LEGAL ETHICS IS NO LAUGHING MATTER...
OR IS IT?

2016 Seminar Material

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LEGAL ETHICS IS NO LAUGHING MATTER... OR IS IT?

Featuring
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Lawpsided Seminars
(Mesa, AZ)
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THE 2016 ETHY AWARDS

The Best of the Worst Ethics Offenders

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Sean Carter is the founder of Lawpsided Seminars, 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 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:

RPC 5.5. Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

(a) A lawyer shall not:

   (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

   (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:

   (1) the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or

   (2) the lawyer is an in-house counsel and complies with R. 1:27-2; or

   (3) under any of the following circumstances:

      (i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

      (ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required;

      (iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;

      (iv) the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest,
a lawyer admitted to the Bar of this State who shall be held responsible for the
conduct of the out-of-State lawyer in the matter; or

(v) the lawyer practices under circumstances other than (i) through (iv) above, with
respect to a matter where the practice activity arises directly out of the lawyer's
representation on behalf of an existing client in a jurisdiction in which the lawyer
is admitted to practice, provided that such practice in this jurisdiction is occasional
and is undertaken only when the lawyer's disengagement would result in
substantial inefficiency, impracticality or detriment to the client.

RPC 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 RPC 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

Mr. Wonderful (142 Ohio St.3d 1272, 2015-Ohio-1951): An Ohio lawyer was suspended upon his felony conviction for unauthorized practice of law in New York, where he practiced without a license for 12 years.

Return to Sender (Case No. 2014AP175-D): A Wisconsin lawyer received reciprocal discipline of a 60-day suspension imposed in Arizona, notwithstanding the fact that the attorney was not licensed in Arizona.

Purple Rain (143 Ohio St.3d 411, 2015-Ohio-3277): Bar applicant is forever precluded from sitting for the bar exam because of a felony conviction for preparing false tax returns and seven personal bankruptcy filings.

Office Space (Admonition 15-12): A Massachusetts lawyer was admonished for failing to obtain a Limited In-House Corporate Counsel License after her job was relocated to Pennsylvania in 2011.

The Three Muskateers (SJC-11846): An applicant was denied admission to the Massachusetts Bar after three attorneys contacted the Board of Bar Examiners to express concern over the applicant’s behavior in his own divorce proceeding.

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.
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:

**RPC 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;

**NOMINEES**

**Blues Brothers** (No. 14PDJ105): A Colorado lawyer was suspended for two years, all but 90 days stayed, after being caught attempting to drive from California to Illinois with 7.25 pounds of marijuana in his car.

**Sex, Lies & Videotape** (Case No. 12-C-15595): A California lawyer received a two-year suspension for hiding a small video camera in a unisex public restroom on four occasions during a two-month period.

**Grapes of Wrath** (Slip Opinion No. 2015-Ohio-2488): An Ohio lawyer was suspended for two years, with one year stayed, for shoplifting pricey wines from a grocery store on seven occasions.

**The Carpenter** (Misc. Docket AG No. 28, September Term 2014): A Maryland lawyer was disbarred for working as an unlicensed home improvement contractor, which is a criminal offense in Maryland.

**Dukes of Hazzard** (Unfiled, as of yet): An Alabama lawyer is facing calls for his disbarment after removing confederate flags from a cemetery.

**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.

**RPC 1.5. Fees**

(a) A lawyer's fee shall be reasonable. 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) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client 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 law or by these rules. 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.

**RPC 1.8. Conflict of Interest: Current Clients; Specific Rules**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessor, security or other pecuniary interest adverse to a client unless:
(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.

(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.

**NOMINEES**

**Birdman** (Commission No. 2012PR00155): The Illinois Hearing Board has recommended a six-month suspension for a lawyer who charged contingency fees that were not set forth in writing.

**Perry Mason** (No. E2014-01062-SC-R3-BP): A Tennessee lawyer was suspended one year for billing clients for the time she spent watching legal shows on TV.

**Up in Smoke** (Docket No. 15-DB-001): A Louisiana lawyer received a deferred suspension of one year and one day for accepting marijuana as payment of his retainer.

**Get On Up** (No. 15-0859): An Iowa lawyer was suspended upon pleading guilty to fraud charges for overbilling the State Public Defenders Office.

**Shanghai Surprise** (No. 15–1391): An Iowa lawyer was suspended for 30 days for failing to notify clients of a 33% increase in her hourly rate.

**Pretty Woman** (No. 49S00-1402-DI-118): An Indiana lawyer was suspended for at least one year for attempting to trade legal services for sex.

**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.
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:

**RPC 1.15. Safekeeping Property**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. 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 seven years after the event that they record.

(b) 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.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

**RPC 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;
NOMINEES

Unsuitable for Children (Case No. 11-O-15647): A California lawyer received a two-year stayed suspension for using a client’s child support payments to pay his legal fees.

Petty Crimes (Appellate Case No. 2014-002459): A South Carolina lawyer was disbarred for misappropriating $4,000 in legal fees from his firm.


Trust (Misc. Docket AG No. 73, September 2013 Term): A Maryland lawyer was disbarred after his paralegal stole money from the client trust account.

Even Steven (S15Y1050): A Georgia lawyer surrendered his license after admitting to improperly withdrawing $275,000 from the client trust account, despite later replacing the 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 a Criminal 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.

RPC 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) A lawyer shall abide by a client’s decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client’s decision on the plea to be entered, jury trial, and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

RPC 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, or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests 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.

RPC 5.5. Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RPC 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

**Witness** (Slip Opinion No. 2015-Ohio-2020.): An Ohio lawyer received an indefinite suspension for paying a witness to leave the state.

**Forrest Gump** (15PDJ035.): A Colorado lawyer received a public censure for advising his criminal defendant client to flee the jurisdiction.

**A Civil Action** (A14-0570): A Minnesota lawyer was suspended for 30 days for negotiating a settlement in a civil case that required his client to forego testifying against the defendant in the underlying criminal matter.

**The Rainmaker** (2014 OK 44, Case Number: SCBD-6130): A New York lawyer resigned was suspended for two years for assisting a disbarred lawyer in the unauthorized practice of law by hiring him as a “legal assistant.”

**Incognito** (Case No. 65705): A Nevada disciplinary panel has recommended a five-year suspension for a lawyer who forged certificates of completion of court-ordered counseling and community service for his clients.

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.

RPC 1.4. Communication

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

NOMINEES

Ice Age (15PDJ034): A Colorado lawyer received a stayed 90-day suspension for failing to adequately advise his client about $235,000 of penalties that were assessed against her in a contested probate matter)

The Paper (Slip Opinion No. 2016-Ohio-535): An Ohio lawyer was suspended for six months for failing to advise two clients that their cases had been dismissed.

Waiting for Forever (D-61-15): A New York lawyer was suspended for 90 days for falsely telling that his client’s appeal was pending two years after it had been dismissed.

Charlie’s Angels: A D.C. Hearing Committee has charged a lawyer with, among other things, filing a Chapter 13 bankruptcy petition for a client with whom she had never communicated directly (she had only communicated with the client’s wife).

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.”

**RPC 1.6. Confidentiality of Information**

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).

(b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

1. from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

2. from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

**RPC 1.9. Duties to Former Clients**

(a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client’s interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client,

1. whose interests are materially adverse to that person; and

2. about whom the lawyer, while at the former firm, had personally acquired information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing. Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to RPC 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

(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:
(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

**NOMINEES**

**Porky’s Revenge** (2015 NY Slip Op 06483 [132 AD3d 1]): A New York lawyer was suspended for one year for making false statements about a former client in an effort to have the client deported in retaliation for discharging the lawyer.

**From Hell** (Docket No. DRB 14-105): A New Jersey lawyer was reprimanded for criticizing her client’s conduct in a letter that she forwarded to the opposing party.

**Annie Hall** (PRB File No. 2014.115): A Vermont lawyer was admonished for leaving a former client’s file in the hallway outside of his office.

**Old Yeller** (15PDJ040): A Colorado lawyer was suspended for 18 months for posting highly confidential client information online in retaliation for a negative client review.

**One Hour Photo**: An Illinois lawyer was sanctioned $5,000 for tweeting photos of evidence while observing a federal trial.

**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:

RPC 1.1. Competence

A lawyer shall not:

(a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.

(b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

RPC 1.3. Diligence

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

NOMINEES

The Help (Case No. 12-O-12279): A California lawyer who failed to comply with the terms of his disciplinary probation can not cure the defect by hiring another attorney to file his probation reports for him.

My Cousin Vinny (S15Y0904): A Georgia lawyer was disbarred for “an alarming lack of familiarity with fundamental legal procedure.”

Waiting to Exhale (2015 NY Slip Op 06097 [131 AD3d 171]): A New York lawyer received a public censure for a 20-year delay in completing a divorce filing.

An Innocent Man (2015 WY 112): A Wyoming lawyer received a public censure for negotiating a DUI guilty plea for a client who had 0.0% BAC.

Race Against Time (Commission No. 2015PR00074): A complaint has been filed against an Illinois lawyer who failed to deliver trust documents prior to the death of the 86-year-old testator.

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:

RPC 7.1. Communications Concerning a Lawyer's Service

(a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

(1) 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) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

RPC 7.2. Advertising

(a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

(b) A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used.

RPC 7.4. Communication of Fields of Practice and Certification

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has 43 been recognized or certified as a specialist in a particular field of law except as provided in paragraphs (b), (c), and (d) of this Rule.

(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 may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been approved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

RPC 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1. Except for organizations referred to in R. 1:21-1(e), the name under which a lawyer or law firm practices shall include the full or last names of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or retirement.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction. In New Jersey, identification of all lawyers of the firm, in advertisements, on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licensed to practice in New Jersey. Where the name of an attorney not licensed to practice in this State is used in a firm name, any advertisement, letterhead or other communication containing the firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.

(c) A firm name shall not contain the name of any person not actively associated with the firm as an attorney, other than that of a person or persons who have ceased to be associated with the firm through death or retirement.

(d) Lawyers may state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services.

RPC 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;
The Ethy Awards

NOMINEES

**Papillon** (No. 13-0491): A West Virginia lawyer received a reprimand for placing funds into prison inmate accounts to incentivize them to refer clients for new cases.

**Steve Jobs** (2015 Formal Ethics Opinion 3): The North Carolina State Bar opined that a lawyer may not offer a computer tablet to a prospective client in a direct mail solicitation letter.

**Win Win** (Advisory Opinion #15-04768-A): The Connecticut Grievance Committee opined that a proposed logo of “We listen. We care. We win” would be a violation of ethics rules.

**Family Business** (Commission No. 2012PR00176): An Illinois lawyer was suspended for 60 days for submitting a false letter of recommendation as part of a job application.

**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 obliviously limits to such expressions. Unfortunately, some lawyers ignore such limits and, in the process, create conflicts of interests.

RPC 1.7. Conflict of Interest: General Rule

(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:

(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.

RPC 1.8. Conflict of Interest: Current Clients; 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.

RPC 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;

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the courthouse, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice outside of the courthouse, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private
activities are not intended to be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

NOMINEES

My Best Friend’s Wife (No. 14PDJ097): A Colorado lawyer was suspended for 60 days for sleeping with his client’s wife.

Sugar Daddies (Misc. Docket AG No. 64, September Term 2013): A Maryland lawyer was disbarred for sending explicit text messages to an opposing pro se litigant.

52 Pick-Up (No. 14–1708): An Iowa lawyer was suspended for 30 months for making advances towards five women who were either clients or employees.

9½ Weeks (PDJ 2014-9104): An Arizona lawyer was suspended for 30 days for borrowing $10,000 from a client with whom he had an intimate relationship.


Jailhouse Rock: A Florida lawyer is facing felony charges and has been banned from all Broward County jails for allegedly having sex with a client during a jailhouse visit.

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 Ethy Awards

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

Picture Perfect: A Wisconsin lawyer is facing possible sanctions after posting a selfie of himself and a client after winning the client a new trial.

Extra Ordinary Barry: A D.C. lawyer was suspended for one year for failing to pay chiropractors who provided services for his personal injury clients.

Spies Like Us (144 Ohio St.3d 113, 2015-Ohio-3420): An Ohio lawyer received a public reprimand for using law enforcement computers to get information about men she and her friends were dating.

Deadbeat (14PDJ020): A Colorado lawyer was suspended for one year and one day for failing to pay child support.

Cuba (2015 NY Slip Op 06098 [131 AD3d 49]): A New York lawyer was disbarred for making false statements on customs forms.

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:

RPC 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;

(3) 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;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or

(5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

RPC 4.1. Truthfulness in Statements to Others

(a) In representing a client a lawyer shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.
RPC 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 RPC 1.6.

RPC 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;

NOMINEES

Ransom (2015 WY 59): A Wyoming lawyer was publicly censured for misrepresentations in an appellate brief.

European Vacation (A14-0995): A Minnesota lawyer was suspended for 120 days for claiming that she was hospitalized while she was actually on vacation in Paris.

Throw Momma from the Train (M.R. 27422): An Illinois lawyer resigned after it was discovered that he falsely claimed that his mother had died in a car accident to excuse his failure to timely respond to a discovery request.

Presumed Innocent (SC94418): A Missouri lawyer was disbarred for stealing client funds and then blaming the thefts on his wife.

All the President’s Men (Misc. Docket AG No. 0067, September Term 2014): A Maryland lawyer was disbarred for lying to the client for five years about the status of her case before finally concocting a bogus settlement, which the lawyer attempted to pay from his own pocket.

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:

**RPC 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 RPC 1.6.

**NOMINEES**

**The Jerk** (Appellate Case No. 2014-002762, Opinion No. 27533): A South Carolina lawyer was disbarred for several acts of malfeasance despite evidence that he was homeless for much of his legal career.

**Sister Act** (142 Ohio St.3d 35, 2015-Ohio-476): An Ohio lawyer received a one-year stayed suspension for misappropriating client funds because the client was her very disagreeable sister.

**The Taming of the Shrew** (2015 OK 22, 350 P.3d 108, Case Number: SCBD-6103): An Oklahoma lawyer was suspended for 18 months for stealing client funds to satisfy his discontent wife.

**Shame** (144 Ohio St.3d 257, 2015-Ohio-2724.): An Ohio lawyer was suspended for two years (six months stayed) for sleeping with four clients despite his claim of sex addiction.

**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.
Most Over-Animated Courtroom Outburst

While attorneys are encouraged to zealously represent their clients, it’s possible to cross the line in zealotry. Each of the nominees in this category has done just that and, in the process, has violated the following ethics rules:

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that 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, or the establishment of new 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.

RPC 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) engage in conduct intended to disrupt a tribunal; or

(d) contact or have discussions with a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral (hereinafter "judge") about the judge's post-retirement employment while the lawyer (or a law firm with or for whom the lawyer is a partner, associate, counsel, or contractor) is involved in a pending matter in which the judge is participating personally and substantially.

RPC 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

Judge Joe Brown (No. W2014-00825-COA-R3-JV): A Tennessee lawyer was found guilty of contempt for statements made to the court on behalf of a pro se litigant.

Django Unchained (2015 NY Slip Op 06301 [131 AD3d 268]): A New York lawyer was suspended for three-months for making racist, sexist, homophobic and threatening remarks to lawyers and judges.

The French Connection (No. 303, 2015): A Delaware prosecutor was suspended for six months and a day for demeaning comments made towards a pro se death penalty defendant.

The Howling (No. 201, 352-0): A Washington lawyer was suspended for one year for slamming objects on a table and making loud noises that “sounded like an animal being killed.”

Shoot to Kill (Case Nos.: 14-O-01867-LMA): The California Bar is attempting to disbar a lawyer who threatened opposing counsel with pepper spray and a stun gun at a deposition.

LESSON: While most lawyers will not cross these lines of acceptable behavior, some lawyers will flirt with it by engaging in acts of “minor” disrespect. Furthermore, lawyers must be mindful that their obligation to respect the judicial process (and its participants) doesn’t simply extend to the judicial setting. Lawyers have a continuing obligation to show deference to the court and respect for opposing parties and counsel.
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.

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that 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, or the establishment of new 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.

RPC 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) engage in conduct intended to disrupt a tribunal; or

RPC 4.4. Respect for 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.

NOMINEES

Frozen (2015 NY Slip Op 01951 [127 AD3d 99]): A New York lawyer was censured for threatening communications to the foreman of a jury that ruled against his client.

In the Name of the Father (A13-2350): A Minnesota lawyer was suspended for 90 days for using overly aggressive tactics to collect legal fees.

The Water Boy (15 DHC 20): A North Carolina lawyer was admonished for taking a water battle from the home of a suspect and using the DNA evidence to secure the release of her innocent client who served 40 years in prison for a crime he didn’t commit.
Hamilton (Commission No. 2014PR00161): A complaint has been filed against an Illinois lawyer who challenged a client to a duel in an attempt to collect legal fees.

The Hangover (SC14-1052, SC14-1054, SC14-1056): Three Florida lawyers were permanently disbarred for setting up opposing counsel for a DUI arrest in an attempt to gain an advantage at trial.
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:

RPC 4.4.  Respect for 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.

RPC 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 RPC 1.6.

RPC 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

Pulp Fiction (Case No. 15-14-AI): A Michigan lawyer was disbarred for attempting to hire a hitman to murder opposing counsel before a bankruptcy hearing.

Trolls (Commission No. 2015PR00068): The Illinois Disciplinary Commission has charged an attorney with ethics violations for attempting to extract settlements from defendants in copyright infringement cases by threatening to reveal that they visited adult websites.

Dead Men Don’t Wear Plaid (Commission No. 2015PR00100): The Illinois Disciplinary Commission has charged an attorney with ethics violations for attempting to settle a personal injury without informing the defendant that the plaintiff was dead.

Persecution (Misc. Docket AG No. 40, Sept. Term 2014): A Maryland lawyer was suspended indefinitely after unsuccessfully attempting to portray himself as a victim of bar counsel persecution and refusing to fully cooperate with bar counsel.

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.
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:

**RPC 4.4. Respect for 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.

**RPC 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**

**To Kill a Mockingbird** (13-DB-042): A Louisiana lawyer was suspended for one year and one day for failing to meet his registration, MCLE and dues requirements.

**Deliverance** (PDJ 2015-9011): An Arizona lawyer was admonished for making threats about the unpleasantness of prison to a client who had failed to pay his legal fees.

**Fighting Words** (No. 112,658): A Kansas lawyer was given three years probation for challenging lawyers and judges to fist fights.

**Snakes on a Plane** (Commission No. 2015PR00082): An Illinois disciplinary commission has filed a complaint against a lawyer who used profanity and made threats against a police officer and his wife after being arrested for DUI.

**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

Dirty Rotten Scoundrels (No. 112,923): A Kansas lawyer received a stayed three-year suspension for calling opposing counsel a derogatory name (that rhymes with “witch”).

Body Double (SC14-700): A Florida assistant public defender was fired and publicly reprimanded for using Photoshop to create an obscene image of a female co-worker.

The Lady and the Tramp: A California lawyer was ordered to make a $250 donation to the Women Lawyers of Los Angeles Foundation for warning opposing counsel that her behavior at a deposition was “not becoming of a woman.”

Monkey Business (S15Y1852): A Georgia lawyer was disbarred for calling an African-American court staffer a “little monkey.”
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.

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that 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, or the establishment of new 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.

RPC 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 of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who has been confirmed for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

NOMINEES

10 Things I Hate About You (Commission No. 2013PR00001): An Illinois patent lawyer received a three-year suspension for impugning the integrity of those working in the Cook County Probate Courts on her blog.

Twins (Case No. 12-O-15242): A California lawyer was publicly reproved for implicating that his opponent in a judicial election was implicated in bribery.

Yankee Doodle Dandy (15 DHC 47): A North Carolina lawyer was charged with ethics violations for making disparaging remarks about judges in court pleadings.

Dinner for Schmucks (CPC Docket No. 2015-090): An Arkansas lawyer has been cautioned for making his case for appeal by citing an article in which the presiding judge is called a “schmuck” (among other things).

Bad Blood (2014 OK 1, 318 P.3d 1114, Case Number: SCBD-5775; 6009): An Oklahoma lawyer was disbarred for stalking a judge’s wife.
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

**Unfaithful** (No. 2015-B-1399): A Louisiana lawyer received an interim suspension for ramming into his wife’s car after seeing her riding with another passenger.

**Road Rage** (Cause No. 56456): A Texas lawyer was disbarred, pending the appeal of her criminal conviction for brandishing a gun during a road rage incident.

**The Cake Eaters** (291 Neb. 566): A Nebraska lawyer was disbarred upon her conviction for stabbing her husband in bed, despite his assertions that his injuries were self-inflicted.

**Arachnophobia**: A West Virginia prosecutor was suspended from his job for pulling out a gun and waving it around in response to seeing fake spider Halloween decorations.

**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.

RPC 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:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

NOMINEES

Animal House (14-051-098765): A Virginia lawyer was suspended for six months for becoming disruptive while intoxicated at a CLE program.

Half Baked (Case No. 13-C-11781 - RAH): A California lawyer was suspended for 90 days for showing up to court under the influence of methamphetamine and marijuana.

Clean & Sober (No. 1918 Disciplinary Docket No.3, No. 177 DB 2013): A Pennsylvania lawyer was suspended for a year and one day for failing to remain sober during his probationary period.

Pain & Gain (No. BD-2015-058): A Massachusetts assistant district attorney was disbarred after pleading guilty to trading confidential law enforcement information to a drug kingpin in exchange for pain killers.

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.

RPC 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:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

NOMINEES

Losing Bet (14 DHC 30): A North Carolina lawyer consented to disbarment after pledging trust accounts to cover casino bets.

Fatal Bond (PDJ-2015-9007): An Arizona lawyer was suspended for two years for succumbing to his sex addiction and having an intimate relationship with an indigent criminal defendant client.

Rumors of Wars: 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.

Airport (No. 2015-B-1373): A Louisiana lawyer received a suspension of one year and one day for a series of alcohol-related incidents, including causing a disturbance at an airport departure gate.

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

Disciplinary authorities will often attempt to help a lawyer return to active duty status by requiring that the lawyer complete a program sponsored by that jurisdiction’s lawyers assistance program. Likewise, disciplinary authorities may place other conditions on an attorney’s reinstatement when it is deemed necessary to ensure that the lawyer does not relapse into unethical behavior. Lawyers who comply with such conditions can increase their chances of reinstatement and even reduce the length of their suspensions from the practice of law. On the other hand, lawyers that fail to take advantage of such opportunities almost completely eliminate their chances for reinstatement.

NOMINEES

**Mr. Deeds** (Commission No. 2013PR00076): An Illinois lawyer was only suspended for 60 days for improper handling of trust account funds in four matters due to “extraordinary testimony regarding his efforts to provide pro bono representation.”

**Cloudy With a Chance of Meatballs** (No. 1696 Disciplinary Docket No.3, No. 257 DB 2010): A Pennsylvania lawyer was reinstated to active status after serving a 30-month suspension for identity theft due to his successful recovery from gambling addiction.

**First Wives Club** (S15Y1787): A Georgia lawyer only received a reprimand for his ineffective representation of a client charged with murder in large part due to the favorable testimony of his current and ex-wife.

**Green Acres** (No. BD-2013-065): A Massachusetts lawyer was reinstated after a suspension during which he spent much of his time working on the family farm.
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.

**WINNER**

**Man of Thousand Faces** (Case Nos. 09-C-12545; 11-O-17317): A California lawyer was disbarred for abandoning the 4,500 clients of his loan modification firm. More than 1,100 clients have filed complaints with the bar against him.

**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.