness to police themselves might show the public that the rule of law can work.

Admittedly, the Eastern European situation I saw shines a bright (perhaps glaring) light on the need for a fair and open attorney discipline system. But that principle – of using the attorney discipline system to show the public that we are willing to police ourselves – readily applies in the middle of America. As Missouri Supreme Court Judge Mary R. Russell explains, that is a basic function of the system: "The goal of our disciplinary system is to protect the public and preserve their confidence in our great and honorable profession."

The legal profession's continued support for a strong attorney discipline system can remind the public that lawyers are subject to the law. Missouri Bar President Ron Baird talks about it in terms of accountability: "Our profession requires that those who are licensed to practice law should be held accountable. The Missouri disciplinary system is designed to afford this accountability to the public." In a similar vein, the Missouri Supreme Court recently noted the important role that attorney discipline plays in assuring the public's trust in our profession: "Significant discipline must follow to maintain the public's trust and confidence in our ability to police ourselves." *In re Carey & Danis*, 89 S.W.3d 477, 503 (Mo. banc 2002).

John C. Dods, the long-time chair of the Missouri Supreme Court's Advisory

Committee, points with pride to our self-administered disciplinary system:

> The privilege of being a lawyer carries with it an obligation to assure that the judicial system and our own practice of law are competent and honorable. The enforcement of the Rules of Professional Conduct through our self-administered disciplinary system is intended to protect the public's interest in these ideals. A hallmark of our profession is that we impose upon ourselves high standards of conduct and that we ourselves administer the disciplinary system.

To meet the obligations and goals that Judge Russell, Ron Baird, and John Dods describe, our attorney disciplinary system is written into law. "The Supreme Court may establish rules relating to practice, procedure and pleading for all courts and tribunals, which shall have the force and effect of law." Mo. Constitution, art. V, § 5. In Missouri, Supreme Court Rule 4 contains the Rules of Professional Conduct; that rule provides the ethical guidelines for lawyers' behavior. Supreme Court Rule 5 governs the disciplinary process, establishing procedures for investigation and prosecution of alleged professional misconduct. Judge Russell describes the system: "We, through the Office of Chief Disciplinary Counsel, the Advisory Committee, the Disciplinary Panels, and this Court, have the important responsibility to 'police' the members of our profession who do not conduct themselves in accordance with the Rules of Professional Conduct and ethical standards." In deciding discipline cases, the Missouri Supreme Court has also relied on its inherent authority: "From the very earliest times the right to punish attorneys by suspension or disbarment, as well as for contempt, has been exercised by the Courts as an inherent power." *In re Richards*, 333 Mo. 907, 913; 63 S.W.2d 672, 674 (Mo. banc 1933).

Many Missouri lawyers want to support the civics course being led by Chief Justice Wolff and Missouri Bar President Ron Baird; we will have many opportunities and methods to do so. In my view, one approach would be to proudly direct the public to our attorney discipline system. That system, based in law, provides the lesson that lawyers not only use, argue, stretch, explain, and sometimes help change the law, we also promote it by accepting it and submitting to it.

Sam Phillips is serving as Deputy Disciplinary Counsel within the Office of Chief Disciplinary Counsel.

AROUND MISSOURI

Association of Missouri Mediators Annual Meeting Report

St. Louis attorney-mediator **Bruce S. Feldacker** was elected president of the Association of Missouri Mediators at the association's annual meeting held in Columbia. Missouri Supreme Court Judge **Richard B. Teitelman** received the association's annual honor award in recognition of his service to the mediation field.

Kansas City Metropolian Bar Foundation Honors Non-Lawyer With Liberty & Justice Award

The Kansas City Metropolitan Bar Foundation presented **Bobbie Lou Nailling-Files**, the first non-lawyer recipient, with the 2006 Liberty & Justice Legacy Award during the foundation's annual dinner. The award is given in recognition of the recipient's dedication to the principles of liberty and justice through exemplary professional, civic and community service.

Nailling-Files served as the executive director of the Kansas City Metropolitan Bar Association from May 1970 until December 2000.

Coburn Award Presented at Justice for All Campaign Reception

Attorney **Richard W. Miller**, of the Miller Law Firm, was presented with the 2006 Honorable H. Michael Coburn Community Service Award during the Justice for All Campaign Kickoff reception.

The campaign provides support for the work of Legal Aid of Western Missouri, which provides free civil legal assistance to low-income people in 40 counties in western Missouri.