

August 15, 2022

MEMO TO: Traci N. T. Fujita, Director of Council Services

F R O M: James Forrest, Legislative Attorney *JB*  
Lesley Milner, Legislative Analyst *LM*  
Jerry Paredes, Legislative Analyst *JAP*  
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SUBJECT: **UH WEBINAR: LEGAL ETHICS** (PAF 21-012(41))

On August 4, 2022, the University of Hawai'i at Mānoa Shidler College of Business, as part of the Will Weinstein Ethics Conversation Series, held a webinar on legal ethics. Various legal experts weighed in during a question-and-answer session on a variety of ethics dilemmas in the legal profession. Our notes below include information about the conversations that emerged. The webinar was moderated by Will Weinstein, a financial-services professional and ethics teacher, and the panelists included:

- Sherry P. Broder, Law Offices of Sherry P. Broder.
- Judge Richard Clifton, Senior Judge, United States Court of Appeals, Ninth Circuit.
- Mark Davis, Partner, Davis Levin Livingston.
- Ken Lawson, Professor, University of Hawai'i at Mānoa, William S. Richardson School of Law.

Video of the session can be found at <https://vimeo.com/shidlercollege>. The presenters addressed an array of issues including:

- The makeup of the United States Supreme Court.
- Problems with the legal profession.
- The attorney-client privilege.

## **Supreme Court**

The panelists noted the relatively new conservative makeup of the U.S. Supreme Court has overturned or put into question long-accepted legal rights. Because the Supreme Court is the most visible representative of the legal system, public opinion of the legal system as a whole correlates with public opinion of the Court, which has recently decreased. Panelists also noted the Supreme Court is considered a political entity by the public, in part based on Justices meeting with political-advocacy groups. The panel also observed that Justices are serving almost twice as long as they used to, as they are appointed younger, which ensures the appointing political party's interests will have a longer-lasting effect.

## **Problems with the legal profession**

Conversation around what may be wrong with the legal profession included two major issues: conversion fraud and class-action lawsuits.

Conversion fraud occurs when an attorney takes funds from their client's trust account for their own gain. With more money flowing through the system, there is the potential to bring out aspects of the human personality that can be damaging. As law has transitioned from a profession to more of a business over the last half-century, more transgressions began to occur.

Class-action lawsuits were discussed as a different thread of the same issue. The drastic increase in class-action suits often seeks to benefit individual lawyers and their firms more than their clients, according to some panelists, which poses an ethical dilemma. Panelists noted class-action lawsuits often end with a significant amount of the money going to the attorneys and a small amount going to the class members, which they called a troubling trend.

## **Attorney-client privilege**

Finally, the attorney-client privilege was discussed at length from a variety of perspectives. Is there ever a time when legal counsel should violate the privilege and, if so, would it provide any benefit? Most panelists agreed that the

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privilege should be protected as matter of legal ethics. They noted, though, legal ethics may not always be consistent with moral ethics.

We found the presentation informative and would encourage anyone who is interested to watch the video. Thank you for the opportunity to participate in this webinar. Please let us know if you have any questions or comments.

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cc: David Raatz, Deputy Director of Council Services