THE YEAR 2012 was the 40th anniversary of Watergate, the political scandal and constitutional crisis wrought by lawyers (including an attorney president) that ushered in a new era of heightened sensitivity to legal ethics in law schools, bar examinations, and continuing legal education. Unfortunately, the lesson was lost on some. A California State Bar audit last year of 2,600 attorneys for compliance with Minimum Continuing Legal Education (MCLE) requirements found that 13.4 percent were scofflaws, exposing them to suspension, discipline, and warnings.1 Separately, the California Supreme Court sent an unprecedented message to the State Bar by returning 24 attorney discipline cases “for further consideration of the recommended discipline” and later returned another 18 cases.2 No observer thought the court was saying the bar’s recommended punishment and plea bargains were too severe.

California courts continued to suffer crippling budget cuts last year, with the public paying the price in closed courtrooms, fewer services, and delayed justice. The civil case-load increased 30 percent from 2006 to 2010, civil trials doubled since 2007, and the judicial branch saw its share of the state budget cut by $900 million over the past two fiscal years.3 Forced to reduce its 2012-13 budget by $30 million, the Los Angeles Superior Court laid off staff, closed 56 courtrooms, and ceased providing court reporters for trials, among other forced economies.4 “Make no mistake,” wrote Richard J. Burdge Jr., president of LACBA, “these changes present access to justice issues for all people.”5 Access will be further denied when the superior court closes entire courthouses this year.

Despite these hardships, some people still want to be lawyers. The California Supreme Court began considering whether an undocumented immigrant, Sergio C. Garcia, can become a member of the State Bar. Brought to this country by his parents when he was 17 months old, Garcia eventually went to law school and passed the bar exam in 2009. He has been waiting for his green card for 18 years.

By John W. Amberg and Jon L. Rewinski

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MCLE ARTICLE AND SELF-ASSESSMENT TEST
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years. His admission to the bar is supported by the State Bar and a resolution of the California legislature, and is opposed by the federal government.6

Another anniversary was marked in 2012—sadly, it was the third year since the murder of attorney Jeffrey A. Tidus, a respected trial lawyer and member of LACBA’s Professional Responsibility and Ethics Committee, who was shot outside his Rolling Hills Estates home by a still unknown assailant. Strongly suspecting the crime was work-related, his family and friends have offered a $100,000 reward for information leading to his killer.7

Conflict of Interest
Because an attorney owes duties of loyalty and confidentiality to the client, Rule of Professional Conduct 3-310 mandates that lawyers avoid conflicts of interest. As several cases illustrated in 2012, violation of the rule can lead to disqualification and forfeiture of fees. In Beltran v. Avon Products, Inc.,8 a putative class action alleging false advertising by a cosmetics company, Avon was defended by the Paul Hastings law firm. Avon moved to disqualify the plaintiffs’ lawyer, Jason M. Frank, because he had previously represented Avon as an associate with Paul Hastings. Avon contended that Frank had acquired material confidential information about its business practices while working on Avon cases, and that his acquisition of confidential information also was presumed under the substantial relationship test, due to similar factual and legal issues.9 It moved to disqualify not only Frank but also his entire law firm and his cocounsel in a separate firm, on the ground his knowledge was imputed to the other lawyers.10

In a sworn declaration, Frank stated “with a 100 percent certainty” that he had never possessed any confidential Avon information relevant to the lawsuit, and in response to the motion to vicariously disqualify the law firms, he pointed to an ethical wall that screened him from the other lawyers. However, after in camera review of Frank’s associate time records revealed he had billed 336 hours to Avon over six years, District Judge Cormac J. Carney ruled that Frank’s statements were “simply implausible” and “not credible,” and disqualified him.11 The court also dis-qualified Frank’s law firm and his cocounsel but ignored relevant California law to reach this result. Relying on a 2006 case, Carney wrote that an ethical wall is insufficient to overcome the possession of confidential information except in limited situations involving government lawyers, but this old doctrine had been swept away in 2010 by the landmark case Kirk v. First American Title Insurance Company,12 which recognized the efficacy of ethical walls to insulate conflicts. Kirk was not mentioned by the court. The judge also faulted the ethical wall because it did not comply with the ABA Model Rules of Professional Conduct (although they do not apply in California), and as evidence that Frank had actively participated in the case, in contravention of the wall, the judge cited Frank’s submission of a declaration in opposition to the motion to disqualify him.13

In Rodriguez v. Disner,14 the Ninth Circuit affirmed a denial of millions of dollars in attorneys’ fees to class action counsel who created a conflict of interest with their clients. In 2007, West Publishing Corporation and Kaplan, Inc., entered into a settlement in an anti-trust class action brought by persons who purchased BAR/BRI bar exam review courses between 1997 and 2006. In addition to a $49 million settlement fund, the settlement proposal to pay incentive awards of $25,000 and $75,000 to seven class representatives based on previously undisclosed agreements with class counsel, and $7 million to the lawyers.15 In a 2009 opinion, the Ninth Circuit held that while incentive awards generally are permissible, the incentive agreements created a conflict of interest between the contracting representatives and the rest of the class, because the resulting awards were tied to a sliding scale based on the amount recovered.16 The court noted the incentive agreements “disjoined the contingency financial interests” of the representatives from the rest of the class by creating a disincentive to go to trial and by giving the representatives an interest in a financial settlement as opposed to other remedies, and implicated California’s ethics rules prohibiting the representation of clients with conflicting interests.17 It approved the settlement but reversed the attorneys’ fees award.18

On remand, District Judge Manuel L. Real held that the conflict of interest tainted the representation, resulting in forfeiture of the attorneys’ fees to McGuireWoods and other class counsel.19 McGuireWoods argued that under Pringle v. LaChapelle,20 a court may not deny all fees where a client suffered no injury as a result of an ethical violation. McGuireWoods also pointed out that the class representatives did not settle for just $10 million, the mark for the maximum incentive award, but had achieved a $49 million settlement. The Ninth Circuit held, however, that the district court’s denial of the fees was not an abuse of discretion, because the lawyers had knowingly inserted the conflict into the retainer agreement at the outset and took no steps to disclose it to the court or the class.21

Attorney-Client Privilege and Work Product
The year 2012 provided an excellent illustration of how federal courts applying federal privilege law approach the attorney-client privilege entirely differently from California state courts. The illustration comes from a sideshow in epic litigation over rights to the lucrative Superman franchise. Unsatisfied with progress in negotiations in the main copyright action, D.C. Comics and Warner Brothers filed in federal court a separate lawsuit against a producer-lawyer (Marc Toberoff) and others for interfering with the studios’ contracts with the heirs of Superman’s creators. In In re Pacific Pictures Corporation,22 the Ninth Circuit addressed whether documents that Toberoff produced in response to a grand jury subpoena in a criminal investigation lost whatever attorney-client privilege the documents may have had and therefore were discoverable in the lawsuit asserting contract interference. The Ninth Circuit concluded that Toberoff waived the privilege. In so holding, the Ninth Circuit joined the First, Second, Third, Fourth, Sixth, Seventh, Tenth, D.C., and Federal Circuits in rejecting the so-called selective waiver doctrine, which first gained traction in the Eighth Circuit in 1978.23

The Ninth Circuit applied federal law on privilege, which places the search for truth above the attorney-client privilege. “The privilege stands in derogation of the public’s right to every man’s evidence and as an obstacle to the investigation of the truth, and thus it ought to be strictly confined within the narrowest possible limits consistent with the logic of its principle.”24 This is the federal court view.25

Did the choice of law make a difference? It may well have. In 2008, in Regents of the University of California v. Superior Court, the California Court of Appeal adopted the selective disclosure doctrine.26 The court reasoned that because the disclosure of attorney-client documents was coerced by subpoenas issued by a government agency, those producing the documents did not waive the privilege because waiver implies voluntary consent. Had the district court in Pacific Pictures applied California law, the ruling with respect to the documents Toberoff produced to the grand jury may well have been different.

The year 2012 also saw an important California Supreme Court case concerning the attorney work-product doctrine. The Code of Civil Procedure distinguishes between work product reflecting a lawyer’s “impressions, conclusions, opinions, or legal research or theories,” which is entitled to absolute protection, and all other attorney work product, which is entitled to qualified protection.27 Work product receiving qualified protection may be subject to disclosure if the party seeking it can establish that denial of the discovery would unfairly prejudice the party in preparing his or her claim.
1. Rule of Professional Conduct 3-310 governs conflicts of interest between a California lawyer’s clients.
   True.

2. A conflict of interest can result in an attorney’s disqualification or forfeiture of fees.
   True.

3. A lawyer’s acquisition of confidential client information can be presumed under the substantial relationship test without evidence of actual knowledge.
   True.

4. One lawyer’s knowledge can be imputed to an entire firm, resulting in the firm’s vicarious disqualification.
   True.

5. California law recognizes that an ethical wall may insulate one lawyer’s knowledge of confidential information and prevent vicarious disqualification of an entire firm.
   True.

6. If a lawyer’s ethical violation does not harm a client, the lawyer cannot be denied his or her fees.
   True.

7. Under the law in the Ninth Circuit, documents produced under the compulsion of a grand jury subpoena do not lose their privileged nature.
   True.

8. Federal law and California law are consistent on the subject of selective waiver of the attorney-client privilege.
   True.

9. Witness statements taken at a lawyer’s request are always entitled to absolute work product protection.
   True.

10. A form interrogatory 12.3 seeking the identification of witness statements always must be answered.
    True.

11. Rule of Professional Conduct 2-200 requires informed written consent of a client to a fee-sharing arrangement among lawyers, unless one of the lawyers prevents compliance with the rule.
    True.

12. An agreement under which a lawyer is paid with a share in his or her client’s business is unenforceable unless the client is advised to consult independent counsel.
    True.

13. Under federal habeas corpus law, the negligence of defense counsel does not constitute cause for a prisoner’s failure to meet state procedural requirements.
    True.

14. The anti-SLAPP statute does not bar a client’s lawsuit against his or her attorney for malpractice in handling litigation.
    True.

15. A claim by one attorney against another attorney for equitable indemnity for a legal malpractice claim is not entitled to protection by the anti-SLAPP statute.
    True.

16. An attorney’s breach of the standard of care is not per se actionable.
    True.

17. In the absence of substantial evidence of causation and damages, a client cannot fire his or her lawyer, settle his or her claim, and then sue the lawyer by claiming the settlement would have been larger.
    True.

18. In the absence of a partnership agreement, income from unfinished business belongs to the lawyer who completed the work, not the law firm.
    True.

19. In bankruptcies of law firms, bankruptcy courts have held that some joint waivers are fraudulent transfers.
    True.

20. The California Supreme Court has not approved any of the revised California Rules of Professional Conduct.
    True.

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**MCLE Test No. 223**

The Los Angeles County Bar Association certifies that this activity has been approved for Minimum Continuing Legal Education legal ethics credit by the State Bar of California in the amount of 1 hour.

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**MCLE Answer Sheet #223**

Name _______________________________ Law Firm/Organization _______________________________

Address ______________________________________________________________

City ___________________ State/Zip ________________ E-mail ____________________________

Phone __________________________ State Bar # ________________

INSTRUCTIONS FOR OBTAINING MCLE CREDITS

1. Study the MCLE article in this issue.
2. Answer the test questions opposite by marking the appropriate boxes below. Each question has only one answer. Photocopies of this answer sheet may be submitted; however, this form should not be enlarged or reduced.
3. Mail the answer sheet and the $20 testing fee ($25 for non-LACBA members) to:
   Los Angeles Lawyer
   MCLE Test
   P.O. Box 55020
   Los Angeles, CA 90055

Make checks payable to Los Angeles Lawyer.
4. Within six weeks, Los Angeles Lawyer will return your test with the correct answers, a rationale for the correct answers, and a certificate verifying the MCLE credit you earned through this self-assessment activity.
5. For future reference, please retain the MCLE test materials returned to you.

**ANSWERS**

Mark your answers to the test by checking the appropriate boxes below. Each question has only one answer.

1. [ ] True [ ] False
2. [ ] True [ ] False
3. [ ] True [ ] False
4. [ ] True [ ] False
5. [ ] True [ ] False
6. [ ] True [ ] False
7. [ ] True [ ] False
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19. [ ] True [ ] False
20. [ ] True [ ] False

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Los Angeles Lawyer April 2013
or result in an injustice.\textsuperscript{28}

The supreme court’s decision in Coito v. Superior Court\textsuperscript{29} arose in litigation following the tragic death of a 13-year-old boy who drowned while swimming with six other kids in the Tuolumne River near Modesto. The boy’s mother sued Modesto and several state agencies, including the Department of Water Resources (DWR), for wrongful death. The DWR’s lawyers sent two investigators to interview the youths after the city had noticed their depositions. The investigators taped four of the interviews. During discovery, the deceased boy’s mother propounded to the DWR form interrogatory 12.3, seeking the identification of witness statements, and requests demanding production of the recordings. The DWR objected, citing the attorney work product doctrine.

Based on a close analysis of the origins and legislative history of the work product doctrine in California, the supreme court concluded that witness statements recorded at the request of a party’s lawyers are entitled as a matter of law to at least qualified work product protection. Whether such recordings are entitled to absolute protection must be determined on a case by case basis. An attorney resisting production of work product claimed to be absolutely protected “must make a preliminary or foundational showing that disclosure would reveal his or her ‘impressions, conclusions, opinions, or legal research or theories.’”\textsuperscript{30} In so holding, the supreme court expressly disclaimed a contrary holding in its 1961 decision, Greyhound Corporation v. Superior Court,\textsuperscript{31} and disapproved several published appellate court decisions that, according to the supreme court, had “address[ed] the issue in a conclusory manner without discussing the legislatively declared policy or the history of the work product privilege.”\textsuperscript{32}

The supreme court declined to conclude that information responsive to form interrogatory 12.3, seeking the identification of witness statements, is automatically entitled to some level of protection as work product. Unless the responding party can make a preliminary showing that answering the interrogatory would reveal the attorney’s tactics, impressions, or evaluation of the case or result in opposing counsel taking undue advantage of the attorney’s industry or efforts, form interrogatory 12.3 must be answered.\textsuperscript{33}

**Fee-Sharing**

Rule 2-200 permits an attorney to share legal fees with another lawyer only with the client’s informed written consent. Numerous cases over the years have demonstrated that a failure to comply with all requirements of Rule 2-200 generally results in a forfeiture of fees. It is bad business for a lawyer to ignore Rule 2-200.

The class action eventually settled and generated $13.5 million in legal fees for class counsel. The Barnes firm wanted one third according to the fee-splitting agreement. Ringler refused to pay the referral fee because the two class representatives (as opposed to Meredith) had not consented in writing to the agreement. In fact, Ringler refused even to disclose the fee-splitting agreement to the class representatives and threatened to pursue claims against the Barnes firm for interference if the Barnes firm tried to contact the class representatives themselves to get their consent.

Finding that it was undisputed that the Barnes firm had failed to obtain written client consent to the fee-splitting arrangement as required by Rule 2-200, the trial court entered judgment for Ringler and the other defendants following opening statements at trial. The Fourth District reversed. The superior court should have allowed trial to proceed on the Barnes firm’s contention that defendants were equitably estopped from claiming the contract was unenforceable due to noncompliance with Rule 2-200. Under the unique circumstances of the case, the parties’ noncompliance with Rule 2-200 did not preclude the Barnes firm from enforcing the fee-splitting agreement.

**Doing Business with a Client**

Rule 3-300 precludes a California lawyer from entering into a business transaction with a client unless four requirements are met: 1) the transaction and its terms are fair and reasonable to the client, 2) the transaction and its terms are fully disclosed to the client in writing in a manner that should reasonably have been understood by the client, 3) the client is advised in writing that the client may seek independent legal advice and is given an opportunity to do so, and 4) the client thereafter consents in writing to the transaction.

In Gurney v. Legend Films, Inc.,\textsuperscript{34} the U.S. District Court in San Diego cited Rule 3-300 in a lawsuit by a lawyer (Amy Gurney), who was a member of the California and New
York bars, over compensation that a startup business (Legend Films) and its two founders allegedly owed Gurney. Before the creation of Legend Films, Gurney had represented the founders in various legal matters. Gurney alleged that after the founders created Legend Films, they asked her to serve as its general counsel. Gurney’s employment agreement was drafted but not fully executed. In addition to promising Gurney a base salary and severance pay in the event of a termination of her employment, the agreement purported to give Gurney an equity stake in Legend Films. Gurney did not comply with Rule 3-300.

About a year later, the founders terminated Gurney’s employment. Having not received her salary, severance pay, or equity stake, she sued. The district court granted the defendants’ motion for summary judgment and denied Gurney’s cross-motion. The court relied primarily on applicable statutes of limitation. It noted, however, that the purported employment agreement would also be unenforceable for failure to satisfy Rule 3-300 and comparable ethics rules in New York and New Jersey (where Gurney resided during various relevant times). Gurney had a pre-existing lawyer-client relationship with the founders. The unsigned employment agreement gave Gurney an equity interest in Legend Films. It memorialized a business transaction between Gurney and her clients within the meaning of Rule 3-300. It appeared that the founders never signed the agreement, and there was no evidence that Gurney had advised them in writing of their right to seek independent counsel of their choice. Gurney had not complied with Rule 3-300, and for this reason, among others, she could not claim her equity stake in the business.

Abandonment
A client’s life was endangered when he was abandoned by his pro bono lawyers. In Maps v. Thomas,37 two associates at Sullivan & Cromwell in New York, Jaasi Munanka and Clara Ingen-Housz, filed a post-conviction petition for Alabama death row inmate Cory Maps, who had been convicted of murdering two people. While the petition was pending, the lawyers left the law firm for new jobs that disabled them from continuing to represent Maps. They did not inform Maps, did not seek leave to withdraw, and did not move for substitution of new counsel. When the petition was denied a year later, notice of the court’s order was mailed to counsel of record at Sullivan & Cromwell, whose mail room returned the mailings, unopened and marked “Return to Sender—Attempted, Unknown” and “Return to Sender—Left Firm,” to the Alabama trial court, which attempted no further mailings. The time to appeal ran out.38 After Maps was informed by an Alabama assistant attorney general, his mother called Sullivan & Cromwell, and new lawyers tried unsuccessfully to resurrect the case. The trial court denied a motion to reissue its order, the Alabama Court of Criminal Appeals denied a writ of mandamus, and the Alabama Supreme Court affirmed. A petition for federal habeas relief was denied by the federal district court and the Eleventh Circuit because of the failure to timely appeal the petition in state court.39

The U.S. Supreme Court reversed, holding there was cause to excuse the procedural default, because Maps had been abandoned without notice by his counsel. “In these circumstances, no just system would lay the default at Maps’ death-cell door,” Justice Ruth Bader Ginsburg wrote.40 Federal courts are barred from reviewing a state prisoner’s habeas claim if the prisoner failed to meet a state procedural requirement unless the prisoner can demonstrate cause and actual prejudice. Cause exists when something external to the prisoner impeded his or her efforts to comply with the procedural requirement. The negligence of counsel does not constitute cause, because the attorney is the prisoner’s agent, and the principal bears the risk of negligence by the agent.41 The Court distinguished the situation, however, from one in which an attorney abandons a client, such as Maps, without notice, and severs the agency relationship. Maps could not be charged with the omissions of an attorney who has abandoned him, the Court concluded, and cannot be faulted for failing to act on his own when he lacks reason to believe his attorneys are not representing him.42 The Court remanded for consideration of prejudice.

Lawyers Behaving Badly
Lawyers who violate the ethics rules are subject to discipline in the State Bar Court. In In the Matter of Chance Edward Gordon,43 a lawyer named in a State Bar Court proceeding alleging 30 counts of violations of the California Business and Professions Code and the California Rules of Professional Conduct tried to remove the disciplinary case to federal court because the disciplinary charges were similar to claims asserted against him by the Consumer Financial Protection Bureau in a pending federal case and, therefore, involved federal questions. The District Court remanded the disciplinary proceeding to the State Bar Court. The State Bar prosecutors did not assert claims raising federal questions and a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption.44

In other cases, the Ninth Circuit excoriated a prosecutor who intentionally misquoted the defendant’s prior testimony in an attempt to win a conviction for drug trafficking.45 The Ninth Circuit instructed the district court to consider disciplinary options. The State Bar Court Review Department recommended disbarring a 54-year-old lawyer who became romantically involved with an 85-year-old client who was suffering from emphysema and terminal cancer and misappropriated $340,000 of his savings after his death.46

Malpractice
After Hillel Chodos and his cocounsel Hugh John Gibson obtained a settlement for a client in a marital dissolution and related Marvin action, they sued her for $3.5 million in fees, and she sued them for malpractice. Not trusting Chodos while he was representing her, his client had retained other counsel to review his work. In Chodos v. Cole,37 Chodos filed a cross-complaint for equitable indemnity against the lawyers, contending that while concurrently representing the client, they had independently reviewed and approved the proposed settlement. The superior court struck the cross-complaint on the ground it was barred by the anti-SLAPP statute,48 but the Second District Court of Appeal reversed. Justice Richard M. Mosk rejected the argument that the indemnity claim arose from protected activity. Citing authority that the anti-SLAPP statute does not bar client lawsuits against lawyers for malpractice in handling litigation, Mosk held that a claim by an attorney against another attorney for equitable indemnity in connection with a claim of attorney malpractice “is not distinguishable from a client’s claim against an attorney for malpractice.”49 The cross-complaint concerned conduct constituting a breach of professional duty, not statements or filings made in litigation. The appellate court concluded, “Because a client’s action against an attorney for a breach of duty by an act of malpractice is not subject to the anti-SLAPP statute, logically Chodos’s action based on a breach of duty by an act of malpractice likewise should not be subject to the anti-SLAPP statute.”50 Because protected activity was not implicated, the Court held it did not need to consider whether the litigation privilege barred the claim.51

Reversing a verdict against a lawyer, the First District Court of Appeal underscored the difficulty of proving causation and damages in a “settle and sue” malpractice case. In Filbin v. Fitzgerald,52 James and Carolyn Filbin fired their lawyer, Herman H. Fitzgerald, and hired a new lawyer to represent them in eminent domain proceedings against San Luis Obispo County, which wanted their property for the regional airport. After settling their claim with the county, they sued Fitzgerald, contending they would have received more but for his malpractice. An appraiser hired
by Fitzgerald had valued the land at $4.535 million, but Mr. Filbin believed it was worth $12 to $15 million. When Fitzgerald erroneously advised the Filbins that the Code of Civil Procedure required their mandatory settlement offer to be less than the appraiser’s expected testimony at trial, they rejected his advice and fired him. During the subsequent condemnation trial, the Filbins accepted the County’s offer of about $2.6 million. In the malpractice case, the trial court held that Fitzgerald’s misstatement of the law fell below the standard of care and awarded the Filbins $574,000, offset by $242,000 in fees.53

The appellate court held there was no substantial evidence of causation or damages. Noting that attorney breaches of the standard of care are not per se actionable, the court found that nothing Fitzgerald did or did not do caused detriment to the Filbins. Rather than following his erroneous advice, they stuck to their guns and refused to lower their demand below the appraisal. Moreover, when the Filbins decided to settle two and a half months later, no past decision by Fitzgerald hobbled them. “[T]hey were free agents... Nothing prevented their new counsel from giving them impartial advice.” The court added it was “supremely ironic” that the former clients tried to use Fitzgerald’s history and his own appraiser’s opinion against him and concluded that no evidence showed that a greater settlement could have been reached.55

Getting Paid
It is a fact of modern practice that lawyers depart and firms dissolve. The continuing fight over who is entitled to revenue from valuable unfinished business, however, often binds former partners together. Nearly 30 years ago, in the seminal case of Jewel v. Boxer,56 the First District Court of Appeal held that in the absence of a partnership agreement, income from unfinished business belongs to the partnership, to be allocated to the former partners according to their respective interests, and does not belong to former partners who took the business and finished it. As a result, Jewel waivers—under which partners relinquish rights to unfinished business—began appearing in partnership agreements. In Greenspan v. Paul Hastings Janofsky & Walker LLP,57 District Judge Charles R. Breyer considered a Jewel waiver that the former partners of Brobeck, Phleger & Harrison LLP added to their partnership agreement shortly before the firm was forced into involuntary bankruptcy in 2003. When former Brobeck partners took unfinished business to Paul Hastings, the bankruptcy trustee brought an adversary proceeding in the bankruptcy court challenging the Jewel waiver as a fraudulent transfer.

Because Bankruptcy Judge Dennis Montali had ruled that new firms would be liable as immediate transferees despite a Jewel waiver,58 Paul Hastings sought to convince the District Court to withdraw the reference from Montali. It argued that non-bankruptcy federal issues were raised by the Jewel waivers issue—freedom of association, the right to counsel, and the right to practice one’s profession—and mandated withdrawal. The district court noted it had denied a previous motion to withdraw the reference in the Heller Ehrman LLP bankruptcy59 and rejected the new arguments. First, it held that while state law issues may be unresolved, the alleged constitutional rights were not significant, open, and unresolved. Second, it noted that the alleged right to practice one’s profession has been interpreted strictly and requires something akin to complete prohibition to state a constitutional claim. Finding no significant and unresolved questions of federal law, the court denied the motion.60

As law firm bankruptcies proliferated, other courts grappled with Jewel issues last year. Thus, in Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP,61 the U.S. District Court for the Southern District of New York held that unfinished business, whether billed hourly or on a contingent fee, belonged to the dissolved Coudert Brothers firm, and in Huber v. Etkin,62 the Pennsylvania Superior Court similarly held that contingent fees must be shared as partnership assets. In Geron v. Robinson & Cole LLP,63 another federal district judge in New York held that California law and New York law are different, so profits earned by Robinson & Cole LLP belonged to the bankrupt Thelen firm, but Seyfarth Shaw LLP could retain its fees because they would bestow an unjust windfall on Thelen and clash with New York’s Rules of Professional Conduct and public policy favoring client autonomy and lawyer mobility.

Rules Revision
The State Bar’s Board of Governors approved revised Rules of Professional Conduct two years ago, but none can take effect until approved by the supreme court. The State Bar has submitted the new rules to the supreme court twice—its initial submission of 67 rules was deemed too voluminous and withdrawn in 2011, and a new petition in October 2012 contained a test batch of just two rules.64

1 MCLE Audit Results Encouraging, but Some Attorneys Still Face Discipline, CAL. BAR J. (Dec. 2012).
2 Justices Return 24 Discipline Cases to State Bar, L.A. DAILY J., June 25, 2012; Supreme Court Returns