



## Wednesday, May 30, 2018

2:00PM – 5:30PM

Registration, light reception & “Dutch-Treat Dine Around” Signup

7:00PM – 9:00PM

“Dutch-Treat” Dine-Around Various Venues  
Hosted by the Conference Planning Committee

## Thursday, May 31, 2018

7:00AM – 8:30AM

Networking Breakfast

7:00AM – 8:30AM

Canadian / American International Regulators’ Roundtable

8:45AM – 9:00AM

Welcome & Opening Remarks

Alice Neece Mine, Chair  
Center for Professional Responsibility  
Conference Planning Committee

9:00AM – 10:20AM

**Plenary: Ethics Issues in Lawyers’ Use of Artificial Intelligence**

Moderator: [Robert Ambrogi](#)

Panelists: [Andrew Arruda](#), [Anthony Davis](#), [Kyle Doviken](#), [Dennis Garcia](#)

If machine capabilities allow us to diminish, or even remove, human participation from some tasks traditionally involved in the practice of law, or to exchange non-lawyer providers for lawyer providers for entire segments of service previously performed by lawyers, what roles will lawyers play, and how will the changes affect the delivery of legal services in the future? In turn, how do these changes affect how we analyze and manage the ethical accountability and client protections associated with both lawyer and non-lawyer provided tasks and services?

A panel that includes several lawyers working for businesses that are creating and expanding those very machine capabilities will discuss those questions with the practicing ethics lawyers – on the panel and in the audience – who advise other lawyers about analyzing and managing lawyers’ ethical and legal accountability.

10:20AM – 10:40AM

Break

10:40AM – 12:00PM

**Breakout #1**

**Lies, Damned Lies and ‘Alternative Facts’**

Moderator: [Bruce Green](#)

Panelists: [Ellen Brotman](#), [Michael Flaherty](#), [Nicole I. Hyland](#), [Brad Johnson](#), [Rebecca Roiphe](#)



Everyone knows that lawyers are not allowed to lie -- to clients, courts or third parties. But once you get beyond deliberate false statements, the scope of the obligations relating to truth and integrity become less clear. What about reckless and negligent statements that are false? What about misleading statements and implications about the extent of your knowledge (e.g., "I don't know," when you do have some knowledge, and factual assertions for which you have no basis). What about omissions -- which are okay and which are impermissibly misleading? When is it okay to exploit someone else's misapprehension and when do you have to correct it? What about false and misleading statements where nobody is fooled (e.g., sellers' concessions)? What about misleading conduct in one's personal, rather than professional, capacity? And given the gray areas, how should lawyers be sanctioned for impermissible deceit that does not involve an outright, boldfaced lie?

Through a series of hypotheticals, this program will explore the issues of attorney candor, the parameters of what constitutes a misrepresentation, and the consequences for violating one's duty of candor.

#### **Breakout #2**

#### **Post-conviction Ethics Issues for Criminal Defense and Prosecution**

Moderator: [Tigran Eldred](#)

Panelists: David Siegel, Donna Patalano, [Colon Willoughby](#)

The professional responsibility demands imposed by the Constitution, the ABA Model Rules, and the ABA Criminal Justice Standards are all well known and have been prolifically discussed and analyzed. But there is a discrete set of those demands that affects the behavior of lawyers -- both prosecutors and defense lawyers -- post-conviction that are not so frequently analyzed and discussed. This panel will raise and discuss several of those issues.

12:00PM – 2:00PM

#### **LUNCH (*On Your Own*)**

12:30PM – 1:30PM

#### **The Breakdown of Civility in Political Discourse – What Does it Mean for the Legal Profession?**

Panelists: [Blake D. Morant](#), [Jayne Reardon](#), [Jonathan E. Smaby](#),  
[W. Bradley Wendel](#)

Increasing incivility has become the new normal in American politics, yet lawyers have been addressing incivility in the legal profession for over 30 years. Join this panel of experts as they examine the relationship between civility in law and civility in politics. All are invited to grab a quick lunch and join this optional, non-CLE discussion sponsored by the ABA Consortium on Professionalism and the Standing Committee on Professionalism. [More](#)



2:00PM – 3:20PM

**Breakout #1**

**Online Attorney Client Matchmaking and For-Profit Referral Services: 21st Century Innovation Clashes with 20th Century Rules**

Moderator: [James McCauley](#)

Panelists: [Alberto Bernabe](#), [Larry Fox](#), [Mark Henriques](#)

Model Rules 5.4(a) and Rule 7.2(b) generally prohibit lawyers from sharing fees with non-lawyers and paying a non-lawyer for a recommendation or referral. Several states have issued ethics opinions that say lawyers may not participate in online attorney-client matching or for-profit referral services without violating these rules, while some other states are considering changing the rules. A lawyer's use of a for-profit online attorney-client matching service ("ACMS"), such as Avvo, Inc. ("Avvo"), potentially could expand the market for legal services and lower legal costs for both consumers and lawyers. Are any competitive restrictions caused by these rules justified by an important client-protective policy that would prohibit an attorney's use of these new digital platforms? This panel will discuss these issues, the current regulatory environment and whether the current rules stifle innovation and access to legal services.

**Breakout #2**

**The Common Interest Doctrine**

Moderator: [Alan Weil](#)

Panelists: [William Barker](#), [Margaret Keeley](#), [Jeff Smith](#)

In the words of the United States Supreme Court, "the attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." It does this "by removing the fear of compelled disclosure of information." But the protection of the privilege can be waived if privileged communications are disclosed to someone beyond the scope of the privilege. It is thus very important to know to whom disclosure can be made without waiving the privilege.

3:20PM– 3:40PM

**Break**

3:40PM – 5:00PM

**Plenary: Information Governance Part II – The Ethics of Data Breach Reaction**

Moderator: [Alice Neece Mine](#)

Panelists: [Steven Puiszis](#), [William Sampson](#), [Jason Warmbir](#)

Back by popular demand! At the 2017 conference, a panel examined what the ethics rules and opinions require of law firms to prevent the digitized confidential information of law firms and clients from being accessed by hackers or inadvertently revealed by a lawyer or firm. The topic was so expansive, a second, and equally important, issue was not addressed: if confidential information is revealed, misused



5:00PM - 5:30PM

or misappropriated, what must firms do, and what must they tell clients, *after* the disclosure occurs? The panel will explore the duties that arise when data systems—and confidentiality—are breached.

Michael Franck Professional Responsibility Award Presentation

Recipient: [Professor Bruce Green](#)

5:30PM – 7:00PM

Reception

## Friday, June 1, 2018

7:00AM – 8:45AM

**Networking Breakfast**

7:00AM – 8:45AM

**Law Student/Young Lawyer Networking Breakfast**

9:00AM – 10:20AM

**Breakout #1  
When Clients Go Rogue**

Moderator: Art Burger

Panelists: [Carol Needham](#), [Douglas Richmond](#), [Kathleen Uston](#)

Rule 1.2(d) prohibits lawyers from assisting clients “in conduct that the lawyer *knows* is criminal or fraudulent.” The word “knows” is defined as “actual knowledge,” but the definition also states that “knowledge may be inferred from the circumstances.” When can the suspicious nature of a client’s conduct become so obvious that a lawyer’s lack of actual knowledge can be deemed willful ignorance? If so, does willful ignorance constitute knowledge? While particular attention has been paid to such issues in the context of money laundering and terrorist financing, similar concerns arise in connection with other client activities as well.

In this presentation, we provide the perspective of disciplinary counsel, a malpractice insurance director, professional responsibility counsel and a legal ethics professor and offer practical options to lessen the risk of bad outcomes.

Among the points covered are:

- Avoiding problems by effective client intake procedures at the outset. How to identify high-risk clients and high-risk matters. What provisions to include in retainer agreements. Other tips for effective law firm risk management.
- Principles of client loyalty and exceptions for known wrongful conduct. Do lawyers have a duty to assume that their clients are being honest?
- What sorts of client conduct raises yellow, pink or red flags? What if a lawyer comes to learn that they have unwittingly been assisting wrongful conduct? Hypotheticals will be provided.



- Can a lawyer “investigate” a client without the client’s permission? Should the lawyer confront the client? When is withdrawal (noisy or quiet) the answer? Contemplating the nuclear option of blowing the whistle.
- When should the malpractice carrier be notified and what, if any, role should the insurer play? Claims of aiding and abetting. Potential civil and criminal liability.

### Breakout #2

#### Once a Lawyer, Always a Lawyer? The question of regulation for “off-duty” and judicial conduct by lawyers and bar applicants

Moderator: [Nancy Cohen](#)

Panelists: [Sophie Martin](#), [Fran Rosinski](#), [Jack Weiss](#)

Should a judge face disciplinary prosecution for misconduct committed by the judge while holding the “official” office for actions not involving dishonesty, deceit, misrepresentation, fraud, or criminal misconduct? Should a lawyer be disciplined for a misdemeanor DUI 1st for which she receives no jail time? Should an applicant for admission be denied after posting a photograph on Facebook depicting his illegal drug use? This panel will explore the question of when and how an individual’s “off-duty” conduct should be addressed by regulators, as well as the question of whether attorney regulators should seek disciplinary sanctions for improper judicial conduct or completely defer to judicial regulatory authorities. Issues related to regulators’ jurisdictional limits, and practices, procedures and limitations imposed upon regulators by case law, statute and the First Amendment will be explored.

10:20AM – 10:40AM

### Break

10:40AM – 12:00PM

### Breakout #1

#### Hot Topics for Firm GC’s, Including Firm Lawyers as Whistleblowers

Moderator: Robert Denby

Panelists: Greg Kanard, Douglas Laird, [Simon Malko](#), [Allison Rhodes](#)

What are the issues that keep law firm general counsel awake at night? This panel will offer insights into these nettlesome topics from the perspective of full-time, part-time, and outside law firm counsel. The topics to be considered will be: (1) client-imposed outside counsel guidelines; (2) representing the marijuana industry in a time of shifting federal policy; (3) the challenges of prior-work conflicts-of-interest and managing meaningful client waivers of conflicts; (4) the privileged nature of internal law firm communications generally and in the setting of law firm whistleblowers; and (5) managing the quality delivery of services to clients.





**Breakout #2**

**“Mass actions” mean mass problems: How the ethics rules restrict lawyers handling multi-plaintiff claims**

Moderator: [Nancy Moore](#)

Panelists: [Gregory Bubalo](#), [Amir Nassihi](#), Richard Zitrin

When class actions are unavailable, plaintiffs’ lawyers are increasingly aggregating the claims of hundreds or even thousands of individuals, each of whom has a formal attorney-client relationship with the lawyer. These mass actions present numerous ethical issues. For example, there are conflicts of interest that are present at the outset of the representation, as well as conflicts that arise at various stages of the litigation. Are these conflicts of interest consentable, and if so, what disclosures do the plaintiffs’ lawyer need to make in order to obtain the clients’ informed consent? Is a general consent obtained at the outset of the representation effective for all conflicts that subsequently arise, or do lawyers need to make further disclosures, or perhaps even withdraw from some or all of the cases as the conflicts emerge in a more specific and concrete fashion? Lawyers who negotiate aggregate settlements must comply with the aggregate settlement rule by disclosing the participation of all the plaintiffs, but what if the settlement does not provide for individual settlement offers but rather a process for determining what each plaintiff will receive? Can a lawyer give individually tailored advice to each client whether to accept or reject a proposed settlement? If not, how are the clients supposed to decide what to do? Can the lawyer withdraw from the representation of clients who reject the settlement and insist on litigating their case? What if the lawyer cannot afford to advance the litigation expenses of a small number of cases? What role do MDL judges play in non-class aggregated lawsuits? And how do these issues affect the conduct of the defendant’s lawyer? Our panel consists of lawyers who are experienced in mass litigation on both the plaintiffs’ and the defendants’ side who will share their perspectives on how lawyers on both sides can successfully navigate mass actions without violating their ethical obligations.

12:00PM – 2:00PM

2:00PM – 3:20PM

**Lunch (*On Your Own*)**

**Breakout #1**

**What Do You Mean I Can’t Defend Myself on YELP®?**

Moderator: [Arthur Lachman](#)

Panelists: [Lonnie Brown](#), [Lynda Shely](#), [William Wernz](#)

This panel will discuss the application (or not) of confidentiality exceptions when a claim is made on social media rather than in a proceeding such as a disciplinary charge, fee dispute, motion for sanctions, or malpractice claim. Lawyers have faced disciplinary sanctions for attempting to defend



themselves by responding to former clients' online false and sometimes defamatory negative reviews. Should the exceptions in the confidentiality rule permit lawyers to disclose information to defend their reputations online? What about simply posting an article that discusses a former client's public record case? This panel will discuss the policy considerations underlying proposed amendments to the Rule in Minnesota, as well as recent ABA opinions addressing the extent to which lawyers may disclose client information.

**Breakout #2**  
**Aggravating and Mitigating Factors in Discipline Cases**

Moderator: Mark Armitage  
Panelists: Michael Downey, William Lucero, Wendy Muchman, [Trisha Rich](#)

The Standards for Imposing Lawyer Sanctions includes descriptions of various factors in aggravation, and in mitigation, of an offense that bar discipline adjudicators are to take into account in the process of meting out discipline. But how is evidence actually developed, presented, and sorted into those categories in the course of preparing and trying a discipline case? Our panel of experienced litigators and adjudicators will examine some of the problems in dealing with aggravation and mitigation evidence in the course of a hypothetical disciplinary prosecution.

**Break**

**Breakout #1**  
**Measuring Professionalism**

Moderator: [Jayne Reardon](#)  
Panelists: [John Berry](#), [Clark Cunningham](#), [Benjamin Grimes](#)

In designing law school curriculum, transition to practice programs for new lawyers, and remediation for sanctioned attorneys, there is an increasing recognition that ethical conduct – and professional misconduct – are strongly linked to the formation of professional identity: understanding the values and norms of the profession and internalizing them into one's own sense of self.

In the late 1980s Dr. Muriel Bebeau agreed to design a remediation program for disciplined dentists, using a series of psychological tests she developed in the design of the professionalism curriculum at the University of Minnesota School of Dentistry. These tests identified problems with moral reasoning and professional identity formation and measured the effectiveness of the remediation program in addressing these problems. (Dentists completing the program returned to practice with a very low rate of recidivism.) More recently Dr. Bebeau used similar tests to design and assess a program to remediate a large cohort of medical students caught in a cheating scandal.

3:20PM – 3:40PM

3:40PM – 5:00PM



3:40pm – 5:00pm

The program will describe how existing programs evaluate the effectiveness of efforts to form and improve professional identity and then explore the feasibility of adapting Dr. Bebeau's tests to measure lawyer professionalism.

**Breakout #2**

**Alternative Funding Models and Other Hot Topics in Attorneys Fees  
(Joint Presentation with the National Forum on Client Protection)**

Panelists: [Peter Jarvis](#), Aviva Kaiser, [Ellen Pansky](#)

Rule 1.5 is one of the most detailed provisions in all of the Model Rules of Professional Conduct, but it barely begins to guide the resolution of issues that lawyers and clients encounter in reaching the end of lawyers' getting paid for their work.

This panel will examine what's new in the modern landscape of legal fees and the methods, currency, and value by which they are paid, and ethical pitfalls that can occur to prevent their being paid.

5:00pm – 7:00pm

**Reception**

**MCLE Credit Hours**

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, PR, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV.

These states sometimes do not approve a program for credit before the program occurs. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit <http://ambar.org/CPREvents> or contact Kimley Grant at [Kimley.Grant@americanbar.org](mailto:Kimley.Grant@americanbar.org).

**SCHOLARSHIPS:** A limited number of scholarships are available to defray the tuition expenses for lawyers who are unable to attend the program due to financial hardship. Contact us at [cpr@americanbar.org](mailto:cpr@americanbar.org) for details. Scholarship requests must be received by April 30, 2018.