

# **THE 2018 ETHY AWARDS**

A Two-Hour LIVE Webinar Covering:

**Legal Ethics**

Presented by:

Sean Carter  
CA Bar# 200356

November 14, 2018

**THE 2018 ETHY AWARDS**  
**(2 hours of legal ethics)**  
**Speaker: Sean A. Carter, Esq.**

In this Oscar-themed presentation, the speaker will present “awards” for the best (or rather, worst) ethics violations of 2016. In doing so, he will recap the facts of each disciplinary action, the ethics rules violated and the sanction imposed against the attorney. More importantly, he will explain how to avoid similar violations in the conduct of our legal practices.

0:00 Introduction

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

0:05 The Outlawyer Award

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

0:15 Most Creative Billing

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

0:25 The Houdini Award

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

0:35 The AT&T Award

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

0:45 The Joan Rivers Award

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

0:55 Least Competent in a Legal Representation

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

1:05 Worst Love Scene

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

1:15 The Hitchcock Award

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

1:25 Worst Legal Strategy

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

1:35 Miss (Mister) Uncongeniality

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

1:45 Worst Temper in a Non-Legal Setting

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

1:55 Conclusion and Q&A

## ABOUT THE SPEAKER

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

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

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

### Bar Associations

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

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

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

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

### **Law Firms**

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

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

### **Corporations**

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

### **Law Schools**

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

North Carolina Central University  
University of Houston  
Washburn University  
Widener University

### **Government Agencies**

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

### **Professional Associations**

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



# **THE 2018 ETHY AWARDS**

## **The Best of the Worst Ethics Offenders**

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**Sean Carter**

**Humorist at Law**

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:

## **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**

**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.

### **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, possessory, 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

**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:

## **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

**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 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;

- (d) 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**

**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.

## **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**

**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."

### **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

**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 Yelp** (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:

## **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 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:

## **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;

## 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.

### **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 court house, 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 court house, 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

**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:

## **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**

**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:

### **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**

**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.

## **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**

**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.

## The Ethy Awards

**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:

## **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

**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:

## **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**

**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:

### **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

**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.

### 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.

## **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**

**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.

## **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**

**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.

## **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**

**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.

## WINNER

**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.