RECENT LAW REVIEW ARTICLES CONCERNING THE LEGAL PROFESSION

In keeping with the tradition of *The Journal of the Legal Profession*, the following section represents a selection of Law Review and Journal articles centered on the subject of the legal profession that were published in the last year. Brief summaries accompany selected entries.

I. THE ATTORNEY-CLIENT RELATIONSHIP


II. CONFIDENTIALITY AND THE ATTORNEY-CLIENT PRIVILEGE


Michael J. Riordan, *The Attorney-Client Privilege & the “Posthumous” Corporation—Should the Privilege Apply?*, 34 TEX. TECH L. Rev. 237 (2003). In this article, Riordan examines the viability of the attorney-client privilege in the context of a statutorily dissolved corporate entity. By exam-
ining the historical and legal significance of the attorney-client privilege with respect to the “natural person,” the author argues that, notwithstanding a statutory provision, the applicability of the attorney-client privilege to dissolved corporate entities exists only insofar as the “relative importance of the communication” outweighs the “need to disclose” the information.


III. CONFLICTS OF INTEREST


Claudia T. Salomon & Jeremy D. Andersen, Imputing Conflicts Across Firms, 27 J. LEGAL PROF. 81 (2002-2003). In this article, Salomon and Anderson discuss the current ethical treatment of imputing conflicts of interest among different law firms that had previously maintained the co-counsel relationship. The authors note that courts largely examine the facts surrounding the firms’ relationship rather than automatically disqualify co-counsel. The authors then outline the burden-shifting procedure utilized in determining the appropriateness of co-counsel disqualification.

Susan P. Shapiro, Bushwacking the Ethical High Road: Conflict of Interest in the Practice of Law and Real Life, 28 LAW & SOC. INQUIRY 87 (2003).


IV. ATTORNEY COMMUNICATION


Carl A. Pierce, Variations on a Basic Theme: Revisiting the ABA’s Revision of Model Rule 4.2(Part I), 70 TENN. L. REV. 121 (2003).

Carl A. Pierce, Variations on a Basic Theme: Revisiting the ABA’s Revision of Model Rule 4.2(Part II), 70 TENN. L. REV. 321 (2003).


V. ATTORNEY’S FEES


Albert Choi, Allocating Settlement Authority Under a Contingent-Fee Arrangement, 32 J. LEGAL STUD. 585 (2003).

Susan Saab Fortney, I Don’t Have Time to be Ethical: Addressing the Effects of Billable Hour Pressure, 39 IDAHO L. REV. 305 (2003).


James E. Moliterno, Broad Prohibition, Thin Rationale: The “Acquisition of an Interest and Financial Assistance in Litigation” Rules, 16 GEO. J. LEGAL ETHICS 223 (2003). In this article, Moliterno argues that ethics rules proscribing a lawyer from providing financial assistance to a client or from acquiring an interest in the client’s litigation should be discarded. After examining the historic background of champerty, maintenance, and barratry, the author challenges the modern reservations preventing the revision of these rules. The author argues that neither conflict of interest, the risk of frivolous litigation, nor the threat of unfair “client-getting” practices supports the continuation of these rules, and that they should accordingly be abrogated.


VI. ATTORNEY AS ADVOCATE


Margareth Etienne, Remorse, Responsibility, and Regulating Advocacy: Making Defendants Pay for the Sins of Their Fathers, 78 N.Y.U. L. REV. 2103 (2003). Etienne argues that the zealous advocacy of criminal defense lawyers detrimentally results in increased sentences for their clients. The article asserts that federal judges using the Federal Sentencing Guidelines respond to the defense attorney’s “overzealous advocacy” by interpreting such as indicative of the defendant’s insufficient “remorse.” Etienne argues that by using the “acceptance of responsibility” provision of the federal guidelines, judges increase the defendant’s sentence to punish both the de-
fendant and the “overzealous” lawyer. The author argues that this adversely affects the attorney-client relationship, as well as the role of the lawyer as zealous advocate.


VII. THE PRO-SE LITIGANT AND THE RIGHT TO COUNSEL


VIII. REPRESENTING THE CORPORATE CLIENT


Marc I. Steinberg, Lawyer Liability After Sarbanes-Oxley—Has the Landscape Changed?, 3 WYO. L. REV. 371 (2003). In this article, Steinberg asserts that the ethical consequences and risk of liability to corporate counsel remain largely unchanged by the requirements of the Sarbanes-Oxley Act of 2002 and by subsequent SEC regulatory provisions. The author outlines the existing prescriptions found in professional rules and in state and federal securities laws to assert the duties of corporate counsel—particularly regarding the issue of “noisy withdrawal.” The author concludes by arguing that the lawyer facing such withdrawal should suggest that the client secure a “second opinion” from outside counsel.


IX. REPRESENTING THE GOVERNMENTAL CLIENT


Edward C. Carter III, *Limits of Judicial Power: Does the Constitution Bar the Application of Some Ethics Rules to Executive Branch Attorneys?*, 27 S. ILL. U. L.J. 295 (2003). In this article, Carter asserts that the judicial promulgation of certain ethics rules—specifically those that regulate the discretionary activities of the prosecutor—are impermissible usurpations of the role of the executive branch. Carter asserts that such rules run contrary to the constitutional doctrine of separation of powers.


X. LAW FIRMS


XI. MULTI-DISCIPLINARY PRACTICE


Karel Ourednik IV, *Multidisciplinary Practice and Professional Responsibility After Enron*, 4 FLA. COASTAL L.J. 167 (2003). In this article, Ourednik examines the role of multidisciplinary practice in the United States, and discusses the intersection of multidisciplinary practice (MDP) with the Model Rules of Professional Conduct. Acknowledging the ethical difficulties with respect to fee sharing, conflicts of interest, and confidentiality, the author, nevertheless, advocates the allowance of MDP, particularly in the elder law context.
XII. MULTI-JURISDICTIONAL PRACTICE AND THE UNAUTHORIZED PRACTICE OF LAW.


XIII. ALTERNATIVE DISPUTE RESOLUTION


Scott R. Peppet, Contractarian Economics and Mediation Ethics: The Case for Customizing Neutrality Through Contingent Fee Mediation, 82 TEX. L. REV. 227 (2003). In this article, Peppet examines the concept of Contingent Fee Mediation. The article challenges the role of the neutral mediator by introducing a “contractarian” approach wherein the parties to the mediation define the mediator’s role with respect to their specific needs. The author outlines possible contingent fee arrangements and examines the ethical implications of contingent fee mediation.

XIV. BAR ASSOCIATIONS AND THE REGULATION OF LAWYERS


XV. JUDICIAL ETHICS

Hon. Howland W. Abramson & Gary Lee, Judicial Ethics Advisory Committees Should Render Opinions Which Adhere to Binding United States Constitutional Precedents, 41 Duq. L. Rev. 269 (2003). In this article, Abramson and Lee argue that judicial ethics codes must comply with the Constitution, particularly with respect to the fundamental rights secured by the First Amendment. The authors contend that judges do not “waive” their Constitutional rights—specifically their right to freedom of speech—as a result of assuming their judicial office. The authors then examine numerous examples of judicial ethics cases that deal with free speech, particularly those dealing with the judge’s political activity.


XVI. MALPRACTICE AND THE INEFFECTIVE ASSISTANCE OF COUNSEL


George S. Mahaffey, Jr., “All For One and One For All? Legal Malpractice Arising from Joint Defense Consortiums and Agreements, the Final Frontier in Professional Liability, 35 Ariz. St. L.J. 21 (2003).


XVII. ATTORNEY MISCONDUCT


Arthur F. Greenbaum, The Attorney’s Duty to Report Professional Misconduct: A Roadmap for Reform, 16 Geo. J. Legal Ethics 259 (2003). This article surveys the overall effectiveness of Model Rule 8.3 and the lawyer’s duty to report professional misconduct. The author examines whether the rule requiring a lawyer to report professional misconduct is of value to the profession, and answering in the affirmative, outlines the principle issues requisite for the construction of a properly drafted rule.
XVIII. PRO BONO AND PUBLIC INTEREST


XIX. ETHICS RULES GENERALLY


XX. SYMPOSIA


Jeremy L. Carlson