



CHAPTER MEETING MINUTES
April 22, 2010
Headliners Club 11:45 am - 1:00 pm

PRESIDENT REPORT - James Cornell

James thanked our Platinum Sponsor for the year, Furniture for Business, and also acknowledged them as our meeting sponsor. Brad Wells and Marcy Edwards attended the meeting as the Furniture for Business representatives. James then introduced the new officers and committee chairs and expressed his excitement about taking on the role of president of the chapter.

There are 10 chapter members attending the ALA Conference in Boston. He asked everyone to calendar the Region 4 conference in Las Colinas on October 1 and 2, 2010. The chapter will pay for registration and is also working on providing transportation to and from the conference for chapter members. James also told everyone to mark their calendars for the 2011 ALA Conference in Orlando on May 23 - 26.

James introduced the guests at the meeting: Kathy Carroll and Ashley Boyer with Mitchell Williams Long Burner; Megan Moss with Bickerstaff Heath Delgado Acosta; and Chawntal Louie with Pirkey Barber.

COMMITTEE ANNOUNCEMENTS

Community Service - Bonnie Zook distributed a flyer regarding our community service project with Urban Roots on June 5. Members interested in attending should contact Bonnie at bzook@slackdavis.com.



Website - Barbara Mullen asked that everyone log in to the Members Only section of the website and check their information for accuracy. Please notify Barbara if corrections are needed. She will bring a camera to the May meeting to get pictures of members for the website. The website will be completely revamped. If you have any contacts on web designers, please forward them on to Barbara. Please also let Barbara know if you would like to join the committee!

Education - Josh de Koning announced that the CLM Study Group is getting started. Please contact Amanda Koplos if you would like to join the group. The CLM exam will be offered in Boston at the ALA Conference, in October at the Region 4 conference and next May in Orlando. Josh also asked people to let him know if they were interested in joining the Education Committee.

LUNCHEON SPONSOR

Furniture for Business is a Platinum Sponsor for the chapter this year. Brad Wells is the primary contact and can be reached at brad@furnitureforbusiness.com. Furniture For Business opened its doors in 1997 with a vision to serve the Central Texas market with a combination of quality and speed previously unheard of. At Furniture For Business we understand the complexities of creating a great work environment while managing a tight budget. No matter the label, design or function, today's economy challenges you to take a second look.

SPEAKER

PRESENTER BIO:

Chuck Herring is a partner in the law firm of Herring & Irwin, L.L.P. He is certified in Civil Trial Law by the Texas Board of Legal Specialization. He is the author of *Texas Legal Malpractice and Lawyer Discipline* and has written many articles on legal malpractice, legal ethics, and litigation topics and has also taught and lectured extensively on those subjects. He received the First Annual Professionalism Award from the Texas Center for Legal Ethics and Professionalism and the Travis County Bar Association.

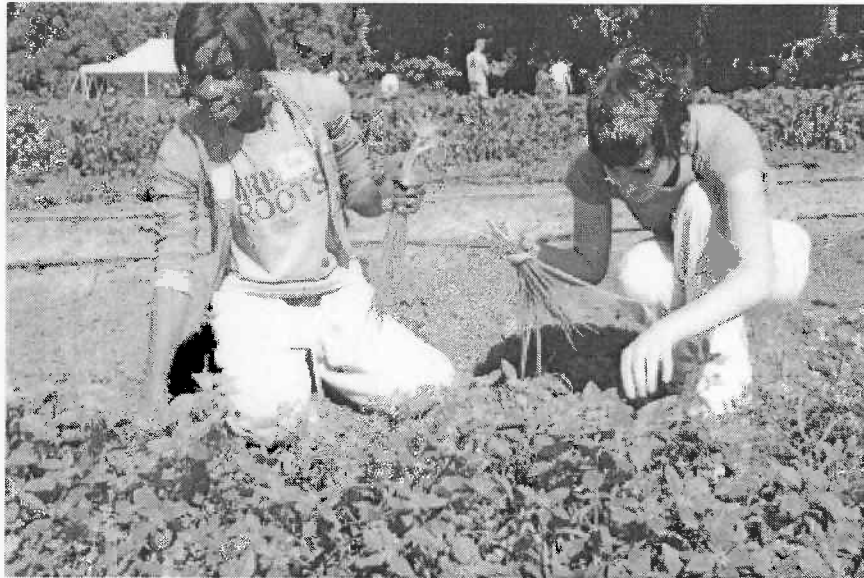


TOPIC DESCRIPTION: An overview of the Texas Rules of Professional Conduct including requirements for Communication with Clients, Confidentiality, Client Property, Conflicts of Interest, Litigation Misconduct, Unauthorized Practice of Law, Advertising and Solicitation. A fast paced presentation you won't want to miss!

(Handouts Attached)



Austin ALA Community Service Project



***HarVESTED* Interest in our Community**

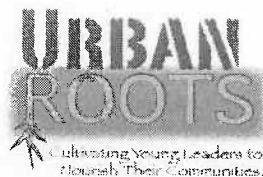
Saturday - JUNE 5, 2010

8:30 - 12:30

Hands of the Earth Farm

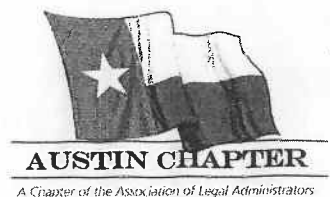
183 at Bolm Road

(about 1 mile from Johnston High School)



If interested, contact Bonnie Zook at bzook@slackdavis.com or 225-5315.

Committee Members: Kelly Barker, Rebekah Brown, Sandy Gable,
Joan McClendon, Debra Nicklaus, Karie Rivkin,
Diana Stangl, Tina Terrian and Brad Wells



General Ethics

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MISCONDUCT: POSSIBLE CONSEQUENCES

- Grievance
- Liability claim
- Loss of fee
- Loss of insurance deductible
- Loss of time from practice

- Damage to reputation
- Loss of client
- Motion to disqualify (conflicts)
- Court sanctions

Which Rules?

- Texas Disciplinary Rules of Professional Conduct
- Texas Rules of Disciplinary Procedure distinguished

Which Rules?

- Multi-jurisdictional considerations
- Federal court differences
- MDL Panels

Rule 5.03(a) Obligation

“A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer”

Neglect – Rule 1.01

“[A] lawyer shall not: (1) neglect a matter entrusted to the lawyer”

Communication

Rule 1.03(a):

“A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

Communication

Rule 1.03(b):

♦ “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make *informed decisions* regarding the representation.”

Keeping the Client Informed

Major source of grievances and client satisfaction – dissatisfaction

- ♦ settlement decisions
- ♦ “response” time on calls

Confidentiality

Rule 1.05 – Extremely Broad

♦ All information “relating to a client or furnished by the client . . . acquired by the lawyer during the course of or by reason of the representation of the client.”

Rule 1.05

- Attorney-client privilege distinguished
- Includes name, medical information, etc.
- No request for secrecy required

Potential Problems

- ◆ Loose talk in firm kitchens, hallways, elevators, airports, planes and cabs
- ◆ Mis-sent fax, letter, email (both ways)

DUTIES TO PROSPECTIVE CLIENTS

Restatement of the Law Governing Lawyers §15:

- ◆ Protect confidentiality and client property
- ◆ Avoid conflicts
- ◆ Reasonable care in advice

Client Property – Rule 1.14

“[C]lient property shall be identified as such and appropriately safeguarded.”

Rule 1.14

- ◆ [A] lawyer shall promptly deliver to the client . . . any funds or other property that the client ... is entitled to receive.”
- ◆ E.g.: money, “documents”
- ◆ File=everything (even unflattering notes)

Conflicts of Interest

- ◆ Principal Rules:
 - *1.06: concurrent conflicts
 - *1.09: former-client conflicts
- ◆ Key concepts:
 - *Loyalty
 - *Protecting client information
 - *Not using client or former client info to disadvantage that person.

Common Conflicts Settings

- Family disagreement: amount or division of settlement proceeds
- “Migratory staff” problem (e.g., Thompson & Knight – legal assistant; .6 hour)
- Nonlawyer screening

Litigation Misconduct

- Lie, cheat, steal rules
- E.g.—Rules 1.02(c), 3.01, 3.03, 3.04, 4.01, 8.04(a)(3)
- Popular media & client expectations
- Overlap with sanctions rules: Tex. R. Civ. P. 13 (groundless pleadings), 191.3 (discovery), 215 (same)

Rule 3.01

- ◆ Generally prohibits asserting frivolous positions.

Rule 3.03(a)(1)

“(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal”

Rule 3.04

- ◆ A lawyer shall not:
 - unlawfully obstruct access to evidence
 - unlawfully alter, destroy or conceal documents or help another person to do so
 - falsify evidence, counsel or assist a witness to testify falsely

Rule 3.04(d)

A lawyer shall not:

“(d) knowingly disobey, or advise the client to disobey, an obligation under the ... rules or ruling of a tribunal”

*****Includes any rule of civil procedure or court rule.**

Rule 4.01

A lawyer shall not:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose facts necessary to avoid assisting a crime or fraud.

Rule 8.04(a)(3)

“A lawyer shall not: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation”

In re Cleaver-Bascombe, 892 A.2d 396 (D.C. 2006)

Lawyer disciplined for submitting a fraudulent Criminal Justice Act voucher to court for payment.

Fla. Bar v. Schulz, 717 So. 2d 386 (Fla. 1998)

Lawyer disciplined for tendering a postdated check to travel agent but then stopping payment on it that same day.
***Nothing to do with client representation!

In re Attorney Discipline, 98 F.3d 1082 (8th Cir. 1996)

- Lawyer represented woman in divorce/custody case.
- Male witness testified they had sex in a motel room while her young daughter was present.

Trial recessed. Court reporter
accidentally left on her tape recorder:

- L: What about the business about the motel? Did that happen?
C: Yeah, it happened.
L: God-damn. What were you thinking about?
C: She was only 18 months. I couldn't leave him

- L: You better deny this. Eighteen months old, Jesus.... You better deny this, buddy. You better deny this.
C: What can I do with it that won't make it seem like I'm lying?
L: I don't know. That's up to you. It could be your word against his.... If you say it didn't happen, it didn't happen.

Recess ends.

L: Do you ever—under oath now—do you ever remember going to a motel with your daughter with [the witness]?

C: No.

L: That [witness’s testimony] is a lie, isn’t it?

C: Yes.

L: What would possess him to tell that?

C: I don’t know.

Results:

- ◆ **Lawyer suspended in Illinois for 2 years**
- ◆ **Disbarred in Missouri**
- ◆ **Prosecuted (unsuccessfully) for perjury and subornation of perjury**

Unauthorized Practice of Law

Rule 5.05 – Prohibits:

- ◆ **Assisting a nonlawyer in the “unauthorized practice of law”**

Texas Gov. Code § 81.101

“Practice of Law”=“preparation of a pleading or other document incident to an action ... or the management of the action ... in court as well as a service rendered out of court, including ... advice or ... any service requiring ... legal skill or knowledge”

Tex. Penal Code § 38.122

- ◆ **3rd degree felony to falsely hold oneself out as a lawyer when not licensed to practice law**

Tex. Penal Code § 38.123

- ◆ **Class A misdemeanor to advise a person concerning personal injury or property damages claims or settlements, unless licensed to practice law**

Supervision of Nonlawyers

Rule 5.05, comment 4

“Rule 5.05 does not prohibit a lawyer from employing ... paraprofessionals and delegating functions to them. So long as the lawyer [1] supervises the delegated work, and [2] retains responsibility for the work, and [3] maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in ... the unauthorized practice of law.”

UPL

- *Giving legal advice v. communicating legal advice
- *List position on letters, faxes, emails

Advertising, Solicitation

- ◆ Huge variation among states.
- ◆ TV, direct mail, other advertising permissible, per rule limits and filing.

Prohibited solicitation

Rule 7.03 – Prohibits:

- ◆ paid runners
- ◆ in-person or phone or unsolicited computer contact seeking employment from “a particular occurrence” unless from an existing/former client or relative

“Public media” advertisements

- Rule 7.04 requirements

Written, electronic solicitations

- Rule 7.05 requirements

Review, approval, retention

- **Atty must review, approve**
- **4-year retention**
- **R 7.04(e)-(f)**
- **R 7.05(d)-(e)**

State Bar filing requirements

- **Rule 7.07**
- **Websites: Rule 7.07(c)**
- **Facebook, LinkedIn, Twitter:
website filing applies if “solicit”**

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