

Ethically Speaking



By Charles Slanina, Esquire

Lawyers Behaving Badly: Summer 2008 Edition

Intended more as cautionary tales than reveling in others' misfortunes, "Ethically Speaking" once again offers a compendium of attorney misconduct across the country.

Richard "Dickie" Scruggs built his fortune and reputation on tobacco, asbestos, and insurance coverage cases. In the 1990s, he used a corporate insider against tobacco companies in lawsuits that resulted in a \$200 billion settlement. Those events became the basis for the movie "The Insider." Legal fees to his firm alone were reported to be approximately \$900 million. Notwithstanding that success, Scruggs pled guilty to conspiring to bribe a circuit court judge in Lafayette County, Mississippi with \$50,000 to gain a favorable ruling in a dispute over \$26.5 million in legal fees from a mass settlement in Hurricane Katrina insurance cases. Scruggs was undone by his law partner and an associate who wore a wire for the FBI. He was recently sentenced to five years in prison and fined \$250,000. *Associated Press*, June 27, 2008.

A Texas attorney was sentenced to ninety days in jail for contempt of court after making an obscene gesture in front of a judge. The trial judge testified at the contempt hearing that the offending attorney, Adam Reposa, made a gesture simulating masturbation at a prosecutor while standing next to his client and while making eye contact with the trial judge. Reposa told the court that the sentence was excessive and that the proceeding was "a preliminary disbarment proceeding disguised as a contempt hearing." Reposa also argued that the prosecution in the contempt hearing wrongfully made use of his advertising tactics to impugn

him. Reposa identifies himself as Adam "Bulletproof" Reposa in his ads and was recently featured in a magazine distributed in Texas bars as the "DWI Stud." *Texas Lawyer*, June 9, 2008.

A Florida lawyer was recently jailed for 48 hours for missing a trial. Jonathan S. Schwartz is a criminal defense lawyer who had been previously admonished by the Florida Bar for ignoring a court order to appear after failing to show up six times. In the current case, Schwartz is alleged to have failed to appear on behalf of a client at a driving without a license trial. Schwartz responded with the explanation that the whole thing was a big misunderstanding. He claimed that he had hired a substitute lawyer to fill in for him and that lawyer had hired someone else who had then hired someone else and that the final lawyer failed to appear for trial. Schwartz said he had hired someone to cover for him initially because he was in an all day hearing in another county before a judge who had ordered him to personally appear on behalf of a capital felony defendant. He further blamed the court's policy of banning cell phones on his inability to confirm that his substitute attorney had appeared. *National Law Journal*, June 24, 2008.

A Georgia attorney was rebuked for his deposition conduct in an order granting his opponent attorney's fees for the disrupted proceeding. That order found that attorney James W. Smith of Athens, Georgia had committed a "verbal assault" on his opposing counsel by making "disturbing" remarks about a small pin he was wearing. That pin, a gold star on a purple background, was given to his opponent by the army to honor his twenty-year-old

son who was killed in Iraq in January of this year. In the order granting attorney's fees, the court stated "While Defendant's counsel personally seeks no remedy for this heartless attack, the Court cannot avoid its responsibility to condemn conduct that is not only decidedly lacking in the civility due to a fellow member of the bar, but is so ignoble as to bring the legal profession into disrepute." *Fulton County Daily Report*, June 24, 2008.


A plaintiff's attorney was recently sanctioned for misstating his opponent's position. Opposing counsel was sent the motion before it was filed and warned plaintiff's counsel that the motion mis-characterized their demands. Nevertheless, the motion was filed unchanged. Awarding attorney's fees to the defendants, the court found that neither protracted nor bad faith misconduct is necessary for the imposition of sanctions under 28 U.S.C. §1927, which targets vexatious and unreasonable multiplication of proceedings and that an attorney may be sanctioned for a single incidence of bad faith with "an empty head and a pure heart." *Hamilton v. Boise Cascade Exp.*, 519 F.3d 1197 (10th Cir. 2008), at 1202.

Melvin Weiss, the co-founding partner of the Milberg Weiss firm, is scheduled to begin serving his thirty-month sentence on August 28, 2008. He is also ordered to forfeit \$9.75 million plus pay a \$250,000 fine as a result of kickbacks paid by the firm to lead plaintiffs. The sentencing judge found it "difficult to reconcile" Weiss' numerous charitable contributions with his criminal conduct which "strikes directly at the core and heart of the judicial system." His attorney, Benjamin

Brafman, noted that Weiss would be 73 years old in July, and referred to his client as “one of the greatest lawyers of this generation” and “one of the legal giants of the Bar.” The defendants also submitted over 275 letters from former judges, law professors, and lawyers in support of Weiss. He asked the court to permit Weiss to serve his sentence in a minimum security facility. Weiss is eligible to serve up to half of his thirty months incarceration in a home or community confinement setting.

Nevertheless, prosecutors allege that Weiss and seven of his partners obtained \$251 million in attorney fees by paying illegal kickbacks to lead plaintiffs. Subtracting the \$9.75 million that Weiss was ordered to forfeit, the \$75 million settlement by the firm, and the \$11 million paid in kickbacks to the plaintiffs, this still leaves \$155.25 million for Weiss to pay his \$250,000 fine. On an hourly basis, that also nets Weiss over \$5 million for each of the 30 months that he might be incarcerated. *National Law Journal*, June 3, 2008.

Enjoy the rest of your summer!

**“Ethically Speaking” is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association. Additional information about the author is available at www.delawgroup.com.* 

Upcoming Seminar (continued from page 9)

sewer service, another for a county’s alleged failure to approve a hotel, and another for alleged free speech violations relating to political activities in a re-election campaign. While each of these cases includes state law claims, each contains broad-based and sweeping claims of constitutional violations, and seeks damages and attorneys’ fees from the government under § 1983. The seminar will provide guidance about how to litigate (and perhaps prevent) these complicated civil rights cases.

Space is limited, so please sign up early to attend this important seminar. If you have any questions, please contact CLE at DSBA at 504-1472 or e-mail monly@dsba.org.

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