**Session 1**  8:45 - 10:20 am

**Closing One Door and Opening Another: Legal, Ethical and Practical Problems with Shutting Down a Law Firm**

From solo practices to international megafirms, the death of a law firm is always a traumatic experience – for lawyers, for staff and for clients. In this program, a panel of experienced lawyers and state Bar officials will use a hypothetical fact-setting and audience participation to examine the numerous legal, ethical and practical issues involved with shutting down law firms. These will include addressing the sudden death or disability of a solo practitioner, managing escrow accounts in a dissolving firm, dividing firm property (and defining just what is firm property), soliciting clients of a dissolving firm, determining the scope of fiduciary obligations among the dissolving firm’s partners, and managing efforts to control the dissolving firm by non-lawyer third parties such as banks and creditors.

Ronald C. Minkoff (panel leader), Judith D. Equels, Janis M. Meyer, Wallace E. Shipp Jr.

**LIFE OVERTAKES ART: AN UPDATE ON JEWEL V. BOXER**

**The Death of a Practice**

**Mass Torts as Quasi Class Actions: The Role of Judicial Oversight**

This panel will address the role of lawyers and judges in mass non-class litigation. Some judges have referred to mass torts as "quasi-class actions" and have used this idea to justify increased judicial supervision of fees, settlements, and other matters. The panel will consider how judicial oversight may mitigate some concerns about lawyer responsibility, but may also raise new concerns about the bounds of judicial authority and interference with client-lawyer relationships.

Howard M. Erichson (panel leader), Lynn A. Baker, John H. Beisner, Aaron Twerski

**Session 2**  10:40 am-12:00 pm

**IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION**

**Managerial Judging: The 9/11 Responders’ Tort Litigation**

**The Role of the Judge in Non-Class Settlements**

**Ethical Issues in Mass Tort Plaintiffs’ Representation: Beyond the Aggregate Settlement Rule**

**Prosecutors' Ethical and Professional Decision Making -- Is it Unique?**
Prosecutors are said to have "the responsibility of a minister of justice and not simply that of an advocate." This responsibility is defined in part by the law and professional conduct rules of the prosecutor's jurisdiction, but it is commonly understood that prosecutors' vast power and discretion are guided by additional expectations. Both the ABA and the National District Attorneys' Association (NDAA) periodically publish standards that attempt to capture some of these expectations, but new developments regularly test the correctness, clarity and completeness of these standards. This panel discussion will employ a series of real-life problems to explore the depth and complexity of prosecutors' ethical and professional decision making in a range of contexts.

Bruce A. Green (panel leader), Henry L. Garza, Russell Wilson, Ellen Yaroshefsky

PROSECUTORS' ETHICAL AND PROFESSIONAL DECISION MAKING -- IS IT UNIQUE?

Session 4 2:00 - 3:20 pm

Conflicts and Other Issues when General Counsel Hire Outside Law Firms
The panel will examine the issues that can arise between corporate general counsel and the law firms they retain—and how best to resolve them. Among those issues are the content and structure of engagement letters (and particularly the inclusion of advance waivers and indemnification provisions); actions against subsidiaries and affiliates; and the effect of lateral moves. The differences between a general representation and representation for a limited matter or transaction will also be addressed. The panel includes inside and outside counsel who have experienced these difficulties and have views (not always uniform) as to how best they can be resolved.

Simon Lorne (panel leader), Steven A. Bennett, James Kobak, Anne E. Thar

BASIC PRINCIPLES APPLICABLE TO CONFLICTS BETWEEN LAW FIRMS AND CORPORATE CLIENTS
SOME FUNDAMENTAL THESES ABOUT THE APPROACH TO CONFLICTS BY INSIDE COUNSEL AND THEIR LAW FIRMS
GALDERMA LABORATORIES, L.P. ET AL V. ACTAVIS MID ATLANTIC LLC
IN RE LIEBNOW V. BOSTON ENTERPRISES
PARALLEL IRON LLC V ADOBE SYSTEMS INC.

Session 5 2:00 - 3:20 pm

Proving Remorse in Bar Application, Lawyer Discipline and Lawyer Reinstatement Settings
This panel will explore the element of remorse in bar application, lawyer discipline and lawyer reinstatement settings. It will engage in a practical discussion of the challenges of proving and disproving remorse in professional regulatory proceedings. It will discuss what remorse is and how it differs from similar states of mind, and it will investigate remorse through practitioner experience and an exploration of philosophical and psychological perspectives.

Mary T. Robinson (panel leader), Kellie F. Johnson, Donald R. Lundberg, Mitchell Simon
Ethical Issues in Whistleblower Litigation: Plaintiff and Defendant Perspectives
This panel will explain the operation of two federal statutes that establish financial incentives for whistleblowers -- the federal False Claims Act and Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 -- and discuss the ethical issues that arise under these statutes. Whistleblowers often have access to information that their employers view as confidential or privileged. How do lawyers representing whistleblowers handle this sensitive information? How does the corporate attorney-client privilege apply to corporate compliance officers? Does application of the privilege depend on whether the compliance officer is a licensed lawyer or part of the corporate General Counsel’s office? May lawyers who represent corporations take advantage of the financial incentives that are available under the False Claims Act and Dodd-Frank or are they barred from doing so under confidentiality or conflict of interest rules?

Nancy J. Moore (panel leader), John T. Boese, Kathleen Clark, Jennifer M. Verkamp

Whistleblowers, Ethics, and the Federal False Claims Act
Whistleblowing incentives for lawyers?
Partial Bibliography of Legal Sources

Fri., May 31, 2013

Did Lincoln Practice Law the Way He Practiced Politics?
In the film "Lincoln" we see the President's political acumen in his effort to pass the 13th Amendment. Based on Doris Kearns Goodwin's "Team of Rivals: The Political Genius of Abraham Lincoln", the President's use of federal job offers to lame duck Congressmen, omission of relevant facts, and hardball tactics contrast with the image of "Honest Abe." Mark Steiner, author of "An Honest Calling: The Law Practice of Abraham Lincoln" and Billie J. Ellis, Jr., contributing author to "Abraham Lincoln, Esq.: The Legal Career of America's Greatest President" will delve into the ethical intricacies of Lincoln's law practice and how Lincoln's actions would play out under today's rules.

Dennis A. Rendleman (panel leader), Billie J. Ellis, Jr., Mark E. Steiner

Selected Cases of A. Lincoln, Esq., Attorney and Counselor-at-Law
Abraham Lincoln's Notes for a Law Lecture
Beyond the Model Rules: Aristotle, Lincoln and the Lawyer’s Aspirational Drive to an Ethical Practice
Managing Disciplinary Proceedings and Malpractice Actions
Some lawyers who sue or defend other lawyers like to specialize – in legal malpractice, for instance, plaintiff or defense, or only in discipline defense. But situations that create a discipline case for a lawyer-client often create a simultaneous malpractice case (or the risk of it, at least), and vice versa. And a criminal case (or the risk of it) often accompanies one or both them, too. This panel will examine several of the issues that those situations create, and discuss many of the considerations, practical as well as legal, that a litigator in those situations must think through, even if they are outside that litigator’s chosen specialty. Topics to be covered include: When and how broadly do evidentiary privileges (lawyer-client, work product, Fifth Amendment), the ethics duty of confidentiality, and statutes or rules that may gag participants in discipline and criminal cases apply, and how can they be used (or avoided) to a client’s benefit? If one or more types of cases arise from a single set of facts, which case can, should, or must be given precedence? Will the order of the cases’ disposition affect the proof in the other cases, and how can a smart litigator use the answers to those questions to the client’s benefit?

Carol A. Needham (panel leader), Susan Brotman, W. William Hodes, Tracy Kepler, Alison Moore

Survey Regarding Deferral of Prosecution and Sharing of Information Compilation of Cases

Ethics Issues in Estate Planning
As in all specialized areas of practice, there are ethics issues that arise for lawyers who practice in estate planning and probate that are peculiar, or peculiarly common, to the practice area. The American College of Trust and Estate Counsel’s Commentaries to the Model Rules of Professional Conduct, now in their fourth edition, are intended to give particularized guidance to ACTEC Fellows, and trust and estate practitioners generally, in resolution of ethics issues that commonly arise in practice. This panel -- composed of experienced practitioners, academics, and participants in the ongoing revision and update of the ACTEC Commentaries -- will examine several of those issues and offer comment and discussion on their resolution, with precise attention paid to the language of the Model Rules and Comments, and the guidance offered by the ACTEC Commentaries.

Karen Boxx (panel leader), Patricia H. Char, Terry W. Hammond, Bruce S. Ross

The ACTEC Commentaries on the Model Rules of Professional Conduct ACTEC Commentaries Annotations: Recent Case Law and Ethics Opinions Involving Trust, Estate and Guardianship Issues
**Session 10  10:40 am - 12:00 pm**

**Recent Issues Regarding Lawyer Advertising Rules**

While the unconstitutionality of per se advertising restrictions has been clearly established, concerns about "second-generation advertising issues" continue to pose fascinating and challenging questions. This panel will consider the regulation of the "softer" side of advertising (including logos, jingles, testimonials, pit bulls and superheroes); the general question of regulating matters of "taste" and "dignity"; and the related regulation of attorney internet activity. It will also consider these activities in light of the lawyer's obligation of confidentiality with regard to publicly available information about representation.

Margaret Raymond (panel leader), James M. McCauley, Alice Mine, Rodney Smolla

*IN THE MATTER OF HORACE FRAZIER HUNTER, OPENING BRIEF OF APPELLANT*
*IN THE MATTER OF HORACE FRAZIER HUNTER, BRIEF OF APPELLEE*
*IN THE MATTER OF HORACE FRAZIER HUNTER, REPLY BRIEF OF APPELLANT*
*HUNTER v. VIRGINIA STATE BAR*

**Session 11  2:00 - 3:20 pm**

**Confidentiality and Attorney-Client Privilege**

In this annual review of recent developments, a panel of scholars and practitioners will explore attorney-client privilege and confidentiality issues in the law firm 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 recent topics, including claiming and challenging the intra-firm privilege; representing corporate board committees and transforming the privilege in corporate mergers and acquisitions.

Mark L. Tuft (panel leader), Merri A. Baldwin, John C. Koski, Allison D. Rhodes

**HYPOTHETICALS**

*THE ATTORNEY-CLIENT PRIVILEGE MAY NOT PROTECT COMMUNICATIONS BETWEEN FIRM IN-HOUSE COUNSEL AND FIRM LAWYERS*

*MAY A LAW FIRM HAVE PRIVILEGED COMMUNICATIONS WITH IN-HOUSE COUNSEL REGARDING A CURRENT CLIENT*

*TRANSMUTATION OF THE ATTORNEY-CLIENT PRIVILEGE (CASE SUMMARIES)*

*ATTORNEY-CLIENT PRIVILEGE BETWEEN A BOARD COMMITTEE AND OUTSIDE COUNSEL: AN OUTLINE OF AUTHORITIES*

*BUSINESS SUCCESSORS AND THE TRANSPOSITIONAL ATTORNEY-CLIENT RELATIONSHIP*

**Session 12  2:00 - 3:20 pm**

**Lawyer Fiduciary Duties: Testing the Limits of Client Loyalty and Confidentiality**

Following a provocative session at APRL's Annual Meeting in Chicago last year, this protean
concept will get another work-out in San Antonio. Do we know direct adversity when we see it? Is there a legal or ethical conflict of interest when two current clients are locked in a Freivogel "zero sum game" or Wolfram "finite pie contest"? To whom are the duties of loyalty and confidentiality owed when the client is a corporation? Can fiduciary duty be negotiated away or compromised in the terms of engagement? Does competing with your client for talent, office space, or business breach your fiduciary duty to it? And can loyalty survive indirect adversity? Using hypotheticals and with input from the audience, we'll survey the cacophony of disparate voices, views, and results on these issue in an effort to discern a coherent approach to them.

Arthur J. Lachman (panel leader), Henry Dinger, J. Charles Mokrisky, Paula Schaefer

HYPOTHETICALS

SPEAKERS TRY TO CABIN SLIPPER CONCEPT OF LAWYER'S FIDUCIARY OBLIGATION TO CLIENTS
BACK TO THE FUTURE: FIDUCIARY DUTY THEN AND NOW
FREIVOGEL ON CONFLICTS: ZERO SUM GAMES
HARMING BUSINESS CLIENTS WITH ZEALOUS ADVOCACY: RETHINKING THE ATTORNEY ADVISOR’S TOUCHSTONE
COMPETITOR AND OTHER “FINITE-PIE” CONFLICTS
LINKS TO RULES, CASES AND ETHICS OPINIONS

Session 13 3:40 - 5:00 pm

Lawyer Accountability: Do We Take Client Protection Seriously (Enough)? (Joint Program with Client Protection Forum)
The panel will explore the following questions in this interactive session: Are Client Protection Funds adequate as to both conduct covered and funding?; Should malpractice liability insurance be mandatory or is insurance for LLCs & LLPs enough?; Does the civil liability "system" adequately protect the public?; How do limited liability forms of practice impact the protection provided by the civil justice system?; Is the disciplinary system open and transparent enough?; Does diversion assist or undermine it as a device for protecting the public?; and What are the implications if we do not take client protection seriously enough?

Thomas Andrews (panel leader), Daniel J. Abrahams, Nancy L. Cohen, Susan Saab Fortney, Janet Green Marbley

Law as a Profession: Examining the Role of Accountability Between a Rock and a Hard Place: The Future of Self-Regulation—Canada Between the United States and the English/Australian Experience
Tales of Two Regimes for Regulating Limited Liability Law Firms in the U.S. and Australia: Client Protection and Risk Management Lessons
Client Protection in Ontario, Canada: An Overview

Session 14 3:40 - 5:00 pm

Mandatory Civility Rules

Should civility among lawyers be mandated? Several jurisdictions have started down that road
either through their oaths of admission, rules of professional conduct or other court rules. Is enforcement realistic? Do disciplinary agencies and courts have better things to do? What are the benefits, what are the dangers, and which outweighs the other?

David A. Grenardo (panel leader), Judge Sidney A. Fitzwater, Ellen A. Pansky, Maret Vessella

ENFORCING CIVILITY: HOLDING ATTORNEYS TO A HIGHER STANDARD OF CONDUCT
CALIFORNIA ATTORNEY GUIDELINES OF CIVILITY AND PROFESSIONALISM FAQS