Remarks of John E. Thies to ABA
House of Delegates in Support of 10A
8/6/12
Hyatt

Madam Chair and members of the House, I am the president of the Illinois State Bar Association which, together with the Senior Lawyers Division, the Young Lawyers Division, the National Conference of Womens Bar Associations and a number of state bar associations across the country, is co-sponsoring Resolution 10A.

What is at issue is a subject of great importance to our profession – the greater and greater involvement of non-lawyers in the practice of law; and whether this House will take steps to try to do something about it *before it's too late*.

10A seeks to *reaffirm* existing ABA policy that dates from 2000 – the MacCrate Resolution. That followed from an effort by accounting firms to provide legal services to their clients.

These accounting firms were dismissive of our ethical rules and persuaded an ABA Commission that we should abolish the Rule 5.4 prohibition against the sharing of legal fees with non-lawyers and non-lawyer ownership.

This was Multi-Disciplinary Practice, or "MDP", and permitting it was described as a critical part of providing better service to clients – it was supposed to be "consumer" friendly.

In actuality, it was an attempt to pad the bottom line at the expense of client service and protection.

Through the MacCrate Resolution that 10A seeks to re-affirm, the profession fought back to *defend* 5.4 and all it stood for

– protecting clients and defending obligations of confidentiality, loyalty, and other core values. It was one of the ABA's finest hours. MDP was killed, or so we *thought*.

The proponents of 10A, of which I am obviously one, need to answer two questions -- why was 10A filed; and, why should it be adopted now, as opposed to at some later date?

To the first question: There are those within and without our profession who – just as with MDP -- wish to permit an ever-increasing role for non-lawyers in the practice of law. And, just like the year 2000, we need to send them a message.

The purveyors of this new paradigm use words that sound so progressive and innocuous (or at least vague) – like the need for the "institutional practice of law," "Alternative Law Practice Structures," and the importance of confronting "choice of law issues."

They point to the British and Australian experience as evidence of how this is "consumer friendly," and if you disagree with them, you're sticking your head in the sand.

On the subject of "fee-splitting," it has been said that we must address this subject because lawyers need "clarification" as to how they can split fees with non-lawyers in jurisdictions that allow non-lawyer ownership. Whether fee splitting with non-lawyers is a good idea in the first place is an *afterthought*.

Under the Model Rules, you are not permitted to fee-split – and the reason this is being discussed *now* is because there are those that simply want to *change* this rule.

But, the need for 10A goes beyond the subject of "fee-splitting" and, and certainly beyond the work of the ABA's Ethics 2020 Commission.

Resolution 10A was filed, and is now being debated because members of our profession across the country are concerned that we are seeing a movement toward Multi-Disciplinary Practice "by another name."

The supporters of 10A are not some "fringe" group. Our organizations collectively represent hundreds of thousands of lawyers across the country! Rather than acknowledging our concerns on the merits, opponents of 10A have called our intentions into question – and in the debate before the ABA Young Lawyers Division Assembly, 10A was called "insidious."

We are not trying to cut off debate by the Commission or anyone else, but to *inform* it – there's nothing "insidious" about that.

We are not sticking our heads in the sand, but standing on core principles that have served our clients well in the past, and will do so in future!

To the second question – why now?: In October of last year, the New York Times ran an article that made the question of greater non-lawyer involvement in the practice of law a very *public* issue.

This article was titled: "Selling Pieces of Law Firms" with the sub-titles: "Outside Investors may take some control from lawyers," and "US is looking at British Plans to allow law firms to sell stakes to investors." Whether this article happened on its own, or as a part of some marketing campaign, this is not a message we want the public to hear.

This New York Times article was followed soon after by a December 2nd Ethics 2020 memo identifying the Commission's preliminary proposals and conclusions saying that lawyers *should be* permitted to share fees with non-lawyers under certain circumstances.

This memo was eight (8) months ago – and, we've seen no effort to withdraw it.

The fact that these "proposals" have not been filed with the House is of no consequence – there is little doubt that they are headed here.

Because of this background, we need to send a strong statement to the forces that would greatly alter the whole concept of lawyers being a part of a profession - and to the public as well.

The message we should send is that this Association is not going to "water down" our ethical standards. This was the message of the MacCrate Resolution from twelve years ago, and it's also the message of 10A that seeks to reaffirm it.

The opponents of 10A also have some questions to answer, like:

What is it about 10A that prevents further discussions?

and

If the Ethics 2020 Commission doesn't intend to proceed with their recommendations as to 5.4 and 1.5, why the vigorous opposition to 10A which would reaffirm such a basic ABA policy? Why not withdraw those preliminary proposals – floated eight months ago

(just as they did the 25% ownership cap proposal)? And, why all the incendiary language?

Ladies and gentlemen, this appears to be about *more* than just giving the Ethics 2020 Commission additional time to consider the issue.

Thank you, and please vote “yes” on 10A.