Conduct Unbecoming

Personal Time, Professional Consequences

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When Professional Misconduct is Personal



Off the Clock Conduct Unbecoming

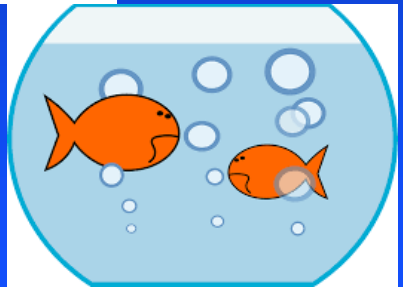


- Disregard for the law
- Dishonesty
- Violence
- Vices
- Improper identification
- Bias/ discrimination

Modern #Ethics for #Lawyers



- ABA Rules
- ABA Standards
- Practical Application



Sources of Ethics Rules

- Binding
  - State Codified Ethics Rules
  - State Rules of Professional Conduct
  - State and Federal Case Law
- Advisory
  - ABA Model Rules of Professional Conduct
  - ABA, State, County Bar ethics opinions
  - Industry Rules and Guidelines

ABA Preamble: A Lawyer's Responsibilities

- [5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and *personal affairs*.

Have You Ever Defended a Crime You Have Committed?



ABA Model Rule 8.4 Misconduct

Professional misconduct for a lawyer includes:

- (a) Violate rules of prof conduct
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects

ABA Model Rule 8.4 Misconduct

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- (d) engage in conduct that is prejudicial to the administration of justice

Is All Crime Equally Unbecoming?









ABA 8.4 Comment [2]

- Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication.

ABA 8.4 Comment [2]

- Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of *personal morality*, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law.

ABA 8.4 Comment [2]

- Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics *relevant to law practice*.

Patterns Make Professional Misconduct



ABA 8.4 Comment [2]

- Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A *pattern of repeated offenses*, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

ABA 8.4 (b) Honesty, Trustworthiness, or Fitness as a Lawyer



Relevant to Law Practice?



Forum Shopping



Show Me the Nexus



2X DUI Nexus to Practicing Law

- Disobedience of a court order . . . demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney´s fitness to practice law and serve as an officer of the court"



2X DUI Nexus to Practicing Law

- Complete disregard for the conditions of probation and the safety of the public.
- Repeated criminal conduct indicate alcohol abuse adversely affects private life, cannot sit back and wait until it begins to affect practice of law.

First Time DUI

- No accident
- No visible driving
- BAC .25%



Neighborhood Peeping Tom (Iowa, 2010)

- Late night prowling and peeking
- Serious concern about whether D understood the law of privacy – which reflects adversely on fitness to practice law in violation of 8.4(b)
- Repeated pattern of criminal conduct causing Vs to suffer emotional distress

ABA Rule 8.4 (c)
Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation





Rule 8.4 (c) Examples





Prejudicial to Admin of Justice



- Violence – offense with characteristics relevant to law practice per rule 8.4
- *In re Grella* (Mass. 2002) (DV case)

Prejudicial to Admin of Justice



- Misdemeanor assault on wife
- Interfering with wife calling 911
- 8.4(b) v. 8.4(d) – conduct prej to admin of justice
- *In re Stoneburner* (Minn. 2016)

Model RPC 8.3(a) Reporting Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the 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 professional authority.

Model RPC 8.3(a)
Reporting Misconduct

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program.

Model RPC 8.3(a)
Reporting Misconduct

[5] cont: Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Modern Supervision



Managers and Mentors



ABA Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

ABA Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

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Personal Life, Professional Ethics

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