Loyola University Chicago Law Journal

Volume 23
Issue 2 *Winter 1992*

Article 7

1992

Suppressed v. Suppressed: A Court's Refusal to Remedy the Legal Profession's "Dirty Little Secret," Attorney-Client Sexual Exploitation

Robert H. Muriel

Suppressed v. Suppressed: A Court's Refusal to Remedy the Legal Profession's "Dirty Little Secret," Attorney-Client Sexual Exploitation

I. INTRODUCTION

In the aftermath of the Clarence Thomas confirmation hearings, this country has acquired a new consciousness regarding sexual harassment in the workplace.[1] Sexual harassment, however, is not limited to the workplace. These days, sexual exploitation is commonly reported in the offices of doctors, social workers, clergy, and attorneys.[2] The most troublesome aspect of these situations is that the person being sexually exploited is typically in a vulnerable position, and is often at the mercy of the person in whom she[3] has placed her trust.

Courts recognize malpractice when the person initiating the sexual contact is a mental health professional.[4] Courts, however, have refused to recognize similar causes of action when the initiator is an attorney. Recently, in *Suppressed v. Suppressed*,[5] the First District Illinois Appellate Court held that a divorce attorney has no duty to refrain from sexual relations with a client during the course

1. More generally, 1991 was a year in which "sex" received as much media attention as the Persian Gulf War, the collapse of communism, and the failing U.S. economy. The media items that centered on sex included not only the confirmation hearings of Judge Clarence Thomas, *see, e.g.*, Richard L. Berke, *The Thomas Nomination; Thomas Accuser Tells Hearing of Obscene Talk and Advances; Judge Complains of "Lynching"*, N.Y. TIMES, Oct. 12, 1991, at A1, but also the William Kennedy Smith rape trial, *see, e.g.*, Steven Brill, *How the Willie Smith Show Changed America*, AM. LAW., Jan./Feb. 1992, at 3, the discovery that Earvin "Magic" Johnson tested positive for HIV, *see, e.g.*, Magic Johnson with Roy S. Johnson, *I'll Deal With It*, SPORTS ILLUSTRATED, Nov. 18, 1991, at 16, as well as Pee Wee Herman's arrest in an adult movie theater, *see, e.g.*, *Pee-Wee Herman Arrested on Sex Charge*, CHI. TRIB., July 28, 1991, at C8.

2. *See generally A Special Report: A Very Private Practice* (CBS television news, Chicago, Oct. 28-29, 1991) (reporting instances in which doctors, lawyers, and clergy exploited vulnerable clients for their own sexual purposes).

3. For consistency, this Note uses feminine pronouns to describe victims. This does not imply, however, that female professionals never exploit their clients or that male clients are undeserving of protection. Instead, it reflects the overwhelming majority of reported cases dealing with sexual exploitation. In fact, some reports describe situations in which male homosexuals had similar experiences with attorneys. Donna Gill & Nancy D. Holt, *Lawyers Debate Attorney-Client Sex Rule*, CHI. LAW., Sept. 1991, at 10.

4. *See infra* notes 43-71 and accompanying text.

5. 565 N.E.2d 101 (Ill. App. Ct. 1st Dist. 1990), *appeal denied*, 571 N.E.2d 156 (Ill. 1991).

of representation. Although little case law exists regarding attorney liability for sexual relations with a client, there are cases dealing with the liability of psychotherapists in this context. Thus, an analogous theory of law exists which is applicable to the attorney-client relationship.

This Note traces the development of the theory which imposes a fiduciary duty on some professionals to refrain from sexual involvement with their clients.[6] It then discusses the *Suppressed* case, summarizing the relevant facts and the court's opinion.[7] The Note then analyzes the *Suppressed* opinion focusing on two points: (1) whether courts should distinguish psychotherapist malpractice actions in this area from malpractice actions involving attorneys; and (2) whether courts may prohibit malpractice claims in which emotional injury is the only damage alleged by the plaintiff.[8] Finally, the Note predicts the impact that the *Suppressed* decision will have on practicing attorneys and state bar associations and proposes how the problem of sexually-exploited clients should be resolved.[9]

II. BACKGROUND

Although sexual relationships between attorneys and their clients during representation have long existed, few lawsuits have been filed as a result.[10] When sexual relations with an attorney during legal representation cause harm to a client, typically the client's legal theory to recover damages is breach of fiduciary duty.[11] In general, a fiduciary relationship arises when two parties have unequal bargaining power and when one party places confidence in the more influential and knowledgeable party.[12] Indeed, the attorney-client relationship is "highly fiduciary in its nature and of a very delicate, exacting, and confidential character, requir-

6. *See infra* notes 10-93 and accompanying text.

7. *See infra* notes 94-129 and accompanying text.

8. *See infra* notes 130-50 and accompanying text.

9. *See infra* notes 151-58 and accompanying text.

10. "About 1% of the 5,000 complaints which the Illinois Attorney Registration and Disciplinary Commission (ARDC) received during 1989 involved attorney-client sexual encounters." *In re* Marriage of Kantar, 581 N.E.2d 6, 12 n.2 (Ill. App. Ct. 1st Dist. 1991) (Greiman, J., concurring) (citing ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS, 54 (1990)). Yet, the ARDC has determined that this "problem is 'a systematic, unchanging and consistent trend' in the domestic relations field." *Id.* (Greiman, J., concurring) (citing ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS 54 (1990)).

11. *See* 7 AM. JUR. 2D *Attorneys at Law* § 197 (1980 & Supp. 1991).

12. *In re* Estate of Heilman, 345 N.E.2d 536, 540 (Ill. App. Ct. 3d Dist. 1976).

ing a high degree of fidelity and good faith."[13] As a result, all transactions between attorneys and clients are subject to the closest scrutiny.[14] Yet, despite the high degree of fiduciary duty imposed on attorneys, few courts have examined malpractice actions against lawyers who sexually exploit clients during representation.

A. Sparse Case Law Regarding the Attorney-Client Relationship

Prior to the *Suppressed* decision, only one court had examined whether sexual relations between an attorney and client could result in breach of a fiduciary duty. In *Barbara A. v. John G.*,[15] the California Court of Appeals considered whether the fiduciary obligation of an attorney encompasses personal relations with a client. In *Barbara A.*, the attorney represented the client in a post-dissolution proceeding for modification of spousal and child support.[16] On two occasions during the course of legal representation, the attorney and client engaged in sexual intercourse.[17] When the client expressed fears of getting pregnant, the attorney assured her, "I can't possibly get anyone pregnant."[18] Relying on this representation, the client consented to sexual relations and eventually became pregnant.[19]

Addressing the client's claim for legal malpractice, the *Barbara A.* court first examined the essence of fiduciary relationships[20] and found that a breach of this type of a fiduciary relationship should not be limited to purely financial claims.[21] The court opined that courts should also allow actions that allege physical damage resulting from a breach of fiduciary duty.[22] Second, the court addressed whether the highest fiduciary standard should be applied to the attorney in all of his relations with the client, social as well as legal.[23] The court found that this high standard would be applied if the client could prove the existence of a confidential relation-

13. 7 AM. JUR. 2D *Attorneys at Law* § 119 (1980 & Supp. 1991).
14. *See, e.g,* Gaffney v. Harmon, 90 N.E.2d 785, 788 (Ill. 1950).
15. 193 Cal. Rptr. 422 (Ct. App. 1983).
16. *Id.* at 426.
17. *Id.*
18. *Id.*
19. *Id.* The client was forced to undergo surgery to save her life as a result of a tubal pregnancy and suffered physical, emotional, and financial injuries. *Id.*
20. *Id.* at 432. The court stated that the essence of a fiduciary relationship is "that the parties do not deal on equal terms," and thus, that the person with superior position is able "to exert unique influence over the dependent party." *Id.*
21. *Id.*
22. *Id.*
23. *Id.*

ship.[24] If such a confidential relationship were established, then the attorney would have the burden of showing that the consent to intercourse was informed and freely given.[25]

Since the decision in *Suppressed*, three courts have discussed the implications of sexual involvement between attorneys and clients.[26] These opinions, however, fail to discuss whether sexual relations between an attorney and client constitute a per se violation of the lawyer's fiduciary duty.

Less than a year after the *Suppressed* decision, the First District Illinois Appellate Court examined a breach of fiduciary duty issue in a sexual relations context in *In re Marriage of Kantar*.[27] In *Kantar*, the trial court denied the client's request for a hearing on the appropriateness of attorney's fees charged her.[28] On appeal, the client argued that her divorce attorney breached a fiduciary duty by engaging in a sexual relationship with her during representation.[29] The client further argued that as a result of that breach, the attorney's fees had been obtained unlawfully through undue influence.[30]

Although the majority never reached the breach of duty issue,[31] Justice Greiman, in a specially concurring opinion, stated his belief that the precedential value of the case was sufficient reason to discuss "the legal profession's 'dirty little secret.' "[32] Justice Greiman stated that the attorney's handling of a case such as this in a "lawyerlike fashion" does not constitute a defense.[33] Because a sexual relationship between a divorce lawyer and client creates an inher-

24. *Id.* The court stated earlier that the existence of a confidential relationship is a question of fact for the jury or the trial court. *Id.*

25. *Id.* The court noted that any other holding "would have a chilling and far-reaching effect on any personal relations" between an attorney and his client. *Id.* at 432-33.

26. McDaniel v. Gile, 281 Cal. Rptr. 242 (Ct. App. 1991); *In re* Marriage of Kantar, 581 N.E.2d 6 (Ill. App. Ct. 1st Dist. 1991); Edwards v. Edwards, 567 N.Y.S.2d 645 (App. Div. 1991).

27. 581 N.E.2d 6 (Ill. App. Ct. 1st Dist. 1991).

28. *Id.* at 7.

29. *Id.* The client also alleged that she and her attorney had engaged in sexual relations at least twenty times during representation and that she was charged legal fees for all the time during their sexual encounters. *Id.* at 9.

30. *Id.* at 7.

31. The majority in *Kantar* never reached the issue of whether the alleged sexual relationship breached the attorney's fiduciary duty because it found that the attorney's fees impropriety alone would be sufficient reason to vacate the trial court's judgment. *Id.* at 11.

32. *Id.* at 12 (Greiman, J., concurring). The court did not consider the issue of malpractice because the case dealt solely with the appropriateness of the attorney's fees charged. *Id.* at 14-15 (Greiman, J., concurring).

33. *Id.* at 15 (Greiman, J., concurring).

ently exploitative situation, Justice Greiman reasoned that the attorney may be unable to serve the client's interests adequately.[34] His reasoning was supported by two commonly recognized rules of law. First, adultery is grounds for divorce.[35] If the lawyer is subpoenaed to court, his testimony could adversely affect child custody, or perhaps distribution of property.[36] Second, the attorney-client privilege only extends to conversations made in the professional relationship.[37] Any information obtained by the attorney during personal time could destroy the privilege.[38]

Similarly, in *McDaniel v. Gile*,[39] the California Court of Appeals recently considered the issue of attorney liability for sexual relations with a client and held that seeking sexual favors from an unwilling client may expose an attorney to tort liability. In *McDaniel*, the client claimed legal malpractice against the attorney who represented her in a marital dissolution proceeding.[40] The client contended that the attorney's delay in and withholding of legal services, as well as his provision of substandard services when she refused to grant him sexual favors, constituted a breach of his professional duty.[41] The *McDaniel* court agreed with the client and held that such conduct fell below the standard of care and skill against which members of the legal profession are measured.[42]

In sum, courts are beginning to recognize that an attorney may breach the fiduciary duty to a client by engaging in sexual relations during the course of representation. These courts have been unwilling, however, to declare that lawyer-client sexual relations are a per se violation of the attorney's fiduciary duty.

B. Analogous Malpractice Claims Against Other Professionals

Given the minimal direction provided by the courts in the attorney-client setting, it is helpful to analyze malpractice claims filed against psychotherapists for engaging in sexual relations with their patients. Commentators warn, however, that this argument by

34. *Id.* (Greiman, J., concurring).
35. *Id.* at 13 (Greiman, J., concurring).
36. *Id.* at 13-14 (Greiman, J., concurring); *see also* Edwards v. Edwards, 567 N.Y.S.2d 645, 649 (App. Div. 1991) (noting that when a divorce attorney engages in sexual relations with his client, he becomes a potential witness to her adultery).
37. *Kantar*, 581 N.E.2d at 14 (Greiman, J., concurring).
38. *Id.* (Greiman, J., concurring).
39. 281 Cal. Rptr. 242 (Ct. App. 1991).
40. *Id.* at 248-49.
41. *Id.* at 249.
42. *Id.* The court did not address, however, whether sexual relations in the attorney-client context constitute a per se violation of the fiduciary duty. *Id.*

analogy will be met with resistance by the legal community, which likely will profess that psychotherapy cases are distinguishable because they involve the transference phenomenon[43] and because mental health professionals are trained to handle vulnerable patients.[44] Nevertheless, an inquiry is warranted.

Several states allow malpractice actions against psychologists,[45] psychiatrists,[46] and social workers,[47] predicated primarily on the counsellor's sexual contact with patients. In what is perhaps the leading case in this area of law, *Roy v. Hartogs*,[48] the patient was induced into having sexual intercourse with the defendant-psychiatrist as part of her prescribed therapy. The court held that by alleging emotional and mental injury as a result of the treatment, the plaintiff asserted a viable cause of action for malpractice.[49] The *Roy* court's recognition of malpractice for engaging in sexual relations with patients provided a foundation for other cases to follow.[50]

After decisions such as *Roy*, which allowed psychiatric malpractice claims for engaging in sexual relations with patients, plaintiffs attempted to extend this liability to other professions.[51] Courts were not always willing, however, to allow this extension of liability. The Fourth District Illinois Appellate Court refused to do so in *Martino v. Family Service Agency*,[52] when a patient tried to bring a malpractice action against her social worker after the social worker fell in love with the patient's husband and engaged in intimate relations with him.

In *Martino*, the court began its analysis by observing that no statutory or common law precedent existed for applying the tort of

---

43. In psychoanalysis, transference occurs when the patient "directs towards the physician a degree of affectionate feeling . . . which is based on no real relation between them and which . . . can only be traced to old wishful phantasies of the patient's which have become unconscious." SIGMUND FREUD, *Five Lectures on Psycho-Analysis* (1909), *in* 11 STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 49, 51 (J. Strachey trans., 1957) [hereinafter FREUD'S COMPLETE PSYCHOLOGICAL WORKS].

44. *See* Thomas Lyon, Comment, *Sexual Exploitation of Divorce Clients: The Lawyer's Prerogative?*, 10 HARV. WOMEN'S L.J. 159, 191-92 (1987).

45. *See, e.g., infra* notes 62-71 and accompanying text.

46. *See, e.g.*, Cotton v. Kambly, 300 N.W.2d 627 (Mich. Ct. App. 1980); Omer v. Edgren, 685 P.2d 635 (Wash. Ct. App. 1984).

47. *See, e.g.*, Horak v. Biris, 474 N.E.2d 13 (Ill. App. Ct. 2d Dist. 1985); *infra* notes 56-61 and accompanying text.

48. 381 N.Y.S.2d 587, 588 (App. Div. 1976).

49. *Id.*

50. *See* cases discussed *infra* notes 52-71 and accompanying text.

51. *See infra* notes 52-71 and accompanying text.

52. 445 N.E.2d 6 (Ill. App. Ct. 4th Dist. 1982).

malpractice to social workers.[53] The court refused to analogize the situation to the medical profession, where a breach of duty arises when a psychiatrist engages in sexual relations with a patient during therapy.[54] The crux of the *Martino* court's refusal to allow this malpractice action against the social worker was the difficulty in discerning among the myriad emotional injuries that likely would be claimed in such actions.[55]

Three years later, however, the Second District Illinois Appellate Court examined a set of facts almost identical to those in *Martino*, and allowed a malpractice claim against a social worker.[56] In reaching its decision, the court in *Horak v. Biris* initially found that whether a fiduciary duty exists is a question of law to be determined by the court.[57] In answering that question, the court reasoned that by offering counseling and guidance in marital relationships, the defendant-social worker placed himself in a position of trust.[58] The *Horak* court found that a violation of this trust constituted a breach of the fiduciary relationship.[59] Moreover, the court presumed that the social worker possessed a basic knowledge of fundamental psychological principles such that his mishandling of the transference phenomenon constituted a breach of duty.[60] Finally, the court noted that various statutory provisions and a code of ethics made it clear that certain minimum standards of professional conduct exist for social workers.[61]

---

53. *Id.* at 8.

54. *Id.* at 9.

55. *Id.* ("[W]e find no compelling policy reason to . . . [allow this tort] for unintended 'hurts' most of which we deem likely to be 'slight hurts which are the price of a complex society.' " (quoting Knierim v. Izzo, 174 N.E.2d 157, 164 (Ill. 1961))).

56. Horak v. Biris, 474 N.E.2d 13 (Ill. App. Ct. 2d Dist. 1985).

57. *Id.* at 17.

58. *Id.*

59. *Id.* Specifically, the *Horak* court stated:

> [T]he very nature of the therapist-patient relationship . . . gives rise to a clear duty . . . to engage only in activity or conduct which is calculated to improve the patient's mental or emotional well-being, and to refrain from any activity or conduct which carries with it a foreseeable and unreasonable risk of mental or emotional harm to the patient.

Id.

60. *Id.* at 18. The court noted that the field of practice engaged in by the defendant more closely resembled the practice of psychology than the practice of social work. *Id.*

61. *Id.* at 19. In particular, the court cited the Social Worker's Registration Act, ILL. REV. STAT. ch. 111, para. 6301 (1979), and a code of ethics adopted by the National Association of Social Workers. *Horak*, 474 N.E.2d at 19.

C. *Emotional Distress Sufficient to Show Injury in Malpractice Claims*

Recently, the Illinois Supreme Court in *Corgan v. Muehling*[62] had the opportunity to review a patient's malpractice action against her psychologist for having sexual relations with her during treatment. The main issue was whether the plaintiff, who was the direct victim of the psychologist's negligence, could bring the action without alleging any physical symptoms of emotional distress.[63]

Following the holding in *Horak*,[64] the *Corgan* court first found that the psychologist owed a duty to the plaintiff.[65] The court then stated that this duty had been breached by the psychologist's mishandling of the transference phenomenon.[66] Finding both a duty and a breach of that duty, the court next examined the principal issue of whether the complaint should be dismissed for failure to allege a physical injury as a result of the emotional distress.[67]

Addressing this issue, the *Corgan* court outlined some of the reasons why other courts impose a physical manifestation requirement: emotional distress is difficult to prove, emotional distress easily could be feigned, and such actions could expose defendants to potentially unlimited liability.[68] However, the court rejected these rationales for requiring a physical injury primarily on the basis of advanced modern scientific research.[69] The court also reaffirmed its faith in the ability of jurors to sift out fraudulent claims from meritorious ones.[70] Consequently, the court found that the plaintiff had alleged a viable action for negligent infliction of emo-

62. 574 N.E.2d 602 (Ill. 1991).

63. *Id.* at 607. The *Corgan* court stated that the specific allegations that a direct victim who has suffered emotional distress as a result of a psychotherapist's negligence must make, have yet to be determined. *Id.* The court noted that the question of whether a physical manifestation is required when there is emotional injury has "deeply divided the courts of our sister States." *Id.*

64. Horak v. Biris, 474 N.E.2d 13 (Ill. App. Ct. 2d Dist. 1985); *see supra* notes 56-61 and accompanying text.

65. *Corgan*, 574 N.E.2d at 606-07.

66. *Id.* at 607.

67. *Id.*

68. *Id.* at 608.

69. *Id.* The court explained that there are two responses to traumatic stimuli: primary and secondary. *Id.* While a primary response is "an immediate, automatic and instinctive response," secondary responses are "longer lasting reactions that are caused by a person's inability to cope adequately with a traumatic event." *Id.* When both responses are present, damages can be established with a sense of objectivity. *Id.* at 609. For a greater analysis of these scientific developments, see Leong v. Takasaki, 520 P.2d 758, 766-67 (Haw. 1974).

70. *Corgan*, 574 N.E.2d at 609.

tional distress, even though she had not alleged physical symptoms of the distress.[71] Thus, the *Corgan* decision evidences the Illinois courts' acceptance of emotional distress claims without requiring physical manifestation of the injury.

In sum, although courts initially were reluctant to allow claims against various professionals for breaching their duty to refrain from sexual relations with patients or clients, increasingly, the courts have expanded this duty to impose liability when clients are vulnerable to, and suffer injury from, sexual involvement. Moreover, in *Corgan*, the Illinois Supreme Court established that emotional distress alone is sufficient to show injury in a malpractice claim.

D. Alternative Methods of Redress for Sexual Exploitation by Attorneys[72]

If a sexually-exploited client decides not to sue the attorney under tort law, the client may seek disciplinary action against the attorney by reporting the attorney's actions to the state bar.[73] After the client files a report, the state bar inquires into the attorney's conduct to determine if the attorney should be exonerated or if the results of the investigation should be submitted to the court for judicial determination.[74] Typically, the court has the power to disbar, suspend, or reprimand the attorney.[75]

---

71. *Id.* The court noted that its reasoning was consistent with Illinois law for the tort of intentional infliction of emotional distress:

> "The stronger emotions when sufficiently aroused do produce symptoms that are visible to the professional eye and we can expect much more help from the men of science in the future. In addition, jurors from their own experience will be able to determine whether . . . conduct results in severe emotional disturbance."

Id. (quoting Knierim v. Izzo, 174 N.E.2d 157 (Ill. 1961) (citation omitted)).

72. Although malpractice suits against attorneys are the primary focus of this Note, this section is provided to explore other avenues of redress for sexually-exploited clients.

73. *See* 7 AM. JUR. 2D *Attorneys at Law* § 87 (1980 & Supp. 1991). In Illinois, the aggrieved party can report the alleged misconduct to the court-appointed Administrator. ILL. REV. STAT. ch. 110A, para. 751(a) (1989).

74. 7 AM. JUR. 2D *Attorneys at Law* § 88 (1980 & Supp. 1991). On its own initiative or at the instruction of the Administrator, the Illinois Inquiry Board investigates complaints and determines whether to dismiss the charge, close investigations, or file a further complaint with the Hearing Board. ILL. REV. STAT. ch. 110A, para. 753(a)(2)(3) (1989 & Supp. 1990).

75. 7 AM. JUR. 2D *Attorneys at Law* § 31 (1980 & Supp. 1991). If a complaint is filed with the Illinois Hearing Board, hearings panels will conduct hearings on the complaint and make findings of fact and law. ILL. REV. STAT. ch. 110A, para. 753(c)(3) (1989 & Supp. 1990). The Hearing Board will then administer a reprimand or recommend disciplinary action by the court. *Id.*

Among the more frequently cited reports is *In re Disciplinary Proceedings Against Gibson*.[76] In *Gibson*, the attorney appealed from the referee's findings that he engaged in unprofessional conduct by making sexual advances toward his client.[77] The client, who was having marital difficulties at the time, was meeting with the attorney in his office when suddenly he asked her to take her clothes off.[78] After the client refused, the attorney went to bring her some tea.[79] The attorney then turned off the lights, knelt beside her, "began kissing her, put his hands inside her blouse and fondled her breasts, and moved his hands over her pelvic area outside of her clothing."[80] The attorney stopped only after the client told him that she was frightened.[81] The client reported the incident to the judge before whom she had a hearing the next morning.[82]

The Wisconsin Supreme Court found that the attorney had violated a common law ethical rule against unsolicited sexual contact and upheld his ninety-day suspension.[83] The court found it relevant that a client usually looks upon the attorney as one who will protect the client's best interests such that the client often "is particularly vulnerable to improper advances made by the attorney."[84] Further, the court observed that fear of losing the attorney's representation will render the client reluctant to end the relations.[85]

Similarly, in *Committee on Professional Ethics v. Durham*,[86] the Iowa Supreme Court examined whether professional ethics were violated when an attorney engaged in several instances of kissing and fondling her client who was an inmate in the Iowa State Penitentiary.[87] Because the attorney signed her name in the visitor's log as the inmate's attorney, the court stated that her responsibility

76. 369 N.W.2d 695 (Wis.), *appeal dismissed*, 474 U.S. 976 (1985).

77. *Id.* at 696. The referee recommended that the attorney's license to practice law in Wisconsin be suspended for 90 days. *Id.*

78. *Id.* at 697. The purpose of the meeting was to prepare for a hearing the next day to obtain a temporary restraining order to remove the client's violent husband from their home. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* Specifically, she told him that she was visualizing being beaten. *Id.*

82. *Id.*

83. *Id.* at 699-700 (citing State v. Heilprin, 207 N.W.2d 878 (Wis. 1973)).

84. *Id.* at 699.

85. *Id.*

86. 279 N.W.2d 280 (Iowa 1979).

87. *Id.* at 281. The attorney appealed from the Grievance Commission's recommendation that she be suspended from the practice of law for at least one year. *Id.*

at the prison was to function in a professional capacity.[88] Since the attorney's actions in the prison were not "temperate and dignified," the court held that the attorney violated the *Code of Professional Responsibility*.[89] Even though the court found an ethical violation, it nevertheless ruled that the attorney's professional competence was not adversely affected nor was the conduct severe enough to warrant a suspension for any length of time.[90]

Thus, *Gibson* and *Durham* both illustrate that courts will not hesitate to find violations of the *Model Rules of Professional Conduct* when an attorney engages in sexual relations with a client during representation. When determining the proper sentence to impose for such ethical violations, the court often will consider the injury caused by the attorney's conduct. Specifically, the *Gibson* court focused on the harm suffered by the client and suspended the attorney from practicing law for ninety days, whereas the *Durham* court looked to the damage done to the legal profession and merely admonished the attorney.[91]

---

88. *Id.* at 285.

89. *Id.* (citing IOWA CODE OF PROFESSIONAL RESPONSIBILITY OF LAWYERS EC 1-5, 9-6 (1978)).

90. *Id.* at 286. The court merely reprimanded and admonished the attorney for her conduct. *Id.*

91. For other cases disciplining attorneys for sexual advances toward their clients, see *In re* Adams, 428 N.E.2d 786 (Ind. 1981); Drucker's Case, 577 A.2d 1198 (N.H. 1990); *In re* Stanton, 708 P.2d 325 (N.M. 1985); Cincinnati Bar Association v. Fettner, 455 N.E.2d 1288 (Ohio 1983); State v. Heilprin, 207 N.W.2d 878 (Wis. 1973).

Besides malpractice and disciplinary actions, a third and more novel approach to combatting the problem of a sexually-exploitative attorney recently was attempted. In *Doe v. Roe*, 756 F. Supp. 353 (N.D. Ill. 1991), the client brought a Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(a), (c) (1988), claim against the law firm and its divorce attorney who allegedly misused his position to coerce and intimidate the client into having sexual relations with him. Interestingly, the defendant-attorney in *Doe* is the same attorney sued in the *Suppressed* case. *Doe*, 756 F. Supp. at 360 n.13; Michael B. Reuben, *Arnie Becker's Evil Twin?*, LITIG., Summer 1991, at 51, 52.

In *Doe*, the attorney agreed to represent the client in a divorce proceeding in 1983. *Doe*, 756 F. Supp. at 354. On the client's second visit to the attorney's office, the attorney made sexual advances. *Id.* Primarily because of her psychological dependence on the attorney, the client feared that the attorney would not represent her if she refused his advances. *Id.* Consequently, the client submitted to the attorney's sexual demands. *Id.* These relations continued from 1983 to 1988, and at one point during a sexual episode, the client's husband discovered them in her bedroom. *Id.* at 354-55.

In 1986, after the client had fallen behind in her payments for the legal services, she allegedly received a letter from the attorney which threatened that the firm had some " 'very Italian friends who could be eye witnesses to some slight injury on [her] part' " if she didn't pay the $6,500 bill. *Id.* at 335. The letter also warned, " 'I don't want to read your name in the paper, and I don't mean on the funny pages!' " *Id.* Finally, the letter allegedly informed the client that if she did not pay the balance in full, the attorney would work it out with her " 'in other ways' " to pay the balance. *Id.*

In 1989, after the client's present attorney wrote a letter to the defendant informing

In summary, courts presently recognize malpractice suits against psychotherapists for engaging in sexual activity with patients during therapy.[92] Moreover, the Illinois Supreme Court recently stated that emotional distress is sufficient to show injury in a psychological malpractice claim.[93] When attorney-client sexual relations are involved, courts now realize that an attorney *may* be breaching a fiduciary duty to the client. To date, courts have not yet accepted any per se breach of duty when an attorney engages in sexual relations with a client during representation. As an alternative to seeking monetary damages, a client may seek to have an attorney disciplined by reporting the attorney's actions to the state bar.

Therefore, given the paucity of cases on attorney liability, it is understandable that courts continue to struggle with the proper resolution of this issue. Nevertheless, the court's decision in *Suppressed* illustrates that courts should be less reticent in finding an actionable malpractice claim when an attorney engages in sexual relations with a client during the course of representation.

III. DISCUSSION

A. Factual Background

In *Suppressed v. Suppressed*,[94] a forty-year-old woman and mother of three hired an attorney to represent her in a divorce action. In her first meeting with the attorney on November 4,

---

him that the client would be seeking redress for her injuries, the defendant allegedly phoned the client directly and threatened to " 'rip [her] to shreds' " and make her look like a " 'slut.' " *Id.* at 356. The client allegedly continued to receive threatening phone calls from anonymous persons and frequent early morning phone calls in which the caller said nothing. *Id.* The client further alleged that the attorney implemented similar schemes of fraudulent activity on at least three other female divorce clients. *Id.* at 357.

The *Doe* court held that the client failed to state a RICO claim because there was no injury to business or property and that physical injury and mental suffering do not constitute RICO injury. *Id.* at 358. In rejecting numerous arguments by the client that she did in fact incur injury to property, the court stated that the client's "actual injury was the personal injury of sexual servitude, not a loss of property." *Id.* at 359. Because the RICO claim was dismissed, the client's pendent state law claims for breach of fiduciary duty and intentional infliction of emotional distress were also dismissed without prejudice for lack of subject matter jurisdiction. *Id.* at 360.

92. *See, e.g.*, Horak v. Biris, 474 N.E.2d 13 (Ill. App. Ct. 2d Dist. 1985); Roy v. Hartogs, 381 N.Y.S.2d 587 (App. Div. 1976).

93. Corgan v. Muehling, 574 N.E.2d 602, 609 (Ill. 1991).

94. 565 N.E.2d 101, 102 (Ill. App. Ct. 1st Dist. 1990), *appeal denied*, 571 N.E.2d 156 (Ill. 1991). The *Suppressed* case generated much discussion in Chicago newspapers and magazines. *See, e.g.*, Reuben, *supra* note 91, at 51; Rob Warden, *Secret Suits*, CHI. LAW., Apr. 18, 1989, at 1; Mary Wisniewski, *Sex With Clients an Unfair Affair*, CHI. DAILY L. BULL., Apr. 20, 1991, at 1.

1983, the plaintiff paid him $2,500 in exchange for his agreement to represent her.[95] At the attorney's request, the plaintiff met with him on December 10, 1983, at his office.[96] At this time, the attorney locked the door, unzipped his pants, and requested that the plaintiff have oral sex with him.[97] "Stunned and confused," the plaintiff complied with his request for fear that he would not represent her if she objected.[98]

Despite her aversion to his behavior, the plaintiff agreed to meet the attorney again in his office on December 14, 1983.[99] After telling her that "they would be going someplace," the attorney left the office with the plaintiff and took a taxi to a nearby apartment building.[100] Inside an apartment, the attorney "insisted that [the plaintiff] inhale a liquid solution" from a brown bottle which made her light-headed.[101] Plaintiff then submitted to sexual intercourse with the attorney for fear that her refusal would jeopardize her divorce proceeding.[102] The same events again occurred on January 11, 1984.[103]

Due to the plaintiff's "growing belief" that her sexual exploitation was not necessary to her divorce proceeding, she discharged defendant as her attorney in February, 1984.[104] Plaintiff then hired a new attorney and her marriage was dissolved to her satisfaction on May 30, 1984.[105]

On December 8, 1988, the plaintiff filed a complaint against the attorney and his law firm alleging breach of fiduciary duty.[106] The plaintiff claimed that the attorney had psychologically coerced or seduced her into engaging in sexual relations with him during legal representation.[107] The trial court dismissed the complaint based

95. *Suppressed*, 565 N.E.2d at 103. The plaintiff contacted this particular law firm because of its purported expertise in the area of domestic relations law. *Id.* at 102.

96. *Id.* at 103.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* In submitting to the attorney's sexual desires, plaintiff contemplated the interest of her children as well as the divorce proceeding. *Id.*

103. *Id.* Plaintiff again inhaled a substance and complied with the attorney's request to have sexual intercourse. *Id.*

104. *Id.*

105. *Id.* In July 1987, plaintiff filed a complaint against defendant with the Illinois Attorney Registration and Disciplinary Commission. *Id.* The Inquiry Board closed the investigation without taking any action. *Id.*

106. *Id.*

107. *Id.*

upon its conclusion that the applicable two-year statute of limitations for personal injury actions had expired.[108]

On appeal, the plaintiff contended "that her complaint stated a cause of action for breach of fiduciary duty, which is a breach of the unwritten contract for legal services, thereby invoking the five-year statute of limitations."[109] The appellate court affirmed the decision of the trial court, holding that the plaintiff's complaint failed to state a cause of action because the duty of care allegedly breached by the attorney does not exist, and because no actual damages were alleged.[110]

B. The Illinois Appellate Court Opinion

The court recognized that although this wrong has existed "since biblical times," only one documented case has discussed sexual relations in the attorney-client context.[111] The court observed that the issue essentially was whether a cause of action existed for legal malpractice in this context.[112]

The court established that in a legal malpractice action, the plaintiff must allege: "(1) that the attorney owed the plaintiff a duty of care arising from an attorney-client relationship; (2) that the attorney breached that duty; and (3) that as a proximate result, the plaintiff suffered actual damages."[113] In *Suppressed*, the court observed two flaws in the plaintiff's legal malpractice claim. First, the court found that the attorney owed no duty to the client to refrain from sexual relations, because an attorney's duty is limited to providing competent legal services.[114] Second, the court found that the client suffered no injury as a result of the attorney's actions because her marriage was eventually dissolved to her satisfaction.[115]

1. The Duty of Care

The *Suppressed* court feared "creating a new species of legal malpractice" if it recognized a duty in the attorney-client relation-

108. *Id.*; *see* ILL. REV. STAT. ch. 110, para. 13-202 (1989).

109. *Suppressed*, 565 N.E.2d at 103; *see* ILL. REV. STAT. ch. 110, para. 13-205 (1989).

110. *Suppressed*, 565 N.E.2d at 104.

111. *Id.* (citing Barbara A. v. John G., 193 Cal. Rptr. 422 (Ct. App. 1983)); *see supra* notes 15-25 and accompanying text (discussing the *Barbara A.* case).

112. *Suppressed*, 565 N.E.2d at 104.

113. *Id.*

114. *Id.* at 105.

115. *Id.* at 105-06.

ship.[116] The court believed that creation of such a duty would mandate that attorneys "refrain from intimate personal relationships" with all clients.[117]

In addition, the court noted that although the fiduciary relationship that exists in an attorney-client setting requires "the utmost of good faith and fair dealing," the duty is limited to providing competent legal representation.[118] The court then distinguished the fiduciary duty owed by an attorney from that owed by a psychologist.[119] First, in malpractice actions against psychotherapists, courts recognize the phenomenon known as " 'transference,' whereby the patient transfers feelings to the therapist."[120] Second, because therapists are trained in those matters, the courts are more willing to treat the mishandling of transference as malpractice.[121]

Finally, the court recognized that a higher standard of care would exist if the attorney made his legal representation contingent upon sexual favors or if his legal representation of the client was adversely affected by the sexual relations.[122] Although the plaintiff in *Suppressed* possibly felt that she had no other option but to submit to sexual relations, the court found that her statement was "too tenuous and [fell] short" of alleging facts sufficient to state a claim for breach of fiduciary duty.[123]

2. Actual Damages

The third prong of the malpractice inquiry focuses on whether the plaintiff suffered actual damages as a result of the breach of duty.[124] The court in *Suppressed* focused on whether the client's legal position somehow suffered as a result of the alleged breach.[125] Because the plaintiff's marriage was eventually dissolved and her divorce agreement was satisfactory to her, the court found that her legal position had not been harmed.[126]

---

116. *Id.* at 104.

117. *Id.* Further, the court stated that it is for the state bar to decide whether an actionable breach of ethics exists when an attorney induces a client into sexual relations. *Id.* at 105.

118. *Id.* at 105.

119. *Id.*; *see supra* notes 43-71 and accompanying text.

120. *Suppressed*, 565 N.E.2d at 105 n.2.

121. *Id.*

122. *Id.* at 105.

123. *Id.* The court agreed that the defendant's behavior may have been unethical, but did not think that it was sufficient to constitute legal malpractice. *Id.*

124. *See supra* text accompanying note 113.

125. *Suppressed*, 565 N.E.2d at 106.

126. *Id.* The court rejected the plaintiff's contention that she suffered the expense of hiring a new attorney after she discharged the defendant. *Id.*

Moreover, in examining the plaintiff's claim that she suffered emotional harm from the sexual relations, the court surmised that allowing an unquantifiable injury such as this would open the door to malpractice actions whenever clients are unhappy with their legal representation.[127] Creating such a new cause of action could have a "serious chilling effect" on attorney-client relationships and allow the potential for blackmail.[128] In conclusion, the court suggested that the legislature should create a cause of action for sexual exploitation cases such as this, similar to the one recently approved for psychotherapists.[129]

IV. ANALYSIS

In light of the reasoning of prior decisions in Illinois, the court in *Suppressed* should have allowed the malpractice claim against the attorney for breach of duty. First, the court failed to realize that transference occurs in many professional relationships, and most certainly in the context of a divorce attorney-client relationship. Second, emotional harms are just as real and painful as injuries that are evidenced by a physical manifestation. Thus, the lack of a physical manifestation should not be a basis to reject an otherwise viable claim.

Transference is a phenomenon through which a client transfers to a professional "the emotions which the client has about an important figure in his early childhood."[130] Transference traditionally arises in any relationship in which trust is involved.[131] In fact, several authors have observed that transference occurs in divorce attorney-client relationships.[132]

---

127. *Id.*

128. *Id.* at 106 n.3. The court opined that the plaintiff may have been able to allege an allowable claim for battery or intentional infliction of emotional distress. *Id.* at 106.

129. *Id.* at 106 (citing ILL. REV. STAT. ch. 70, para. 802 (1989) (imposing malpractice liability for psychotherapists)).

130. James R. Elkins, *A Counseling Model for Lawyering in Divorce Cases*, 53 NOTRE DAME LAW. REV. 229, 253 (1977). In fact, Elkins notes that the emotions in a divorce attorney-client relationship are similar to those in a parent-child relationship. *Id.* at 253 n.120.

131. SIGMUND FREUD, *The Dynamics of Transference* (1912), *in* 12 FREUD'S COMPLETE PSYCHOLOGICAL WORKS, *supra* note 43, at 106.

132. *See* ALAN A. STONE, LAW, PSYCHIATRY, AND MORALITY 199 (1984); ROBERT S. WEISS, MARITAL SEPARATION 259 (1975). For a discussion of how this phenomenon occurs, see ANDREW WATSON, PSYCHIATRY FOR LAWYERS 17 (1968). Watson explains:

> [W]hen a client seeks help from a lawyer, he is generally ignorant of the technical aspects of law. His ordinary techniques for judging persons or situations must be suspended, for he has no way of adequately testing the competency of the lawyer he chooses. He may make inquiries about him, and he may be able

One reason transference occurs in attorney-client relations in divorce suits is because of the psychological impact that marriage dissolution has on individuals. Some studies show that as many as forty percent of divorced individuals could be diagnosed as psychiatrically impaired.[133] Many of these people should be seeking medical help; instead, they rely solely on attorneys because of the stigma attached to seeing a psychiatrist.[134] These individuals are often in a weak mental state and place full confidence in divorce attorneys, making them easy prey for sexual exploitation.[135]

The *Suppressed* court explained that psychotherapists are trained to treat the transference phenomenon.[136] Thus, their mishandling of the transference provides the basis for a malpractice claim. Such relationships are distinguishable, the *Suppressed* court reasoned, from attorney-client relations because the attorney is not trained to treat transference.[137] This logic, however, may be shortsighted. Authors frequently have noted that clients who seek divorce representation are vulnerable to sexual advancement.[138] An attorney may not know how to handle a psychologically imbalanced client, but he should recognize the dangers that exist if he engages in sexual relations with her. Following the reasoning in *Horak*,[139] a divorce attorney should be presumed to possess a basic knowledge of fundamental psychological principles such that the mishandling of the transference phenomenon constitutes a breach of duty.[140] As one commentator noted, the mishandling of transference by a psychotherapist is in reality just a more technical way

---

> to investigate past successes and failures; but, generally, he is unable to make any realistic appraisal of skill and trustworthiness. Of necessity, then, he must place himself under the authority and assistance of the lawyer, essentially in blind trust. By virtue of this fact, all the client's previous attitudes about authority and dependency will be stirred up. This will elicit, usually, a certain amount of irrational fear and concern, which the client will be helpless to deal with. He will feel impotent to broach these fears, and will conceive of the relationship to his attorney as one of helplessness although, in reality, he is free to procure a new lawyer any time he wishes.

Id.

133. Bernard L. Bloom et al., *Marital Disruption as a Stressful Life Event*, *in* DIVORCE AND SEPARATION: CONTEXT, CAUSES AND CONSEQUENCES 187 (George Levinger & Oliver C. Moles eds., 1979).

134. Lyon, Comment, *supra* note 44, at 172.

135. *See* WEISS, *supra* note 132, at 57 (explaining that marital separation causes loneliness which drives some individuals to "enter affairs, appropriate or inappropriate, to gain some respite from loneliness").

136. Suppressed v. Suppressed, 565 N.E.2d 101, 105 n.2 (Ill. App. Ct. 1st Dist. 1990).

137. *Id.* at 105.

138. *See, e.g.*, WEISS, *supra* note 132.

139. Horak v. Biris, 474 N.E.2d 13 (Ill. App. Ct. 2d Dist. 1985).

140. *Id.* at 18; *see supra* notes 56-61 and accompanying text.

of describing an abuse of a fiduciary relationship.[141]

Furthermore, although the client's legal position in *Suppressed* was not affected adversely, the court failed to consider possibilities when a client's legal situation may be harmed by sexual relations with an attorney. As Justice Greiman stated in *Kantar*, the handling of a case in a "lawyerlike fashion" should be no defense to a breach of duty claim.[142] If the sexual activity with the attorney is discovered, it can adversely affect child custody or distribution of property.[143] Personal discussions with an attorney also may destroy the attorney-client privilege.[144]

The *Suppressed* court also expressed concern that allowing the plaintiff's claim would send a signal to the legal community that in all attorney-client contracts, there is a duty to refrain from intimate personal relationships.[145] However, such a broad proscription is unnecessary. The court could have limited its holding to client relationships with divorce attorneys or other relationships in which compelling considerations—"the client's vulnerability, the attorney's superior power, or the resulting transference"[146]—are present. Such situations may include working with criminal defendants, clients who are poor or uneducated, or clients seeking representation in probate matters. The following are relationships in which this principle may not apply: a patent lawyer and an inventor, a real estate lawyer and a developer, a personal injury lawyer and an injured plaintiff, or a corporate lawyer and a CEO.[147] These relationships present situations in which the parties would likely be in positions of equal bargaining power.

The second reason given by the court in *Suppressed* to reject the plaintiff's claim was that the emotional harm she suffered as a result of her relationship with the defendant attorney was insufficient to state actual damages in a malpractice action.[148] The state of the law in this area at the time of *Suppressed* may have been unclear.[149]

---

141. Lyon, Comment, *supra* note 44, at 193.

142. *In re* Marriage of Kantar, 581 N.E.2d 6, 15 (Ill. App. Ct. 1st Dist. 1991) (Greiman, J., dissenting); *see supra* notes 27-38 and accompanying text.

143. *Kantar*, 581 N.E.2d at 14 (Greiman, J., concurring). The attorney could be subpoenaed to testify regarding the client's adultery. *Id.* at 13 (Greiman, J., concurring).

144. *See* People v. Adam, 280 N.E.2d 205 (Ill. 1972). *See generally* GRAHAM C. LILLY, AN INTRODUCTION TO THE LAW OF EVIDENCE § 90, at 332 (1978) (explaining that oral communications between the client and the attorney must be made for the purpose of obtaining or rendering legal services to come within the attorney-client privilege).

145. Suppressed v. Suppressed, 565 N.E.2d 101, 104 (Ill. App. Ct. 1st Dist. 1990).

146. Lyon, Comment, *supra* note 44, at 199.

147. *See Kantar*, 581 N.E.2d at 15 n.9 (Greiman, J., concurring).

148. *Suppressed*, 565 N.E.2d at 106.

149. *See supra* notes 62-71 and accompanying text.

However, the Illinois Supreme Court recently pronounced that the advancement of modern research, as well as the ability of jurors, should allow judicial bodies to sift out fraudulent emotional injury claims from truthful ones.[150] As a result, the courts' fears of frivolous claims are no longer proper bases for rejecting malpractice actions.

V. IMPACT

The immediate effect of the court's decision in *Suppressed* is to send a clear signal to practicing attorneys that they may use their superior position of power in the attorney-client relationship to induce or coerce vulnerable clients into engaging in sexual activity. In deciding that this problem should be resolved by the state bar, the *Suppressed* court sidestepped a sensitive issue that has been ignored for a long time.[151]

The *Suppressed* decision stirred enough emotion in Illinois legal circles that the Illinois Senate took notice. In July 1991, the Illinois Senate passed a resolution that "urges" the Illinois Supreme Court to adopt a rule prohibiting sexual contact between attorneys and clients.[152] The prohibition would apply in all situations unless the client is the spouse of the attorney, the sexual relationship began before the lawyer-client representation, or any other situation that, in the court's discretion, would not detract from the attorney's representation.[153] To date, the Illinois Supreme Court has not acted on the resolution.[154]

Moreover, the American Academy of Matrimonial Lawyers re-

150. Corgan v. Muehling, 574 N.E.2d 602, 608-09 (Ill. 1991); *see supra* notes 62-71 and accompanying text.

151. *See State Bar Struggles with Ethics of Lawyer-Client Sex*, S.F. EXAMINER, Aug. 4, 1986, at A4. As one of the drafters of the *ABA Model Code of Professional Responsibility* has admitted, lawyer-client sexual relations have "been recognized within the Bar and talked about in kind of a hushed way for 25 years." *Id.*

152. David Heckelman, *Senate Urges Court to Ban Sex Between Lawyers and Clients*, CHI. DAILY L. BULL., July 5, 1991, at 1. Interestingly, the idea for the original bill came from the plaintiff in *Suppressed*. Wisniewski, *supra* note 94, at 1. This woman also testified before an Illinois Senate Committee in May of 1991. William Grady, *Lawyers Seeking New Image*, CHI. TRIB., Sept. 4, 1991, at C1.

153. Heckelman, *supra* note 152, at 1.

154. The California Bar Association adopted, in 1990, what is believed to be the first rule in the United States restricting sex between lawyers and their clients. *See* Philip Hager, *Lawyer-Client Sex Ethics Rule Blocked by Court*, L.A. TIMES, Aug. 28, 1991, at A3. In late August 1991, the California Supreme Court directed the State Bar Board of Governors to obtain additional comment for 90 days on the lawyer-client sex rule. *Id.* The Oregon State Bar Association also recently considered a recommendation that would ban sex between lawyers and their clients. Tracey Tyler, *No Sex Please: Lawyer and Client Affairs Frowned Upon*, TORONTO STAR, Oct. 4, 1991, at B1.

cently adopted a code of conduct to offer guidance to all divorce lawyers in the United States.[155] The code, called the "Bounds of Advocacy," includes a strong statement against divorce attorneys having sexual relations with clients.[156] However, compliance with the code is purely voluntary and cannot be the subject of disciplinary actions against an attorney.[157]

Changes are underway in the legal community as public awareness of lawyer-client sexual exploitation increases. Because of the likelihood that more state bar associations eventually will adopt similar rules of conduct prohibiting attorney-client sexual relations,[158] it is probable that the courts will follow suit. In the future, courts likely will allow clients to recover monetary damages for malpractice when an attorney induces or coerces them into sexual relations.

VI. CONCLUSION

Today, sexual exploitation by professionals of their clients is not an uncommon occurrence. The victims in these cases are frequently vulnerable people, in desperate need of assistance, who have placed their trust in the professional. A fiduciary relationship in which one party has a superior position of power is evident in these professional relationships. By not imposing a duty on attorneys to refrain from sexual involvement with their clients, the court in *Suppressed* misunderstood basic psychological principles and failed to take the initiative to remedy this vexing problem in today's society. Nevertheless, state bar associations are beginning to take note of this problem. Consequently, it is likely that courts soon will follow the lead of state bar associations and allow malpractice claims when injury results from attorney-client sexual relations.

ROBERT H. MURIEL

155. Grady, *supra* note 152, at C1.

156. *Id.*

157. *Id.*

158. Not all attorneys agree that an ethics rule banning lawyer-client sexual relations will solve the problem of client vulnerability. For a thorough discussion of the strong and diverse views regarding the adoption of such a rule, see Gill & Holt, *supra* note 3, at 1.