Effectively Managing Environmental Matters: The Roles Of Attorneys And Consultants – Part I

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This is Part I of a three-part article. Parts II and III will appear in the May and June issues of The Metropolitan Corporate Counsel.

The question is simple: which professional do you retain to solve an environmental concern – an environmental attorney or an environmental consultant? Even when the answer is "both," which is frequently the case, the client must understand the differences in the professions in order to monitor and assign tasks while controlling liability, risks and cost. Attorneys and consultants have different educations, different standards that regulate their professions, different approaches and different problem solving skills. Although the law provides some guidance that separates the professions, in practice the two can and do overlap. By knowing the skills and limitations of each profession and by actively managing a team, a client can most effectively address environmental concerns.

Differences In The Professions

Aside from the obvious difference that attorneys are generally educated to advise others in the law, and consultants are generally educated to use science to solve technical problems, there are other differences in the two professions which will assist in determining how to manage an environmental problem. These differences are discussed more fully in the sections below and include: attorneys are a client's advocate where consultants serve the client as more objective, technical problem solvers; communications with attorneys may fall within the attorney-client privilege where communications with consultants are confidential by agreement or sometimes by statute; consultants may provide lower hourly rates, but the risks of enforcement and confidentiality may call for legal counsel; consultants work under specific contracts with terms which need to be negotiated, where attorneys work through retention letters; attorneys must avoid potential conflicts of interest where consultants may have conflicts inherent in their business arrangements. Each of these differences should be considered when managing a team to solve an environmental concern.

Approach/Client Relationship. In general, a consultant approaches an environmental issue as a technical problem to be solved. He or she will serve the public by objectively presenting information and designing engineering systems and facilities to solve environmental problems such as reducing or eliminating contamination. It should be noted, however, that technical consultants are more frequently departing from a purely "objective" view and are entering a gray area as they essentially advocate a technical position more favorable to a client. For instance, care should be taken in reviewing technical reports prepared by consultants as they may be "sanitized." The data typically will be there, but either without analysis or containing one-sided analysis.

In contrast, an attorney approaches an environmental issue as a pure advocate for a particular client. The attorney is required to zealously represent the client and is prohibited from taking on work that would result in a conflict of interest.[1] The attorney uses his or her legal skill to evaluate legal responsibility for contamination as well as to advocate the most appropriate manner to resolve it -- with the technical assistance of a consultant. The attorney may advocate for an appropriate clean-up criteria, or a certain remediation methodology.

In some respects, managing attorneys and consultants can be viewed by the point in time their specific skills are more appropriate. Attorneys should be contacted early on in a matter, as they are trained to identify issues, determine the need for additional expertise and answer questions like: What are the clients' interests? Who is responsible? Is the clean-up within the coverage of a state reimbursement program? Is it covered by an insurance policy? If I clean it up now is a third party available for cost recovery later?

Consultants will provide guidance in this early case assessment by helping to answer initial early questions like exactly how big the problem seems to be, or how much it may cost to clean it up. The later phases of solving environmental concerns, such as the mechanics of investigating and remediating an environmental problem through to solution, are clearly consultant territory. The consultant will delineate contamination, and design, evaluate and implement clean-up systems. Attorneys take a backseat at this point, serving to review and strategize.

Confidentiality. In developing a team to solve an environmental issue, a client should be fully aware of whether his or her conversations are confidential and the scope of the confidence. Many a client has been surprised when his or her private strategy sessions with a consultant (e.g., what is the lowest level of remediation we can conduct/support?) become public in the discovery process of, say, a toxic tort case.

Professional Engineers and Geologists are both subject to Standards of Professional Conduct promulgated by licensing boards. Professional engineering or geologist relationships begin with a limited expectation of confidentiality as defined by these rules. Professional engineers shall not reveal confidential facts, data or information obtained in a professional capacity without the prior consent of the client, except as authorized or required by law.[2] Similarly, professional geologists shall not voluntarily disclose information concerning the lawful business affairs or technical processes of a client or employer without his or her consent, provided that there is no detriment to public safety.[3] While geologists are required to keep confidential a broader range of information than engineers, both have public safety exclusions, among others.

Specifically, applicable standards of conduct include a requirement of Professional Responsibility such as "Engineers shall be responsive to the needs of clients and the general welfare, but shall hold paramount life, health, property and the welfare of the public."[4] This emphasis on the primary obligation of the professional engineer to protect the life, health, property and welfare of the public is repeated in Illinois Standards several times and is consistent in other states. Clearly the professional engineer has a public responsibility transcending any employment relationship with the client. The professional engineer owes a primary allegiance to the public. Professional Geologists are the same. In Illinois, they shall: "Protect to the fullest extent the public welfare and safety."[5]

This duty can conflict with the client's expectations, for example, in the case of spill or release reporting. An environmental consultant may feel obliged to report the discovery of a release of regulated material to the Agency to protect public safety when perhaps the client may feel there is no realistic risk and that a report is unnecessary. Alternatively, a technical consultant may report a release or provide information to an Agency as part of their "client service," without consulting the client.

The Standards of Professional Conduct only apply to licensed professionals, that is, Professional Engineers and Professional Geologists. It is important to note that many practicing environmental consultants are not licensed.[6] A client may obtain some additional confidentiality protection in a technical consulting relationship through a written contract. However, neither the Rules nor a contractual agreement will provide a legal privilege and any conversations and documents are discoverable by law.

Many states have enacted a critical self-evaluation privilege or environmental audit privilege which applies to properly identified documents whether prepared by consultants or attorneys. In Illinois, for example, the privilege prohibits an environmental audit report from being admitted into evidence in any civil, criminal, or administrative legal action. In order for the privilege to apply, the report must be labeled "Environmental Audit Report: Privileged Document" and can include the report itself, information gathered for the primary purpose of preparing an audit, memoranda analyzing the report, and implementation plans addressing past and future compliance. If, however, the privilege is invoked for fraudulent purposes, or if the audit shows a violation of state or federal law and the person claiming the privilege fails to correct the violation within a reasonable time, then the privilege will be lost. The privilege does not apply to information that must be collected for or made available to regulatory agencies. In addition, invoking the environmental audit privilege has no effect on other privileges, including the attorney-client privilege.[7]

In contrast, a lawyer zealously asserts the client's position within the bounds of the law.[8] An attorney's duty as the client's confidential advisor and advocate is to present the client's case in the most favorable light. Fundamental to this duty is the attorney-client privilege. Very simply, the lawyer may not reveal client confidences.[9]

Courts recognize that confidential communications between an attorney and client, not waived or revealed to others and made for the purpose of obtaining legal advice, are privileged.[10] The purpose of the privilege is to encourage clients to be candid with their attorneys so the attorney is well informed and can provide sound legal advice.[11] The privilege extends to verbal statements, documents and tangible objects conveyed in confidence for the purpose of obtaining advice.[12]

As a result, there are clear advantages to working through an attorney to keep information confidential in many situations. These may include strategy discussions relating to liability, property transfers, environmental assessments and audits, and enforcement situations.

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[1] See American Bar Association Rules of Professional Conduct (2000) ("Model Rules") *Preamble, 1.7, 1.8. In August 2001 and February 2002 the ABA adopted many amendments to the Model Rules. However, the 1983 Model Rules, amended through 2000, are the standard currently in effect in many states and are referred to herein.*

[2] *See applicable rules developed to implement the Professional Engineer's Act, 68 IAC 1380.300(a)(3).*

[3] *68 IAC 1252.110(a)(6).*

[4] *68 IAC 1380.300(a).*

[5] *68 IAC 1252.110(a)1.*

[6] *When a client retains a consultant, the client should fully investigate the training and certifications of the individuals performing the work.*

[7] *415 ILCS 5/52.2*

[8] Model Rules, *Preamble, Rule 1.6.*

[9] *A narrow exception to this strong general rule is that a lawyer must disclose a client's intent to commit a crime involving serious risk of bodily harm, even in breach of a client confidence.* See Model Rule 1.6.

[10] See Denius v. Dunlap, *209 F.3d 944 (Ill. 2000) (confidential communications between client and attorney for the purpose of obtaining legal advice are privileged - a court cannot compel revelation of these through discovery or testimony in civil or criminal matters).*

[11] See U.S. v. Adlman, *68 F.3d 1495 (N.Y. 1995).*

[12] See Manna v. U.S. Dept. of Justice, *815 F. Supp 798 (N.J. 1993);* but see, WLIG-TV, Inc. v. Cablevision Systems Corp., *879 F. Supp. 229 (E.D.N.Y. 1994) (privilege does not shield facts underlying the communications).*

Effectively Managing Environmental Matters: The Roles Of Attorneys And Consultants – Part II

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This is Part II of a three-part article. Part I appeared in April and Part III will appear in the June issues of The Metropolitan Corporate Counsel.

Cost and Objectives. Both technical consultants and attorneys normally work on an hourly basis. Therefore the total cost of their service will be the multiple of the hourly rate times the number of hours. To this, both normally add expenses, which are generally a minimal percentage of any bill of this nature. (There are other arrangements such as fixed fee for all work or fixed price for a particular scope of work, but these are not the norm.)

Technical consultants are not normally going to cost as much as attorneys on an hourly basis. However, the closer you get to each profession's core competencies, the more cost effective their services will be. Attorneys are likely to have certain language from prior agreements or contracts at their fingertips so contracts can be quickly and competently prepared. Technical consultants may have very specific information relating to the interpretation of detailed regulations if they are experienced in that field. If either profession has completed an identical or very similar project in the recent past, then they will be able to use that experience to a client's benefit.

On its face, cost seems to many to be a factor that weighs in favor of using technical consultants instead of attorneys *if* both professionals are equally capable of doing the work and legally permitted to do the work and all other things are equal. But that's a big "if," and it is rare that all other things are equal. Given the risks of liability and enforcement, and the benefits of privilege and a long-range view, the cost of counsel may be well worth it. It is the client's role to actively manage the tasks undertaken by both consultants and attorneys to keep costs in check.

The client must also set its business objectives. Achieving these objectives is the primary purpose of any project. Expending resources that do not achieve objectives is wasteful. A low hourly rate is little consolation when business objectives are not achieved. For example, a client's business objective may be to divest an environmentally challenged property for a reasonable price. A consultant may look at the problem as "clean it up," which may be prohibitively expensive. An attorney is more likely to make the client's business objective their own and see the problem as "make a deal." The deal may allow varied levels of clean at a variety of cost levels. Attorneys are skilled at identifying what is legally required and allocating responsibility to facilitate transactions.

Contracting Issues. The method of retaining attorneys and consultants is different, implying that the services provided are different as well. Consultants are retained with contracts. The terms of those contracts can vary widely in how favorable they are to the client. If a client retains a consultant without analyzing and negotiating the terms of the contract, the client may find that the agreement is standard-form and contains provisions detrimental to the client. One of the most harmful is a standard provision limiting liability for errors by the consultant to the cost of the consultant's services, which would likely be a fraction of any damages such as cleanup costs. Instead, the client should require indemnification in the amount of environmental coverage in the consultant's insurance policy and should review the policy to make sure there is adequate coverage and no pollution exclusion. Additional issues to be negotiated when retaining a consultant include the scope of work, the standard of care, confidentiality, conflicts and ownership of work product. Attorneys serve a valuable role in negotiating the terms of the consultant contract, or helping the client develop its own set of contract terms.

In contrast, attorneys are retained with retention letters appointing the attorney, generally describing the matter for which representation is requested, laying out a fee structure, and perhaps giving some direction. This is a less technically detailed way of obtaining professional services and it reflects the personal nature of the attorney-client relationship and the potential uncertainties of legal representation. Attorneys in Illinois are not required to carry malpractice insurance, so the client should ask whether the attorney has insurance and, as with the consultant, request proof.

Conflicts/Incentives. Since both technical consultants and attorneys are paid by the hour, they would seem to have an economic self interest in taking as long as possible to complete a job, or in mucking up the situation with time consuming extraneous concerns. The marketplace effectively protects educated consumers from this risk (sometimes called "churning").

Technical consultants may have financial interests in remediation services, laboratory services, and the like. There is a risk that a client will overpay because the technical consultant uses "their" in-house services. There is also a risk that a technical consultant will recommend additional sampling or remediating contamination when it is not required, possibly motivated by financial gain. This is not good practice but it happens, particularly when a technical consultant is given free reign on a project. Further, consultants have been known to make agreements with the Agency without the client's prior approval. A knowledgeable environmental attorney can review the consultant's scope of work or proposed remediation plan and serve as a check and balance while keeping focused on the client's business objectives.

Law firms do not generally have financial interests in other businesses so there is no clear financial incentive for the attorney when recommending a laboratory, a consultant, more consulting work or remediation work.[1] Lawyers are also subject to strict conflict of interest rules set forth in the American Bar Association Model Rules of Professional Conduct. Lawyers are prohibited from representing adverse parties in the same litigation, suing a current client even on matters unrelated to the attorney's work, or representing affiliate corporations in matters adverse to a client.[2] Further, lawyers are subject to specific rules when representing government agencies, trade associations, co-parties and even former clients. The rules are complex and often the basis for malpractice actions against attorneys but they assure the loyalty that clients expect from attorneys.

On the other hand, corporate compliance managers occasionally see consultants working for them on one project and against them on another, sometimes simultaneously. Clients can contract to require consultants to avoid conflict of interest situations. However, the Professional Rules of Conduct do not restrict Professional Engineers and Professional Geologists to the same extent that attorneys are regulated and in practice attorneys are more conscious of conflicts issues.

Effectively Staff

Given the skills and advantages of the professions, their exclusive practice areas defined by law, and the overlap between the professions, the most effective way to staff an environmental matter will depend on the particular task at hand. Environmental problems are complex and frequently require the services of both environmental attorneys and environmental consultants as well as other disciplines. Each profession has unique attributes and skills. The table below identifies how both professions are involved in many environmental activities. The table is organized running from the most legal tasks obviously most suited to attorneys at the top, to the most technical tasks obviously most suited to environmental consultants at the bottom.

The table set forth below may be used as a guide to help understand the roles of the two professions in solving environmental concerns.

[1] Model Rule 5.4, Professional Independence of a Lawyer.
[2] Model Rule 1.7a.

	Type of Activity	Consultant Role	Attorney Role
1	Litigation	Expert witness, possibly fact witness	Client advocate, litigation strategy, pleadings and papers
2	Legal analysis	Develop facts	Identify or interpret legal requirements or legal responsibility
3	Enforcement actions	Develop facts	Develop facts, litigate or negotiate with regulators
4	Appearance before enforcement body	Technical support	Required for corporate appearance in contested cases such as enforcement matters, permit appeals and variance petitions (IPCB)
5	Contracts	Administer and implement	Draft, negotiate and interpret
6	Clean-up agreements	Implement and support	Draft, negotiate and interpret
7	Regulations	Implement by designing and constructing systems and facilities, can be very knowledgeable regarding specifics	Interpret requirements
8	Law development	Review and evaluate scientific basis; technical support	Write the laws, lobby the law makers
9	Regulations development	Review and evaluate scientific basis: assist in negotiated rulemaking and standards development	Persuasively present facts in comments to proposed rules, challenge agency authority, scope and breath of regulations, vagueness
10	Appearance at public	Present the facts	Persuasively advocate on the client's behalf
11	Environmental management	Develop and implement the program	Develop and/or review the program
12	Compliance audits	Field investigation and report	Interpret results and determine preparation strategy for reporting liability or response
13	Transactions	Identify problems and risks through environmental assessment process	Recommend consultant, review assessment, collect corporate data, allocate problems and risks through preparation of legal documents
14	Waste determinations	Sampling and analysis, plain meaning and analysis	Novel or complex regulatory analysis
15	Permit writing	Develop technical facts, prepare forms	Determine, if required, pre-submittal review
16	Technical submissions	Develop and prepare	Review in light of legal requirements
17	Engineering design	Design/construct remediation and treatment systems	Identify legal requirements and ensure they are acheived
18	Field investigations	Develop and implement sampling plans	Identify legal requirements and ensure they are achieved
19	Engineering	Set the standard of care negligence	Prove the case

Effectively Managing Environmental Matters: The Roles Of Attorneys And Consultants – Part III

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This is Part III of a three-part article. Parts I and II appeared in the April and May issues of The Metropolitan Corporate Counsel.

A client should understand the standards of conduct which apply to the professionals it hires. It is only by knowing such standards that the client can attempt to contract for a higher standard, get contractual protection if the standard is not met, understand any insurance gaps if a professional acts outside its boundaries and, of course, know when malpractice has occurred. Further, a client should understand the types of activities restricted exclusively to one professional or the other.

Standards of Care. Like attorneys, Professional Engineers and Professional Geologists are subject to regulation by licensing boards and must comply with standards of professional responsibility. The Illinois Department of Professional Regulation has the power, duty and authority to investigate violations of the design professions acts and to discipline violators accordingly. Violations can include making false statements, negligence, unprofessional conduct of a character likely to deceive the public, breaching the rules of professional conduct, among many other acts.[1] The Department may issue fines of $10,000 for Professional Engineers, or $5,000 for Professional Geologists, and may revoke or suspend licenses, obtain an injunction against violations or seek a Cease and Desist Order through a Show Cause rule,[2] conduct investigations, or refer complaints for criminal prosecution. Action against Professional Engineers may be initiated through the State Board of Professional Engineers Complaint Committee and against Professional Geologists through the Director of the Department of Professional Regulation. In short, a professional license is a valued qualification that provides not only quality assurance but also a system to remedy complaints.

These remedies do not apply to non-licensed environmental consultants. In addition to any contractual remedies that a client may have against environmental consultants, there are traditional remedies provided by common law and statute such as misrepresentation, negligence, and the like.[3]

Lawyers are subject to a comprehensive system of regulation which includes rules of conduct enforced by state courts, private legal malpractice actions, controls on counsel in the course of litigation (disqualification, contempt of court or court rules), or criminal or tort law generally. The basis for much regulation is the American Bar Association Model Rules of Professional Conduct, subsequently adopted by most states. The Model Rules address a wide range of topics including the basic duties of a lawyer with respect to clients (competence, diligence, confidentiality),[4] lawyer as advocate (zealousness, frivolous claims, expediting litigation),[5] and maintaining the integrity of the profession (admission, reporting misconduct, disciplinary actions).[6]

In Illinois, the Illinois Supreme Court has delegated its jurisdiction to regulate and discipline lawyers to the Attorney Registration and Disciplinary Commission ("ARDC").[7] The ARDC investigates allegations of misconduct by lawyers and prosecutes cases where a lawyer's misconduct suggests a threat to the public or the legal profession.[8] Discipline imposed by the ARDC includes disbarment, suspension, probation, censure and reprimand. Once discipline in the form of disbarment or suspension (6+ months) is imposed, the attorney is prohibited from maintaining a presence in or occupying an office where the practice of law is conducted and must notify his or her clients and other attorneys involved in the lawyer's practice of the discipline imposed.[9]

All attorneys are subject to such regulation, merely by virtue of being admitted to practice law in the state.

Unauthorized Practice. There is a "gray area" of overlap between environmental consultants and environmental attorneys. Everyone will agree that only lawyers should practice law. Yet, everyone will also agree that consultants must have solid understanding of environmental laws and regulations in order to spot problems and determine a resolution. In fact, in many specific areas, consultants are expected to know the applicable environmental regulations, where attorneys may not (i.e., specific handling or storage requirements for hazardous wastes; how to conduct sampling to comport with EPA requirements). Nevertheless, the practice of law is legally limited to attorneys, and clients and both professions alike should know when the line has been crossed.[10]

Since the 1930s, states have prohibited non-lawyers from practicing law.[11] For example, the Illinois Attorney Act states that "[n]o person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose...."[12]

There are several reasons for preventing the unauthorized practice of law, all of which relate to the protection of the client. First, engaging in the unauthorized practice of law usually excludes a consultant from his or her insurance coverage. Moreover, it can be difficult to judge whether a non-lawyer is legally competent. Non-lawyers are also not trained to work with critical and hard-to-define legal terms, such as "reasonable" and "material."[13]

In addition, restricting the practice of law to licensed attorneys subjects attorneys to sanctions for failing to comply with its profession's standards.[14] By limiting the practice of law to licensed attorneys, the standards of zealous representation, client loyalty, and confidentiality become effective and meaningful, providing additional protection for the client.

Since the chief restraint on consultants is not being able to engage in the unauthorized practice of law, it is important to understand what the practice of law entails. There is no universal definition of "practice of law,"[15] but courts have applied three main approaches to determine when a non-lawyer has crossed the line.

The first is that the practice of law is involved when there are difficult legal questions that require professional judgment.[16] The courts have attempted to help define this standard. In *Chicago Bar Association v. Quinlan & Tyson, Inc.*, 34 Ill. 2d 116, 214 N.E.2d 771 (1966), the court defined "professional judgment" as requiring legal skill or knowledge which is more than ordinary business intelligence. The court said that a real estate broker could fill in merely factual information on legal forms prepared by attorneys but that the fact that a task was simple was not enough to remove it from the practice of law.[17] In *In re Disciplo*, 163 Ill. 2d 515, 645 N.E.2d 906 (1994), the court found that helping individuals fill out intake forms to determine if they had a worker's compensation claim was the unauthorized practice of law. Unfortunately, these decisions lack the specificity needed to predict what activities actually constitute the practice of law.

A second definition of the practice of law is those activities traditionally performed by lawyers.[18] These activities are somewhat narrowed down to three principal areas: giving advice on legal rights and obligations; preparing documents involving legal analysis; and representing clients in legal tribunals.[19] The important element is the character of the activity, not its name. When legal knowledge and technique are required, the activity is the practice of law even if conducted for example, before, an administrative board.[20] This is especially true if the board performs some judicial functions, like making findings of fact.[21] Again, however, the definition is quite open-ended.

A third approach is that the practice of law does not include those services which are merely incidental to routine services in the business world. For example, in *Grace v. Allen*, 407 S.W.2d 321 (Tex. App. 1966), accountants who prepared their client's tax returns also helped prepare a protest of a tax assessment. The court first noted that an accountant keeping a client's books is permitted to answer simple legal questions arising out of that work because accounting and the tax laws overlap significantly.[22] The court went on to hold that because the accountants' interpretation of various tax provisions was related to their accounting work and because they consulted with the client's attorneys throughout the project, the accountants were not engaging in the practice of law.[23] Again, however, as applied to environmental consultants the definition gleaned from this case is rather ambiguous. It gives no definitive answer, for example, to whether a consultant giving a legal compliance opinion – "meets the Innocent Purchaser Defense" or "does not fall within New Jersey's ISRA" – is practicing law.

Consultants are held liable and clients are not protected if a consultant engages in the practice of law without a license, but precisely defining the practice of law is seems difficult. There are some examples which in our view clearly cross that line:

- Consultant reviews/revises documents in a transaction;
- Consultant "opines" that a practice complies with law;
- Consultant make determinations that a client's environmental issues are "material" for SEC reporting purposes;
- Consultant concludes that its report "meets the innocent purchaser defense;" and
- Consultant "represents" client in enforcement-related meetings and/or proceedings.

Clients are well advised to avoid pressuring their consultants to engage in these activities, or in any activity trending towards legal advice. The client would be unprotected as such practice by a consultant would be outside the scope of its insurance coverage. A consultant can be somewhat shielded from liability for unauthorized practices by working through counsel whenever it's activities relate to the law.

On the other hand, it would be most unusual for an attorney to venture into the exclusive practice areas of consultants such as by designing a remediation system or conducting a site investigation. Many technical submissions require a Professional's seal just as litigation practice requires an attorney's signature or "certification." Nevertheless, attorneys may go too far by advocating unsupported technical positions (e.g., "the contamination is not significant") and a client would do well to evaluate whether a position is legal, technical, or some combination thereof.

Conclusion

While there is no comprehensive rule to dictate whether an environmental consultant or an environmental attorney should be retained to solve an environmental concern, it is clear that there are certain exclusive practice areas as well as significant overlap between the professions. Each profession has strengths to be employed, but neither can be one-stop shopping for environmental concerns. By judiciously assembling a team of the right professionals for the right tasks, environmental concerns can be effectively and economically addressed.

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[1] *225 ILCS 324/24* for Professional Engineers, *225 ILCS 745/85* for Professional Geologists.

[2] *225 ILCS 325/25 for PEs, 225 ILCS 745/85 for PGs.*

[3] *Professional Engineers can also be held liable for malpractice, which applies to those areas traditionally thought of as professions (e.g., doctors, lawyers, engineers, accountants, and architects).* E.g., Heldman Steel Products, Inc. v. Compuware Corp., *1999 U.S. Dist. LEXIS 21700 (Northern Dist. Ohio, 1999) (unpublished opinion). They have apparently never been held liable as environmental consultants, however.* (But see Price v. Dames & Moore, *92 Cal. App. 4th 355 (2001), where plaintiff sued engineering consultants, whom she had hired to inspect for environmental contamination, for "professional negligence." Although the case was entirely a discussion of whether plaintiff had complied with California procedure, the court never said that the engineers could not be sued for their work as environmental consultants.) There are no Illinois cases holding environmental consultants liable for malpractice.*

[4] *Model Rules 1.1-1.7.*

[5] *Model Rules 3.1-3.9.*

[6] *Model Rules 8.1-8.5.*

[7] *Ill. Supreme Court Rules 701 et. seq.*

[8] See *www.iardc.org.*

[9] *Ill. Supreme Court Rule 764.*

[10] *Again, for insurance purposes, a consultant found to be practicing law will be acting outside the scope of its insurance coverage, as would, arguably, an attorney drilling sample wells.*

[11] *Susan B. Schwab,* Note, Bringing Down the Bar: Accountants Challenge Meaning of Unauthorized Practice, *21 CARDOZO L. REV. 1425, 1428-29 (2000).*

[12] *705 ILCS 205/1 (date).*

[13] *Schwab, supra note 4, at 1457.*

[14] *Derek A. Denckla,* Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters, *67 FORDHAM L. REV. 2581, 2594 (1999).*

[15] *An ABA Task Force on the Model Definition of the Practice of Law has developed a draft statement setting out which actions constitute the delivery of legal services. The draft will be the subject of a public hearing in 2003. The model drafted by the task force defines the practice of law as "the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law." See www.aba-net.org/cpr/model_def_home.html.*

[16] *Schwab, supra note 4, at 1444.*

[17] *34 Ill. 2d at 123, 214 N.E.2d at 775.*

[18] *Schwab, supra note 4, at 1449-50.*

[19] Shortz v. Farrell, *327 Pa. 81, 84 (1937).*

[20] *Id. at 85.*

[21] *Id. at 92.*

[22] *Grace at 323.*

[23] *Id. at 324.*