Are You More Ethical Than A 4th Grader?

Lawyer's Behaving Badly
Client Funds and Other People's Money
Telling the Truth

I. LAWYERS BEHAVING BADLY

The Rules of Professional Conduct ("Rules") always apply to lawyers to some degree. The extent to which a lawyer's conduct may be governed by the Rules depends on the lawyer's role and desire to hang onto the professional license. For analytical purposes, there are two basic subsets: (1) the rules that apply to lawyers acting as lawyers and (2) the rules that apply to lawyers in all circumstances. The first set refers to the Rules as a whole and apply when a lawyer is acting inside a more traditional client-lawyer relationship or law practice. The second set refers to the basic rules barring misconduct that reflects adversely on fitness to practice law (e.g. dishonesty or fraud) and "apply" always to a lawyer who wishes to retain a license.

Whether in practicing law or not, it is "professional misconduct" for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation or commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. But when does a lawyer's "personal life" outside the law practice cross the line drawn by the professional rules? Do our young minds see links between bad behavior outside the practice of law and "fitness to practice"?

A. Governing Rules: Rule 8.4 of the ABA Model Rules of Professional Conduct ("ABA Rule(s)") addresses the maintenance of the legal profession's integrity. To achieve that goal, ABA Rule 8.4(b)–(c) governs a lawyer's behavior in ways that extend beyond the practice of law.

B. Criminal Acts

1. **ABA Rule 8.4(b)**. This rule states that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

a) There is broadscale adoption of ABA Rule 8.4(b) by the states with fairly minimal variation. Examples of some variations follow:

(1) ME adds "unlawful act" and VA adds "deliberately wrongful" act in addition to "criminal act".

(2) GA, SC, TX, and WA keep a link to the "moral turpitude" standard to some extent.

(3) GA, VT, and WA attempt to more precisely identify the criminal acts or illegal conduct that merit consideration as professional misconduct.

b) The rule reaches criminal conduct whether or not the lawyer was acting as a lawyer at the time. *See* Annotation to Rule 8.4(b) in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing: *In re Cross*, 155 A. 3d 835 (D.C. 2017) (video voyeurism; secretly taping man undressing in gym locker room); *In re Wright*, 76 P. 3d 1018 (Kan. 2003) (lawyer holding power of attorney for great aunt living in nursing facility and who served as secretary/ treasurer of Topeka Lawyers' Club took money from accounts for personal use); *In re Brown*, 674 So. 2d 243 (La. 1996) (negligent homicide conviction for shooting roommate during argument); *Att'y Grievance Comm'n v. Paul*, 187 A. 3d 625 (Md. 2018) (traffic violations accompanied by "road rage")*; Att'y Grievance Comm'n v. Thompson,* 786 A. 2d 763 (Md. 2001) (conviction for stalking thirteen-year-old boy violated rule; rejecting arguments that practice was limited to estates and trusts and other areas not involving minors, and that stalking had not been in course of representing client); *In re Trudeau*, 705 N.W. 2d 409 (Minn. 2005) (misdemeanor convictions for interference with 911 call and unauthorized computer access); *In re Capone*, 689 A. 2d 128 (N.J. 1997) (false statement on loan application); In re Bonilla, 60 N.Y.S. 3d 405 (App. Div. 2017) (lawyer accused of sexual harassment while serving as town clerk unlawfully pressured employee to provide him with compromising photographs of complainant); *Disciplinary Counsel v. Scott*, 141 N.E. 3d 216 (Ohio 2019) (stealing from Walmart by replacing UPC labels with those for cheaper items).

c) It is not necessary for a lawyer to be convicted of, or even charged with, a crime to violate Rule 8.4(b). *See* Annotation to Rule 8.4(b) in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing: *In re Ritland*, 957 N.W. 2d 540 (Wis. 2021) (lawyer need not "actually have been convicted of a crime for the rule to apply; we discipline for conduct, not convictions"). *See, e. g., In re Ivy*, 374 P. 3d 374 (Alaska 2016) (lawyer's false testimony violated rule, though never charged with perjury; rule does not require conviction, but only that it "would be criminal" under state law); *People v. Odom*, 941 P. 2d 919 (Colo. 1997) (lawyer disciplined for committing crime for which he never was charged); *In re Meaden*, 902 A. 2d 802 (D.C. 2006) (attempted theft

violated rule even though charges dismissed and records expunged); *In re Riddle*, 700 N.E. 2d 788 (Ind. 1998) (prosecutor used deputy to work in prosecutor's private law office; rule violated even though no criminal charges filed); *Iowa Supreme Court Att'y Disciplinary Bd. v. Stowers*, 823 N.W. 2d 1 (Iowa 2012) (" absence of criminal charges, or even acquittal of criminal charges, is not a defense to this rule"); *In re Frahm*, 241 P. 3d 1010 (Kan. 2010) (fact that convictions for reckless driving and leaving scene of accident set aside irrelevant to discipline; "it is the conduct that warrants discipline, not the technicality of the conviction"); *In re King*, 33 So. 3d 873 (La. 2010) (that felony conviction was set aside and expunged at conclusion of probationary period did not preclude use for disciplinary purposes); *Att'y Grievance Comm'n v. Smith*, 950 A. 2d 101 (Md. 2008) (lawyer who left voicemail message for trial witness and falsely represented himself as police officer violated rule even though convictions reversed); *State ex rel. Counsel for Discipline v. Janousek*, 674 N.W. 2d 464 (Neb. 2004) (lawyer may be disciplined for conduct that "might be found to have been illegal" even if "no criminal prosecution has been instituted or conviction had"); *In re Treinen*, 131 P. 3d 1282 (N.M. 2006) (" a criminal conviction is not a prerequisite to disciplining an attorney for criminal conduct"); *In re Hassenstab*, 934 P. 2d 1110 (Or. 1997) (lawyer violated three criminal sex offense statutes; irrelevant that criminal proceedings resulted only in plea of no contest to one count of prostitution); *see also In re Varner*, 780 So. 2d 1 (Fla. 2001) (disciplining lawyer for violating insurance fraud statute and noting "[i]t is not necessary for the attorney to have been convicted or even charged with the violation of the criminal statute in question"); *Iowa Supreme Court Att'y Disciplinary Bd. v. Meyer*, 944 N.W. 2d 61 (Iowa 2020) (Alford plea established that lawyer committed criminal act); *Iowa Supreme Court Att'y Disciplinary Bd. v. Taylor*, 887 N.W. 2d 369 (Iowa 2016) (failure to file tax returns, but never charged; "It is the commission of a criminal act . . . not the act of getting caught" that constitutes rule violation); *N. C. State Bar v. Simmons*, 757 S.E. 2d 357 (N.C. Ct. App. 2014) (lawyer disbarred for embezzlement although not convicted of crime); *State ex rel. Okla. Bar Ass'n v. Dobbs*, 94 P. 3d 31 (Okla. 2004) (" witness immunity doctrine does not preclude imposition of professional discipline for a lawyer's perjury"); *In re McEnaney*, 718 A. 2d 920 (R.I. 1998) (entering nolo contendere plea amounted to admission of "sufficient facts to be found guilty of the crimes charged").

2. **Traditional Approach**. Historically, the approach has been to connect professional misconduct for criminal acts to "moral turpitude."

a) **1970s**. The ABA first tied professional misconduct to illegal conduct involving "moral turpitude" in 1907. 1970 ABA Model Code of Prof'l Responsibility.

b) **1980s**. Because states struggled to define "moral turpitude," the ABA approved new rules that rejected illegal conduct involving "moral turpitude." The ABA explained that it moved away from the "moral turpitude" standard because it is a "concept [that] 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. 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." 1983 ABA Model Code of Prof'l Responsibility Rule 8.4 cmt [2]; *see also* Hal R. Lieberman, *Private Conduct and Professional Discipline*, N.Y.L.J. (2002) (describing the "moral turpitude" standard as a "hopelessly subjective concept").

3. **Modern Approach**. The modern approach detaches professional misconduct from "moral turpitude" and, instead, lists examples of activities that constitute professional misconduct.

4. **Current**. The ABA has kept its 1983 comment and added "[o]ffenses 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 Model Rules of Prof'l Conduct Rule 8.4 cmt 2 (and Virginia likewise adopts cmt. 2).

5. **Modern Trend**. Nearly all jurisdictions have followed the ABA and removed the "moral turpitude" standard from their rules. *See,* Hal R. Lieberman, *Private Conduct and Professional Discipline*, N.Y.L.J. (2002) (explaining that New York amended its rules "so it no longer enjoins illegal conduct involving moral turpitude. It now prohibits only illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer. This reformulation tightened an impossible to define rule to require at least some relationship between the conduct and the attorney's ability to practice law ethically."); *see also* Restatement (Third) of the Law Governing Lawyers § 5 cmt g (2000) ("Those formulations have replaced in most jurisdictions a formerly employed standard stated in terms of criminal acts constituting 'moral turpitude,' a phrase that, while meaningful to individuals, is vague and may lead to discriminatory or otherwise inappropriate applications."). *But see, e.g.,* Ga. Rule of Prof'l Conduct 8.4(a)(3) (keeping the "moral turpitude" standard for misdemeanors); *In re Jones*, No. S12Y1781, slip op. at 4 (Ga. S.Ct. June

3, 2013) (defining "moral turpitude to mean "everything done contrary to justice, honesty, . . . or good morals" and "an act . . . contrary to the accepted and customary rule of right and duty between man and man" (citations omitted)).

C. **Dishonesty, Fraud, Deceit, Misrepresentation**

1. **ABA Rule 8.4(c)**. This rule states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

a) There is broadscale adoption of ABA Rule 8.4(b) by the states with fairly minimal substantive variation. Examples of some variations follow.

(1) CO adds a qualification that "a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities," recognizing that such behavior is otherwise potentially dishonest or deceptive or may involve misrepresentation. FL, MO, and OR add a similar provision.

(2) ND and VA qualify this with reference to dishonesty, etc. that reflects adversely "on the lawyer's fitness as a lawyer." This seems to suggest that some dishonesty (like some criminal acts) might not reflect adversely on the lawyer's fitness as a lawyer.

2. Rule 8.4 c) extends to dishonesty in dealings with the world at large and not just in connection with the practice of law. *See* Annotation to Rule 8.4(b) in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing: *People v. Rachel*, 50 P. 3d 938 (Colo. O.P.D.J. 2002) (misappropriating funds received from third parties for purchase of baseball tickets); *In re Scanio*, 919 A. 2d 1137 (D.C. 2007) (attempting to deceive insurer in claim for lost income); *Fla. Bar v. Schultz*, 712 So. 2d 386 (Fla. 1998) (giving postdated check to travel agent and stopping payment the same day); *Iowa Supreme Court Att'y Disciplinary Bd. v. Marzen*, 949 N.W. 2d 229 (Iowa 2020) (mailing inaccurate tax returns to IRS in order to provide them to bank as filed tax returns supporting clients' loan application); *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Visser*, 629 N.W. 2d 376 (Iowa 2001) (defense lawyer's letter to newspaper containing "partially true" statement about judge's ruling on plaintiff's claims violated rule even though lawyer attached copy of court order to letter); *In re Thompson*, 441 P. 3d 1027 (Kan. 2019) (failing to deposit funds withheld from employees' paychecks into their retirement accounts); *Bonar v. Ky. Bar Ass'n*, 405 S.W. 3d 465 (Ky. 2013) (misrepresentations in capacity as president of state bar association); *In re McCool*, 172 So. 3d 1058 (La. 2015) (disseminating false and

misleading statements about judges through social media and in court motions); *In re Hutton*, 25 So. 3d 767 (La. 2009) (defrauding ex-sister-in-law of life insurance proceeds to which she was entitled); *Att'y Grievance Comm'n v. Young*, 124 A. 3d 210 (Md. 2015) (falsely telling state authorities that he had license to work as home improvement contractor); *Att'y Grievance Comm'n v. Coppock*, 69 A. 3d 1092 (Md. 2013) (lying to lender); *In re Giuliani*, 146 N.Y.S. 3d 266 (N.Y. App. Div. 2021) (false and misleading statements to "lawmakers and the public at large" in connection with 2020 U.S. election results); *In re Hibl*. 950 N.W. 2d 423 (N.D. 2020) (lawyer falsely told police she had been robbed of $200 when in fact she had attempted to sell narcotics to alleged perpetrators who had stiffed her by that amount); *Columbus Bar Ass'n v. Jones*, 181 N.E. 3d 1178 (Ohio 2021) (filing articles of incorporation in names used by ex-wife's boyfriend's business); *State ex rel. Okla. Bar Ass'n v. Ezell,* 466 P. 3d 551 (Okla. 2020) (lawyer sent threatening messages to herself from fictitious email address, notified authorities, and implicated other people as possible culprits); *In re Herman*, 348 P. 3d 1125 (Or. 2015) ("Although no rule explicitly requires lawyers to be candid and fair with their business associates or employers, such an obligation is implicit in the prohibitions set out in [Rule 8.4(c)]"; *Lawyer Disciplinary Bd. v. Markins*, 663 S.E. 2d 614 (W. Va. 2008) (secretly accessing e-mail accounts of wife and other lawyers at her firm for over two years). *See generally* Bruce A. Green and Rebecca Roiphe, Lawyers and the Lies They Tell, 69 Wash. U. J.L. & Pol'y __ (2022), available at Lawyers and the Lies They Tell (challenging bar's assumptions that "all lies reflect a dishonest character that presages future dishonesty in law practice, or that all lawyers' lies diminish public respect for the profession.").

D. Illustrative Cases

1. **Substance Use & Abuse**. The prevalence of substance abuse among attorneys has been amply reported. *See, e.g.,* "ABA Study on Lawyer Impairment" (January 18, 2019) at Study on Lawyer Impairment. Substance abuse and addiction not only correlates with behavior that can lead to discipline, to the extent that the substance abuse itself is criminal or leads a lawyer to commit a crime, the profession recognizes that substance abuse and addiction is a red flag for "fitness" to practice law. *See, e.g.,* "Understanding Discipline and Reporting Requirements for Lawyer DUIs" (October 2, 2020) at Understanding Discipline and Reporting Requirements for Lawyer DUIs (noting that with respect to DUI's specifically, most courts that have considered the question have only disciplined lawyers in the event of a DUI when one or more aggravating factors are present: (a) multiple DUI offenses; (b) additional non-DUI offenses; (c) behavior which negatively affects clients; or (d) injury or death caused by impaired driving. Generally, a single instance of a

misdemeanor DUI—without any additional offenses or aggravating factors—has not historically been sufficient to violate Model Rule 8.4(b).).

a) Crimes involving alcohol and drugs are often deemed to fall within Rule 8.4(b). *See* Annotation to Rule 8.4(b) in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing: *In re Quinn*, 696 N.E. 2d 863 (Ind. 1998) (" Criminal offenses such as driving while intoxicated, public intoxication, and gambling, while not directly linked to the practice of law, may nonetheless reflect adversely on one's fitness as an attorney because such conduct tends to indicate a general indifference to legal standards of conduct . . . . That perception is magnified where there is a pattern of such offenses."); *In re Musto*, 704 A. 2d 6 (N.J. 1997) (lawyers who violate controlled-substance laws "demonstrate a disrespect for the law, denigrate the entire profession, and destroy public confidence in the practicing bar"); see *People v. Miller*, 409 P. 3d 667 (Colo. O.P.D.J. 2017) (lawyer's first DUI, causing no harm to himself or others, violated rule; conduct carried risk of serious harm due to high blood alcohol content); *In re Broderick*, 151 N.E. 3d 753 (Ind. 2020) (OWI and leaving scene); *Iowa Supreme Court Att'y Disciplinary Bd. v. Khowassah*, 890 N.W. 2d 647 (Iowa 2017) (public intoxication and OWI); *In re Fuller*, 474 P. 3d 776 (Kan. 2020) (trading legal services for illegal drugs); *In re Cure*, 440 P. 3d 563 (Kan. 2019) (four DUI convictions); *In re Frahm*, 241 P. 3d 1010 (Kan. 2010) (DUI and leaving scene of accident involving personal injury and property damage); *Ky. Bar Ass'n v. Dunn*, 965 S.W. 2d 158 (Ky. 1998) (plea of guilty to DUI established violation of rule notwithstanding lawyer's argument that his actions were product of addiction); *In re Pastorek*, 239 So. 3d 798 (La. 2018) (lawyer/ physician convicted of conspiracy to improperly dispense controlled substances); *In re Mecca*, 214 So. 3d 827 (La. 2017) (accepting marijuana in exchange for legal services); *In re McEnaney*, 718 A. 2d 920 (R.I. 1998) (possession of crack cocaine and marijuana); *In re Inglimo*, 740 N.W. 2d 125 (Wis. 2007) (supplying clients with marijuana and using it with them); *Bd. of Prof'l Responsibility v. Hambrick*, 465 P. 3d 459 (Wyo. 2020) (two instances of DUI within three months).

b) Attorney censured for conviction of cocaine possession, a misdemeanor. *Matter of Hildebrand*, 221 A.D.2d 85, 643 N.Y.S.2d 105 (1996).

c) Attorney placed on three years of disciplinary probation after two DUI convictions for alcohol. Although the drunk driving did not involve moral turpitude, it established "other misconduct warranting discipline." *In re Kelley*, 52 Cal. 3d 487, 801 P.2d 1126 (1990).

d) Attorney suspended for six months for disruptive behavior and intoxication at a CLE seminar. Debra Cassens Weiss, *Lawyer is suspended after he is accused of intoxication at CLE seminar*, ABA Journal (Apr. 7, 2014), *available at* http://www.abajournal.com/news/article/lawyer_is_suspended_for_alleged_intoxication_at_cle_seminar/

2. Sexual Misconduct & Domestic Violence.

a) Attorney censured for pre-bar-admission sexual misconduct with a minor. *In re Wong*, 275 A.D.2d 1, 710 N.Y.S.2d 57 (2000).

b) Attorney suspended for three years for assault of former girlfriend and destruction of property. *In re Zulandt*, 93 A.D.3d 77, 939 N.Y.S.2d 338 (2012).

c) Attorney suspended for three years for domestic violence against his wife. *In re Jacoby*, 86 A.D.3d 330, 926 N.Y.S.2d 480 (2011).

d) Attorney disbarred for possession of child pornography, a felony. *In re Grant*, 58 Cal. 4th 469, 317 P.3d 612 (2014).

e) Attorney disbarred for having sexual relations with his stepdaughter. *Clayton v. State*, 244 Ala. 10, 13 So. 2d 420 (1942).

f) Attorney suspended for two years for making obscene phone calls. *The Fla. Bar v. Helinger*, 620 So. 2d 993 (Fla. 1993).

g) Attorney suspended for three years for felonious invasion of privacy arising from surreptitious videotaping of secretary in bathroom. *In re Holloway*, 469 S.E. 2d 167 (Ga. 1996).

3. Personal Financial Problems.

a) An attorney may file personal bankruptcy. NC CPR 168.

b) Attorney failed to pay child support and was suspended until he caught up on payments. *In re Rosoff*, 225 A.D.2d 197, 650 N.Y.S.2d 149 (1996).

4. Other Criminal Behavior.

a) Two attorneys convicted in an **extortion scheme** had their licenses revoked. They pleaded guilty to extortion in June 2020. See "Lawyers admit to extortion scheme," by Peter Vieth, VIRGINIA LAWYERS WEEKLY, June 29, 2020. Thereafter, both consented to revocation of their licenses

to practice law. See *In the Matter of Timothy Andrew Litzenburg*, August 11, 2020 Consent to Revocation Order, VSB Docket No. 20-070-117650 at https://www.vsb.org/docs/Litzenburg-081220.pdf; and *In the Matter of Daniel Matthias Kincheloe*, July 6, 2020 Consent to Revocation Order, VSB Docket No. 20-000-119103 at https://www.vsb.org/docs/Kincheloe-070720.pdf. In addition, one was sentenced to twenty-four months in prison followed by one year of supervised release and the other to twelve months in prison followed by one year of supervised release. See September 18, 2020 Press Release ("Virginia Attorneys Sentenced for Attempting to Extort a Multinational Chemicals Company") from the Department of Justice at https://www.justice.gov/opa/pr/virginia-attorneys-sentenced-attempting-extort-multinational-chemicals-company.

One of the attorneys was part of the trial team that won a verdict against the manufacturer of a weedkiller. The attorneys thereafter targeted the supplier of a chemical used in the weedkiller. They sent the supplier a draft complaint and offered to delay filing the complaint if the supplier would meet with him. Threatening public statements and damaging lawsuits aimed at the supplier, the attorneys proposed a "consulting arrangement" that would pay them $200 million in purported "consulting fees" and under which a purported conflict-of-interest would effectively stop them from representing their clients as plaintiffs in litigation against the supplier.

Plaintiffs set up a corporation to receive the purported "consulting fees" and did not plan to distribute any funds to their existing clients. One of the attorneys said that if he received the "consulting fees" he would not discuss the supplier or its parent company with his current clients, and that he was willing to "take a dive" during a deposition of a toxicology expert to deter potential future claims related to litigation against the supplier. See September 18, 2020 Press Release ("Virginia Attorneys Sentenced for Attempting to Extort a Multinational Chemicals Company") from the Department of Justice at https://www.justice.gov/opa/pr/virginia-attorneys-sentenced-attempting-extort-multinational-chemicals-company. As part of the plea bargains and consent to the licensure revocation, one of the lawyers acknowledged a long-time substance use disorder which had affected his judgment.

A felony conviction results in an automatic suspension of license and a show cause order for a hearing on possible revocation or further suspension under Part Six, § IV, Paragraph 13-22 of the Rules of the Supreme Court of Virginia:

> Whenever the Clerk receives written notification from any court of competent jurisdiction stating that an Attorney (the

> "Respondent") has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily enter an order of Suspension requiring the Respondent to appear at a specified time and place for a hearing before the Board to show cause why the Respondent's License to practice law should not be further suspended or revoked. A copy of the written notification from the court shall be served upon the Respondent with the Board's order of Suspension.

At the hearing, the lawyer has the burden of proving why the license should not be further suspended or revoked. *Id*. at ¶ 13-22(D). If the conviction is set aside or reversed on appeal, the license is automatically reinstated. However, nothing precludes further proceedings against the lawyer upon allegations of misconduct arising from the facts leading to the conviction. *Id*. at ¶ 13-22(C).

In the circumstances described above, both lawyers entered plea agreements on the criminal matter and accepted the revocations of their licenses. There would have been little doubt of the outcome had there been a hearing, as the "criminal act" undoubtedly reflects adversely on their honesty, trustworthiness or fitness as lawyers.

b) Attorney suspended for three years after pleading guilty to charges of **aiding and abetting false statements** and writings in connection with Georgia **election interference** case. See Clarissa-Jan Lim, "Another Trump attorney has her law license suspended over alleged 2020 election subversion.," MSNBC.com (May 29, 2024) at https://www.msnbc.com/top-stories/latest/jenna-ellis-law-license-georgia-election-trump-rcna154513.

c) Attorney indicted and charged with crimes related to **stealing client funds and who pleaded guilty to Social Security number fraud** is disbarred. See "Disbarred attorney pleads guilty to Social Security number fraud as part of scheme to obtain jobs at law firms," from the US Attorney's Office, Southern District of Ohio, July 9, 2024, at https://oig.ssa.gov/news-releases/2024-07-11-disbarred-attorney-pleads-guilty-to-social-security-number-fraud-as-part-of-scheme-to-obtain-jobs-at-law-firms/.

d) Attorney disbarred for submitting an application to a city clerk **falsely affirming** he had never been married when, in fact, he had been

married and had not divorced his first wife. *In re Masterson*, 283 A.D.2d 20, 726 N.Y.S.2d 114 (2001).

e) Attorney suspended for five years after being convicted of attempted **assault**, a misdemeanor. *In re Stockton*, 188 A.D.2d 10, 593 N.Y.S.2d 79 (1993).

f) Attorney suspended for two years after pleading guilty to **promoting prostitution**, a misdemeanor. *In re Cincotti*, 115 A.D.2d 24, 499 N.Y.S.2d 736 (1986).

g) Attorney disbarred for **smuggling tobacco** and tobacco-related contraband to a client in jail on at least ten occasions, all misdemeanors. *In re Jones*, No. S12Y1781 (Ga. S.Ct. June 3, 2013).

5. Civil Wrongs

a) Attorney censured for plagiarizing two published works in a master's thesis. *In re Lamberis*, 93 Ill. 2d 222, 443 N.E.2d 549 (1982).

b) Attorney censured after being found to have engaged in civil fraud. *In re Sylvor*, 225 A.D.2d 87, 648 N.Y.S.2d 440 (1996).

II. CLIENT FUNDS AND OTHER PEOPLE'S MONEY

Although in-house and large firm lawyers may be spared experience with the nitty gritty accounting and trust fund details, in a world trending to alternative fee arrangements, all need to tune in and take care to document who the money flows to and from, when, and what happens if . . . whether the funds are lawyer compensation or funds associated with a deal, closing, settlement or the like.

A. Safekeeping Property Generally

Lawyers are bound by strict guidelines governing the safekeeping of *client funds **and other people's money***. *See* ABA Rule 1.15 and equivalent state rules. This includes the obligation to keep funds of a client or third person in a separate account and to keep complete records of such account funds. This particular rule has a great deal of detail in the state versions of the rule, giving rise to a fair amount of state-by-state variation. Notwithstanding the logistical details that may vary, the state versions of ABA Rule 1.15 share the common substantive duty of safekeeping, the prohibition against commingling of the lawyer's property with that of the client or third parties, the duty to timely notify, account for, and disburse undisputed property or funds held on behalf of others, and the duty to retain property in the event of a dispute pending resolution of any disagreement.

B. Client Money

Beware: the mishandling of client money is one of the most common reasons for lawyers, from both large and small firms, to be brought before the state bar on disciplinary charges. *See, e.g.*, *In re Anderson*, 685 S.E.2d 711 (Ga. 2009) (affirming disbarment of attorney for mishandling client trust money). *See also*, Sheila Blackford, *Managing Your Client Trust Account: Where the Buck Stops*, 37 L. Prac. 1 (2011) ("[T]he number one reason lawyers get into regulatory hot water is due to mishandling their client trust account."); Ashley Post, *Crowell & Moring Faces Third Lawsuit Tied to Former Employee's Theft*, Inside Counsel (Nov. 18, 2011) (suggesting that lawyers from firms of all sizes are at risk).

"A large number of disciplinary claims brought against lawyers are not the result of the intentional mishandling of client funds, but rather the lack of a clear understanding of best practices when managing those funds." Selina Thomas, *What Every Young Lawyer Should Know about Client Protection*, 16 Young Lawyer 1 (2012). Lawyers often find themselves subject to discipline for "honest mistakes" in trust accounting, rather than for "dishonest conduct" such as financial fraud. *See* Edward Poll, *Financial Fraud: Trouble from Honest Mistakes and Dishonest Conduct*, L. Pract. Today, http://www.americanbar.org/publications/law_practice_today_home/law_practice_today_archive/april12/financial-fraud-trouble-from-honest-mistakes-and-dishonest-conduct.html.

1. IOLTA: Interest on Lawyer Trust Account

a) Every state, along with the District of Columbia, operates an IOLTA program.

b) An IOLTA is a specialized pooled trust account that lawyers use to generate interest from client funds that are nominal in amount or held for a brief duration. This interest cannot be retained by the lawyers, and the practical costs of attempting to allocate it to clients would exceed the value of attempting to do so. As a result, a lawyer places funds in an IOLTA account when the lawyer receives funds that cannot otherwise earn enough income for the client to exceed the cost of securing that income. The pooled interest is then channeled to support the public service initiatives as designated by the governing state bar (e.g., funding legal aid for the poor and supporting improvements to the justice system at no cost to lawyers or their clients).

c) In 2009, IOLTA programs in the U.S. generated nearly $125 million, which was used to support nonprofit legal aid providers. *What is IOLTA?*, IOLTA, http://www.iolta.org/what-is-iolta.

2. Three Common Lawyer Trust Account Mistakes:

a) "Borrowing" money from the trust account

(1) Taking money before it is earned

(2) Borrowing money with the intention of putting it back

(3) Stealing from trust account

b) Commingling lawyer's funds with client money

(1) Personal funds kept with client funds

c) Failing to properly track client funds

(1) Not putting the client's name on trust account checks

(2) Not keeping an individual ledger for each client

(3) Not balancing the individual client balances against the overall account. *See* William Pfeifer, *Lawyer Trust Account Mistakes: 3 Common Lawyer Trust Account (IOLTA) Mistakes*, http://law.about.com/od/financialmanagement/a/Lawyer-Trust-Account-Mistakes-3-Common-Lawyer-Trust-Account-Iolta-Mistakes.htm.

3. Can't "Fix" Transgressions:

a) There are no circumstances under which it is permissible to "borrow" client money.

b) Violations of the rules governing the safekeeping of client funds are punishable, even if the violation does not harm the client or a third person. *See In re Joyce*, 236 A.D.2d 116, 121 (2007) ("[i]n determining an appropriate measure of discipline to impose, [the court has] considered the respondent's alleged lack of venal intent, the fact that he did not use the escrow funds for his own benefit, and the lack of ultimate harm to any clients or third persons. The [attorney] is, nevertheless, guilty of gross mismanagement of his escrow fund and failing to supervise and review his escrow account.").

c) "Commendable intentions" do not excuse violations of the rules, and even if clients ultimately receive all the funds to which they

are entitled, lawyers can still be disciplined. *See In re Francis*, 78 A.D.3d 106, 107 (1st Dep't 2010).

4. Retainer vs. "Advanced Payment of Fees"

a) Confusion over whether a client's payment is a true retainer as opposed to an advanced payment of fees can lead a lawyer to makes mistakes relative to the duties under ABA Rule 1.15.

b) A true retainer is "a payment by a client to an attorney to insure the attorney's availability for *future legal services* and/or as consideration for his unavailability to a potential advert party in the *future.*" Virginia Legal Ethics Opinion ("VA LEO") 1606. It is not a "pre-payment for legal services to be rendered in the *future."* Id. Instead, a true retainer "seeks to guarantee the client's right to secure the attorney's employment for representation of his interests *in a matter which may arise in the future.*" *Id. Accord, Swango v. Virginia State Bar ex rel. Second District, Section I Committee,* Record No. 241016 (Circuit Court of the City of Virginia Beach, July 31, 2025). The true retainer belongs to and is earned by the lawyer when paid and should be deposited into the lawyer's operating account.

(1) Accord, Annotation to ABA Rule 1.15 in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing Dowling v. Chi. Options Assocs., 875 N.E. 2d 1012 (Ill. 2007) (calling such fee a "security retainer" which is "is earned when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client"). Several authorities have held that with the consent of the client, a fee paid in advance for a legal matter, the amount of which does not depend upon the amount of lawyer's time spent on the matter, becomes the lawyer's property upon receipt. See, e. g., id. (calling such fee an "advance payment retainer," which is property of lawyer upon payment if client agrees to such treatment in written retainer agreement); In re Kendall, 804 N.E. 2d 1152 (Ind. 2004) (flat fee paid in advance for work regardless of lawyer time becomes property of lawyer upon receipt and need not be held separately); Or. Ethics Op. 2005-151 (rev. 2011) (when retaining agreement expressly states fixed fee is earned upon receipt, it may not be deposited in client trust account); Pa./ Phila. Joint Formal Ethics Op. 2022-300 (2022) (flat fee characterized as "nonrefundable" and "earned upon receipt" may be deposited into lawyer's business account); cf. Cluck v. Comm'n for Lawyer Discipline, 214 S.W. 3d 736 (Tex. App.

2007) (fee paid under written agreement that expressly said future hourly charges would be billed against it could not be characterized as "retainer"; it was advance to be deposited in client trust). Note that the lawyer may still be required by Rule 1.16(d) to refund, at the end of the representation, any portion of such fee that has not been "earned." See the annotation to Rule 1.16. See generally Tyler Moore, Flat Fee Fundamentals: An Introduction to the Ethical Issues Surrounding the Flat Fee after In Re Mance, 23 Geo. J. Legal Ethics 701 (Summer 2010); Douglas R. Richmond, Understanding Retainers and Flat Fees, 34 J. Legal Prof. 113 (Fall 2009).

c) An advanced payment of fees are fees "paid in advance for particular legal services not yet performed." VA LEO 1606. Advanced legal fees represent prepayment for services to be rendered in a known matter or for identifiable services that are contemplated by the lawyer and client at the time of the payment. *Id.* Because such payments entitle the client to legal services—whether that be research, consultation, advice, litigation or any other identifiable legal service—for a known and discrete set of legal circumstances, a lawyer does not earn any portion of an advanced legal fee until such services are actually rendered. *Id*. An advanced payment of fees should be deposited into the client or trust account until such time as the lawyer has performed the service and send an invoice for services. If funds remain after the conclusion of the representation, those must be refunded to the client as unearned fees.

(1) *Accord*, Annotation to ABA Rule 1.15 in Ellen J. Bennett, Helen W. Gunnarsson, and Nancy G. Kisicki. Annotated Model Rules of Professional Conduct, Tenth Edition (American Bar Association), citing *In re Sather*, 3 P. 3d 403 (Colo. 2000) (unless fee agreement "expressly states that a fee is an engagement retainer and explains how the fee is earned upon receipt, it will be presumed that any advance fee is a deposit from which [the] lawyer will be paid"); *In re Lochow*, 469 N.W. 2d 91 (Minn. 1991) (advance payments of lawyers' fees are client funds, which must be placed in client trust account until earned); *In re Montclare*, 376 P. 3d 811 (N.M. 2016) (real estate transferred to lawyer as flat fee payment must be safeguarded and returned promptly to client if any portion of fee is not earned); *State ex rel. Okla. Bar Ass'n v. Friesen*, 384 P. 3d 1129 (Okla. 2016) (improper to treat as earned entire fee for reaching structured settlement in wrongful death matter, setting up annuities, trusts, and children's college accounts, and preparing wills, where lawyer knew some work could not be performed for years to come due to children's ages); Alaska Ethics

Op. 2012-2 (2012) (flat or fixed fees must be deposited in lawyer's trust account until earned unless agreed otherwise in detailed writing); San Diego Cnty. Ethics Op. 2019-3 (2019) (must refund unearned portion of flat fee if representation ends before all services are performed); D.C. Ethics Op. 375 (2018) (crowdfunded fees are treated as advance fees and must be placed in lawyer's trust account until earned absent other agreement with client); Mo. Formal Ethics Op. 128 (2010) (" all flat fees must be deposited into a lawyer trust account and promptly removed when actually earned"); N.Y. State Ethics Op. 983 (2013) (lawyer may, at client's request, treat unearned portion of advance retainer for concluded matter as advance retainer for unspecified future legal services and must then maintain funds in trust account); S.D. Ethics Op. 2019-01 (n.d.) (criminal defense lawyer must deposit flat fee paid in advance into trust account and must refund any unearned portion if representation concludes before final disposition).

d) Depositing a "true retainer" into a client trust account (rather than the lawyer's operating account) would amount to improper "commingling." Depositing an advanced payment of fees into a lawyer's operating account prior to earning such fees would amount to theft of unearned funds.

5. Alternative Fee Arrangements

a) May introduce ambiguity about when the fee is earned. Be sure to document what triggers full or partial payments, including the right to draw down on any retainer or fixed fee paid up front (that is, when the fee is earned in whole or in part).

b) Absent a clear and reasonable agreement as to when a fee is earned, a lawyer should be aware that it is unreasonable to charge for work not done or charging a lot for doing very little. *See, e.g., In re O'Farrell,* 942 N.E.2d 799 (Ind. 2011) (charging and collecting flat fees that were nonrefundable even if client-lawyer relationship terminated before completion of representation); *Flowers v. Bd. Of Prof'l Responsibility,* 314 S.W.3d 882 (Tenn. 2010) (charging fees and costs for services not performed and then not reimbursing).

c) Document a plan that addresses compensation in the event of early termination or withdrawal. Rule 1.15(d) obligates a lawyer to promptly deliver to the client or third person the funds or other property that the client or third person is entitled to receive and to promptly render a fully accounting regarding such property. In the

event of a dispute, the property or funds must be kept separate until the dispute is resolved. Rule 1.15(e). A lawyer must distribute all portions of the funds or property as to which the interests are not in dispute.

d) Virginia Legal Ethics Opinion 1606 (1994) (see https://www.vacle.org/opinions/1606.htm) is a compendium opinions discussing the propriety of various fee arrangements, including when the fee is the property of the client and when it can be considered the property of the attorney, and when and under what circumstances a client is entitled to a return of the fees paid (specifically: retainers, advanced legal fees, non-refundable legal fees, fixed fees, and contingent fees). There are scores of legal opinions in Virginia touching on both fees and trust accounts, reflective of the importance and recurrence of the topic.

6. **Multiple clients**

When representing multiple clients in a single matter, the lawyer must consider at the outset whether or not the intent is for the clients to share equally and pro rata in the fees and costs. Moreover, the lawyer must plan for and expressly address what happens if one or more of the multiply clients ceases to pay or ceases to be a client. The lawyer's records will need to support who paid what amount and the dates when fees had been earned. *See* Rule 1.15(a). The lawyer must keep accurate records sufficient to allow a client-by-client refund in accordance with the engagement terms.

7. **Handling funds from a settlement, deal, closing, and the like which are ultimately owed to the client but from which attorney's fees are expected to be paid**

a) Lawyers may receive and hold funds associated with a client's settlement, deal, closing or the like.

b) A lawyer and client may agree that attorney's fees will be paid from settlement, deal, closing funds, or the like. If the lawyer's fee is undisputed by the client and not subject to a third party claim, the lawyer may draw down the funds in the amount of the undisputed fees. However, a client may dispute the amount of the fee owed. Comment 3 to Rule 1.15 recognizes that a "lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and

the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed."

C. Other people's money

1. Comment 4 to Rule 1.15 discusses the potential for third party claims to funds in the lawyer's possession, "such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute."

    a) This is a circumstance in which the lawyer's duties to a client are subject to the obligations under Rule 1.15, which may put the lawyer in a conflict situation in which the lawyer's client representation is limited b responsibilities to a third person. See Rule 1.7(a)(2).

2. The third party "interest" that will trigger a lawyer's duty under Rule 1.15 include a statutory lien, a judgment lien and a court order or judgment affecting the funds, and agreements, assignments, lien protection letters or other similar documents in which the client has given a third party an interest in specific funds. *See* Virginia LEO 1865 (2012) "Obligations Of A Lawyer In Handling Settlement Funds When A Third Party Lien Or Claim Is Asserted." An assurance of payment from the lawyer may also create ethical duties to third parties under Rule 1.15. *Id.* "The basis for such duties is the fundamental duty of lawyers to deal honestly with third parties." *Id.*, citing Rules 4.1 and 8.4(c).

    a) Before a lawyer accepts funds that could be subject to a third party claim or gives a third party an assurance of payment, the lawyer should explain to the client the ramifications, including the lawyer's potential ethical and civil liability, ensure that the client is competent to understand the explanation, and obtain the client's informed consent. *Id.*

3. A lawyer is wise to be wary of a circumstance in which the lawyer's duties to a client could be compromised by duties to others. See, e.g.,

a) Mike Hoover, Administrative Director Minnesota Office of Lawyers Professional Responsibility, "Attorney As Escrow Agent," Reprinted from Bench & Bar of Minnesota (October 1981) at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwiOvqqUqOjOAhUFmh4KHdJ8A-AQFggpMAE&url=http%3A%2F%2Flprb.mncourts.gov%2Farticles%2FArticles%2FAttorney%2520as%2520Escrow%2520Agent.pdf&usg=AFQjCNGNXvT4P1x07zpNGL96VNcT9ui-Eg. ("An attorney should not act as an escrow agent when his client is a party to the escrow agreement. To do so may create a conflict between the attorney's duties as an escrow agent and his duties as an advocate for this client. The conflict is created when the client's interests require the attorney to follow a course of action contrary to the course of action required of him under the terms of the escrow agreement.")

b) The Hanover Insurance Group lists an attorney as "escrow agent" as one of the top five potential circumstances giving rise to claims against real estate lawyers. *See* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwixv9z9lujOAhWIWh4KHd_gBGcQFgg-MAU&url=http%3A%2F%2Fwww.hanover.com%2Flinec%2Fdocs%2F119-0437.pdf&usg=AFQjCNFRG-3ClSKo8bF3K2ayu4icfG7myg&bvm=bv.131286987,d.dmo

c) The Law Society of British Columbia, "Risks for Lawyers as Escrow Agents, Stakeholders and Trustees" at https://www.lawsociety.bc.ca/page.cfm?cid=2404&t=Risks-for-lawyers-as-escrow-agents,-stakeholders-and-trustees (noting that its insurance program had experienced claims arising out of lawyers acting as escrow agents, stakeholders or trustees in connection with commercial transactions and advising against lawyers undertaking these roles).

III. TELLING THE TRUTH

Lawyers must keep client confidences and represent their clients zealously within the bounds of the law, but there are circumstances in which a truth telling obligation may trump other client duties (e.g., candor obligation to court under ABA Rule 3.3, truthfulness in statements to others under ABA Rules 4.1 and 4.3, and general rule against dishonest or deceitful conduct under ABA Rule 8.4).

A. Correcting a Representation to the Court

1. If a lawyer discovers that the lawyer or the lawyer's client has, knowingly or unknowingly, offered false evidence to the court, the lawyer must take "reasonable remedial measures." R. 3.3.

2. First, the lawyer should advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation in withdrawing or correcting the false evidence.

3. If the lawyer is unable to persuade the client to withdraw or correct the false evidence, the lawyer must either withdraw from representation (if withdrawal from representation is permitted and will undue the effect of the false evidence) or "make such disclosure as is reasonably necessary to remedy the situation." Comment 2 to Rule 3.3. *See also* Florida Bar, Ethics Op. 04-1 (2005) ("Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.")

4. ***Beware***: a lawyer's duty of candor often conflicts with a client's expectation of confidentiality—lawyers must carefully weigh their options, and should take conservative corrective action when necessary.

B. Withdrawing if a Client States an Intent to Lie

1. When a client expresses an intent to commit perjury, the client's lawyer must either persuade the client not to do so or withdraw from the case and inform the court of the client's intent to lie under oath. R. 3.3.

2. Withdrawal alone will often not fulfill a lawyer's ethical obligations—if the lawyer knows that the client will testify falsely, the lawyer must disclose the client's intention to the court.

3. Lawyers must be able to recognize when it is appropriate for them to withdraw from a case.

4. The timing of withdrawal from the case or disclosure to the court varies based on the facts of the case.

5. Depending on the circumstances of the case, the disclosure may be made in camera.

C. Recognizing the Line between Posturing and Dishonesty in a Negotiation

1. While lawyers are under a duty to act as zealous advocates for their clients, lawyers may not attempt to deceive adversaries through unethical misrepresentations.

a) *See, e.g.*, State Bar of California Standing Committee on Prof'l Responsibility and Conduct, Formal Op. No. 12-0007 (holding that a

lawyer breached his ethical duty by factually misrepresenting his client's annual salary during negotiations).

b) A lawyer who makes factual misrepresentations during negotiations may be subject to disciplinary action.

2. ***Distinguish***: lawyers may rely on negotiation tactics such as "posturing" or "puffery."

a) Acceptable forms of posturing include:

(1) Exaggerating strengths or minimizing weaknesses in legal or factual positions;

(2) Downplaying a client's willingness to compromise; and

(3) Insisting on the inclusion of a term for a certain strategic reason, when in reality there is no interest in the particular term. *See* ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 06-439 (2006).

(4) State Bar of California Standing Committee on Professional responsibility and Conduct Formal Opinion No. 2015-194 (discussing difference between dishonesty, deceit or collusion from "puffery" or "posturing).

D. **Addressing Adverse Authority:**

1. A lawyer is obligated to disclose to the tribunal controlling legal authority which the lawyer knows to be directly adverse to the lawyer's client's position. ABA Rule 3.3.

2. The ABA has interpreted the phrase "directly adverse" to include, in addition to "controlling authorities," "any proposition of law on which the lawyer expressly relies, which would reasonably be considered important by the judge sitting on the case." *See* ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 280 (1949).

3. ***Remember***: although lawyers are obligated to disclose adverse authority, lawyers still have the right to distinguish the authority and to present other reasons why the court should not be influenced by it. *See* ABA Comm'n on Ethics & Prof'l Responsibility, Informal Op. 84-1505 (1984).

E. **Pretexting:**

1. Pretexting—or "dissemblance"—occurs when a lawyer engages in deceptive behavior in order to elicit information.

2. Common forms of pretexting include:

a) Posing as a customer for the purpose of buying goods to use as evidence in an infringement claim;

b) "Friending," or instructing someone else to "friend," an adverse witness to obtain evidence; or

c) Misrepresenting one's identity to elicit records or other personal information for use in an investigation. *See* Kathryn Fenton, *Ethical Implications of Lawyer Pretexting*, http://www.americanbar.org/content/dam/aba/publications/antitrust_law/at311550_fenton_ethical_implications.pdf..

3. ***Pretexting and Ethical Rules***: pretexting implicates various ethical rules, including ABA Model Rule 4.1 (Truthfulness in Statements to Others), 4.2 (Communication with Person Represented by Counsel), and 8.4 (Misconduct).

4. ***Beware***: the ethical propriety of pretexting is unsettled, and is highly dependent upon the circumstances and jurisdiction. *See* Hope Todd, *Lies, Damn Lies: Pretexting and D.C. Rule 8.4(c)*, Washington Lawyer (Jan. 2015), https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/january-2015-speaking-of-ethics.cfm ("The ethical propriety of pretexting … is an unsettled question of law in a vast majority of jurisdictions.").

a) While some jurisdictions have held that pretexting may be permissible under certain circumstances, others have found that an "attorney's duty not to deceive" trumps the attorney's desire to pursue evidence. *See, e.g.,* NYCLA Committee on Prof'l Ethics, Formal Op. 737 (2007) (holding that an attorney may be permitted to engage in dissemblance to investigate wrongdoing under certain narrow circumstances, but cautioning that, in most cases, the attorney will need to make a showing of "virtual necessity"); San Diego County Bar Ass'n, Ethics Op. 2011-2 (2011) (holding that an attorney's duty not to deceive prevents the attorney from making a friend request without first disclosing the purpose of the request).