Wednesday, May 27, 2020

3:00PM – 6:00PM  Registration, light reception & “Dutch-Treat Dine Around” Signup
7:00PM – 9:00PM  Dutch-Treat: Dine- Around Various Venues

Thursday, May 28, 2020

7:00AM – 5:00PM  Registration
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, ABA Center for Professional Responsibility
Conference Planning Committee

9:00AM – 10:15AM  Plenary: Effective Advocate or Just a Jerk? The Ongoing Discussion of Lawyer Incivility

What does it mean to be uncivil? Is that just a derogatory way to label a hard-nosed advocate or does it represent a continuing threat to the integrity of the profession? This session will discuss how lawyers do and should treat one another, the Courts, their opposing parties, and their own clients. The discussion will focus on the ever-present concern about incivility, unprofessionalism, and bullying tactics used in the profession, whether and when such behavior violates the Rules of Professional Conduct, and what can and is being done to address the issues.

Moderator:  William Slease, Chief Disciplinary Counsel, New Mexico

Panelists:  Heidi K. Brown, Director of Legal Writing and Associate Professor of Law, Brooklyn Law School

Hon. Susan N. Burke, Fourth Judicial District, Hennepin County, Minnesota

David A. Grenardo, Professor of Law, St. Mary’s University School of Law
Break

Breakout #1
Lawyer Musical (and Failing) Chairs: Lawyer Mobility and Law Firm Dissolution

This session focuses on the professional responsibility issues that arise when lawyers change places of employment or retire. The pressures of law firm instability and dissolution arising from such events are encountered frequently in today’s legal services industry. Lawyer mobility presents difficult legal and ethical challenges for individual lawyers, their firms, and the clients they represent. Questions arise about when, how, and what to communicate with clients; who will continue providing services to the clients (both desirable and undesirable ones) after the split; whether lawyers can be held to a contractual notice period or other potentially restrictive covenant; and how profits and liabilities will be apportioned among the parties.

Moderator: Susan Saab Fortney, Professor of Law and Director, Program for the Advancement of Legal Ethics, Texas A&M University School of Law

Panelists: Robert W. Hillman, Professor of Law, Fair Business Practices and Investor Advocacy Chair, UC Davis School of Law

Tyler Maulsby, Counsel, Frankfurt Kurnit Klein + Selz PC

Janis Meyer, Of Counsel, Clyde & Co.

Breakout #2
The Model Rules and First Amendment Freedoms: An exploration of Model Rules 8.2 and 8.4(g)

With its 2016 amendment to Rule 8.4(g) to prohibit discrimination and harassment in lawyers’ conduct related to the practice of law, the ABA recognized the importance of creating more effective measures to foster diversity and end harassment and discrimination in the legal profession. A recent study of the International Bar Association reflects that the prevalence of bullying and harassment in the United States far exceeds global averages. While 25 jurisdictions have a rule that adopts some version of anti-discrimination and anti-harassment provisions, since 2016, few states have adopted ABA MR 8.4(g) verbatim or with minor changes.

Some states have expressly declined to adopt the amendment citing infringement on constitutional rights and religious freedom. Opponents of Model Rule 8.4(g) argue that the rule is overbroad and violates the “freedom of religion” and “freedom of speech” protected by the First Amendment. On the other hand, lawyer regulation has withstood Constitutional scrutiny when a lawyer improperly solicits an accident
victim, makes extrajudicial statements to the media during a pending civil or criminal proceeding, recklessly attacks the integrity or fitness of a judge or solicits campaign contributions for judicial elections, or is excluded from the profession for expressing views of white supremacy.

This interactive program will explore whether Model Rule 8.4(g) places lawyer regulation on a new First Amendment battleground or is a replay of battles that have been fought and won by the bar.

Moderator: Jessica E. Yates, Attorney Regulation Counsel, Colorado Supreme Court Office of Attorney Regulation Counsel

Panelists: Marni E. Byrum, Partner, McQuade Byrum, President, Virginia State Bar

Jason C. DeSanto, Senior Lecturer, Northwestern Pritzker School of Law

Joan M. Fortin, Chief Executive Officer, Bernstein Shur

11:45AM – 1:45PM

LUNCH (On Your Own)

Breakout #3

Lawyers Making Mistakes: What We Can Learn from Behavioral Ethics

Mistakes happen. Generally, however, mistakes do not always constitute professional misconduct. How lawyers process and respond to mistakes may not only affect the rights of their clients but also the lawyer’s professional and financial future. There is no “one size fits all” approach to addressing these concerns. Beyond simple and serious mistakes, there are a myriad of reasons that attorneys engage in avoidant or problematic behaviors.

This session will use a behavioral ethics lens to follow the lifecycle of attorney lapses, beginning with a specialized clinician as she explains the science of what happens physically and psychologically when an individual discovers he/she has made a serious error. Then travel the lapse lifecycle as we learn where attorneys turn to after an ethical problem occurs. Along the way, find out what educators, regulators, and malpractice advisors can do to improve the legal profession’s response. Finally, brainstorm with a leading academic as she discusses the latest research on how attorneys react to mistakes and ethical lapses.

Moderator: Newton N. Knowles, Attorney, State Bar of California, Client Security Fund

Panelists: Sarah Myers, Executive Director, Colorado Lawyers Assistance
Program

**Catherine O’Grady**, Professor of Law; Associate Dean for Academic Affairs, The University of Arizona James E. Rogers College of Law

**Breakout #4**

**Where Were the Lawyers? The Lawyer as Whistleblower: Conflicting Obligations Governing Lawyers’ Conduct**

Whenever a corporate scandal is unearthed, the question arises where were the lawyers? While the duty of confidentiality is recognized as almost sacrosanct, there are exceptions. This panel of experts will examine the ethical concerns and issues that lawyers face when confronted with problems that may require a report to external authorities. Is a report mandated or permitted? Will there be protections from retaliation? Are there repercussions for non-compliance? Will the lawyer face disciplinary action? What are the laws that govern lawyers’ conduct? Is a bounty ever allowed for whistleblowing on your own client? Come join us as we consider the important issues facing lawyers in this catch-22 dilemma between the duty of confidentiality and obligations to report client wrongdoing.

**Moderator:** Wendy J. Muchman, Senior Lecturer, Northwestern Pritzker School of Law

**Panelists:** Eric R. Swibel, Partner, Latham & Watkins LLP

George Kostolampros, Partner, Venable LLP

3:00PM – 3:20PM

**Break**

**Plenary: Lawyering in the Washington DC Spotlight**

From the Mueller investigation through the impeachment hearings, the Washington, D.C. spotlight has been shining not only on the President and his aides but on lawyers – lawyers who defend public officials, who investigate public officials and who are themselves public officials. Throughout, questions have been raised about the lawyers’ professional conduct – for example, about whether they are sufficiently or overly zealous, whether they are honest and fair, whether they are conflicted, and whether they are too reticent or too revealing. This panel will review the recent years’ events in our nation’s capital through a “legal ethics” lens in order to illuminate not only the lawyers’ conduct but also the applicable professional rules and standards of attorney conduct.

**Moderator:** Bruce Green, Louis Stein Chair of Law; Director, Stein Center, Fordham University School of Law
Panelists:  
Kathleen Clark, Professor of Law, Washington University in St. Louis School of Law  
Ellen C. Brotman, Founder, Brotman Law

4:45PM  
Reception

5:00PM  
Michael Franck Professional Responsibility and Rosner & Rosner Young Lawyer Professionalism Award Ceremony

Friday, May 29, 2020

7:00AM – 5:00PM  
Registration

7:30AM – 8:45AM  
Networking Breakfast

9:00AM – 10:15AM  
Plenary: Innovations in Legal Services to Address Access to Justice

Several jurisdictions and law-related organizations, including Arizona, California, Utah, and the Association of Professional Responsibility Lawyers are considering making proposals for re-regulation of the legal services industry. Though many of the concepts have been seen before, they are now gaining real traction. This panel will discuss some of the ideas that are being raised, including an examination of the successes of and lessons to be learned from the processes undertaken and concepts raised in one of these jurisdictions, California. It will also examine what issues lie ahead as the traditional boundaries on the delivery of legal services are challenged.

Moderator:  
Luz E. Herrera, Professor of Law and Associate Dean for Experiential Education, Texas A&M University School of Law

Panelists:  
Ashod Mooradian, Founder, Law Office of Ashood Mooradian  
Jayne Reardon, Executive Director, Illinois Supreme Court Commission on Civility  
Mark L. Tuft, Partner, Cooper White & Cooper

10:15AM – 10:30AM  
Break
10:30AM – 11:45AM

Breakout #5
How Does This AI Work and What Is/n’t It Telling Me? How to Be Tech Competent in 2020

How do you know that you’re meeting the ethical standards for tech competence? Data transparency and implicit bias, for instance, are among the real concerns in the adoption of technology-based solutions. This tech-savvy panel will demo artificial intelligence and machine learning applications that lawyers use and supervise. It will also highlight the specific questions lawyers should be asking about the limits and benefits of that technology in order to comply with their ethical obligations.

Moderator: Rochelle D. Washington, Practice Management Advisor, DC Bar

Panelists: Bahar T. Ansari, Co-founder 2nd.Law Inc. and Case.one Inc. ©
Sarah Nolton, Principal, Forensics Technology, PwC
Mindy Rattan, Litigation Team Lead, Bloomberg Law Analysis

Breakout #6
When Your Colleagues (and your Boss) Are Your Clients

Lawyers tasked with providing internal ethics advice can be placed in a difficult position when it becomes necessary to tell the partnership that a new client can’t be accepted because of conflicts concerns or when called upon to deliver other unfavorable news or difficult advice, or to approach colleagues whose alleged conduct raises professional responsibility or liability concerns. Law firm conflicts counsel, general counsel, and outside advisors all will describe their experiences, hurdles they’ve encountered, and how lawyers charged with these responsibilities may deal with uncomfortable situations or resistant lawyers.

Moderator: Dennis Rendleman, founder, Law Office of Dennis A. Rendleman

Panelists: Amanda C. Jones, U.S. Head of Risk and Compliance, WithersWorldwide
Douglas Richmond, Managing Director, Aon Risk Solutions
Annie Thar, Deputy General Counsel, Sidley Austin LLP

11:45AM – 1:45PM

Lunch (On Your Own)
1:45PM – 3:00PM

**Breakout #7**

**Consumer Litigation Funding: Learning the Basics, Surveying the Current Market and Products, and Understanding the Legal, Regulatory, Ethics, and Confidentiality Issues**

With all the hubbub in the legal press about the booming commercial litigation finance market, some forget that litigation funding for consumer claimants has been around for some time now. As the market has matured, a number of state legislatures and regulators now patrol the field. Learn from a panel of experts the basics of common transactions, the reach and scope of the market today, and how to evaluate the legal and legal ethics issues involved, including champerty and maintenance, prohibition on outside control of litigation, fee-sharing, and conflicts of interest. Our panel will also discuss the important confidentiality, work product, and privilege issues, including a recent survey of all known decisions on discovery of litigation funding information.

**Moderator:** Lucian T. Pera, Partner, Adams and Reese LLP

**Panelists:** Jenna Wims Hashway, Professor of Legal Practice, Roger Williams University School of Law

Eric Schuller, President, Alliance for Responsible Consumer Legal Funding

Anthony Sebok, Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University

**Breakout #8**

**Conducting an Effective Law Firm Audit**

Law firms of all sizes—whether individually, though their ethics counsel, or through malpractice insurers—conduct ethics audits to review the firm’s systems, policies, and procedures. This helps identify weaknesses and areas of potential improvement to promote compliance with the ethics rules and reduce exposure to malpractice claims and associated risks. Such audits are becoming increasingly commonplace. Whether serving as part of a law firm’s office of general counsel or asked to conduct an outside audit, lawyers should know how to effectively plan for, conduct, report and advise, and follow up an ethics audit. This program will discuss these processes to assist the professional ethicist in performing this essential service.

**Moderator:** Mark Bassingthwaigte, Risk Manager, ALPS
Panelists: James J. Grogan, Adjunct Professor, Loyola University of Chicago, School of Law

Nesheba M. Kittling, Senior Loss Prevention Counsel, ALAS

Steven M. Puiszis, Partner, Hinshaw & Culbertson LLP

3:00PM – 3:20PM

3:20PM – 4:35PM

Break

Plenary: The Deep Web and the Dark Web
(Joint Presentation with the National Forum on Client Protection)

Moderator: Daniel E. Pinnington, President & CEO, LawPro® Lawyers Professional Indemnity Company

Panelists: Patrick Brown, Vice President, Enterprise and Operational Risk Management, Lawyers Mutual Liability Insurance Company of North Carolina

Mark Lanterman, Computer Forensic Services

Alice Neece Mine, Executive Director, The North Carolina State Bar

4:45PM

Reception

MCLE Information

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MS, MO, MP, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, 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 course is expected to qualify for TBD CLE credit hours (including TBD ethics hours) in 60-minute states, and TBD credit hours (including TBD ethics hours) in 50-minute states. 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 Annie Kuhlman at Annie.Kuhlman@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 for details. Scholarship requests must be received by April 19, 2020.