IT'S NOT THE FRUIT, IT'S THE ROOT

Curing the Seven Deadly Sins of Unethical Behavior

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

Deadly Sin #1:
Lust

Rule 1.8(m) prohibits a lawyer from entering into a sexual relationship with the client. However, lust encompasses more than just physical lust. In a broader sense, lust is the improper desire for anything to which one is not entitled. Therefore, it's possible to lust not only after a person's body, but also their possessions, status, etc. This type of desire may cause a lawyer to breach his/her ethical obligations with regards to the following rules:

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction;

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(m) A lawyer shall not have sexual relations with a client when the client is in a vulnerable condition or is otherwise subject to the control or undue influence of the lawyer, when such relations could have a harmful or prejudicial effect upon the interests of the client, or when sexual relations might adversely effect the lawyer’s representation of the client.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) commit a criminal act involving moral turpitude;

(d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(e) engage in conduct that is prejudicial to the administration of justice;

Deadly Sin #2
Gluttony

When we think of gluttony, we usually think solely of consuming too much food, which creates a limited ethical problem with regards to a lawyer's obligation under Rule 1.16 to decline or terminate representation if the lawyer's physical condition materially impairs his/her ability to represent the client. However, gluttony encompasses more than just consuming food to excess. It encompasses *any* excess of consumption. Furthermore, it is not just limited to consumption. It can be gluttonous to consume too soon (prematurely), too extravagantly or too ravenously. In that regard, lawyers must be careful to avoid violating the following ethical rules.

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

RULE 1.15: SAFEKEEPING PROPERTY

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

[2] A lawyer must control the lawyer's work load so that each matter can be handled competently.

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;

Deadly Sin #3
Greed

Greed inhibits a lawyer’s ability to abide by the ethics rules in a number of ways. Greed causes lawyers to inflate bills to clients, misappropriate client funds, and even commit criminal acts of bribery, theft, fraud and the like. Furthermore, greed may cause an attorney to violate his/her fiduciary duty to a client in other ways.

RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

[3] Lawyers often receive funds from which the lawyer’s fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer’s contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

Deadly Sin #4
Sloth

A common cause of ethical violations is a lawyer's failure to fully carry out the duties owed to the client. In some cases, this failure is due to willful neglect. In other cases, it is a matter of over-commitment. And, in yet other cases, it is a matter of incompetence – not having the necessary experience to know that a particular course of action is warranted under the circumstances. In any case, each of these shortcomings can be classified as "sloth," either in execution of the duty or in preparation for performance of the duty.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

RULE 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Deadly Sin #5
Wrath

In some cases, lawyers become so emotionally involved in a dispute that they lose their ability to provide objective representation. In other cases, lawyers cross the line from being zealous advocates to outright zealots, engaging in various forms of unethical behavior.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by *a personal interest of the lawyer*.

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on a good faith assertion that no valid obligation exists;

(d) in pretrial procedure, intentionally or habitually make a frivolous motion or discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence or by a good-faith belief that such evidence may exist, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;

RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(d) engage in conduct intended to disrupt a tribunal.

[4] The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition.

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(b) commit an criminal act that reflects adversely on the lawyer’s honesty or trustworthiness;

(e) engage in conduct that is prejudicial to the administration of justice;

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

Deadly Sin #6
Envy

The competitive nature of the practice of law makes attorneys particularly susceptible to feelings of envy, whether this envy is directed towards judges, colleagues, opposing counsel or even clients. In each case, envy can cause an a lawyer to violate his/her ethical obligations with respect to each of these persons as set forth in the following rules:

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to 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 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction;

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

Deadly Sin #7
Pride

Excessive pride can cause a lawyer to fall short of his/her ethical obligations in a number of ways. For one, a bragging lawyer may violate client confidences in his/her zeal for recognition. Also, pride may cause a lawyer to attempt to demonstrate his/her “greatness” by engaging in other forms of unethical conduct.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to 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).

[5] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

RULE 3.6: TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

NICE LAWYERS FINISH FIRST

Acquiring the Seven Virtues of Good Lawyering

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SOUTH CAROLINA BAR
STANDARDS OF PROFESSIONALISM
STATEMENT OF PRINCIPLES

1. Principle: A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

2. Principle: A lawyer should further the legal profession's devotion to public service and to the public good.

3. Principle: A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

4. Principle: A lawyer should not knowingly misstate or improperly distort any fact or opinion.

5. Principle: A lawyer should conduct himself or herself to assure the just, prompt and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

6. Principle: A lawyer should avoid all rude, disruptive, and abusive behavior and should, at all times, act with dignity, decency and courtesy consistent with any appropriate response to such conduct by others and a vigorous and aggressive assertion to appropriately protect the legitimate interests of a client.

7. Principle: A lawyer should respect the time and commitments of others.

8. Principle: A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

9. Principle: A lawyer should exercise independent judgment without compromise of a client and should not be governed by a client's ill will or deceit.

10. Principle: A lawyer's word should be the lawyer's bond.

These standards of professionalism are guides and goals for lawyers in the conduct of their professional life at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.

Violation of a guideline, principle or standard should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The civility guidelines are designed to provide guidance to lawyers and define a structure for helping lawyers deal in a responsible fashion and are not designed to be a basis for civil liability nor a basis for any disciplinary action since disciplinary action is governed by Rule 407 concerning Rules of Professional Conduct.

SOUTH CAROLINA BAR
STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

Reference for the Law, the Legal System and the Legal Profession

1. Principle: A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

Standards:

1.1 A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.

1.2 A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.

1.3 A lawyer should support proposals to improve the administration of justice.

1.4 A lawyer should support proposals to advance the science of jurisprudence.

1.5 A lawyer should encourage and support qualified candidates to seek judicial office and encourage and support qualified and competent judges personally and publicly.

1.6 A lawyer should decline to encourage or support for appointment or election to judicial positions persons who, by skill, knowledge, experience, integrity or temperament are not qualified to fill those positions.

1.7 When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

1.8 A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

1.9 A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

1.10 A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

1.11 A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

1.12 A lawyer should, at all times, be appropriately prepared for court appearances, meetings, and conferences, not only for the benefit of the lawyer's client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

1.13 Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the representation and, if practical, promptly confirm those arrangements in writing.

1.14 In any representation in which the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flatsum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular and frequent interim basis.

1.15 When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

1.16 A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular view and alternate lifestyles who are otherwise fit and competent.

1.17 A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public's esteem for the law, the judicial system and the legal profession.

1.18 A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

1.19 A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

1.20 A lawyer should counsel and encourage other lawyers to abide by these standards of professionalism.

1.21 A lawyer and the Bar should educate the schools of law, students, lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

Devotion to Public Service and the Public Good

2. Principle: A lawyer should further the legal profession's devotion to public service and to the public good.

Standards:

2.1 A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic responsibility and the public good.

2.2 A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

2.3 A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

Adherence to a Fundamental Sense of Honor, Integrity and Fair Play

3. Principle: A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

Standards:

3.1 A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client's legitimate interest.

3.2 A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

3.3 A lawyer should not impose arbitrary or unreasonable deadlines for action by others and should freely grant requests for reasonable time extensions.

3.4 In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

3.5 In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

3.6 A lawyer should not unreasonably oppose an adversary's application for an order or an adversary's request to insert a term or provision in a document.

3.7 A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

3.8 A lawyer should promptly respond to requests for stipulations of fact or law.

3.9 A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

3.10 A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

3.11 A lawyer should never permit nonlawyer support personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters when it is inappropriate to do so.

3.12 A lawyer should notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling matters not related to the choice of judges, and should simultaneously provide opposing counsel with copies of any written communication with the court by the same or substantially the same means by which they were provided to the court.

3.13 A lawyer should not make scheduling decisions with the motive of limiting opposing counsel's opportunity to prepare or respond.

3.14 When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

3.15 A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

3.16 A lawyer should bring to the attention of the court or other tribunal all controlling legal authority, whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

3.17 A lawyer should appear at a hearing before a court or other tribunal appropriately prepared to submit the matter at issue to the court or tribunal for adjudication when the matter is not subject to reasonable grounds for postponement or dismissal and when the case is called for trial with reasonable notice and under appropriate circumstances by the court.

3.18 A lawyer should not use the post-hearing submission of proposed orders as a guise to argue or reargue the merits of the matter to be determined consistent with the right to further the formation of the grounds for appeal.

3.19 A lawyer should not request rescheduling, cancellations, extension, and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

3.20 When there has been pretrial disclosure of trial witnesses, a lawyer should make a reasonable, good-faith effort to identify those witnesses whom the lawyer believes are reasonably likely to be called to testify.

3.21 When there has been pretrial disclosure of trial exhibits, a lawyer should make a reasonable good-faith effort to identify those exhibits that the lawyer believes will be proffered into evidence.

3.22 During trials and evidentiary hearings, a lawyer should disclose the identities requested in discovery and estimated duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel visual aid equipment and demonstrative exhibits, charts, graphs, and diagrams which have been jointly prepared or which have been previously placed into evidence consistent with the preparation and protection of the trial strategy.

3.23 A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

3.24 A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

3.25 A lawyer should not enter into an agreement to withhold information from a client to serve the lawyer's own interest or convenience inconsistent with the promotion of a just and fair resolution in the client's best interest.

Honesty and Candor

4. Principle: A lawyer should not knowingly misstate or improperly distort any fact or opinion.

Standards:

4.1 A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

4.2 A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitful and deceptively for a wrongful purpose.

4.3 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

4.4 A lawyer should not knowingly draft a document or through silence permit a document to be drafted in

a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyers knows or believes that the adversary neither anticipates nor contemplates.

Fair and Efficient Administration of Justice

5. Principle: A lawyer should conduct himself or herself to assure that just and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

Standards:

5.1 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

5.2 A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

5.3 A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

5.4 A lawyer should frame reasonable discovery requests tailored to the matter at hand.

5.5 A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

5.6 A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client's legitimate interest.

Courtesy

6. Principle: A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

Standards:

6.1 A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

6.2 A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

Respect for the Time and Commitments of Others

7. Principle: A lawyer should respect the time and commitments of others.

Standards:

7.1 Before scheduling a hearing on any motion or discovery objection, a lawyer should endeavor to resolve or narrow the issue at hand.

7.2 In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

7.3 Unless circumstances compel more expedited scheduling, a lawyer should endeavor to provide litigants, witnesses and other affected persons or parties with ample advance notice of hearings, depositions, meetings and other proceedings.

7.4 Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

7.5 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client's opportunity for full and fair consideration and adjudication of the client's claim or defense.

7.6 Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

7.7 A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

7.8 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

7.9 A lawyer should promptly notify the court or tribunal of any resolution by the parties that renders a scheduled court appearance unnecessary.

Diligence and Punctuality

8. Principle: A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

Standards:

8.1 A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

8.2 A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

8.3 A lawyer should counsel the client to consider and explore settlement in good faith.

8.4 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

8.5 A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

Independence of Judgment

9. Principle: A lawyer should exercise independent judgment and should not be governed by a client's ill will or deceit.

Standards:

9.1 A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

9.2 A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

9.3 A lawyer should not permit the client's ill will toward an adversary, witness or tribunal to become that of the lawyer.

9.4 A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

9.5 A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

9.6 A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

9.7 A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

9.8 A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

9.9 In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

9.10 A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

9.11 A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

9.12 A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer's duty to espouse novel, but reasonable causes.

9.13 A lawyer, when necessary, should acquaint the client with these principles, their practicality and fairness when requested by the client to violate them.

Fulfilling Promises

10. Principle: A lawyer's word should be the lawyer's bond.

Standards:

10.1 A lawyer should strive to fulfill all promises and other commitments.

Virtue #1
Chastity

Definition: “Abstaining from sexual conduct according to one’s state in life; the practice of courtly love and romantic friendship. Cleanliness through cultivated good health and hygiene, and maintained by refraining from intoxicants. *To be honest with oneself, one’s family, one’s friends, and to all of humanity. Embracing of moral wholesomeness and achieving purity of thought through education and betterment.* The ability to refrain from being distracted and influenced by hostility, temptation or corruption.”

STANDARDS OF PROFESSIONALISM

1.8 A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

1.16 A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular view and alternate lifestyles who are otherwise fit and competent.

1.17 A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public’s esteem for the law, the judicial system and the legal profession.

1.18 A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

1.19 A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

3. Principle: A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

Standards:

3.4 In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

3.5 In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

3.16 A lawyer should bring to the attention of the court or other tribunal all controlling legal authority,

whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

3.23 A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

4. Principle: A lawyer should not knowingly misstate or improperly distort any fact or opinion.

4.1 A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

4.2 A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitful and deceptively for a wrongful purpose.

4.3 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

4.4 A lawyer should not knowingly draft a document or through silence permit a document to be drafted in a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyers knows or believes that the adversary neither anticipates nor contemplates.

9.2 A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

10. Principle: A lawyer's word should be the lawyer's bond.

10.1 A lawyer should strive to fulfill all promises and other commitments.

Virtue #2
Temperance

Definition: "Restraint, temperance, justice. Constant mindfulness of others and one's surroundings; *practicing self-control, abstention, moderation*, zero-sum and deferred gratification. Prudence to judge between actions with regard to appropriate actions at a given time. *Proper moderation between self-interest, versus public-interest, and against the rights and needs of others.*"

STANDARDS OF PROFESSIONALISM

1.17 A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public's esteem for the law, the judicial system and the legal profession.

1.19 A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

3.1 A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client's legitimate interest.

6. Principle: A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

6.1 A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

6.2 A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

9.3 A lawyer should not permit the client's ill will toward an adversary, witness or tribunal to become that of the lawyer.

9.5 A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

9.6 A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

9.10 A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

Virtue #3
Charity

Definition: “Generosity, charity, self-sacrifice; the term should not be confused with the more restricted modern use of the word charity to mean benevolent giving.”

STANDARDS OF PROFESSIONALISM

1. Principle: A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer’s professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

Standards:

1.1 A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.

1.2 A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.

1.3 A lawyer should support proposals to improve the administration of justice.

1.4 A lawyer should support proposals to advance the science of jurisprudence.

1.7 When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

1.21 A lawyer and the Bar should educate the schools of law, students, lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

2. Principle: A lawyer should further the legal profession’s devotion to public service and to the public good.

2.1 A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic responsibility and the public good.

2.2 A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

2.3 A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

9.12 A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer’s duty to espouse novel, but reasonable causes.

Virtue #4
Diligence

Definition: "A zealous and careful nature in one's actions and work; decisive work ethic, steadfastness in belief, fortitude, and the capability of not giving up. Budgeting one's time; monitoring one's own activities to guard against laziness. *Upholding one's convictions at all times, especially when no one else is watching (integrity).*"

STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

1.11 A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

1.12 A lawyer should, at all times, be appropriately prepared for court appearances, meetings, and conferences, not only for the benefit of the lawyer's client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

8. Principle: A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

8.1 A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

8.4 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

8.5 A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

9.9 In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

Virtue #5
Patience

Definition: "Forbearance and endurance through moderation. Resolving conflicts and injustice peacefully. Creating a sense of peaceful stability and community, rather than engendering suffering, hostility and antagonism."

STANDARDS OF PROFESSIONALISM

3.2 A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

3.6 A lawyer should not unreasonably oppose an adversary's application for an order or an adversary's request to insert a term or provision in a document.

3.7 A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

3.9 A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

3.10 A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

3.19 A lawyer should not request rescheduling, cancellations, extension, and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

3.24 A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

5.2 A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

5.3 A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

5.4 A lawyer should frame reasonable discovery requests tailored to the matter at hand.

5.5 A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

5.6 A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client's legitimate interest.

8.1 A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

8.2 A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

8.3 A lawyer should counsel the client to consider and explore settlement in good faith.

9.4 A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

9.7 A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

9.8 A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

9.11 A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

Virtue #6
Kindness

Definition: “Charity, compassion and friendship for its own sake. Empathy and trust without prejudice or resentment. Unselfish love and voluntary kindness without bias or spite. Having positive outlooks and cheerful demeanor; to inspire kindness in others.”

STANDARDS OF PROFESSIONALISM

3.14 When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer’s adversary.

3.15 A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

5.1 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client’s legitimate interests are not adversely affected.

7.4 Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

7.5 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client’s opportunity for full and fair consideration and adjudication of the client’s claim or defense.

7.6 Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

7.7 A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

7.8 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

7.9 A lawyer should promptly notify the court or tribunal of any resolution by the parties that renders a scheduled court appearance unnecessary.

Virtue #7
Humility

Definition: "Modest behavior, selflessness, and the giving of respect. *Humility is not thinking less of yourself, it is thinking of yourself less.* It is a spirit of self-examination; a hermeneutic of suspicion toward yourself and charity toward people you disagree with. *The courage of the heart necessary to undertake tasks which are difficult, tedious or unglamorous*, and to graciously accept the sacrifices involved. Giving credit where credit is due; not unfairly glorifying one's own self."

STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

1.8 A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

1.9 A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

1.10 A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

1.13 Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the representation and, if practical, promptly confirm those arrangements in writing.

1.15 When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

2.2 A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

2.3 A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

9.1 A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

9.6 A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, **even when confronted with such behavior.**

9.11 A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

ATTORNEY, HEAL THYSELF!

The Detection, Treatment and Prevention of Substance Abuse in the Legal Profession

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

DETECTION OF SUBSTANCE ABUSE

"An ounce of detection is worth a kilo of cure."

What is Substance Abuse?

Substance abuse is the compulsive use of drugs or alcohol even in the face of negative consequences. The decisive factor is NOT the amount or frequency of consumption but rather the impact the drugs or alcohol have on the person's life.

The Scope of the Problem

18 million Americans have a drinking problem
14.8 million Americans are "current" illicit drug users
4 million Americans are addicted to prescription drugs

The estimated economic cost to American society for substance abuse is over $300 billion. The cost, in terms of just lost productivity, medical claims and accidents, amounts to half of that total.

One of every 144 American adults is behind bars for a drug or alcohol-related crime. Furthermore, 25-50% of the men who commits acts of domestic violence have a substance abuse problem and substance abuse is one of the two leading factors in child mistreatment cases.

Lawyers are even at greater risk of substance abuse. For instance, it's estimated that 15% to 18% of lawyers have a drinking problem. This is compared with a 7% to 10% rate for the general population. Substance abuse is a causal factor in over 50% of all disciplinary and malpractice complaints.

SUBSTANCE ABUSE BINGO

1	5	9	13
2	6	10	14
3	7	11	15
4	8	12	16

1. Does your colleague lie about A&D use?
2. Does your colleague have trouble stopping A&D use once he/she starts?
3. Does your colleague show up to work under the influence?
4. Does your colleague avoid social interaction with peers?
5. Does your colleague behave irritably with co-workers?
6. Does your colleague's work product indicate excessive mistakes or neglect?
7. Does your colleague miss important meetings or court dates?
8. Does your colleague call in "sick" more than twice a month?
9. Has your colleague been arrested for DUI?
10. Has your colleague been arrested for public drunkenness?
11. Has your colleague been involved in a fight recently?
12. Is your colleague having "serious" marital difficulties?
13. Has your colleague been accused of malpractice?
14. Has your colleague requested to borrow money?
15. Does your colleague take unnecessary sexual risks?
16. Has your colleague been having excessive car trouble?

WARNING SIGNS OF SUBSTANCE ABUSE

1. Does your colleague lie about A&D use?

Lying about alcohol and/or drug use is one of the telltale signs of substance abuse, particularly as the problem progresses. To avoid detection, a substance abuser will resort to denying alcohol or drug usage, or at least, minimizing it.

2. Does your colleague have trouble stopping A&D use once he/she starts?

Substance abuse isn't defined in terms of quantity or frequency of use. A person can have, say, a glass of wine with dinner every night and not be an alcoholic. Likewise, a person can consume a large quantity of alcoholic (on occasion) and not be an addict. On the other hand, a person can use substances on infrequently and in small amounts and still have a *substantial* substance abuse problem if they have trouble stopping alcohol or drug use once it starts.

3. Does your colleague show up to work under the influence?

This is a rather obvious sign of a substance abuse problem that has progressed well beyond the casual weekend use. This person has very likely reached the point where they can't make it through an entire day without their substance of choice.

4. Does your colleague avoid social interaction with peers?

Most people realize that getting intoxicated in front of colleagues and superiors in the workplace is not a smart career move. For the person who finds it difficult to abstain from, say, having several beers at the firm Friday Happy Hour, the easiest course of action may be to avoid the affair altogether.

5. Does your colleague behave irritably with co-workers?

For the person who is attempting to limit the use of substances to the weekends, getting through the week without using can be a challenge. As a result, co-workers might encounter an irritable

person during the week, particularly towards the middle of the week (Tuesday, Wednesdays and Thursdays).

6. Does your colleague's work product indicate excessive mistakes or neglect?

Excessive mistakes or neglect are a sign that *something* is amiss in the life of your co-worker, particularly if this person was previously a stellar performer. In that case, your co-worker is almost assuredly encountering some problem, whether mental, emotional, financial, relational, physical or perhaps substance abuse.

7. Does your colleague miss important meetings or court dates?

This is one of the most obvious signs of a substance abuse problem, particularly if such occurrences are common and not accompanied by extraordinary circumstances which warrant such answers.

8. Does your colleague call in "sick" more than twice a month?

As a substance abuse problem progresses so does absenteeism from work, particularly absences centered around Monday and Friday. Most often, this results from your co-worker taking extended weekends. As the illness further progresses, you may notice the sick days creeping into the mid-week.

9. Has your colleague been arrested for DUI?

This is a very serious warning sign, particularly if it is not immediately accompanied by a reduction or complete elimination of substance consumption.

10. Has your colleague been arrested for public drunkenness?

This is another serious warning sign, as it evidences a blatant disregard for public intoxication. In short, they are using substances and don't care who knows about it.

11. Has your colleague been involved in a fight recently?

The colleague who has been involved in a physical altercation is certainly undergoing some type of disruption – emotional, mental or perhaps substance abuse.

12. Is your colleague having "serious" marital difficulties?

Substance abuse problems cause unusual strain in even the best of marriages. The problems that your co-worker might be able to hide from you can't be hidden from his or her spouse.

13. Has your colleague been accused of malpractice?

Substance abuse is a causal factor in more than half of all malpractice cases. More often than not, substance abuse causes otherwise good attorneys to miss deadlines, make excessive mistakes, miss court dates, etc.

14. Has your colleague requested to borrow money?

A person in the midst of a substance abuse problem is often caught between two contradictory financial forces. On the one hand, they are experiencing decreased productivity (and likely, decreased income). Yet, on the other hand, they are experience increased expenses – legal, medical and otherwise. Your co-worker's financial difficulties might become manifest if they enlist your financial assistance (or the assistance of others).

15. Does your colleague take unnecessary sexual risks?

16. Has your colleague been having excessive car trouble?

Motorists who drive under the influence invariably have minor automotive mishaps – bent fenders, minor dents, broken of sideview mirrors, etc. The co-worker whose car looks like it has been in a demolition derby is likely in need of medical intervention, or a driver's lesson.

TREATMENT OF SUBSTANCE ABUSE

Resources for Lawyers

Program	Phone Number	Website
Alcoholics Anonymous	(212) 870-3400	www.aa.org
ABA Standing Committee on Substance Abuse	(202) 662-1784	www.abanet.org/subabuse/home.html
AL-ANON	(888) 425-2666	www.Al-Anon-Alateen.org
Drug Help	(800) DRUG-HELP	www.drughelp.org
National Clearinghouse for Alcohol and Drug Information	(800) 729-6686	www.health.org
Narcotics Anonymous	(818) 773-9999	www.na.org
South Carolina Lawyers Helping Lawyers	(866) 545-9590	www.scbar.org/MemberResources/LawyersHelpingLawyers.aspx

PREVENTION OF SUBSTANCE ABUSE

As lawyers, perhaps the best thing we can do to prevent falling prey to substance abuse is to learn to handle one of its biggest contributors – stress. As much of the stress in the practice of law is self-imposed, lawyers would do well to remember the following:

A. GET A CLUE

In order to effectively deal with stress, we must first understand its source. In other words, we must get a clue as to what is causing us stress. When we do, we can then take one of the following approaches:

1. Don't Do That Anymore. There's an old joke about a woman who goes to the doctor and says, "Doctor, my arm hurts when I do this (moving her arm to demonstrate)." In the punch line to this joke, the doctor replies, "Well, then, don't do that anymore!" Sometimes the answer to increased stress can be just that simple, don't do that anymore! Through delegation and task-shifting, lawyers can alleviate many of the "pains" of practice.

2. Look on the Bright Side. When the pressures mount (and they will), it's always good to keep in mind that it could always be worse. As lawyers, most of us have jobs that others would envy. It's good to keep this in mind from time to time.

3. Learn to Deal with Difficult People. As lawyers, we are often thrust into situations where we must deal with difficult people. By the nature of the representation, we simply have no choice. We don't choose the judges who hear our cases or opposing counsel. In large organizations, we don't even choose our colleagues. Therefore, we must develop a way to deal effectively with difficult people by using the tools of praise and modeling.

   a. Praise. It's been said that four billion people go to bed hungry every night for food but five billion people go to bed hungry every night for a sincere word of

encouragement and praise. By meeting the most widely unmet need in others (the need for praise), we can create instant harmony, even when dealing with normally inharmonious people.

b. Modeling. It's been said that imitation is the greatest form of flattery. There is some truth to this statement. Most people are automatically inclined to like (and be reasonable to) people who are like them. They can't help themselves. By learning to model the behavior of others, lawyers can greatly reduce the strife of dealing with opposing counsel and others who might naturally seem to be adversaries.

B. GET A GRIP

Much of the stress facing lawyers is fueled by an exaggerated sense of self-importance.

1. The Firm Will Be Open on the Day of Your Funeral. Unless you are a solo practitioner, it's likely that your firm will go on without you. In fact, many lawyers work in law firms where the name partners are long since dead. If the firm can survive with its founders, it almost certainly can survive with you. By coming to grips with the fact, a lawyer is freed from thinking that the weight of the firm rests on her shoulders.

2. It's Not Life or Death. Many lawyers treat their client matters as matters of life or death. As a result, they find themselves experiencing the physiological as well as emotional stress of a life or death struggle. Yet, much of the stress can be alleviated when the lawyer realizes that, in most cases, they are dealing with a simple dispute over money; and it's not even *their* money.

3. Tame Your Inner Lawyer. Law school teaches young people how to "think like a lawyer." And while such a mindset is essential in representing clients, it's important for lawyers to learn when to turn it off. While playing devil's advocate or arguing in the alternative may be

just what the client needs, these tactics only cause undue conflict and strife in interpersonal relationships.

C. GET A LIFE

When we began to understand that there is more to life than the job, the inevitable stresses of the job have less effect on us.

1. Stop Keeping Up With the Obamas. One of the greatest self-imposed stressors is always trying to keep up with others. It's hard enough to achieve a sense of pride and satisfaction in our own lives. However, to heap the added hurdle of being just as successful as our law school roommate, the person we entered the firm with, our brother-in-law, or whomever makes for an impossible task.

2. Live Your *Whole* Life. It's been said that we are not human doings or human havings but rather we are human beings. Yet, the sad truth is that many lawyers define themselves exclusively in terms of what they do (e.g., practice corporate securities law) or by what they have (e.g., a summer home in Hamptons, etc.). The problem is that these things often add more stress to life than less because they provide no lasting fulfillment. After all, who wants to die and have their kids put on their tombstone: "Here Lies Mommy, She Had a Lexus"?

3. Do It Now. Most people have a list of "someday whens" – things they will do someday when. Someday when they have more time, they will take the family on that grand vacation. Someday when they have more money, they will start contributing to the causes that mean something to them. And the list goes on and on. And all of these "someday whens" loom over a person like a weight. The quickest way to throw off that yoke is to make someday when TODAY. As it has been said, "You can't make footprints in the sands of time while sitting on your butt and who wants to make buttprints in the sands of time?"

FANTASY SUPREME COURT LEAGUE: 2013 EDITION

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

CASE #1: KIOBEL v. ROYAL DUTCH PETROLEUM

(Alien Tort Statute; International Law)
Hearing Date: October 1, 2012
Opinion Date: April 17, 2013

In September 2002, Esther Kiobel, a Nigerian national, filed a lawsuit in federal court on behalf of herself, her late husband and other Nigerians against three international oil companies. In the lawsuit, Kiobel claims that these companies arranged for the Nigerian government to use its military forces to put down resistance to the companies' drilling for oil in the Ogoni region of the Niger Delta in Nigeria.

This action was brought under the Alien Tort Statute ("ATS"). This law, originally passed in 1789, allows foreign nationals to bring actions in U.S. federal courts torts committed outside the U.S. if such torts are a violation of either international law or a treaty that the U.S. has signed.

In September 2010, the 2nd Circuit Court of Appeals ruled for the defendants, concluding that international law had not made it clear that corporations could be sued for human rights violations, even if they were serious atrocities. As a result, the torts alleged in this case were not clear violations of "either international law or a treaty that the U.S. signed." The plaintiffs appealed to the U.S. Supreme Court.

Did the Supreme Court agree with the 2nd Circuit?

☐ Yes, the Supreme Court affirmed, ruling that this action can not be brought under the ATS.

☐ No, the Supreme Court reversed, concluding that the action can be brought under the ATS.

Vote Spread: _____

Points: _____

Total: _____

CASE #2: ARKANSAS GAME & FISH COMMISSION v. U.S.

(Takings; Fifth Amendment)
Hearing Date: October 3, 2012
Opinion Date: December 4, 2012

In the 1940s, the federal government built the Clearwater Dam on the Black River that flows from Missouri into Arkansas. It was built expressly to control the Black's water flows to reduce downstream flooding. The Corps of Engineers has adopted a water control plan for the damn with a schedule of releases.

From 1993 through 1998, these releases caused lowland flooding in the Dave Donaldson Black River Wildlife Management Area, destroying timber that Arkansas harvests and sells for general revenues. In 2005, the Arkansas Game & Fish Commission filed a lawsuit against the Corps of Engineers contending that the government knew the releases would cause flooding and the resulting damage, but went ahead heedless of the consequences. As a result, it had affected a "taking" requiring just compensation under the Fifth Amendment.

The Court of Federal Claims agreed with Arkansas that the releases were a taking and awarded it $5.8 million for the losses caused by the flooding. However, the Court of Appeals for the Federal Circuit, overturned the award because the flooding was only temporary and therefore, it did not rise to the level of a taking requiring compensation.

Did the Supreme Court agree with the Court of Appeals?

☐ Yes, the Supreme Court affirmed, ruling that temporary flooding is not a taking.

☐ No, the Supreme Court reversed, ruling that even temporary flooding is a taking requiring compensation.

Vote Spread: _____

Points: _____

Total: _____

CASE #3: RYAN v. GONZALES / TIBBALS v. CARTER

(Federal Habeas Corpus; Competence; Capital Punishment)
Hearing Date: October 9, 2012
Opinion Date: January 8, 2013

The Supreme Court heard consolidated arguments for two cases involving criminal defendants seeking federal habeas corpus challenges.

In the first case, Ernesto Valencia Gonzales was convicted in 1990 for murder and sentenced to death. After exhausting his appeals in the Arizona state courts, he began a federal habeas challenge. His lawyers sought a ruling that he was mentally incompetent and asked for a stay of the habeas case. A federal district judge denied this request, ruling that since all of Gonzales' legal claims were based on the state court record or were legal in nature, his cooperation was not necessary. However, the 9th Circuit Court disagreed, ruling that the habeas case could benefit from Gonzales's participation and stayed the habeas case until such time as Gonzales is mentally competent to proceed.

In the second case, Sean Carter was convicted of the 1997 rape and murder of his 68 year-old adoptive grandmother and given a death sentence. After all of his appeals failed in Arizona state courts, he began a federal habeas challenge, claiming that his lawyer had been deficient in failing adequately to raise the issue of his mental competence. His habeas challenge was denied in the federal district court, but granted by 6th Circuit Court, which ruled that the habeas petition should be delayed until he had regained his competency.

In these cases, the 6th and 9th Circuit Courts based their rulings on the 1967 case of *Rees v. Peyton*, in which the Supreme Court indefinitely stayed the habeas petition (and therefore, the execution) of a Virginia death row inmate who was found to be mentally incompetent. The 9th Circuit also based its ruling on the federal right-to-counsel law for state inmates facing death sentences and pursuing habeas, concluding that an mentally incompetent defendant can not sufficiently avail himself of his right to counsel.

Did the Supreme Court agree with the 6th and 9th Circuits?

☐ Yes, the Supreme Court affirmed, ruling that mental incompetence is a ground for an indefinite habeas stay.

☐ No, the Supreme Court reversed, ruling that mental competence is not required for habeas challenges to proceed.

Vote Spread: _____

Points: _____

Total: _____

CASE #4: FISHER v. UNIVERSITY OF TEXAS AT AUSTIN

(Affirmative Action; Equal Protection)
Hearing Date: October 10, 2012
Opinion Date: June 24, 2013

The University of Texas at Austin admits undergraduate students using the following process: Under its Ten Percent Plan, any Texas student who finishes in the top 10% of his/her high school graduating class is automatically admitted into the university. This accounts for 85% of its annual admissions. Students who do not qualify for admission under the Ten Percent Plan may still be admitted to the college and are judged on a number of criteria, one of which is race.

In 2007, Abigail Noel Fisher, a young white woman from Sugarland, Texas, applied to the college. She did not qualify under the Ten Percent Plan and was subsequently denied admission. In response, Fisher filed a lawsuit in federal court claiming that she had been discriminated against on the basis of her race because minority students with less impressive credentials had been admitted instead of her.

The district court denied Fisher's claim citing the Supreme Court's 2003 decision in *Grutter v. Bollinger*. In *Grutter*, the Court affirmed the University of Michigan Law School's admissions program, which also included race as one of many factors to be considered, because it is a "narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." The 5th Circuit Court of Appeals affirmed this ruling.

On appeal, Fisher argues that the Ten Percent Plan has already resulted in a "critical mass" of diversity at the college and therefore, using race as a factor with respect to the remaining applicant pool is impermissible.

Did the Supreme Court agree with the 5th Circuit?

☐ Yes, the Supreme Court affirmed, concluding that the University of Texas at Austin may continue to use race as a factor in admissions.

☐ No, the Supreme Court reversed, ruling that once a critical mass of diversity has been achieved, race may no longer be considered.

Vote Spread: _____

Points: _____

Total: _____

CASE #5: KIRTSAENG v. JOHN WILEY & SONS, INC.

(Copyright; First Sale Doctrine)
Hearing Date: October 29, 2012
Opinion Date: March 19, 2013

In 2007, Supap Kirtsaeng, a Thai national, came to the U.S. to study at Cornell and U.S.C. To subsidize his educational expenses, he resold textbooks purchased by his family at bookstores in Thailand. As the books were much cheaper in Thailand, he could sell them in the U.S. at a much higher price through commercial websites like eBay and net a profit. In fact, over a two-year period, Kirtsaeng earned about $100,000 from such resales.

Eventually, one of the publishers, John Wiley & Sons, Inc., became aware of Kirtsaeng's activities and sued him for copyright infringement. Kirtsaeng defended this action by claiming the right to resale these works under the "first sale doctrine," as codified by 17 U.S.C. 109(a), which reads in part:

> "(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord."

However, the district court concluded that the first sale doctrine did not apply in this case because the books in question were not "lawfully made under this title" because books manufactured in Thailand are not subject to U.S. copyright law. In doing so, it awarded Wiley $600,000 in damages. The 2nd Circuit affirmed this decision.

Did the Supreme Court agree with the 2nd Circuit?

☐ Yes, the Supreme Court affirmed, ruling that the first sale doctrine only applies to works manufactured domestically.

☐ No, the Supreme Court reversed, ruling that first sale doctrine applies to all works regardless of where they are made.

Vote Spread: _____

Points: _____

Total: _____

CASE #6: FLORIDA v. JARDINES

(Fourth Amendment; Drug-sniffing Dogs)
Hearing Date: October 31, 2012
Opinion Date: March 26, 2013

On November 3, 2006, the Miami-Dade Police Department received an unverified "crime stoppers" tip that the home of Joelis Jardines was being used to grow marijuana. One month later, a detective and his drug detection dog, Franky, approached the residence. After circling for a few minutes, Franky sat down, near the front door. That indicated to his police handler that the dog had detected an odor of marijuana coming from under the front door. The detective went up to the front door for the first time, and smelled marijuana. He also observed that the air conditioning unit had been running constantly for fifteen minutes or so, without ever switching off, something that often occurs in hydroponics labs where marijuana growers use high-intensity light bulbs to cultivate the plants.

The detective prepared an affidavit and applied for a search warrant, which was issued. A search was then conducted, confirming that marijuana was indeed being grown inside the home. The defendant was arrested. However, at trial, the defendant moved to suppress the evidence as the result of an unlawful search under the Fourth Amendment. After an evidentiary hearing, the trial judge agreed and suppressed the evidence.

Florida appealed this ruling to the state district court, which reserved. In doing so, it concluded that the use of a drug-sniffing dog to detect drugs from *outside* of the home was not a "search" under the Fourth Amendment.

However, the Florida Supreme Court disagreed, once again suppressing the evidence. In its ruling, the state high court cited the Supreme Court's 2001 decision in *Kyllo v. U.S.* In *Kyllo*, the high court ruled that it was unconstitutional for police to use a heat-sensing device aimed at the outside walls of a house to detect the use of high-intensity lamps. The Florida Supreme Court concluded that using a drug-sniffing dog to explore the details of Jardine's home was similarly unconstitutional.

Did the Supreme Court agree with the Florida Supreme Court?

☐ Yes, the Supreme Court affirmed, ruling that drug-sniffing dogs can not be used to detect drugs inside a citizen's home in the absence of a search warrant.

☐ No, the Supreme Court reversed, ruling that the use of a drug-sniffing dog outside of a home is not a "search" under the Fourth Amendment.

Vote Spread: _____

Points: _____

Total: _____

CASE #7: FLORIDA v. HARRIS

(Fourth Amendment; Drug-sniffing Dogs)
Hearing Date: October 31, 2012
Opinion Date: February 19, 2013

On June 24, 2006, a Liberty County sheriff and his drug-detection dog, Aldo, were on patrol. The officer conducted a traffic stop of Clayton Harris' truck after noticing that Harris' tag was expired. Upon approaching the truck, the officer noticed that Harris was shaking, breathing rapidly, and could not sit still. He also noticed an open beer can in the cup holder. The officer then asked for consent to search the truck. Harris refused. The officer then deployed Aldo, who sniffed around the exterior of the truck and alerted the officer to the door handle of the driver's side of the car.

The officer then car searched the car, discovering 200 pseudoephedrine pills under the driver's seat as well as other paraphernalia used the production of methamphetamine. Harris was arrested and charged with intent to distribute meth.

At trial, Harris filed a motion to suppress the evidence because Aldo's detection of drugs was not enough, in and of itself, to establish probable cause for the search of the vehicle unless the state also introduced evidence demonstrating the dog's reliability. However, the trial judge denied the motion, prompting Harris to enter a plea of no contest, reserving the right to appeal the denial of the motion. He was sentenced to 24 months incarceration and 5 years of probation. The state district court affirmed the lower court.

On appeal, the Florida Supreme Court reversed, concluding that the state has the burden of establishing the dog's reliability. In doing so, it set forth a very detailed list of supporting evidence that must be presented by the state, including but not limited to training and certification records and field performance reviews.

Did the Supreme Court agree with Florida Supreme Court?

☐ Yes, the Supreme Court affirmed, ruling that the state must produce the evidence required by the Florida Supreme Court to establish probable cause.

☐ No, the Supreme Court reversed, ruling that the state must only demonstrate that it is reasonably prudent to trust the dog's reliability.

Vote Spread: _____

Points: _____

Total: _____

CASE #8: EVANS v. MICHIGAN

(Double Jeopardy; Eighth Amendment)
Hearing Date: November 6, 2012
Opinion Date: February 20, 2013

On September 22, 2008, two Detroit police officers were on patrol when they observed a house on fire. After hearing an explosion at the burning house, they observed Lamar Evans running away from the side of the house with a gasoline can. One officer got out of the patrol car and chased Evans on foot, eventually catching him and detaining him. Evans was arrested and later, tried for "burning other real property" for starting fire in a vacant house.

At the close of the prosecution's case, Evans' lawyer moved for a directed verdict, arguing that the prosecution had failed to prove an element of this particular crime -- that the burned property was not a dwelling house. As the property in question was clearly a dwelling house (even if a vacant one at the time of the fire), the defendant should be acquitted as a matter of law. Despite the prosecution's strenuous objections, the trial judge granted the defense's motion and acquitted Evans.

On appeal, the state was able to demonstrate that the trial judge had clearly misread the statute and had added an extraneous element to the crime. Evans argued that notwithstanding the trial judge's error, he could not be retried under the Double Jeopardy clauses of the state and federal constitutions. The Michigan Court of Appeals disagreed with Evans, ruling that a directed verdict on the basis of an error of law does not constitute an acquittal for the purposes of double jeopardy and therefore, retrial was not barred. The Michigan Supreme Court affirmed.

Did the Supreme Court agree with the Michigan Supreme Court?

☐ Yes, the Supreme Court affirmed, ruling that this kind of procedural error is not an acquittal for double jeopardy purposes.

☐ No, the Supreme Court reversed, ruling that Evans had been acquitted for double jeopardy purposes and can not be tried again.

Vote Spread: _____

Points: _____

Total: _____

CASE #9: VANCE v. BALL STATE UNIVERSITY

(Title VII; Employment Discrimination)
Hearing Date: November 26, 2012
Opinion Date: June 24, 2013

In 1989, Maetta Vance began working in Ball State University's dining and catering department. Over the years, she gained several promotions and some modest pay raises. She was the only African-American in the department. However, beginning in 2001, things started to change as her co-workers began harassing her with repeated racial epithets and, at times, threatening words or actions. Finally, in 2005, Vance complained to the university, which began an investigation and warned other employees that racial discrimination would not be tolerated. As a result of this investigation, one employee was disciplined for using the "N-word" and bragging about her ties to the Ku Klux Klan.

Nevertheless, according to Vance, the slurs and threats continued. Shortly thereafter, she filed a charge with the EEOC under Title VII alleging race, gender and age discrimination. Finally, in October 2006, Vance filed a lawsuit in federal district court alleging that she was being subjected to a hostile work environment.

The district court dismissed her case. While an employer is held strictly liable for a hostile work environment created by a supervisor, it is only liable for a hostile work environment created by co-workers if the employer has been negligent either in discovering or remedying the harassment. The district court concluded that if any harassment had occurred, it had been conducted by Vance's co-workers and that the university had not been negligent in its handling of her complaints. As a result, the university was not liable for the hostile work environment.

On appeal, Vance argued that one of her tormentors was, in fact, her supervisor because she assigned Vance various tasks throughout the day. Therefore, Ball State should be held strictly liable. However, the 7th Circuit Court of Appeals disagreed. It ruled that the definition of "supervisor" is limited to those who have the power to hire, fire, discipline, promote, or transfer another worker. In doing so, it affirmed the lower court dismissal.

Did the Supreme Court agree with the 7th Circuit?

☐ Yes, the Supreme Court affirmed, ruling that supervisors are only those who have the power to hire, fire, discipline or promote.

☐ No, the Supreme Court reversed, expanding the definition of supervisor to include those who assign tasks as well.

Vote Spread: _____

Points: _____

Total: _____

CASE #10: MARACICH v. SPEARS

(Driver's Privacy Protection Act)
Hearing Date: January 9, 2013
Opinion Date: June 17, 2013

In 2006, a group of South Carolina lawyers (the "Original Plaintiffs' Lawyers") filed a putative class action lawsuit against hundreds of state car dealerships, alleging that they had charged unlawful fees to customers. In the course of the case, they obtained from the South Carolina DMV the names and contact information of thousands of other state residents who had also paid the challenged fee. They then wrote to these consumers, seeking to add them as plaintiffs in the lawsuit.

Feeling that turnabout is fair play, one of the lawyers for the car dealers rounded up some consumer clients of his own and sued the Original Plaintiffs' Lawyers for more than $200 million, alleging that their solicitation of clients violated the federal Driver's Privacy Protection Act (the "DPPA"), which generally prohibits the use of any such information that is obtained from the DMV.

In response to this lawsuit, the Original Plantiffs' Lawyers argued that their use of this data was permissible under the DPPA, which sets forth several permissible uses, including:

> "(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court."

The district court agreed with the Original Plaintiffs' Lawyers and dismissed the case. On appeal, the plaintiff's argued that this "litigation exception" to the DPPA should only apply to activities that are part of the actual litigation process and not the solicitation of clients. However, the 4th Circuit Court of Appeals disagreed and affirmed the dismissal of the lawsuit.

Did the Supreme Court agree with the 4th Circuit?

☐ Yes, the Supreme Court affirmed, ruling that client solicitations qualify for the litigation exception to the DPPA.

☐ No, the Supreme Court reversed, ruling that the litigation exception is limited to actions taken as part of the actual resolution of a lawsuit.

Vote Spread: _____

Points: _____

Total: _____

CASE #11: BOYER v. LOUISIANA
(Sixth Amendment; Speedy Trials)
Hearing Date: January 14, 2013
Opinion Date: April 29, 2013

Jonathan Boyer was indicted in 2002 for capital murder. Although he had one court-appointed lawyer, Louisiana law required two lawyers for a death penalty prosecution. For five years, the state was unable to acquire funding for this second lawyer, at which point, they reduced the charges to second-degree (non-capital) murder in order to avoid the second counsel requirement. Finally, in 2009, Boyer was tried and convicted of second-degree murder and sentenced to life in prison.

In 2005, Boyer filed a motion to quash his indictment based on the denial of his Sixth Amendment right to a speedy trial. The trial court denied this motion, ruling that the delay was not caused by the D.A.'s office but rather by the state's failure to provide funding for the second lawyer. By a vote of two to one, the intermediate state appellate court affirmed the trial court.

Did the Supreme Court agree with the Louisiana appellate court?

☐ Yes, the Supreme Court affirmed, ruling that a delay caused by a lack of funding will not be counted against the state for speedy trial purposes.

☐ No, the Supreme Court reversed, ruling that such a delay will be counted against the state.

Vote Spread: _____

Points: _____

Total: _____

CASE #12: MARYLAND v. KING

(Fourth Amendment; DNA Sampling)
Hearing Date: February 26, 2013
Opinion Date: June 3, 2013

On April 10, 2009, Alonzo Jay King, Jr., was arrested for pointing a shotgun at a group of individuals. After he was arrested, police took a sample of his DNA, as authorized by a state law permitting the police to take a DNA sample from every individual accused of a serious crime.

Four months later, King's DNA was matched with the DNA of the perpetrator of a 2003 sexual assault. As a result, King was charged with first-degree rape and other crimes. At trial, King sought to block the evidence of the DNA match, contending that taking his DNA after his initial arrest was an unreasonable "search" under the Fourth Amendment. Nevertheless, the judge allowed the DNA evidence to be introduced at trial. King was found guilty of first-degree rape and sentenced to life in prison without parole.

However, on appeal, the Maryland Court of Appeals reversed the trial court because King had only been arrested (as opposed to convicted) at the time of the DNA sampling. As a result, it voided King's conviction.

Did the Supreme Court agree with the Maryland Court of Appeals

☐ Yes, the Supreme Court affirmed, ruling that taking DNA samples from those merely *accused* of crime is an unreasonable search under the Fourth Amendment.

☐ No, the Supreme Court reversed, ruling that, DNA sampling of arrestees is permissible.

Vote Spread: _____

Points: _____

Total: _____

CASE #13: SHELBY COUNTY v. HOLDER

(Voting Rights Act; Pre-Clearance)
Hearing Date: February 27, 2013
Opinion Date: June 25, 2013

In 1965, Congress passed the Voting Rights Act (the "VRA") to counter efforts by states and local governments, especially in the South, to prevent blacks from voting. Section 5 of the VRA imposes a "preclearance" requirement. It prohibits specified jurisdictions (mostly, in the southern states) from changing their election procedures unless they first receive permission from either a special three-judge panel of a federal district court in Washington, D.C., or the Department of Justice. In 2006, Congress voted to extend this preclearance requirement through the year 2031.

Shelby County, Alabama is one of the covered jurisdictions under Section 5. In 2010, it filed a lawsuit in federal court challenging the validity of the preclearance requirement. It argued that current burdens of Section 5 are not justified by the current need for it. Southern states should no longer be targeted for special treatment as most of the discriminatory practices of the past have been remedied. And even if some isolated problems do remain, there are less draconian remedies to combat them, such as filing a lawsuit under another provision of the VRA to challenge the discriminatory practice or procedure.

The federal district court and the D.C. Circuit disagreed, upholding the validity of Section 5 of the VRA.

Did the Supreme Court agree with the D.C. Circuit?

☐ Yes, the Supreme Court affirmed, upholding the validity of the Section 5 of the VRA.

☐ No, the Supreme Court reversed, ruling that the preclearance requirement is no longer necessary.

Vote Spread: _____

Points: _____

Total: _____

CASE #14: HOLLINGSWORTH v. PERRY

(Equal Protection; Gay Marriage; Prop 8)
Hearing Date: March 26, 2013
Opinion Date: June 26, 2013

In 2000, the voters of California passed Proposition 22, which added the following language to the California Family Code: "Only marriage between a man and a woman is valid or recognized in California." Almost immediately, the law was challenged in the courts. In May 2008, the California Supreme Court struck down Proposition 22 as a violation of the right to equal protection under the law guaranteed by the state constitution.

In response, the proponents of the original measure put Proposition 8 on the ballot in the 2008 election. The language of Proposition 8 was identical to that of Proposition 22. However, Proposition 8 amended the state constitution as opposed to state statute, giving it supremacy over the May ruling by the state supreme court. Proposition 8 passed by a narrow margin and was immediately challenged in federal court.

In August 2010, a federal district court judge struck down Proposition 8 as a violation of the federal constitution's guarantees of Equal Protection and Due Process. In May 2012, a three-judge panel of the Ninth Circuit Court of Appeals affirmed the lower court in a 2-1 decision.

Did the Supreme Court agree with the 9th Circuit?

☐ Yes, the Supreme Court affirmed, striking down California's Proposition 8 as unconstitutional.

☐ No, the Supreme Court reversed, ruling that it is constitutionally permissible for a state to restrict marriage to opposite-gender couples.

Vote Spread: _____

Points: _____

Total: _____

CASE #15: U.S. v. WINDSOR

(Equal Protection; Gay Marriage; DOMA)
Hearing Date: March 27, 2013
Opinion Date: June 26, 2013

In 1996, Congress passed the Defense of Marriage Act ("DOMA"), which allows states to only recognize opposite-gender marriages and restricts federal marriage benefits to such marriages. In recent years, DOMA has been under constant attack in the courts and has been found unconstitutional in eight cases. In this case, the surviving spouse in a lesbian marriage sued the federal government to recoup the additional estate tax payments required because her marriage was not recognized for federal tax purposes under DOMA.

On June 6, 2012, a federal district judge declared DOMA unconstitutional under a rational basis review and ordered the requested tax refund be paid to Windsor. On October 18, 2012, the 2nd Circuit Court of Appeals upheld the lower court's decision, but this time, under the intermediate scrutiny standard of review.

Did the Supreme Court agree with the 2nd Circuit?

☐ Yes, the Supreme Court affirmed, striking down DOMA as unconstitutional.

☐ No, the Supreme Court reversed, ruling that DOMA is valid under the federal constitution.

Vote Spread: _____

Points: _____

Total: _____

CASE #16: ASSOCIATION FOR MOLECULAR PATHOLOGY v. MYRIAD GENETICS

(Patents; Genes)
Hearing Date: April 15, 2013
Opinion Date: June 13, 2013

The federal Patent Act grants a limited-time monopoly to an inventor for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement" of any of those inventions. Myriad Genetics has obtained patents on isolated forms of two genes -- BRCA1 and BRCA2 – that help doctors determine a patient's risk of breast cancer and ovarian cancer.

Several groups challenged the patentability of BRCA1 and BRCA2 in a lawsuit brought in federal district court against Myriad. The challengers claimed that Myriad's claims are no more than an attempt to get a monopoly over natural phenomena. Furthermore, they contended that Myriad's claims were so broad that they included "every single natural variation of the [two] genes, including those that have not yet been isolated." A federal district court agreed and invalidated Myriad's patents.

On appeal to the Federal Circuit, Myriad argued that the process of isolating the DNA molecules in the DNA embodied in the two genes is a "product of human ingenuity" that is unique, with a distinctive name, character, and use. The Federal Circuit agreed and reversed the lower court ruling.

Did the Supreme Court agree with the Federal Circuit?

☐ Yes, the Supreme Court affirmed, ruling that genes are patentable.

☐ No, the Supreme Court reversed, ruling that genes are not patentable.

Vote Spread: _____

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Total: _____

CASE #17: SALINAS v. TEXAS

(Fifth Amendment; Right to Remain Silent)
Hearing Date: April 17, 2013
Opinion Date: June 17, 2013

In December 1992, the Garza brothers were murdered in a Houston apartment. At the scene, officers found discarded shotgun shell casings. After interviewing neighbors, the police began to suspect that Genovevo Salinas might be involved and went to his house, where Salinas' father turned over a shotgun. Salinas then *voluntarily* accompanied the officers to the police station to take fingerprints so that he could be "eliminated as a suspect."

At the station, the officers questioned Salinas about others at the party, and he answered those questions. However, when asked if the shotgun retrieved at his house would match the shell casings at the crime scene, Salinas looked down and would not answer. Notwithstanding, the police delayed filing charges at that time and only later charged Salinas with two counts of murder. However, by then, Salinas had left town and was not found until 14 years later, living under a new name elsewhere in Texas.

At the trial, prosecutors made mention of Salinas's refusal to answer the question about what the ballistics test would show. The defense objected, arguing that making mention of Salinas silence violated his constitutional right against self-incrimination under the Fifth Amendment. The judge rejected this protest. In closing arguments, the prosecutor argued that an innocent person would have protested that the gun was not his, and that he was not at the scene. The jury convicted Salinas, and he was sentenced to 20 years in prison.

On appeal, the Texas Court of Criminal Appeals rejected Salinas' contention that mention of his silence in the police interview constituted a violation of his right against self-incrimination. This decision is in line with decisions handed down in some jurisdictions, yet in opposition to those delivered in other jurisdictions.

Did the Supreme Court agree with the Texas Court of Criminal Appeals?

☐ Yes, the Supreme Court affirmed, ruling that prosecutors may make mention of a defendant's silence in a pre-arrest interview.

☐ No, the Supreme Court reversed, ruling that making mention of a defendant's silence in this case is unconstitutional.

Vote Spread: _____

Points: _____

Total: _____