



Legal Ethics from the Movies

Carter Dugan, Partner
Rachel Roosth, Senior Associate
Megan Roberts, Senior Associate
Norton Rose Fulbright US LLP

Legal Entity
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Unrepresented Persons and Responsibilities of the Supervising Lawyer





USA HD



#suits

USA HD

Whose Actions Were Improper?

- A. Mike Ross
- B. Harvey Specter
- C. Both of their actions were proper
- D. Both Mike and Harvey

Rule 4.03: Dealing with Unrepresented Persons

. . . When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 8.04: Misconduct

(a) A lawyer shall not:

...

(3) engage in conduct involving **dishonesty, fraud, deceit or misrepresentation**;

...

(5) state or imply an ability to influence improperly a government agency or official;

Rule 5.01: Responsibilities of a Partner or Supervisory Lawyer

A lawyer **shall be subject to discipline** because of another lawyer's violation of these rules of professional conduct if:

- (a) The lawyer is a partner or supervising lawyer and **orders, encourages, or knowingly permits** the conduct involved; or
- (b) The lawyer is a partner in the law firm in which the other lawyer practices, . . . and with knowledge of the other lawyer's violation of these rules **knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.**

ABA Model Rules are Stricter than Texas Rules

Model Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

- . . .
- (c) a lawyer **shall be responsible** for another lawyer's violation of the Rules of Professional conduct if:
 - (1) the lawyer **orders or**, with the knowledge of the specific conduct, **ratifies the conduct involved**
- . . .

Rule 8.03(a): Reporting Professional Misconduct

- (a) . . . a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

Witness Compensation





What compensation for witness testimony is not permitted?

- A. Expenses reasonably incurred by a witness in attending or testifying
- B. Reasonable compensation to a witness for his loss of time in attending or testifying
- C. A reasonable fee for the professional services of an expert witness
- D. Any compensation that is contingent on the content of the testimony of the witness

Rule 3.04: Fairness in Adjudicatory Proceedings

A lawyer shall not:

. . .

- (b) falsify evidence, counsel or assist a witness to testify falsely, or pay, **offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness** or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
 - (1) expenses reasonably incurred by a witness in attending or testifying;
 - (2) reasonable compensation to a witness for his loss of time in attending or testifying; or
 - (3) a reasonable fee for the professional services of an expert witness

Protection of Confidential Information





Did an ethical violation occur?

- A. Yes because law firms should have systems in place to automatically detect hackers
- B. Maybe depending on whether the firm's monitoring was reasonable and whether Diane's actions were reasonable
- C. Maybe depending on whether the firm paid the ransom
- D. Not if the firm notified the affected clients as soon as the possible breach occurred

ABA Model Rule 1.6(c): Confidentiality of Information

- (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.

Comment 18 to ABA Model Rule 1.6(c)

A lawyer must “act competently to **safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure** by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”

The unauthorized access “**does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.**”

Factors to be considered in determining the reasonableness . . . include **the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards**, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients .

..

ABA Model Rule 5.3: Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

Comment 3 to the ABA Model Rule 5.3 contemplates cloud service technology:

A lawyer may use nonlawyers outside the firm to assist the lawyer

- Examples: **hiring a document management company** to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an **Internet-based service to store client information**.
- When using such services outside the firm, a lawyer must **make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations**.

Conflicts of Interest







What may the lawyers do without doing more?

- A. Advise Eduardo Saverin and Mark Zuckerberg
- B. Advise only Mark Zuckerberg and disclose to Eduardo that they are not his lawyer
- C. Take their fees in Facebook equity
- D. Advise Eduardo Saverin on a MySpace takeover
- E. None of the Above

Conflicts

Rule 1.06. Conflict of Interest: General Rule

- (b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
 - (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or
 - (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

Conflicts

Rule 1.06. Conflict of Interest: General Rule

- (c) A lawyer may represent a client in the circumstances described in (b) if:
 - (1) the lawyer reasonably believes the representation of each client, will not be materially affected; and
 - (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

. . .

Conflicts

Rule 1.06. Conflict of Interest: General Rule

- (f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

Conflicts

Rule 1.07. Conflict of Interest: Intermediary

- (a) A lawyer shall not act as intermediary between clients unless:
 - (1) the lawyer **consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;**

. . .

Conflicts

Rule 1.07. Conflict of Interest: Intermediary

- (2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation...that each client will be able to make adequately informed decisions...and that there is little risk of material prejudice...; and

Conflicts

Rule 1.07. Conflict of Interest: Intermediary

- (3) the lawyer reasonably believes that the common representation can be undertaken impartially without improper effect on other responsibilities the lawyer has to any of the clients.

. . .

Conflicts – Getting Facebook Stock

Rule 1.08. Conflict of Interest: Prohibited Transactions

- (a) A lawyer shall not enter into a business transaction with a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client;
 - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) the client consents in writing thereto.
- (b) [Can't have client make you a gift or name you in a will unless it's a relative]

Conflicts – Represent Others Later

Rule 1.09. Conflict of Interest: Former Client

- (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:
 - (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
 - (2) if the representation in reasonable probability will involve a violation of Rule 1.05 [maintaining confidentiality]; or
 - (3) if it is the **same or a substantially related matter**.

Obstruction of Evidence





Whose Actions Were Proper?

- A. Maggie Ward – (Junior Lawyer)
- B. Fredrick Quinn – (Managing Partner)
- C. Michael Grazier – (Senior Lawyer)
- D. None of the above

All – Burying Documents

Rule 3.04 Fairness in Adjudicatory Proceedings

A lawyer shall **not**:

- (a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or **conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value**; or counsel or assist another person to do any such act.
- (b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case.
[Exceptions for expenses and reimbursement, and experts]

All – Burying Documents

Rule 3.04 Fairness in Adjudicatory Proceedings

(c) [I]n representing a client before a tribunal:

- (1) **habitually violate an established rule of procedure or of evidence;**
- (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
- (3) state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused, except that a lawyer may argue on his analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein;

All – Not Telling on Each Other

Rule 8.03 Reporting Professional Misconduct

- (a) Except as permitted in paragraphs (c) or (d), **a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question** as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

. . . .

All – Hiding the Documents

Rule 8.04 Misconduct

(a) A lawyer shall not:

- (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
...
- (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) engage in conduct constituting obstruction of justice;
- (5) state or imply an ability to influence improperly a government agency or official;

Fees and Ending the Representation







Which of Mickey's Actions are Not Problematic?

- A. Asking for Additional Fees During the Representation
- B. Delaying the Trial Because of a Fee Issue
- C. Threatening to Withdraw Because of Fees on the Eve of Trial
- D. None, All of Mickey's Actions Were Proper

How may a Fee be determined

Rule 1.04 Fees

- (a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

When can you quit

Rule 1.15 Declining or Terminating Representation

- (a) A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw, except as stated in paragraph (c), from the representation of a client, if:
 - (1) the representation will result in violation of Rule 3.08, other applicable rules of professional conduct or other law;
 - (2) the lawyer's physical, mental or psychological condition materially impairs the lawyer's fitness to represent the client; or
 - (3) the lawyer is discharged, with or without good cause.

When can you quit

Rule 1.15 Declining or Terminating Representation

- (b) Except as required by paragraph (a), a lawyer **shall not** withdraw from representing a client unless:
 - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes may be criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;

When can you quit

Rule 1.15 Declining or Terminating Representation

- (b) Except as required by paragraph (a), a lawyer **shall not** withdraw from representing a client unless:
 - (5) the **client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;**
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.

Preparing Witnesses





Was Paul Biegler's preparation appropriate?

- A. Yes
- B. No

How far is the Wood Shed

Rule 3.04 Fairness in Adjudicatory Proceedings

A lawyer shall not:

- (b) falsify evidence, counsel or **assist a witness to testify falsely**, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case.

. . . .

How far is the Wood Shed

Rule 3.04 Fairness in Adjudicatory Proceedings

- (d) **knowingly** disobey, or **advise the client to disobey, an obligation under the standing rules of or a ruling** by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or **on the client's willingness to accept any sanctions arising from such disobedience.**

Soliciting Clients







What Rule Governs the Solicitation of New Clients?

- A. Texas Rules of Civil Procedure
- B. Federal Rules of Civil Procedure
- C. American Bar Association

Solicitation of Clients

ABA Model Rule 7.3

- (a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter:
- (b) a lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with a:
 - (1) lawyer;
 - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or

Solicitation of Clients (cont'd)

- (3) person who routinely uses for business purposes the type of legal services offered by the lawyer

Let's Get Ethical



Questions?

