

RPPT Assists Victims of Hurricane Katrina

The Real Property, Probate and Trust Law stands ready to assist those affected by Hurricane Katrina. The Section has created a disaster relief webpage on its website which contains articles, checklists, and other information helpful to victims and lawyers assisting victims. The address for our disaster relief webpage is http://www.abanet.org/rppt/section_info/hurricane.html. If you are interested in participating in this effort by providing content for the disaster relief webpage, please send the information in an electronic format to the following members who are reviewing all content.

For the Real Property Division: Richard Frome at rmf@rmfromelaw.com.

For the Probate and Trust Division: Steve Akers at AKERS@bessemer.com.

If the materials are subject to copyright, please secure permission to publish. State and local bar associations have been wonderful in granting permission to publish their materials on the Section website, but please check with these organizations on their policies.

For those willing to offer office space to lawyers displaced by Hurricane Katrina, the ABA website has an on-line registration under the heading "I have Office Space to Donate." For those willing to provide pro bono legal services to victims, the ABA website has an on-line registration under the heading "I would like to Volunteer." The link to the ABA website for these registrations is <http://www.abanet.org/katrina>

ABA President Michael Greco has appointed a task force to address and respond to the multitude of legal issues arising out of this natural disaster. President Greco has appointed Nancy Appleby, a Section Council member based in Washington, D.C., to serve on this task force.

Uniform Power of Attorney Act Has Second Reading

In July the Uniform Power of Attorney Act had its second reading before the National Conference of Commissioners on Uniform State Laws. The drafting committee for the act anticipates that the Act will go for final approval before the Conference at their Annual Meeting in July 2006. Section members are encouraged to submit any comments or suggestions they may have to Linda Whitton, Reporter for the Act (linda.whitton@valpo.edu), by October 15th. A special breakfast meeting will be held on Friday, November 4th at the section's Fall Leadership meeting for anyone interested in discussing revisions to the Act. The Drafting Committee will consider suggested revisions to the Act at a meeting to be held the first weekend of December. The most recent draft of the Act can be obtained on the NCCUSL website (www.nccusl.org) by following the links to the drafting committee's page or by contacting Linda Whitton.

Your Comments on RESPA Reform Sought

On June 29, 2002, HUD published a proposed rule entitled "RESPA: Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers" (67 FR 49134). After much uproar and discussion, the proposed rules were withdrawn in early 2004. On June 24 of this year, HUD announced that it was once again considering revamping the RESPA rules. This time HUD was soliciting input from representatives of various industries by invitation to three roundtables to be held in Washington D.C., together with three small business roundtables to be held around the country. Much of the opposition to the rules proposed in 2002, and what they eventually evolved into in 2004, had to do with the impact on the small business/small service provider (including attorneys involved in the closing and title insurance aspects of residential transactions). The complete text of the

notice published in the Federal Register on June 29, 2005, contains contact information within HUD and can be found at www.hud.gov/respareform/index.cfm, together with copies of the proposed new Good Faith Estimate (GFE) and Mortgage Package Offer (MPO). The general HUD RESPA homepage at www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm contains a comment link and other helpful information. The package that was prepared by HUD for presentation to Congress can be found at namb.org/government_affairs/RESPA/HUD_RESPA_packet_to_members.PDF. In 2003, the RPPT Section prepared a formal comment letter to HUD on the 2002 proposals. Although that letter was ultimately not submitted, and is not an official document of the RPPT Section or the ABA, it is a good summary of the concerns that existed with respect to those proposals. The issues discussed still remain timely and may be of concern to some of our members. The letter can be found at www.abanet.org/rppt/bulletin/2005/respa.pdf. The notice issued by HUD this June does not solicit comments at this time. It does provide that "HUD has announced its commitment to propose changes that will update, simplify and improve the disclosure requirements for mortgage settlement costs and help control these costs for consumers" and is starting out at the point it left off in 2004. The Section will not submit comments at this time, but members of the Section are certainly encouraged to do so individually.

RPPT Section Co-Sponsors Attorney Privilege Resolution

At its meeting in Chicago, the Council voted to co-sponsor and endorse the adoption by the ABA House of Delegates of Resolution 111, which supports the attorney-client and work product privileges, and expresses the need for the ABA to resist governmental efforts to force waivers of those important privileges. The House of Delegates later adopted that Resolution. The Resolution had been

drafted after extensive meetings, testimony and research conducted by the Attorney-Client Privilege Task Force. The Task Force was established by ABA Immediate Past President Robert Grey, and chaired by ABA Past President Bill Ide. Jerry Hoenig and Terry Franklin are the RPPT liaisons to the Task Force and presented the Resolution to the Council. The Task Force plans to develop more detailed proposals during the coming year.

Update on Multijurisdictional Practice

In the final report of the ABA Commission on Multijurisdictional Practice ("MJP"), several recommendations were made to improve client representation in the twenty-first century. Four of these recommendations involved the adoption by states of existing or revised ABA model rules governing the following areas: Unauthorized Practice of Law/Multijurisdictional Practice of Law (Mode Rule 5.5), Disciplinary Authority/Choice of Law (Model Rule 8.5), Model Rule for Licensing of Foreign Legal Consultants, and Model Rule for Temporary Practice by Foreign Lawyers. For more information on these recommendations and others, visit the ABA's MJP website at www.abanet.org/cpr/mjp-home.html. A summary of state action taken on each of the recommendations is available at www.abanet.org/rppt/bulletin/2005/upl.pdf.

RPPT Represented at Synergy Summit

Steve Akers, the Probate and Trust Division Vice-Chair, Council Member Jo Anne Engelhardt, and Insurance and Financial Planning Committee Vice-Chair David Neufeld, represented the Section at the first "Synergy Summit" held in August in Chicago. The Synergy Summit is a unified think-tank and voice of the leadership of seven major financial services organizations the purpose of which is to study, educate and opine on specific issues of mutual interest. These seven organizations - the American Institute of Certified Public Accountants, the Tax Section and Real Property, Probate and Trust Section of the American Bar Association, the Society of Financial Service Professionals, the National Academy of Elder Law Attorneys, the National

Association of Estate Planning Councils and the American College of Trust and Estate Counsel - represent over 500,000 lawyers, accountants, financial planners, insurance professionals and allied professionals and, through the Synergy Summit, bring to these members and the nation's policy-makers the coordinated thinking and integrated actions of the nation's largest and most influential financial services organizations

Recent Decision: Unauthorized Practice of Law

On behalf of a secured creditor in Michigan, a Michigan lawyer assisted a Massachusetts debtor by preparing a reaffirmation of debt form for the debtor to file in bankruptcy court in Massachusetts and used his law firm's letterhead to communicate with the debtor and the court. In re Lucas, 317 B.R. 195 (Bankr. D. Mass. 2004). The bankruptcy court in Massachusetts found that the Michigan lawyer, through his use of his firm's letterhead, misrepresented his status to the debtor and the court. Id. It further held that the lawyer engaged in the unauthorized practice of law by preparing a reaffirmation agreement in which contractual rights were modified and created; providing the debtor with a form notice that the lawyer believed would be of assistance to the debtor in understanding the reaffirmation process; and corresponding with the debtor and the court on his firm's letterhead. Id.

On appeal to the district court, questions were certified to the Massachusetts Supreme Judicial Court, which determined that none of the activities undertaken by the Michigan lawyer constituted the unauthorized practice of law in Massachusetts. In re Chimko, 831 N.E.2d 316 (Mass. 2005).

The court concluded that the lawyer's preparation of the reaffirmation agreement was "akin to a nonlawyer's preparation of preprinted income tax returns[,]" which the court said it had previously held not to constitute the practice of law. Id.

The court also found the notice of pro se reaffirmation prepared as a pleading by the creditor's lawyer for the debtor to be "generic," in that it simply detailed the procedure by which reaffirmation

agreements for pro se debtors are approved by the bankruptcy court along with any requested notice of any hearing on this particular agreement. Id. Equally important was that the notice was addressed to the bankruptcy court, not to the debtor. Id. Therefore, the court found it could not conclude that the attorney furnished legal advice to the debtor, and thus that he had not engaged in the unauthorized practice of law. In re Chimko, 831 N.E.2d 316 (Mass. 2005).

Finally, even if the attorney had engaged in the practice of law, the court added, his filing, processing, and tracking of routine bankruptcy forms on a temporary basis, and on behalf of a client in the jurisdiction in which he is licensed, did not contravene the Massachusetts rules of professional conduct or the public policies underlying them. Id.

Section Appoints Four New Fellows

The Section's Fellows Program is designed to give active members of the Young Lawyers Division or state or local bar associations an opportunity to become involved in the substantive work of the Section. Fellows, are appointed for two years and receive a subsidy to attend Section meetings, and become actively involved in the work of one of the Section's substantive committees. This year's Fellows, who were chosen from a group of about 20 applicants, are:

Anta Cisse-Green, Sullivan & Cromwell, New York, NY (PT)

Christopher L. Walker Brunini, Grantham, Grower & Hewes PLLC, Jackson, MS (RP)

Julie C. Panaro Richards, Layton & Finger, P.A., Wilmington, DE (RP)

Elizabeth A. Lindsay-Ochoa, AXA Financial, Inc., Denver, CO (PT)

Save the Date

Mark your calendar for our **Spring Symposia** - May 4-7 in San Diego at the Manchester Grand Hyatt!

To change your email address or remove your name from any future general distribution emails, complete the form at <http://www.abanet.org/members/join/coa2.html>.