



1-1-2003

Introduction to the Second Annual Symposium on Legal Malpractice & (and) Professional Responsibility The Second Annual Symposium on Legal Malpractice & Professional Responsibility.

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Recommended Citation

Adam Boland, *Introduction to the Second Annual Symposium on Legal Malpractice & (and) Professional Responsibility The Second Annual Symposium on Legal Malpractice & Professional Responsibility*, 34 ST. MARY'S L.J. (2003).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol34/iss4/1>

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ST. MARY'S LAW JOURNAL

VOLUME 34

2003

NUMBER 4

FOREWORD

INTRODUCTION TO THE SECOND ANNUAL SYMPOSIUM ON LEGAL MALPRACTICE & PROFESSIONAL RESPONSIBILITY

ADAM BOLAND

In the post-Enron—WorldCom—Adelphia era, business professionals are under close public scrutiny. Some believe there has been an ethical collapse.¹ The push for change is great, and it may not end until CEOs are taken away in handcuffs.² The public outcry for accountability extends to the legal field as well. It has led the American Bar Association to convene a task force on Corporate Responsibility,³ go to the Securities Exchange Commission

1. Susan Hackett, *Fast-Fix Political Response May Not Cure Corporate Crisis*, TEX. LAWYER, Sept. 2, 2002 at S8; see also David Ivanovich, *The Fall of Enron; Enron's Legacy: Massive Change; Reformers' Ideas Lauded, Loathed*, HOUS. CHRON., Dec. 1, 2002, at 1 (indicating that these scandals have provided the momentum for reform).

2. Michael Hedges, *Suits with Cuffs; Two WorldCom Executives Arrested in Accounting Scam*, HOUS. CHRON., Aug. 2, 2002, at 1.

3. Susan Hackett, *Fast-Fix Political Response May Not Cure Corporate Crisis*, TEX. LAWYER, Sept. 2, 2002 at S8.

(SEC) to promulgate rules to ensure a higher level of attorney responsibility in legal representation.⁴

Against this backdrop, where issues in legal ethics have moved squarely into the spotlight of public attention, the *St. Mary's Law Journal* held its Second Annual Symposium on Legal Malpractice and Professional Responsibility in February of 2003. The Symposium featured six distinguished speakers who discussed current issues in the field of legal ethics.

William D. Cobb, Jr., a shareholder at Cowles & Thompson P.C. and head of the firm's Professional Liability Practice Group, addressed "Tactical Considerations in Defending Assigned Legal Malpractice Claims." Mr. Cobb discussed developments that have occurred since the 1994 Texas appellate court decision in *Zuniga v. Groce, Locke & Hebdon*.⁵ *Zuniga* held that legal malpractice claims are not assignable. However, more recent cases have shown that it may be possible to craft legal arrangements that achieve much the same objectives while surviving judicial scrutiny.

Jack P. Sahl, the Deputy Director of the Miller Institute of Professional Responsibility and Professor of Law at the University of Akron School of Law, spoke on "Lawyer Advances of Living Expenses: Ethical Rules and the First Amendment." Professor Sahl's presentation focused on the rules that limit a lawyer's ability to advance living expenses to clients. The majority view in the United States prohibits attorneys from making such advances even for humanitarian purposes. Texas follows the minority view and allows lawyers to advance living expenses. Professor Sahl also explored the constitutional issues associated with advertising the availability of advances of living expenses.

Vincent R. Johnson, the Associate Dean for Academic and Student Affairs and Professor of Law at St. Mary's University School of Law, discussed the issue of "'Absolute and Perfect Candor' to Clients." More than a dozen recent cases from Texas, California, and Oklahoma have stated that attorneys owe their clients a fiduciary duty of "absolute and perfect candor." The easy repetition of this quotable phrase is beginning to exert an influence on legal scholarship and on the types of claims asserted in legal malpractice actions. Dean Johnson explored whether the "absolute and perfect

4. *Id.*

5. 878 S.W.2d 313 (Tex. App.—San Antonio 1994, writ ref'd).

candor” formulation of an attorney’s duty to disclose is broadly applicable or limited to a small number of clearly identified contexts (such as business transactions between attorneys and clients and situations where specific rules of legal ethics require a high degree of disclosure).

Chief Justice Alma L. López of the Texas Court of Appeals for the Fourth Judicial District gave the lunch address: “Tips for Avoiding Legal Malpractice or Do You Really Want to Keep Your License?” Chief Justice López illustrated how lawyers can be, and are, reported to the State Bar by courts for failing to follow court rules and orders. She cited examples of misconduct by lawyers practicing before the Fourth Court of Appeals, including lying to judges about conflicting court appearances, violating typeface requirements in briefs, and personally attacking judges in written submissions to the court.

David J. Beck, founder of Beck, Redden, & Secrest, L.L.P., raised the question: “Who Will Write the Future Rules Governing the Conduct of Lawyers Representing Public Corporations?” His presentation focused on section 307 of the Sarbanes-Oxley Act of 2002 requiring the SEC to establish minimum standards of conduct for lawyers.⁶ According to Mr. Beck, the legal profession is beginning to lose its historic freedom of self-regulation. Mr. Beck discussed the major questions raised by the Sarbanes-Oxley Act and the risks and problems of federalizing disciplinary rules of professional conduct.

Kathy Patrick, a partner at Gibbs & Bruns, L.L.P., described the “Liability of Lawyers Under the Securities Laws.” Ms. Patrick addressed what it means for a securities lawyer to “make” a misrepresentation, when a securities lawyer is liable for an omission, and when a duty to disclose arises. Under new regulations, attorneys have been made to hold securities lawyers responsible to shareholders as well as clients. The driving force behind these changes is a shift in public policy in the wake of Enron. Ms. Patrick discussed this potential expansion of liability for lawyers under the Sarbanes-Oxley Act.⁷

6. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 307, 116 Stat. 745, 784 (2002) (codified at 15 U.S.C. § 7245).

7. *Id.*

This issue of the *St. Mary's Law Journal* includes articles written by the symposium participants on the topics they presented, as well as student works relating to issues on legal malpractice and professional responsibility.