

THE 2019 ETHY AWARDS

A Two-Hour LIVE Seminar Covering:

Legal Ethics

Presented by:

Sean Carter
CA Bar# 200356

August 8, 2019
9-11 am ET

THE 2019 ETHY AWARDS
(2 hours of legal ethics)
Speaker: Sean A. Carter, Esq.

In this Oscar-themed presentation, the speaker will present “awards” for the best (or rather, worst) ethics violations of 2018. In doing so, he will recap the facts of each disciplinary action, the ethics rules violated and the sanction imposed against the attorney. More importantly, he will explain how to avoid similar violations in the conduct of our legal practices.

0:00 Introduction

- A. Explanation of the format and educational goals for the seminar]

0:05 The Outlawyer Award

- A. Rules Violated
 - 1. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

0:15 Most Creative Billing

- A. Rules Violated
 - 1. Rule 1.5
- B. Case Summaries
- C. Practical Lessons

0:25 The Houdini Award

- A. Rules Violated
 - 1. Rule 1.15
 - 2. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

0:35 The AT&T Award

- A. Rules Violated
 - 1. Rule 1.4
 - 3. Rule 1.13
 - 4. Rule 8.1
- B. Case Summaries
- C. Practical Lessons

0:45 The Joan Rivers Award

- A. Rules Violated
 - 1. Rule 1.6
- B. Case Summaries
- C. Practical Lessons

0:55 Least Competent in a Legal Representation

- A. Rules Violated
 - 1. Rule 1.1
 - 2. Rule 1.3
- B. Case Summaries
- C. Practical Lessons

1:05 Worst Love Scene

- A. Rules Violated
 - 1. Rule 1.7
 - 2. Rule 1.8
- B. Case Summaries
- C. Practical Lessons

1:15 The Hitchcock Award

- A. Rules Violated
 - 1. Rule 1.15
 - 2. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

1:25 Worst Legal Strategy

- A. Rules Violated
 - 1. Rule 3.5
 - 3. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

1:35 Miss (Mister) Uncongeniality

- A. Rules Violated
 - 1. Rule 3.5
 - 2. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

1:45 Worst Temper in a Non-Legal Setting

- A. Rules Violated
 - 1. Rule 8.4
- B. Case Summaries
- C. Practical Lessons

1:55 Conclusion and Q&A

ABOUT THE SPEAKER

Sean A. Carter graduated from Harvard Law School in 1992. He was a corporate securities lawyer in private practice in large law firms in Boston and Los Angeles serving clients such as GNC, the Boston Beer Company, Experian, Safelite Auto Glass, J. Crew and many others. In 2000, he accepted a position as in-house counsel for a publicly-traded financial institution, at which he remained until October 2002.

Since that time, Mr. Carter has been a full-time lecturer, columnist, and legal commentator. His written have appeared in the Los Angeles Times, the Los Angeles Daily Journal, the ABA e-Report and on numerous blogs and websites, including Findlaw.com. He has been a guest on numerous radio programs across the country as well as online legal media outlets, such as The Legal Broadcast Network.

In addition, Mr. Carter delivers more than 100 MCLE presentations each year on topics such as legal ethics, professionalism, the elimination of bias, substance abuse prevention, constitutional law, etc. He has spoken for state and local bar associations, law firms, law schools and corporate in-house legal departments in more than 30 states. Here is a partial list of organizations that have engaged him to give MCLE presentations.

Bar Associations

11th Circuit Judicial Conference
Advocates' Society (Canada)
Akron Bar Association
Alabama State Bar
Alabama Courts
Alameda County Bar
Alaska Bar Association
American Bar Association
American Bankruptcy Institute
American Board of Trial Advocates
American College of Trial Lawyers
ACTL New Jersey
State Bar of Arizona
Arkansas Bar Association
Association of Corporate Counsel
Association of So Cal Defense Counsel
Atlanta Bar Association
Bar Association of Southern Illinois
Bar Association of St. Louis
Bleckley Inn of Court
California Bankruptcy Forum
CA Society for Healthcare Attorneys
State Bar of California

Center for American and Internatl. Law
Charlotte Estate Planning Council
Chattanooga Bar
Cincinnati Bar Association
Collier County Bar
Colorado Bar Association
Connecticut Defense Lawyers Assoc
Continuing Education of the Bar
Dade County Bar
Dallas Bar
Dayton Bar Association
DeKalb County Bar
Defense Research Institute
Erie County Bar Association
Federal Bar Association
Florida Bar
Foothills Bar Association
Georgia Assoc of Crim. Def. Lawyers
State Bar of Georgia
Hillsborough County Bar Association
Hispanic Bar Assoc of Orange County
Houston Bar Association
Idaho State Bar Association
Illinois State Bar Association
Illinois ICLE

Indiana State Bar Association
Inn of Court - Shreveport
International Assoc of Gaming Advisors
International Assoc of Holistic Lawyers
International Society of Barristers
J. Franklyn Bourne Bar Association
Kansas Association of Defense Counsel
Kentucky Bar Association
Larimer County Bar (CO)
Lex Romano
Los Angeles County Bar Association
Louisiana Assoc of Defense Counsel
Maine Bar Association
Memphis Bar Association
State Bar of Michigan
Minnesota CLE
Missouri Association of Trial Attorneys
Missouri State Bar
Montana Assoc of Crim. Def. Lawyers
Montgomery County Bar Association
Nashville Bar Association
National Association of Bar Executives
Natl Network of Estate Planning Attys
Nebraska Assoc of Defense Counsel
State Bar of Nevada
New Hampshire Bar Association
New Hampshire Trial Lawyers Assoc
New Jersey ICLE
State Bar of New Mexico
New York State Bar Association
Ohio State Bar Association
Oklahoma Bar Association
Orange County Bar Association
Orange County Trial Lawyers Assoc
Oregon State Bar
Ottawa County Bar Association
Pennsylvania Bar Association
Pennsylvania Bar Association
Pennsylvania Bar Institute
Philadelphia Bar Association
Riverside County Bar
Salmon P Chase Inn of Court
Shreveport Bar Association
South Carolina Bar
Southeast Bar Association
Southern Law Network

State Bar of Texas
TX Assoc of Civ Trial and App
Utah State Bar
Virginia CLE
Virginia State Bar
Washington State Bar
Washoe County Bar
WealthCounsel
W San Bernardino County Bar Assoc
Wichita Bar Association
State Bar of Wisconsin

Law Firms

Akin Gump
Alston & Bird
Armstrong Teasdale
Arnstein & Lehr
Atkinson, Andelson, Loya, Ruud et al
Balch & Bingham LLP
Baker & Hostetler LLP
Baker, Manock & Jensen
Benesch, Friedlander, Coplan & Aronoff
Best, Best & Krieger
Brown & McCarroll
Cummins & White
Dickstein Shapiro
Drew Eckl & Farnham, LLP
Farella Braun + Marella
Finnegan
Fredrikson & Byron
Friedemann & Goldberg
Fisher & Phillips
Gibson Dunn & Crutcher
Hall Estill
Heller Ehrman
Henderson Franklin
Jones Day
King & Spalding
Kring & Chung
Larkin Hoffman Daly & Lindgren
Lewis Brisbois
Lionel Sawyer & Collins
Littler Mendelson
Looper Reed & McGraw
McDermott Will & Emery

McDonald Hopkins
McDonnell Boehnen et al
McGlinchey Stafford
Morgan Lewis & Bockius
Motley & Rice
Moore & VanAllen
Manatt Phelps
Perkins Coie
Quarles & Brady
Randick O'Dea & Tooliatos
Resources Law Group
Robins Kaplan Miller & Ciresi
Sheppard Mullin
Smith Gambrell & Russell
Sterne Kessler
Sutherland Asbill & Brennan
Troutman Sanders

Corporations

American Online
ARAG Insurance Group
Arizona Counties Insurance Pool
Boeing
Clorox
CVS Caremark Corporation
First Data
Health Management Association
Johnson Bank
Marathon Oil
New Century Mortgage
Sun Healthcare
Taco Bell
Xerox Corporation

Law Schools

Arkansas Little Rock
Brigham Young University
Thomas M. Cooley
Cumberland
Drake University
Florida State University
Georgia State University
Howard University
Loyola Marymount (LA)

North Carolina Central University
University of Houston
Washburn University
Widener University

Government Agencies

TN Administrative Office of the Courts
AL Administrative Office of the Courts
County Counselors of Kansas
Georgia State Board of Worker's Comp
Missouri Public Defender System
Riverside City Attorneys Office
San Bernadino District Attorneys Office

Professional Associations

Assoc of Continuing Legal Education
Assoc of Legal Administrators
Legal Marketing Association
Natl Org of Home & Life Guar Assocs
Los Angeles Paralegals Association
Orange County Paralegals Association



THE 2019 ETHY AWARDS

The Best of the Worst Ethics Offenders

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Sean Carter
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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

Up In Smoke (Illinois Commission No. 2017PR00116): An Illinois lawyer was suspended indefinitely after being convicted of operating a "grow house" in which more than 200 marijuana plants were found.

Cat Woman (State Bar Court of California, Case No. 15-O-10868): A California lawyer received a fully-stayed one-year suspension for non-compliance with her suspension after being convicted of felony animal cruelty for failing to properly care for the more than 100 cats who lived in her home.

9 to 5 (Colorado Office of the Presiding Disciplinary Judge, 17PDJ033): A Colorado lawyer was disbarred after her conviction for fraudulently collecting unemployment benefits while being employed.

9½ Weeks (North Carolina State Bar, 18 DHC 28): A complaint was filed against a North Carolina lawyer after his conviction of solicitation of prostitution just nine days after he was admitted to the bar.

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 enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:
 - (1) whether the fee is fixed or contingent;
 - (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (4) the fee customarily charged in the locality for similar legal services;
 - (5) the amount involved and the results obtained;
 - (6) the time limitations imposed by the client or by the circumstances;
 - (7) the nature and length of the professional relationship with the client; and
 - (8) the experience, reputation, and ability of the lawyer or lawyers performing the services.
- (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
- (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 writing 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. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

NOMINEES

For a Good Time, Call ... (DC Board of Professional Responsibility, Board Docket No. 10-BD-104, Bar Docket Nos. 2005-D098, 2005-D359, & 2005-D317): Disbarment is recommended for a D.C. lawyer who, among other things, charged his client \$.15/minute for calls despite having a flat-rate calling plan.

I've Got Five On It (2018 VT 29, Vermont Supreme Court Docket No. 2018-042): A Vermont lawyer was censured for requiring clients to make installment payments on the remainder of his legal fees *after* their bankruptcy petitions were filed.

Last Will (North Carolina State Bar, 18 DHC 28): A complaint has been filed against a lawyer who inflated his hourly rate and the number of hours worked in administering an estate.

Pay It Forward (Wyoming Supreme Court, 2018 WY 63): A Wyoming lawyer was suspended for 30 days for charging the client a non-refundable flat fee in the amount of \$3000.00 that was later found to be unreasonable.

My Dear Secretary (Supreme Court of Iowa, No. 18–0535): An Iowa lawyer was suspended for 60 days for submitting excessive bills that allegedly resulted from the inattentiveness of his secretary in preparing such bills.

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 Houdini 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 1.8. Conflict of Interest: Current Client: Specific Rules

- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

Rule 1.15. Safekeeping Property.

- (b) A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.
- (d) Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.
- (e) Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.
- (f) When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.
- (g) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a Trust Account or any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).

- (h) A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.
- (i) A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.
- (j) At all times while a lawyer holds Rule 1.15 Funds, the lawyer shall also maintain another account that is not used to hold such funds.

Rule 5.1. Responsibilities of Partners, Managers and Supervisory Lawyers.

- (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 5.3 Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, 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 the person's conduct is compatible with the professional obligations of the lawyer.
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the 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 person is employed, or has direct supervisory authority over the person, 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:

- (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

Lean On Me (2018 NY Slip Op 00816 [159 AD3d 101]): A New York lawyer was suspended for two years for third party's personal bank accounts to shield her funds from tax liens.

Splitting Heirs (Illinois Commission No. 2013PR00078): An Illinois lawyer was suspended for two years for preparing a will that named *his* two children as beneficiaries.

Sticky Fingers (Pennsylvania Supreme Court, No. 2441 Disciplinary Docket, No. 207 DB 2017): A Pennsylvania lawyer was disbarred for stealing from her employer, including using her employee's credit card to purchase \$300 of sex toys without authorization.

Showgirls (Supreme Court of New Jersey, D-30 September Tem 2017, 080239): A New Jersey lawyer was disbarred for "lapping" -- taking one client's funds to pay trust obligations owed to another client.

The Rainmaker (Illinois Commission No. 2018PR00072): An Illinois lawyer has been charged with misconduct for stealing origination credits that belonged to other lawyers.

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, pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; but a lawyer may pay, cause to be paid, guarantee or acquiesce in the payment of:
 - (1) expenses reasonably incurred by a witness in attending or testifying,
 - (2) reasonable compensation to a witness for the witness' loss of time in attending or testifying, and
 - (3) a reasonable fee for the professional services of an expert witness;
- (d) 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 and such conduct is not prohibited by Rule 4.2.

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.

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

The Perfect Score (North Carolina State Bar, 17 DHC 23): A former North Carolina district attorney is under interim suspension for allowing his staff to take online academic tests for his wife on state time.

Air Bud (North Carolina State Bar, 18 DHC 3): A North Carolina lawyer has been charged with misconduct for offering a federal agent two cases of Bud Light and \$100 to retrieve his wife's text messages without the necessary search warrant.

Driving Miss Daisy (152 Ohio St.3d 614, 2018-Ohio-2024): An Ohio lawyer was suspended for two years (six months stayed) for lying to the police after a traffic accident to cover up for a fellow attorney who was driving while intoxicated.

Pet Shop (2018 NY Slip Op 05527 [163 AD3d 168]): A New York lawyer was disbarred for creating phony lease documents for a pet store to support an inflated damages claim.

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.

NOMINEES

Snow Day (Maine Supreme Court, Docket No.: GCF# 17-128): A Maine lawyer was reprimanded for failing to adequately keep a client informed about a matter because he didn't feel that the client had much of a case.

The Divorce (Iowa Supreme Court, No. 17-1415): An Iowa lawyer was suspended for at least a year for lying to a client (and her brothers) about the status of her divorce case.

A Million Ways to Die in the West (2018 NY Slip Op 01890 [160 AD3d 89]): A New York lawyer was suspended for three months for falsely telling the client that he had secured a \$1 million award in a case that had been dismissed on summary judgment.

Don't Answer the Phone (Supreme Court of Appeals of West Virginia, Nos. 15-0589, 16-0992, & 17-0502): A West Virginia lawyer had his license annulled for failing to communicate with a client, who only learned that his case had been dismissed when contacted by the loan company that had lent the client money in connection with the pending litigation.

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 representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).
- (b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.
- (c) 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 criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;
 - (3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or
 - (4) 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; or
 - (5) to secure legal advice about the lawyer's compliance with these Rules; or
 - (6) to effectuate the sale of a law practice consistent with Rule 1.17; 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.
- (d) 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.

- (e) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

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.

NOMINEES

Pillow Talk (Slip Opinion No. 2018-Ohio-4308): Two Ohio lawyers who were engaged to be married received stayed six-month suspensions for exchanging client information.

True Crime (Louisiana Attorney Disciplinary Board, Docket No. 18-DB-063): A lawyer in the US Attorney's office was disbarred for posting anonymous online comments about a case which he was prosecuting and other US Attorney matters.

Mr. Blabbermouth (Colorado 18PDJ002): A Colorado lawyer was publicly censured for sharing with one client confidential information and forwarded e-mails relating to other clients.

Hard Ball (Arizona Supreme Court, No. SB-17-0079-AP): An Arizona lawyer was suspended for 90 days for threatening to file criminal charges and report probation violations by a client who had not paid the lawyer's fees.

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.

NOMINEES

Certified Copy (Florida Supreme Court, No. SC16-1081): A Florida lawyer was disbarred for providing his clients with certificates that were supposed to provide them with legal authorization to use medical marijuana.

17 Miracles (2018 NY Slip Op 02283 [160 AD3d 232]): A New York lawyer has been suspended indefinitely for failing to re-register or complete CLE requirements for 17 years.

Slow Burn (Virgin Islands Supreme Court, S. Ct. Civ. No. 2015-0019): A Virgin Islands lawyer was suspended for 18 months for taking more than 20 years to administer an estate.

Maximum Overdrive (Slip Opinion No. 2018-Ohio-3828): An Ohio lawyer was suspended indefinitely for doing little to no work for up to 400 clients referred to the lawyer by a debt-relief company.

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 7.5 Firm Names and Letterheads

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless 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

Glengarry Glen Ross (Indiana Supreme Court Case No. 02S00-1511-DI-648): An Indiana lawyer was suspended for at least nine months for soliciting clients through a nonlawyer intermediary.

The Experts (Indiana Supreme Court Case No. 41S00-1612-DI-659): An Indiana lawyer was suspended for falsely claiming to be a specialist in practice areas in which the lawyer had no certification and little to no experience.

Signs: A Massachusetts lawyer was admonished for failing to remove a former associate's name from the firm's signage for nearly four years after the associate left the firm.

Multiplicity (Indiana Supreme Court Case No. 18S-DI-00094): An Indiana lawyer was suspended for advertising that his solo law firm was composed of several attorneys.

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.

NOMINEES

One Hour Photo (Maine Supreme Court, Docket No.: BAR-16-17): A Maine lawyer was suspended for 20 months for sexting a client.

Freebie (Supreme Court of Appeals of West Virginia, No. 16–1003, Lawyer Disciplinary Proceeding Nos. 15-03-283, 15-03-285, 15-03-288): A West Virginia lawyer’s licensed was annulled for sleeping with a client despite the lawyer asserting that no professional relationship had existed because the lawyer had never sought payment for his services.

Gifted Hands (153 Ohio St.3d 350, 2018-Ohio-2705): An Ohio lawyer received a partially-stayed two-year suspension for engaging in intimate contact with a client in the courthouse.

Can’t Hardly Wait (Illinois Commission No. 2018PR00053): An Illinois lawyer was charged with misconduct for commencing a romantic relationship with a divorce client before the divorce was finalized.

Midnight Express (South Carolina Supreme Court, Appellate Case No. 2017-002322, Opinion No. 27778): A South Carolina lawyer was reprimanded for asking a client to expose herself.

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

No Strings Attached (Maine Supreme Court, Docket No.: BAR-17-12): A Maine lawyer was suspended for 12 months for filing several deficient motions and briefs, including one brief that was punched with three holes and bound with twine.

Used Cars (Illinois Commission No. 2017PR00085): An Illinois lawyer was censured for entering into a transaction to sell his used car to a client and use the client's better credit rating to obtain favorable financing on a new car for the lawyer.

Extra Ordinary Barry (2018-Ohio-4732): An Ohio lawyer was suspended for six months for failing to pay a local chiropractor who treated the lawyer's personal injury clients.

Hamlet (Colorado 17PDJ086): A Colorado lawyer received a stayed 90-day suspension for failing to pay his ex-wife's attorneys fees, as ordered by the court.

Back to School (Nevada Supreme Court No. 76453): A Nevada lawyer received a stayed-suspension on the condition that he complete an additional 20 hours of ethics CLEs during the probationary period.

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

Back to the Future (Oklahoma Supreme Court, Case Number: SCBD-6496): An Oklahoma lawyer was suspended for 60 days for turning back the court clerk's date filing stamp.

The Forger (Massachusetts Public Reprimand No. 2017-12): A Massachusetts lawyer was publicly reprimanded for notarizing a document for a co-worker wife's who had not appeared before him to sign the document.

Tropic of Cancer (Illinois Commission No. 2018PR00015): An Illinois lawyer has been charged with falsely claiming that he had cancer in order to get case delays and justify a low LSAT score.

White Lies (Illinois Commission No. 2018PR00088): An Illinois lawyer has been charged with making false statements to a tribunal in order to get more time to file an appeal.

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

Melancholia (Illinois Commission No. 2014PR00070): An Illinois lawyer received a two-year suspension for conversion of client funds, despite his history of depression.

Fool's Gold: A New Jersey lawyer was disbarred for conversion of client funds and not given a second chance despite citing the numerous chances received over the years by Donald Trump.

Pain & Gain (Louisiana Attorney Disciplinary Board No. 17-DB-050): A Louisiana lawyer received a stayed one year and a day suspension for stealing client funds to support his addiction to prescription pain medication.

Dial M for Murder (D.C. Court of Appeals, No. 06-BG-858): A D.C. lawyer was disbarred for, among other things, making excessive personal calls on her government-issued cell phone, despite her claim that she had inadvertently “butt-dialed” those numbers.

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 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 3.5 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 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;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

NOMINEES

Kramer vs. Kramer (Washington State Supreme Court, No. 201,706-1): A Washington lawyer was disbarred for violating court orders, filing frivolous motions, and threatening and harassing opposing counsel and party in his own divorce.

The King and I (D.C. Court of Appeals, No. 18-BG-115): A D.C. lawyer was disbarred for purporting to be the father of basketball star LeBron James and then filing a defamation suit against James even after the DNA test proved that he was not the father.

Taken (Arizona PDJ 2018-9062): An Arizona lawyer was admonished for illegal obtaining financial information in an attempt to locate her client's kidnapped child.

School Daze (Arkansas Supreme Court, CPC Docket No. 2016-119): An Arkansas lawyer was reprimanded for instituting frivolous litigation against his son's elementary school to prevent the son from being suspended.

It (Pennsylvania Supreme Court, No. 2531 Disciplinary Docket, No. 123 DB 2017): A Pennsylvania lawyer was suspended for two years as a result of his eight year campaign to resolve a \$3,577.93 dispute in favor of his client.

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 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;

NOMINEES

Charming (New Jersey Supreme Court Docket No. 16-330, District Docket No. VA-2012-0036E): A New Jersey lawyer was reprimanded despite his best efforts to “just win friends and influence people” at his disciplinary hearing.

Pump Up the Volume (North Carolina State Bar, 18 DHC 25): A complaint has been filed against a North Carolina lawyer for posting a video of a deposition on YouTube and entitling it, “Best Ways to Tell If a Witness is Lying.”

Blackhat (Illinois Commission No. 2018PR00024): An Illinois lawyer has been charged with hacking into his former employer’s computer system.

Dead Men Don’t Wear Plaid (Illinois Commission No. 2018PR00101): An Illinois lawyer has been charged with misconduct for attempting to settle a personal injury case on behalf of a deceased client for whom no longer had authority to represent.

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.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may, subject to the requirements of Pa.B.A.R. 302, provide legal services in this jurisdiction that:
 - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission, except that this paragraph (d) does not authorize a lawyer who is not admitted in this jurisdiction and who is employed by the Commonwealth, any of its political subdivisions or any of their organizational affiliates to provide legal services in this jurisdiction; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of 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

Power of Attorney (152 Ohio St.3d 536, 2018-Ohio-231): An Ohio lawyer was suspended indefinitely for sending demand letters to numerous companies on behalf of a non-existent clients; and all while suspended from the practice of law for previous violations.

In the Name of the Father (Colorado 17PDJ084): A California lawyer was publicly censured for attempting to represent his father despite the lawyer's denial of *pro hac vice* admission in Colorado.

Out of Bounds (Ohio Supreme Court, Case No. 2018-0533): A California lawyer (and his firm) were fined \$2,000 for representing an Ohioan in a debt collection case without a license to practice law in Ohio.

Too Late for Tears (Kansas Supreme Court, No. 118,310): A Kansas lawyer was suspended for one year for continuing to practice law despite being under administrative suspension for failing to timely pay his annual dues (and the \$100 late fee).

My Sister's Keeper (Iowa): An Iowa lawyer was reprimanded for failing in his role as local counsel to supervise the activities of out-of-state co-counsel.

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 3.5 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

Dark Knight (New York Supreme Court Appellate Division, D-27-18): A New York lawyer was publicly censured for a “joke gone bad” that he made to a social worker while in the courthouse.

44 Inch Chest (Louisiana Attorney Disciplinary Board, No. 18-DB-63): A Louisiana defense lawyer was suspended for one year and one day for “chest bumping” the DA as they were leaving judge’s chambers.

Overheard: A Connecticut lawyer was suspended for 120 days after his profane remarks were picked up by a lapel microphone.

Draw! (Nevada Supreme Court, No. 74316): A Nevada lawyer was suspended for six months and a day for brandishing a gun during a deposition.

Comedy Central Roast of Donald Trump (Illinois Commission No. 2018PR00109): An Illinois lawyer has been charged for misconduct for incivility, which he claims is justified now that Donald Trump is President.

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.

NOMINEES

Philadelphia (Florida Supreme Court, Case No. SC18-1004): A Florida lawyer was suspended for 60 days for homophobic and anti-Semitic Facebook posts and text messages.

He Got Game (154 Ohio St.3d 253, 2018-Ohio-4071): An Ohio lawyer received an indefinite suspension for his ill-treatment and misogynist insults towards opposing counsel.

Zorro – The Gay Blade: A New York town court justice resigned after making extremely vulgar homophobic remarks to a litigant and his lawyer.

Pimps Up, Ho's Down (153 Ohio St.3d 283, 2018-Ohio-2990): An Ohio lawyer was suspended for one year (with six months stayed) for calling his paralegal insulting terms that he learned from listening to rap music.

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 Statements Concerning Judges and Other Adjudicatory Officers

- (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 and/or the Rules Governing Standards of Conduct for Magisterial District Judges, as applicable.

NOMINEES

Rigged (Tennessee Supreme Court, W2017-00889-SC-R3-BP): A Tennessee lawyer was suspended for six months for alleging in motions that three appellate judges had “rigged the game” in favor of the opposing party.

Planet of the Ages (Connecticut Supreme Court, SC 19950): A Connecticut lawyer was criminally convicted for threatening the family law judge presiding over the lawyer's custody battle with his ex-wife.

The Rosa Parks Story (Michigan Attorney Discipline Board, Case No. 15-28-GA): A Michigan lawyer was reprimanded for using incendiary language in pleadings to get the judge recused from the case.

Kangaroo Jack: A California lawyer is facing possible disbarment for various acts of misconduct, including referring to the disciplinary proceedings as a “mockery” and a “kangaroo court.”

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

Orion's Belt (Illinois M.R. 29085, 2017PR00055): An Illinois lawyer was censured for removing his belt and using it to spank his 14-year-old daughter.

Anarchy Parlor (DC Court of Appeals, Board Docket No. 17-BD-075): A DC lawyer consented to disbarment for assaulting the manager of a Georgetown tattoo shop.

This Means War (Louisiana Attorney Disciplinary Board, Docket No.: 17-DB-061): A year and a day suspension has been proposed for a Louisiana lawyer who assaulted his wife and the man he discovered her with at their rental home.

Falling Down (Maryland Misc. Docket AG No. 4, September Term, 2017): A Maryland lawyer was suspended for a road rage incident, in which he rammed another vehicle after being cut off in traffic.

Reversal of Fortune (303 Ga. 802, S18Y1161): A Georgia lawyer agreed to a voluntary suspension of his law license following conviction for the murder of his wife.

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

Judge Dredd (Indiana Supreme Court Case No. 41S00-1710-DI-632): An Indiana lawyer was suspended for not less than one year after appearing at a mediation with a blood alcohol level of 0.23.

Physical Evidence (Pennsylvania Supreme Court Western District, No. 2195 DD3, No. 123 DB 2015): A Pennsylvania lawyer was disbarred for his conduct as a judge, whereby he stole cocaine that had been introduced as evidence in criminal proceedings and used it himself.

Search Party (California State Bar Court, Case No. 15-C-15947): A California lawyer was disbarred after court security personnel searched his briefcase and discovered methamphetamine and prescription pills.

Need for Speed (Indiana Supreme Court Case No. 84S00-1703-DI-122): An Indiana lawyer was suspended for 90 days (all but 30 days stayed) for unlawfully confiscating Adderall pills prescribed to a client's girlfriend and using them himself.

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

Hellraiser (Louisiana Attorney Disciplinary Board, No. 16-DB-032): Disbarment has been recommended for a Louisiana lawyer who was arrested for several drug possession offenses and for allegedly seducing a married client into the drug lifestyle.

Little Big Shot: An Iowa lawyer was reprimanded for attempting to intimidate the police officers who arrested him for DUI by telling them repeatedly that he was a lawyer.

Shooter (Arizona File No. 17-297, PDJ No. 2018-9033): An Arizona lawyer was reprimanded for accidentally firing a bullet through his neighbor's window while intoxicated.

The Dead Zone (Ohio Supreme Court, Case No. 2018-010): An Ohio lawyer was suspended for three years (all but six months stayed) for swapping legal services for drugs.

Scary Movie 5 (Oklahoma Supreme Court, 2018 OK 84, 431 P.3d 57, Case Number: SCBD-6684): An Oklahoma lawyer resigned after his fifth DUI conviction.

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

The Lifetime Achievement Award

The nominees in this category have amassed a lifetime of ethics violations. In some cases, they have done so in a very short period of time. In other cases, they have “earned” this award through a career dedicated to malfeasance and negligence. In either event, their contributions to the legal ethics lore are acknowledged.

NOMINEES

20 Years of Madness (Supreme Court of New Jersey, Disciplinary Review Board Docket No. DRB 16-345, District Docket Nos. XIV-2015-0052E; XIV-2015-0129E; XIV-2015-0249E; XIV-2015-0376E; and XIV- 2015-0377E): A New Jersey lawyer was disbarred after a two-decade history of being untruthful to courts; lying to disciplinary authorities, including while under oath; failing to obey court orders; and failing to comply with recordkeeping obligations imposed on New Jersey attorneys.

For Men Only (Superior Court for the Judicial District of Waterbury, Docket No. UWYCV166032650S): A Connecticut lawyer is seeking reinstatement after being disbarred for representing a woman client in violation of an order that he only represent men due to a history of becoming romantically-involved with women clients.

Star 80 (Tennessee Supreme Court, No. M2018-01208-SC-BAR-BP, BOPR No. 2016-2564-6-AW): A Tennessee lawyer who was the subject of 74 separate client complaints was disbarred .

Gone in 60 Seconds (Michigan Attorney Disciplinary Board, Case No. 17-107-GA): A Michigan lawyer was disbarred for a number of violations, including 42 outstanding traffic citations.

LESSON: It’s important for us to remember that none of these nominees set out to build a career of repeated ethics violations. In fact, it’s likely that each of these nominees began their careers with the best of intentions. However, they developed a set of bad habits that destroyed their intentions. The rest of us must be vigilant to avoid falling into these same traps.