

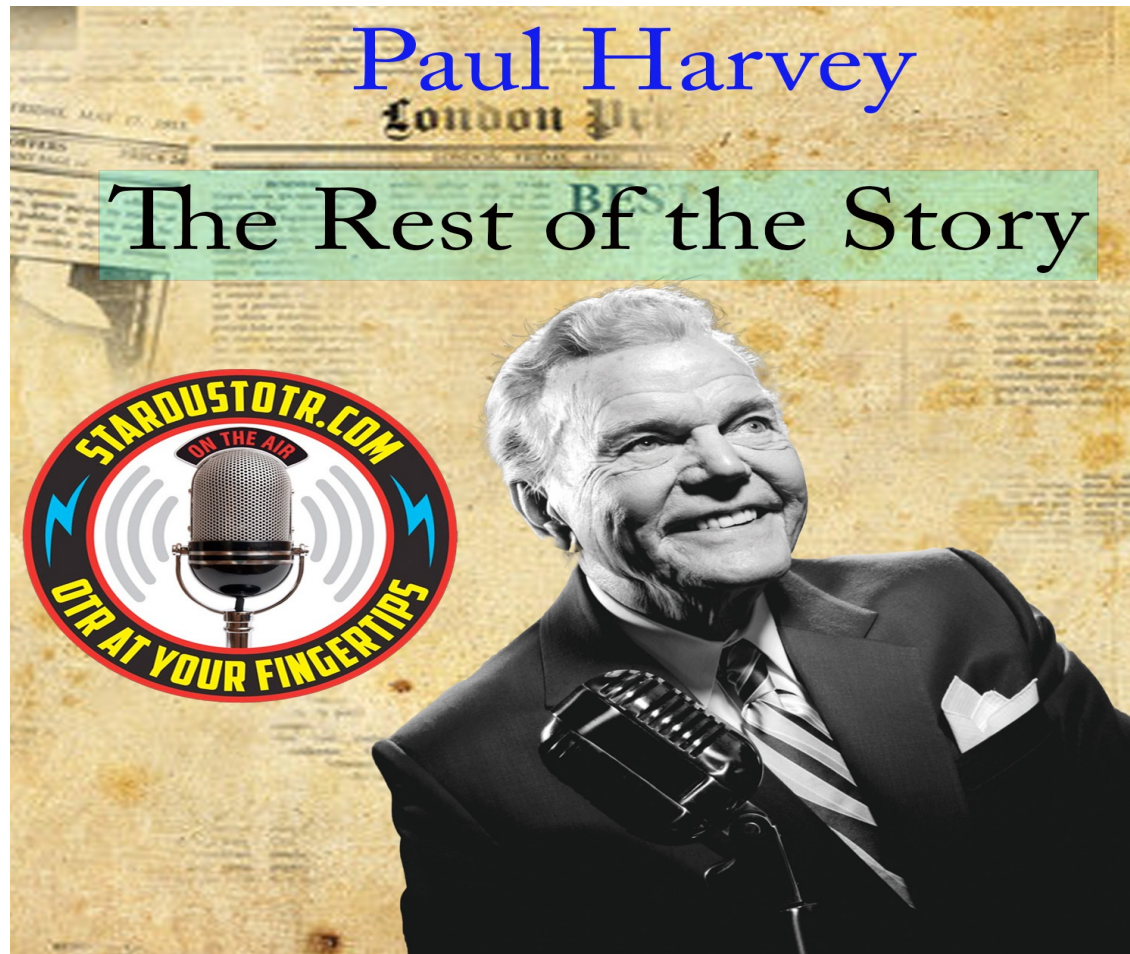
# **2<sup>nd</sup> Annual Midwest Tax Rep Conference**



**James Bell  
Hoover Hull Turner  
October 25, 2024**

# AKA – THE REST OF THE STORY

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# **Civility/ Professionalism**

# DISRUPTING A TRIBUNAL

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Rule 3.5(d): “A lawyer shall not ... engage in conduct intended to disrupt a tribunal.”

## ***MATTER OF K.M.***

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- Attorney disrupted tribunal when immediately after a discussion in chambers with a judge, attorney grabbed and struck opposing counsel, thereby knocking him over the table in the judge's office.
- 60-day suspension

# ***MATTER OF A.M.***

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- Throwing soft drink at opposing counsel and restraining him in his chair in response to deposition questioning of attorney's wife, causing premature conclusion to deposition, is conduct intended to disrupt tribunal and that is prejudicial to the administration of justice.
- 60-day suspension

# **Professionalism In Writing Is Good Advocacy**

# 7 DEADLY WORDS AND PHRASES

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- “Ridiculous”
- “Ludicrous”
- “Disingenuous”
- “Preposterous”
- “Absurd”
- “Outlandish”
- “Absolutely False”



# BRIEFING

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- “Irrelevant commentary thereon during the course of judicial proceedings does nothing but waste valuable judicial time.”
- *Amax Coal Co. v. Adams*, 597 N.E.2d 350 (Ind.Ct.App. 1992).

# BRIEFING

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- The appellant's brief on transfer stated: "indeed the opinion is so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for the appellee ... and then said whatever was necessary to reach that conclusion. (Regardless of whether the facts or the law supported its decision.)"
- Public reprimand
- *Michigan Mutual Ins. Co. v. Sports, Inc.*, 706 N.E.2d 555 (Ind. 1999).

## ***MATTER OF MW,*** **782 N.E.2d 985 (IND. 2003)**

---

- “Lawyers are completely free to criticize the decisions of judges. As licensed professionals, they are not free to make recklessly false claims about a judge’s integrity.”
- Rule 8.2: “A lawyer shall not make a statement that the lawyer knows to be false ... concerning the qualifications or the integrity of a judge.”

**But Kentucky Violates 8.2  
Better than We Do**

***KY Bar Ass'n v. L.W.***  
**929 S.W.2d 181 (1996)**

- KY Example
- Judge grants injunction and then recuses.
- Motion to Set Aside Injunction:
- “Comes defendant, by counsel, and respectfully moves the Honorable Court, much better than that lying incompetent asshole it replaced . . .”

***KY Bar Ass'n v. L.W.***  
**929 S.W.2d 181 (Cont'd)**

- In response to why he should not be found in contempt, he filed:
- “Memorandum In Defense of the Use of the Term ‘Ass-hole’ to Draw Attention to the Public Corruption in Judicial Office.”

***KY Bar Ass'n v. L.W.***  
**929 S.W.2d 181 (Cont'd)**

- In his Answer to First Amended Complaint, he repeated allegations of corruption and then added a “P.S.”:
- “There is a better and happier way and – with due temerity I claim to have found it – it requires one to identify an ass-hole when he sees one.”

***KY Bar Ass'n v. L.W.***  
**929 S.W.2d 181 (Cont'd)**

- “Respondent appears to believe that truth or some concept akin to truth . . . is a defense.”
- “There can never be a justification for lawyer to use such scurrilous language with respect to a judge.”
- “The reason is not that the judge is of such delicate sensibilities as to be unable to withstand the comment, but rather that such language promotes disrespect of the law and for the judicial system.”



***KY Bar Ass'n v. L.W.***  
**929 S.W.2d 181 (Cont'd)**

- “Officers of the court are obligated to uphold the dignity of the Court of Justice.”
- 6 month suspension

# **A Lack of Professionalism Can Be Cause for Discipline**

# ***MATTER OF M.H. (IND. 2015)***

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- Post Dissolution Case: Began Representing the Mom. Upset over a denial for change of venue.
- Accused Opposing Counsel in Writing: Fraud, Deceit, Trickery.
- “Your possibly homophobic, racist, sexist clients should not be using the Courts to further that agenda.”
- Threats of Grievances and criminal prosecution if no agreement to change of venue.

## ***MATTER OF M.H. (CONT'D)***

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- Accused the Judge of a “Stubbornly injudicious attitude.”
- “Taking off on detours and frolics that ignore the fact that there are laws in Indiana that the Court is supposed to follow.”
- 8.4(d); Lack of Remorse
- Violation of Oath for acting in an “offensive personality.”
- 60 Days Without Automatic Reinstatement

# ***DO YOU REMEMBER TAKING THE OATH?***

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## ***HERE IS YOUR OATH REFRESHER***

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- “I do solemnly swear or affirm that . . . I will maintain the respect due to courts of justice and judicial officers . . . I will abstain from **offensive personality** and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged . . . so help me God.”

# ***ADRIENNE MEIRING'S ADVICE TO JUDGES:***

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- BE KIND!
- Or as they say in Kentucky . . . .

***AND NOW . . . THE REST OF THE  
STORY***

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## ***2024 DECISION***

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- Justice Slaughter's Dissent:
- “I am concerned, rather, with interpreting our oath of attorneys to impose minimal standards that warrant sanctions for those whose conduct falls short. The oath is broad and aspirational, and it lacks the specific standards found in other rules . . .”

## ***2024 DECISION***

---

- Justice Slaughter's Dissent:
- “My specific concern is with the ever-present threat that lawyers will face charges for whatever the commission deems an “offensive personality” —an inherently subjective assessment that risks a dangerous slippery slope . . . Unpopular lawyers or those with disfavored clients may be especially vulnerable to enforcement overreach.”

## ***2024 DECISION***

---

- Justice Slaughter's Dissent:
- “The better enforcement practice, in my view, is for the commission to void “offensive personality” charges altogether and to ground charges against those deserving of professional sanction . . .in one or more targeted professional-conduct rules.”

## ***2024 DECISION***

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- Justice Molter Concurring: “I remain open to considering the question Justice Slaughter’s partial dissent identifies. That is, whether an attorney can be sanctioned for violating the oath that Admission and Discipline Rule 22 requires attorneys “take and subscribe to,” including its promise to “abstain from offensive personality.”
- Joined: CJ Rush; J. Massa

# Confidentiality

# CONFIDENTIALITY

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## **Rule 1.6. Confidentiality of Information**

(a) A lawyer shall not reveal information relating to 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).

***MATTER OF SMALL TOWN ATTY, 703 N.E.2D 1045 (IND.  
1998)***

---

- Poor Crawfordsville Attorney
- Represents Guardianship Client
- Guardianship's Client's Husband was a Witness in a Criminal Case
- Criminal Client wanted to kill client and husband
- Attorney = Don't Do That.

## ***MATTER OF SMALL TOWN ATTY***

---

- Criminal Client Demands Address
- Has envelope. Returned for “NSS” (No Such Street)
- Two Days Later, Guardianship client murdered at 3813 South 300 East
- Hearing Officer: Did not reveal information relating to the representation



## ***MATTER OF SMALL TOWN ATTY***

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- Supreme Court of Indiana: “Information relating to the representation of a client” is a “broad definition and has been construed to include all information relating to the representation regardless of the source.”
- “Information” may include identity or whereabouts of client.
- “[I]nformation relating to the representation of the guardianship client was not excepted from Rule 1.6’s confidentiality requirement.”

# CONFIDENTIALITY

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- Areas Where This Will Arise:
  - Staff Comments
  - Social Media
- Requests for Interviews
- Request for Files
  - Duty to Resist

# WHAT IF YOU GET A SUBPOENA

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*Here is what you need*

- Court Order?
- Consent?
- Other?
- There is a duty to resist

***AND NOW . . . THE REST OF THE  
STORY***



# ABA OPINION 511

## LISTSERVS

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- “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 . . .

# ABA OPINION 511

## LISTSERVS

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- . . . 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."

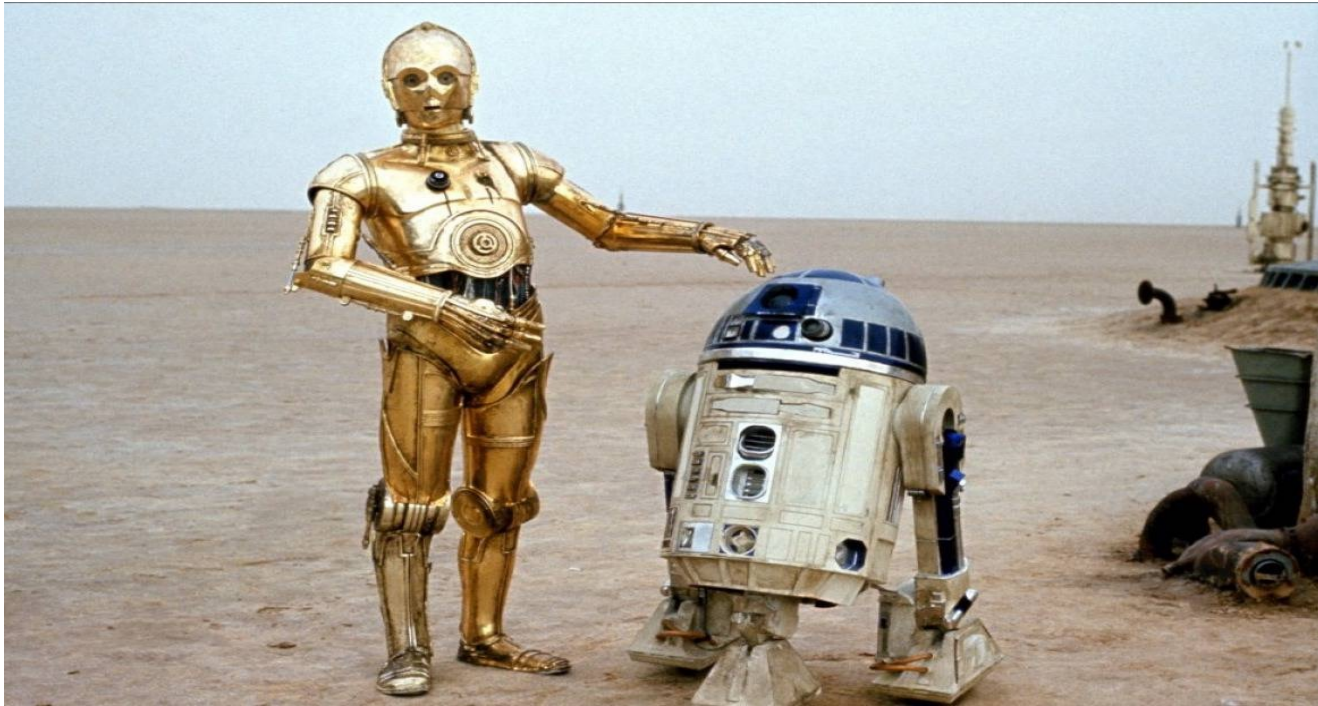
# ABA OPINION 511

## LISTSERVS

---

- “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”.

# Artificial Intelligence





## AI GUIDANCE (FOR NOW)

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- AI is the intern
- You are still the lawyer
- Must supervise

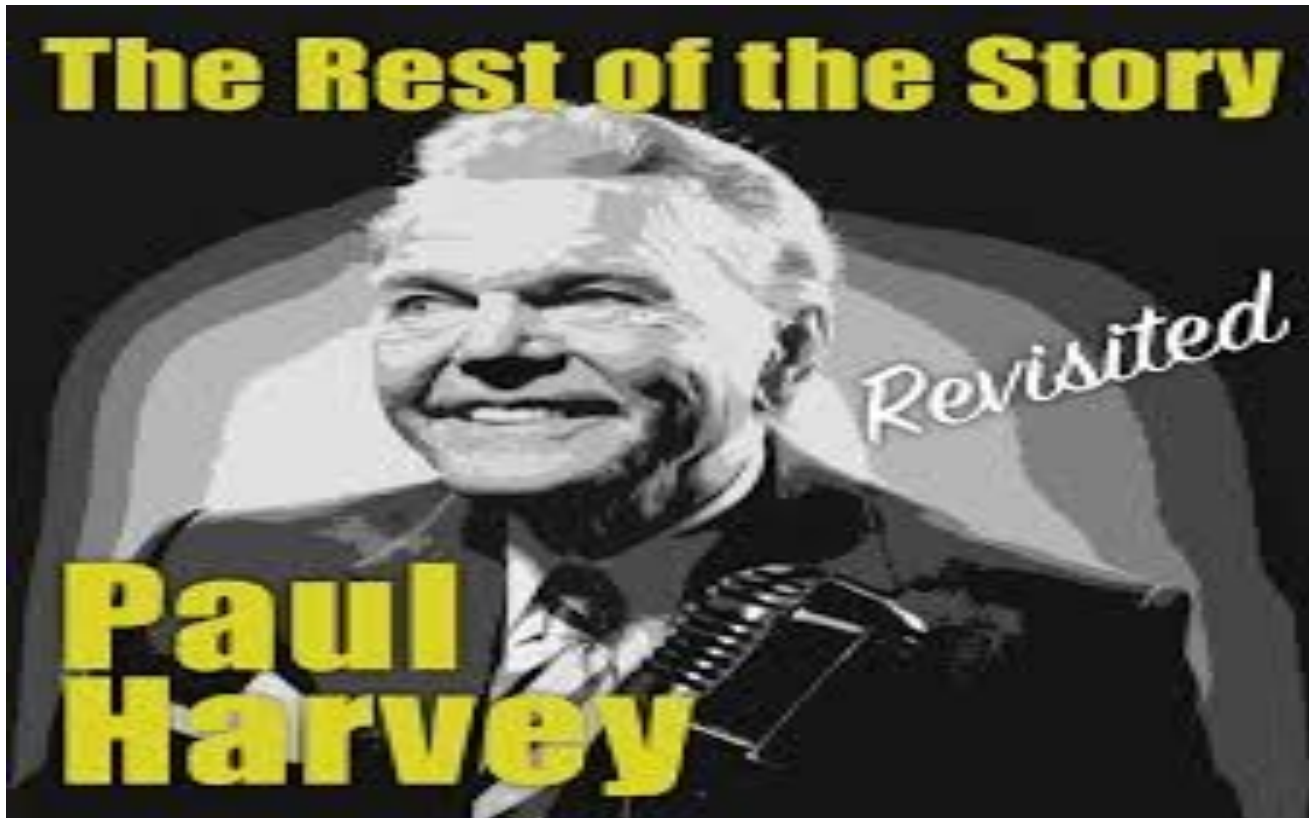
## AI GUIDANCE (FOR NOW)

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- 1.6 – Disclosure of Information
- 1.1- Competent use of tech
- 3.4 – False Statement of Law (Scrutinize)
- 5.1 – Duty to Supervise
- 1.4 – Communicate with client about use – Informed Consent
- 1.5 – What can you charge for?

# ***AND NOW . . . THE REST OF THE STORY***

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## 2024: ABA OPINION 512- AI

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*“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.**”*

# REASONABLE FEES

---

- ABA Formal Ethics Opinion 93-379 explained, “the lawyer who has agreed to bill on the basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she has actually expended on the client’s behalf.”

# REASONABLE FEES

---

- For example, if using a GAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GAI tool as when not using it. “A fee charged for which little or no work was performed is an unreasonable fee.”

# REASONABLE FEES

---

- Absent contrary disclosure to the client, the lawyer should not add a surcharge to the actual cost of such expenses and should pass along to the client any discounts the lawyer receives from a third-party provider.

# REASONABLE FEES

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- At the same time, lawyers may not bill clients for general office overhead expenses including the routine costs of “maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities, and the like.”



# REASONABLE FEES

---

- For example, when a lawyer uses a GAI tool embedded in or added to the lawyer's word processing software to check grammar in documents the lawyer drafts, the cost of the tool should be considered to be overhead.

# REASONABLE FEES

---

- In contrast, when a lawyer uses a third-party provider's GAI service to review thousands of voluminous contracts for a particular client and the provider charges the lawyer for using the tool on a per-use basis, it would ordinarily be reasonable for the lawyer to bill the client as an expense for the actual out-of-pocket expense incurred for using that tool.

# **When Should I Accept a Client?**

# **When Should I Turn Down a Client?**

# ***THE BASICS***

---

- Conflicts of Interest
- Competence
- Money?

# ***THE BASICS***

---

- Competence
  - What if you are in a lull?
    - Enjoy the lull
    - Get caught up
  - Stay away from the gray

## ***OTHER CONSIDERATIONS***

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- Relationship Issues
- What about the guy saying: “I don’t know about this?”

# ***WHEN DO WE SAY NO?***

---





## ***WHEN DO WE SAY NO?***

---

- We should say no when we cannot meet the client's expectations.

# ***SIGNS WE CAN'T MEET EXPECTATIONS***

---

- Are you the second lawyer, third, fourth lawyer?
- Why were they dissatisfied with their previous lawyer?

# ***SIGNS WE CAN'T MEET EXPECTATIONS***

---

- Is there a looming trial date or deadline?
- Why did they wait?

# ***OTHER SIGNS WE SHOULD “JUST SAY NO!”***

---

- The potential client promises you “other business down the line.”
- The potential client thinks this is the only case you should work on.
- The potential client claims to know more law than you (and certainly more than any previous lawyer.)

# ***OTHER SIGNS WE SHOULD “JUST SAY NO!”***

---

- The potential client has a bad attitude toward the justice system.
- The potential client and you are simply incompatible.

# ***OTHER SIGNS WE SHOULD “JUST SAY NO!”***

---

- And everyone's favorite: the potential client claims to be motivated only by “revenge,” “making a statement,” or “teaching someone a lesson.”

## ***CONSIDERATION FOR ENGAGEMENT***

---

- What other signs are there that the client expectations cannot be met?
  - Opposing counsel
  - Judge
  - The Forum

# **Breaking Up with a Client**



**Remember . . .**

---

It's not me.  
It's you.

# SAYING GOODBYE TO A CLIENT

- Do you need Court Approval?
- If so, be safe. Consider:
  - 1.6?
  - Privilege?

# TERMINATING REPRESENTATION

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- Rule 1.16(b): “a lawyer may withdraw from representing a client if ... withdrawal can be accomplished without material adverse affect on the interests of the client.”

# TERMINATING REPRESENTATION

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- Comment [9] To Rule 1.16:
- “Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client.”
- Be Careful in Your Motion to Withdraw

**Don't Get Caught**

**DWA**

**(Drafting While**

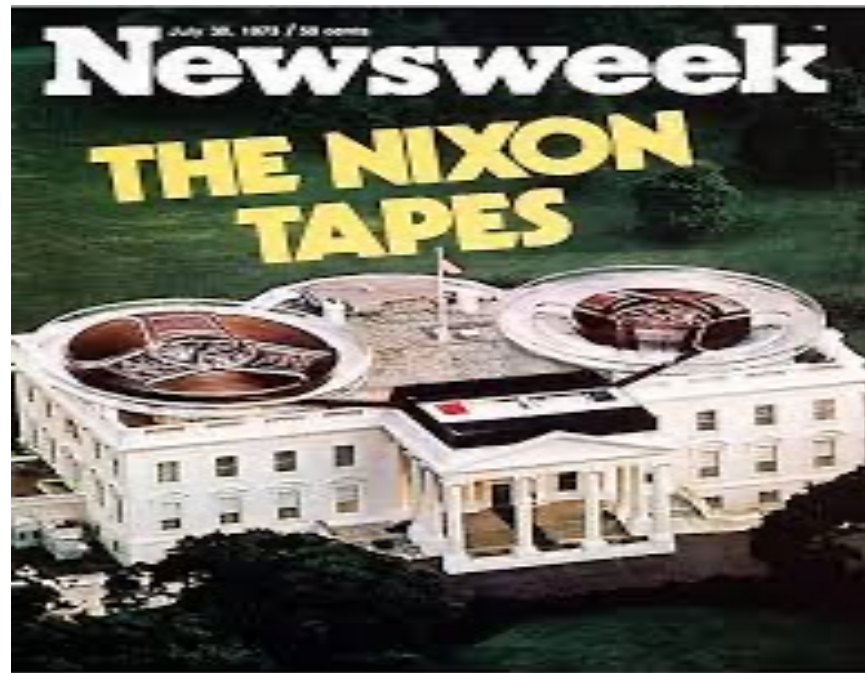
**Angry)**

# TERMINATING REPRESENTATION

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- Surrender Papers and Property
- Remit Unearned Fees
- No revelation of confidential information in the Motion to Withdraw
  - Be careful with notification letters
  - Be careful what you label the document

# Lawyers And Recordings





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# Automatic Call Recorder



Easy to record

## ***MATTER OF CE, 87 N.E.3D 470 (IND. 2017)***

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- In this case, recorded phone conversations with the defendant.
- Attorney “bragged about his personal relationships with judges in a manner that implied he had the ability to improperly influence judges”
- “spoke in pejorative terms about another client’s race”

## ***MATTER OF CE, 87 N.E.3D 470 (IND. 2017)***

---

- 8.4(e): Stating or implying an ability to influence improperly a government agency or official.
- 8.4(g): Engaging in conduct that was not legitimate advocacy, in a professional capacity, manifesting bias

## ***MATTER OF CE, 87 N.E.3D 470 (IND. 2017)***

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- “[I]n multiple conversations he discussed with Defendant the option of fleeing the jurisdiction to avoid or delay criminal prosecution.”

## ***MATTER OF CE, 87 N.E.3D 470 (IND. 2017)***

---

- 1.2(d): Counseling or assisting a client in conduct the lawyer knows to be criminal or fraudulent.

**Criminal Lawyer v.**  
**CRIMINAL LAWYER**

# WARRANT OUT FOR YOUR ARREST?

I KNOW A GUY  
WHO KNOWS A GUY  
WHO WILL TAKE CARE OF IT.



[BETTERCALLSAUL.COM](http://BETTERCALLSAUL.COM)

---

**Saul Goodman**  
ATTORNEY AT LAW

***AND NOW . . . THE REST OF THE  
STORY***





# 2024: ABA OPINION 513

## DUTY TO INQUIRE

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- *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.”*

## 2024: ABA OPINION 513

### DUTY TO INQUIRE

---

- *“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.”*

# **Why Have Rules of Professional Conduct for Lawyers?**

# PREAMBLE TO IRPC

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- “Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.”

# PREAMBLE TO IRPC

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- “A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.”

# PREAMBLE TO IRPC

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- “[A] lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority . . . A lawyer . . . help the bar regulate itself in the public interest.”

# **Why Have A Code of Judicial Conduct?**

# PREAMBLE TO INDIANA CODE OF JUDICIAL CONDUCT

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- “An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society.”



# PREAMBLE TO INDIANA CODE OF JUDICIAL CONDUCT

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- “Thus, the judiciary plays a central role in preserving the principles of justice and **the rule of law**. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust.”

# PREAMBLE TO INDIANA CODE OF JUDICIAL CONDUCT

---

- “Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.”

# **Appearance of Impropriety**

# PROMOTE CONFIDENCE IN JUDICIARY

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## **Rule 1.2: Promoting Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

# PROMOTE CONFIDENCE (CONT'D)

## Rule 2.11: Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality\* **might reasonably be questioned, including** but not limited to the following circumstances

...

# **Rule of Law, Judicial Ethics in Everyday Life**

# DECORUM, COMMUNICATION AND DEMEANOR WITH JURORS

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- **Rule 2.8(C):**
- A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

# DECORUM, COMMUNICATION AND DEMEANOR WITH JURORS

---

## Rule 2.8:

### **Comment [2]**

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.



# RICHARD “RACEHORSE” HAYNES

---

- Would this Texas Judge be in Trouble?
- Practice of having client thank judge and jury after acquittal for murder
- Judge’s response: “Don’t thank me you little turd. We both know you are guilty.”

# RICHARD “RACEHORSE” HAYNES

---

- “Thank you ladies and gentlemen of the jury. I will never do it again.”

# **Professionalism In Writing**

**We Already Talked About  
the Kentucky Case**

# **Bush v. Gore**

- What happened in the aftermath?

# *Bush v. Gore*



# Advertising

## **My Theory:**

**If Your Advertisement is  
Convincing, It is Probably  
Unethical**



# Rule 7.1 Communications Concerning a Lawyer's Services

- “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”
- “A communication is false or misleading if it contains a material misrepresentation of fact or law,” or
- “Omits a fact necessary to make the statement considered as a whole not materially misleading.”

# Is This Advertisement Unethical?



# Is This Advertisement Unethical?



# Is This Advertisement Unethical?



# Is This Advertisement Unethical?

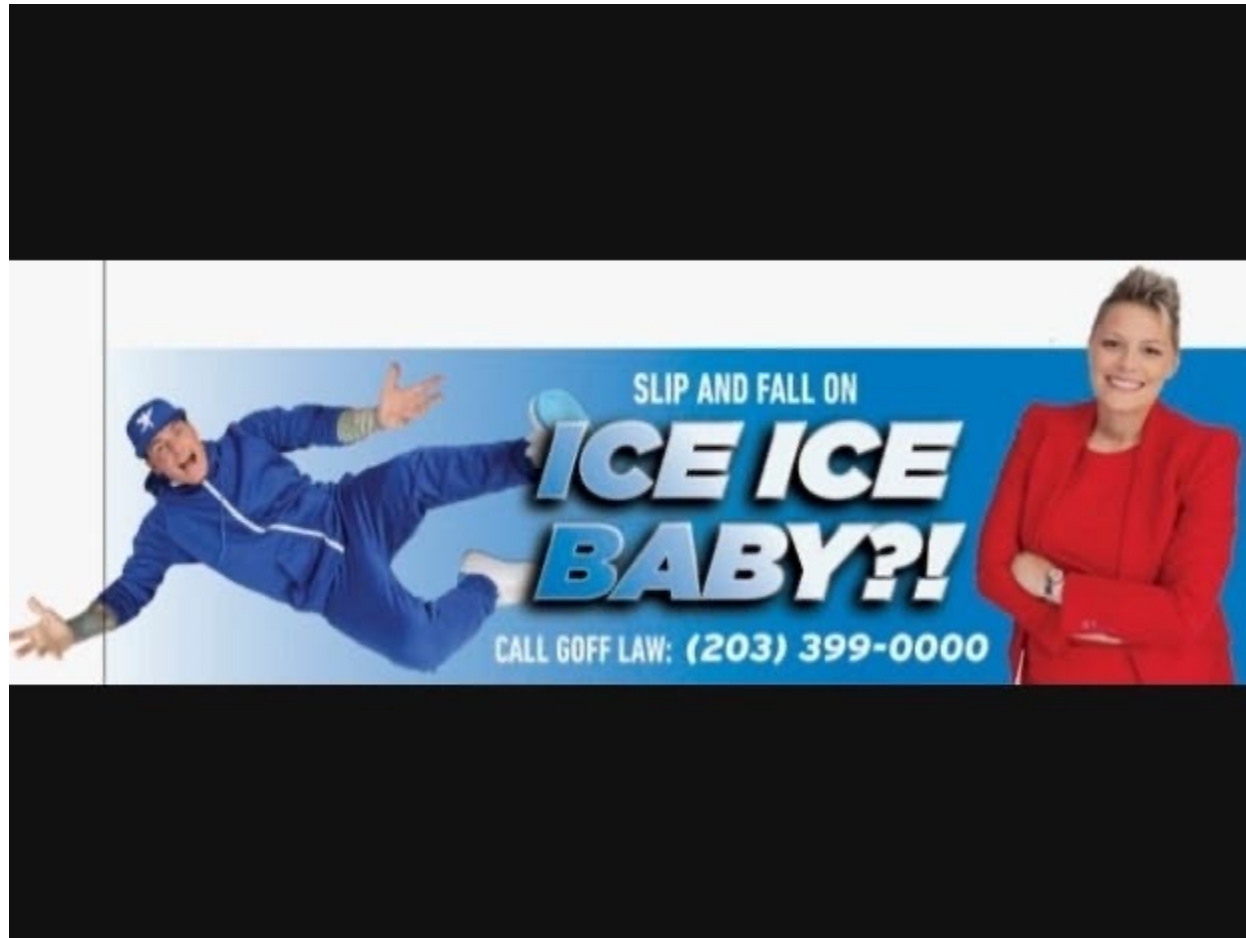


# ***VANILLA ICE***

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**ANIMALS?**

# Is This Advertisement Unethical?



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**Trust Me, I'm A Lawyer!**  
(My Dogs Do)

*Robert (Tito)  
Meyer*

**Free Consultation For:**

- Truck, Car & Motorcycle crashes
- Wrongful Death

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UTAH

# Body Parts



# Is This Advertisement Unethical?



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# **Qualities of the Attorney?**

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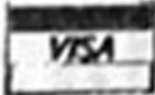



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**AN HONEST ATTORNEY**  
(but not enough to hurt your case).

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GUARDIANSHIP**
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102 SW 332nd St., Suite 1303 Federal Way  
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**BYRON BROWNE**  
265 LBS OF PURE JUSTICE  
INJURY ATTORNEY 1-833-GET-BIGB  
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# Rule 7.1 Communications Concerning a Lawyer's Services

- Comment [2] . . . In the absence of special circumstances that serve to protect the probable targets of a communication from being misled or deceived, a communication will violate Rule 7.1 if it . . .
- (5) compares the services provided by the lawyer or a law firm with other lawyers' services, unless the comparison can be factually substantiated;

# Is This Advertisement Unethical?



# Is This Advertisement Unethical?



# Is This Advertisement Unethical?



# Is This Advertisement Unethical?



**Happy Birthday!**

**Happy Birthday!!!!**





# Good Day!!!!



*Good Day!*

**The End**