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Legal Ethics What You Need to Know Entering 2025

Presented to RE/DC In-House Counsel

By Michelle Greer Galloway

On September 26, 2024

attorney advertisement

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Your Presenter

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Overview

- Ethics Updates: ABA opinions, State rules and opinions
- AI: Opinions, guidance and cases re use of AI
- Ethical Duties: Competence, Confidentiality, Loyalty, Candor
- Ethical Duties: Supervisory/Subordinate Attorneys
- Ethical Duties: Civility, Harassment and Discrimination
- Other Things Ethical Lawyers Should Not Do

Public View of Judiciary and Lawyers in 2024

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S. Ct. Code of Conduct

- Code of conduct, signed by 9 Justices, released Nov. 13, 2023
 - “CANON 1: A JUSTICE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY. A Justice of the Supreme Court of the United States should maintain and observe high standards of conduct in order to preserve the integrity and independence of the federal judiciary.”

Judge's Financial Disclosures

- \$2.5B judgment vacated where judge did not recuse and had \$5K stake in one of parties. *Centripetal Networks v. Cisco*, Fed. Cir., Case No. 21-1888 (June 23, 2022) (vacating \$2.5B judgment), cert. denied (2023).
- Creation of database requiring judge's financial disclosures – missing many
- Additional cases of Judge's recusing based on financial holdings

Judge's Undisclosed Relationship: \$125M Verdict Vacated

- 5th Circuit vacated award in contract suit
 - Parties agreed to have case heard by Magistrate
 - Subsequent evidentiary hearing found Magistrate did not disclose a “close” 40 year friendship between herself, her family, lead counsel, and family of lead counsel
 - *IFG Port Holdings v. Lake Charles Harbor*, Case No. 22-30398 (5th Cir. Sept. 21, 2023) (findings from evidentiary hearing July 29, 2024)

Judge's Undisclosed Relationships

- Former bankruptcy Judge in Houston had a relationship with attorney since at least 2017; attorney a partner at Jackson Walker; firm appeared before Judge
 - Relationship undisclosed
 - See James Nani and Ronnie Greene, Sex, Secrets Trigger Downfall of Star Texas Bankruptcy Judge, Bloomberg Law (April 30, 2024); James Nani and Ronnie Greene, How Four Judges Kept Romance Allegations Quiet for Two Years, Bloomberg Law (May 1, 2024)
 - Entire Jackson Walker firm referred for disciplinary proceeding.
 - See David Thomas, Law Firm Jackson Walker Breached Ethical Duties Over Secret Romance, Judge Says, reuters.com (Sept. 23, 2024)

Anonymous Letter 2021

Corruption Involving Judge David R. Jones

The romantic relationship between Judge Jones and Elizabeth Freeman is publicly known and because of that, the largest corporations and clients willingly choose to work with JW lawyers knowing that they will likely have the court and the judge in their favor.

David R. Jones has had a romantic relationship with Elizabeth Carol Freeman (TX Bar No: 24009222) who worked as his law clerk for 6 years. After Freeman left her clerk position with Judge Jones, she took on the position as a partner for Jackson Walker LLP (JW) in its Houston office along with Matthew D. Cavanaugh (TX Bar No: 24062656). Both Elizabeth and Matthew and other JW partners set up an organization to assist bankruptcy clients.

Corruption:

The court that Judge Jones works in receives all the bankruptcy files in the area and consequently all the cases that come from clients of JW go directly into his hands.

What is concerning is that there is clearly a conflict of interest. Instead of taking these particular lawsuits involving JW clients, he should instead not take on those cases to avoid a conflict of interest.

The romantic relationship between Judge Jones and Elizabeth Freeman is publicly known and because of that, the largest corporations and clients willingly choose to work with JW lawyers knowing that they will likely have the court and the judge in their favor.

Judges and Harassment

- Legalaccountabilityproject.org “to ensure that law clerks have positive clerkship experiences, while extending support and resources to those who do not.”

Resignation: “Sexualized” Relationship with Clerk

- Judicial Council of the Ninth Circuit issued order May 23, 2024 and affirmed (Aug. 22, 2024) finding Judge Kindred (D. Alaska) engaged in judicial misconduct including “inappropriately sexualized relationships” with law clerk and created a “hostile chambers environment for his law clerks”
- Judge Kindred resigned July 3, 2024
- US Attorney’s Office has identified 21 criminal cases in which there may have been a conflict of interest

Handcuffing Teens Sitting In Gallery

- S.D. Cal. Judge ordered defendant's 13 year old daughter handcuffed
 - *In re: Complaint Under the Judicial Conduct and Disability Act*, Case No. 24-01 (9th Cir. Committee on Judicial Conduct and Disability of the Judicial Conference of the United States August 13, 2024), affirming finding of judicial misconduct (May 1, 2024)
- Suit brought by teen who was handcuffed and detained after falling asleep in courtroom during field trip on August 13 (ordered by Michigan state judge).
 - *ELG v. King*, Case No. 2:24-cv-12195 (E.D. Mich.) (Complaint filed)

Examples of Other Ethics Complaints Re Judges

- Judge making demeaning comments and banning female attorney from courtroom
- Judge recorded saying “I’m a new racist” and using slurs
- Judge displaying confederate flag
- Judges using profanity, racial slurs, and other demeaning remarks about litigants
- Judge banned law clerk from courthouse and threatened jail
- Judge’s social media posts

Juror Bribed

Juror excused after mystery woman left bag of cash at her home and explained why

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 4, 2024, 11:05 AM CDT

Other Challenges In Legal Profession

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In the News: Campus Protests

- Firms reported to have rescinded offers including Winston & Strawn, Davis Polk, Foley & Lardner
- Sullivan & Cromwell issued statement that it will “review resumes for participation in pro-terrorist groups and other similar activities” and will request “list of all campus organizations the student has been or is currently a part of and monitor activities from those groups that do not align with our ethical standards”

Wellness

- Continued emphasis on attorney wellness
 - Relationship to competency
- Lawyer assistance programs
- National Suicide Prevention Lifeline

Lawyers: Thinking About Legal Theories and Public Relations

American Airlines backtracks on filing that blamed 9-year-old for being filmed in bathroom

"We do not believe this child is at fault," the airline said Wednesday.

By [Ayesha Ali](#)
May 24, 2024, 4:47 PM



FORBES > BUSINESS

BREAKING

Disney Won't Block Wrongful Death Lawsuit Because Widower Joined Disney+—Reversing Course After Criticism

Mary Whitfill Roeloffs Forbes Staff

Mary Roeloffs is a Forbes breaking news reporter covering pop culture.

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Aug 20, 2024, 03:49pm EDT

ABA Ethics Opinions

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ABA Op. 509: Misuse Gov't Info (2024)

- Discusses the disqualification provisions of Rule 1.11(c) for former and current government employees to prevent use of “confidential government information” (i.e., information obtained under government authority)

ABA Op. 510: Imputation of Conflict – Prospective Clients (2024)

- “Under Rule 1.18 of the Model Rules of Professional Conduct, a lawyer who was consulted about a matter by a prospective client, but not retained, is disqualified from representing another client who is adverse to the prospective client in the same or a substantially related matter if the lawyer received from the prospective client “disqualifying information”—i.e., information that could be significantly harmful to the prospective client in the matter.”
- Discusses reasonable measures to avoid DQ

ABA Op. 511R: Confidentiality Obligations of Lawyers Posting to Listservs (2024)

- “Rule 1.6 prohibits a lawyer from posting questions or comments relating to a representation to a listserv, even in hypothetical or abstract form, without the client’s informed consent if there is a reasonable likelihood that the lawyer’s questions or comments will disclose information relating to the representation that would allow a reader then or later to infer the identity of the lawyer’s client or the situation involved. A lawyer may, however, participate in listserv discussions such as those related to legal news, recent decisions, or changes in the law, without a client’s informed consent if the lawyer’s contributions will not disclose, or be reasonably likely to lead to the disclosure of, information relating to a client representation.”

ABA Op. 512: GenAI Tools (July 29, 2024)

- “To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.”

ABA Op. 513: Duty to Inquire (2024)

- “As recently revised, Model Rule 1.16(a) provides that: “A lawyer **shall inquire** into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.” To reduce the risk of counseling or assisting a crime or fraud, some level of inquiry and assessment is **required before undertaking each representation.**” (emphasis added)

Duty to Inquire Ongoing

- “**Further inquiry and assessment is required** when the lawyer becomes aware of a change in the facts and circumstances relating to the representation that raises questions about whether the client is using the lawyer’s services to commit or further a crime or fraud.” (emphasis added)

Duty to Inquire -- Resolution

- “The lawyer need not resolve all doubts. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.”

Lesson from UK

- UK Solicitors Regulation Authority prosecuting Biglaw firm for lack of procedure onboarding a client
 - Lateral partner brought Client with him to BigLaw firm
 - Client was a bank chairman later jailed for laundering billions
 - Firm's risk and compliance team raised concerns over Client's plans to buy a UK bank
 - Partner responded saying memo "untrustworthy" and that compliance team member was "[****] showing poor judgment and not knowing what he is doing."
 - SRA said this approach to due diligence was the "exact opposite" of what is required
 - See <https://www.rollonfriday.com/news-content/dentons-partner-called-colleague-big-prick-requesting-client-compliance-checks>

State Ethics Opinions and Issues of Note

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NYC Op. 2024-2: Re Client's Litigation Funding Agreements

- Discusses obligation when advising client in situation where client contracts with third party where third party provides funds to pay fees and litigation expenses

NYC Op. 2024-3: Ethical Obligations Relating to a Cybersecurity Incident

- After cybersecurity incident at firm/law department:
 - Must take steps to protect client's confidential information
 - May have obligation under Rule 1.4 to notify clients
 - No prohibition on paying ransom
 - Only disclose information to law enforcement if permitted by Rules 1.6, 1.9 or 1.18 and consider risks to client
 - Conflicts of interest may arise

Mass. Ethics Op. 2024-2: Published Judicial Opinions and Confidentiality

- “A published judicial opinion can nevertheless contain confidential information protected by Rule 1.6 of the Massachusetts Rules of Professional Conduct. Accordingly, before including a citation to such an opinion on a firm website, a lawyer must inquire whether the information is “generally known” within the meaning of Rule 1.6(a). If not, and if the information is embarrassing or detrimental to the client, the lawyer must obtain the client’s informed consent before including a citation.”

NYS Bar Ethics Op 1270 (2024): No Recording Clause

- “A lawyer’s letter of engagement or retainer agreement may prohibit a client from making video recordings and audio recordings of communications between the lawyer and client, provided the letter of engagement or retainer agreement: (a) does not mislead the client regarding circumstances under which the lawyer may seek to withdraw from the representation; and (b) does not serve as irrevocable advance consent by the client to withdrawal by the lawyer if the client violates the prohibition.”

CA State Bar: Continuing Girardi Fallout

- The Lion Air Litigation and criminal indictment of Girardi
- CA State Bar case against Girardi
 - Lazar Report found 130 complaints filed against Girardi from 1982-Jan. 2021
 - Halpern May Report found Girardi cultivated influence with the state bar which included gifts to State Bar personnel of over \$1M
 - See <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-of-california-releases-reports-detailing-past-unethical-conduct-in-handling-girardi-complaints>
- Girardi convicted for stealing \$15M from 4 clients; awaiting sentencing
- Four other firm attorneys received target letters

CA Op. Re Judges Reporting Atty Misconduct

- CA Supreme Court Committee on Judicial Ethics Opinions Op. 2023-025
 - Decision process to determine if Judge must or should report attorney to State Bar under Bus. & Prof. Code 6086.7
 - “Generally, misconduct involves a dishonest or deceptive act, or egregious or outrageous behavior.”
 - Mandatory reporting includes finding of contempt, Court modifies or reverses a judgment based in part on attorney’s misconduct, attorney sanctioned more than \$1000.
 - Also sets forth conditions for discretionary reporting

CA Rule 8.3

- Effective August 1, 2023 “requires a lawyer who knows of credible evidence that another lawyer has engaged in certain conduct to report the lawyer.”
 - Criminal act
 - Dishonesty, fraud, deceit
 - Misappropriation of funds raising a substantial question re honesty, trustworthiness
- See <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Rule-83-Required-Reporting>

Revealing Suspensions to Clients

- California Supreme Court has instructed State Bar Court that effective Sept 1, 2023 “in all instances in which an attorney receives an actual suspension, the attorney will be ordered to comply with the obligations rule 9.20” requiring notice to clients, courts, and opposing counsel

Possible Future Guidance Re In-House Lateral Moves

- CA Committee on Professional Responsibility and Conduct Proposed Op. 21-0003 re “In-House Counsel” discussed conflicts that arise during in-house lateral moves

CA Bar: Expungements

- CA Bar approved plan to automatically expunge attorney disciplinary actions after 8 years where no disbarment and no further discipline
 - Stated rationale: “redress historical racial disparities in discipline” and align with “current criminal justice trends”
 - But see Anna Stolley Persky, *Expunging attorney discipline records could come with risks, according to new paper*, abajournal.com (Aug. 20,2024) (working paper reviewing Florida discipline records finds those with records expunged 9 times more likely to be disciplined than lawyers with no discipline)

Guidance Re AI and Ethics

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Ethical Responsibilities and Considerations



Competence

What will be expected from attorneys from a training and education perspective?



Diligence

If you're using GAI to circumvent good old fashioned legal research, are you doing the proper diligence required?



Communication

What are our responsibilities for communicating and disclosing AI use in legal practice?



Confidentiality

How can lawyers make sure to protect attorney-client privileged and work-product information when using these tools?



Candor to Tribunals

Absent an Order, do you have a duty to inform the court that you used GAI in the preparation of your case? What does it mean to "use" AI in a filing?



Management & Supervision

What guardrails should you place to address the issues?

ABA Op. 512 Generative AI Tools

- ABA Ethics Op. 512 available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

Attorney Judgment Cannot Be Replaced

- ABA Op. 512: “While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.”

ABA Evaluate GenAI Output You Use!!!

- ABA Op. 512: “[A] lawyer’s reliance on, or submission of, a GAI tool’s output – without an appropriate degree of independent verification or review of its output—could violate the duty to provide competent representation as required by Model Rule 1.1. While GAI tools may be able to significantly assist lawyers in serving clients, **they cannot replace the judgment and experience necessary for lawyers to competently advise clients** about their legal matters or to craft the legal documents or arguments required to carry out representations.” (emphasis added)

CA Guidance

- Re Rules 1.1 and 1.3 (Diligence)
 - “Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.”
 - “The duty of competence requires more than the mere detection and elimination of false AI-generated results. A lawyer’s **professional judgment cannot be delegated** to generative AI and remains the lawyer’s responsibility at all times. A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing.” (emphasis added)

DC Ethics Op. 388

- “Lawyers should understand that GAI products are not search engines that accurately report hits on existing data in a constantly updated database. The information available to a GAI product is confined to the dataset on which the GAI has been trained. **That dataset may be incomplete as to the relevant topic, out of date, or biased in some way.** More fundamentally, GAI is not programmed to accurately report the content of existing information in its dataset. Instead, GAI is attempting to create new content.” (emphasis added)

PA and Philadelphia – Joint Formal Op. 2024-200: Communication With Client

- “Thus, if a lawyer chooses to use AI or any other technology, the lawyer has the responsibility to (1) understand the technology and how it works, (2) understand the benefits of the technology, (3) understand the risks of the technology, (4) check and verify all citations and the material cited, and (5) especially in cases where the benefits outweigh the risks, **have an obligation to educate the client and seek their informed consent to use the technology**. At their core, the obligations under all of the relevant Rules are subject to Rule 1.1.”
(emphasis added)

Competence: Require AI?

- Could competence require use of AI?
 - Some companies including in outside counsel guidelines

ABA Model Rule 1.6 – Confidentiality

- “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
- Rule amended to add 1.6(c)
 - “(c) A lawyer shall make **reasonable efforts to prevent** the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (emphasis added)

ABA Op. re Confidentiality

- ABA Op. 512: “Before lawyers input information relating to the representation of a client into a GAI tool, they must evaluate the risks that the information will be disclosed to or accessed by others outside the firm. Lawyers must also evaluate the risk that the information will be disclosed to or accessed by others **inside the firm** who will not adequately protect the information from improper disclosure or use . . .” (emphasis added)

CA Guidance Re Confidentiality

- CA Guidance: “A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must **anonymize client information and avoid entering details that can be used to identify the client**. A lawyer or law firm should consult with IT professionals or cybersecurity experts . . . A lawyer should *review the Terms of Use* or other information to determine how the product utilizes inputs. A lawyer who intends to use confidential information in a generative AI product should ensure that the provider does not share inputted information with third parties or utilize the information for its own use in any manner, including to train or improve its product.”
(emphasis added)

VA Guidance: Confidentiality

- “A lawyer must be **very aware of the Terms of Service and any other information about the possible use of information input into an AI model**. Many free, publicly available models specifically instruct users not to input any confidential or sensitive information and any information input into such a model might be disclosed to other users or used as part of the model’s training. Legal-specific products or internally-developed products that are not used or accessed by anyone outside of the firm may provide protection for confidential information, but lawyers must make reasonable efforts to assess that security and evaluate whether and under what circumstances confidential information will be protected from disclosure to third parties. It may be appropriate to consult with IT professionals or other experts before sharing confidential information with any generative AI product.” (emphasis added)

And What About AI Transcripts and Translations?

new message

Jeff's OtterPilot to Everyone 4:33 PM

Hi, I'm an AI assistant helping Jeff
take notes for this meeting.
Follow along the transcript here:



You'll also be able to see screenshots of
key moments, add highlights,
comments, or action items to anything
being said, and get an automatic
summary after the meeting.

AI, Confidentiality, and Privilege

- Should legal department (or other departments) be “walled off” so closed system does not train others in organization on data from legal?
- Will information received under NDAs be walled off from training AI at the company?
- Question: How far will “smaller walls” go before losing the value proposition of AI?

And Then There Was a “Hallucination”

- *Mata v. Avianca*, Case No. 22-cv-1461 (S.D.N.Y. June 22, 2023)
 - In court filing, lawyers “abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.”
 - Court ordered sanctions including writing each judge falsely identified as author of fictitious opinions and a penalty of \$5000

ABA Evaluate GenAI Output You Use!!!

- ABA Op. 512: “[A] lawyer’s reliance on, or submission of, a GAI tool’s output – **without an appropriate degree of independent verification or review of its output**—could violate the duty to provide competent representation as required by Model Rule 1.1. While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.” (emphasis added)

Examples of Consequences for AI Use in Filings

- Referral for possible discipline
- Appeal dismissed and \$10K awarded
- 366 day suspension (all but 90 days stayed)
- Fined \$2K
- Fined \$999

Oops: AI Appropriates Attorneys ID to File Complaint

AI-generated court filing had name, bar number of lawyer who had nothing to do with case, complaint says

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

AUGUST 5, 2024, 2:53 PM CDT

Resources: Getting an AI Overview

- NYSBA Task Force on Artificial Intelligence Report and Recommendations (April 6, 2024) includes evolution of AI, Benefits and Risks (wide ranging), impacts on the profession, lawyer ethics, and legislative overview.
- New Jersey Task Force on AI Report (May 2024) includes appendices with factors to evaluate when choosing vendors and a sample AI use policy

Other Challenged Uses of GenAI

- No new trial where lawyer used GenAI to assist drafting closing
- Citing GenAI output as evidence supporting fee bid “unusually unpersuasive”

Recognizing Deep Fakes: AI Images

- Fake explosion near Pentagon shared on social media



Aggravated Identity Theft

- Former CEO of Ozy Media convicted of fraud and identity theft
 - Co-founder Samir Rao testified that during a 2021 due diligence call with Goldman Sachs, he used a voice-altering app while trying to impersonate a Youtube executive to show that Ozy was profitable
 - *USE v. Watson* , Case No. 1:23-cr-00082 (E.D.N.Y. July 2024); see Ben Smith, *Goldman Sachs, Ozy Media and a \$40 Million Conference Call Gone Wrong* (NYT Sept. 26, 2021)

Phishing and Deep Fakes

British engineering giant Arup revealed as \$25 million deepfake scam victim



By [Kathleen Magramo](#), CNN

🕒 3 minute read · Updated 4:53 AM EDT, Fri May 17, 2024

AI Allegedly Used In Fraud

AI Musician Duped Streaming Giants To Steal \$10M, Feds Say

By **Pete Brush**

Law360, New York (September 4, 2024, 12:49 PM EDT) -- A North Carolina man streamed thousands of artificial intelligence-generated songs to dupe streaming giants like Spotify and YouTube and generate \$10 million in an elaborate scam, federal prosecutors in Manhattan charged Wednesday in a first-of-its-kind case.

Bar Admission and UPL

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GC Let License Lapse

2017	Pennsylvania administratively suspended Attorney's law license for failure to pay an annual fee
2017-2020	Attorney was Sr. VP, GC and Secretary for Ricoh doing legal work including overseeing "overall legal issues, ethics, compliance, corporate and information security, and regulatory affairs in the United States, Canada and Latin America"
2019	Attorney moves to Reed Smith and then Integra
2020	Attorney pays fee in Pennsylvania and restored license
2020	Pennsylvania issues 6-month suspension as punishment for UPL
2023	NJ moved for reciprocal discipline; reprimand. Case 087027 (S. Ct. N.J. Jan. 30, 2023)

Competence

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ABA Model Rule 1.1 Competence

- Rule unchanged:
 - “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- Comment amended:
 - Maintaining Competence: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology. . . .**” (emphasis added)

Competence – CA Rule 1.1

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.”

Becoming Competent: States Requiring CLE re Technology

- ABA Op. 512: “To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use. . . . This is not a static undertaking. Given the fast-paced evolution of GAI tools, technological competence presupposes that lawyers remain vigilant about the tools’ benefits and risks.” (footnotes omitted)

Your Signature Matters

- Defendant Mike Skill (Romantics) co-wrote song “What I Like About You”
- Plaintiff filed motion for summary disposition
- “When the second deadline [to oppose] arrived, defendant filed a copy of plaintiff’s brief instead of his own, yet this filing contained the proper date and the signature of block of his attorney. The attorney’s signature constituted a certification that she had “read the document,” . . .”
 - Trial court rejected amended brief filed next day -- after deadline for opposition; granted motion for summary disposition finding breach of fiduciary duty, unjust enrichment and conversion; ordered to pay treble damages of \$232K+
 - At hearing, appellate judge referred to “incompetence” of trial attorneys. See Danielle Ferguson, *Mich. Judge Rips Romantics Singer for Copying Trial Brief*, law360.com (Feb. 7, 2024); *Master Beat v. Skill*, Case No. 363340 (Michigan Court of Appeals Feb. 29, 2024) (unpublished disposition)

In House Counsel Suspended For Side-Gig

- Attorney had private practice and continued after accepting full-time in-house counsel role
 - While working in-house, attorney found to have committed gross neglect and had commingled client funds in his private practice
 - 3 month suspension
 - *In re Wynn*, Case No. 088757 (Sup. Ct. N.J. Mar. 8, 2024)

Discipline by Agencies

- SEC suspended NY attorney for 2 years
 - 2018: Manhattan Transfer ordered to retain independent consultant to prepare a report about Manhattan Transfer's control
 - Attorney McCarthy was retained to do the ordered consulting but SEC found she **did not maintain independence** and that her work for Manhattan Transfer including assisting with policy revisions and speaking with local counsel handling suit against company
 - *In re McCarthy*, Admin Proceeding No. 3-21897 (SEC Mar. 21, 2024)

Confidentiality, Cybersecurity

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Model Rule 1.6 – Confidentiality

- “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
- Rule amended to add 1.6(c)
 - “(c) A lawyer shall make **reasonable efforts to prevent** the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (emphasis added)

Cyberattacks

- For Jan.-May, 2024, 21 firms filed data breach reports with State AGs
 - See Dan Roe, *Law Firm Data Breach Reports Show No Signs of Slowing in 2024*, *The American Lawyer* (May 23, 2024)

Hackers Targeting In-House Legal Departments

Microsoft Says Legal Dept. Among Targets Of Email Hack

By **Hailey Konnath**

Law360 (January 19, 2024, 11:22 PM EST) -- Microsoft's in-house lawyers were among employees targeted in a cyberattack from a group linked to Russia's government, the company disclosed Friday, saying that the breach affected a "very small percentage of Microsoft corporate email accounts."

Courthouse Software Hacked



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DISORDER IN THE COURT —

Crooks plant backdoor in software used by courtrooms around the world

It's unclear how the malicious version of JAVS Viewer came to be.

DAN GOODIN - 5/23/2024, 3:46 PM

Hacks of Courthouses

LA Superior Court Closed Monday Due To Ransomware Attack

By Tracey Read

Law360 (July 22, 2024, 1:02 PM EDT) -- The Superior Court of Los Angeles County was forced to close Monday as the court continued to work to repair and reboot network systems that were severely impacted by a ransomware attack that occurred on the same day as an unrelated global tech outage.

Hack Disrupts Pa. Courts A Week After Ga. Cyberattack

By James Boyle

Law360 (February 5, 2024, 4:49 PM EST) -- A cyberattack Sunday night on the Pennsylvania court system's website has disrupted several public-facing services Monday, nearly a week after a similar incident tied up online systems in Fulton County, Georgia.

Several State Courts Impacted By Global Tech Outage

By Sarah Martinson

Law360 (July 19, 2024, 3:56 PM EDT) -- Several state courts have been impacted by a global Microsoft Windows outage Friday morning causing operational challenges and courthouse closures.

State courts in Maryland, California, Alaska, Pennsylvania and Nevada issued statements on social media and their websites saying that they are expecting delays or have closed courthouses in light of the outage caused by an update from cybersecurity platform CrowdStrike.

Example: Do You Know If Cybersecurity Tools Are Actually Being Used?

NETWORK SECURITY —

After cybersecurity lab wouldn't use AV software, US accuses Georgia Tech of fraud

Researchers allegedly found security protocols "burdensome."

NATE ANDERSON - 8/23/2024, 2:16 PM

https://arstechnica.com/security/2024/08/oh-your-cybersecurity-researchers-wont-use-antivirus-tools-heres-a-federal-lawsuit/?utm_source=nl&utm_bra%E2%80%A6

Hacking Judge's Email?!?

Calif. Atty Faces Hacking Charge In Utility Billing Scandal

By Rachel Rippetoe

Law360 (June 7, 2024, 4:45 PM EDT) -- A San Fernando Valley attorney accused of scheming with lawyers representing the city of Los Angeles to settle a customer billing class action favorably for the Los Angeles Department of Water and Power also plotted to access the email and phone accounts of the judge overseeing the litigation, the State Bar of California asserted in an additional disciplinary charge filed Thursday.

See In Re Libman, Case No. SBC-24-0-30064 (Cal. State Bar Ct.) (Complaint filed Jun 6, 2024)

2 Settlements Re Counsel's Alleged Email Hacks

Dechert pays £3m to settle claim it was involved in email hack

 rollonfriday.com/news-content/dechert-pays-ps3m-settle-claim-it-was-involved-email-hack

Dechert Settles Aviation Exec's Hack Cover-Up RICO Claims

By Dorothy Atkins

Law360, London (September 20, 2024, 3:23 AM BST) -- An airline mogul has cut a confidential deal with

Clients Allege Calls Recorded for AI Training

- Suit alleges LegalShield used a call center which used AI
 - Alleges call center had access to all communications; recorded conversations
 - Alleges call center used data to train call center's AI model
 - *Crowder v. Pre-Paid Legal Services*, Case No. 2:24-cv-07123 (CA Superior Court, Riverside County) (complaint filed Aug. 22, 2024)

Lawyer Leaks of Discovery Documents

- Former Overstock.com CEO's counsel disqualified
 - Court found that “even before her first appearance in this case on March 12, 2024 . . . [Lambert] began openly violating orders, including by disseminating protected discovery material.”
 - “Yet she blatantly disregarded this Order and her guarantee that she would comply with it. This is not a case of an inadvertent breach or good faith disclosure; it is unfathomable for Lambert to believe she could do whatever she wanted with Dominion’s Litigation Documents. Lambert’s actions were intentional and clearly meant to inflict the harm that has resulted. Moreover, there is no dispute that the dissemination of the documents has led to individuals, including Dominion’s CEO and employees, facing severe threats.”
 - *US Dominion v Byrne*, Case No. 1:21-cv-02131 (D.D.C. Aug. 13, 2024)

Alleging Counsel Leaked Info to Press

- Nonprofit providing foundation management services alleges former counsel provided reporter with internal documents, advised clients to terminate relationships with GBF that resulted in “hit pieces” in the press and loss of clients
 - *The Giving Back Fund v. Handler Thayer*, Case No. 1:24-cv-3495 (N.D. Ill.) (Complaint filed Apr. 30, 2024) (motion to stay and refer for settlement conference granted Sept. 4, 2024)

Privilege Cases To Watch

- Supreme Court did not resolve conflict regarding “dual purpose” documents and privilege
- *Abbott Labs v. US District Court for the Eastern District of Pennsylvania*, Case No. 23A1107 in the Supreme Court
- *In re FirstEnergy*, Case No. 24-3654 (6th Cir.)

Loyalty

Cooley

DQ In-House Counsel

- Court ruled in-house attorney barred from participating in lawsuit and precluded attorney from reviewing discovery
 - Attorney serves as senior VP for corporate development and legal affairs for Docklight Brands
 - Allegedly drafted licensing agreement in dispute when Docklight, Tilray and High Park Holdings were under one corporate umbrella
- *Docklight Brands Inc. v. Tilray Inc.*, Case No. 2:21-cv-01692 (W.D. Wash. 2023 Aug. 16, 2023)

Only 1 Remains, Rest of In-House Dept. DQd

- Attorney worked at Perkins Coie until August 2022 then takes job at Pacific Bioscience
- Take2 sues Pacific Biosciences late 2022 for patent infringement. Perkins Coie representing Take2 sent letter asking that Attorney be screened and Pacific Bioscience agreed.
- After case transferred to CA, Court disqualified Attorney and imputed the disqualification to all attorneys other than GC. Outside litigation counsel may interact with DQd in-house attorneys “only to the extent necessary to comply with Defendant’s discovery obligations.”
 - *Take2 Technologies Ltd. v. Pacific Biosciences of CA*, Case No. 5:23-cv-04166 (N.D. Cal. Nov. 6, 2023) (disqualifying Tang), supplemental order (Dec. 4, 2023) (imputing DQ)

Alleged Conflict/Former In-House Counsel

- Attorney was outside counsel for Farmobile in trade secret action; protective order included a “patent prosecution bar”
- Attorney later moves in house at Farmobile and then to Carlton Field PA
- AGI (formerly Farmobile) represented by Carlton Filed PA brings patent infringement suit against Farmers Edge; Farmers Edge raises defense of inequitable conduct
 - In deposition, witness testified that attorney “was involved in Farmobile’s [now AGI] decisions and conversations regarding patent applications and prosecution” when she was in-house counsel at AGI
 - Court granted motion to depose attorney
- *AGI Suretrack LLC v. Farmers Edge*, Case No. 8:22-cv-00275 (D. Neb.) (motion to show cause filed; judgment in favor of defendant entered April 11, 2024)

Former In-Counsel Disqualified

- Plaintiff's counsel in breach of contract case (merchandise licensing) disqualified
 - Attorney worked in-house as Director of Legal and Business Affairs for Sony 1998-2007 and then as Director of Licensing from 2007-2014; she signed an NDA in 1998; Attorney signed the Merchandise Licensing Agreement **at issue in the case** in 2014 on behalf of Sony
 - 3 years later, attorney began invoicing ESC for legal services and submitted declaration opposing motion to transfer
- Court found Attorney had conflict of interest that was imputed to plaintiff's firm
 - *ESC-Toy v. Sony Interactive Entertainment*, Case No. 21-cv-00778 (N.D. Cal. Mar. 27, 2024)

CO Lawyer/Co-Founder Disbarred

- CO lawyer co-founded and was CLO and COO for a publicly-traded software company stipulated to discipline
 - Issued stock in excess of authorization; altered IRS filings; failed to disclose concerns raised by outside counsel; failed to disclose conflict of interest when his wife was hired; practiced while on administrative suspension; theft of corporate funds
 - *Colorado v. Wishern*, Case No. 23PDJ040 (S. Ct. Co. Aug. 22, 2024) (disbarred)

Conflicts: Bankruptcy and Shareholder/PE Ties

- In bankruptcy proceedings
 - Initially, Court disqualified Vinson & Elkins from representing Enviva due to potential conflict of interest
 - Vinson & Elkins represented Enviva since 2015
 - Vinson & Elkins also represents Riverstone which owns a 43% stake in Enviva; Riverstone paid \$14M to firm in prior year
 - Court approved retention of Paul Weiss as counsel for Enviva and granted approval for Vinson & Elkins to represent Enviva as special counsel after narrowing scope of work
 - *In re Enviva*, Case No. 24-10453 (E.D. Va. Aug. 15, 2024)

Disqualified: “Substantially Similar”

- Feb-Mar 2023: Bright Data retained firm to defend a suit
 - Firm billed 30.6 hours which included a 2 hour meeting with Board and senior leaders to discuss legal strategies
- July 2023: X sues Bright Data
- June 2024: Firm enters appearance on behalf of X and Bright Data moved to disqualify
- Court granted disqualification finding that “factual, legal, and even strategic” similarities the two matters are substantially related.
 - *X. Corp. v. Bright Data*, Case No. C-23-03698 (N.D. Cal. July 12, 2024)

Candor

Cooley

Quoting Cases with Candor?

Plaintiff's Brief	From Actual Court Decision
<p>“This Court recognizes that the putative class members have a legally protected right to privacy.”</p>	<p>“While this Court recognizes that the putative class members have a legally protected right to privacy, the information sought by Plaintiff is not particularly sensitive.” <i>Stemple v. QC Holdings</i>, 2013 WL 10870906, at *4.</p>
<p>“The putative class members have a legally protected interest in the privacy of their contact information.”</p>	<p>“While the putative class members have a legally protected interest in the privacy of their contact information and a reasonable expectation of privacy the information sought by Plaintiff is not particularly sensitive.” <i>Artis</i>, 276 F.R.D. at 353.</p>

Court: No sanction

- Court found that Plaintiff's opposition "misstated the language of various cases cited in that document"
- Court: "These misstatements are unacceptable. Their presence negatively reflects on the attorneys who drafted and signed that document. While the court declines to act against those individuals for now, it cautions all parties that future attempts to mislead the court to the content of case law may result in sanctions against the document's author or signer."
- *Nix v. The Chemours Company*, Case No. 7:17-cv-00189 (E.D.N.C. June 2024)

Fabricating Court Docs/Fake Signatures

Ga. Atty Disbarred Over Bogus Email, Text In Injury Case

By **Madison Arnold**

Law360 (March 5, 2024, 4:08 PM EST) -- A Georgia attorney who fabricated an email and text from a personal injury client to mislead the state bar about when she was terminated from his case was disbarred by the Supreme Court of Georgia on Tuesday.

Disbarred Pennsylvania Atty Gets Prison Time For Forgery

By **Jack Rodgers**

Law360 (May 8, 2024, 4:31 PM EDT) -- A disbarred Pennsylvania attorney has been sentenced to 30 days to a year in prison after pleading guilty on Friday for having presented fake court documents to clients with forged signatures, including those of judges, and misrepresenting the status of their cases.

Filing Fake News

Judge sticks with \$268K sanction for fake news article lawyer filed with appeals court

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JANUARY 10, 2024, 8:18 AM CST

Misrepresentations Re Cat Food Recall

- Lawyer suspended for 366 days after found to have violated Rule 4.1(a) and 8.4(c) by knowingly making false statements of material fact and misrepresentations over a cat food recall
 - Failed to educate himself of the chemical compound at issue before making false allegations on social media
 - Made key words searchable in social media so “even more serious because of the harm he was causing”
 - *Office of Disciplinary Counsel v. Alder*, Case No. 88-DB-2022 (Penn. S. Ct. Jan. 23, 2024)

Attorneys and PR

Cooley

Attorneys and PR Re Case

- VNA is a defendant in Flint Michigan water crisis case
- Court ordered VNA to produce documents about relationships between PR firm and attorneys and their law firms
 - Allegations PR firm has contacted represented plaintiff's
 - Alleged smears of Plaintiff's attorney
 - *In re: Flint Water Cases*, Case No. 5:16-cv-10444 (E.D. Mich. Feb. 13, 2024)

What Was Happening Outside Courthouse During Hearing?



An advertising truck quoting counsel for Flint children drives by the federal courthouse in Ann Arbor, Michigan on Feb. 13, 2024. (Danielle Ferguson | Law360)

Court Refers Lawyer To CA Bar

- Court referred a CA attorney to the CA state bar
 - Court issued OSC re attorney Lin, attorney for Actum (PR firm)
 - Lin submitted letter which Court found “inadequate” because it “lacked sufficient detail and substance”; Lin sent second letter asserting ACP
 - Lin then sent email declining to submit to Court’s jurisdiction or to provide a privilege log
 - *In re Flint Water Cases*, Case No. 5:16-cv-10444 (E.D. Mich. May 30, 2024)

Supervisory and Supervised Attorneys

Cooley

Supervision?

Lawyer accused of misappropriating up to \$282M allegedly handed firm control to disbarred attorney

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

AUGUST 13, 2024, 3:49 PM CDT

- *In re The Litigation Practice Group, Debtor; Marshack v. Diab*, Case No. 8-23-bk-10571; Ad. Proc. No. 8:23-ap-10046 (C.D. Cal. By.) (4th Amended Complaint filed August 28, 2024)
- Ethics complaint against attorney Marsh; *In Re Marsh*, Case No. SBC-24-)-30054 (State Bar CA.) (Complaint filed Feb. 23, 2024)

B. LPG'S OWNERSHIP AND MANAGEMENT

40. After being **disbarred in both California and Nevada for forging a judge's signature and stealing large amounts of client funds,** Diab transferred his existing debt resolution practice to LPG. LPG was a law firm that provided consumer debt resolution. LPG serviced more than 50,000 customers across the United States, with annual revenue estimated to total \$150,000,000 in 2022.

41. Despite having been disbarred, Diab controlled and operated LPG since its inception. Diab, however, endeavored to and did conceal his control of LPG. For example, Diab required LPG's employees to call him "Admin," and the name plate on his desk reads, "I don't work here."

42. To pull this off, **Diab rented the law license of March** who, at times, masqueraded as the managing partner of LPG but exercised no actual management or control. In fact, Diab sometimes impersonated March and regularly signed March's signature on contracts. LPG's primary DocuSign account was tied to Diab's email address, admin@lpglaw.com, where Diab signed numerous contracts as March. For use of March's law license, March received an annual salary of \$600,000 or more, in addition to bonuses and other forms of benefits and compensation.

Ethics Rules – Discrimination and Harassment

Cooley

February 2024: Women Harassed at Legal Conference

Sexual Harassment Allegations Pile Up At Annual Legal Tech Conference

A abovethelaw.com/2024/02/sexual-harassment-allegations-pile-up-at-annual-legal-tech-conference

Kathryn Rubino

February 5, 2024

2024: Text To Women Law Professors, Students

- Texts sent to women law professors and students at 30+ law schools
 - Example: “Law school isn’t fair for us men anymore, women always outperform us nowadays . . .”
 - Female Law Faculty, Students Across the Country Are Getting Unsettling Texts, insidehighered.com (Sept. 17, 2024); Staci Zaretsky, *The FBI is Investigation Strange Texts Sent to Women Law Professors*, abovethelaw.com (Feb. 27, 2024)

MeToo Continues

Wash. Atty Stops Practicing Law After Assaulting Associate

By Greg Lamm

Law360 (May 23, 2024, 6:01 PM EDT) -- A family law attorney in Washington state has resigned from practicing law after a series of criminal offenses, including a misdemeanor sexual assault and an attempted hate crime involving a colleague after a work-sponsored event, according to state bar association disciplinary records made public this week.

MAY 15, 2024, 9:11 AM CDT

Sexual Misconduct

Baker McKenzie Ditches Attorney Accused Of Sexual Misconduct

 abovethelaw.com/2023/10/baker-mckenzie-ditches-attorney-accused-of-sexual-misconduct

Kathryn Rubino

October 19, 2023

Partners in London and Paris accused of upskirting colleagues

 rollonfriday.com/news-content/partners-london-and-paris-accused-upskirting-colleagues

Law student, son of Buc-ee's co-founder, arrested for alleged secret filming of house guests

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

OCTOBER 12, 2023, 1:53 PM CDT

Alleged Sexual Misconduct -- Feb. 2024

Judge 'pantomimed something similar to a lap dance' on public defender's wife at outing, ethics complaint alleges

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 15, 2024, 11:51 AM CST

Judge says he misperceived interaction at bar event as flirting, leading him to touch lawyer's 'lower hamstring'

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 9, 2024, 8:55 AM CST

Ex-NJ Judge Suspended From Law Practice Over Groping

By **Jake Maher**

Law360 (February 8, 2024, 4:07 PM EST) -- The New Jersey Supreme Court handed down a one-year suspension from practicing law to a former North Bergen municipal court judge who was previously permanently barred from being a judge for groping a woman and being dishonest about the incident in the judicial ethics case against him.

ABA Model Rule 8.4

- ABA Rule amended August 2016
 - “It is professional misconduct for a lawyer to:
 - (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”

ABA Op. 493 (re Rule 8.4)

- Applies to practice, even outside representation of client
- Not restricted to “severe or pervasive” conduct
- Not intended to prevent “expressing opinions and ideas on matters of public concern, nor does it limit a lawyer’s speech or conduct in settings unrelated to the practice of law.”
- “Enforcement of Rule 8.4(g) is therefore critical to maintaining the public’s confidence in the impartiality of the legal system and its trust in the legal profession as a whole.”

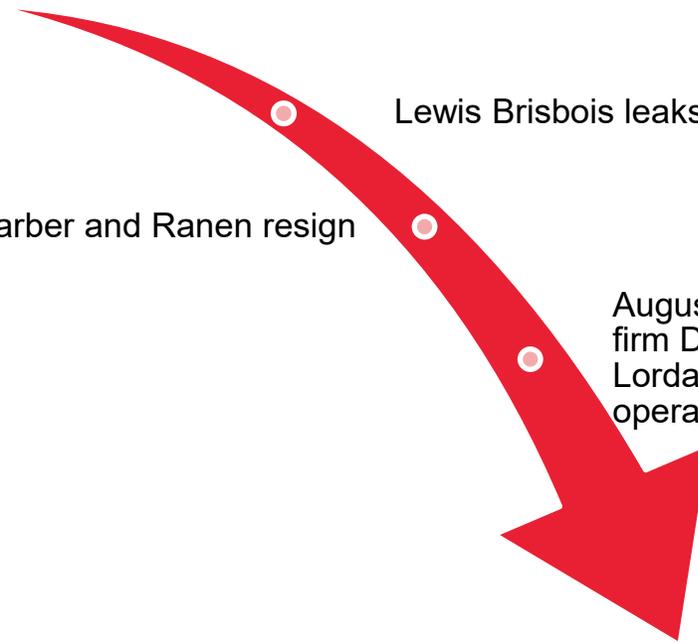
Lewis Brisbois Break Off

May 2, 2023 110
lawyers leave Lewis
Brisbois for Barber
Ranen

Lewis Brisbois leaks emails

Barber and Ranen resign

August 2023 New
firm Daugherty
Lordan ended
operations



Lewis Brisbois Departures

Leaders of Lewis Brisbois rebellion sent emails with 'unacceptable, prejudiced language,' law firm says

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 5, 2023, 11:43 AM CDT

Invitation to Golf Tournament

- Partner for 34 years in Alberta, Canada and King's Counsel award given to those lawyers of highest integrity
 - Sent an email to colleagues inviting them to golf tournament
 - Email includes inappropriate language and disrespect especially to women and the LGBTQ+ community
 - Resigned his partnership
 - See https://abovethelaw.com/2024/05/law-firm-partner-flames-out-after-wild-disturbing-and-misogynistic-email/?utm_campaign=Above

Elsewhere

- Michigan requires use of name/pronouns provided by individual
- ABA asked federal judiciary to drop term “court-appointed master”

Discovery and Ethics

Cooley

Deposition Goes Dark for Eclipse

- Plaintiff's deposition scheduled for April 8, 2024 in Tampa
- Defendant's counsel called 13 minutes after start time and was told Plaintiff's counsel in Arkansas (to view eclipse)
- Plaintiff's counsel alleged he was unaware of deposition
- Court denied request for dismissal but sanctioned for fees and costs
- *Wade v. Auto Club Services*, Case No. 8:23-cv-00316 (M.D. Fla.)

Ephemeral Messaging

- SEC and CFTC enforcement efforts re “off-channel communications” have resulted in fines/settlements of \$1.7Billion
- DOJ issued Memorandum in March 2023 that DOJ prosecutors will consider a company’s use of ephemeral and encrypted applications during investigations

Recommended \$2B Default Judgment

- In antitrust MDL, Special Master recommended \$2B default judgments
 - “The undersigned finds that given Irico’s ongoing, systematic spoliation of documents, failures to search for relevant documents, misrepresentations to the court, unnecessary and inappropriate delays and repeated violations of court orders, Irico’s litigation misconduct renders a fair trial in this case impossible.”
 - *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 4:07-cv-05944 (N.D. Cal. May 14, 2024) (motion re objections heard Sept. 2024)

European Spoliation Fine \$17M

- In antitrust case, European Commission fined International Flavors and Fragrances equivalent of \$17M
 - Alleged senior employee deleted messages during investigation
 - See Matthew Perlman, *Fragrance Co. Fined € 15.9 For Deleting WhatsApp Messages*, law360.com (June 24, 2024)

Adverse Inference

- Failure to preserve text messages; granting sanction imposing two adverse evidentiary inferences and increasing burden of proof. *Goldstein v. Denner*, Case No. 202-0161 (Del. Ct. of Chancery Jan. 26, 2024) (case settled June 2024)

FTC Alleges Texts Deleted and Seeks Adverse Inference

- FTC filed motion seeking adverse inference instruction
 - “Four of eight testifying Albertsons witnesses failed to preserve responsive text messages after receiving a preservation hold and numerous reminders.”
 - *FTC v. The Kroger Co. and Albertsons Companies*, Case No. 3:24-cv-00347 (D. Ore.) (motion filed August 16, 2024)

Sanctions For Rummaging in Cloud Based File Sharing Service

- Third party produced document that included a link to Plaintiff's cloud based file sharing service; Defense counsel used link to what Court found was corporate file directory
- Court ordered defense counsel to certify destruction of all notes or derivative work product and \$155,977 in Attorneys' fees related to motion
 - *Pursuit Credit Special Opportunity Fund v. KrunchCash*, Case No. 651080/2022 (Supreme Court of NY: Commercial Division Oct. 4, 2023), staying enforcement of sanction award pending appeal (Nov. 28, 2023); affirmed (NY App. May 31, 2024)

“Tense” Deposition – Disqualification and Referral for Discipline

- Underlying case against Chicago Board of Education alleges they violated Vega’s first amendment rights by removing her from a public meeting
- District court found that at a deposition in 2017, “Shaw [plaintiff’s attorney] swore at Dreishmire [in-house counsel for defendant] and then intentionally pushed her with force sufficient to knock her backwards” and found Shaw’s description of contact to be false. Issued sanction order removing attorney Shaw from the case and referred for further disciplinary action
- Second sanctions order in 2022 requiring Shaw to reimburse \$12K in attorney fees and costs
- *Vega v. Chicago Board of Education*, Case No. 23-1183 (7th Cir. July 29, 2024) (affirming district court sanctions against Shaw)

Theft and Fraud

Cooley

Atty Theft/Fraud

Calif. Atty Facing Disbarment After Admitting To \$4.8M Fraud

By Emily Sawicki

Law360 (July 2, 2024, 8:45 PM EDT) -- The California State Bar announced Tuesday that a prominent Golden State family law attorney has agreed to be disbarred after she admitted to misappropriating "virtually the entirety" of a more than \$4.8 million client trust account, then attempting to cover up the theft of funds by filing false documents.

'Colorful' attorney with 'massive client list' sentenced for \$2M theft, impersonating his lawyer

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 4, 2024, 9:54 AM CDT

Theft by Non-Lawyers: Supervision?

Ex-Calif. Law Firm CFO Charged in \$1.2M Embezzlement

By Daniel Connolly

Law360 (July 1, 2024, 5:00 PM EDT) -- The former chief financial officer of two related San Francisco law firms now faces federal criminal charges that he embezzled at least \$1.2 million from the companies, and the government is trying to seize some of his properties.

Tony Archuleta-Perkins was indicted last week on eight counts of bank fraud and five counts of engaging in monetary transactions related to unlawful activity.

'Terrible Decisions': Ex-McElroy Deutsch CFO Gets 5 Years

By Carla Baranauckas

Law360 (July 26, 2024, 5:29 PM EDT) -- McElroy Deutsch Mulvaney & Carpenter LLP's former chief financial officer was sentenced Friday in a New Jersey state court to five years in prison and ordered to pay restitution for embezzling more than \$1.5 million from the firm and failing to pay income tax.

Other Things Lawyers Shouldn't Do

Cooley

8-K Filing: GC on Leave

- Company filed 8-K that referred to placing GC of 14 years on paid leave while an internal review is conducted regarding “certain company transactions and other matters”
 - See Sue Reisinger, *Photoronics Puts GC On Leave Amid Internal Review*, law360.com (June 13, 2024)

Insider Trading

- Former senior corporate law attorney at tech company pled guilty to insider trading charges in 2022 and now fined \$1.1M. *See SEC v. Levoff*, Case No. 2:19-cv-05536 (D.N.J. July 2, 2024) (granting msj for SEC)
- In case involving want to be FBI agent reading girlfriends M&A binder, pled guilty in criminal case; agreed to civil judgment *SEC v. Markin*, Case No. 1:22-cv-06276 (S.D.N.Y. Feb. 2024); new indictment against cousin filed Sept. 2024

Former GC

- Former GC was hired at firm and chaired practice group
- Firm terminated attorney following an investigation conducted “as a result of an issue raised by a client”
 - See Emma Cueto, *Prince Lobel Fires Atty Following Misconduct Investigation*, law360.com (July 19, 2024)

Attorney Sitting as Juror

- Civil law solicitor at a personal injury firm is sitting on a jury
- She admitted carrying out internet research about case while on the jury
 - Served 4 weeks in jail at the time
 - Solicitors Disciplinary Tribunal has entered 8 year suspension
 - See <https://www.rollonfriday.com/news-content/ex-irwin-mitchell-solicitor-who-blew-trial-suspended-eight-years> (Jan. 26, 2024)

2024: So Many Other
Questions Re Lawyer Conduct
and Ethics

Cooley

Robbery

Lawyer shot while allegedly trying to rob armored car

BY DEBRA CASSENS WEISS

APRIL 29, 2024, 10:51 AM CDT



You Can't Unsee It

- Senior Counsel walking across UK to raise money for stroke victims; video posted

EXCLUSIVE Naked Womble crosses Britain

 rollonfriday.com/news-content/exclusive-naked-womble-crosses-britain

Law School Con Law Class Shows Porn So You Know It When You See It

Radical concept, but maybe the students could figure out the law without having to experience the fact pattern first-hand.

By JOE PATRICE on September 20, 2024 at 3:11 PM

Lawyers at Restaurants/Clubs

Lawyer Wanted By Police After Dine And Dash, Skipping Out On Bail

Seems like a silly way to lose your law license.

By KATHRYN RUBINO on August 27, 2024 at 2:37 PM

Lawyer disbarred following alleged cocaine-licking assault on employee at nightclub he owned

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

MAY 24, 2024, 9:35 AM CDT

Your Own Hype

- “Aaron Korson is the best attorney I have ever met.”
 - Who wrote it?
 - 28 5-star reviews over 5 years
 - Negative review for lawyer who took over case from Korson
 - See *In re Korson*, Commission No. 2024PR00056, Illinois Attorney Registration and Disciplinary Commission (Aug. 29, 2024) (Complaint); see also Debra Cassens Weiss, *Lawyer Is Accused Of Giving Himself Positive Online Reviews While Disparaging Another Lawyer*, [abajournal.com](https://www.abajournal.com) (Sept. 18, 2024)

Kittens

EXCLUSIVE Travers Smith associate dismissed after complaining that a client 'sold him flea-ridden kittens'

By Jamie Hamilton

01 March 2024

<https://www.rollonfriday.com/news-content/exclusive-travers-smith-associate-dismissed-after-complaining-client-sold-him-flea>

Court: “If any Lanham Act case is exceptional, it is this one.”

²⁹ For example, Defendants have begun

corresponding and filing court documents using the following letterhead:

Lewis Brisbois Bisgaard & Smith, LLP

503 F.M. 359-130, Suite 216,
Richmond, Texas, 77406-2195

Mediations & Arbitrations

Michael Joseph Bitgood
a/k/a/ “Michael Easton”
Mediator &
International and Domestic
Arbitrator
President
281-415-8655
EastProLaw@msn.com

Susan Cecilia Norman
Attorney & Counselor at Law
Vice President
713-882-2006
Certified Mediator
SueNorman@SueNormanLaw.com

Bitgood attached the following images to his email of September 23, 2022:



- *Lewis Brisbois Bisgaard & Smith LLP. v. Michael Joseph Bitgood aka "Michael Easton,"* Case No. 4:22-cv-3279 (S.D. Tex.)

Questions and an Upbeat Ending

Cooley

BigLaw to Bakery

Former Skadden Associates Star In 'Side Hustlers,' Showcasing Their New Cookie Business, Brune Kitchen

From Biglaw to the bakery, watch how these former associates land their dream jobs in the kitchen.

By STACI ZARETSKY on August 23, 2024 at 2:28 PM

https://abovethelaw.com/2024/08/former-skadden-associates-star-in-side-hustlers-showcasing-their-new-cookie-business-brune-kitchen/?utm_campaign=E2%80%A6

In-House Counsel on Survivor

In-House Atty At Priceline.com Set To Appear On 'Survivor'

By Emily Sawicki

Law360 (September 6, 2024, 4:13 PM EDT) -- An experienced in-house attorney currently serving as a senior counsel for travel website Priceline.com is taking part in this year's edition of the iconic TV reality show "Survivor," CBS Entertainment has announced.

Genevieve Mushaluk, 33, a resident of Winnipeg, Manitoba, is one of 18 cast members — known by the television network as "castaways" — who will take part in this year's version of the long-running competition show, now in its 47th edition, the television network said Wednesday.



QUESTIONS?

Cooley

Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes *only* and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2022-2024.