

**38TH ABA NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY
Boston, MA
May 31- June 2, 2012**

Thursday May 31, 2012

Session 1 8:45 – 10:30 am

Watergate: 40 Years and Not Yet History

On June 17, 1972, five men were arrested for breaking into the Democratic National Committee headquarters at the Watergate complex in Washington, D.C. This event and the subsequent cover-up would lead to the resignation of President Nixon and conviction of 48 government officials. The impact on legal ethics was particularly acute because President Nixon and many of the senior staff involved in the events were lawyers. Watergate was one precipitating event that led to replacing the Model Code of Professional Responsibility with the Model Rules of Professional Conduct. **John Dean**, White House Counsel for the President from 1970-73 and a central figure in the aftermath of the break-in, will discuss his decision-making, the pressures he felt, and the mistakes he made. **Beth Nolan**, counsel for the president under President Clinton, and **Richard W. Painter**, Associate White House Counsel for ethics under President George G.W. Bush, will offer comments. **Roger M. Witten**, Assistant Special Prosecutor of the Watergate Special Prosecution Force in 1973 and 1974, will moderate.

LAWYERS AS PROFESSIONALS: SOME MORAL ISSUES
THE LEGACY OF WATERGATE FOR LEGAL ETHICS INSTRUCTION
WATERGATE: LESSONS FOR TODAY, NEARLY 40 YEARS LATER

Session 2 10:50 am – 12:10 pm

Current Issue in Conflicts

This panel will lead an in-depth discussion of recent developments in conflicts, including waivers, special issues involving government lawyers and conflicts from transnational offices.

Peter R. Jarvis (panel leader), Kathleen Clark, James D. Holzhauer, Anne E. Thar

RETHINKING THE PUBLIC-PRIVATE DISTINCTION IN LEGAL ETHICS: THE CASE OF SUBSTITUTE
ATTORNEYS GENERAL
NO CONFLICT
SOLICITORS' CODE OF CONDUCT – RULE 3 - CONFLICTS OF INTEREST
PAGES FROM SAMPLE DOCUMENT - WAL-MART OUTSIDE COUNSEL GUIDELINES

Session 3 10:50 am – 12:10 pm

The Character and Fitness Inquiry: Can We Predict “Problem” Lawyers?

The character and fitness inquiry is designed to weed out bar applicants who are likely to become problematic lawyers. The assumption is that from evidence of past misconduct, bar examiners will be able to predict future behavior accurately enough to justify denying the applicant the chance to practice law. Yet predictions of future conduct are difficult, even for trained clinicians. How well can we predict future misconduct? What can psychology tell us about predicting

problematic behavior in the workplace? What have other professions found about the factors that predict “problem” conduct? This panel will discuss these questions, as well as a recent study that considers whether problematic information revealed during the bar admissions process (e.g., prior crimes, academic misconduct, bad credit history, etc.) can be used to predict those lawyers who are subsequently disciplined.

Carol A. Needham (panel leader) – Mark A. DuBois, Trevor S. Harding, Leslie C. Levin

CHARACTER AND FITNESS—FROM A BAR DISCIPLINARIAN’S VIEW
THE CHARACTER AND FITNESS INQUIRY: CAN WE PREDICT “PROBLEM” LAWYERS?
ETHICAL DEVELOPMENT IN AN UNDERGRADUATE PROFESSIONAL DEGREE PROGRAM

Session 4 2:00 – 3:20 pm

Legal Ethics Issues in Access to and Possession of Evidence

Lawyers come into possession of evidence through a variety of means: contact with clients and third persons, discovery, accidental disclosure, anonymously supplied information, and the like. This panel explores the ethical issues that arise as lawyers navigate the treacherous terrain of possession or use of evidence, with a particular focus on criminal cases.

Loretta M. Lillios (panel leader), Stephen Gillers, Peter B. Krupp, Robert L. Ullmann

HYPOTHETICALS
GUNS, FRUITS, DRUGS AND DOCUMENTS: A CRIMINAL DEFENSE LAWYER’S RESPONSIBILITY FOR
REAL EVIDENCE

Session 5 2:00 – 3:20 pm

Interface Between Professional Liability Defense Work and Discipline Cases

Discipline cases may play a role in the prosecution or defense of professional liability cases. Conversely, all or part of a civil lawsuit may impact a disciplinary proceeding. This panel will examine fact patterns and issues arising from the intersection of the discipline process and the defense of a professional liability claim.

Wallace E. “Gene” Shipp Jr. (panel leader) Pamela A. Bresnahan, Nancy J. Marshall and Michael S. Ross

MODEL RULE OF LAWYER DISCIPLINARY ENFORCEMENT 18G
ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT (7TH EDITION), PREAMBLE AND SCOPE
(EXCERPT)
INTERFACE BETWEEN PROFESSIONAL LIABILITY DEFENSE WORK AND DISCIPLINE CASES

Session 6 3:40 – 5:00 pm

Bankruptcy Practice Ethics Issues

This panel will discuss issues such as the “fit” or lack thereof between state ethics rules and bankruptcy issues; representation of debtors in possession and other fiduciaries; pitfalls for the occasional bankruptcy lawyer; and how client pressures can shape lawyer strategy in bankruptcy cases.

Nancy B. Rapoport (panel leader), Claude R. “Chip” Bowles Jr., Robert J. Keach. Judge Elizabeth S. Stong

DEBTOR'S COUNSEL FIDUCIARY DUTY: IS THERE A DUTY TO RAT IN CHAPTER 11?
OUR HOUSE, OUR RULES
TURNING AND TURNING IN THE WIDENING GYRE
COURT INITIATED SANCTIONS OPINIONS IN BANKRUPTCY COURTS

Session 7 3:40 – 5:00 pm

Old Rules, New Tools: The Challenge of Social Media for Bar Associations and Lawyers

Social media can transform the practice of law. Facebook, Twitter, LinkedIn and legal blogs are here to stay. But what ethical and malpractice risks do they pose? How can lawyers avoid breaching confidentiality, unauthorized practice, illegal advertising and other risks? Should regulators be developing new rules for this wild new world, or will the old suffice? Our panel will discuss the potential and the challenges of social media and explore how bar leaders and law firm leaders should think about social media.

Simon Chester (panel leader), Robert J. Ambrogi, James S. Bolan, Jeffrey T. Kraus

SOCIAL MEDIA NETWORKING FOR LAWYERS: A PRACTICAL GUIDE TO FACEBOOK, LINKEDIN,
TWITTER AND BLOGGING
HOW TO CREATE A LAW FIRM SOCIAL MEDIA POLICY
LAW FIRM ONLINE ACTIVITY POLICY
THE ETHICAL AND LIABILITY IMPLICATIONS OF SOCIAL NETWORKING
TRANSCENDENTAL LAWYERING-TO BOLDLY GO WHERE NO LAWYER HAS GONE BEFORE: THE
INTERRELATIONSHIP BETWEEN ETHICS AND SOCIAL NETWORKING
ABA COMMISSION ON ETHICS 20/20 REVISED DRAFT RESOLUTIONS FOR COMMENT –
TECHNOLOGY AND CONFIDENTIALITY, FEBRUARY 21, 2012
NORTH CAROLINA STATE BAR ASSOCIATION 2011 FORMAL ETHICS OPINION 10
HUNTER V. VIRGINIA STATE BAR
INDIANA STATE BAR ASSOCIATION LEGAL ETHICS OPINION NO. 1, 2012.

Friday, June 1, 2012

Session 8 9:00 – 10:20 am

So You Think You're Up-to-Date on Attorney-Client Privilege & Confidentiality

In this annual review of recent developments, a panel of scholars and practitioners will explore attorney-client privilege and confidentiality issues in the electronic age and corporate context through a series of vignettes that will allow for audience participation. This interactive program will test the knowledge of the panel and the audience on hot topics, including claiming, challenging, and preserving the privilege; exceptions to and waiver of the privilege; choice of law problems; and obligations regarding another person's privilege.

Mark L. Tuft (panel leader), Merri A. Baldwin, Edna Selan Epstein, Bruce A. Green

INADVERTENT OR UNAUTHORIZED PRODUCTION HYPOTHETICALS
WHOSE E-MAIL IS IT ANYWAY? - CAN A CRIMINAL DEFENSE ATTORNEY ACCEPT A CLIENT'S
OFFER TO SHOW THE ATTORNEY E-MAILS WRITTEN OR RECEIVED AT WORK?
POSSESSING EVIDENCE OF A CLIENT'S CRIME-WHAT SHOULD A LAWYER DO?
DEPOSING OPPOSING COUNSEL HYPOTHETICALS
SO YOU WANT TO DEPOSE OPPOSING COUNSEL?
COMMON OR JOINT DEFENSE PRIVILEGE HYPOTHETICALS

WHAT'S UNCOMMON ABOUT THE "COMMON INTEREST" DOCTRINE

Session 9 9:00 – 10:20 am

Legal Education and the Formation of Professional Identity: Past and Future

The changing pattern of employment for American lawyers has moved the discussion of American legal education beyond the Carnegie Report and Best Practices. Drawing on newly developed insights into the history of Harvard Law School, the oldest continuing law school in the United States and the origin of the case method, this panel will look at the historical roots of U.S. legal education, with a particular focus on how professional identity was shaped by historical forces. It will then explore the current debates on the challenges and changes in U.S. legal education in shaping professional identity and the lawyer's understanding of legal ethics.

John T. Berry (panel leader), Daniel R. Coquillette, Daisy Hurst Floyd

PROFESSIONALISM: THE DEEP THEORY

PREFACE - THE REPUBLIC OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY (1817-1910)

Session 10 10:40 am – 12:00 pm

Ethical Limits on Expert Witnesses – The Hiring Lawyer's Perspective

A litigator who hires a professional to serve as an expert witness has ethical duties of loyalty, competence, and confidentiality to the client and a duty of candor to the tribunal. Those duties can cause clashes with the client, the expert, the adversary, and the tribunal. For instance, suppose a lawyer has hired a forensic accountant to critique an opponent's certified financial statements, but the lawyer believes there are flaws or mistakes in the forensic accountant's report that the accountant refuses to acknowledge or address. What duties does the hiring lawyer owe to the tribunal and to the client? And what duties does the hiring lawyer owe – and to whom -- if the lawyer discovers that an expert has conflicts of interest that the expert refuses to acknowledge (or acknowledges but refuses to disclose)? To complicate matters further, many testifying experts are subject to codes of professional ethics in their own fields that differ from or conflict with the hiring lawyer's own ethical duties. Which profession's rules of ethical conduct are supreme – the lawyer's professional ethics rules, or the expert's professional ethics rules? This panel will examine these questions by analyzing realistic hypothetical situations.

Roy D. Simon, Jr. (panel leader), Robert F. Coleman, Jeffrey J. Greenbaum, Michael T. Trucco

INTRODUCTORY VIGNETTE

HYPOTHETICALS ON PERILS IN HIRING LEGAL ETHICS EXPERTS

RULE 26(b), FEDERAL RULES OF CIVIL PROCEDURE

AMENDED EXPERT DISCOVERY: ONE YEAR LATER, HAS ANYTHING CHANGED?

CONFLICTS OF INTEREST FOR INDIVIDUALS RETAINED AS EXPERT WITNESSES-SOME
GOVERNING RULES

ABA GUIDELINES FOR CONDUCT FOR EXPERTS RETAINED BY LAWYERS (PROPOSED DRAFT)

Session 11 10:40 am – 12:00 pm

Disciplinary Actions in Complex Cases

The challenges you encounter when you have complex and complicated disciplinary cases- everything from communication issues with the media, the public, regulatory agencies and the bar members; the steps necessary to investigate the allegations and organize your evidence to determine what action is necessary; and the strategies needed to take these types of cases to trial.

John S. Gleason (panel leader), Jayne Kim, Sheila M. Tuma

COMPLAINT, IN RE THOMAS, AUBUCHON AND ALEXANDER
REPORT OF INVESTIGATION, IN RE THOMAS, AUBUCHON AND ALEXANDER
SUMMARY OF ETHICAL VIOLATIONS, IN RE THOMAS, AUBUCHON AND ALEXANDER
SUMMARY OF MATTERS, IN RE THOMAS, AUBUCHON AND ALEXANDER
ANSWER TO PETITION FOR REVIEW, KRAMER V. STATE BAR OF CALIFORNIA
ORDER, KRAMER V. STATE BAR OF CALIFORNIA

Saturday, June 2, 2012

Session 12 9:00 – 10:20 am

Banking Trends and Lawyer Ethics (Joint Program with Client Protection Forum)

Recent banking trends, including Check 21 legislation, have altered how lawyers do business, which has altered disciplinary investigations. The panel will discuss electronic banking issues, electronic transfers to and by lawyers, and the impacts on lawyers' trust and operating accounts. The panel will explore methods of tracing electronic transfers, and obtaining and interpreting banking records.

Francis A. Rosinski (panel leader) Angie Smith, Kathleen M. "Katie" Uston

PAYMENTS TERMINOLOGY
PAYMENT PROCESSING UPDATE

Session 13 9:00 – 10:20 am

Lawyers in the Night – Conflicts, Stealing Clients, Accessing Files

The movement of lawyers from firm to firm involves a hodge-podge of complex legal and ethical issues, drawing in questions of employment law, contract law, the law of fiduciaries and, increasingly, bankruptcy law, as well as several provisions of the Model Rules. This panel will use hypotheticals drawn from the annals of real life to help parse the analytical and practical problems these situations present, and to provide guidance in this increasingly uncertain area.

Ronald C. Minkoff (panel leader) Robert A. Creamer Tracy L. Kepler, Allison D. Rhodes

HYPOTHETICALS
WHY *JEWEL V. BOXER* IS WRONG
ETHICS 20/20 PROPOSAL REGARDING RULE 1.6(B)(7)

Session 14 10:40 am – 12:00 pm

Law Firm Management & Supervision: Where We Are & Where We're Headed

This panel will examine important recent developments and significant regulatory trends in managing and supervising ethical compliance in law firm environments. We'll start with vignettes based on recent cases raising the ethics, liability, and risk management aspects of real world problems, and then turn to what promises to be a spirited discussion of global developments in Australia and the UK in management-based professional regulation. Using interactive techniques, leading experts in the field will weigh in on these cutting-edge issues, providing interesting and useful insights for practitioners, academics, and regulators alike.

Arthur J. Lachman (panel leader), Henry C. Dinger, Susan Saab Fortney, Douglas R. Richmond

THE LIFE AND TIMES OF SUPERVISORY LAWYERS (HYPOTHETICALS)

ON FURTHER REFLECTION: HOW PROFESSIONAL SELF-REGULATION SHOULD PROMOTE
COMPLIANCE WITH BROAD ETHICAL DUTIES OF LAW FIRM MANAGEMENT

TALES OF TWO REGIMES FOR REGULATING LIMITED LIABILITY LAW FIRMS IN THE U.S. AND
AUSTRALIA: CLIENT PROTECTION AND RISK MANAGEMENT LESSONS

LAW FIRM PARTNERS AS THEIR BROTHERS' KEEPERS

THOUGHTS ON THE COMPATIBILITY OF RECENT U.K. AND AUSTRALIAN REFORMS WITH U.S.
TRADITIONS IN REGULATING LAW PRACTICE

OUT WITH THE OLD AND IN WITH THE NEW IN ENGLAND AND WALES: OUTCOMES FOCUSED
REGULATION

OUTCOMES-FOCUSED REGULATION IN ENGLAND AND WALES: THE COMPLIANCE OFFICER ROLES
SUPERVISORY AND SUBORDINATE LAWYERS

DEVELOPMENTS IN MANAGEMENT REGULATION IN AUSTRALIA-ADDITIONAL RESOURCES

Session 15 10:40 am – 12:00 pm

The Model Rules of Lawyer Disciplinary Enforcement: Time for a Change?

The panel will discuss making the rules more accessible to the nonlawyer adjudicator; the proper scope and breadth of discovery practices in grievance matters; needed refinements in light of the aging lawyer population and the growing understanding of disability issues; considerations regarding reinstatement; and other changes that might improve the system of lawyer disciplinary enforcement.

Donald D. Campbell (panel leader) Myles V. Lynk, Doug Ende, Kim D. Ringler, William B. Dunn

THE ABA MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT: A LOOK BACK AND PLANS
FOR THE FUTURE

THE HISTORY OF THE RULES OF DISCIPLINARY PROCEDURE IN WASHINGTON
OBSERVATIONS OF AN ETHICS JUNKIE AS DISCIPLINARY NOVICE