

LAWYERS BEHAVING BADLY: THE CLE

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UT LAW CLE

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WELCOME TO LAWYERS BEHAVING BADLY

- *Lawyers Behaving Badly* explores the absurd, unbelievable world of lawyer misconduct.
- Started in mid-November 2022, the podcast reached 100,000 downloads in May 2023.
- Like today, each episode follows the travails of a pseudonymous lawyer making unethical choices and the fallout that ensues.
- We've covered stories of lawyers derailing a covert drug operation, embezzling money to buy Britney Spears tickets, doing dead drops for burner phones, planting drugs on PTA volunteers, and much, much more.

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CRIMEAHOLIC: ADDICTED TO CRIMEAHOL

- We'll discuss semi-legendary and infamous former Dallas lawyer, who we will call Alan Attorney.
- Alan began his career in the SEC, culminating his 14 years there as Senior Trial Counsel in Ft. Worth
- He then transitioned to private practice, at the time with Godwin Gruber
- Immediately upon his transition to private practice, Alan played fast and loose with his ethical obligations
 - One of his first cases presented ethical issues based on his prior representation

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- Alan began representing a client called Consolidated Sports Media in 2004
- Despite the benign name, Consolidated Sports Media produced a unique product: Race Track Girlz Go Nutz
- Facing a capital crisis, CSM hired Alan for advice on raising funds through a penny stock public offering
 - Immediately, things go off the rails for CSM after their public offering
- Only good things happen at 2:36 AM, including the kick-off to Alan's grand plan to make money off his client

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- After the blast fax, CSM believed Alan was engaged in a classic pump-and-dump scheme
- CSM sued Alan and Godwin Gruber for malpractice, fraud, breach of fiduciary duty, and securities violations in August 2005
- This lawsuit is where things start to go off the rails
 - What happens implicates multiple Texas Rules for Disciplinary Conduct, including 1.06, 1.07, 1.08, 1.14, and 4.01

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Rule 1.06. Conflict of Interest:

- (a) A lawyer shall not represent opposing parties to the same litigation.
- (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.
- (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.
- (d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.
- (e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.
- (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.

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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; (2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and (3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.
- (b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.
- (c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.
- (d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.
- (e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct.

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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.

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Rule 1.14. Safekeeping Property

- (a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (c) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separated by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.

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Rule 4.01. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

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Title search: Lawyers Behaving Badly (REPLAY)

First appeared as part of the conference materials for the
2023 First Friday Ethics (September 2023) session
"Lawyers Behaving Badly (REPLAY)"