

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
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

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

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

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

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