

THE CHANGING LEGAL PROFESSION: VALUES

By:
Bill Simon
Columbia Law School

The profession is in the midst of the most serious crisis in its history. The symptoms are radical challenges to the bar's traditional commitments to self-regulation and to client confidentiality. The most notable examples are the norms on corporate practice arising from the Sarbanes-Oxley Act and SEC regulations and the norms on tax practice arising from last fall's "Jobs Act" and IRC Circular 230. These developments represent the most radical change in the context of professional regulation since the late 19th century.

The cause of the crisis is the bar's inability to seriously respond to the developments typified by Enron and related scandals and, to a lesser but still revealing extent, tax shelters. These developments involve two longstanding unresolved issues of professional ethics -- first, the problem of formalism, and second, the meaning of organizational representation. The bar has never been able to take a coherent position on the first, and until recently, it was unable even to acknowledge the second.

The bar's befuddled response to these issues has lost it respect and perhaps influence. It has tended to circle the wagon around traditional positions. These traditional positions beg important jurisprudential and organizational questions. They also ignore the challenges for law practice from new and increasingly prominent styles of regulation that impinge importantly on practice.

Sources:

William H. Simon, "The Belated Decline of Literalism in Professional Responsibility Doctrine," 70 Fordham Law Review 1881 (2002)

William H. Simon, "Whom (or What) Does the Organization's Lawyer Represent?: An Anatomy of Intraclient Conflict," 91 California Law Review (2002)