

Not Your Father's Practice of Law: U.S. Supreme Court Denies Certiorari in Attorney Disciplinary Case (continued)

In my father's day, I would have guessed that the state could, indeed, prohibit an attorney from discussing information about a client or former client, even information not within attorney-client privilege, without consent from the client. But we've come a long way since my father's day. Advertising, we learned in *Bates*, is perfectly permissible, as attested to by the late night television lawyer ads and ubiquitous lawyers on billboards. Confidentiality, we learned in changes to ABA Model Rule 1.6, is not inviolate. The world, and the legal profession along with it, has changed -- perhaps for the better, perhaps for the worse, but clearly it has changed. With these changes have clearly come changes to the hallowed relationship between attorney and client, and to the lawyer's duty.

But on the bright side: at least my father doesn't have to deal with the application of Rule 1.1, Competence, to today's technology.³

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Endnotes

¹Commonly referred to as the "G.I. Bill", the official name of the Act was The Servicemen's Readjustment Act of 1944 (P.L. 78-346). According to Wikipedia (today's font of all knowledge), by the end of the program in 1956 roughly 2.2 million veterans had used the G.I. Bill education benefits in order to attend colleges or universities and an additional 6.6 million used these benefits for a training program.

²Virginia Rules of Professional Conduct Rule 1.6(a) states:

A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client unless the client consents after consultation ... (emphasis added).

³See, ABA Model Rule 1.1, which provides that: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation", together with Comment 8, which provides that: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..." (emphasis added).

Another Alarm Blasts as the Second Circuit Rejects Class Action Tolling of the Statutes of Repose

By: Barbara J. Hart and David C. Harrison

CLASS ACTION



In our prior discussion of the issue of "class standing" under the Second Circuit's decision in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012) ("*Goldman Sachs*"),¹ we noted a trend eroding the tolling principles articulated in *American Pipe* which jeopardizes the efficiencies of the class action procedure. These cases undercut a pension fund fiduciary's ability to rely on the pendency of class action litigation to represent their interests. Especially in the context of claims involving mortgage-backed securities ("MBS"), fiduciaries can no longer assume that the inclusion of their securities in the putative class definition is sufficient to protect their interests. Rather, they must vigilantly monitor any challenges to a lead plaintiff's standing as it relates to the fiduciary's holdings. Even where a lead plaintiff has vigorously defended its standing to represent a broadly defined class of investors who are similarly situated, pension plans nonetheless may be required to intervene or file protective actions—either individually or as a class representative to cure any alleged defects in standing—before the applicable limitations period expires. Otherwise, they run the risk of being time-barred in the event the court finds that the lead plaintiff lacks standing to pursue these claims. In this context, a fiduciary's reliance on a pending class action, no matter how reasonable, may fall on deaf ears when it argues that *American Pipe* preserved its right to assert claims after the applicable limitations period has run.²