



**NEBRASKA**  
*State Bar Association*

# Nice Lawyers Finish First

**Sean Carter**

Humorist at Law

MONDAY

DECEMBER 3, 2018

WEBINAR

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# Nice Lawyers Finish First Webinar

featuring Sean Carter



**Mon., December 3, 2018**  
**11:00 am - 1:00 pm**

**NE MCLE Accreditation**  
#163921 (Distance learning)  
**2 CLE ethics hour**

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Increasingly, lawyer civility and congeniality are becoming a thing of the past. Yet, it doesn't have to be that way. Civil litigation need not lead to all-out civil war. As legal professionals, lawyers have an obligation to act just that way – professionally.

In this presentation, the presenter will remind lawyers that zealous advocacy does not require us to be zealots. It's possible to be courteous, kind, accommodating and effective. In fact, for the continued well-being of the profession (and the individual lawyer), it's necessary. In particular, Mr. Carter will discuss practical ways to:

- Reduce the hostility in interactions with even the most difficult opposing counsel;
- Increase camaraderie among colleagues;

- Diffuse tensions among warring clients;
- Secure accommodations from opposing counsel;
- Structure more mutually beneficial arrangements with clients;

**Sean Carter**, Humorist at Law, has crisscrossed the country delivering his Lawpsided Seminars. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more. He is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. Mr. Carter graduated from Harvard Law School in 1992.

## REGISTRATION FORM: Nice Lawyers Finish First Webinar - December 3, 2018

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# **THE 2018 ETHY AWARDS**

**The Best of the Worst Ethics Offenders**

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**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:

## § 3-508.4 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

**Pretty Woman** (Mich. Attorney Disciplinary Board Case No. 16-145-JC): A Michigan lawyer received a reprimand after his conviction for solicitation of prostitution.

**Peeping Tom** (D.C. Court of Appeals BPR, D.C. App. No. 13-BG-757; Board Docket No. 13-BD-064; Bar Docket No. 2013-D235): A D.C. lawyer received a fully-stayed two year suspension for a voyeur crime committed in Texas, even though the conviction was ultimately overturned because the law was ruled to be unconstitutional.

**Trading Places** (Massachusetts SJC, No. BD-2015-102): A Massachusetts lawyer was suspended for three years after his conviction for trading on tips he received from a golf buddy at his country club.

**Money for Nothing** (New Jersey Supreme Court, D-71 September Term 2016, 078807): A New Jersey lawyer received a public censure for theft of mislead property.



**Smokey and the Bandit** (Louisiana Attorney Disciplinary Board, No. 14-DB-040 c/w 16-DB-071). The Louisiana Board has recommended disbarment for a lawyer who was arrested for smoking in a non-smoking hotel room.

**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.

### § 3-501.5 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....

§ 3-501.8 **Conflict Of Interest: Current Clients: Specific Rules**

- (h) A lawyer shall not:
- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

**NOMINEES**

**Beverly Hills Chihuahua** (Massachusetts SJC, No. BD-2017-066): A Massachusetts lawyer was suspended for six months for charging his client his full hourly rate for non-legal services, such as caring for the client's pets.

**Payback** (Nevada Supreme Court, Docket No. 72989, 17-41044): A Nevada lawyer was suspended for five years and a day for submitting \$214,345 of fraudulent expense reports.

**To the Limit** (Illinois Commission No. 2016PR00126): The Illinois Hearing Board recommends a 30-day stayed suspension for an unethical retainer provision prohibiting the client from reporting the attorney to the state bar.

**Doin' Time** (Louisiana Supreme Court, 2017-B-0525): A Louisiana lawyer was suspended for 30 months (all but 12 months stayed) for overbilling clients in order to meet his annual billable hours target.

**The Money Pit** (Utah Supreme Court, 2017 UT 10): A Utah lawyer was suspended for 150-days for bartering his firm's legal services in exchange for construction work done on his home, thereby, depriving his law partners of income earned.

**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:

### § 3-501.15 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. 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 5 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. See, e.g., ABA Model Financial Recordkeeping Rule.*

*[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 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.
- (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:

- (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**

**Pennies from Heaven** (Florida Supreme Court, No. SC15-1323): A Florida lawyer was suspended for six months for misappropriating \$500 of client funds.

**Two Weeks Notice** (Kansas Supreme Court, No. 115,002): A Kansas lawyer was suspended for a two years (all but six months stayed) for failing to return client funds held in escrow on demand.

**For a Good Time, Call ...** (New Jersey Supreme Court, D-17 September Term 2016, No. 078323): A New Jersey lawyer was disbarred for charging phone sex calls to his client trust account.

**Sixteen Candles:** A Nevada lawyer was disbarred for stealing more than \$16 million from more than 100 clients.

**Partners in Crime** (D.C. Court of Appeals, No. 16-BG-762): A D.C. lawyer was suspended for six months for failing to supervise her law partner, who stole more than \$1 million of client funds.

**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**

- (f) 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 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**

**Loan Shark** (Georgia Supreme Court, 300 Ga. 484, S17Y0496): A Georgia lawyer consented to voluntarily surrender his license for helping her payday lender employer violate state usury laws.

**Mama's Boy** (Michigan Attorney Discipline Board, Case No. 17-16-GA): A Michigan lawyer received a reprimand for bringing unauthorized anxiety medicines into jail for her incarcerated sons.

**Code Name: The Cleaner**: An Idaho lawyer was suspended for one year (all but 90 days stayed) for erasing data from his brother-in-law's cellphone shortly after his arrest on drug charges.

**The Associate** (2017 NY Slip Op 06407 [154 AD3d 123]): A New York lawyer received a two-year suspension for assisting the suspended managing partner of her firm in the unauthorized practice of law.

**(Dis)Honesty: The Truth About Lies** (Nevada Supreme Court, Docket No. 70901, 17-24680): A Nevada lawyer was suspended for 35 days for offering to pay a witnesses for their testimony.

**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

**Annie** (D.C. Court of Appeals, Board Docket No. 14-BD-089, Bar Docket No. 2012-D437): A hearing committee has recommended a 90-day suspension for a D.C. lawyer who continued to make false positive assurances about a case that had been lost.

**Pulp Fiction** (Oklahoma Supreme Court, 2017 OK 30, 394 P.3d 223, Case No. SCBD-6420): An Oklahoma lawyer was reprimanded for leaving threatening voicemails for a client.

**The Social Network**: An Oklahoma lawyer was suspended for 90 days for failing to communicate with a client, except through Facebook messages.

**On the Down Low** (Louisiana Supreme Court, No. 2016-B-0075): A Louisiana lawyer was suspended for one year and one day (six months stayed) for offering a client \$7,500 to overlook the fact that she negligently allowed the case to be time barred.

**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 the client from committing a crime or to prevent reasonably certain death or substantial bodily harm;
  - (2) to secure legal advice about the lawyer's compliance with these Rules;
  - (3) 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
  - (4) to comply with other law or a court order.

*[15] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules [1.1](#), [5.1](#) and [5.3](#).*

*[16] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.*

**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**

**The Break-Up** (Ohio Case No. 2016-1495): An Ohio lawyer received a one-year stayed suspension for violating confidentiality in a motion to withdraw from representation.

**Old Yelper** (Colorado, 15PDJ099): A Colorado lawyer was suspended for six months posting comments in response to a client’s online complaint about the lawyer.

**The Answer Man** (Virginia State Bar Docket No. 14-102-097282): A Virginia lawyer was reprimanded for unnecessarily revealing confidential information in an answer to a motion to dismiss counsel.

**Muhammad Ali – The Greatest** (Indiana Supreme Court, Case No. 49S00-1604-DI-192): An Indiana lawyer has been suspended for at least 90 days for bragging about past successes to a current client, thereby, breaching confidentiality to past clients.

**True Confessions** (New York D-210-17): A New York lawyer was censured for telling a reporter how his now-deceased client “got away with murder.”

**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**

**The Day the Earth Stood Still** (2017 NY Slip Op 01869 [149 AD3d 141]): A New York lawyer was suspended for one year for falsifying MCLE compliance.

**Pay It Forward** (150 Ohio St.3d 130, 2017-Ohio-2961): An Ohio lawyer received a stayed six-month suspension for failing to defend the client's lawsuit and must pay the client's judgment before being reinstated to practice.

**The Rookie** (Illinois Supreme Court No. M.R.28844, Commission No. 2017PR00067): An Illinois lawyer consented to disbarment for his incompetent bankruptcy representation after 30 years of competent representation in other areas of the law.

**Race Against Time** (Arizona PDJ-2017-9029): An Arizona lawyer received 18 months probation for failing to timely execute a transaction on behalf of an elderly client.

**The Emoji Movie** (Fla. 1st DCA, No. 1D15-5714, 10/6/2017) (on rehearing), 2017 WL 4448526): A law firm's spam filter safeguards do not constitute excusable neglect when they prevent a lawyer from timely receipt of a judicial order.

**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 7.4. 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**

**Miracle** (Michigan Attorney Discipline Board Case No. 14-117-GA): A Michigan Indiana lawyer was disbarred for multiple lies on his resume, including that he was an Olympian.

**Blame It On Rio** (South Carolina Supreme Court, Appellate Case No. 2017-000608, Opinion No. 27712): A South Carolina lawyer was reprimanded for false and misleading claims made on social media by her paralegal.

**Mr. Fix It** (South Carolina Supreme Court, Appellate Case No. 2017-001218, Opinion No. 27751): A South Carolina lawyer was reprimanded for several marketing violations, including using the telephone number (844) FIXTICKET.

**Gift of the Magi** (Louisiana Supreme Court, 2017-B-0068): A Louisiana lawyer was disbarred for, among other things, using gift cards and baseball tickets to entice clients to come over to her new firm.

**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. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

**NOMINEES**

**One Hour Photo** (Massachusetts Supreme Judicial Court No. BD-2016-018): A Massachusetts lawyer was suspended for a year and a day for sending inappropriate text messages to the client's girlfriend.

**An Officer and a Gentleman** (Iowa Supreme Court No. 16-1911, Grievance Commission No. 824): An Iowa lawyer was suspended for 30 days for having a relationship with his divorce client.

**Hot Tub Time Machine** (Ohio Board of Professional Conduct, No. 17-015): A complaint was filed against an Ohio lawyer for having a physical relationship with a client, aiding and abetting a fugitive and unauthorized use of his neighbor's hot tub).

**The Bodyguard** (Louisiana Supreme Court 2017-B-0874): A Louisiana Assistant US Attorney was suspended for one year and a day for not disclosing her relationship with an FBI agent assigned to a number of her cases.

**Housesitter** (Maine Supreme Judicial Court, Docket No. Bar-14-12): A Maine lawyer was suspended for six months for engaging in a physical relationship with a client who came to live with him after fleeing an abusive ex-boyfriend.

**Fatal Attraction** (North Carolina 16 DHC 37): A North Carolina lawyer was suspended for five years for sex with a client.

**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

**Bad Moms** (Colorado Hearing Board, 15PDJ060): A Colorado lawyer was suspended for six months for failing to pay child support.

**American Psycho**: A California judge stepped down from the bench after taking a number of business card holders from a Judge's Night dinner.

**Bad Match** (Illinois Commission No. 2017 PR 00084): A complaint has been filed against an Illinois lawyer for setting up fake accounts for opposing counsel on Match.com, Obesity Action Coalition and Pig International.

**Back to School** (California State Bar Court 15-O-14509): A California lawyer was disbarred for falsifying his MCLE compliance.

**Just For the Record** (South Carolina Supreme Court, Appellate Case No. 2017-001219, Opinion No. 27741, S17Y0552): A South Carolina lawyer was suspended for 18 months for failing to pay court reporters for several depositions.

**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**

**Sorry, Wrong Number** (California Bar Court, Case Nos. 14-O-04592; 14-O-05291): A California lawyer was suspended for one year for misrepresenting the identity of a phone caller to the bar investigator.

**Heart Condition** (California Bar Court, Case No. 15-O-10406): A California lawyer was disbarred for falsely claiming to have two heart attacks in order to obtain a continuance at trial.

**Chinatown** (2017 NY Slip Op 05698 [153 AD3d 45]): A New York lawyer was disbarred for hiring a “storywriter” to craft false stories of persecution for clients seeking asylum.

**Witness** (Illinois Commission No. 2017PR00016): An Illinois lawyer was suspended for 60 days for instructing others to sign witness attestations for a will they did not witness being signed.

**The Sting** (Georgia Supreme Court, S17Y1593): A Georgia lawyer was suspended for two years for engaging in a complex scheme with in-house counsel to defraud his corporate client.

**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**

**Father Figures** (New Jersey Supreme Court, D-65 September Term 2016, 078792): A New Jersey lawyer was disbarred for trust fund misappropriations despite his claim that he was not aware of the trust accounting rules, but had learned his accounting practices from his father.

**Crazy People** (Slip Opinion No. 2017-Ohio-6872.): An Ohio lawyer was suspended for two years (one year stayed) for overbilling a law firm by more than \$87,000 for non-attorney services, despite her document evidence of suffering from persistent mild depression.

**Gross Anatomy** (Arizona PDJ 2017-9024, State Bar Nos. 16-2013, 16-2764, 16-2987, and 16-3297): An Arizona lawyer was disbarred for neglecting multiple client matters, despite her (unsupported) claim of suffering from lupus.

**Religulous** (Arizona PDJ 2017-9053, State Bar No. 16-1878): An Arizona lawyer was suspended for six months and a day for filing a frivolous and nonsensical complaint against 80 defendants, despite her claim that this sanction violated her 1<sup>st</sup> Amendment right to the free exercise of religion.

**The Seven Year Itch**: A Nevada lawyer has been suspended for having sexual contact with his inmate client during a jail visit, despite his claims that he was on medication at the time and has not had sex with his wife for 14 years.



**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) A lawyer shall not:
- (1) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
  - (2) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
  - (3) communicate with a juror or prospective juror after discharge of the jury if:
    - (i) the communication is prohibited by law or court order;
    - (ii) the juror has made known to the lawyer a desire not to communicate; or
    - (iii) the communication involves misrepresentation, coercion, duress or harassment; or
  - (4) 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;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

**NOMINEES**

**Just the Ticket** (California Bar Court, Case No. 12-C-10794): A California lawyer was suspended for 60 days for using her position as a DA to get a traffic ticket dismissed.

**Pacific Heights** (California Bar Court, Case No. 13-C-11780): A California lawyer was disbarred stalking several former employers, attorneys and their families in retaliation for receiving a parking ticket.

**Peanuts**: The Florida Bar has brought a complaint against a lawyer for his false and dishonest claims against another lawyer, including the claim that the other lawyer attacked his nut-allergic law clerk by sprinkling pistachios and peanuts in her food.

**Rear Window** (New York Appellate Division, Case No. 2016-03859): A New York lawyer was suspended for two years for attempting to obtain incriminating photos of a female employee who accused him of sexual harassment.

**Greedy** (Slip Opinion No. 2017-Ohio-8800): An Ohio lawyer was suspended for one year (six months stayed) for using the judicial system to collect an illegal or clearly excessive fee.

# 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

**Spies Like Us:** The South Carolina Supreme Court reprimanded an Arkansas lawyer for sending private investigators into the state to pose as customers in order to obtain information about the defendant in an intellectual property case.

**Trolls** (Illinois Commission No. Commission No. 2015PR00068): An Illinois lawyer has been disbarred for being a copyright troll.

**Bully** (Virginia State Bar, VSB Docket No. 16-053-105949): A Virginia lawyer was reprimanded for threatening a bar complainant with criminal perjury charges.

**House Calls** (Tennessee Chancery Court, No. CH-16-0239): A Tennessee lawyer was publicly censured for going to the home of a judge to ask a question about the case.

**One Missed Call** (Illinois Commission No. 2014PR00161): An Illinois lawyer was suspended for two years for leaving several threatening voice mails for the hearing officer in his disciplinary matter.

**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

**Dial M for Murder** (Georgia, 300 Ga. 762, S16Y1645): A Georgia lawyer was removed from the rolls of the bar for attempting to try to murder case while suspended for CLE non-compliance.

**The Stepfather** (Colorado 17PDJ007): A Colorado lawyer was suspended for one year and a day for representing his stepson in an expulsion proceeding in Pennsylvania, where the lawyer was not licensed to practice law.

**It's a Low Down Dirty Shame** (Illinois Commission No. 2016PR00084): A suspended Illinois lawyer was suspended for five additional months for not disclosing to the court his need to withdraw from representation.

**The Traveling Man** (Ohio Board of Professional Conduct, Case No. 2017-0492): An Ohio board recommends that a Florida attorney be suspended for two years (fully-stated) for the unauthorized practice of law as in-house counsel.

**No Country For Old Men** (Louisiana Attorney Disciplinary Board, Docket No. 16-DB-091): A Louisiana board has recommended a one-year and a day suspension for a lawyer who practiced before the INS while his only state license was suspended.

**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) A lawyer shall not:
  - (4) 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

**Bad Words:** A New York lawyer was suspended for three years for vulgar and profane e-mails sent to opposing counsel.

**Airplane** (Arizona PDJ- 2017-9010, State Bar File No. 16-0804): An Arizona lawyer was reprimanded and received two years probation for slapping his inmate client with his file folder.

**Reap the Wild Wind** (Virginia State Bar, VSB Docket No. 17-070-106687): A Virginia lawyer's license was revoked after his conviction for spanking two of his female clients.

**When Push Comes to Shove** (M.R. 28824, 2017PR00060): A Missouri lawyer received one year of probation for pushing opposing counsel into a glass table.

**The Fly** (Ohio Board of Professional Conduct, Case No. 16-067): An Ohio lawyer has been charged, in part, for his discourteous response to a 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 is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

*[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**

**Borat:** The Rhode Island Supreme Court immediately suspended an attorney for an appellate filing in which he made anti-semitic remarks about a family court judge.

**The Seige** (California Bar Court, Case No. 14-C-3326): A California lawyer was suspended for 90 days for verbally and physically assaulting two Middle Eastern men in a shopping center parking lot.

**Diary of a Mad Black Woman** (Michigan Attorney Discipline Board, Case No. 17-84-GA): A Michigan lawyer was reprimanded for discourteous treatment of his probation officer, including saying she had “angry black woman’s syndrome.”

**The Adventures of Ford Fairlane** (Illinois Commission No. 2017PR00115): An Illinois lawyer was suspended for one year for making misogynistic remarks to opposing counsel.

## 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 Nebraska Revised Code of Judicial Conduct.

### **NOMINEES**

**Extra Ordinary Barry** (West Virginia, Case No. No. 16-0670): A recently-elected West Virginia judge was suspended for a photoshopped picture of his judicial election opponent during the last election.

**The King and I** (Arizona PDJ-2017-9007, State Bar No. 16-1692): An Arizona lawyer was reprimanded and put on two years probation for personal attacks against the trial judge in his criminal appeal brief.

**The Lake House** (296 Neb. 687): A Nebraska lawyer was suspended for one year for writing two letters to a judge in an effort to get him to recuse himself from the case.

**Gossip**: A California judge was admonished for making online accusations that a judicial election candidate was having sex with defense lawyers while acting as a prosecutor and for "friending" lawyers that appear before him on Facebook.

## 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

**Road House** (Illinois M.R.28528): An Illinois lawyer was censured for punching a woman in a bar.

**Road Rage** (Ohio Board of Professional Conduct, Case No. 2017-1417): An Ohio board recommends a two-year suspension (one year stayed) for a lawyer who got involved in a road rage incident with a cyclist.

**Backdraft** (California Bar Court, Case No. 16-C-13435-PEM): A California lawyer was privately resigned after being arrested for drunk and disorderly conduct.

**The 40-Year-Old Virgin** (Colorado 17PDJ072): A Colorado lawyer was publicly censured after pleading guilty to a misdemeanor domestic assault charge.

**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**

**Pulp Fiction** (Colorado 16PDJ013): A Colorado lawyer was disbarred for, among other things, leaving a briefcase containing drugs in a courtroom overnight.

**Mo' Better Blues** (Idaho Supreme Court, Case No. 2017\_0316): An Idaho lawyer received an 18-month suspension (12 months stayed) for purchasing drugs from his criminal defendant client.

**Wristcutters** (New Jersey Supreme Court, D-112 September Term 2016, 079130): A New Jersey lawyer was censured for appearing at a client's home uninvited and intoxicated and slitting his wrists in her bathroom.

**Nobody's Fool** (Virginia State Bar, VSB Docket No. 17-042-108562): A Virginia lawyer received a public reprimand for showing up to court intoxicated in a matter in which he was representing 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**

**The Godfather: Part III** (Iowa Supreme Court, Case No. 16-1266): An Iowa lawyer was suspended for at least six months without automatic reinstatement for his third DUI offense.

**High Kick Girl** (California Bar Court, Case No. 13-C-16396): A California lawyer has been recommended for disbarment after her conviction for vehicular homicide while driving under the influence of prescription medications.

**Better Living Through Chemistry** (California Bar Court, Case No. : A D.C. lawyer who had an "alcoholic blackout" behind the wheel of his car and severely injured another motorist was given a two year and one day stayed suspension.

**Hair** (Louisiana Supreme Court, Case No. 11-OB-1539): A Louisiana lawyer was denied reinstatement after testing positive for cocaine despite his attempt to avoid detection by shaving his entire body and cutting his fingernails to the quick.

**Honey, I Shrunk the Kids** (2017 OK 98, Case Number: SCBD-6597): An Oklahoma lawyer was suspended on an interim basis after an infant had to be treated for meth intoxication and meth was found in his home.

**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

**Cheaper By the Dozen** (Wisconsin Supreme Court, Case No. 2015AP1971-D): A Wisconsin lawyer consented to voluntary license revocation after admitting to 47 counts of misconduct in 11 different client matters.

**The Seventh Sign** (Wisconsin Supreme Court, Case No. 2016AP2452-D): A Wisconsin lawyer consented to a reprimand in his seventh disciplinary proceeding.

**It** (151 Ohio St.3d 462, 2017-Ohio-6871): An Ohio lawyer was permanently disbarred for stealing more than \$360,000 from 23 clients, in amounts ranging from \$3.80 to \$201,048.43.

**War and Peace** (2017 UT 50): The Utah Supreme Court affirmed the disbarment of a Utah lawyer who had received multiple warnings from multiple tribunals about her handling of cases in state and federal courts.

**Going in Style** (Pennsylvania Supreme Court, DB No.: 78 DB 2015): A Pennsylvania lawyer was disbarred after egregious misconduct in three matters, despite 54 years in the bar without previous discipline.

**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.