



THE 2020 ETHY AWARDS

The Best of the Worst Ethics Offenders

Sean Carter

Humorist at Law

Mesa CLE

4710 Falcon Dr.

Suite 210

Mesa, AZ 85215

Phone: (480) 262-2653

sean@mesacle.com

www.mesacle.com

Sean Carter
Humorist at Law

Sean Carter is the founder of *Mesa CLE*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

The “Academy” has reviewed disciplinary reports from across the country to compile its list of the “Best of the Worst” in various categories of ethics violations. Awards will be given in categories that correspond with the most common ethical violations. While each of the nominees has violated an ethical rule in a grievous manner, they can serve as warnings for attorneys to avoid similar (although likely, far less flagrant) violations.

The Outlawyer

As officers of the court, lawyers have an obligation to abide by the law. The nominees in this category have committed egregious acts of criminality resulting in the loss of their privilege to practice law; and in some cases, the loss of their freedom. In the process, they have violated the following rule:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(2) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

NOMINEES

Animal House (Iowa Supreme Court, No. 18–1719): An Iowa lawyer was suspended indefinitely (but for at least one year) for photographing and stealing a colleague’s panties from her home.

The Break-up (Illinois ARDC Commission No. 2016PR00007): An Illinois lawyer was suspended for five (5) months for fraudulently using his former domestic partner’s healthcare coverage for eight years after their break-up.

Les Miserables (California State Bar Court, Case No.: 18-C-10191-YDR): A California lawyer was disbarred for eating food at a local market and not paying for it on multiple occasions.

The Perfect Score (2019 NY Slip Op 08015 [179 AD3d 157]): A New York lawyer has been suspended for participating in the widely publicized college admission cheating scandal.

LESSON: In the case of the law, it’s not enough to know it, but to follow it as well. And while most attorneys value their freedom too highly to commit serious crimes, we have an obligation to avoid “a pattern of repeated offenses, even ones of minor significance when considered

separately” (i.e., the “little” crimes). This is the case even if the proscribed activity is unrelated to the practice of law.

Most Creative Billing

Under Rule 1.5, a lawyer is prohibited from charging or collecting “an unreasonable fee.” Of course, there is no bright line test to determine whether a fee is unreasonable. Instead, it is a balancing test. Yet, the attorney who crosses this fuzzy line may face disciplinary action. This same fate may also await those lawyers who charge a fee that is “unreasonable” through over-billing or inflated expense reimbursements.

Rule 1.5 Fees

- (a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (8) whether the fee is fixed or contingent.

- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. *Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.*

- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. *A contingent fee agreement shall be in a writing signed by the client* and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party....

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

NOMINEES

Thanks for Sharing (Ohio Supreme Court, Case No. 2019-0217): An Ohio lawyer was suspended for two years (18 months stayed) for underpaying another law firm as part of their fee sharing agreement.

O Brother, Where Art Thou? (Illinois ARDC Commission No. 2019PR00012): An Illinois lawyer has been charged with overbilling clients for work that was never performed.

Block-Heads (West Virginia Supreme Court, No. 16-1210): A West Virginia lawyer was suspended for six months for using “block billing” and “value billing” in calculating amounts owed to him for court-appointed criminal defense work.

Guns (157 Ohio St.3d 395, 2019-Ohio-4227): An Ohio lawyer was suspended for one year (fully stayed) for accepting payment in guns and not sharing the “proceeds” with his law partners.

The World Is Not Enough (Massachusetts, SJC for Suffolk County, No. BD-2019-006): A Massachusetts lawyer was suspended for six months for overbilling clients in an effort to increase her share of firm profits.

LESSON: In addition to being scrupulously honest, it’s important for lawyers to be meticulous and timely with billing matters. Overbilling that results from failure to keep timely records will be nonetheless punished, as will failure to *immediately* return excess funds to the client. Likewise, failure to meet any applicable written disclosure requirements may subject the attorney to discipline. And finally, any fee arrangement must be legal.

The David Copperfield Award

Unfortunately, some lawyers have an almost “magical” way of causing money to disappear from the accounts of their clients and even law partners. The nominees in this category worked their “magic” in spectacular fashion, violating the following ethics rules:

Rule 1.15. Safekeeping Property.

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) A lawyer may deposit the lawyer’s own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer’s business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order.

[3] Lawyers often receive funds from third parties from which the lawyer’s fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer’s contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Rule 1.7: Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
- (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

NOMINEES

Undercover Brother (Illinois ARDC Commission No. 2019PR00027): An Illinois lawyer has been charged with ethics violations for convincing his mother to disinherit his brother, thereby, leaving her entire estate to him.

Diner (Illinois ARDC Commission No. 2019PR00057): An Illinois lawyer has been charged with ethics violations for using a client's credit card to pay for non-client related personal and business expenses.

Ocean's Eleven (New York, Appellate Division Third Judicial Department, PM-94-19): A New York lawyer disbarred for embezzling \$11.8 million from his trust and estate clients.

50/50 (Iowa Supreme Court, No. 19-0360): An Iowa lawyer was suspended indefinitely (but not less than four months) for stealing from his employer by keeping client fees for himself.

Rules of Engagement (Iowa Supreme Court, No. 19-1032): An Iowa lawyer's license was revoked (for a minimum of five years) for failing to deposit an advance fee into a client trust account and converting the money for her own use.

LESSON: Attorneys must *always* keep separate their funds and those belonging to clients. Any commingling (regardless of the amount, frequency or eventual replacement) will be punished harshly by disciplinary authorities. It's important to note that lawyers will become involved in these behaviors after decades of honorable legal service. This should serve as a reminder that *any* lawyer could fall prey to greed and financial mismanagement. Furthermore, lawyers have an obligation to protect client funds from theft by others.

Best Supporting Actor (In an Illegal Activity)

While a lawyer has an obligation to provide zealous representation to a client, a lawyer must not cross the line to providing *illegal* representation. Specifically, a lawyer may not aid or abet a client in their criminal actions. This admonition applies to both the lawyer's role as an advisor and advocate. Therefore, a lawyer should not advise the client to commit a crime nor should the lawyer actively assist the client in doing so. Nor may a lawyer assist another lawyer in the unauthorized practice of law.

Rule 1.2 Scope Of Representation And Allocation of Authority Between Client And Lawyer

- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; or
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and

- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

NOMINEES

Altered States (Florida Supreme Court, No. SC17-1391): A Florida lawyer has been charged with misconduct for altering photographic evidence in a criminal case.

Witness (Ohio Supreme Court, Case No. 2019-1720): An indefinite suspension has been recommended for an Ohio lawyer who arranged for a "hush money" payment to a crime victim.

The Fugitive (Tennessee Board of Professional Responsibility, File No. 54085-9-SC): A Tennessee lawyer was publicly censured for not immediately notifying the police about the whereabouts of her son, who had been charged with murder.

Pennies from Heaven (Ohio Slip Opinion No. 2019-Ohio-4739): An Ohio lawyer was suspended for six months (fully stayed) for passing \$7 in cash to her incarcerated client during a jailhouse meeting.

LESSON: A lawyer's advice or assistance in subverting the judicial process will be dealt with harshly because it goes to the heart of the lawyer's function in society. A lawyer who demonstrates blatant disrespect for the proper administration of justice will often be seen to have forfeited the privilege of being a member of this learned profession.

The AT&T Award

In years past, AT&T encouraged us to “reach out and touch someone.” The nominees in this category were in dire need of such encouragement, either failing to make necessary contact with clients or making such contact but failing to be candid in such interactions. In the process, they engaged in the most common ethical violation – failure to communicate. In some cases, this duty to communicate requires the lawyer to report improper behavior to authorities within an organization; and if necessary, those outside of the organization.

Rule 1.4 Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

NOMINEES

Return to Sender (Kansas Supreme Court, No. 119,254): A Kansas lawyer was disbarred for failing to communicate with clients, including moving offices and not leaving a forwarding address.

Hardball (Georgia Supreme Court, S19Y0498): A Georgia lawyer was disbarred for failing to respond to a former client's request to return the client file and a subsequent court order to do so.

Another Language (DC Court of Appeals, No. 17-BG-1053): A DC lawyer received an informal admonition after failing to communicate with his client for 18 months after the lawyer's Mandarin-speaking assistant left his employ and the lawyer was unable to replace her with someone who also spoke Mandarin.

Talk to Me (Massachusetts Board of Bar Overseers, Public Reprimand No. 2019-1): A Massachusetts lawyer was publicly reprimanded for sending multiple emails to the opposing party, despite the fact that she was represented by counsel.

LESSON: Many lawyers fail to communicate with clients when they have failed to achieve the desired result (or have neglected to take action in the first place). Some lawyers will then proceed to make the problem worse by making false reports to the client. This foolish pride almost always exacerbates the problem because as the old Watergate saying goes, "It's not the crime. It's the cover-up."

The Joan Rivers Award

Lawyers have an obligation to keep client confidences. This obligation is at the heart of the lawyer's ability to provide zealous representation for the client. Without the assurance of confidentiality, clients will be less likely to provide their lawyers with all of the facts necessary to properly access the client's case. Notwithstanding the foregoing, an attorney's confidentiality obligation is not absolute as there are situations in which the disclosure of client confidences is not only proper but also required. The nominees in this category had no such justifications for "spilling the beans."

Rule 1.6. Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice, or informal ethics advice from the Office of Disciplinary Counsel, about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (6) to comply with other law or a court order; or
 - (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.9 Duties To Former Clients

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 3.6 Trial Publicity

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

NOMINEES

The Debt Collector (157 Ohio St.3d 58, 2019-Ohio-2881): An Ohio lawyer was suspended indefinitely for threatening to reveal (and actually disclosing) confidential client information in an effort to collect a clearly excessive legal fee.

Middle Man (Vermont PRB File No. 2019-083, 088): A Vermont lawyer has been charged with misconduct for making unauthorized disclosures to his clients in their purchase of property from the seller, a former client.

Gossip (Louisiana Attorney Disciplinary Board, Docket No. 18-DB-081): A Louisiana lawyer received a stayed suspension and probation for telling the wife of his divorce client that the client was having an affair with the lawyer's former secretary.

College Confidential (Colorado, 18PDJ072): A Colorado prosecutor was publicly reprimanded for discussing non-public facts and giving his personal opinion about two ongoing prosecutions as part of a college lecture.

The Net (Massachusetts, Public Reprimand No. 2019-16): A Massachusetts lawyer was reprimanded for discussing a pending client matter on Facebook.

LESSON: The duty to preserve client confidences is so important that lawyers will be sanctioned for disclosures, unless such disclosures are necessary to prevent substantial harm to the interests of the client or others.

Least Competent in a Legal Representation

In some cases, lawyers will fail to fulfill their duty of competent representation due to either a lack of expertise or diligence. In either case, the lawyer does a great disservice to the client and violates one or more of the following ethics rules:

Rule 1.1 Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

(2) A lawyer's work load must be controlled so that each matter can be handled competently.

(3) Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

- (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

NOMINEES

Moonlight (Minnesota Supreme Court, A17-1548): A Minnesota lawyer was suspended indefinitely (but not less than 120 days) for missing a court appearance because of a conflicting appearance in another court and lying to the court about it.

Victor Victoria (New Mexico Supreme Court, Opinion Number: 2019-NMSC-006, No. S-1-SC-37204): A New Mexico lawyer was suspended for nine months for filing a lawsuit on behalf of a male inmate in federal court and then withdrawing that claim and re-filing in state lawsuit on behalf of a similarly-named female inmate.

Same Time, Next Year (Indiana Supreme Court Case No. 18S-DI-574): An Indiana lawyer was suspended for two years for “systemic negligence that has characterized her career.”

Management (New York Supreme Court, Fourth Judicial Department, 2017-06108): A New York lawyer was suspended for two years for failing to adequately supervise a subordinate lawyer, who stole \$2.3 million from the firm’s clients.

The Day the Earth Stood Still (Kansas Supreme Court, Appeal No. 120,924): A Kansas attorney was publicly censured for falsely reporting that he had attended a live CLE seminar that happened at the same time he claimed to have been viewing another CLE seminar online.

LESSON: While there is no clear definition of what constitutes “competent representation,” disciplinary authorities are not afraid to impose sanctions for legal work that falls below a certain level of proficiency. This is particularly true when a lawyer’s delay adversely affects the interests of the client.

Best Use of Deception in Legal Marketing

In an increasingly competitive legal market, many lawyers are eager to find a way to distinguish themselves from the competition. Yet, in doing so, they run the risk of violating the following ethics rules governing the communication of a lawyer's services:

Rule 7.1. Communications Concerning a Lawyer's Service.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(2) Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

(3) An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

Rule 7.2 Advertising

- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.

Rule 7.3 Solicitation of Clients

- (a) A lawyer — or a lawyer’s agent, representative or employee — shall not by in-person, live telephone or real-time electronic contact, directly or indirectly solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.

Rule 7.4. Communication of Fields of Practice and Specialization.

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty” or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

Rule 7.5. Firm Names and Letterheads

- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

NOMINEES

Boiler Room (California State Bar Court, Case No; 14-C-02964-YDR): A California lawyer was disbarred for hiring telemarketers to enroll clients for his fraudulent “loan modification services.”

Sweet Charity (Indiana Supreme Court Case No. 41S00-1612-DI-659, M-17-052): A New York lawyer was suspended for three years for, among other things, using her law firm website to solicit for a fund entitled “law firm support fund for indigent clients and attorneys.”

House Calls (Ohio Supreme Court, Case No. 2019-0219): An Ohio lawyer was suspended for six months for visiting an inmate and soliciting him to hire her for his appeal.

Me Myself & I (Wisconsin Supreme Court, Case No. 2018AP1397-D): A Wisconsin lawyer was publicly reprimanded for using a law firm name and letterhead that listed several partners, despite the fact that she had a solo practice.

LESSON: As lawyers, we are held to a higher standard of candor in our marketing communications. It isn’t enough to simply avoid committing consumer fraud. We must actually be sure not to mislead our prospective clients in *any* manner. As Dr. Martin Luther King once said, “A fact is the absence of contradiction but the truth is the presence of coherence.” As lawyers, we are not only obligated to tell prospective clients the facts, but the truth as well.

And this does not only apply to our dealings with clients in private practice, but also in the context of full-time employment. Lawyers must avoid representations on resumes and job applications that either embellish or diminish a lawyer’s skill and training.

Worst Love Scene

While it is admirable for a lawyer to show love for clients and even opposing counsel and parties, there are obviously limits to such expressions. Unfortunately, some lawyers ignore such limits and, in the process, create conflicts of interests.

Rule 1.7 Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced...

(17) The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (d) engage in conduct that is prejudicial to the administration of justice;

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

NOMINEES

The Ladies Man (Vermont Supreme Court, 2019 VT 8, No. 2018-112): A Vermont lawyer was disbarred for having romantic relationships with multiple clients.

Text (Wyoming Supreme Court, 2019 WY 68, D-19-0007): A Wyoming lawyer was disbarred for sleeping with and sexting a client.

Caught (Arizona, PDJ 2019-9036): An Arizona lawyer was publicly reprimanded for sending a suggesting text to a client, which the lawyer's wife later discovered.

Something to Talk About (West Virginia Supreme Court, No. 18-0617): A West Virginia lawyer was suspended for 120 days for having sexual suggestive conversations on Facebook Messenger with a client who was on supervised probation.

Last Resort (Pennsylvania Supreme Court, No. 159 DB 2019): A Pennsylvania lawyer was publicly reprimanded for making sexual advances towards multiple female lawyers at a bench-bar conference.

LESSON: Even the most private of relationships are subject to public scrutiny when the lawyer is professionally involved with clients, their loved ones, opposing parties or employees.

The Hitchcock Award

While most disciplinary cases are based on obvious violations of the canons of ethics, there are some cases that are brought to the absolute shock and horror of the respondent. These lawyers had engaged in some wrongful activity that, on its face, did not rise to the level warranting a bar investigation. However, it should be noted that the ethics rules are designed to ensure that lawyers don't act in *any* manner that reflects adversely on our honesty, trustworthiness or fitness as a lawyer in other respects.

NOMINEES

The Quick and the Dead (Vermont Supreme Court, PRB Docket No. 2018-087): A Vermont lawyer was privately admonished for trust account irregularities that resulted from a delayed transition from Quicken to QuickBooks.

Time Lapse (Wisconsin Supreme Court, Case No. 2018AP2460-D): A Wisconsin lawyer was suspending for an additional 60 days for practicing law while administratively suspended for failure to pay dues and report his CLE compliance.

Both Sides of the Law (West Virginia Supreme Court, No. 17-0007): A West Virginia lawyer's license was annulled for accepting fees from the parents while serving as guardian ad litem for their minor children in an abuse and neglect matter.

Alias Jesse James (Louisiana Supreme Court, NO. 2019-B-1041): A Louisiana lawyer was publicly reprimanded for not paying his court reporting service and then changing the name of his firm to avoid civil liability.

LESSON: A lawyer is accountable to the disciplinary authorities for even actions that occur outside of the practice of law. Furthermore, the disciplinary authorities will consider transgressions without regard to whether they are technically "crimes" or even acts that are malum per se. Even a technical infraction of the law can give rise to a disciplinary action under certain circumstances.

Most Creative Tale

Lawyers have an obligation to tell the truth. The pursuit of justice depends upon it. As a result, the ethics rules contain several prohibitions against misrepresenting the truth:

3.3. Candor Toward the Tribunal.

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Rule 4.1. Truthfulness in Statements to Others.

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.1 Bar Admission And Disciplinary Matters

In connection with a bar admission application or in connection with a disciplinary matter, a lawyer shall not:

- (a) knowingly make a false statement of material fact;

- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

NOMINEES

Code Name: The Cleaner (New Jersey Disciplinary Review Board, Docket No. 18-098, District Docket No. XIV-2015-0563): A New Jersey lawyer was suspended for three months for deleting crucial computer data necessary to verify her requests for substantial legal fees.

Like a Boss (2019 NY Slip Op 00843 [169 AD3d 74]): A New York associate at a law firm was suspended for three months for telling falsehoods to two partners to cover up his mistakes.

Missing Link (Virginia Record No. l81603, Circuit Court No. CL 18-2692): A Virginia lawyer received an admonition for citing a federal regulation that did not exist.

Playing With Fire (New York Supreme Court, Second Judicial Department, 2019 NY Slip Op 04704): A New York lawyer was disbarred for unlawfully collecting pension benefits while still working.

Weekend at Bernie's (Florida, Case No. SC19-259): A Floridayan lawyer was reprimanded for failing to disclose the death of her client prior to a scheduled mediation.

LESSON: Disciplinary authorities will severely punish transgressions that demonstrate a lawyer's dishonesty. There are several rules that require lawyers to be honest in their dealings with the court, clients and third parties. And when such a rule is not implicated specifically, lawyers are still subject to discipline for violations of Rule 8.4(c), which is a "catch-all" rule for dishonest behavior.

Best Original Excuse

There may be a thousand good reasons why a lawyer will violate his or her ethics duties, but there is seldom a single good *excuse*. That being said, there are some factors that may mitigate the sanction imposed upon the lawyer. The nominees in this category were particularly creative in their quest for absolution/leniency. Unfortunately, their creativity may have caused them to run afoul of the following ethics rule:

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

NOMINEES

Hustle & Flow (Maryland, Miscellaneous Docket No. 3, September Term, 2018): A Maryland lawyer's disbarment for, among other things, calling opposing counsel a "[b-word]", was not mitigated by his claim that he meant it as a term of respect.

Attention Shoppers (Utah Supreme Court, 2019 UT 34): An Utah bar applicant was denied admission to the bar after falling just short of a passing score despite his assertion that he should receive an accommodation due to his ADHD.

Bobby Jones: Stroke of Genius (New Jersey Supreme Court, D-69 September Term 2018, 082317): A New Jersey lawyer's discipline was mitigated to a reprimand after suffering two strokes.

The Very Excellent Mr. Dundee (New Mexico Supreme Court, NO. S-1-SC-37306): A New Mexico lawyer's suspension of not less than 18 months was not mitigated by his "self-proclaimed" excellence as a lawyer.

LESSON: Most disciplinary authorities consider unpersuasive excuses as an *aggravating* factor in meting out sanctions. As a result, lawyers should be willing to accept full responsibility when warranted by the circumstances. In fact, this same principle should apply in all situations in which the lawyer is at fault and not just in the context of a disciplinary hearing.

The Pit Bull Award

In general, persistence is a great quality for a lawyer to possess. However, just as in everything, there are limits. And while lawyers are obligated to provide our clients with zealous representation, we should not become zealots in the process.

Rule 1.16 Declining or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.4 Fairness to Opposing Party & Counsel

A lawyer shall not:

- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

Rule 3.5 Impartiality And Decorum Of The Tribunal

A lawyer shall not:

- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or

Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

NOMINEES

Staying Together (California State Bar Court, Case No. 16-O-12069): A California lawyer was suspended for 60 days for continuing to represent her brother after he had terminated the representation.

I Know What You Did Last Summer (New York Supreme Court, Second Judicial Department, 2019-00958): A New York lawyer was suspended for one year for attempting to extort a settlement by publicly releasing documents that had been sealed by the court.

A Time to Kill (Illinois ARDC No. 2019PR00048): An Illinois lawyer faces disciplinary charges for threatening to kill bar authorities after his escrow account was frozen.

Bad Reputation (Oklahoma Supreme Court, 2019 OK 74, Case Number: SCBD-6859): An Oklahoma lawyer received an interim suspension for making cyber threats to owners of websites where former clients had left negative reviews of the lawyer's services.

Snitch (New York Commission on Judicial Conduct): A New York judge was admonished for threatening to report defense counsel to the state bar for perceived racially-charged comments during closing arguments unless that lawyer agreed to settle the case for a specified amount.

Worst Legal Strategy

When the going gets tough, some tough lawyers get ridiculous. This is certainly the case with the nominees in this category, who decided to take a bad situation and make it *much* worse by employing desperate (and unethical) legal strategies in violation of the following rules:

Rule 4.2 Communication With Person Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 5.6 Restrictions on Rights to Practice

A lawyer shall not participate in offering or making:

- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Rule 4.4 Respect for the Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

NOMINEES

The Social Network (Pennsylvania Supreme Court, No. 2436 Disciplinary Docket No. 3, No. 32 DB 2017): A Pennsylvania former prosecutor was suspended for one year and a day for creating a fake Facebook page in order to “friend” defendants being tried by his office.

The Tie That Binds (Ohio Board of Professional Conduct, Opinion 2019-04): An advisory opinion reminds lawyers that they may not include provisions in settlement agreements that preclude the plaintiff's lawyer from bringing similar claims against it for future clients.

Harry in Your Pocket (New Jersey Supreme Court, D-43 September Term 2018, 082094): A New Jersey lawyer was admonished for “joking” that the DA, a former law partner, was “in his pocket.”

Money Ball (Florida Supreme Court, Case No. SC17-574): A Florida lawyer was suspended for 18 months for offering baseball tickets to the presiding judge in a case.

LESSON: The lawyer who employs a “win at all costs” attitude will invariably find out that the costs of violating the ethics rules are simply too high. Not only will the lawyer usually fail in obtaining the desired outcome for the client but the lawyer will also fail to retain the privilege of practicing law.

The Eager Beaver Award

While most ethical violations result from an attorney's misconduct in the practice of law, some lawyers are too eager to wait for admission to the bar to begin violating its ethics rules. Their misdeeds prevent them from ever becoming lawyers, particularly, when they violate the following rules:

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(1) The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

NOMINEES

Night School (Illinois ARDC No. 2019PR00021): An Illinois lawyer has been charged with the unauthorized practice of law for continuing to practice after being administratively suspended for failing to meet the state's newly-admitted lawyer CLE requirements.

The Outsiders (South Carolina Supreme Court, Appellate Case No. 2019-000040, Opinion No. 27882): A Florida lawyer was disbarred in South Carolina for marketing loan modification services to South Carolina residents.

Company Business (Pennsylvania Supreme Court, No. 2627 Disciplinary Docket No. 3, No. 102 DB 2019): A lawyer was suspended for six months for failing to reinstate her Pennsylvania license when she took an in-house counsel job for a company located within the state.

The Whole Truth (Maryland Board of Bar Examiners, Misc. No. 27, September Term 2018): An applicant was denied admission for failing to disclose delinquent accounts, civil actions, criminal proceedings and past employment terminations.

Jailhouse Rock (Oklahoma Supreme Court, 2019 OK 78, Case Number: SCBD-6874): An Oklahoma lawyer was placed on interim suspension for continuing to practice law despite being incarcerated.

LESSONS: A lawyer must be careful to follow the admissions rules to the letter. Furthermore, lawyers must realize that they will be accountable for actions that occur even prior to being admitted to the practice of law as they reflect on his/her "moral character." And perhaps, the thing that reflects most on this character is the lawyer's willingness to be candid about prior misdeeds in the bar application process, regardless of how "irrelevant" the lawyer may consider them.

Miss (Mister) Uncongeniality

In the course of litigation, some lawyers behave as if civility and decency is optional. Increasingly, such lawyers are being subject to discipline for their lack of decorum. Here are some examples:

Rule 3.4 Fairness to Opposing Party & Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party' s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5 Impartiality And Decorum Of The Tribunal

A lawyer shall not:

- (d) engage in conduct intended to disrupt a tribunal.

Rule 4.4 Respect for the Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

NOMINEES

Justin Bieber: This is My World (2019 NY Slip Op 02487 [171 AD3d 184]): A New York lawyer was suspended for four months for inappropriate litigation conduct.

Capital Punishment (Arizona, No. PDJ 2017-9119): An Arizona lawyer was suspended for six months and a day for threatening emails during a child custody case.

Inglourious Basterds (Kansas Supreme Court, No. 119,027): A Kansas lawyer was suspended indefinitely for calling a videographer a "Nazi."

Fully Loaded (California State Bar Court, Case No. 17-C-05004-CV): A California lawyer was suspended for at least one year for brandishing a gun during a dispute with a disgruntled client.

LESSON: Lawyers may be subject to disciplinary action for incivility, even if such incivility does not occur in the presence of the judge. In fact, such behavior may be punished even if it occurs outside of any legal (or quasi legal) forum. So long as a lawyer is acting in a professional capacity or in a private capacity is interacting with the legal system, the lawyer has an obligation to be at least minimally polite.

The Archie Bunker Award

Increasingly, disciplinary authorities are taking action against lawyers for words and deeds that indicate prejudice with regards to race, national origin, religion, age, gender, disability and sexual orientation. In some cases, lawyers have been found to engage in conduct prejudicial to the administration of justice. In other instances, lawyers run afoul of applicable civility creeds.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law...

[3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).

[4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

NOMINEES

Rocky Picture Horror Show (Kentucky Supreme Court, 2018-SC-000436-KB): A Kentucky lawyer was suspended for 60 days for mailing a sexist and homophobic message to opposing counsel.

10 Things I Hate About You (Maryland Board of Bar Examiners, Misc. No. 5, September Term 2018): Maryland Bar Counsel has charged two attorneys with misconduct for participating in an e-mail chain largely consisting of disparaging remarks (some of which were sexist, racist and/or homophobic) about co-workers.

Slugs (New York Supreme Court, Second Judicial Department, 2017-11411): A New York lawyer was suspended for three years for using a sexist slur in reference to opposing counsel.

China Salesman (New Jersey Supreme Court, D-76 September Term 2018, 082332): A New Jersey lawyer was reprimanded for using ethnic stereotypes to bolster his legal argument in a case against a Chinese doctor.

Critic's Choice Award

While lawyers often find it tempting to criticize a judge who has ruled against them, we must be careful to avoid that temptation. Such criticisms only serve to diminish the esteem of our judicial system and create animosities that impede our search for justice.

Rule 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 8.2 Judicial and Legal Officials

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

NOMINEES

Deep Water Horizon (Mississippi Supreme Court, No. 2018-BD-01383-SCT): A Mississippi lawyer was suspended for two years for accusing the judge of colluding with the opposing party.

The Jerk (<https://www.nhattyreg.org/assets/1553200666.pdf>): The New Hampshire Professional Conduct Committee has recommended a three year suspension for a lawyer who blamed his shortcomings on the alleged corruption of the judge and opposing counsel.

Payback (Arkansas Supreme Court, 019 Ark. 218, CV-18-733): An Arkansas lawyer was held in contempt of court for accusing the judge of retaliation after the judge ruled against the lawyer on a motion.

Big Bully: A Nevada lawyer was suspended for six months and a day for accusing the judge of being a “lawless bully” in a recusal motion.

Worst Temper in a Non-Legal Setting

Some lawyers carry the contentious nature of litigation into the personal lives and their interactions with others in society. And while this can be simply annoying in some contexts, it can be criminal when taken to the extreme, causing the lawyer to violate Rule 8.4(b).

NOMINEES

Love Triangle (Arizona, PDJ 2019-9013): An Arizona lawyer was disbarred for shooting his girlfriend's ex-boyfriend.

Riding in Cars With Boys (VSB Docket No. 18-010-111721): A Virginia lawyer was publicly admonished for an altercation he had with a passenger in the car he was driving at the time.

The Silver Cord (VSB Docket No. 18-000-111641): A Virginia lawyer was suspended for 60 days for hitting another motorist with an extension cord in a road rage incident.

Harold & Kumar Go to White Castle (Indiana Supreme Court, Case Nos. 19S-JD-386, 19S-JD-566, 19S-JD-567): Three Indiana judges were suspended after a night of heavy drinking resulted in a heated altercation with a two strangers that starting with shouting, escalated to fighting and resulted in two of the judges being shot.

LESSON: Continued hostility in the practice of law will begin to manifest itself into an attorney's private life.

Most Impaired in a Legal Setting

Usually, a drug-related crime involving a lawyer occurs outside of the practice of law. However, in some cases, the lawyer can't keep these two activities separated. In these cases, the lawyer's physical and mental condition materially impairs his/her ability to provide competent representation in violation of Rule 1.16.

Rule 1.16 Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

NOMINEES

Pee Wee's Big Adventure (Illinois ARDC No. 2017PR00035): An Illinois lawyer was suspended for two years for representing himself in a civil matter while under the influence.

Don't Drink the Water (Vermont PRB Docket No. 2019-009, Decision No. 229): A Vermont lawyer was suspended for nine months for drinking vodka out of a Vitamin Water bottle while in court.

Buyer Beware (Louisiana Supreme Court, No. 2019-B-1459): A Louisiana lawyer was disbarred for buying prescription medication from a client.

Punch-Drunk Love (Ohio Supreme Court, Case 19-065): An Ohio lawyer has been charged with misconduct for yelling insults to a judge at a local bar association's annual Holiday Party.

LESSON: Some lawyers fall prey to the delusion that it is possible to separate their private and professional lives only to later learn that the two will invariably blend together, producing negative results in both areas.

Most Impaired in a Non-Legal Setting

Under the influence of drugs and alcohol, lawyers commit some of the most outrageous acts.

Rule 1.16 Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

NOMINEES

Pain & Gain (Louisiana Supreme Court, No. 2018-B-1646): A Louisiana lawyer was suspended for one year and one day (six months stayed) for trust account violations stemming from an addiction to Oxycontin.

No Hands on the Clock (Ohio Supreme Court, Case No. 2019-028): The Ohio Board of Professional Conduct has recommended a two year suspension (fully stayed) for a lawyer who was arrested for DUI while pantless.

Better Living Through Chemistry: An Idaho lawyer was suspended after pleaded guilty to petty theft and public intoxication resulting from his simultaneous use of five prescribed medications.

The Great Gatsby (Oklahoma Supreme Court, 2019 OK 63, Case Number: SCBD-6676): An Oklahoma lawyer was suspended for the duration of her four year prison sentence after pleading guilty to vehicular manslaughter for driving under the influence.

LESSON: The abuse of drugs and/or alcohol in an attorney's private life can become cause for disciplinary action.