

# Concurrent Legal and Nonlegal Services Disqualify Lawyer

BY LAZAR EMANUEL

**L**awyer Kilmer operated a business called Legal Expense Management. The business conducted an audit of legal bills submitted to the Binghamton City School District by a law firm which acted as the District's general counsel.

Later, Kilmer was retained by a Binghamton student in a claim against the School District. The School District moved to disqualify Kilmer. Among the bills which Kilmer had reviewed for the School District were bills relating to the student's claims.

Federal magistrate judge Gary L. Sharpe found that the student's billing records were protected as attorney-client communications belonging to the School District.

Kilmer argued that the auditing services of Legal Expense Management were not legal services. The magistrate judge disagreed. The judge decided there was no difference between legal services and nonlegal services rendered by a lawyer in determining conflicts issues. Under DR 1-106, "[F]or purposes of conflict resolution, both are legal services."

Because both the student and the School District were Kilmer's clients when the student's claim arose, the per se conflict rule applies. The rule governs conflicts in concurrent representation of clients with different interests.