

Tri-State Regional Special Education Law Conference
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Legal Ethics and Special Education Disputes
Part II: Select Attorney Discipline Cases from the Outside Tri-State Region

Thomas A. Mayes
Attorney, Iowa Department of Education

The following selected cases involve application of the American Bar Association's Model Rules of Professional Conduct from around the country, for a period of September 2016 to September 2017. The Model Rules are located here:

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

Note: This presentation discusses reported decisions imposing discipline. It does not include referrals by courts for discipline, malpractice action, discovery disputes or sanctions, Rule 11 sanctions or orders, voluntary license surrenders, consent orders, applications for reinstatement, applications to take a bar examination or for admission on motion, memorandum opinions, or opinions imposing reciprocal discipline without providing in-depth discussion.

I. Attorneys Convicted of Crimes

- A. *Matter of Parrott*, 2017 WL 4052279 (S.C. Sept. 14, 2017) (charged with voyeurism, pled down to assault-and-battery, third degree: nine month suspension)
- B. *Matter of McAdams*, 2017 WL 4052087 (S.C. Sept. 14, 2017) (federal wire fraud conspiracy: disbarment)
- C. *Matter of Kerr*, 2017 WL 4017910 (Ga. Sept. 13, 2017) (trust deposit fraud: disbarment)
- D. *Matter of Spain*, 802 S.E. 2d 240 (Ga. 2017) (stalking: one year suspension)
- E. *State ex rel. Oklahoma Bar Ass'n v. Hixson*, 397 P.3d 483 (Okla. 2017) (prostitution - legal work in exchange for sex acts: six month suspension)
- F. *In re Legato*, 229 N.J. 173 (2017) (consolidated discipline action - child sexual abuse: attempt to endanger child welfare = indeterminate suspension // endangering child welfare = disbarment)
- G. *Matter of Grimm*, 54 N.Y.S.3d 444 (App. Div. 2017) (aiding-and-abetting filing of false tax return = four year suspension) (Respondent was a member of Congress)
- H. *State ex rel. Oklahoma Bar Ass'n v. Hastings*, 395 P.3d 552 (Oka. 2017) (pointing a firearm at ex-wife = two year suspension)
- I. *Ohio State Bar Ass'n v. Jacob*, 150 Ohio St. 3d 162 (Ohio 2017) (prostitution and falsification of documents [municipal judge] = two years suspension, with second year stayed)
- J. *Kentucky Bar Ass'n v. Ford*, 515 S.W.3d 181 (Ky. 2017) (wire fraud, money laundering: disbarment)

- K. *In re Madison*, 300 Ga. 637 (2017) (molestation of step-daughter: disbarment)
- L. *In re Broussard*, 219 So.3d 290 (La. 2017) (filing of fraudulent tax returns: disbarment)
- M. *In re Mecca*, 214 So.3d 827 (La. 2017) (accepting marijuana as payment for legal service: one year suspension)
- N. *In re Kapalin*, 229 N.J. 224 (2016) (smuggling contraband into federal correctional facility: three year suspension)
- O. *In re Williams*, 218 So.3d 1009 (La. 2016) (bribery [while assistant district attorney]: disbarment)
- P. *In re Gilmore*, 218 So.3d 100 (La. 2016) (bribery [while member of city council]: disbarment)
- Q. *Disciplinary Counsel v. Warren*, 147 Ohio St. 3d 406 (2016) (felony sexual battery: two year suspension)
- R. *Matter of Anderson*, 418 S.C. 48 (2016) (false statement to a federal agency [here, the DEA]: two year suspension)
- S. *Kentucky Bar Ass'n v. Ford*, 498 S.W.2d 392 (Ky. 2016) (conspiracy, wire fraud, securities fraud: disbarment)

II. Conduct of Attorney's Personal Affairs

- A. *Disciplinary Bd. v. Allen*, 900 N.W.2d 240 (N.D. 2017) (abusing power as mother's attorney-in-fact when finding out that he would not inherit anything under her will, general misconduct in the probate of his mother's will: six month suspension)
- B. *In re Brodsky*, 58 N.Y.S.3d 380 (App. Div. 2017) (depositing personal funds in client trust account to evade personal creditors, inter alia: two year suspension)
- C. *Attorney Grievance Comm'n v. Kotlarsky*, 453 Md. 469 (2017) (failing, inter alia, to include his firm's assets in his personal bankruptcy petition: disbarment)
- D. *Lawyer Disciplinary Bd. v. Plants*, 239 W. Va. 347 (2017) (elected county attorney violated Emergency Protective Order by talking to his ex-wife and children: public reprimand [The court gave weight to the fact that Plants had been removed from office])
- E. *In re Johnson*, 74 N.E.3d 550 (Ind. 2017) (pattern of harassment of ex-girlfriend, including using leverage as chief public defender to have probation office file probation violation complaint against ex-girlfriend: one year suspension)
- F. *People v. Sanders*, 2017 WL 7856475 (Colo. Office of Presiding Disciplinary J., Dec. 1, 2016) (failure to pay child support: six month suspension)
- G. *Cincinnati Bar Ass'n v. Hauck*, 148 Ohio St. 3d 203 (2017) (aiding-and-abetting client-friend's violation of a domestic abuse protective order: two year suspension)
- H. *People v. Lindquist*, 2016 WL 7373880 (Colo. Office of Presiding Disciplinary J., Nov. 8, 2016) (altering e-mail presented in evidence in attorney's divorce: three year suspension)
- I. *People v. Saxon*, 2016 WL 8540133 (Colo. Office of Presiding Disciplinary J., Nov. 7, 2016) (domestic abuse assault, violations of no-contact orders: three year suspension)

III. Attorney's Conduct of Law Practice

- A. *In re McKeever*, 2017 WL 4159768 (S.C. Sept. 20, 2017) (taking a property interest in client's real property as a fee, practicing in violation order granting admission pro hac vice, attempt to intimidate former clients: disbarment)

- B. *In re Toaston*, 2017 WL 3908701 (La. Sept. 6, 2017) (twenty-five client complaints regarding competence, diligence, fees, etc.; conviction for driving with a suspended license, resisting arrest: disbarment)
- C. *In re Kirchoff*, 361 Or. 712 (2017) (fabricating evidence (an e-mail) in support of a motion to set aside a default judgment: two year suspension)
- D. *In re McMillin*, 521 S.W.3d 604 (Mo. 2017) (repeated missing of court appearances, repeated failure to return calls, taking fees without performing work, failure to return prepaid fees after termination of representation: disbarment)
- E. *Lawyer Disciplinary Bd. v. Cooke*, 239 W. Va. 40 (2017) (pervasive overbilling while a contract attorney for state's public defender: two year suspension)
- F. *State ex rel. Oklahoma Bar Ass'n v. Moody*, 394 P.3d 223 (Okla. 2017) (threatening and obscene voice mails to current client: public reprimand)
- G. *In re Zak*, 476 Mass. 1034 (2017) (illegal fees [advance fees for mortgage relief services were not deposited, as required by federal law, in client trust account], finders' fees to non-lawyers for clients that attorney acquired, clearly false advertising: disbarment)
- H. *In re Hebert*, 214 So.3d 836 (La. 2017) (while suspended, using another attorney's bar identification number on pleadings: disbarment)
- I. *Matter of Johnson*, 51 N.Y.S.3d 746 (App. Div. 2017) (vulgar e-mails to opposing counsel, failure to file biennial report, failure to cooperate with disciplinary authorities: three year suspension)
- J. *Matter of Discipline of Barrett*, 391 P.3d 1031 (Utah 2017) (attorney had client perform work on his house in exchange for writing off fees client owed to attorney's firm: one hundred and fifty day suspension)

IV. Procedural Issues

- A. *Matter of Powell*, 76 N.E.3d 130 (Ind. 2017) (videotaped deposition taken during proceeding on reinstatement application is admissible in discipline proceeding)
- B. *In re Venie*, 395 P.3d 516 (N.M. 2017) (disciplinary claim not barred by limitations rule; even if rule had been barred, the limitations period had not run when the rule was rescinded)
- C. *Cincinnati Bar Ass'n v. Wiest*, 148 Ohio St. 3d 683 (2016) (allegations not included in complaint are dismissed on due process grounds: lack of notice)
- D. *Petition of Lath*, 169 N.H. 616 (2017) (complainants do not have standing to challenge dismissal of grievance)
- E. *Johnson v. Office of Prof'l Conduct*, 391 P.3d 208 (Utah 2017) (attorney's appeal of suspension order was not timely)
- F. *In re Sanai*, 360 Or. 497 (2016) (attorney failed to preserve error regarding admissibility of exhibits at disciplinary hearing)

V. A Special Situation: Prosecutorial Misconduct

- A. Consider the following cases in light of Model Rule 3.8 (Special Responsibilities of a Prosecutor)
- B. *Matter of Keiffner*, 79 N.E.3d 903 (Ind. 2017) (a finding of prosecutorial misconduct in closing argument is not preclusive re: allegation of violation of Model Rules) (improper

vouching for victim, impugning integrity of opposing counsel - resulting in reversal of conviction: complaint dismissed) (following *In re Smith*, below)

- C. *Matter of Lee*, 301 Ga. 74 (2017) (*Brady* violation was not clear cut: no discipline)
- D. *In re Murray*, 2016 WL 6651388 (Cal. State Bar Ct., Nov. 10, 2016) (Attorney added fabricated lines to a defendant's statement, making it appear that the defendant confessed to molestation. After being called on this and given an opportunity to correct, attorney stated it was a "joke": two year suspension, with the second year stayed)
- E. *Matter of Smith*, 60 N.E.3d 1034 (Ind. 2016) (a finding of prosecutorial misconduct in closing argument is not preclusive re: allegation of violation of Model Rules) (improper vouching for victim - resulting in reversal of conviction: complaint dismissed)

VI. *A Final Case for Your Consideration: Matter of Straw*, 68 N.E.3d 1070 (2017), cert. denied, 137 S.Ct. 2309 (2017): *The Perils of Zealous Advocacy Outside the Bounds of the Law*

Andrew Straw is an attorney and a person with a disability. The Supreme Court of Indiana suspended his license for filing four frivolous actions under the Americans with Disabilities Act ("ADA"). One of the actions was against the American Bar Association, demanding that the ABA collect data on all law students and faculty members with disabilities and provide it to Straw. The trial court dismissed the case because of Straw's lack of standing, and Straw filed a letter with the court alleging that the application of the standing requirement was discriminatory. The Indiana Supreme Court suspended Straw for one hundred and eighty days. Straw alleged that the court was punishing him for his advocacy on behalf of persons with disabilities. The court rejected that allegation:

Further, we categorically reject Respondent's arguments that he is being persecuted for his disability-related advocacy. A necessary corollary of the frivolousness of Respondent's lawsuits is that no relief benefitting the plaintiffs (whether a client or Respondent himself) possibly could have come from those actions. Further, Respondent's actions risked harm to himself and his client in the form of sanctions, and by Respondent's own acknowledgement the relief he sought in *Straw v. American Bar Association et al.* could have led to discrimination against disabled law school faculty. *In sum, Respondent does not face discipline for standing up for disabled persons' rights, as he perceives, but rather for having done so incompetently.*

Id. at 1073 (emphasis added). Epilogue: Straw filed an ADA case against the Indiana Supreme Court, alleging that the disciplinary action against him violated the ADA, which was dismissed. *Straw v. Indiana Supreme Ct.*, 692 Fed. Appx. 291 (7th Cir. 2017).