WORKERS' COMPENSATION
LAWYERS ASSOCIATION, LTD.
ETHICS SEMINAR
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ARDC
ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION

TRENDS IN LAWYER REGULATION

I. ARDC E-BLAST, SEPTEMBER 2012

IMPORTANT INFORMATION FOR LAWYERS WHO ACCEPT DEBIT AND CREDIT CARD PAYMENTS

Lawyers who accept debit and credit card payments from clients need to be aware of a recent IRS regulation scheduled to take effect January 1, 2013, which has the potential to adversely impact client trust accounts if certain precautions are not taken before January 1, 2013. Section 6050W was added to the Tax Code in January 2012, requiring credit card processing companies to verify and match your federal tax identification number and legal name on your merchant account to IRS records ("Form 1099-K"). An EXACT match is required. If you have either abbreviated your name or used an acronym for your merchant account, you will need to contact your credit card processor to assure that your legal name on your merchant account exactly matches the legal name you use to file your tax returns. If there is NOT an exact match between the information provided to the credit card processing company and the information on file with the IRS, there are serious consequences:

Beginning January 2013, the IRS will impose a 28% withholding penalty on all credit card transactions, including those that the lawyer directs to the IOLTA client trust account.

- If client funds that should be in the IOLTA account are withheld due to the lawyer's failure to act and thus are not available to the client on demand, ethical issues are raised. If a mismatch occurred you should have already received notice from your credit card processing company of the problem. However, there is no certainty that all processing companies have provided such notice. Don't wait for your credit card processor to contact you! It is important that you take the following actions before January 1:

- Contact your credit card processor to determine that a match occurred.

- Correct mismatches if informed of one.

For more information on Section 6050W visit www.IRS.gov

II. ON IOLTA ACCOUNTS AND FDIC PROTECTION

FDIC INSURANCE COVERAGE CHANGES FOR IOLTA AND NON-INTEREST-BEARING ACCOUNTS

As of January 1, 2013, FDIC insurance available to IOLTA accounts is $250,000 per owner of the funds (client), per financial institution, assuming that the account is properly designated as a trust account and proper accounting of each client's funds is maintained. Non-interest-bearing trust accounts have this same level of coverage.

For the past two years, IOLTA and non-interest-bearing accounts enjoyed unlimited FDIC insurance coverage pursuant to Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. That provision was to be effective for two years with a sunset date of Dec. 31, 2012.

Although there were attempts in Congress to extend that coverage for an additional two years, and the American Bar Association and others have lobbied for that extension, those efforts were not successful due largely to legislative maneuvering that was unrelated to the merits of the issue. As a result, IOLTA and non-interest-bearing accounts now have the same level of FDIC insurance coverage as all other FDIC-insured accounts.

Further information on FDIC insurance coverage for IOLTA and other accounts as of January 1, 2013, is at http://www.fdic.gov/deposit/deposits/unlimited/expiration.html.

(Taken from the ABA website, the Commission on Lawyer's Trust Accounts at: http://www.americanbar.org/groups/interest_lawyers_trust_accounts/resources/fdic_insurance_iolta.html.)

III. CONFIDENTIAL INFORMATION

Disciplinary Counsel v. Christopher T. Cicero, Slip Opinion No. 2012-Ohio-5457 (Ohio Nov. 28, 2012) is a case of first impression in Ohio. In that matter, the state Supreme Court had occasion to determine whether or not an attorney should be sanctioned for violating Rule 1.18 for revealing the confidences of a prospective client.

Edward Rife owned a tattoo parlor on the west side of Columbus known as Fine Line Ink Tattoos and Body Piercings. On April 1, 2010, federal law enforcement officials raided Rife's house and seized $15,000 to $20,000 worth of Ohio State University football memorabilia as part of a drug-trafficking investigation.

The day after the raid, Rife and Joseph Epling, a former partner in Rife's tattoo business, met with Cicero to discuss his criminal case. It should be acknowledged that Cicero and Epling testified before a lawyer disciplinary panel in the instant case and denied that an April 2 meeting had ever occurred. Nevertheless, both testified that they had a phone conversation on April 1 wherein they discussed the raid on Rife's home.

It is undisputed that on the afternoon of April 2, Cicero sent an e-mail to Jim Tressel, the then-head coach of the Ohio State University football team. This is the e-mail:

Dear Coach Tressell:

- A lot of my friends are in law enforcement. The Federal Government raided the house of [redacted] yesterday. His name is Edward "Eddie" Rife.
- He lives [redacted]
- His [redacted]
- He owns and operates a tattoo parlor call **Fine Line Ink** off Hague and Sullivant
- When the Federal Government raided his house yesterday they seized 70,000 in cash and a lot of Ohio State Memorabilia; including championship rings.
- I am being told [redacted] and other players have taken Eddie Rife signed Ohio State memorabilia (shirts/jerseys/footballs) to Eddie who has been selling it for profit. I dont know if he gives any money in return to any players.
- I have been told OSU players including [redacted] have been given free tatoo's in exchange for signed memorabilia.
- Just passing this on to you.
- Hope all is well with you. Have a Blessed Easter

[redacted]

p.s. Eddie was convicted about 9 years ago for felony forgery and possession of criminal tools in Franklin County. Case number 01 CR-3245
p.s.s. He also was with his friends (most in drug trafficking) at [redacted] where he witnessed the homicide of one of his friends that night in the parking lot; and where he was the State's chief witness in that case 03 CR-922
p.s.s.s The Federal Government was at his house for alleged drug trafficking, but they knew about the memorabilia before they even got there.

Rife retained lawyer Stephen Palmer to represent him in the criminal case, and Palmer discussed a possible plea deal and ten-year prison sentence with Rife. Rife testified that he became unsatisfied with Palmer and scheduled another meeting with Cicero to discuss his case. This meeting took place on April 15.

Although Cicero denies giving any legal advice, a lawyer disciplinary hearing panel found that Cicero expressed legal opinions during this meeting. First, the panel found that Cicero assured Epling, who was also present at the meeting, that Epling did not need to hire a lawyer. The panel believed that Cicero gave this advice to clear away any potential conflict so that he could represent Rife. Second, Cicero admitted that he advised Rife that he could not get the Ohio State memorabilia back if the federal government believed that Rife had purchased it using drug money. This was advice that the panel considered to be of a legal nature and within the particular expertise of a criminal-law practitioner. Third, Cicero testified that he told Rife that a person in Rife's situation faces two choices: "You either can sit in the county jail for a long period of time, or you can start cooperating with the federal government and become a snitch."

Rife testified that although he never specifically asked for the information he gave at the April 15 meeting to be kept confidential, he assumed that it would be. He never gave Cicero permission to reveal to Tressel any information discussed. Of course, Cicero should have treated the information from Rife as confidential, but, instead, he planned to forward the information he

learned to Tressel, and he did not disclose to Rife this intent. On the morning of April 16, Cicero sent a second e-mail to Tressel. In the e-mail, Cicero revealed specifics of Rife's case that he learned the previous day. Later that day, Cicero sent yet another e-mail to Tressel in which he disclosed further information about Rife:

- He is in really big trouble. The federal government has told him that his best offer is to take 10 years in prison. He wanted my opinion yesterday on his situation.
  * * *
- I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face to face with me.
- One correction from my first email to you…he did confirm to me that he put out on the street the government took 70,000 from his house, but he made that up so other associates of his would think it; so they wouldnt [sic] do a home invasion on him and his family. But, he had that much cash just lying around.
  * * *
- Take care. I will keep you posted as relevant information becomes available to me. Just keep our emails confidential.

  Thank you.

The Court held that, before obtaining representation, prospective clients must meet with attorneys, and attorneys often must obtain sensitive information before they can decide whether to represent a client. Prospective clients trust that their confidences will be protected when they engage in an initial consultation with an attorney. Cicero's almost immediate dissemination of the detailed information that Rife provided on April 15, according to the Court, directly violated that trust.

Before the Supreme Court, Cicero argued that the information he communicated to Tressel was "generally known" and that the communication was therefore permitted by Rule 1.9(c)(1). The Court noted, however, that a close examination of the April 16 e-mails revealed that Cicero disclosed not only generally known information—for example, that Rife's home had been raided by federal agents—but also a number of specific details about Rife's case that Cicero could only have learned during his consultation with Rife. This information, obviously, did not fall into the "generally known" exception of the rule. Cicero violated Rule 1.18(b) when he disclosed to Tressel confidential information about Rife's case learned during the April 15 meeting. Cicero, who was licensed in 1988, was suspended for one year.

As an aside, Cicero was a played for the Buckeyes football team in the early 1980's. Tressel was an assistant coach under Earle Bruce at the time Cicero was a walk-on linebacker. Tressel responded to Cicero's e-mails by stating that he would "get on it ASAP," but, according to published reports, he did not forward any of the information to Ohio State's compliance department or his athletic director for more than nine months. Tressel's contract, as well as NCAA rules, required him to tell superiors in the athletic department about any potential NCAA rules violations. The coach, who had won a national championship and seven Big Ten titles, later

resigned. The Ohio State University later vacated all 12 of its victories from the 2010 football season and placed itself on two years' probation in the wake of the scandal. The NCAA placed Ohio State on an additional one year of probation and banned it from postseason play in 2012. Rife was eventually sentenced to a three-year prison term.

IV. RULE 718-THE KATRINA RULE

Provision of Legal Services Following Determination of Major Disaster

(a) Determination of existence of major disaster. Solely for purposes of this rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster has occurred.

(b) Temporary practice in this jurisdiction following major disaster. Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, *pro bono* program or legal services program or through such organization(s) specifically designated by this Court.

(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of authority for temporary practice. The authority to practice law in this jurisdiction granted by paragraph (b) of this rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court appearances. The authority granted by this rule does not include appearances in court except:

(1) pursuant to that court's *pro hac vice* admission rule and, if such authority is granted, any fees for such admission shall be waived; or
(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any *pro hac vice* admission fees shall be waived.
(f) Disciplinary authority and registration requirement. Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

V. DISCIPLINARY STATISTICS AND THE GRIEVANCE PROCESS

Illinois has the fourth largest attorney population in the United States. Only New York, California (172,483), and Florida (91,491), have larger lawyer numbers than Illinois.[1]

Although the lawyer population in Illinois is substantial[2], its combination of urban, suburban and rural practice environments makes it an archetype for the study of the disciplinary process.

The Attorney Registration and Disciplinary Commission (ARDC) is the lawyer regulatory authority in Illinois. During 2011, the Commission docketed 6,155 investigations, a 9.6% increase as compared to the number of investigations docketed in 2010. Those 6,155 investigations involved charges against 4,063 different attorneys, representing about 4.6% of all registered attorneys. About 21% of these 4,063 attorneys were the subject of more than one

[1] Source: ABA***, Survey on Lawyer Discipline*** (2010), Chart One. Since the ABA collected this data, all states have seen an increase in their respective attorney populations. For example, Illinois now has an attorney population of well more than 91,000. The SOLD Survey lists only New York lawyers licensed in three of the four reporting jurisdictions and omits statistics for the First Judicial Department. Taking the First Department into account could add the New York total attorney population to more than 200,000. The 2009 Sold Survey listed the number of all New York lawyers at 192,578. According to the SOLD Survey, there are 1,380,528 law licenses nationwide.

[2] On November 1, 2012, more than 2,100 new lawyers were admitted to practice in Illinois, 1,682 of whom were admitted in the First District.

investigation docketed in 2011.[3]

ARDC staff classified the charges docketed in 2011, based on an initial assessment of the type of legal context in which the facts apparently arose. Consistent with prior years, the top areas of practice most likely to lead to a grievance of attorney misconduct include: criminal law (23% of all grievances), domestic relations (13% of all grievances), tort (11% of all grievances), and real estate (7.5% of all grievances). As a general rule, about five percent of disciplinary grievances result in the filing of formal disciplinary charges annually, although there was a smaller investigation-to-formal-proceeding ratio in 2011.

If an investigation fails to reveal sufficiently serious, provable misconduct, the ARDC staff will close the investigation. If an investigation produces evidence of serious misconduct, the case is referred to the Inquiry Board, unless the matter is filed directly with the Supreme Court under certain specific situations. The Inquiry Board operates in panels of three, composed of two attorneys and one non-lawyer, all appointed by the Commission. An Inquiry Board panel has authority to vote a formal complaint if it finds sufficient evidence to support a charge, to close an investigation if it does not so find, or to place an attorney on supervision. The Administrator cannot pursue formal charges without authorization by an Inquiry Board panel.

VI. Lawyer Regulatory Cases of Interest (2011-2013)

Many of the following case summaries were prepared by ARDC Deputy Administrator and Chief Counsel James J. Grogan for the National Organization of Bar Counsel ("NOBC") **Current Development Project**. The NOBC is a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States, Canada and Australia.

In the News

The Associated Press reported that a Kansas appeals court attorney was fired after using offensive language in a tweet about the state's former Attorney General, Phill Kline. ***Kansas Appeals Court Attorney Fired over Tweet***, Associated Press (Nov. 19, 2012) (***See e.g.,*** http://news.yahoo.com/kansas-appeals-court-attorney-fired-over-tweet-230156262.html). Sarah Peterson Herr, a research attorney for the Kansas Court of Appeals, posted her comments about former Attorney General Phillip D. "Phill" Kline to Twitter while Kline was appearing before the Kansas Supreme Court in his own lawyer disciplinary matter. The Kansas Supreme Court is considering whether Kline's law license should be indefinitely suspended for misconduct during investigations of abortion providers. The Twitter comments appeared around 10 a.m., at the same time that Kline was standing before the seven-member court answering questions about his conduct while he was Attorney General and Johnson County District Attorney. Kline told the Kansas Supreme Court that he never lied or intentionally misled authorities as he conducted an extensive investigation of abortion providers during his term in office. In 2011, a panel of the

[3] The number of grievances varies widely among the jurisdictions. For example, in 2010, South Dakota, with an active practitioner base of 2438, fielded 81 grievances. California, with an active practitioner base of 172,483, received 21,539 grievances. The average number of grievances received by disciplinary regulators in this country is 2,270 per agency. The median number is 11437. ABA, ***Survey on Lawyer Discipline*** (2010), Chart One.

Kansas Board for Discipline of Attorneys recommended that Kline's law license be suspended indefinitely. The Panel held that Kline had repeatedly misled other officials or allowed subordinates to mislead others, including a Kansas City-area grand jury, to further investigations of abortion providers. It also said Kline made a false statement to the Disciplinary Administrator and attempted to mislead the panel as it considered his case. ***See generally,*** http://www.abajournal.com/news/article/ethics_panel_recommends_indefinite_suspension_for_ex-kansas_ag/. Kline now teaches at Liberty University School of Law in Lynchburg, Virginia. One of Herr's tweets commented on Kline's facial expression, saying "Why is Phil Klein (sic) smiling? There is nothing to smile about, douchebag." Another predicted that Kline would be disbarred by the court for seven years for his conduct. The lawyer representing Kline before the Court, Tom Condit, has called for an independent investigation of the judicial branch, saying that he believes the attitudes expressed by Herr permeate the entire court system. Said Condit, "I have no interest in insulting any judge or justice in that courthouse who is prepared to be fair and objective as it relates to Phill Kline…[b]ut the bigger question has always been what kind of atmosphere prevails in the back rooms of the high courts of Kansas that would make a young lady like that so comfortable to tweet those kinds of comments in those circumstances." Kansas Supreme Court Chief Justice Lawton Nuss announced that Herr had been fired and that her case had been referred to other offices for possible ethical violations. Herr had worked for Court of Appeals Judge Christel Marquardt since 2010, with a promotion to research attorney in 2011. Before her firing, Herr had been suspended without pay. She apologized for making the comments publicly. Herr said she failed to realize her posts were readable by all Twitter readers and she understood her posts may have reflected badly on the state's court system. A Court spokesman said he couldn't disclose details of the investigation that led to Herr's firing, including where she was when the tweets were posted or if she was in the building during the hearing. Court rules regarding judges and justices commenting on pending cases extend to the judicial branch staff.

Late last year, a significant number of media outlets throughout the country reported that the United States Attorney for the Eastern District of Louisiana, Jim Letten, had resigned, effective December 11, 2012. ***See, e.g.,*** **New Orleans U.S. Attorney Resigns Amid Scandal over Anonymous Online Postings,** Washington Post (Sari Horwitz, Dec. 6, 2012), ***appearing at***: http://articles.washingtonpost.com/2012-12-06/politics/35650115_1_federal-investigation-attorney-general-james-cole-prosecutor. Letten, who had built a reputation for prosecuting public officials, quit in the midst of a federal investigation into two of his staff prosecutors who had used the Internet to anonymously attack people their office was investigating. Letten was appointed by George W. Bush in 2001 and had been the longest-serving U.S. Attorney in the country at the time he made his announcement. The resignation came eight months into a scandal involving his top deputy and a second veteran prosecutor in connection with anonymous on-line criticism of a man whose company was the target of a federal inquiry, Fred Heebe, the owner of a local landfill. Heebe, serendipitously, happens to be a Louisiana lawyer who had lost out being appointed U.S. Attorney to Letten. The two prosecutors at issue, former First Assistant Jan Mann (who used the pen name "eweman") and former assistant Sal Perricone (who used the pen name "Henry L. Mencken1951"), used their aliases to post comments on the Web site of the ***Times-Picayune*** newspaper, www.NOLA.com. The Internet scandal came to light in March 2012, when Heebe filed a defamation lawsuit against Perricone. Heebe had hired a former FBI agent to track down the troll. That agent, James R. Fitzgerald, is a forensic linguist whose past efforts

contributed to the arrest of the Unabomber, Ted Kaczynski. When Fitzgerald analyzed the anonymous postings, he found that the writer was not just any blogger. The linguistic trail led to Perricone, who was directly involved in the investigation of Heebe's company. In the wake of the defamation suit, Perricone resigned. In November, Heebe filed yet another defamation suit, this time against Mann. She was initially demoted by Letten, but then she too resigned. Mann's husband, Jim Mann, a federal prosecutor in Letten's office, also quit. The Justice Department's Office of Professional Responsibility began investigating the tawdry episode. Late last November, however, federal judge Kurt D. Engelhardt issued a blistering fifty-page opinion, highly critical of OPR, and called for the appointment of an independent counsel to investigate the situation. ***See***, http://media.nola.com/crime_impact/other/engelhardtorder.pdf. The judge also called upon the Justice Department to investigate leaks of grand jury information to the media by prosecutors in the high-profile Danziger Bridge case, in which New Orleans police officers shot innocent city residents after Hurricane Katrina in 2005 and then tried to cover it up.

Admissions-'Abuse of Employer E-mail'

In re Application of Michele L. McKinney, Slip Opinion No. 2012-Ohio-5635 (Ohio Dec. 5, 2012). McKinney, of Cincinnati, registered as a candidate for admission in June 2010 and applied to take the February 2011 bar examination. The Admissions Committee disapproved her application based on a lack of candor regarding her conduct during her employment with a Cincinnati law firm in her first year of law school and the reasons that that employment was terminated. McKinney appealed and applied to take the July 2011 bar examination. After conducting a hearing, a three-member panel of the Board of Commissioners recommended that her application be denied. Ultimately, the Supreme Court agreed with that recommendation, but ordered that that she could apply for the July 2014 bar. McKinney began her law school career at Northern Kentucky University in 2007. The following month she accepted a paralegal position at the Cincinnati law firm of Lerner, Sampson & Rothfuss. Before deciding to attend law school, McKinney had signed a lease for an apartment in Louisville that she planned to occupy with her sister. Her sister had not signed the lease because she had a mortgage that they believed would financially disqualify her as a lessee. McKinney's sister occupied the apartment, but she began to experience serious health problems that prevented her from working and left her unable to pay the rent. The sister planned to vacate the premises, but McKinney would remain financially responsible for the three to four months that remained on the lease. When she inquired about terminating the lease early, McKinney was advised that she could sublet the property or her lease could be cancelled if she was transferred by her employer. Instead of attempting to sublease the property, McKinney planned to fake an employment transfer by fraudulently producing two documents on her employer's letterhead—one to verify her transfer from Louisville to Cincinnati, and the other to acknowledge that she accepted the transfer. Both letters were purportedly drafted for the firm by employee Kelly Richards, but Kelly Richards did not exist. Concerned that the landlord would call the firm to verify her transfer, and believing that the landlord would recognize her voice, McKinney changed the voicemail on a phone used by her sister to state that the caller had reached the desk of Kelly Richards. McKinney's sister would then call back and pretend to be Ms. Richards. Serendipitously, the firm suspected McKinney of violating firm policy by using the firm's e-mail for personal reasons. The firm's human resources director, one Ms. Faris, began to monitor her e-mail account in real time. Faris discovered that McKinney was sending e-mails and then immediately deleting them from her sent folder. Faris

became more when, in the process of printing some of those e-mails before McKinney deleted them, she found one that said, "I need a contact number for my fake human resources person." On further investigation, Faris found an e-mail with the falsified letters on the firm letterhead attached. Based upon the information uncovered by Faris's investigation, the firm's chief operating officer fired McKinney and her boyfriend (now husband) that same day. In her application to register as a candidate for admission, however, McKinney, who was 30-years-old by this time, represented that her reason for leaving the firm was "terminated/conflicted with school schedule." Later in her application, she explained, "I was fired [for] using company e-mail for personal reasons."

Admissions-Financial Issues

In re Application of Eric Wilson, Slip Opinion No. 2012-Ohio-5480 (Ohio Nov. 29, 2012). Wilson, of Cincinnati, graduated from the University of Dayton School of Law in May 2009 and applied to take the July 2009 bar exam. An Admissions Committee interviewed him and requested that he provide additional information relating to two areas of concern: (1) his failure to disclose in his 1992 application to the Detroit College of Law that he had been dismissed from the Golden Gate University School of Law in 1988 for poor academic performance and (2) His default on his significant student-loan debt. Wilson did not provide all of the information, so he was not permitted to sit for the July 2009 exam. In December 2010, he applied to take the February 2011 bar exam and filled out a supplemental character questionnaire. The Committee interviewed him again. Wilson did not provide the information that the Committee had requested in 2009 and, needless to say, the interview did not go very well. It did not help that Wilson failed to make any effort to pay his student loans, and never held a full-time job from August 2003 through September 2011. The Board of Commissioners on Character and Fitness disapproved the application and further recommended that he would not be permitted to apply for any examination prior to the February 2016 test. He appealed. At the Court, the Justices were interested in his debt situation. He apparently accumulated $32,300 in undergraduate debt at the University of Cincinnati from 1980 through 1987 and as a first-year law student at Golden Gate University School of Law from 1987 to 1988. He also accumulated four student loans totaling $120,000 to fund his legal education at the University of Dayton School of Law. He testified that two of those loans, with a total principal balance of approximately $60,000, are now in default and he has no plans to begin repayment because he simply does not have the money. The Court criticized him for not seeking steady employment in order to support himself and reduce his student-loan debt; he elected to rely on family to help him financially while he worked seasonal jobs and ran, unsuccessfully, for public office. The Court noted that his complete disregard of financial obligations did not inspire confidence. His application for admission was disapproved, but he is permitted to sit for the July 2014 bar. In ruling, the Court noted that:

> In order to be a viable candidate for admission to the bar in the future, Wilson must maintain full-time employment, devise a strategy to satisfy his significant debt, and fully cooperate in the admissions process. While obtaining his license to practice law may be part of his long-range plan, he must first demonstrate that he has accepted responsibility for his past actions, that he is committed to honoring his financial obligations, and that he is capable of exercising good judgment.

In re Application of Ebonie Michelle Martin, Slip Opinion No. 2012-Ohio-5427 (Ohio Nov. 28, 2012). Martin applied to take the July 2011 bar exam. After an admissions committee recommended that her application be disapproved, a panel of the Board of Commissioners on Character and Fitness held a hearing. The panel, and subsequently the Board, recommended that the application be rejected, but that she be permitted to apply for the July 2014 bar exam. The Supreme Court agreed. There were three basic concerns with her application. First, she was questioned as to why she had failed a real-property class during her first semester of law school. Apparently, she failed to place her assigned exam number on the exam. She claimed that she had written the number on the palm of her hand but that her sweaty palms had rendered the number illegible. An investigation, however, revealed that while Martin may have lost some points based on her failure to use her assigned exam number, she had also performed poorly on the exam. The second area of concern related to her finances. Although Martin owed only $15,000 in undergraduate student loans when she started law school, she amassed a student-loan balance of approximately $150,000 for tuition and living expenses while attending Capital University Law School, despite receiving scholarships to pay all but $18,000 a year for school, in addition to public assistance. At the time of the hearing, her loans were in forbearance. The panel and Board found, however, that by obtaining financial counseling, creating a budget, and obtaining employment as a paralegal, Martin showed that she is beginning to address this issue. The third and most serious area of concern related to her lack of truthfulness in explaining a 2008 traffic stop that resulted in her being charged with providing false information to a police officer to avoid a citation, driving with an expired driver's license, and failing to restrain a child in a car seat. Martin testified, and the police officer's testimony confirmed, that she had been pulled over because the officer believed that the windows of her vehicle were too darkly tinted—though she was never charged with an offense related to the window-tinting. At hearing, Martin admitted that when she was pulled over, she did not have her driver's license with her and her license had expired more than six months before her traffic stop anyway. She testified that when the officer asked her for her Social Security number, she gave him her mother's Social Security number instead, but she claimed that she had done so by mistake, due to the stress of the situation and the fact that she regularly gave her mother's Social Security number in dealing with her mother's health issues. But the officer testified that in addition to giving him her mother's Social Security number, Martin also gave him her mother's name and date of birth.

Internet Advertising Leads to Neglect of Immigration Matters

In re L. Tod Schlosser, M.R. 24458, 2009PR00032 (Ill. May 18, 2011). Schlosser, who was licensed in 1993, was disbarred. He neglected eight immigration matters and failed to promptly return unearned fees, which totaled $31,025. His misconduct was aggravated by the representations made on a website that "we specialize in results not promises," and boasted a "100% success rate." He also held himself out as an attorney licensed to practice law in Illinois when he was not registered for the year 2010. His website is at: http://www.ltodschlosser.com/ (last visited May 31, 2011). On that primary, but by no means exclusive, website, he notes that, "Nobody does it better than L. Tod Schlosser." He also informs site visitors that he," shuttles between the Chicago Illinois, Denver Colorado, Pattaya Thailand, Angeles City, Philippines, and Rio De Janeiro, Brazil offices." He did not participate in his own disciplinary proceeding.

Criminal Conviction-Identity Theft

In re Kevin Odell Pritchett, M.R. 25248, 2011PR00034 (Ill. May 18, 2012). Pritchett, who was licensed in 1987, was suspended for five months. He was convicted of attempt to commit financial identity theft after he used his secretary's identification information to open a bank account and to obtain a life insurance agency agreement. Pritchett was sentenced to a term of supervision. He had an estate planning practice, through which he marketed life insurance policies and annuities. He also held a life insurance sales agency agreement with Allianz Life Insurance Company, and an agreement for insurance marketing assistance with USA Financial Distribution Company, an insurance marketing services firm. At some point, Pritchett stopped using the marketing services of USA Financial and begin using a different insurance marketing services company. His agency agreement with Allianz, however, prohibited him from marketing Allianz insurance products for a period of six months after associating with a new marketing services organization, which would have limited his income for at that six-month period. In order to avoid this limitation, he created and submitted to Allianz an application for an agency agreement, in which he falsely identified himself as Deborah Claywell, who was his secretary. He opened a checking account in Claywell's name with TCF Bank and used Claywell's social security number and birth date to create these accounts. Claywell never authorized him to use her identifying information, and she had no knowledge of the agency application or of the TCF checking account.

Criminal Conduct-Immigration Fraud

In re Manny A. Aguja, M.R. 25202, 2012PR00003 (Ill. March 19, 2012). Aguja, who was licensed in Illinois in 1994, was disbarred on consent. He pled guilty in federal court to one count of conspiracy to commit marriage fraud and was sentenced to a 24-month prison term. Aguja operated a law firm on Chicago's Northwest Side and employed two of his co-defendants. He and certain of his office staff would fill out and file immigration paperwork such as U.S. Citizenship and Immigration Services ("CIS") Forms I-130, I-485, and I-765, for individuals engaged in fraudulent marriages, knowing that the marriages were fraudulent and entered into to evade the immigration laws. He knew that the paperwork contained false statements and knew that the paperwork would be submitted to CIS to support the legitimacy of the fraudulent marriages. His assistance also included meeting with the individuals participating in the fraudulent marriages prior to their immigration interview with CIS, and providing these individuals with advice on how to make their fraudulent marriages appear legitimate to the immigration authorities. He assisted in this manner with at least ten such fraudulent marriages.

Criminal Conduct-Identity Theft

In re Lawrence Matthew Haws, M.R. 25467, 2012PR00081 (Ill. Sept. 24, 2012). Haws, who was licensed in 2001, was suspended on an interim basis and until further order of the Court. He pleaded guilty in Iowa to one count of forgery, a felony, and one count of theft, a misdemeanor. While a woman named Ms. Cleverly was reading at a public library in Newton, Iowa, Haws stole her purse and credit cards, and then used the credit cards to make purchases at a Wal-Mart store that included cigarettes, soda, American Express prepaid credit cards, and a laptop computer, by forging the woman's name on credit card receipts. The next day, he returned

to the same Wal-Mart and attempted to return the laptop computer, purchased with Ms. Cleverly's credit card. He told Wal-Mart staff that the computer was broken and he wanted a refund. Wal-Mart security personnel identified him as the individual who purchased the laptop the prior day. Wal-Mart personnel notified Newton police that he had returned to the store. When Newton police arrived, Haws had already exited the store. Newton police officers tracked him for at least twenty minutes, in the snow and through timber, until he was apprehended, arrested, and taken to the Jasper County Jail.

Importing Cuban Cigars

In re Richard Steven Connors, M.R. 25584, 2004PR00122 (Ill. Nov. 19, 2012).. Connors, who was licensed in 1978, was disbarred. He was found guilty in federal court of conspiring to smuggle Cuban cigars into the United States, smuggling goods into the United States, violating the Trading with the Enemy Act and related regulations, and making false statements on a passport application. He was sentenced to a 37-month prison term, fined $60,000, and ordered to pay a special assessment of $650. He was suspended on an interim basis on December 28, 2004. Connors has a disciplinary history. ***See*** **NOBC Current Developments** (Honolulu 2006) (suspension for conversion of client funds). This case, however, has engendered much public comment, as many lawyers believe that Connors was merely bringing in a few cigars for personal consumption. ***See e.g., Attorney Faces Disbarment for Smuggling Cuban Cigars in 1990s***, **ABA Journal** (August 15, 2012), appearing at: http://www.abajournal.com/news/article/attorney_faces_disbarment_for_smuggling_cuban_cigars_in_1990s (Comments). One such comment at that site is particularly representative:

> This is ridiculous! The ARDC should go after lawyers with DUIs, child abuse convictions, child porn convictions and all the other transgressions that actually mean something!
>
> ABC Aug 16, 2012 10:20 AM CST

As to the actual events that led to the conviction, beginning in 1996, Connors and others made frequent trips to Cuba, where he purchased thousands of cigars and smuggled them back to the United States. At times, he would travel to Toronto, Ontario, or Cancun, Mexico, by commercial airlines and then fly to Cuba. He and others would rent storage space from a private mail service in Windsor, Ontario, in order to store Cuban cigars and later smuggle the cigars into the United States by automobile. In order to prevent United States Custom inspectors from seeing Cuban documentation of Connors' trips to and from Cuba, he would mail, or enlist others to mail, his passport back to the United States by private courier services, and he would conceal the nature of the mailing by using fictitious names for the addressees, by mailing the passport to himself at a commercial mail box location or by misrepresenting on the outside of the envelopes that the contents were confidential under the attorney-client privilege. Once the cigars were brought into the United States, Connors would sell them to third parties.

Representing Both Buyer and Seller and Failure to Disclose Commission

In re Shaveda Monique Scott, M.R. 25453, 2009PR00102 (Ill. Sept. 17, 2012). Scott, who was licensed in 2001, was suspended for thirty days. She failed to properly disclose her

financial interest as an agent for a title company and she improperly represented both the seller and the buyer in four of those transactions. As to the first issue, after starting her own practice in 2005 with another young attorney, Scott became a title agent for Ticor Title Company. The Illinois Title Insurance Act, 215 ILCS 155/18, required her, when acting as both an attorney and a title agent, to provide a written disclosure to clients that she would earn a commission as the title agent and to obtain their written consent to her acting as the title agent. Prior to 2008, she was both an attorney and the title agent in six real estate transactions, but she was unaware of her obligations under the Title Insurance Act. She also failed to provide written disclosures or obtain written consent from her clients to her financial interest in those transactions. In addition to legal fees, she received a total of $6,981 in title fees from the six transactions.

Rule 4.2

In re Petition for Disciplinary Action against David Lawrence McCormick, A11-1052 (Minn. August 22, 2012). McCormick, who was licensed in 1995, was suspended for sixty days. While representing a defendant in a homicide case, he instructed an investigator to interview an anticipated witness in the case without first seeking and obtaining permission from the witness' attorney, in violation of Minnesota's Rule 4.2. Specifically, while representing R.S. in a homicide case. M.S., a co-defendant in the same matter, entered into a plea agreement with the state and sentencing "was deferred until after [he] testified at [R.S.'s] trial." At some point, McCormick asked an investigator to meet with M.S. and ask him questions about how he planned to testify at R.S.'s trial. The investigator did so and took a statement from M.S. about facts relating to the homicide charges pending against M.S. and R.S. McCormick knew M.S. was represented by counsel, but he neither sought nor received M.S.'s lawyer's permission to communicate with M.S. about the matter. McCormick argued that he did not violate Rule 4.2 because his investigator did not speak with M.S. about the "subject of the representation." McCormick contends M.S. was not represented in connection with his role as a witness in R.S.'s trial and that, after M.S. pleaded guilty and his case was severed from R.S.'s case, M.S. was no longer a party in the same matter as R.S. The Supreme Court concluded, however, that M.S. was represented by another lawyer in the matter (*i.e.*, the homicide charges) at the time of the interview and that the communication was about that matter. The Court also rejected an argument that McCormick was authorized by law to communicate with M.S. because he needed to speak with M.S. in order to satisfy his duty to vigorously defend a client. The Respondent has a disciplinary history and was on disciplinary probation at the time of the instant misconduct.

Prosecutor Misconduct-Using County Resources for Personal Purposes

In re Thomas O. Finks, M.R. 25048, 2010PR00168 (Ill. January 13, 2012). Finks, who was licensed in 1984, was suspended for sixty days. While serving as the State's Attorney of Christian County, he became a candidate for judicial election and circulated nominating petitions that omitted specific information concerning the judicial vacancy he sought. He also failed to supervise his secretary when she notarized signatures on two nominating petitions, even though the circulators of the petitions did not appear personally before the secretary. Finally, on two occasions, he and his secretary did political work related to his judicial campaign on county time using county resources. The suspension was effective on February 3, 2012.

Prosecutorial Misconduct-Unauthorized Actions

In re J.W. Pierceall, M.R 25620, 2012PR00032 (Ill. Nov. 19, 2012). Pierceall, who was licensed in 2001, was suspended for ninety days. While employed as an assistant county prosecutor, he repeatedly advised Christian County correctional officers to set bond, and release inmates under sentence, without prior judicial approval. His official duties included an intermittent weekend assignment as the "on call" prosecutor, and his responsibilities included responding to calls from Christian County correctional officers who were seeking information about the amount of bail to be set for new detainees and other issues related to inmates who were then serving weekend sentences. Pursuant to the weekend bail-setting policy of the Christian County State's Attorney's Office, the "on call" prosecutor would receive a call or page from the officers, who would advise the prosecutor of an individual arrestee's name, criminal charge and facts of the alleged offense. The prosecutor would then contact an "on call" judge and advise the judge of the information provided by the officers. The judge would set bail and any conditions of bail, and the prosecutor would then notify the officer of the bail and any conditions of bail as ordered by the judge. On at least four occasions, Pierceall told officers to release inmates under sentence of periodic imprisonment, without having previously consulted with a judge for modification of the existing sentencing order. On at least four other occasions, again without consulting the "on call" judge, Pierceall told officers that bail amounts and conditions had been set for certain detainees. His statements were false, and he knew they were false, because he had not discussed any of the four cases with a judge prior to speaking to the officers, and had therefore not been told what bond or conditions were appropriate.

Ex Parte Communications with an Arbitrator

In re Elizabeth Jane Barringer, M.R. 25465, 2011PR00079 (Ill. Sept. 17, 2012). Barringer, who was licensed to practice in 2007, was censured and ordered to successfully complete the ARDC Professionalism Seminar. She communicated on an *ex parte* basis with a worker's compensation arbitrator. Barringer was discharged from her law firm after various e-mails she exchanged with the arbitrator became public. She initially became acquainted with the arbitrator in 2007, and they became social friends. In one of the e-mails at issue, the arbitrator and Barringer exchanged derogatory comments about a claimant who was acting *pro se.* At the time of the e-mails, the unnamed person had not filed an application for adjustment of claim with the Illinois Workers Compensation Commission and, thus, had no claim on the Industrial Commission's docket. However, it was anticipated that the person's case would ultimately come before the arbitrator at the Mt. Vernon docket. The Hearing Board concluded that the e-mails regarding this *pro se* person were clearly prejudicial to the administration of justice. In another matter, Barringer and the arbitrator exchanged disparaging *ex parte* emails about opposing counsel after that counsel had requested a continuance of his client's case.

In re Caryn H. Nadenbush, M.R. 25622, 2011PR00077 (Ill. Jan. 18, 2013). Nadenbush, who was licensed in 1997, was suspended for ninety days and ordered to successfully complete the ARDC Professionalism Seminar. She is the third lawyer to be sanctioned in the wake of having *ex parte* communications with the same workers' compensation arbitrator. Aggravating her misconduct was the fact that her communications spanned four cases and she made a

misrepresentation to the ARDC during the disciplinary investigation. The suspension was effective on February 8, 2013.

In re Kerry Irene O'Sullivan, M.R. 24972, 2011PR00078 (Ill. January 13, 2012). O'Sullivan, who was licensed in 1999, was censured. She had an *ex parte* e-mail communication with an arbitrator regarding the merits of a workers' compensation case that was pending before the arbitrator. Specifically, she represented Matt Mitchell, an Illinois State Police officer who was injured while responding to a call. He was speeding, and speaking on his cell phone just before he lost control of his car, crossed a median, and struck another vehicle, killing two teenage sisters. He was charged with reckless homicide, and he also filed, through Respondent, a workers compensation claim for the injuries he sustained in the accident. There was a very extensive and negative public reaction to Mitchell's potential receipt of benefits, given his reckless criminal conduct, and his causing the death of the two girls. Jennifer Teague was the arbitrator assigned to the workers compensation case. At some point, Respondent and Teague engaged in an *ex parte* dialog relating to the case. On October 14, 2010, Respondent sent an e-mail to Teague and her opponent stating that she would not be proceeding with her client's request for a hearing in the case, because the State was disputing that Mitchell's claim was compensable. Thereafter, Teague responded to Respondent, via e-mail, without copying opposing counsel, and stated:

> "Seriously????????? I cannot believe they are bringing this on themselves!"
>
> Respondent sent an email back to Teague, without copying opposing counsel, stating:
>
> "I think so too. The defense appears to be that he was acting so recklessly it takes it out of 'arising out of'. But by that argument, any goofus who pulls a guard off of a machine and then gets his hand chomped off is out of WC too. I don't get it. I recommended a pretrial on the issue of compensability, but [opposing counsel] said it would not help."

Teague responded to Respondent with the following email:

> "Then it is the adjuster calling the shots. It will likely go up on appeal too. Whatever. Perhaps the State should have thought of that before they threw 2 young attorneys to be chomped up by Tom Keefe in the Court of Claims hearing. Get a copy of that transcript, and I'd say they are bound by the stipulation. Not sure whey [*sic*] they think they are not bound. I agree he was reckless, but stupidity is no defense, and neither is contrib."

Scope of Representation-Lawyer for Juvenile Acting more like a GAL

Illinois v. Austin M., a Minor, 2012 IL 111194 (August 30, 2012). This is not a lawyer discipline case, but is an important decision regarding the scope of an attorney-client relationship. In a matter of first impression in Illinois, the Illinois Supreme Court ruled that, in delinquency proceedings, there is a *per se* conflict of interest calling for the reversal of a conviction if a minor's attorney functions simultaneously as defense counsel and guardian *ad*

litem. Here, a misdemeanor conviction for criminal sexual abuse was reversed where the record showed that retained defense counsel had so functioned, even though he was never actually appointed as guardian. Austin's claim required that the Supreme Court decide two issues: whether "hybrid representation" was inconsistent with the statutorily and constitutionally guaranteed right to counsel afforded minors in delinquency proceedings, and if so, whether, under the facts of the case, Austin's attorney performed the dual role of defense attorney and GAL when representing Austin at his delinquency trial even though he was not appointed as such. The Ford County State's Attorney filed delinquency petitions against Ricky M., age 15, and Austin M., age 16, charging them with misdemeanor criminal sexual abuse. It was alleged in the petitions that the boys had engaged in sexual acts with each other and with two other, younger boys who had been foster children living in the M. family foster home. Ricky and Austin were tried at a joint delinquency trial. The boys' parents, Mr. and Mrs. M., hired an attorney to represent both at trial. At a pretrial hearing, the court inquired whether the attorney was appearing on behalf of the boys as well as the parents. The attorney replied, "I think the minors, Judge." The court then admonished Mr. and Mrs. M. as follows: "At this point, [the attorney] is entering an appearance for your sons only. So, he represents them and does not represent you. He represents what's in the best interest of these Minors, which may or may not be what the Minors or the parents think is in their best interest." The Supreme Court held that minors in delinquency proceedings also have a constitutional right to counsel. The Court also ruled that, in a delinquency proceeding, when counsel attempts to perform the role of GAL as well as defense attorney, the risk that counsel will render ineffective assistance or that an actual conflict of interest will arise is substantial. Moreover, the subliminal effect on counsel who attempts to perform both roles may be subtle and not easily detected or demonstrated—particularly by the juvenile being represented. When counsel attempts to fulfill the role of GAL as well as defense counsel, the risk that the minor's constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great. The Court found it telling that Austin's attorney never attempted to suppress the one piece of evidence which, ultimately, was the basis for the trial court's finding of guilt—Austin's alleged inculpatory statement to police. The Court noted Austin's contention that, in this case, the comments and conduct of his attorney throughout the delinquency proceedings were strong evidence that his attorney's concern was to do what he, the attorney, believed was in the best interests of his clients and of society and, thus, his attorney was not acting as defense counsel. The Court agreed and reversed the conviction for a new trial.

Application of the Nullity Rule

Downtown Disposal Services Inc. v. Chicago, Ill., No. 112040 (Ill. Nov. 1, 2012). This is not a disciplinary case. In a 4-3 decision, the Illinois Supreme Court ruled that a multifactor test, rather than a per se "nullity rule," applies when a non-lawyer has taken legal action on behalf of a corporation. The nullity rule should be only invoked, according to the Court majority, when the doctrine would fulfill the purpose of protecting the public and the court system and when no alternative remedy is possible. The case had its genesis in the City of Chicago issuing citations to Downtown Disposal Services Inc. four times for ordinance violations relating to dumpsters. When the company failed to show up at the hearings, the city obtained default judgments. The company's president, Peter Van Tholen, then signed and filed four fill-in-the-blank complaints for administrative review. A lawyer appeared on behalf of the corporation about six months later. On the city's motion, however, the trial court dismissed the complaints,

concluding that because corporations must appear through counsel and the complaints were not signed by a licensed attorney, they must be deemed invalid under Illinois's "nullity rule." The Supreme Court agreed that Van Tholen had engaged in the unauthorized practice even though he merely filled in blanks on a form that did not require any expertise. The Illinois Supreme Court ruled that the trial court should have allowed DDS to amend its complaints. In looking to a multifactor test in determining whether or not to apply the nullity doctrine, trial courts need to take the following factors into account: Was the non-lawyer's conduct undertaken without knowledge that the action was improper; Did the corporation act diligently in correcting any mistake by obtaining counsel; Was the non-lawyer's participation minimal; and did the non-lawyer's participation result in prejudice to the opposing party.

Malpractice Coverage: Voluntary Payment Clause in Illinois

Illinois State Bar Ass'n Mutual Insurance Co. v. Frank M. Greenfield and Associates PC, Ill. App. Ct. 1st Dist., No. 1-11-0337 (Nov. 9, 2012). This is not a disciplinary case but it is an important legal malpractice decision of first impression in Illinois. A Chicago lawyer was retained to assist a couple with their estate planning. The couple established two separate trusts. The husband, who died first, gave his wife the authority to modify the distribution plan for his trust. She exercised that power by amending her will, with the lawyer's help, in 2007. The next year, she decided to amend her will again, but the lawyer allegedly made a critical error in preparing that document and failed to include language that the widow was exercising her Power of Appointment from her deceased husband's trust. When the lawyer discovered the error after the widow's death, he took the ethical high road and informed the heirs about the mistake. He revealed the situation in a letter that blamed the omission on a change in his computer software. The letter further informed the heirs that they would have to reach a unanimous agreement as to how to resolve the discrepancy. Otherwise, the bank serving as a co-trustee of the trusts would "be forced to seek a judicial determination to resolve the scrivener's error," the lawyer wrote. Four of the heirs sued the lawyer and his firm in malpractice, arguing they should have inherited over $1 million more under the 2007 will. He turned the claim over to his carrier, ISBA Mutual, and the insurer denied the claim because the lawyer's malpractice policy precluded an insured from admitting liability without the insurer's consent. Thus, the insurer was relieved of any duty to defend or indemnify. (The relevant insurance policy clause, which is contained in most malpractice policies, provided that an insured, except at its own cost, will not admit any liability, assume any obligation, incur any expense, make any payment, or settle any claim, without the Company's prior written consent.) The appellate court has now ruled that such a "voluntary payment clause" cannot be enforced because it interferes with an attorneys' ethical obligation to keep clients apprised of significant events in their case pursuant to IRCP 1.4. The Appellate Court ruled that such a the voluntary payments clause interfered with the lawyer's discharge of his professional duties, which include an obligation to keep clients apprised of major developments in their case. Accordingly, the insurance provision was deemed to be void as against public policy and unenforceable. The Appellate Court noted:

> [W]e are uncomfortable with the idea of an insurance company advising an attorney of his ethical obligation to his clients [….] [I]t is the attorney's responsibility to comply with the ethical rules as he understands them.