

Nuts and Bolts Ethics for the Business and Transactional Lawyer

George W. Coleman
Claude E. Ducloux

University of Texas School of Law
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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
cducloux@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 3rd 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

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