

AGAIN, WAS THAT WRONG? PART 2

DSBA WEBINAR VIA ZOOM

SPONSORED BY THE DELAWARE STATE BAR ASSOCIATION

TUESDAY, FEBRUARY 21, 2023 | 12:00 P.M. – 1:00 P.M.

1.0 Hour CLE credit in Enhanced Ethics for Delaware and Pennsylvania Attorneys

PRESENTERS

David A. White, Esquire
Office of Disciplinary Counsel

Kathleen M. Vavala, Esquire
Office of Disciplinary Counsel

Jessica L. Tyler, Esquire
Office of Disciplinary Counsel

ABOUT THE PROGRAM

Explore with ODC the absurd and outrageous cases from the world of legal ethics and attorney discipline. Whether you are a double-dipper, a close-talker, or a re-gifter (not that there's anything wrong with that), you'll appreciate the substance and the humor of this CLE. So put on your puffy shirt, and say "Serenity Now" (yada yada yada).... and sign up for this great CLE.

Visit <https://www.dsba.org/event/again-was-that-wrong-part-2/> for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

Again, Was That Wrong?

Part 2

David A. White, Esquire
Office of Disciplinary Counsel

Kathleen M. Vavala, Esquire
Office of Disciplinary Counsel

Jessica L. Tyler, Esquire
Office of Disciplinary Counsel

David A. White
Chief Disciplinary Counsel, Office of Disciplinary Counsel,
Delaware Supreme Court

Mr. White is a frequent speaker/moderator in the areas of legal ethics and Alternative Dispute Resolution. In March 2021, the Delaware Supreme Court appointed Mr. White Chief Disciplinary Counsel of the Office of Disciplinary Counsel (“ODC”), and Arm of the Court.

The ODC, which functions as an educational and professional resource for members of the Delaware bar, receives, evaluates, investigates, and when necessary, prosecutes complaints of lawyer misconduct and the unauthorized practice of law. The Office also recommends sanctions for attorney misconduct to the Board on Professional Responsibility and the Court.

Previously, Mr. White was in private practice and was the office managing partner in the Wilmington, Delaware office of McCarter & English, LLP. There, he was a member of the firm’s business litigation, products liability, and bankruptcy practice groups. A substantial portion of his practice was devoted to ADR and representing lenders in the areas of commercial loan workouts, commercial litigation, commercial real estate, and related bankruptcy issues.

Mr. White was a Superior Court Commissioner from 2001-2008 and for several years he taught a civil litigation course for the University of Delaware, Division of Professional and Continuing Studies, where he was awarded Excellence in Teaching awards in 2007 and 2008.

Mr. White has served on the Executive Committee of the Delaware State Bar Association for many years and he is also an Honorary/Volunteer member of the Professional Guidance Committee.

Education:

Widener University School of Law, J.D 1986

University of Delaware, B.A. 1982

KATHLEEN M. VAVALA

Kathy Vavala has been a member of the Delaware, Pennsylvania, and New Jersey state bars, as well as the federal bar for the U.S. District Court of Delaware, for twenty-six years. She is currently Disciplinary Counsel for the Supreme Court of the State of Delaware. Prior to that appointment, Ms. Vavala was a Deputy Attorney General for the Delaware Department of Justice, where she headed the Domestic Violence, Child Abuse and Elder Abuse Unit, the Criminal Division Felony Screening Unit, and served as a senior litigator and mentor in the Criminal, Family, and Fraud Divisions. Ms. Vavala is a graduate of Franklin & Marshall College and Delaware Law School. Previously, she was a judicial law clerk to the Honorable Vincent A. Bifferato, Resident Judge of the Delaware Superior Court and associated with the law firm of Tybout, Redfearn & Pell. Ms. Vavala is an adjunct professor for Delaware Law School and Saint Joseph's University, where she teaches health care law and finance, biomedical ethics, and advanced legal writing. Ms. Vavala is also a frequent presenter on professionalism, civility, and ethical standards applicable to the legal profession at both the local and national level.

JESSICA L. TYLER

Jessica Tyler is currently Deputy Disciplinary Counsel for the Supreme Court of the State of Delaware. Prior to that appointment, Ms. Tyler spent 10 years in private practice where she represented individuals and businesses in the defense of civil litigation involving automobile accidents, premises liability, general liability, and products liability. Prior to private practice, Ms. Tyler served as a judicial law clerk for Judges Buckworth and Conner in the Family Court of the State of Delaware. She previously was a member of the Delaware Civil Clinic where she worked with Delaware Volunteer Legal Services to assist clients with obtaining Protection from Abuse Orders and custody of their children. Ms. Tyler also interned with the Camden County Prosecutor's Office and the Pennsylvania Attorney General's Office, Bureau of Consumer Protection. Ms. Tyler is a graduate of Arcadia University and Delaware Law School.



Was That Wrong??

Part 2!

**Absurd Legal Ethics
Problems - A CLE.**

Email Etiquette

Dear Client:

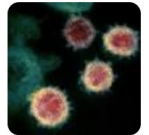
If either of you have COVID or some other highly infectious, nasty disease — or if you know someone who does — please make sure they lick the envelope and handle it as much as possible.

 Reuters

Bankruptcy lawyer urged clients to spread COVID-19, judge ...

(Reuters) - A Colorado bankruptcy judge has sanctioned an Edgewater, Colorado lawyer for "blatant misconduct," including advice he gave...

4 weeks ago



 The Denver Post

Denver attorney suspended, accused of urging clients to infect a rival with COVID-19

Devon M. Barclay was barred from practicing in U.S. Bankruptcy Court for the ... his clients try to infect a rival attorney with COVID-19.

4 weeks ago



 Bloomberg Law News

Lawyer Gets 3-Year Bankruptcy Court Ban for Repeated ...

Lawyer Gets 3-Year Bankruptcy Court Ban for Repeated Misconduct ... clients to infect the Chapter 7 Trustee's counsel with Covid.

4 weeks ago



 FindLaw

Lawyer Suspended for Instructing Clients to Spread COVID-19 ...

Normally, bankruptcy lawyers advise their clients on how to legally ... COVID-19 to opposing counsel, among other egregious misconduct.

2 weeks ago



 American Bar Association

Bankruptcy Attorney Suspended for History of Misconduct

The attorney's misconduct also extended to his clients, whom he encouraged to infect another attorney with COVID-19 or "some other highly..."

2 weeks ago

Additional Misconduct – 3 year suspension from practicing in Bankruptcy Court (Colorado)

- Forged the Debtors' signatures on the Petition, Statement of Financial Affairs, Declaration for the Debtors' Schedules, and the Filing Fee Application
- Made false statements in motions filed with the Court
- Lied repeatedly to the Chapter 7 Trustee ("especially egregious since the Chapter 7 Trustee is an officer of the Court and functions in an important fiduciary capacity for the benefit of all creditors and parties in interest")
- Intentionally interfered with the Trustee's administration of the main case by refusing to comply with discovery
- Attorney then attempted a scheme to further defraud the Court

- January 10, 2023 United States Bankruptcy Court (Colorado)

Prosecutorial Misconduct

- Coles County, Illinois
- January 2023: State prosecutor charged with 32 counts of misconduct over interactions he had in his official capacity with three women between 18 and 35 years old.
- Specifically: “bribery and misconduct charges alleging he solicited sexual contact, photos and videos from women who were defendants with the understanding they would receive preferential treatment in their cases.”
- It is alleged he suggested to them he could influence others at the state’s attorney’s office.



A word about fraudulent injuries or limitations



Conspiracy and fraudulent injuries

- NY lawyer and NY orthopedic surgeon participated in a “massive trip-and-fall scheme between 2013 and 2018.” December 2022 – found guilty of conspiracy to commit mail and wire fraud, mail fraud, and wire fraud.
- Using paid “runners,” they recruited people to stage or falsely claim to have suffered trip-and-fall accidents in NYC (cellar doors, sidewalk racks, purported potholes); gas stations, diners, other businesses.
- These individuals were directed to go to the hospital, obtain discharge papers, and then were brought to the lawyer’s office, by the carloads. He uniformly accepted their cases.
- He filed almost 200 fraudulent lawsuits; earned \$5 million in fees

<https://www.justice.gov/usao-sdny/pr/new-york-attorney-and-doctor-convicted-defrauding-new-york-city-area-businesses-and>

Arson

- Brooklyn, NY attorneys set fire to an empty NYC police vehicle in 2020 during a protest after the death of George Floyd (using a Molotov cocktail)
- Pled guilty to conspiracy to commit arson and to make and possess an unregistered illegal device
- Disbarment

Assault & Battery

- Oklahoma attorney found guilty of assault and battery with a deadly weapon for willfully and knowingly shooting a person with a handgun
- While incarcerated pending formal sentencing, the attorney then engaged in the practice of law operating his law office from the detention facility
- Ultimately, the Court imposed disbarment – Rule 7.1 (criminal conviction), 8.4(d), 1.1, 1.3, 1.7(a)(2) (for representing clients without competence while incarcerated)



Harassment



- Opposing counsel harassment
- What did Respondent-lawyer do?
 - Created a false dating profile on Match.com in the victim-lawyer's name
 - Online subscription to Obesity Action Coalition; Pig International (global nutrition and health publication for pork production; daily emails); Diabetic Living – monthly magazine; Auto Trader (bombarded with emails, phone calls, text messages, U.S. mailings)
 - Posted negative reviews on Martindale.com and lawyers.com
- Rule 8.4(c) violations; recommendation of 6 month suspension
- Illinois with reciprocal discipline in Texas (*In re: Drew Randolph Quitschau*)

January 19, 2023 – Iowa Supreme Court Grievance Commission recommends disbarment

Source: Des Moines Register, January 24, 2023

- Creating a new business entity to avoid a client's wages from being garnished
- Divorce case
- Argued a contract he previously drafted was void
- Inheritance dispute
- Trust accounts

Frivolous claims, disobeying orders, reckless statements about the judiciary

- Kansas attorney initiated multiple federal court proceedings to obtain an email that he was denied through multiple FOIA requests. Several lawsuits and appeals for the same issue.
- Decision states: “Across various pleadings, Jordan persistently accused multiple federal judges of lying about that e-mail's contents, lying about the law, and committing crimes including conspiring with others to conceal the document.”
- Example: he filed a document titled “Plaintiff's Suggestions Supporting Motion to Remedy Judge Smith's Lies and Crimes and Lift the Stay or Disqualify Judge Smith.”
- Rule violations - KRPC 3.1 (meritorious claims and contentions), KRPC 3.4(c) (fairness to opposing party and counsel), KRPC 8.2(a) (judicial and legal officials), and KRPC 8.4(d) and (g) (professional misconduct)
- Disbarment

III. CONCLUSION

For the foregoing reasons, the Court strikes Talley's “Suggestions Opposing DOL Suggestion for In-Court Conference Requiring Plaintiff's Attendance” (Doc. #19) and denies Talley's “Motion to Remedy Judge Smith's Lies and Crimes and Lift the Stay or Disqualify Judge Smith” (Doc. #17).

IT IS SO ORDERED.

DATE: January 8, 2020

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Not telling the opposing party your client has died

- Illinois attorney
- 10 months after learning his personal injury client had died...
- He prepared and sent a letter to an insurance company demanding settlement for injuries and for “future pain and physical limitations.”
- Insurance company made a counteroffer.
- He purported to enter into a settlement agreement despite never having taken steps to substitute the deceased client’s estate as the claimant.
- He knew the insurance company didn’t know his client had died.
- Suspended for 30 days

Out to Sea

- Pretrial conference was set for September 10, 2021 (trial for September 14, 2021)
- Early August 2021, the attorney booked a 7 day Caribbean cruise set to begin on September 5, 2021; and another 7 day cruise to begin right after on the same ship.
- On August 30, 2021, the attorney moved to withdraw from the client's matter.
- Neither the attorney, nor the client, appeared on September 10, 2021. Court denied the motion to withdraw.
- Attorney's 2nd cruise departed from Miami on September 12, 2021. Attorney's ship was docked in Honduras on September 14, 2021. no one appeared at trial. Court issued a bench warrant for the client and an order to the attorney directing him to show cause at an in-person hearing why he shouldn't be held in contempt.
- Attorney appeared remotely and not in-person.
- He apologized to the Court and explained that he expected the motion to withdraw to be granted and the trial date to be vacated when his client didn't appear at the pretrial.
- Rules – 1.3 (diligence); 8.4(d) (prejudicial to the administration of justice)
- Stipulated to 30 days suspension, all stayed on his successful completion of one-year probation with conditions



Illegal Inducement of a witness

- Criminal defense – agreed to represent a husband charged with assault and battery of his wife
- Family law – also agreed to represent the husband in divorce proceedings filed by wife
- What did the attorney do?
 - He spoke to wife's attorney and asked her to "communicate a proposal to [wife] that if she did not testify in the criminal matter, his client would relinquish his claim against the marital home."
 - Massachusetts Rules violated: 3.4(b); 1.7(a)(2); 1.1; 1.2(a); 8.4(d); 8.4(h)

Forged Character Reference Letters

- Stipulated to committing 34 counts out of 41 counts of professional misconduct. State Bar found him culpable of 33 counts (several client matters)
- To avoid disbarment, he presented three character reference letters
- One was supposedly from a partner who described him as “a highly intelligent, very open-minded and very reliable person” who is “very concerned with his clients’ well-being.”
- He wrote and signed each of the letters.
- Underlying cases: he had told a client he filed suit, when he hadn’t, and the statute of limitations then barred the claim. In another matter, he failed to return a \$10,000 retainer despite requests to do so and not performing any services.
- Disbarment

Concealment, fraud, predatory engagement letter

- Man won \$1 million in the state lottery, taking home \$650,000
- His ex-girlfriend sought to modify a prior child support order
- The Court enjoined him from spending, assigning, or transferring the funds
- He hired one attorney to represent him on the support issue.
- But consulted and retained another counsel as well. That attorney created a trust to hold the money (and later the man's truck title), naming the client's brother as a beneficiary so they could be protected from the ex-girlfriend.
- Advised the client to file for bankruptcy to prevent enforcement of the Court Orders (frivolous); drafted predatory fee agreement.
- Rules violated: 1.4(b), 1.5(b)(1) (unreasonable fees); 1.2(a) (achieving objectives by legal means); 1.2(d) (fraudulent); 3.4(a) (unlawful obstruction to other party; also 3.4(c); 8.4(a); 8.4(c); 8.4(d); 3.3(a)(1), and others.
- Disbarment

Having someone else complete your CLEs..



Having someone else complete your CLEs..



I finished your webinar training for you.

Awesome. 3 more to go.

Did I do my seminar?

Seminars are done.

Finally, a word about Toilet Etiquette



He couldn't spare a square

15. On November 30, 2021, the day of Wells's pretrial hearing, respondent deposited his feces into an empty potato chip can before leaving his home. He did not put a lid on the can. Respondent drove with the can of feces to Cambridge, Ohio.

15. Admits the allegations in paragraph fifteen.



Toilet Etiquette

16. At approximately 8:10 a.m. – 8:15 a.m., respondent turned his vehicle down the alley where Haven of Hope’s parking lot is located.



16. Admits the allegations in paragraph sixteen and further avers Respondent did not know the address of Haven of Hope on November 30, 2021, and just chose a random location downtown to throw out the Pringles cannister as a prank that was not directed at anyone in particular.

Toilet Etiquette

27. Respondent has engaged in similar conduct on approximately ten previous occasions, indiscriminately choosing the location where he throws the chip cans containing his feces.

27. Admits the allegations in paragraph twenty-seven and further avers Respondent voluntarily provided this information during his deposition that he indiscriminately choses the location where he throws chip cans as a prank.





Disciplinary Counsel

MENU

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Office of Disciplinary Counsel

Ethics Hotline for Lawyers

ODC will provide informal, non-binding guidance to a lawyer regarding compliance with the Rules. A request for guidance should relate to a lawyer's contemplated, prospective conduct. ODC guidance will not be in the form of legal advice, and the guidance discussions should not be construed as creating an attorney-client relationship. Although any guidance provided by ODC will be confidential, a lawyer may waive such confidentiality in any subsequent, related disciplinary matter in which that lawyer is a disciplinary respondent.

To reach the Ethics Hotline, please call the ODC at 302-651-3931 and advise the receptionist you are making a hotline call. You also have the option of emailing the Ethics Hotline at ARMS_ODC_EHOTLINE@delaware.gov.

HAVE A QUESTION?

Give us a call.