

# UNDER CONSTRUCTION

## Ethical Considerations in Construction

By Thomas L. Rosenberg  
Roetzel & Andress LPA

As lawyers, we are bound to ethical standards and rules. The Model Code of Professional Responsibility or similar codes adopted in our respective States set a standard of ethics for lawyers to follow. Also in place is a system for reporting violations, investigating violations and disciplining lawyers who may act contrary to ethical standards and obligations.

What about the construction business? Are there ethical standards to which participants in the industry are subject? Does an architect submit to certain standards of ethical conduct that might also apply to a contractor, subcontractor or supplier? These issues were recently raised and considered in Columbus, Ohio.

The Builders Exchange of Central Ohio is the largest trade association of construction industry members in Ohio. While the majority of its members are contractors, the Builders Exchange also has architects, engineers and attorneys as members. The Builders Exchange created the "Rising Leaders" program to identify future leaders in the industry and foster leadership and camaraderie in the profession. During its 2007 meetings, the program discussed issues of organizational management, leadership, finance, human resources, business communication, law and ethical challenges. Participants were young leaders from all phases of the construction industry who went through an intensive nomination and endorsement program. To broaden the group's perspective, the young leaders were required to bring the owner or a senior manager from their companies to participate in the ethics discussion.

In preparation for the ethics program, surveys were sent to the young leaders and the senior management participants. Responses were received from 21 young leaders and 20 senior management personnel. For each scenario, all participants were asked: (1) Is this ethical?; (2) Does this happen in the industry?; and (3) Does this happen in your company? A review of the survey scenarios follows.

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### The Forum Announces the 2008-2009 Chair-Elect and New Leadership

At the Annual Meeting in La Quinta, CA, the Forum elected:

**Adrian L. Bastianelli, III**

as its Chair-Elect, and

**Terrence L. Brookie,  
Gregory L. Cashion,  
Carol J. Patterson, and  
Joseph D. West,**

as new Governing Committee Members.

The Forum's Division Chairs for 2008-2009 are: **Catherine E. Shanks** (Div. 1); **David A. Scotti** (Div. 2); **Joseph Jones** (Div. 3); **Kerry L. Kester** (Div. 4); **John Clappison** (Div. 5); **Michael Murphy** (Div. 6); **W. Cary Wright** (Div. 7); **John S. Vento** (Div. 8); **Aaron P. Silberman** (Div. 9); **Christopher D. Montez** (Div. 10); **Edward Benes** (Div. 11); and **Daniel S. Brennan** (Div. 12).



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MESSAGE FROM THE

# CHAIR

Adrian L. Bastianelli, III  
Chair-Elect

ELECT



## Where Are We Going?

By Adrian L. Bastianelli, III  
Peckar & Abramson, PC

I have had the opportunity to participate in Forum Governing Committee ("GC") meetings now going on twelve years. Each new group of leaders has brought a different style, approach, philosophy, and emphasis with them. However, they have all had in common the ability to make excellent decisions for the good of the Forum - and in that time the Forum has prospered. The Forum has not rested on its laurels and each year has seen tremendous growth and improvement. From the achievement of financial stability, to the increased participation of the membership, to the quality of programs and publications, that growth has been continuous and positive. The Forum just keeps getting better.

In mid-May, Mike Tarullo and Robbie MacPherson brought together a diverse group of Forum members in Chicago to develop a new Strategic Plan for the Forum. The group included young lawyers, new leaders, present leadership, and some old-timers. It developed a far-reaching Strategic Plan to present to the GC. By the time this article is published, the GC will have enacted a version of this Plan, available on our website.

In preparation for the meeting, questionnaires were answered by all attendees. It was amazing to me how closely the answers to many of the questions tracked each other, even before there was any discussion. For example, when addressing the goals or purpose of the Forum, almost

everyone included the three "Ps" - Programs, Publications and People. This made development of much of the Strategic Plan relatively simple. However, the unique and sometimes controversial responses provided a springboard for expanding discussion and developing new goals. The process and product of this strategic planning will provide an excellent foundation for the continued growth of the Forum.

So where are we headed? The cornerstone of the Forum will continue to be quality. While we will grow in many ways, the Forum will not sacrifice quality for quantity or speed. We will continue to vet our programs rigorously and make demands on speakers that go well beyond the norm. We will continue to demand that *The Construction Lawyer, Under Construction*, and our books be of exceptional quality.

*Programs.* The Forum will continue with three national programs per year: (1) The Consensus DOCS, September 11-12, 2008 in Chicago, IL, (2) Insurance and Risk Management, January 15-16, 2009 in Bonita Springs, FL, and (3) Energy, Sustainability, and Green Building, April 16-17, 2009, in New Orleans, LA. The Forum plans to increase its outreach to members who do not attend the national meetings, particularly young lawyers, by offering programs through different formats and delivery systems. In this vein, we will have regional programs in Orlando, Philadelphia, Indianapolis, Las Vegas, and San Francisco, on construction contracts on November 6, 2008. We have produced our first video from a past conference, which can be purchased from the ABA Web Store. We will continue to expand our teleconferences and are considering or experimenting with webinars, pod casts, streaming live video to remote sites, blogs, and other media. Finally, we are considering a concentrated

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## Where Are We Going?

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“NITA” style course on construction arbitration or litigation.

*Publications.* *The Construction Lawyer* continues to receive more high quality articles than it can publish and has been expanded in length to accommodate this phenomenon. *Under Construction* has fared similarly and may go to an electronic format to allow it to increase the quantity of material published in it.

The Forum will continue to produce at least two books per year. This year will include a construction checklist book, an international construction law book, and a second edition of the contracts book. We are particularly proud of the upcoming publication of a construction law text book for use in law schools. An electronic directory consultants is also in the works. Other books are in various phases of production: a construction law glossary, construction law for non-lawyers, a “sticks and bricks” guide to heavy and horizontal construction, accounting for construction lawyers,

construction defects, construction insurance, and updated editions of previous publications.

The Forum continues to lead the ABA in its use of technology. For example, we will make a database of past program materials and other publications available to members on our website and expand the eLibrary contained on the program DVDs.

*People.* This may be the most important prong for the Forum. The relationships I have developed through the Forum are invaluable and would not have been possible without the Forum. This camaraderie is what brings many people to the programs and drives them to invest so much time in the organization. The Forum is developing new outreach strategies to improve the Forum experience of all members, particularly minorities, women, new members, young lawyers, government lawyers, in-house counsel, and long-term members.

Often a lawyer is stereotyped as a disruptive, argumentative person who destroys relationships and does not add value to the business process.

This view, held by many in the construction industry, is frequently wrong and results from a lack of knowledge and understanding. One of the Forum’s new goals is to advance relationships with industry organizations in order to improve mutual understanding and respect between the legal and construction communities.

Finally, the Divisions are the backbone of the Forum. The Forum will seek to increase Division membership and participation, and improve communication among the Divisions, Forum leadership and the general membership.

In my view, the Forum is headed in the right direction and will continue to improve and grow in the future as it has in the past. As with most organizations, those who actively participate get the most out of the organization. So get on board and become active. If you want to know how to get involved or there is something you would like to do, please contact me at [abastianelli@pecklaw.com](mailto:abastianelli@pecklaw.com) or (202) 293-8815. ♦

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## A Conversation With the Forum’s Senior Membership

In June 2008, Allen Overcash a member of the bar for nearly 50 years, was interviewed by Kory D. George, an associate at their firm, Woods & Aitken LLP in Lincoln, Nebraska.

**Q:** When you first started practicing law in 1959, why did you get involved in the area of construction?

**A:** Just because it happened to be available. I worked construction but didn’t have an emphasis in school or law school. I was going to be a tax lawyer.

**Q:** In the fifty years or so that you have been practicing construction law, how has the practice changed from when you first started?

**A:** It is a larger legal industry now. The number of lawyers practicing construction law has increased ten-fold; there is a lot more construction, a lot more cases.

**Q:** Why do you think there are more lawyers today that specialize in construction law?

**A:** Growth of the industry as well as other facets of the economy. It also reflects more complex projects, larger and more difficult projects and contract arrangements with a number of parties, and the number of developments in the industry. Things like design, which is now no longer the exclusive province of the architect, have become much more complex. A greater risk of disputes is an important factor.

**Q:** How has the practice of construction law changed for the

better in your fifty years?

**A:** Generally, educational background. The Forum is a good example—more programs, updated programs, written material, as well as electronic material available to construction lawyers. It is a more intelligent and sophisticated bunch.

**Q:** What are the biggest obstacles or changes construction lawyers face today?

**A:** Well, I think understanding the industry and understanding the problems. I don’t think the law has dealt very well with construction over the years. Generally, the form contracts that are published by industry groups very frankly are paid little attention to by the people who are actually doing the work. Lawyers are only involved in contracts that are for much larger and more

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## Construction Ethics

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**Scenario 1 - After an owner accepts a general contractor's bid, the GC demands that the subcontractor reduce its price in order to receive the work.**

*This business practice is ethical.*

Total Group: Yes (15%); No (85%).

Young Leaders: Yes (20%); No (80%).

Senior Mgmt.: Yes (10.5%); No (89.5%).

*This business practice occurs in the industry.*

Total Group: Yes (92%); No (8%).

Young Leaders: Yes (85%); No (15%).

Senior Mgmt.: Yes (100%); No (0%).

*This business practice occurs in my company.*

Total Group: Yes (38.5%); No (61.5%).

Young Leaders: Yes (40%); No (60%).

Senior Mgmt.: Yes (37%); No (63%).

**Scenario 2 - A GC "frontloads" or increases the alleged amount of work performed during the initial stages of the project in order to obtain more money up front.**

*This business practice is ethical.*

Total Group: Yes (54%); No (46%).

Young Leaders: Yes (55%); No (45%).

Senior Mgmt.: Yes (53%); No (47%).

*... occurs in the industry.*

Total Group: Yes (85%); No (15%).

Young Leaders: Yes (80%); No (20%).

Senior Mgmt.: Yes (89.5%); No (10.5%).

*... occurs in my company.*

Total Group: Yes (54%); No (46%).

Young Leaders: Yes (50%); No (50%).

Senior Mgmt.: Yes (58%); No (42%).

**Scenario 3 - An owner requires a general contractor to review the details of the design and assume responsibility to provide work not specifically included in the design, but claimed to be needed for a "complete" system.**

*This business practice is ethical.*

Total Group: Yes (31%); No (69%).

Young Leaders: Yes (30%); No (70%).

Senior Mgmt.: Yes (32%); No (68%).

*This business practice occurs in the industry.*

Total Group: Yes (90%); No (10%).

Young Leaders: Yes (85%); No (15%).

Senior Mgmt.: Yes (95%); No (5%).

*This business practice occurs in my company.*

Total Group: Yes (59%); No (41%).

Young Leaders: Yes (50%); No (50%).

Senior Mgmt.: Yes (68%); No (32%).

**Scenario 4 - Prior to submitting a bid, a contractor becomes aware of defects in plans, and submits a bid without telling the owner or architect about the defects, because it knows this can form the basis for a claim for additional compensation during the project.**

*This business practice is ethical.*

Total Group: Yes (30%); No (70%).

Young Leaders: Yes (20%); No (80%).

Senior Mgmt.: Yes (41%); No (59%).

*... occurs in the industry.*

Total Group: Yes (89%); No (11%).

Young Leaders: Yes (85%); No (15%).

Senior Mgmt.: Yes (94%); No (6%).

*... occurs in my company.*

Total Group: Yes (35%); No (65%).

Young Leaders: Yes (30%); No (70%).

Senior Mgmt.: Yes (41%); No (59%).

**Scenario 5 - An owner is bidding a large construction project that includes underground work crossing a river or stream. The owner tells the bidders the soil reports are for their information only in preparing bids and cannot be relied upon to guarantee soil conditions. The owner also tells the bidders that they may perform any and all soil analyses possible in connection with preparing their bid. The owner knows, however, that it is impossible for bidders to obtain approval to take soil analysis or studies in the river or stream.**

*This business practice is ethical.*

Total Group: Yes (11%); No (89%).

Young Leaders: Yes (5%); No (95%).

Senior Mgmt.: Yes (18%); No (82%).

*... occurs in the industry.*

Total Group: Yes (51%); No (49%).

Young Leaders: Yes (50%); No (50%).

Senior Mgmt.: Yes (53%); No (47%).

*... occurs in my company.*

Total Group: Yes (27%); No (73%).

Young Leaders: Yes (20%); No (80%).

Senior Mgmt.: Yes (35%); No (65%).

**Scenario 6 - What about lien waivers? The participants were asked to consider a situation where a general contractor requires lien waivers from subcontractors that waive lien rights in advance for money not yet received from the general contractor or that will be paid out of the next payment received from the owner.**

*This business practice is ethical.*

Total Group: Yes (38%); No (62%).

Young Leaders: Yes (40%); No (60%).

Senior Mgmt.: Yes (35%); No (65%).

*... occurs in the industry.*

Total Group: Yes (84%); No (16%).

Young Leaders: Yes (80%); No (20%).

Senior mgmt.: Yes (88%); No (12%).

*... occurs in my company.*

Total Group: Yes (51%); No (49%).

Young Leaders: Yes (50%); No (50%).

Senior Mgmt.: Yes (53%); No (47%).

**Scenario 7 - A general contractor asks a subcontractor for a price on change order work and the sub intentionally inflates its price because it knows the GC is not in a position to hire another sub to do the work.**

*This business practice is ethical.*

Total Group: Yes (25%); No (75%).

Young Leaders: Yes (20%); No (80%).

Senior Mgmt.: Yes (31%); No (69%).

*... occurs in the industry.*

Total Group: Yes (92%); No (8%).

Young Leaders: Yes (90%); No (10%).

Senior Mgmt.: Yes (94%); No (6%).

*... occurs in my company.*

Total Group: Yes (28%); No (72%).

Young Leaders: Yes (20%); No (80%).

Senior Mgmt.: Yes (37.5%); No (62.5%).

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## Construction Ethics

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As you can imagine, these questions generated a lot of discussion. It was interesting to see where the young leaders and senior management disagreed about whether something was ethical or whether something occurs in the industry.

I was surprised to see that nearly 30% of the group believed it was ethical for a bidder not to tell an owner or architect about defects in the bid documents, with the intent to use that information as the basis for a potential claim. Many contract bid documents would require the contractor to make such disclosure to the architect or owner.

The exercise was intended to gauge reaction to and generate discussion of a number of provocative scenarios, not to compile scientifically accurate statistics about the ethical beliefs of certain classes of subjects. The participants did not receive detailed explanations of the terms “occurs in the industry” or “occurs in my company.” In particular, we wanted to identify areas where there was a gap between a young leader’s perception of ethical issues, and the perceptions held by senior management personnel. Also, we wanted to identify and discuss situations generally held to be an unethical practice but also viewed to be prevalent in the industry. This was an exciting and animated event. The discussion went on for hours and I am sure continued after the session ended.

The participants, guided by their internal sense of right and wrong and not by a written code of ethics, expressed very strong opinions about what is and is not ethical in the construction business. Rule books cannot cover all ethical situations, especially on a construction project. There was a consensus, however, that ethical standards of conduct start from the top down. Leaders are the primary shapers of an organization and

an industry’s climate and culture. They define what is important to the organization and the industry from an ethical standpoint. They identify the values and create a mechanism to encourage proper behavior.

Lawyers have a role in defining and serving the business practices that the construction industry values as ethical. Drafting contract documents, partnering sessions and even recommending a project delivery system can be opportunities to address ethical issues in construction. Many of the problems encountered by the scenarios above can be eliminated or managed by the terms of a contract, by considering these issues in a partnering meeting or by counseling an owner when it is deciding how to structure its project. As the push continues toward more collaboration from the outset of a project among owner, design professionals, construction managers and contractors, lawyers can be at the forefront of addressing the issues. If lawyers miss that opportunity, the result for the construction industry will be conflicts, claims and strained relationships. ♦

## Forum Conversation

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sophisticated projects, and primarily are involved in disputes that happen at the end of the line. So, to some extent, the industry doesn’t rely on lawyers and legal work as much as it should. I would like to see that change; I would like to see construction law taught in all the law schools in the country; I would like to see lawyers more attuned with the construction process; I would like to see reform in the contract system and also the dispute handling system so lawyers are more involved in it.

Q: What would you say to a young lawyer who is considering the practice of construction law?

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## Editor’s Message

Like many in the Forum, I did not become fully engaged in our “Publications, Programs and People” until someone else in the Forum encouraged me to jump in. Our current Chair urged me to join the Forum and seek out the Young Lawyers Committee. A short time after that, our current Chair-Elect suggested I apply for the Hard Hat Case Notes editor’s position. The fellowship and mentoring that I have been fortunate to experience in the Forum is a powerful force, and one that flows naturally from the remarkable people who commit themselves to the Forum’s success. To keep that great energy flowing, I have asked Ben Patrick, the current chair of the YLC to arrange a series of interviews of senior members of the Forum, to be conducted by YLC members. Allen L. Overcash, a partner at Woods & Aitken LLP in Lincoln, Nebraska, has been practicing law since 1959, served on the Forum Governing Committee, and received the Cornerstone Award in 2002. For this issue, Allen has agreed to be interviewed by Kory D. George, an associate at his firm.

That first YLC meeting I attended was just a handful of people nibbling cheese and sipping wine, meeting spouses and trading business cards. Since that time, after much more time spent together and wine and cheese consumed, the YLC has grown and prospered in much the same way Adrian Bastianelli describes the Forum’s arc of progress in his first column as Chair-Elect. That original group has since “graduated” from the YLC, but every one I met in those early days of the YLC has gone on in the Forum to write and edit articles and books, chair Divisions and Programs, speak at regional and national Meetings, and even serve on the GC. It’s only a matter of time before the first YLC alum is elected Chair. When that happens, I hope that fortunate construction lawyer will agree to be interviewed by a member of the YLC for *Under Construction*. ♦

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# Downstream Allocation of Concurrent Delay Damages, Part 3

By Michael F. Drewry and Daniel M. Drewry  
Drewry Simmons Vornehm, LLP

In the last two issues of *Under Construction*, we explored the problem of concurrent delay and potential defenses to apportionment. In this final installment, we address ways to manage outcomes through contract documents.

## *Controlling the Outcome through the Contract Documents*

The ability to apportion the costs or damages for concurrent delays can be significantly enhanced or curtailed through effective negotiation and drafting. Whether it is done in the Owner-Contractor Agreement or Project General Conditions, or in the Contractor's subcontract terms, there are provisions that can impact and potentially determine the ability to successfully assert or defend against downstream concurrent delay damages.

*First*, the allocation of, or liability for, concurrent delay can be managed through the definition of "excusable delay" under the contractual excusable delay clause, whether it is in Article 8 of the AIA A201 General Conditions of the Contract for Construction (1997 and 2007 ed.) or Supplementary Conditions addressing that Article or in the express terms of the Contractor's Subcontract. The tighter or more precise the grounds stated that must be met in order to establish entitlement to an excusable delay, the more difficult it becomes to establish a compensable delay. This has the effect, in essence, of limiting concurrent delays by limiting the creation of contractor or subcontractor claimed compensable delays.

*Second*, ownership of the float can be addressed through express language. Most parties provide for contract clauses which state that float is not for the use of any one party on a project, but rather float belongs to the project and therefore is available to either the owner or contractor, whoever claims or uses it first (provided they act in good

faith in making the claim). Contractually, the parties may agree that float belongs to the Project but that to establish entitlement to a compensable delay or time extension, the contractor must establish not only the events of delay but also that they are delays to the critical path. It can be further narrowed to require delays to the overall project, in excess of any float on a critical activity. In other words, before an excusable and compensable delay may occur, the contractor must exhaust the total float on the project. In at least one case, such a clause provided that "extensions of time for performance ...will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the total float or slack along the channels involved." *Tital Pacific Constr. Corp.*, ASBCA Nos. 24148 *et al*, ¶ 19,626 at 99,320 (1987). This type of provision can be onerous to the contractor because it limits severely the entitlement to excusable and compensable delay, thereby restricting events of concurrent delay, leaving only the owner claim for contractor caused delay.

*Third*, as noted above, to be entitled to any time or price adjustment for owner caused delays (or contractor caused delays to a subcontractor), the contractual notice provisions must be met. An owner or contractor (in addressing its lower tier contractual obligations) may draft tighter notice requirements than exist under industry forms such as the AIA A201 General Conditions, whether in terms of the timeliness by which the delay notice must be provided or in terms of the substantive requirements of what such a notice must provide. The consequence of failing to comply with these contractual requirements may be claim preclusion altogether.

*Fourth*, the contract terms may expressly prohibit monetary recovery for concurrent delays by the contractor, or by the subcontractor,

while preserving the right of the owner to assert liquidated damages or even actual damages for its delays (if it can establish them apart from the contractor's delay). It is a risk allocation that if made should be enforceable under normal rules of contractual interpretation. In essence, it is like an extension of the "no damages for delay" contractual bar to recovery.

*Fifth*, the contract may provide the owner with the right to order the contractor to re-sequence or accelerate its work and to undertake efforts to recover the schedule such as increasing manpower, working overtime, going to an extended schedule or additional shifts, when faced with delays to the critical path. While the ability to so direct the contractor (or subcontractors) to take steps to bring the work back on schedule may result in a claim for impact costs due to the delay, if it is demonstrated that the delay is not contractor caused (and therefore excusable), in the case of concurrent delays, the inability of the contractor to meet this very burden of proving that it was not the cause of the delay may result in a recovered schedule and a denial of the additional costs of doing so. Likewise, from an owner perspective, even if such costs are compensable in whole or in part, the savings to the project by schedule recovery may justify the effort and cost of doing so.

*Sixth*, the contractor dealing with lower tier contractual apportionment of concurrent delays among its subcontractors may provide in its subcontracts that it, and it alone, shall have the right to apportion concurrent delays and their attendant costs or damages among the respective subcontractors that the contractor deems responsible, and that such determination by the contractor shall be binding upon and without

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## Downstream Allocation of Concurrent Delay Damages, Part 3

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recourse by the subcontractors. This provision may be accompanied by an express obligation or duty imposed upon subcontractors not to delay or hinder the work of other subcontractors and trades so that the contractual predicate for such unilateral concurrency apportionment by the contractor is clearly established.

*Seventh*, it is critical that the subcontract contain a well-drafted flow-down provision to ensure that the above types of contractual provisions become part of the subcontractor's obligations to pass downstream any resultant liability for concurrent delays that are lower tier generated. Such limiting provisions should be expressly identified in the flow down clause to comply with recent case law suggesting that generic incorporation of rights and remedies from the Contract Documents may not otherwise become part of the subcontract. *See, e.g., MPACT Constr. Group, LLC v. Superior Concrete Constructors, Inc., 802 N.E.2d 901 (Ind. 2004).*

### Conclusion

Concurrent delays can be allocated by a general contractor to or among its subcontractors, subject to the same rules and limitations impacting concurrent delay events as between the owner and contractor. As such, the analysis of concurrent delays, and downstream allocation of damages stemming there from, is highly fact-intensive and can be extremely complex. The existing body of law governing delay claims, however, generally permits such an allocation to the responsible parties. The right to apportion exists. The difficulty is the ability to do so successfully. The above framework does not provide all of the answers, but we hope it will afford the construction lawyer a roadmap for navigating this issue. ♦

## Forum Conversation

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A: I would say he or she needs some construction experience. I would say the best thing they could do is get involved with some actual people, owners, designers, contractors who do construction work and understand their problems, understand how they go about it so they have some practical experience that sets them apart from formal legal training which generally involves cases and academic issues.

Q: Is there a good way to mentor young construction lawyers?

A: Again, I think the problem with young construction lawyers is they need to understand the process; they need to understand what goes on in the field and the mentoring should include that.

Q: What is the worst mistake young construction lawyers make?

A: I think they treat the field too academically. They treat it as legal cases, where the facts aren't as important as the interpretation of the decisions that courts and other bodies issue when, in reality, the facts and the relationship of the parties is so hugely important in this area.

Q: Tell me how you first got involved with the Forum.

A: I got involved because of Dick Smith, who was really my mentor in construction. Dick was active in the Forum and so with his encouragement, I started attending meetings and participating in Forum activities.

Q: How has your involvement with the Forum helped you as a construction lawyer?

A: I think it is important as an institution that keeps you advised of current developments in the industry. And it is a forum in which industry and legal issues are discussed and you learn information which is invaluable

to your sensitivity to issues that arise in your practice.

Q: What are some of the potential benefits for younger construction lawyers who become active in the Forum?

A: Well, the learning is certainly one thing, the substance that they would receive in the Forum papers or in the meetings, of course, are important and may be a central reason to join. But also, the relationships with other construction attorneys of their own age that will be practicing throughout the United States and the world. It is invaluable to be on a construction project in some other state or country and be able to call someone whom you know and trust for advice on the problem.

Q: You were on the GC and have held various leadership roles within the Forum. Would you encourage younger people to take a more active role in the leadership of the Forum?

A: I think they should be on the committees that interest them, and be very active in those committees. And generally, I think that is the source of members of the Governing Committee; hopefully, people who have worked in the Forum and understand the issues. I think they should be encouraged as much as possible to participate in the Forum's work, particularly the committees and move up to the Governing Committee.

Q: What is the best way for younger members of the Forum to gather some of the wisdom of the older members of the Forum?

A: They should go to the meetings, they should sign up for the committees, they should go to the committee meetings, and they should obviously listen and participate in the programs. I think also to the extent they could get access to older lawyers at the meetings and outside of them, I think that is very helpful. I think most older lawyers would be happy to do that. ♦

## Join Us in Chicago for the Forum's 2008 Fall Meeting

- WHAT:** The Forum's 2008 Fall Meeting takes us to the Windy City, where Chicago's spectacular skyline will be the backdrop to a program that will be as timely as it is important. This Fall's program focuses on the new ConsensusDOCS family of construction contract documents that were rolled out last Fall. You may have already noticed that the ConsensusDOCS have been receiving national attention in such places as in *News Record* and have been endorsed by more than 20 industry groups. Do these documents represent the winds of change? Well, maybe coming to the Windy City in the closing days of summer may be just what you need to find out and, more importantly, to stay ahead of the curve on this new family of construction documents that some of our clients are talking about.
- WHEN:** September 11 and 12, 2008
- WHERE:** The conference will be held at the **Fairmont Chicago**, 200 N. Columbus Drive, Chicago, IL 60601. Reservations can be made by calling the hotel directly at **312-565-8000** block has been reserved for our attendees at a rate of \$319 single/double room per night. After **August 18, 2008** at 5:00 pm CDT or when the room block is sold out, guest rooms at the special ABA rate are not guaranteed and may not be available.
- TELL ME MORE:** Join us Friday Afternoon for a Chicago Architectural River Cruise, presented by The Chicago Architectural Foundation. Expert docents will interpret the world-class architecture along the Chicago River. This tour will spotlight more than 50 architecturally significant sites along the river where you will discover a new perspective on the city.
- Please register by August 18, 2008 to receive the discounted conference rate. For more information about the program, registration, hotel and transportation arrangements and CLE credit, the conference brochure is available at:

[www.abanet.org/forums/construction/featured\\_program/chicago08.pdf](http://www.abanet.org/forums/construction/featured_program/chicago08.pdf).



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### UNDERCONSTRUCTION

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