

 ABA Center on Professional Responsibility
34th National Conference on Professional Responsibility
May 28-31, 2008

Wed., May 28, 2008

5:00-6:30 pm **Registration and Welcome Reception**

Thurs., May 29, 2008

8:00-9:00 am **Registration and Breakfast Buffet**

9:00-10:25 am **Welcome and Plenary Session**

Concealment of Exculpatory Evidence by Prosecutors: A Conversation about the Nifong Case

Michael B. Nifong, the district attorney in Durham, North Carolina, was disbarred and held in contempt of court in 2007 after falsely charging three Duke University lacrosse players with sexual assault. Nifong concealed from the judge and the defense attorneys DNA evidence that exonerated all the lacrosse players. This panel will discuss the ethical issues illustrated by the case and examine possible improvements in the current system for ethical regulation of prosecutors.

Panel Leader: Lisa G. Lerman
R. Michael Cassidy
Angela J. Davis
Katherine E. Jean

10:25-10:40 am **Refreshment Break**

10:40-12:00 noon **Breakouts**

Holding Lawyers Accountable for Client Behavior

This panel will discuss to what extent lawyers should be held accountable for failing to control socially unacceptable conduct by clients, and what changes to present rules, regulatory practices, and legal training might be required to avoid the debacles that have provoked calls for more effective measures.

Panel Leader: Mary T. Robinson
Lisa H. Nicholson
Paul Paton
Robert K. Vischer

Good Culture: Moving Beyond Loss Prevention in Law Firms

This panel will discuss what works and doesn't work in establishing and maintaining a positive law firm culture of compliance with ethics rules, competent representation, and best practices in client relations? What role should firm counsel, claims counsel, or loss prevention counsel play? How does a firm encourage good behavior, such as honest timekeeping and billing?

Panel Leader: Michael P. Downey
David Allan Gates
Kimberly Kirkland

12:00-2:00 pm **Michael Franck Award Luncheon (and Break)**
2008 Recipient - Geoffrey C. Hazard, Jr.

2:00-3:20 pm **Breakouts**

Unethical Obedience by Subordinate Lawyers: Practical Lessons from Social Psychology

Foundational studies in social psychology imply that subordinate lawyers will obey a superior's unethical or illegal instructions far more often than we would like to believe. This panel will explore some of the key insights from these studies and describe what implications they have for lawyer behavior.

Panel Leader: Andrew M. Perlman
Thomas Blass
Jon Hanson

Conflicts of Interest-Year in Review

This panel will discuss significant developments in conflicts of interest law in the past year, with particular attention to cases and ethics opinions that might implicate lawyer liability.

Panel Leader: William Freivogel
Karen K. Phillips
Mark L. Tuft

3:20-3:35 pm **Refreshment Break**

3:35-4:55 pm **Breakouts**

Behavioral Economics and Ethical Decision Making: "Bad Apples" II

This program focuses on Behavioral Economics, a growing field that uses psychological insights to challenge traditional economic theory's presumption of the rational human actor. Exploring the limits of the human mind and how they play out in market settings, the panel will examine moral implications for decision making in legal organizations.

Panel Leader: Daylian Cain
M. Keith Chen
Jason Dana
Donald C. Langevoort

Judicial Responses to Lawyer Misconduct

Judges play a dominant role in establishing and enforcing litigation ethics. This panel will explore how judges craft litigation norms for their courtroom, how judges see their role in addressing attorney misconduct, and why they do (or more often do not) report to the bar.

Panel Leader: Judith A. McMorrow
Daniel Klubock
Ellen J. Messing
Mark L. Wolf

5:00-6:30 pm **Reception**

Fri., May 30, 2008

8:00-9:00 am **Breakfast Buffet**

9:00-10:20 am **Breakouts**

The Ethics of Integrating Non-Traditional Client Services with a Law Practice: Realities, Trends, and Solutions

Lawyers are increasingly integrating traditional and non-traditional practice elements. This panel will explore how these changes implicate the ethical choices lawyers must make, how recent amendments to the ethical rules are responding to these trends, and the regulatory choices available to enable lawyers to adopt these new practices while maintaining the traditional autonomy and integrity of the profession.

Panel Leader: Robert Rubinson
Avis E. Buchanan
Robert R. Keatinge
Mark F. Scurti

Organization as Client: What Really are a Lawyer's Duties?

In the 2003 post-Enron environment, Model Rule 1.13 was amended to require a lawyer representing organizations to act on knowledge of constituent misconduct and to permit the lawyer to disclose such misconduct outside the entity in some circumstances. This panel will review the five-year impact of these changes and explore how lawyers might better respond to these new duties.

Panel Leader: Robert A. Creamer
Richard W. Painter
Jeffrey Swope
Anne E. Thar

10:20-10:35 am **Refreshment Break**

10:35-11:55 am **Breakouts**

Teaching Ethics and Professional Development: Legal Education at a Crossroads

The Carnegie Foundation's recent study, "Educating Lawyers" concludes that law schools fall short in developing students' sense of professional identity and purpose. Its recommendations mirror those of the Clinical Legal Education Association's 2006 "Best Practices" project. This program will offer concrete ideas drawn from these two reports that can be used to improve the teaching of ethics and professionalism.

Panel Leader: Judith Wegner
Barbara Glesner Fines
Peter Joy

Litigation Quiz Show

Everybody loves a good game show, so join us to see two advocates argue before a judge the in-court implications of issues presented in short video vignettes. Three contestants, selected from the audience will pre-judge the court, and there will be a right of appeal to the full audience. Topics include attorney-client privilege, work-product, and other evidentiary issues.

Panel Leader: Kenneth R. Berman
Lawrence J. Fox
Denise Page Hood
Lucian T. Pera

Informal Sessions (No CLE Credit)

1:30 - 3:00 pm **Firm Counsel Project Roundtable**

Opinion Practice (including liability issues) and Audit Response Letters

Discussion leaders - Art Lachman, Anne E. Thar, Bruce Johnson, Robert R. Keatinge

If you perform an ethics or risk management function within a law firm or corporate law department, this discussion, sponsored by the ABA Business Law Section Committee on Professional Conduct Firm Counsel Project, is for you. For more on the Firm Counsel Project, visit <http://www.abanet.org/dch/committee.cfm?com=CL290005>.

1:30 - 3:30 pm **Scholarship Roundtable**

“The Corporate Attorney Client Privilege: Third Rate Doctrine for Third Party Consultants”
Michele D. Beardslee, Harvard Law School

“The Evolving Saga of Attorney Loyalty to Clients: Lord Brougham, the Erie Railroad, Mr. Cravath and Corporate Lawyers in the 21st Century”
Eli Wald, University of Denver Sturm College of Law

"Between a Rock and a Hard Place: Protecting the Attorney-Client Privilege for Multinational Corporate Clients"

Lawton P. Cummings, Washington and Lee University School of Law

“Educating Millennial Law Students for Public Obligation”

Steve Berenson, Thomas Jefferson School of Law

“For Whose Eyes Only: the Problem of ‘Unwanted’ Disclosure”

Jim Fischer, Southwestern Law School

Sat., May 31, 2008

8:00-9:00 am **Breakfast Buffet**

9:00-10:20 am **Breakouts**

Conditional Admission to the Bar (*Joint Program with Client Protection*)

As the profession debates the wisdom of admission to practice conditioned upon requirements tailored to address an applicant’s mental illness, addiction, or other challenge, this panel will provide descriptions of programs already in place, and discuss what structures and legal attributes, particularly confidentiality, promote or frustrate the programs.

Panel Leader: Charles B. Plattsmier

Erica Moeser

John A. Weiss

Barbara Bowe

The Ethics of Representing Unpopular Clients – Then and Now

On March 5, 1770, British soldiers shot into a crowd of colonists. This event became known as the Boston Massacre. In the subsequent trial, John Adams and Josiah Quincy defended the British soldiers. Both Adams and Quincy were challenged by friends and family for representing deeply unpopular clients who were a threat to the emerging republic. This panel will explore this historical trial and what lessons we have or have not learned as we face similar issues in 2008.

Panel Leader: Kathleen Clark

Daniel R. Coquillette

David H. Remes

10:20-10:35 am **Refreshment Break**

10:35-11:55 am **Breakouts**

The Ethics Implications of Collaborative Law

In 2007, Colorado became the first state to issue an ethics opinion that found that collaborative law practice creates a non-waivable conflict of interest. The ABA subsequently took a contrary position. This panel will explore ethical issues in collaborative law practice and assess whether and how the underlying concerns can be addressed.

Panel Leader: James M. McCauley

Paula H. Noe
Scott R. Peppet
Pauline Tessler

Regulating 21st Century Advertising: Time to Throw in the Towel?

Is the New York experience a signal that lawyer advertising cannot be regulated within First Amendment constraints? Or does a trip through e-space tell us that we should be doing more? Can any present regulator effectively police Internet advertising? This panel will survey what regulators are doing about advertising and debate what they should be doing.

Panel Leader: Lynda C. Shely
Bruce E. H. Johnson
Donald R. Lundberg