“Ethics and Entertainment: Should the Show Go On?”

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The words “entertainment” and “lawyer” usually conjure up rubbing elbows with celebrities, dressing up for award shows, negotiating lucrative contracts for well-known artists, and basically living the high life thanks to high-earning and high-paying clients. But regardless of the potential perks, legal practitioners of this area of law still need to abide by the Ethical Rules all lawyers are sworn to – as well as realize that all that glitters is not gold. This paper, along with the accompanying webinar, offers an inside look at the how and what can happen when entertainment lawyers (or any other lawyer in some cases) venture away from the ethical path. Join us for an interesting enlightening, and yes, entertaining journey into the dark side of Hollywood legalities.

First I want to distinguish between the concepts of “values” versus “ethics.” This is important because it defines for us the parameters of what can and cannot be regulated. Basically “values” are personal beliefs that an individual holds. These beliefs are developed throughout a person’s lifetime and depend on factors such as background, educational status, socio-economic status, culture, gender, age, etc. You can also think of them as “thoughts” and since we have no thought police, they cannot be regulated, although many have tried through censorship and banning of certain materials. “Ethics” are more concrete – they are demonstrated by conduct or action – and conduct can be regulated. Attorneys are subject to the American Bar Association Model Rules of Professional Conduct\(^1\) plus their own jurisdictional rules or code of professional conduct\(^2\).

Second these ethical rules are broad and opinions trying to clarify their meanings within certain situations are also numerous. Ethical concerns such as the duty of confidentiality, disclosure, conflict of interest, business partnerships outside the legal arena, investments by attorneys in films and TV projects, attorney-client relationship issues, attorney compensation, and simultaneous representation can show up in a number of unique ways due to the nature of the entertainment industry and the fact that many attorneys practicing entertainment law sometimes wear two hats – being the lawyer and the agent, or the lawyer and the manager, or the lawyer and the musician\(^3\). Trying to identify what role the lawyer is playing at what time can get sticky and lead to

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ethical violations inadvertently. So let’s look at some cases where the lawyer didn’t do that too well. Below each case summary is a listing of applicable American Bar Association Rules of Professional Conduct for reference.

Who Are You?

Sometimes celebrity for an attorney comes not from any particular film or television gig but from the fact that what he or she did was so outrageous they become an instant online hit. Take the case of James O’Hare, a New York attorney who served as a judge advocate in a unit assigned to the Abu Ghraib prison in Iraq. Apparently Mr. O’Hare “received a one-year suspension for posing as a former college acquaintance on a lesbian dating website.”

According to the NY Appellate Division, Second Judicial Department, he did not know the woman well but her husband was a prominent attorney. Besides the ethical violation, this situation brings up additional concerns of violating a website’s Terms of Service and violating the FTC false advertising rules by claiming something he was not.

- ABA Rule 4.1 Truthfulness in Statements to Others
- Virginia Rules of Conduct (VRC) 4.1 (a) Truthfulness in Statements to Others
- Virginia Code of Responsibility (VCR) DR 7-102

Muggle Misconduct

Harry Potter and the law don’t seem to mix. The first Potter ethics case we have is that of Kimberly Townley-Smith, who had her license revoked in 2012 by the Law Society of Upper Canada. Ms. Townley-Smith represented a folk group in 2005 and brought suit against Warner Bros. for $40 million claiming, “the film Harry Potter And The Goblet of Fire included one scene that showed a fictional rock band that infringed on the Winnipeg group’s trademark.” Part of the decision to revoke her license was based on the fact that “Townley-Smith made allegations of improper conduct, including criminality, against an ever-expanding group of individuals directly and indirectly involved in the ... proceedings and subsequent related events.”

- ABA Rule 3.1 Meritorious Claims and Contentions; VRC 3.1
- ABA Rule 3.4 Fairness to Opposing Party and Counsel; VRC 3.4; VCR DR 7-108

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The second ethical violation case deals with a lawyer in a big London law firm who revealed to his wife’s friend that Robert Galbraith was actually Harry Potter author JK Rowling. The wife’s friend promptly leaked the secret and the attorney was fined 1000 British pounds.\(^6\)

I’m Bad, So Bad, You Know It

In order for you to understand this next one you have to read the preceding heading to the Michael Jackson tune “I’m Bad.” Here is a case of famous by association. Brian Oxman, a California attorney who claimed to be the attorney and spokesperson for the Jackson family. This association did not protect him from disbarment based on “mismanagement of client funds, failure to properly represent a woman in her divorce and other infractions.”\(^7\)

Can’t Practice Law, Be a Movie Star

Apparently being disbarred does not have to mean your “legal” career is over. Can’t be a lawyer then play one on TV. That’s what Mike Cassaway, a former attorney from Oklahoma City did. According to his agent he has a “great commercial look.” It seems he didn’t put on his head shot resume that he was disbarred for “trading legal fees for sexual favors and forged the signature of another lawyer on a letter.”\(^8\) Oh and the character he played in the film - a disbarred attorney.


\(^8\) Weiss, Debra, “Disbarred Lawyer Plays Another Disbarred Lawyer in Oliver Stone Movie,”
People often talk about creative accounting in Hollywood. For example the Eddie Murphy mega-hit “Coming to America” made no profit according to a copyright lawsuit filed shortly after it was released (Buchwald v. Paramount, 1990 Cal. App. LEXIS 634). Robert M Victor took it one step further and was disbarred for violating his fiduciary duties – basically scamming film partners in a movie-making deal misappropriating nearly $1 million intended for movie projects and providing bogus financial documents to hide his trail.9

Movie Lawyers are Like Real Lawyers: Unethical??

I don’t like to watch law-related movies. I find myself scrutinizing the legal process in the film and the lawyer’s correct or incorrect application of real or fake law. But sometimes the movie version gives us some insights – take for example The Lincoln Lawyer. The movie starring Matthew McConaughey, brings up the following ethical issues (and others):

- ABA Rule 1.5 Fees; VRC 1.5 (a); VCR DR 2-105 (a); VCR EC 2-20 Can lawyers accept compensation from illegal activities (a no-no) and lawyers need to set appropriate fees in the first place.
- ABA Rule 1.1 & 1.3 Duties of Competence and Diligence; VRC 1.1 & 1.3; VCR DR 6-101 (a)(2) & DR 6-101 (b)
- ABA Rule 1.7(a) Conflict of Interest; VRC 1.7 (a)(b); VCR DR 5-105 (a)(c). In terms of representing prior, current, and concurrent clients.
- ABA Rule 1.6 Confidentiality of Information; VRC 1.6 (a); VCR DR4-101 (a)(b)10

Once Family, Always Family

Does the Mafia exist? Depends on who is asking and where. Isaac Guillen, was disbarred and sentenced to seven years in prison when he pleaded guilty to “pleaded guilty to racketeering and laundering drug proceeds on behalf of a clique of the 18th Street gang controlled by a Mexican Mafia member.”

- ABA Rule 1.2 Scope of Representation; VRC 1.2 (a); VCR EC 7-7; EC 7-8
- ABA Rule 1.5 Fees; VRC 1.5 (a); VCR DR 2-105 (a); VCR EC 2-20

Does this Ethics Violation Make Me Look Fat?

Stanley Chesley was a Kentucky attorney who was known for his success in class action suits. The one that did him in was related to a $200 million settlement over the diet drug fen-phen. “The court said Chesley, 76, of Cincinnati, Ohio, took an excessive $20 million fee and helped cover up misconduct by other lawyers in the case to protect the improper payments he accepted.”

- ABA Rule 1.5 Fees; VRC 1.5 (a); VCR DR 2-105 (a); VCR EC 2-20
- ABA Rule 4.1 Truthfulness in Statements to Others; VRC 4.1 (a); VCR DR 7-102

Silence is Not Golden

Alea Danielle Ashby was disbarred in Tennessee not just for separate instances of misconduct but also because she did not respond to the complaints. The TN Board of Professional Responsibility “ruled that Ashby, who also didn’t respond to the new complaints, effectively abandoned her practice by not communicating effectively with her clients following her temporary suspension and noted that she then misrepresented her professional status to Davidson County Circuit Court, other attorneys and clients.”

- ABA Rule 1.4 Communications; VRC 1.4 (a); VCR DR 6-101 (c)
- ABA Rule 8.4 Misconduct; VRC 8.4;

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ABA Rule 8.5 Disciplinary Authority; VRC 8.5

It’s My Disbarment and I’ll Party If I Want To

So you are convicted of aggravated vehicle assault, driving while intoxicated and for leaving the scene of the accident. This gives you a 3-10 year sentence to serve in prison. Then you are disbarred. What do you do next? If you are Tabber Benedict, “a jet-setting prepser and Manhattan social fop” you throw yourself a going away party and tell everyone that you are actually moving to Europe.

ABA Rule 1.1 Competence; VRC 1.1; VCR DR 6-101 (a)(2)
ABA Rule 4.1 Truthfulness in Statements to Others; VRC 4.1 (a); VCR DR 7-102
ABA Rule 8.4 Misconduct; VRC 8.4;
ABA Rule 8.5 Disciplinary Authority; VRC 8.5

You Can’t Make Misconduct Disappear Like Magic

But what if you are not only a lawyer but also a professional magician named “Fantastic Fig?” That still won’t protect you from facing the consequences of your unethical actions. It is a shame that Paul Fegen, who was disbarred when he was 77 years old, had an unblemished record of practicing law for 44 years! He was celebrated and awarded by a Los Angeles Mayor in his heyday. So what happened? “Fegen’s disbarment resulted from cases that originated in 2005, ‘06 and ‘07 and resulted in admissions of disobeying court orders and failures to perform legal services competently and keep a client informed of developments in her case.”

ABA Rule 1.1 Competence; VRC 1.1; VCR DR 6-101 (a)(2)
ABA Rule 1.5 Fees; VRC 1.5 (a); VCR DR 2-105 (a); VCR EC 2-20
ABA Rule 4.1 Truthfulness in Statements to Others; VRC 4.1 (a); VCR DR 7-102
ABA Rule 8.4 Misconduct; VRC 8.4;
ABA Rule 8.5 Disciplinary Authority; VRC 8.5

I Know the President!

Remember the White House State Dinner crashers in 2009 – Tareq and Michele Salahi\textsuperscript{16}? They had a Baltimore entertainment attorney named Paul W. Gardner II. Mr. Gardner also represented another high profile actress – Felicia Pearson who appeared on “The Wire.” Mr. Gardner was disbarred in 2013 for a variety of professional misconduct, including “overbilling clients, misusing money given to him as a retainer, having his office manager who was not an attorney do legal work, improperly filed immigration visa applications, and was late to his disciplinary proceedings.\textsuperscript{17}” All of this plus on his website he has photos of himself with a number of celebrities including Barak Obama.

- ABA Rule 1.1 Competence; VRC 1.1; VCR DR 6-101 (a)(2)
- ABA Rule 1.3 Diligence; VRC 1.3 (a); VCR DR 6-101 (b)
- ABA Rule 1.5 Fees; VRC 1.5 (a); VCR DR 2-105 (a); VCR EC 2-20
- ABA Rule 1.18 Duties to Prospective Client
- ABA Rule 4.1 Truthfulness in Statements to Others; VRC 4.1 (a); VCR DR 7-102
- ABA Rule 8.4 Misconduct; VRC 8.4;

One for the Social Media & Ethics Book

On one side you have a Los Angeles County Deputy District Attorney named Patrick Frey who has a blog called “Patterico's Pontifications.” His blog contains commentary about justice, politics and the media. On his blog he has a disclaimer that the comments on his blog are his own opinion and not of his employer’s. On the other side you have Louisiana attorney Kathy Kelly who was representing Jimmy Duncan, whose murder case was under review because of allegations that 2 prosecutors manufactured evidence against him. Frey wrote on his blog about his views on the Jimmy Duncan case after his own research and after interviewing a prosecution witness. Kelly left a comment on Frey’s blog post threatening to file ethics charges against Frey for contacting the witness and writing about the case on the blog\textsuperscript{18}. After careful review of the original blog post and the threat, another legal blogger, Ben Sheffner could find no

\textsuperscript{16} For more information or to refresh your memory see http://www.huffingtonpost.com/2009/11/25/tareq-and-michele-salahi_n_371336.html.
\textsuperscript{18} For the comment see: http://patterico.com/2009/02/28/balkos-article-on-the-jimmie-duncan-case/#comment-466154.
CA ethical rules that could be violated by Frey and determined the threat to be empty as well as a possible violation of Frey’s First Amendment Rights\(^9\).

- ABA Rule 1.4 Communications; VRC 1.4 (a); VCR DR 6-101 (c)
- ABA Rule 3.3 and 3.4 Ex-parte Communications; VRC 3.3
- ABA Rule 8.3 Reporting Professional Misconduct; VRC 8.3

**What’s Wrong with a Media Trial?**

Defense attorneys have many ways of defending their clients, inside the courtroom and out and even before the trial has even begun. Dallas Cowboys player Josh Brent was charged with intoxication manslaughter in regards to the death of his teammate. Dallas County District Attorney Craig Watkins was interviewed regarding the case on radio and made the statement that “Brent will be found guilty and should remain incarcerated ahead of his trial because he continues to use alcohol and illicit drugs.” Brent’s attorney George Milner then held a press conference accusing Watkins of violating Texas Disciplinary Rules of Professional Conduct regarding pre-trial publicity and that he was “concerned about the inflammatory statements and the impact they may have on those selected for the jury.”\(^20\)

- ABA Rule 3.6 Trial Publicity; VRC 3.6 (a)(b); VCR DR 7-106
- ABA Rule 4.1 Truthfulness in Statements to Others; VRC 4.1 (a); VCR DR 7-102
- ABA Rule 8.3 Reporting Professional Misconduct; VRC 8.3

We’ve covered a lot of ground with these cases even though many more are on the books. It doesn’t really matter what area of law your practice – even if it glimmers with fame and riches – you need to uphold the ethical standards of the legal profession for your clients, for society, and to be able to keep your bar card.

*For more information, check out the Resources section of The Law Office of Deborah Gonzalez, Esq., LLC at [www.dgonzalez-esq.com](http://www.dgonzalez-esq.com).*

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