



A Comedic Review of Recent Supreme Court Decisions and Other Notable Cases

8:50am – 9:00am - Introduction

9:00am – 10:30am - **Ethics - Deal or no deal? After learning the predicament of certain attorneys who played fast and loose with the ethics rules, you must decide if you will take a deal or take your chances at trial**

Case studies of Lawyers facing discipline for engaging in dishonest conduct¹

ABA Model Rule 3.3 - Candor towards the Tribunal

ABA Model Rule 4.1 - Truthfulness in Statements to Others

ABA Model Rule 8.4 - Misconduct

Varana v. FORBA Holdings, LLC, 42 Misc. 3d 303; 974 N.Y.S.2d 913 (N.Y. Misc 2013). An insurance company hired a lawyer to monitor a trial involving an insured. This attorney took his job a little too seriously, so much so that the jurors complained to the court that this attorney was “creepy” and “scary”. The court overturned a defense verdict due to the “stalking” actions of this attorney.

In re Hon. John C. Murphy, Florida Judicial Qualifications Commission, Case No. 14-255. The commission found probable cause existed for formal proceedings to be commenced against a judge based on his qualifications to hold the office after he told a public defender “You know if I had a rock, I would throw it at your right now. Stop pissing me off. Just sit down. I’ll take care of this. I don’t need your help. Sit down.... I said sit down. If you want to fight, let’s go out back and I’ll just beat your ass.”

In re Richmond, 996 So. 2d 282, 283 (La.2008). Based on the stipulations and the other evidence in the record, it was undisputed that the attorney filed a notice of candidacy in which he swore under oath that he had been domiciled at a certain address for two years prior to an election for the office of city council. The supreme court found the attorney's statement of domicile in the qualifying form was false, and that after his candidacy for office was challenged, he made similarly false statements regarding his domicile in pleadings and oral testimony in the election contest. Moreover, the supreme court accepted the hearing committee's factual finding that the attorney's misconduct was knowing. The supreme court determined that the attorney had violated La. St. Bar art. XVI, R. 3.3 and 8.4(c). The attorney was suspended from the practice of law for six months. It was further ordered that all but 60 days of the suspension should be deferred.

Morris v. Coker, No. A-11-MC-712-SS, slip op. (W.D. Tex. 2011). In response to a motion to quash subpoenas, a judge ordered the parties to attend a “kindergarten party”, including learning “how to telephone and communicate with a lawyer” and “an advanced seminar on not wasting the time of a busy federal judge and his staff because you are unable to practice law at a level of a first year law student.”

Attorney Grievance Commission of Maryland v. Thomas Patrick Dore, 433 Md. 685; 73 A.3d 161 (Md. App. 2013). Court suspended attorney for violating rule requiring candor to the tribunal when he authorized employees to sign his name to affidavits attesting that he had personal knowledge of the matters in the affidavit.

¹ Attorney discussion might require that certain subjects are left to the printed material for coverage.

In re Harrod, Illinois Disciplinary Commission, No. 96 SH 579, slip op. (1997). The commission reinstated an attorney (and previous judge) who had been disbarred. In 1982, the attorney drafted a will which he knew was improperly attested to. He had his own brother sign as an attesting witness when, in fact, his brother was not present. He then filed the will for probate knowing it was invalid. The attorney lied under oath and committed perjury regarding the signing of the will, on three occasions. To make matters worse, in April 1986, while he was on probation for his perjury conviction, the attorney committed retail theft by stealing about \$26 worth of merchandise from a K-mart store, to which he plead guilty. The Panel also noted the immature acts of the attorney. For example, a few years prior to his disbarment, he sent anonymous letters to certain attorneys and obtained magazine and book subscriptions for members of the Courts Commission who investigated and ruled against him. (The implication here is that these magazine and book subscriptions were of the adult variety and slightly embarrassing to receive at work.). While the perjury charges and the theft resulted in the attorney's disbarment, the commission did note his character had improved, and reinstated his license.

In re Alberg, 296 Kan. 795; 294 P.3d 1192 (2013). The attorney began an attorney/client relationship with a woman to represent her in a divorce, and a sexual relationship with the woman. But the attorney failed to secure the financial terms of the attorney/client relationship. The attorney then tried to bill the woman for his services. (We will assume only for the legal services.) The romance fizzled, and the woman wanted an accounting of her money in the trust account. While the attorney provided an accounting, he omitted the money that he had borrowed from time to time. Consequently, the woman sued the attorney and won. The court found the attorney violated his ethical duties (KRPC 1.7(a)(2) and 1.8(k)) by having a sexual relationship with a person after the attorney client relationship was formed. The court found that the attorney violated rule 1.15 by commingling his personal funds with client funds. Because the attorney submitted false billing entries to the court, the court found that he violated rule 3.3 requiring candor towards the tribunal. And if this were not enough, the attorney was busted for growing marijuana. He pled guilty for possession, and the court found that such acts violated rule 8.4 (prohibiting criminal acts that reflect adversely on the lawyer's honesty, trustworthiness and fitness to be a lawyer). The court disbarred the attorney.

In re Sutton, 265 Kan. 251; 959 P.2d 904 (1998). During the course of the hearing, the attorney whispered to his own witness, the arresting officer, that the judge was acting like a cockroach. The comment was picked up on a tape recording machine that was used in the courtroom. He later got into a bar fight and was charged with disturbing the peace. He pled not guilty and the charges were dropped. On another occasion, he encountered road construction that limited the highway to just one lane. Rather than wait his turn, he tried to drive through the construction. When a road worker waived the stop sign at him, his car hit the stop sign. At which point he got out of his car, yelled at the road worker, and threw a Pepsi bottle at her. He then got in his car and drove through the road construction out of turn. Finally, the attorney attended a seminar and was reimbursed twice for his expenses, once by the county (his employer) and once by the National Association of Prosecutor Coordinators. The panel found no violation of the rules for the allegations that he called a judge a cockroach or for the bar fight. As for the road rage and double expense allegations, the panel recommended public censure, which the court ordered.

Estate of Shelton, 2009 Phila. Ct. Com. Pl. LEXIS 170, 1 (Pa. C.P. 2009). Pa. R. Prof. Conduct 3.3(c) provides that the obligations of an attorney under both Rule 3.3(a) and (b) would trump the attorney's obligations of confidentiality that are set forth in Pa. R. Prof. Conduct 1.6

Bank of N.Y. Mellon v. Tarboro, 2013 Phila. Ct. Com. Pl. LEXIS 289, 1, 31 Pa. D. & C.5th 526, 527 (Pa. C.P. 2013). A lawyer has duties of disclosure to a tribunal under Pa. R. Prof.

Conduct 3.3(a) that may entail disclosure of information related to the representation. At the same time, in a civil matter counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client.

In re Druten, 297 Kan. 432; 301 P.3d 319 (2013). The court found that an attorney violated rule 3.3 (candor towards the tribunal) when he informed the court that discovery had been signed by the party, when in fact, this had not occurred. The court found that the attorney violated rule 8.4 (professional misconduct) when he lied to his client by telling him he had refiled his complaint, when he had not. The court disbarred the attorney.

In re Ketter, 268 Kan. 146; 992 P.2d 205 (1999). The panel found that the attorney violated KRPC 8.4. He was convicted of indecent exposure when in a Topeka grocery store parking lot, he parked his car and masturbated. The attorney defended himself by saying he was not masturbating, but was suffering from a severe case of "blue balls." He claimed that he was "merely massaging his testicles to relieve the pain." Another person saw the incident and reported it. This was not his first experience in public exposure, but had several incidents of similar conduct. The court noted that he had a medical condition and that a treating physician testified that he "had an irresistible compulsion to engage in that behavior which he could not control." The court ordered him to continue treatment, suspended him for three years, and then placed him on probation.

In re Baker, 296 Kan. 696; 294 P.3d 326 (2013). Attorney violated rule 4.1 and 8.4 when he made material misstatements and omissions in trying to obtain investors in a company he formed. He was disbarred.

In re Beck, 298 Kan. 881; 318 P.3d 977 (2014). Attorney was disbarred. Among other infractions, he violated rule 8.4 ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.") The attorney forged his secretary's name and directed his client to sign the mother's name to a trust document and other documents, including a last will and testament.

In re Mintz, 298 Kan. 897; 317 P.3d 756 (2014). Attorney was indefinitely suspended after he lied to investigators about the death of his girlfriend. His girlfriend struggled with alcohol, and had just successfully graduated from a treatment program. Shortly thereafter, the attorney went with his girlfriend to several drinking locations and consumed a lot of alcohol. When he found her dead the next morning from a fall, he deleted text messages, moved her car from a restaurant to her apartment and lied to authorities about his activities the night before. He defended himself by saying he feared what her family would do to him when they found out. While the panel concluded that this was "an isolated incident of dishonest conduct" and dismissed the charges, the court was not so lenient and suspended the attorney indefinitely.

Bracy v. Gramley, 81 F.3d 684 (7th Cir. 1996). A judge is convicted of having accepted bribes from criminal defendants.

People v. Thorton, 80 Mich. App. 746 (1977). Conviction was overturned when prosecutors presented a witness that they knew was lying. The prosecutor also failed to give the changed testimony to the defendants attorney

United States v. Sterba, 22 F.Supp.2d 1333 (M.D. Fla. 1998). Cox, the prosecuting attorney, attempted to shore upon a weak case of soliciting sex with a minor via the internet by concealing the identity of, and presenting false evidence about, the government's informer and participant in the supposed crime.

People v. Jones, 2003 Mich.App.Lexis 2347. Prosecutor offered immunity to witness, who then changed his testimony and testified at trial in a way contrary to the way he testified at first. No rules violation. An attorney can believe his own witness.

Lawyer Regulation: Bar Counsel Insider: Is it Ever Okay for Lawyers to Lie? 44 AZ Attorney 84 (May 2008) – A criminal defense lawyer was referred to the state bar for creating a ruse

to serve subpoenas. She learned that they planned to attend a Halloween party on the reservation so she masqueraded as a marketing representative for a new (fictitious) product entitled "Zephyr Lager." She then offered the tribal members coupons with which to obtain free samples if they identified themselves on her "World Tour 2005" sign-up sheet. When she saw the sought-for signatures, she served the subpoenas.

In re Joe Caramagno, Las Vegas attorney was disbarred after showing up in court run, causing mistrial in kidnapping case.

10:30am - 10:40am - Break (10 minutes)

10:40am – 12:10pm – Ethics and the Movies

Model Rules of Professional Conduct Rule 3.3 Candor towards the tribunal

Comments to Rule 3.3

Rule 4.1 – Truthfulness in Statements to Others

Comments to Rule 4.1

Rule 8.4 Misconduct

Comments to Rule 8.4

18 USC 1001

Model Rule 7.1 – Communications concerning a lawyer’s services

Case illustrations concerning lawyer advertising

Roundtable discussion on obstacles to maintaining an honest law practice, including:

- Learning facts about the case
- Witness preparation
- Depositions
- Negotiations

12:10pm – 1:00pm - Lunch

1:00 pm – 2:30 noon – Top 10 Wacky Cases and how they can impact your practice!

Obstruction of justice meets the evasive witness answer

- United States v. Bonds, 2015 U.S. App. LEXIS 6708 (9th Cir. 2015)
- 18 U.S.C. 1503(a)
- The materiality test

Implied Primary Assumption of the Risk vs. Implied Secondary Assumption of the Risk in Comparative Fault States

- Coomer v. Kansas City Royals, 437 S.W.3d 184 (Mo. 2014)
- Restatement (Second) of Torts, § 343).
- Baseball Rule - Anderson v. Kansas City Baseball Club, 231 S.W.2d 170, 172 (Mo. 1950)
- Lowe v. California League of Prof. Baseball, 56 Cal. App. 4th 112, 65 Cal. Rptr. 2d 105 (1997).
- Cohen v. Sterling Mets, L.P, 17 Misc. 3d 218, 840 N.Y.S.2d 527 (N.Y. Sup. Ct. 2007), aff'd 58 A.D.3d 791, 870 N.Y.S.2d 914 (N.Y. App. Div. 2009).

Cheaters Can Win!

- Mayer v. Belichick, 605 F.3d 223 (3rd Cir. 2010)
- Federal Rule of Civil Procedure 12(b)(6)
- Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)
- Wood v. Leadbitter, (1845) 153 Eng. Rep. 351 (Exch.)
- Bowers v. Federation Internationale De L'Automobile, 489 F.3d 316 (7th Cir. 2007)
- Castillo v. Tyson, 268 A.D.2d 336, 701 N.Y.S.2d 423 (App. Div. 2000)

Deflating Deflategate

- *NFL Players Ass'n v. NFL*, 2015 U.S. Dist. Lexis 23843 (Minn. 2015)
- Article 46 of the Collective Bargaining Agreement
- The NFL's Personal Conduct Policy
- Enhanced NFL Personal Conduct Policy
- 29 U.S.C. § 185
- Section 10 of the Federal Arbitration Act, 9 U.S.C. §10.
- The Law of the Shop doctrine
- *NFL Mgmt. Council v. NFL Players Ass'n*, 2015 U.S. 119283 (S.D.N.Y. 2015)
- NFL's Policy on Integrity of the Game & Enforcement of Competitive Rules
- Game Operations Policy Manual for Member Clubs (2014 Edition)
- Collective Bargaining Agreement, Article 46 § 1(a) – Conduct detrimental standard
- NFL Players Contract
- Wells Report
- NFL Arbitration Process

Anti-trust and the draft – Can all NFL teams discriminate against me for being slow?

- *Clarett v. NFL*, 369 F.3d 124 (2nd Cir. 2004)
- § 1 of the Sherman Act, 15 U.S.C. § 1
- § 4 of the Clayton Act, 15 U.S.C.S. §15

Anti-trust and amateurism

- *O'Bannon v. NCAA*, 2015 U.S. App. Lexis 17193 (9th Cir. 2015)
- NCAA's history of amateurism
- Rule of Reason

Playing with the Big Boys: Anti-trust and competing leagues

- *United States Football League v. National Football League*, 842 F.2d 1335 (2nd Cir. 1988)
- §2 of the Sherman Anti-Trust Act, 15 U.S.C.S. § 2
- Noerr-Pennington Doctrine
- *AFL v. NFL*, 323 F.2d 124 (4th Cir. 1963), aff'g 205 F. Supp. 60.
- *Mid-South Grizzlies v. National Football League*, 720 F.2d 772 (3d Cir. 1983) (no anti-trust violation when NFL denied admission to a football franchise into its league, even if such team was qualified)
- Sports Broadcasting Act, Pub. L. No. 89-800, § 6(b)(1), 80 Stat. 1515 (codified as amended at 15 U.S.C. § 1291).
- *United States Football League v. National Football League*, 887 F.2d 408 (2nd Cir. 1989) (affirming an attorney fee award to plaintiffs-appellees for \$ 5,529,247.25 and costs of \$ 62,220.92 work done in connection with an antitrust suit that resulted in a jury verdict of \$ 1.00, trebled to \$ 3.00, in favor of plaintiffs-appellees.)

Ashley Madison

- *In re: Ashley Madison Customer Data Security Breach Litigation*, United States Judicial Panel on Multidistrict Litigation, MDL No. 2669 (Ashley Madison Class Action lawsuit for “failure to delete”)
- “Suicide” lawsuits
- Extortion lawsuits

EEOC v. Abercrombie and Fitch Stores, 575 U.S. __ (2015)

- Discrimination v. the right to be snobby

- *Chambers v. God*, District Court of Douglas County, Nebraska (Sept. 14, 2007) – stumbling out of the gate in a lawsuit can doom your chances for gold!

- *Kansas v. William Marotta* – avoiding malpractice in the modern age of family law.
- *In re Hon. John C. Murphy, Florida Judicial Qualifications Commission*, Case No. 14-255 – foster the appropriate level of respect between attorney and court
- *Koutsouradis v. Delta Air Lines, Inc.*, 427 F.3d 1339 (11th Cir. 2005) – why arguing spurious claims can hurt your case, and other observations from Captain Obvious.
- *Pelman v. McDonalds*, 237 F. Supp.2d 512 (S.D.N.Y. 2003) – should we be filing a class action over the demise of the class action?
- *Costanza v. Seinfeld*, 693 N.Y.S.2d 897 (S.C.N.Y. County 1999) – when to push the bounds of creating new law, and when to realize you have a lawsuit about nothing.
- *Dougherty v. Home Depot* – the expansive jurisprudence on commode casualties.
- *Billittier v. Clark*, 43 Misc. 3d 1223(A) | 2014 N.Y. Misc. LEXIS 2174 – use of cell phones/text messaging as evidence top stop an “un-gifter”
- In re Havwer – strategy tips to avoid from Thomas Jefferson
- *Christy Bros Circus v. Turnage*, 38 Ga. App. 581 (1928) – how to turn bad facts into bad/good law
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2:30pm – 2:40pm – Break

2:40pm – 4:10pm - Supreme Court Jiggery-Pokery! Meet (not greet) the Justices and hear them delivery the funniest jokes from the bench.

Meet the Justices, learn their ideologies and jurisprudence

- Chief Justice Roberts
- Justice Antonin Scalia (what this vacancy means to the court)
- Justice Anthony Kennedy
- Justice Clarence Thomas
- Justice Ruth Bader Ginsburg
- Justice Stephen Breyer
- Justice Samuel Alito
- Justice Sonia Sotomayor
- Justice Elena Kagan

Recent landmark cases and how they will impact your practice²

- *Galloway v Greece*, 572 U.S. ___ (2014)
- *Citizens United v. FEC*, 558 U.S. 310 (2010)
- *District of Columbia v. Heller*, 554 U.S. 570 (2008)
- *Maryland v. King*, 133 S.Ct. 1958 (2013)
- *J. D. B. v. North Carolina*, 131 S. Ct. 2394 (2011)
- *NLRB v. Canning*, 134 S.Ct. 2550 (2014)
- *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)
- *King v. Burwell*, 135 S.Ct. 2480 (2015)

² We will cover the cases that most interest the attending attorneys and the remainder of the cases will be covered in the written materials.

- *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) – obtaining a warrant when a person is sobering up. Warrant requirements for DUI stops.
- *Riley v. California*, 134 S.Ct. 2473 (2014) – Applying the search incident to arrest standard to cell phones.
- *Maryland v King*, 133 S.Ct. 1958 (2013) – Warrantless searches of fingerprints, mug shots and DNA.
- *Florida v. Harris*, 133 S.Ct. 1050 (2013) – Reasonable stops and bad dogs.
- *Kentucky v King*, 131 S.Ct. 1849 (2011) – Exigent circumstances and flushing toilets.
- *Heien v. North Carolina*, 135 S.Ct. 530 (2014) – Is a mistake of law an excuse now?
- *United States v. Jones*, 132 S.Ct. 945 (2012) – GPS tracking of cars – Privacy vs. Trespass issues.
- *Kimble v. Marvel Entertainment*, 576 U.S. ___ (2015)
- *Hall v. Florida*, 134 S.Ct. 1986 (2014) – Stats, stats, and more stats - How to tell is a person's intelligence can keep them off of death row.
- *Miller v. Alabama*, 132 S.Ct. 2455 (2012) – Evaluating cruel and unusual punishments to youth who commit cruel and unusual crimes
- *Glossip v. Gross*, 135 S.Ct. 2726 (2015) – applying the 8th Amendment to death drugs
- *Kansas v. Gleason*, 299 Kan. 1127 (2014), cert granted 135 S.Ct. 1698 (2015) – instructing juries on how to issue the death penalty

4:10pm - End



A Comedic Review of Recent Supreme Court Decisions and Other Notable Cases Table of Contents

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