

# Nuts and Bolts Ethics for the Business and Transactional Lawyer

George W. Coleman

Claude E. Ducloux

University of Texas School of Law  
LLCs, LPs and Partnerships  
July 13-14, 2017



## Presenters

George W. Coleman  
Bell Nunnally & Martin LLP  
3232 McKinney Ave., Suite 1400  
Dallas, TX 75204  
(214) 880-6670  
georgec@bellnunnally.com

Claude E. Ducloux  
Attorney at Law &  
National Director of Education –  
LawPay  
3700 Capital of Texas Hwy North  
Ste 420  
Austin, TX 78746  
(512) 716-8580  
cdycloux@affinipay.com

## Introduction – Basis of Liability

---

- Texas Disciplinary Rule of Prof Conduct
  - Liability implication of violations of ethics rules
  - Major duties owed by lawyers to clients
- Basis of Liability
  - Ethical Lapses – grievances - licensure
  - Negligence – money damages

3

## Introduction – Basis of Liability

---

- Violation of Rules as Sole Basis of Liability –not really, but...
  - Preamble, paragraph 15 – “These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation \*\* does not give rise to private cause of action nor does it create a presumption that a legal duty to client has been breached.”
  - Most malpractice suits come with a grievance, too!

4

## Negligent Misrepresentation –Watch out!

---

- Negligent Misrepresentation
  - Claims are now made based on negligent representation
  - TX SCt recognized a negligent representation cause of action in favor of 3<sup>rd</sup> party/non-client against attorney in special circumstances based on Restatement (Second) of Torts Sec. 552 (1977)
    - **Negligent misrepresentation is separate and distinct from professional malpractice and is not dependent upon the attorney–client relationship.**

5

## Scenario 1: Who is the Client?

---

- Lawyer A meets with 3 individuals in a hurry. No engagement letter. Lawyer A drafts company agreement for LLC; violent dispute develops between 3 individuals over C/A. Lawyer A does not file a Certificate of Formation because no one has agreed to reimburse Lawyer A the filing fee. Each individual gives different instructions to Lawyer A.
- Who is in charge? What courses of action are open to Lawyer A?

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Nuts and Bolts Ethics for the Business and Transactional Lawyer

Also available as part of the eCourse

[Answer Bar: LLCs and Partnerships Formation](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual LLCs, LPs and Partnerships session

"Nuts and Bolts Ethics for the Business and Transactional Lawyer"