

Michelle Greer Galloway

Legal Ethics:
What You Need to Know
for 2022
Presented to Association
of Corporate Counsel,
San Diego
April 26, 2022

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attorney advertisement

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Michelle Greer Galloway



- Of Counsel in the IP Litigation Practice Group of Cooley LLP
- Lecturer in Law at Stanford University and Santa Clara University School of Law
- Executive Committee, Litigation Section of California Lawyers Association (2018-2021)
- Past Chair, ABA Intellectual Property Section, Professional Ethics and Responsibility Committee
- Contact Michelle at mgalloway@cooley.com or 650-843-5161 or michelleseminars@gmail.com
- For information about seminars Michelle offers, go to <https://www.cooley.com/people/michelle-galloway> and click on the red box.

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- LinkedIn: For information about seminars Michelle offers, go to <https://www.cooley.com/people/michelle-galloway> and click on the red box.
- Contact Michelle at mgalloway@cooley.com or 650-843-5151

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Caroline Perry



- Executive Vice President, Business Administration and General Counsel of Padres
- 12th season with the Padres
- Oversees the Padres' accounting and finance department, legal department, public affairs, and information technology department
- Prior to joining the Padres, Perry worked as a corporate attorney for Davis Polk & Wardwell LLP in the Bay Area and Cravath Swaine & Moore LLP in New York, where she focused primarily on corporate finance and general corporate matters.

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Overview

- Ethics Updates: ABA opinions, State rules and opinions, “Work from Anywhere,” UPL
- Ethical Duties: Competence, Confidentiality
- Special challenges for In-House Counsel
- Ethical Duty: Candor
- Ethical Duties: Supervisory/Subordinate Attorneys
- Ethical Duties: Disrespect, Harassment and Discrimination
- Other Things Ethical Lawyers Should Not Do – and the 2021 “eye rolls”

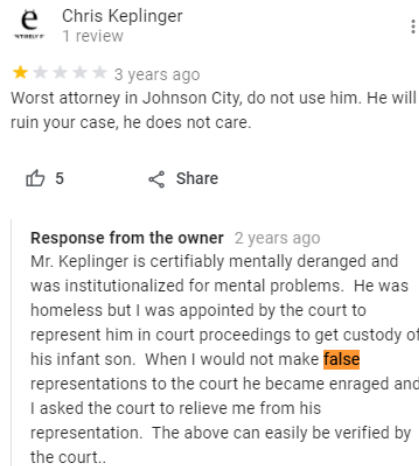
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ABA Ethics Opinions

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Negative Online Reviews



The screenshot shows a Yelp review for Chris Keplinger. The reviewer, who has one review, gave a 1-star rating 3 years ago. The review text is: "Worst attorney in Johnson City, do not use him. He will ruin your case, he does not care." Below the review, it shows 5 thumbs up and a share button. A response from the owner, dated 2 years ago, is also visible. The response text is: "Mr. Keplinger is certifiably mentally deranged and was institutionalized for mental problems. He was homeless but I was appointed by the court to represent him in court proceedings to get custody of his infant son. When I would not make false representations to the court he became enraged and I asked the court to relieve me from his representation. The above can easily be verified by the court.."

Chris Keplinger
1 review

★☆☆☆☆ 3 years ago

Worst attorney in Johnson City, do not use him. He will ruin your case, he does not care.

👍 5 ➦ Share

Response from the owner 2 years ago

Mr. Keplinger is certifiably mentally deranged and was institutionalized for mental problems. He was homeless but I was appointed by the court to represent him in court proceedings to get custody of his infant son. When I would not make false representations to the court he became enraged and I asked the court to relieve me from his representation. The above can easily be verified by the court..

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ABA Op. 496 (2021) – Responding to Online Criticism

- “Lawyers who choose to respond online must not disclose information that relates to a client matter, or that could reasonably lead to the discovery of confidential information by another, in the response. Lawyers may post an invitation to contact the lawyer privately to resolve the matter. Another permissible online response would be to indicate that professional considerations preclude a response.”

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ABA Op. 500 (2021) – Language Access

- Language Access in the Client-Lawyer Relationship
 - “When a client’s ability to receive information from or convey information to a lawyer is impeded because the lawyer and the client do not share a common language, or owing to a client’s non-cognitive physical condition, such as a hearing, speech, or vision disability, the duties of communication under Model Rule 1.4 and competence under Model Rule 1.1 are undiminished.
 - Interpreter, translator, other assistive technologies
 - Must ensure “the client understands the legal significance of translated or interpreted communications and that the lawyer understands the client’s communications, bearing in mind potential differences in cultural and social assumptions that might impact meaning.”

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ABA Formal Op. 501 (Apr. 13, 2022)

- Opinion focuses on Rule 7.3 re solicitation
 - “Rules 8.4(a) and 5.3 extend a lawyer’s responsibility for solicitation prohibitions not only to actions carried out by the lawyer directly but also to the acts of persons employed by, retained by, or associated with the lawyer under certain circumstances.”
 - “Lawyers with supervisory responsibility have a duty to supervise and train all persons employed, retained, or associated with the lawyer to ensure compliance with the Rules of Professional Conduct, including Rule 7.3(b)’s prohibition.”

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State Ethics Opinions and Issues of Note

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CA Lawyers Association Op. 2021-1

- Note: Not a State Bar Op.
- CLA Op. 2021-1 re “Elements of Effective Ethical Screens”
- Requires
 - Timeliness; no fee sharing; notice to affected clients; prohibit communication across screen; limit access to matter file; limit access to screened person’s files

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CA Op. 2021-206 – Colleague Impairment

- “. . . An impaired lawyer’s conduct can also trigger obligations for the impaired lawyer’s subordinates, supervisors and other colleagues who know of the impaired lawyer’s conduct. These ethical obligations may include, but are not limited to, communicating significant developments related to the lawyer’s conduct to the client and promptly taking reasonable remedial action to prevent or mitigate any adverse consequences resulting from an impaired lawyer’s actions. The required scope of each lawyer’s action depends on the nature of the client’s representation, the severity of the impaired lawyer’s unethical conduct, whether the client has been harmed or will be harmed by the impaired lawyer’s conduct, the nature of the lawyer’s impairment, the size of the law firm and the resources available, and each lawyer’s position within the firm.”

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CA Bar and the Girardi Scandal

- Thomas V. Girardi plaintiff counsel in mass tort class actions was placed in to a conservatorship after a dementia diagnosis; State Bar deactivated license; C.D. Cal. disbarred him
 - *In re Lion Air Flight JT 610 Crash* – N.D. Ill froze firm’s assets after finding Girardi failed to distribute \$2M settlement
- Involuntary bankruptcy proceedings
- Litigations alleging Girardi misused and misappropriated client funds

CLE Speaker Series

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CA Bar

- Attorneys have said they were aware of misconduct
 - CA does not have Rule 8.3 re reporting misconduct
- State bar of CA investigations for decades
- Girardi Keese law firm did not carry professional liability insurance
 - Bankruptcy creditors claims total \$130M
 - See Elizabeth Tuttle Newman, *Girardi Scandal Provides Important Ethics Lessons*, www.law360.com (Oct. 13, 2021)

CLE Speaker Series

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Pandemic and Working From Home – Confidentiality and UPL

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Model Rule 1.6 – Confidentiality

- “A lawyer shall not reveal information relating to the 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).”
- Rule amended to add 1.6(c)
 - “(c) A lawyer shall make **reasonable efforts to prevent** the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (emphasis added)

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ABA Op. 495 (2021) – Working Remotely & UPL

- “Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction.”

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States – Working Remotely and UPL

- DC Op 24-20
- Florida Advisory Op. 2019-04 issued August 17, 2020
- NJ 742: Non-NJ licensed lawyer may practice out of state law from NJ if not maintain a continuous and systematic presence in NJ for practicing law
- SF Op. 2021-1: non-CA lawyer, “merely physically present in California while using modern technology to remotely practice law in compliance with the rules of the jurisdiction where the lawyer is licensed” no UPL
- Pa. 2021-100 PA lawyer may practice remotely if the jurisdiction in which lawyer is physically present does not prohibit.

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ABA Op. 498 (2021) Virtual Practice

- “The ABA Model Rules of Professional Conduct permit lawyers to conduct practice virtually, but those doing so must fully consider and comply with their applicable ethical responsibilities, including technological competence, diligence, communication, confidentiality, and supervision.”

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States – Virtual Practice

- PA Ethics Op. 2020-300
- Wis. EF-21-02 (Jan. 2021) Working Remotely
 - “The basic responsibilities that a lawyer owes the client – competence, diligence, communication, and confidentiality - lie at the core of lawyer’s professional obligations and remain unchanged irrespective of the lawyer’s physical location. . . . The role of the partners, managers and supervising attorneys, whose responsibilities include insuring that both attorneys and non-attorneys in the firm, regardless of their location, comply with the requirements of SCR Chapter 20, is of increasing importance.”

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1 Case of Neglect in Pandemic = Discipline

- Attorney hired by client and filed civil action to collect monies owed to business;
 - Beginning in March 2020 “failed to respond to discovery requests, letters from opposing counsel, and various motions” and failed to respond to client’s attempts to call
 - December 2020 case was dismissed for failure to prosecute
 - Attorney stated that believed litigation in DC Superior court was stayed by pandemic
 - Informal Admonition
 - *In re Hessel*, Docket No. 2021-D174 (D.C. Disciplinary Counsel Apr. 4, 2022)

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Competence

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ABA Model Rule 1.1 Competence

- Rule unchanged:
 - “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- Comment amended:
 - Maintaining Competence: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, ***including the benefits and risks associated with relevant technology. . . .***” (emphasis added)

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Under Pressure

- Attorney neglected tax appeal (while at Biglaw) and made false statement to cover up
 - Testified that he was “in no way prepared” to handle Biglaw and “oversold” his ability to be a practice group leader
 - Wrongly thought he could “power through” depression
- 1 year suspension. *In re Dixon*, Case No. 174 DB 2020 (Pa. Mar. 4, 2022)

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Advo-cats



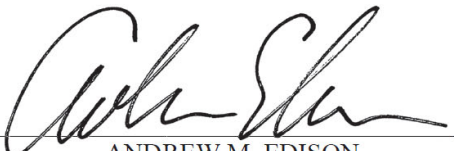
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Hearings During COVID

One other note: you are NOT required to wear formal courtroom attire during the videoconference. You are, however, required to wear clothes.

SIGNED and ENTERED this 28th day of July, 2021.


ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE

State of Texas v. Biden, Case No. 3:21-CV-065 (S.D. Tex. July 29, 2021)

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Zoom Fails

Lawyers

- Naked/unclothed
- Eating on camera
- Masturbating
- Having sex on camera

Parties

- Defendant with obscene screen name
- Defendant in home with victim during hearing
- Defendant with suspended license attends hearing in driver seat of SUV
- Doctor calling in to hearing from operating room

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Security: Phishing, Vishing and Hacking

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Data Breach

Calif. Bar Faces Info Leak Covering 260,000 Discipline Cases

By **Brandon Lowrey**

Law360 (February 27, 2022, 8:13 PM EST) -- Confidential information from about 260,000 of the State Bar of California's attorney discipline cases was published online in what the agency described on Sunday as a "data breach," though a records search site said the confidential data had been publicly available on the bar's own website.

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Vendor Hacks

Jones Day is hit by vendor data breach; hackers post files they claim were stolen from the law firm

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 17, 2021, 9:26 AM CST

Goodwin Procter reports data breach from hack of third-party vendor

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 3, 2021, 10:57 AM CST

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Leaks

Ontario Bar Exam Canceled Last Minute Due to Leak of Questions

 [law.com/2022/03/06/bar-exam-canceled-last-minute-due-to-leak-of-questions-292-110383](https://www.law.com/2022/03/06/bar-exam-canceled-last-minute-due-to-leak-of-questions-292-110383)

By Christine Charnosky

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Reminder: Secure Video Conferences

Fired Peloton employees crash new CEO's first all-hands

 theverge.com/2022/2/9/22926095/peloton-ceo-all-hands-fired-employees

Victoria Song

February 9, 2022

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Confidentiality

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Model Rule 1.6 – Confidentiality

- “A lawyer shall not reveal information relating to the 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).”
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Revealing Confidential Information



Drew, driver
Mary, passenger

Yamaha ATV crashes

Drew	Mary
(1) Calls Atty Carroll who refers to Atty Cross	(5) Hires Atty Carroll
(2) Drew pleaded guilty to reckless driving	(6) Sues Drew
(3) Cross gets declaration from Mary it was not Drew's fault	(7) Drew moves to assert claim against Yamaha
(4) Cross advised Drew no strong case v Yamaha	(8) Atty Carroll calls Cross
2 years go by . . .	(9) Cross reveals that Drew considered suing Yamaha and decided against it


In re Cross, Case No. 201,993-5 (Wash. Dec. 23, 2021 (9 month suspension))

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Confidentiality/Leaks

Covington Reportedly Paying Settlement Over Leak Of Les Moonves Sexual Misconduct Report

 abovethelaw.com/2021/05/covington-reportedly-paying-settlement-over-leak-of-les-moonves-sexual-misconduct-report

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Careful With CCs

Oops! Biglaw Partner Sent Private Strategy Presentation To Adversary In 'CC' Snafu

 abovethelaw.com/2021/08/oops-biglaw-partner-sent-private-strategy-presentation-to-adversary-in-cc-snafu

NYT engaged in unionization negotiations
Partner sent email titled "Tech Organizing Unit Scope Decision Options" and sent to Senior VP and Deputy GC of NYT; cc'd an organizer for the NY Chapter of the NewsGuild representing staffers
See <https://www.thedailybeast.com/ny-times-lawyers-accidentally-send-private-strategy-memo-to-staff-union>

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Admitted Pro Hac Vice Over Objections

- Case involves Hertz customers who allege Hertz filed false police reports; Hertz in bankruptcy
- Plaintiff's counsel previously suspended in E.D. Pa. and has history of discipline
- Hertz argues plaintiff's counsel previously breached a confidentiality agreement and leaked info about a confidential settlement to media. Court declined to consider because facts in dispute.
- *In re Rental Car Intermediate Holdings*, Case No. 1:20-bk-11247 (Del. Bkry) (granting pro hac vice status)

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Protecting Privilege

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Cybersecurity Report – Generally Not Privileged

- No ACP or AWP
 - *Wengui v. Clark Hill*, 338 FRD 7 (D.D.C. 2021)
 - *In re Rutter's Data Sec. Breach Litig.*, 2021 BL 275161 (M.D. Pa. 2021)
 - *In re Capital One Consumer Data Security Breach Litigation*, MDL No. 1:19md2915 (E.D. Va. May 26, 2020)

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Conf. and Priv.: Which Email Account?

- Dell outside director using email account of Accenture (where he retired) with Accenture's permission for "personal use. Reasonable expectation of privacy where account used with permission and where Accenture had a policy to permitting monitoring but had never done so. *Dell Technologies Inc. Class v. Stockholders Litigation*, Case No. 2018-0816 (Ct. Chancery Del. Sept. 17, 2021)
- Individuals using their employer's (Sprint's) email accounts for Softbank related purposes had no reasonable expectation of privacy where Sprint policies included statements that employees had no expectation of privacy and that Sprint had right to monitor email. *In re WeWork Litigation*, Case No. 2020-0258 (Ct. Chancery Del. Dec. 22, 2020)

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In-House Counsel: Loyalty, Whistleblowers, Clawbacks – OH MY

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GC Convicted Embezzlement

- Former GC pleaded guilty for embezzling \$500K from fin tech co and agreed to surrender law license *US v. Solis*, Case No. 3:21-cr-00297 (N.D. Cal. Mar. 14, 2022)

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Suing Former In-house Lawyer

- A group of cannabis companies sued former GC
 - Alleges attorney used confidential information he learned to form and operate a competing business within .5 miles of former client's entity.
 - *Purple Mountain Holdings v. Tanner*, Case No. 8:21-cv-01275 (C.D. Cal. July 2021) (removed to federal court)
- Fiat sued former in house lawyer who allegedly copied files to laptop and left to open firm representing client suing Fiat
 - *FCA v. Bullock*, Case No. 2:17-cv-13972 (E.D. Mich. Jan.27, 2021 (dismissed conditioned on finalizing settlement)

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In-House Lawyer Departures

- Top 3 in-house attorneys resigned from CPS Energy (related to complaints about CEO)
- Board has hired outside law firm to review complaints
 - See www.law360.com (June 25, 2021)

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GC Whistleblower

Fresenius GC Says He Was Canned For Flagging Misconduct

By Hailey Konnath

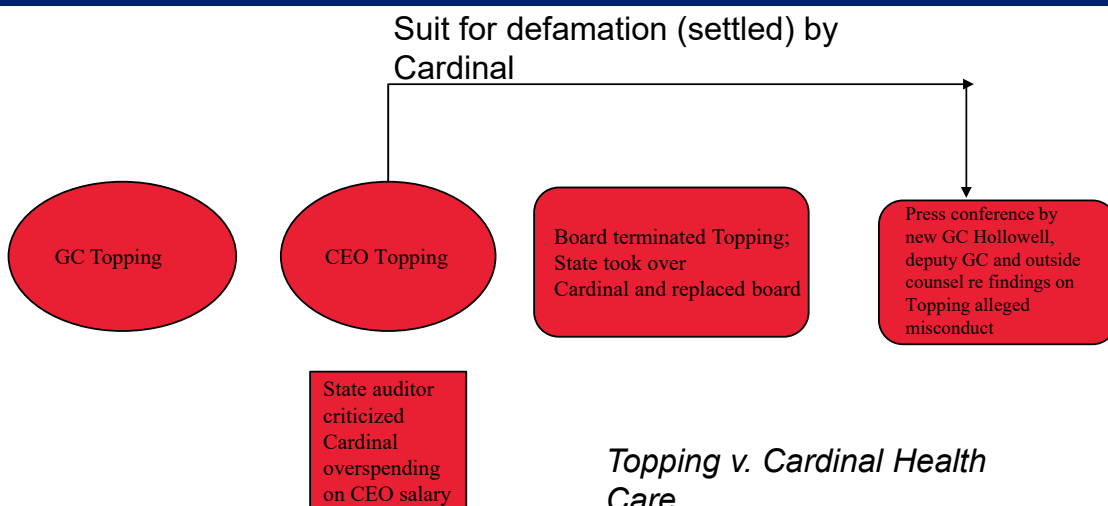
Law360 (April 12, 2022, 11:02 PM EDT) -- Fresenius Medical Care's former general counsel filed retaliation and wrongful termination claims against the company on Tuesday, claiming he was demoted and ultimately fired for reporting apparent misconduct that allegedly included embezzlement and waste of corporate funds.

Douglas G. Kott, who was also a senior vice president at Fresenius, said the German company shifted him from general counsel into a much less meaningful role — global chief legal operations officer — after he reported the potential misconduct and illegal activity to the compliance department.

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Defamation Suit: Former GC v. Current GC



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Candor

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Traffic Court to 90 Day Suspension

- Attorney ordered to community service hours for traffic violation
- Submitted false report completed service hours because she “cuts corners”
- Hearing board refused to take actual completion of service hours as a mitigating factor
- 90 day suspension recommended
- *In re Williams*, Commission No. 2021PR00032 (Apr. 1, 2022) (Report and Recommendation)

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Settlements Without Client Approval

- Former Goldberg Segalla partner fired after settling at least 13 cases without consent of client insurance company
 - Client Knight and/or firm forced to satisfy judgments
 - NJ 3 year suspension based on discipline imposed in Pennsylvania. *In re Chancey*, Case No. 086103 (N.J. Feb. 9, 2022)

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Misrepresentations

NY Judge Affirms Sanctions Against Fisher Phillips Attys

By **Matt Perez**

Law360 (May 20, 2021, 10:24 PM EDT) -- A New York federal judge on Wednesday affirmed a magistrate judge's recommendation of sanctions against two employment partners at Fisher Phillips for misrepresentations to the court as a way to beat a motion for sanctions.

Littler Punished Over Atty Lies In Wage-And-Hour Suit

By **Andrew Strickler**

Law360 (April 15, 2021, 4:24 PM EDT) -- Lies from a Littler Mendelson PC lawyer defending a federal wage and hour suit in Alabama have cost the firm at least \$63,600, an apology and possibly the client's case.

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Misrepresenting Study

- Underlying case *Lieff Cabraser* one of principal firms representing investor class challenging charges on foreign exchange products by State Street Bank
 - District Court awarded \$60M in fees; sanctioned Lieff Cabraser for misrepresenting a study about typical fees awarded in similar cases
 - *Lieff Cabraser Heimann & Bernstein v. Labaton Sucharow*, Case No. 21-1069 (1st Cir. Feb. 9, 2022) (affirming Rule 11 sanction); *Arkansas Teacher Retirement System v. State Street* (underlying case)

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Fabricating Court Documents


- *In re Philip J. Morin III*, Case No. 086220 (N.J. Mar. 25, 2022) (3 year suspension for fabricating consent order and forged judge's signature)
- *In re Costello*, Case No. D67291 (S. Ct. N.Y. App. 2nd Judicial Dept. Oct. 6, 2021) (18 month suspension forging judge's signature.
- *In re Levine*, (Mass. Apr. 2021) (Resignation accepted from lawyer accused of forging signature to settlement agreement.)

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Attorney Forgery Leads to Kidnapping Charge

Cleveland attorney indicted on kidnapping charge filed forged documents that got woman's kids taken from her, prosecutors say

 cleveland.com/court-justice/2021/11/cleveland-attorney-indicted-on-kidnapping-charge-filed-forged-documents-that-got-womans-kids-taken-from-her-prosecutors-say.html

November 23, 2021

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Supervisory and Supervised Attorneys

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Failure to Supervise Attorneys

- 2 attorneys suspended for 18 months
 - Hired suspended attorney as paralegal and allowed to function as attorney
 - *In re Friedberg*, Case No. 2018-00100 (N.Y. App. Div, 1st Jud. Dept. April 6, 2021)
 - *In re Pinkas*, Case No. 2018-00347 (N.Y. App. Div, 1st Jud. Dept. April 6, 2021)

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Failure to Supervise Non-Lawyers

- Assistant stole \$3300 in client funds after forging attorney signature
- Lawyer gave assistant a “second chance”
- Assistant stole \$191K in client funds
- 6 month suspension. *In re Krzton*, Case No. 86 DB 2020 (Pa. Aug. 6, 2021)

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Ethics Rules – Disrespect, Incivility Discrimination and Harassment

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ABA Model Rule 8.4

- ABA Rule amended August 2016
 - “It is professional misconduct for a lawyer to:
 - (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”

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ABA Op. 493 (re Rule 8.4)

- Applies to practice, even outside representation of client
- Not restricted to “severe or pervasive” conduct
- Not intended to prevent “expressing opinions and ideas on matters of public concern, nor does it limit a lawyer’s speech or conduct in settings unrelated to the practice of law.”
- “Enforcement of Rule 8.4(g) is therefore critical to maintaining the public’s confidence in the impartiality of the legal system and its trust in the legal profession as a whole.”

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Hot Mics: Judge’s remarks

**Off the Record Communication between Judge William B. Raines, Patty [Clerk],
ASA Anna Sedelmaier, ASA Susie Bucaro, and APD Kyle Lappin**

ASA Anna Sedelmaier: “She’s maybe not the nicest person.”

Judge William B. Raines: “Can you imagine waking up next to her every day?
Oh my God!”

laughter

ASA Susie Bucaro: “There would be a number of things wrong with my
life if I was waking up next to her every day.”

Judge William B. Raines: “I couldn’t have a visual on that if you paid me. So,
there you have it.”

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Judicial Ethics and Conduct

- “Grossly inappropriate demeanor”
- Sexual innuendo; sexual harassment
- “Crude language”
- “Sexist and misogynistic”
- Bias: anti-Arab, anti-LGBTQ+, anti-Muslim
- “Racist theory”; using racial slurs
- Displaying handgun in open court
- “Frequently” used F-bombs and obscenities (no reinstated)

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3 Year Suspension and Fitness Requirement

- Respondent’s language calling Schmeltz “Schmaltz” and “Schmuchs,” referring to Schmeltz and Badger as “disgusting,” “despicable,” “scum,” “idiot,” “perp,” and “active criminal,” and threatening to end Schmeltz’s career and “flay him on a public pillory” were objectively offensive and threatening. Moreover, this language did, in fact, cause Schmeltz and Badger to feel embarrassed, harassed, and concerned.
- Respondent’s profanity and references to Sanfelippo as a “liar,” “Sanscamfelippo” and “Sanliarippo” had no legitimate purpose. Similarly, violent imagery such as describing people as “targets,” referring to a “legal rope tightening around your neck,” and threatening to “rip y’all a new one” has no place in the practice of law and was clearly intended to intimidate the recipients. Regardless of whether the language arose in the context of litigating or settling the Cubesmart matter, it had no substantial purpose other than to burden the recipients.
- Vincent Schmeltz testified that Respondent called his 80-year-old father in March of 2021 and attempted to obtain Schmeltz’s address. (Tr. 115).
- *In re Gomez*, Comm. No. 2020PR00064 (Ill. Disciplinary Hearing Board Jan. 7, 2022)

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Don't Write to the Court

- **Emails sent**

directed the following statements to Judge Carr:

“See, that’s –that’s why this is the clown car. You are a clown.”

“You’re a child abuser. I mean, honestly, I should call DCFS on you because you’ve abused these children for two years. What you have done and what people like you do to people all over this country is a disgrace.”

“Caidi, I strenuously object to you being a lowlife bottomfeeder, who suborns perjury, breaks the IRPC and extorts your own client.”

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Threatening to Call ICE

- Public reprimand. *In re Davis*, Case No. S22Y0085 (Ga. S. Ct. Nov. 2, 2021) (on an undocumented former partner of his longtime friend)
- Public censure. *In re Mukambetova*, Case No. 2021-02596 (N.Y. App. Div. Mar. 31, 2022) (where former client left negative on line review)
- **Calif. Atty Disbarred After Deportation Threats**

By Jennifer Doherty

Law360 (March 8, 2021, 10:59 PM EST) -- A California attorney who was previously disciplined for bringing a loaded gun to court has lost his law license after facing a third round of disciplinary action, this time involving threats to get opponents' clients deported.

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Lawyer's "Incendiary" Posts

- Court found 12 disturbing Facebook posts and discussed two
 - One involved George Floyd
- "These comments were not expressive; they are expressly incendiary . . . The statements were intended to incite, and had the effect of inciting, gender and race-based conflict"
- 6 month suspension *In re Traywick*, Case No. (S.C. June 18, 2021) (ordering CLE and anger management) (not did not raise 1st amendment challenge)

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Discovery and Ethics

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Listen to Your In-House Counsel!

- Hyundai sanctioned for failure to preserve engines
 - “On June 9, 2020, Alex (Youngshick) Kim, who held the title of Plaintiff’s Executive Coordinator, Legal/Audit/US SO, requested by email that engines obtained from Napleton-owned Hyundai and Kia dealerships, including Napleton #121, and in possession of Hyundai Translead and YRC Freight be “officially preserved until notified” [DE 167-2 at 6-7].”
 - “The inexplicable failure by a large sophisticated corporation like Plaintiff to ensure compliance with Mr. Kim’s [in-house counsel] preservation email was not merely negligent. It is far worse.”
 - *Hyundai Motor America v. North American Automotive Services*, Case No. 9:20-cv-82102 (S.D. Fla. July 22, 2021)

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Using Chat to Coach Trial Witness

Lawyer is suspended for coaching client using chat function during virtual trial

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 1, 2022, 3:16 PM CST

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An Arizona lawyer has consented to a two-month suspension after he was accused of using the chat function on GoToMeeting to coach his client during a virtual trial.

Ryan Patrick Claridge (<https://mymodernlaw.com/our-team/ryan-claridge/>) was ordered to complete the suspension and a two-year probationary period in a Jan. 21 final judgment

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Public View of Lawyers and Judiciary in 2020-21

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Judiciary's Workplace Conduct

- The Judiciary's Workplace Conduct Working Group issued report making 9 recommendations for additional changes (Mar. 16, 2022)
 - Adds "express prohibition against abusive conduct, addressing harassing behavior even when it is not discriminatory."

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Judicial Impartiality

- Sept. 2021 Wall Street Journal report
 - Between 2010-2018
 - 131 federal judges heard
 - 685 cases in which judge or family members owned shares of plaintiff or defendant
 - Judges ruled in favor of party in which they held a financial stake on 66% of contested motions
 - See James V. Grimaldi, Coulter Jones, and Joe Palazzolo, *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, Wall Street Journal (Sept. 28, 2021)

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Judge's Financial Disclosures

Federal Courts To 'Automate' Judges' Financial Disclosures

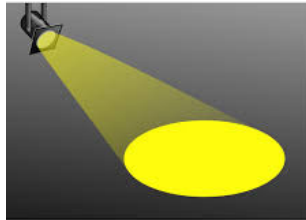
By **Andrew Strickler**

Law360 (March 15, 2022, 3:53 PM EDT) -- In the wake of an embarrassing revelation that stock-owning federal judges have routinely overseen cases in which they had a financial stake, court leaders Tuesday agreed to automatically post judges' financial disclosures online.

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Supreme Court



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DOJ Discovery Failures

NY Feds Drop \$500M Fraud Case, Avoiding Misconduct Probe

By **Max Jaeger**

Law360 (April 12, 2022, 1:29 PM EDT) -- A sweeping \$500 million real estate fraud case ended with a series of minor plea deals involving just a few thousand dollars Tuesday, as New York federal prosecutors tossed their 114-count indictment rather than submit to a potentially embarrassing evidentiary hearing into their own alleged misconduct.

It's the second dismissal of the government's indictment of Rochester real estate mogul Bob Morgan, members of his family and business associates, with both prosecutions ultimately undone by the government's failure to timely process and share potential evidence it seized.

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Brandishing Guns

- 9 month suspension where lawyer brandished gun when angry about sign promoting social distancing and then failed to cooperate with Disciplinary Board's interview. *In re Legu*, PRB File No. 2020-102 (Vt. Prof. Resp. Board, Dec. 238, Aug. 30, 2021)

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Lawyers and BLM

McCloskey's from BBC



- Pardoned on gun charges
- Missouri Disciplinary Counsel has asked Supreme Court to suspend law license (Sept. 2021)

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Lawyers and Elections

- In Michigan, Court ordered attorneys to pay \$22K sanction in legal fees Michigan incurred defending election suit
 - Also ordered to attend CLEs and referred to attorney discipline
 - *King v. Whitmer*, Case No. 2:20-cv-13134 (E.D. Mich. 2021)
- In Colorado, Court sanctioned attorneys \$187K

It should have been as obvious to Plaintiffs' counsel as it would be to a first-year civil procedure student that there was no legal or factual basis to assert personal jurisdiction in Colorado for actions taken by sister states' governors, secretaries of state, or other election officials, in those officials' home states.

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AG Impeached

The New York Times | <https://www.nytimes.com/2022/04/12/us/south-dakota-attorney-general-impeached.html>

South Dakota Lawmakers Impeach Attorney General Involved in Fatal Crash

Attorney General Jason R. Ravensborg will face a trial in the State Senate to determine whether he is removed from office.



By Mitch Smith

April 12, 2022

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Other Things Lawyers Shouldn't Do

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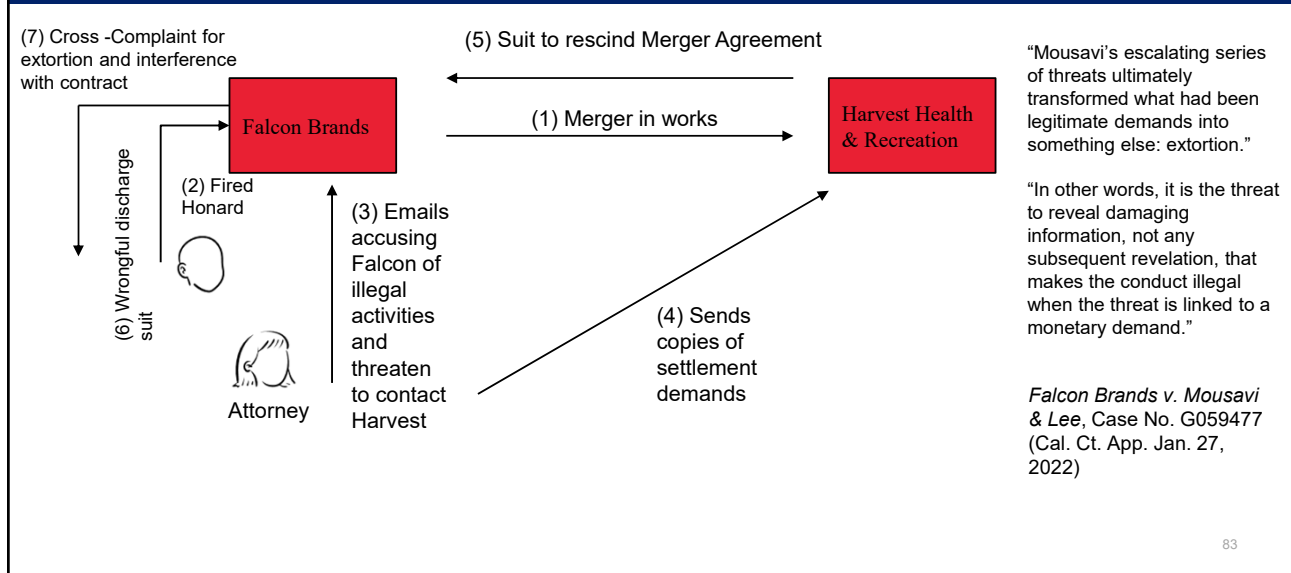
BigLaw Partner: Recommended Against Reinstatement

- Former Hunton & Williams partner suspended following 2017 insider trading conviction
- Applied for reinstatement in DC
 - “Schulman does not appear to have engaged in much introspection during his suspension about what led him to violate the Rules of Professional Conduct. To the contrary, the tenor of his testimony was that while he technically violated the rules, he does not believe he truly did anything wrong.”

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Settlement Tactics Become Extortion



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Don't Report Other Lawyers Are Dying

- Plaintiffs’ attorney Shegerian brought suit alleging three management-side lawyers engaged in slander and libel by spreading misinformation that he was in hospice care
 - Labor Lawyers listserv: “Hi All. In case you haven't heard, Carney Shegerian is apparently in hospice care and is expected to pass away soon.”
 - *Shegerian v. Proskauer Rose LLP*, Case No. 22STCV05269 L County Sup. Ct.) (Complaint filed Feb. 10, 2022)
 - Reported at dailyjournal.com/articles/366170-plaintiffs-lawyer-sues-others-who-reported-he-was-dying

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Alleging Opposing Counsel Mentally Unfit

- Contentious case re estate-planning dispute
 - Attorney Whipple filed a motion requesting Court refer opposing counsel to Ohio Lawyers Assistance Program including alleging “that opposing counsel’s performance as a lawyer was impaired by a mental or emotional condition or some other condition and sought dismissal of the underlying civil case.”
- 1 year suspension. *Cleveland Metro. Bar Ass’n. v. Whipple*, Case No. 2021-0229 (Ohio Feb. 24, 2022)

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Keep Your Pants On

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Keep Your Pants On

Another lawyer drops his pants to get through courthouse metal detector

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

NOVEMBER 11, 2021, 10:10 AM CST

“I had a brain cramp, a brain fart, whatever you want to call it.” Pollock told the TribLive

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Removing Clothes At A Bar

Florida lawyer arrested for removing her clothes at a bar; it was second arrest in 2 days

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

FEBRUARY 24, 2022, 1:06 PM CST

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Eye Rolling Awards

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No Chartered Air Fare Recovery

- Court declined to award \$19,999 for chartered air fare for corporate representative to attend trial
 - *Sorrell Holdings v. Infinity Headwear & Apparel*, Case No. 4:16-cv-04019 (W.D. Ark. Mar. 24, 2022)

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Judge Using “White-Out”

- Judge charged with falsifying public record; “applying white-out to the entirety of the original handwritten orders”
- Charged with misdemeanors and felonies
- Disbarred. *In re Introcaso*, Case No. LD-2021-0001 (N.H. Feb. 25, 2022)

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Head Scratching: No Work To Do?

Lawyer



Charges

- Charged with disorderly conduct
- Walking the beach pre-Hurricane (Sept. 2021)

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Lawyers as Plaintiffs

Lawyer sues Amazon for false imprisonment after delivery van blocks his car

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

OCTOBER 11, 2021, 11:15 AM CDT

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Eye Rolled Myself to Another Dimension

After Shooting Son And Leaving Him Bleeding For 2 Hours, Lawyer Outraged Over Censure

Maybe, just maybe, her priorities are a little off.

www.abovethelaw.com

By KATHRYN RUBINO on September 16, 2021 at 1:46 PM

In re Smits, District Docket No. XIV-2018-0143E
(N.J. Feb. 10, 2021)

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Wow!

- *Elliott Greenleaf PC v. Zahralddin-Aravena*, Case No. 2021-01427 (Ct. Common Pleas, Montgomery County, Pa.)
 - Firm alleges that former shareholders copied and removed files before leaving firm
- *Zahralddin v. Elliott Greenleaf*, Case No. 2002-0294 (Del. Ct. Chancery)
 - Zahralddin and Kinsella brought suit against firm in Delaware seeking advance payment of their legal bills and indemnification in the PA suit citing firm bylaws
 - Elliott Greenleaf has filed motion to remove suit to Delaware District Court
 - Accuses former shareholders of attaching exhibit (bylaws) to Delaware complaint and that the exhibit is subject to protective order in PA case

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What Might Keep In House Attorneys Awake at Night in 2022?

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Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes *only* and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2022.

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