



## STRANGE BUT TRUE: LAWYER DISCIPLINE CASES ELSEWHERE

BY KENNETH L. JORGENSEN

**L**awyers often tell me they religiously read the Minnesota Supreme Court decisions involving lawyer discipline cases. Although these cases occasionally address perplexing or challenging ethical issues, the vast majority involve conduct or behavior never contemplated by most lawyers. So why then all the interest? Does it stem from some form of self-regulating professional duty or obligation? Or is it related to something less altruistic, such as *morbid curiosity*?

Like other areas of the law, lawyer discipline can be difficult, agonizing, and at times painful. However, it is rarely boring or dull. The behavior, personalities, different areas of the law, and types of law practice provide a variety and interest level that I suspect are not often rivaled in other parts of our profession. To illustrate this point, this month's article is a sampling of *strange but true* lawyer discipline cases decided in other states over the past year and compiled by the National Organization of [Lawyer Discipline] Counsel. Some of the cases are included for the strange or bizarre behavior that gave rise to discipline. Others demonstrate rather peculiar analysis sometimes used by courts to discipline lawyers. Some are entertaining, others are just plain sad, but together they give one a flavor of the unique variety of issues confronted by courts and regulators in lawyer discipline cases.

### ■ MEN'S RAINCOATS ALL LOOK ALIKE.

Attorney Richard Ryan was entering a Chicago courthouse and on his way through the metal detector removed two box packs of Marlboro cigarettes from his raincoat pocket and placed them into the property tray. When he observed the attending deputy opening the first cigarette box, Ryan grabbed the second box and attempted to leave the building. One witness heard him say, "Oh shit, I gotta get out of here." Ryan was stopped and ultimately charged with felony and misdemeanor possession of a controlled substance.

After Ryan completed a substance abuse program, the criminal charges were dismissed and lawyer discipline charges were later lodged. During the disciplinary hearing, Ryan claimed the

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raincoat was not his and must have belonged to a prospective client whom Ryan knew only as "Mr. Green." According to Ryan, he had met Mr. Green at a restaurant earlier that morning. When Ryan left the restaurant, Mr. Green held up two similar looking raincoats and Ryan surmised he had grabbed the wrong coat. When Ryan removed the cigarettes from his pocket at the courthouse, he claimed that he did not notice the coat was not his because Mr. Green, like Ryan, also smoked Marlboros packaged in the hard box. The Illinois Disciplinary Board rejected Ryan's raincoat defense finding it "highly dubious" and suspended him from practice for a year. *In re Ryan*, M.R. 19532, 01 CH 16 (Ill. Sept. 24, 2004).

■ **HIGH SCHOOL PRANK.** Oregon lawyer Jim Carpenter posted a fake message at Classmates.com in the name of his high school classmate who had become a high school teacher. The message, posted as if Carpenter's classmate were writing it, stated that the classmate had become a teacher, got to work with high school chicks and had been lucky with a few. Unbeknownst to Carpenter there had been rumors in the community that his classmate had engaged in an affair with a student. Someone other than Carpenter copied the message from Classmates.com and sent it to school officials.

A subsequent criminal investigation of the message led to Carpenter who admitted posting the message. Although no criminal charges were filed, a disciplinary proceeding was instituted. A trial panel initially dismissed the charges because the ethics rules did not extend to this type of "non-professional, unregulated conduct." The Oregon Supreme Court disagreed but then engaged in its own debate about why or whether Carpenter's conduct warranted discipline. First, it concluded that because the Bar had not proven the statements about Carpenter's classmate were false, the content of the fake message was not a misrepresentation. However, by assuming his classmate's identity and posting the message, the court found Carpenter created a significant risk that his classmate's legal rights as a teacher would be adversely affected. This conduct raised questions about Carpenter's trustworthiness and integrity as a lawyer and warranted a public reprimand. *In re Carpenter*, 95 P.3d 203 (Ore. 2004).

■ **THE JUDGE'S SUSPENDED TWIN BROTHER.** Ohio lawyer Mark Conese was a member of the County Elections Board who was convicted of coercing an employee of the elections board to contribute 100 percent of his salary to the county Democratic Party under threat of dismissal from his job. Conese received a 180-day suspended jail sentence and was fined \$1,000 (\$750 suspended). The subsequent discipline proceeding also involved problems with Conese's law practice, including accounting irregularities and that Conese had shared legal fees with his

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suspended twin brother. Conese was given a two-year stayed suspension and placed on probation when the court found as mitigation: (1) that Conese lacked familiarity with law office practices because he had been a judge for a number of years; and (2) that Conese had relied on bad advice from his suspended twin brother about the fee-splitting violations. *Disciplinary Counsel v. Conese*, 812 N.E.2d 944 (Ohio 2004).

■ **SUITS, GOLF CLUBS AND REFRIGERATORS.** After Utah lawyer John Alex was disbarred, the court appointed a trustee to take possession of Alex's remaining client funds and client files. Alex's landlord was willing to let the trustee take possession of the client funds and files but objected to the trustee's seizure of Alex's personal property, which included a refrigerator, a suit, and a set of golf clubs. The trustee went back to district court and obtained a broader order authorizing seizure of Alex's personal property.

Not to be outdone, the landlord then filed a motion to intervene in the Supreme Court lawyer discipline proceeding. The landlord contended that its judgment lien for Alex's unpaid rent was superior to any claim by the trustee on Alex's personal property. The Utah Supreme Court held that the landlord was entitled to intervene and that the order authorizing seizure of Alex's personal property went beyond the scope of the Court's rule authorizing trustee proceedings. The opinion does not mention the make or model of the golf clubs, nor does it reveal the contents of the refrigerator. *In re John Alex*, 99 P.3d 865 (Utah 2004).

■ **PAY NO ATTENTION TO MY TIME SHEETS.** John Lawrence was an associate at the Windhorst law firm in Greta, Louisiana. The Windhorst firm was retained by Ms. Curtis to handle her injury claim on a contingent fee basis. Lawrence was assigned to handle certain tasks in connection with the file and filed Curtis' lawsuit against Beaver Productions. Within four months, Lawrence left the Windhorst firm and joined the law firm representing Beaver Productions in the Curtis suit. The Windhorst firm sought to disqualify Lawrence's new firm, and asserted that firm's time records showed Lawrence had worked on the Curtis case for approximately 15 hours. Lawrence submitted an affidavit in opposition stating:

■ Regardless of what his time records reflected, he had worked on the Curtis case for only one hour.

■ While associated with the Windhorst firm, he padded his timesheets with hours he did not actually work.

■ That he frequently had too little work at the Windhorst firm and when he brought his concern to the partners he was encouraged to pad his bills.

■ Although he believed it was wrong to bill clients for work not performed, padding his bills in contingent fee cases was the most appropriate resolution to this dilemma because the client does not pay bills in contingent fees cases and therefore is not prejudiced.

The trial court was not persuaded by Lawrence's affidavit and not only disqualified his new law firm, but also filed an ethics complaint against Lawrence. The Louisiana Supreme Court thought even less of Lawrence's attempt to justify his false time records. Even though the time sheets were not used to bill Curtis, the court found the false time records prejudiced her when her case was delayed while the law firms battled unnecessarily over the disqualification motion, and ancillary contempt and sanction motions. Moreover, Lawrence's defense itself contributed to his undoing. In suspending Lawrence for three months, the court found that his persistent refusal to acknowledge the wrongful nature of the false time sheets was an aggravating factor warranting more severe discipline. *In re Lawrence*, 884 So.2d 343 (La. 2004).

■ **A BICYCLE ACCIDENT.** Ohio lawyer Stephen Stern was a county prosecutor. The Smiths filed an ethics complaint against Stern relating to a criminal investigation. The Smith complaint was dismissed, but during the investigation, disciplinary investigators asked Stern whether he was taping their interview. Although Stern was in fact secretly taping the interview, he denied doing so.

Stern was defeated in the next election and when his successor took office the tape of the interview was discovered. When Stern was charged with lying to disciplinary investigators, he raised an "exceptional circumstances" defense contending that the Smith ethics complaint was politically motivated because the Smiths were financial

supporters of Stern's opponent, and that the Smiths filed the ethics complaint to interfere with his ongoing investigation. Stern also claimed his surreptitious taping was justified because he had been the subject of an unfair ethics investigation in the 1980s.

The Ohio Supreme Court refused to accept Stern's exceptional circumstances defense but then dismissed the charges based upon a defense not raised by Stern. According to the Court, a head injury Stern suffered in a bicycle accident may have caused him to act out of character. Ironically, the Court rejected Stern's exceptional circumstances defense out of concern that it would lead to absurd results. *Ohio Bar v. Stern*, 817 N.E.2d 14 (Ohio 2004).

■ **WITH MY BARE HANDS.** Maine lawyer Neil Weinstein appears to have a unique perspective on the issue of zealous advocacy. Weinstein was representing a client in a boundary dispute after the client's neighbor had hired a contractor to construct a retaining wall along the property line. When Weinstein appeared at the construction site, he threatened the workers with criminal trespass and assured them that he would "destroy with his bare hands" any work they performed. After the police arrived, Weinstein left. When work resumed the next day, Weinstein again arrived and confronted the crew with obscenities. True to his word, Weinstein began tearing out landscape timbers with his bare hands and engaged in a tug-of-war with one of the workers who attempted to replace a grade stake. Before leaving, Weinstein removed all of that morning's work and pledged to return as often as necessary if further work was performed. Weinstein was publicly reprimanded. *In re Weinstein*, File No. 03-252 (Maine 2004).

■ **JUST PLAIN SAD.** Larry Feingold was an administrative law judge in New York. One depressing day, Feingold decided to commit suicide. To do so, he closed all of the windows to his apartment and turned on the gas stove. The resulting explosion not only shattered his windows, but also blew out the apartment walls. Feingold was injured but survived. However, the exploding apartment walls injured eight of Feingold's neighbors. Feingold was convicted of felony reckless endangerment and thereafter disbarred. *Matter of Feingold*, 784 N.Y.S.2d 96 (Nov. 2004). □