

Lawyer Ethics

(With A Twist)

A criminal defense lawyer met with her client and told him that she had good news and bad news. What's the bad news? The bad news is that the blood tests prove you committed the crime. What is the good news? She replied, "Your cholesterol is only 120.

My name is Scott Morrill and I became a lawyer in 1991. This session is scheduled for 50 minutes. But because I am used to getting paid by the hour, please forgive me if I go a bit over. I promise to wrap things up in 4 or 5 hours at the most.

For nearly 15 years I worked for the Oregon State Bar in lawyer ethics. As you know, you are governed by a set of rules we informally refer to as the lawyer ethics rules. Some variation of the rules exist in each state and they are usually formally called the rules of professional conduct, or something similar. We are not very creative when it comes to names. Depending on the state the rules are enforced by the state bar association, the state Supreme Court or a stand-alone agency. But, they all pretty much operate the same, except Hawaii where the lawyers get to wear leis to work and Alaska where they usually wear seal skins.

First, some terms and acronyms. While we are not creative when it comes to names we do love acronyms and specialized terms almost as much as politicians.

LAWYER- this seems obvious.

DISHONEST LAWYER- also obvious and what I specialized in. Wait! I don't mean I was a dishonest lawyer, I mean I specialized in figuring out which lawyers were dishonest.

COMPLAINANT- annoying people who file complaints about lawyers that used to clutter my desk. Sorry, did I say that out loud?

ALJ- administrative law judge.

DB- disciplinary board.

DCO- disciplinary counsel.

CAO- client assistance office.

BR- bar rule

ETC. . .

RCMP- oops, my wife is Canadian and this stands for the Royal Canadian Mounted Police whose primary function is to dress in bright red uniforms, wear cowboy hats (unless they are Sikh in which case they wear turbans, also really cool) and ride around on horses looking really awesome.

OK, got it? Great. Keep all this in mind as I proceed.

This is how it works. Someone files a complaint. Or, a particularly energetic lawyer regulator reads the local newspaper (online of course because who reads paper copies of newspapers) and sees that a lawyer may have done a bad thing.

Aside- I once read in my local newspaper about a lawyer who had done something during a trial that I was pretty sure violated the rules. I showed the article to my boss the next day and he told me to open an investigation and assign the investigation of the complaint to myself. The next day I cancelled my newspaper subscription, all my news magazine subscriptions, stopped watching the news and rarely surfed the internet except for sports scores.

Where was I? Oh yes, someone files a complaint about a lawyer.

Aside- Oh, did I forget to mention that people are not limited to filing complaints about their own lawyer? Yeah, you can file complaints about any lawyer: the opposing lawyer, the lawyer in a matter you have no interest in. In fact, you are required by Oregon Rule of Professional Conduct 8.3 to file a complaint about your fellow lawyer if you know that they have violated the rules. Yes, there are lots of caveats and exceptions such as whether or not the information you have is protected by the attorney-client privilege, but. . .

Anyway, there are people who apparently cannot afford cable TV, a newspaper or magazine subscriptions who entertain themselves by going to their local courthouses and sitting in on trials. They are open to the public and free to attend. I once received a complaint from one of these people who thought one of the lawyers was a bit rude with a witness. The complainant was not involved with the trial and none of the parties actually involved had any complaints. I dismissed the complaint. Being rude does not violate any rule of professional conduct, unless the lawyer is REALLY, REALLY RUDE. Oregon RPC 8.4(a)(4) tells us that it is misconduct to engage in activity that is prejudicial to the administration of justice. For instance, there are examples of complaints from around the country where a lawyer went off on a court and was prosecuted for that kind of conduct.

People can file complaints about their neighbor if the neighbor happens to be a lawyer. The best example of this was the anonymous complaint I received that a lawyer was driving too fast on a rural, dirt road and kicking up dust that was covering the complaining party's lawn decorations. A set of gnomes, plastic flamingos and gazing balls, if I recall. The interesting thing is that we have to advise the lawyer if a complaint is ever filed, regardless of the validity. While the complainant tried to remain anonymous, when I advised the lawyer about the complaint he immediately recognized who it was that had filed the complaint. Oh, and the complainant put his return address on the envelope. . .

I handled several complaints from neighbors about lawyers with encroaching fences, barking dogs and broken down cars in the yard. OK, the broken down car complaint got my attention and I called the lawyer and suggested he donate it to a local charity or something. The rest I dismissed out-of-hand.

But, I'm veering off topic. After my office received a complaint and once we stopped laughing-oops, did I say that out loud? After we received a complaint we first decided- if true, did it

implicate any rules. Then we decided if the complaint was even believable. Bar Rule 2.5 says that a complaint must show sufficient evidence to support a reasonable belief that misconduct may have occurred. Pretty squishy and while I was at the bar no one ever convinced a trial panel or court that the bar had not met this standard.

Right, the rules. Maybe now is a good time to discuss what you are not allowed to do.

OK, that about covers it. . .

Fine, here is the gist of the rules. No lying, cheating or stealing. No using your client's money for your own benefit like gambling or paying off witnesses. No sex with your clients, no conflicts of interest, no talking to the judge behind the other party's back, no slacking, no gouging, no quitting without good cause and for heaven's sake no pursuing stupid legal claims.

I will explain some of the most important rules and try to give real examples of what I had to deal with over the years. My examples are taken from real complaints. They are 100% mostly true.

No commingling (combining) your client's money with another client's money, or your own money, except if you can get a better interest rate from the bank and doing so benefits the state bar association.

Oregon Rule of Professional Conduct 1.15-1. See, this is the stuff that gets you an ethics credit.

Now, if you get retainer money from clients you are supposed to put that money in an interest bearing account, unless the amount is too small or the interest rate is too low (and with current bank interest rates that means all the money) and then you can aggregate all your clients' money and put it into one account. The interest from that aggregated account generally gets paid to the state bar association, which of course is generally run by lawyers.

Seriously, usually the interest is turned over to legal aid organizations who give it to poor people so they can then give it to other lawyers. I really don't see anything wrong with the system, do you?

In one particularly interesting year lawyers turned over nearly \$500,000 to the bar. One lawyer was responsible for over half that amount. That means some lawyer's client left a big pile of money with their lawyer. After I'm done here maybe you should all check your trust accounts. I will only take 25% of whatever you have as a finder's fee.

No incompetence. ORPC 1.1. Incompetence must be really bad before the rule is invoked. When someone would ask me for an example I would say that a lawyer who did nothing for 20 years other than divorce cases who one day decided to take on a complex, commercial litigation case without knowing the first thing about complex, commercial litigation cases was probably incompetent. Otherwise if you passed the bar exam and had a pulse, you are probably competent. The pulse part may not even matter as there are several examples of lawyers continuing to practice even after they were dead.

Seriously though, most claims of incompetence are actually malpractice issues. Everyone makes mistakes. If you make a mistake your client can sue for malpractice. We did have one lawyer who pursued a trade mark infringement claim on behalf of his client, but forgot to hire an expert engineer to testify that his client's product was essentially the same as the one being sold by the other party. Generally speaking juries don't believe lawyers are competent to testify about engineering issues, too much math. Neither did we- that lawyer was found to have been incompetent and to have committed malpractice.

No conflicts of interest. You cannot represent one client who is fighting with one of your other clients. Sounds simple, right? Unfortunately, it is not, mostly because the rule was written by lawyers. Here is what it actually says:

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 current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;**
- (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; or**
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.**

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and**
- (4) each affected client gives informed consent, confirmed in writing.**

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 and transmitted 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; and**

(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.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.

(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, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close familial relationship.

(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.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information related to the representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of
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(3) information related to the representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement;

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith;

(3) enter into any agreement with a client regarding arbitration of malpractice claims without informed consent, in a writing signed by the client; or

(4) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or to pursue any complaint before the Oregon State Bar.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and**
- (2) contract with a client for a reasonable contingent fee in a civil case.**

(j) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the client-lawyer relationship commenced; or have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation. For purposes of this rule:

(1) "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party; and

(2) "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless each affected client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) For purposes of this rule, matters are "substantially related" if (1) the lawyer's representation of the current client will injure or damage the former client in connection with the same transaction or legal dispute in which the lawyer previously represented the former client; or (2) there is a substantial risk that confidential factual information as would normally have been

obtained in the prior representation of the former client would materially advance the current client's position in the subsequent matter.

Actually, there's more. But, you get the idea. Here is the best way to figure out if you have a conflict of interest.

Here is my favorite complaint that involved both allegations of incompetence and conflicts of interest. I have changed only the names to protect the guilty. Stepson (let's call him Hap as in hapless) wrote to complain that his step brothers (let's call them Will and John from the movie Step Brothers) were interfering with his attempt to hire a lawyer to help dear old stepmom (let's call her Lizzy because she lived in an assisted care facility) re-write her will. Hap's allegation was that the lawyer Will and John hired for Lizzy were not competent because the lawyer (let's call her Lacey as in straight-laced) was thwarting his efforts to write Will and John out of Lizzy's will and write himself in instead. He reported that the step brothers never visited Lizzy in her assisted living facility and that he visited her all the time. He claimed that made Lacey incompetent for not knowing his actual client, Lizzy, wanted the change. He also alleged that Lacey had a conflict of interest because she actually represented Will and John, not Lizzy.

After letting Lacey tell her version of the facts, which were quite different from Hap's, we followed up with the assisted care facility. Turns out their records showed Will and John visited Lizzy regularly and that Hap had visited only one time. That one time was when he took her for an outing- directly to his long-time criminal defense lawyer's office. Hap's criminal defense lawyer made the very bad decision to change Lizzy's will to exclude Will and John and to make Hap the sole beneficiary. We also spoke to the lawyer who drafted Lizzy's original will a decade earlier who confirmed that Lizzy was in complete possession of all her faculties when she decided to give her entire estate to Will and John and that she specifically intended to exclude Hap.

Needless to say we dismissed Hap's complaints. In what was a big surprise to Hap and his lawyer we then opened an investigation into Hap's lawyer's conduct. The issue here was that Hap's lawyer barely knew Lizzy, was a criminal defense lawyer with no estate planning experience and professed to represent Lizzy when in fact he was just doing Hap's bidding. That creates both a competency concern (Oregon RPC 1.1) and a conflict of interest concern (Oregon RPC 1.7), but not for Lacey who took the time to meet Lizzy without any relatives around and determined that Lizzy could make her up her own damn mind about who she wanted to give her property to- that being Will and John.

Next Issue.

I assume you noticed that the rules prohibit having sex with a current client. It doesn't prohibit you from having sex with a former client. It doesn't prohibit you having sex with a client if you had sex with the client before they became a client. The only way you can violate this rule is if you get a client that you have never had sex with previously and then you have sex while they are a client. Seems like a pretty easy rule to comply with.

But, apparently not. We disciplined several lawyers every year for not being able to follow this very simple rule. The worst example of these conflicts are the lawyers who represent clients in prison, profess to fall in love with them and then marry their clients while they are still in prison. The good news is that unless the prison has very lax security or a very liberal definition of visit, then the lawyers could not violate the sex with client rule as long as the client was still in prison. We could never quite figure out why the lawyers would marry their incarcerated clients.

Then there was the lawyer who was caught at the Oregon-Nevada state line who had her 97 year old client with her and was trying to make it to Vegas in order to marry him. The lawyer was in her 40's. The client had very little cognitive function but a lot of money. She claimed it was true love and that her 97 year old client had professed his undying love and desire to marry her. It was a simple matter for the bar to disbar her. As I noted, they were caught at the state line after the lawyer's car broke down and another motorist noticed her pushing her client down the road in his wheel chair. The lawyer was charged with criminal elder abuse, kidnapping and failing to stay in her lane while operating a non-motorized vehicle on a public highway (OK, I made up the last part).

You may not disclose your clients' confidences or secrets. ORPC 1.6 and 1.9.

Unless it is necessary to write a best-selling book and make a lot of money. There are lots of best sellers written by lawyers and former lawyers about their most interesting cases.

Lawyers may not withdraw from representing a client unless the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. ORPC 1.16. Translation- your client doesn't pay your bill. You know the special code you should use should you need the court's permission to withdraw? Use the following line in your supporting affidavit: "Irreconcilable differences" (loosely translated from the Latin *irratatis clientarium*). Translation- the client is not paying me.

In representing a client or the lawyer's own interests, a lawyer shall not knowingly bring or defend a proceeding, assert a position therein, delay a trial or take other action on behalf of a client, unless there is a basis in law and fact for doing so that is not frivolous. ORPC 3.1. Translation- if you can make an argument with a straight face and the judge does not bust out laughing, it is OK.

Hey, I'm not kidding here. I did some *pro tem* work every now and then and was a municipal court judge. One day a middle aged woman came in with an older fellow. The older fellow was the woman's father and a lawyer. He explained that he was representing his daughter for a traffic ticket. The court room was full of other defendants, a bunch of other lawyers and some sheriff deputies. Anyway, the older fellow started by making a motion to dismiss the case on United States Constitutional grounds. His argument went something like this. The 3rd Amendment guarantees freedom of religion and the traffic rule his daughter was accused of violating infringed on her objection to traffic rules generally because of her religion. OK, I'm embellishing the story a bit, but that was essentially the argument.

This put me in a very difficult position. I didn't want to lose control of the courtroom, but it was all I could do not to join in the laughter coming from all the other lawyers in the back. The point is that this lawyer's position was probably frivolous and he could have been sanctioned for violating the rule. I handled it by putting my hand in front of my face until I stopped giggling and then denied his motion.

Which reminds me about another incident in the same courtroom. Only this time I was the lawyer representing my wife (probably that was a conflict of interest, but I digress, and the statute of limitations has probably passed) for a traffic violation. She had been pulled over for an expired registration. I was horrified because I was responsible in our family for making sure our cars were properly registered and insured and I could not understand how the registration had expired. After careful review I figured out that the registration issued by the State was for a date that could not exist (March 00, 2000) (must have had something to do with the Y2K thing). So, I went with my wife and our infant son (I was trying to play the sympathy and cuteness cards) to the hearing. When my wife's name was called I went up and made my very passionate plea for her innocence based on an impossible expiration date. The judge looked at the paperwork, probably without really listening to my impassioned speech, and dismissed the case. My legal representation was obviously brilliant. The funny thing is that as I made my way down the courtroom aisle with other defendants lined up on both sides, one of them tugged at my suit jacket and asked me to represent them.

One of our most memorable complainants was the rabbit hoarder. Most people are familiar with the concept of hoarding. Some people hoard cats or dogs and others hoard newspapers, something that is becoming harder to do as not many newspapers are still in business. This person hoarded rabbits. There were hundreds of live ones and every time the hoarder was found out there was a prosecution, which just caused the hoarder to move to a different county and start over again. More disturbing was that if one of the rabbits died it would end up in the hoarder's freezer. Freezers full of rabbits.

The hoarder was a real pain for prosecutors because the hoarder would always try to get positive public opinion by claiming to be a compassionate animal lover who was saving the rabbits. Generally prosecutors would just ignore the hoarding until the situation became too extreme to ignore. Also, it turns out that in Oregon there is a VERY dedicated and energetic group of rabbit enthusiast who put pressure on the DA's to prosecute.

Anyway, once the hoarder realized the public opinion strategy was not working the hoarder started filing complaints about the prosecutors. There is a special rule that says prosecutors may not charge crimes that they know they cannot prove. Oregon RPC 3.8. The flaw with these complaints about the prosecutors was that they were 100% successful in prosecuting the hoarder for animal abuse, which is pretty good evidence that the prosecutors were not pursuing charges they could not prove.

The hoarder then resorted to filing complaints about the defense lawyers. Because the hoarder was poor, spending money on rabbit chow, there was always a court appointed lawyer involved. I can imagine the public defender's office drawing straws to see who was up next.

The hoarder's favorite strategy was to complain that the free defense lawyer was making false statements to the prosecutors or the judges. Oregon RPC 3.3 says a lawyer shall not knowingly make a false statement of fact or law to a tribunal.

The key word here is knowingly. If the lawyer does not know that the statement is false then it is ok to make it. The hoarder would lie to the free lawyer about some important fact and when the lawyer repeated it to the prosecutor or the court the hoarder would correct the statement and complain that it was the lawyer who was lying. I imagine you can all see the flaw in that logic and why the complaints were dismissed.

The last I heard of the hoarder was that she there were complaints about the judges involved in the cases. Fortunately in Oregon we did not have jurisdiction over judge complaints or that would have really kept us hopping.

The most important thing I learned from the hoarder experience is that the humane society does not just deal with dogs and cats. There is a fierce contingent of rabbit sympathizers looking out for rabbit's best interests. This group of business savvy, retired activists is a force to be reckoned with. They followed the antics of this particular hoarder very closely and made sure that we recognized that the complaints about the prosecutors were frivolous. I'm glad I no longer have a rabbit's foot for good luck.

Oregon RPC 3.4 requires lawyers to be fair to the opposing lawyer and opposing client.

Sorry. Seriously, you cannot be sneaky.

The rules actually prohibit you from obstructing the other side's access to evidence, from falsifying evidence, from altering evidence, from helping a client testify falsely, or from offering money to a witness in exchange for favorable testimony. Refer to Oregon RPC 3.4.

Lawyers are not supposed to violate the rules of the court, make frivolous requests from the opposing side, fail to respond to reasonable requests from the opposing side, refer to irrelevant facts, suggest a client or witness hide out somewhere, or threaten to bring criminal charges in order to gain an advantage.

Again, seriously. Oregon RPC 3.1 and 3.4.

You are prohibited from trying to improperly influence judges. You cannot bribe judges or talk to them about current cases outside the courtroom. Can you take judges to lunch? What happens if you are married to a judge? I don't honestly know the answer to some of these questions, but I suppose there is great fodder here for stand-up comics and sitcoms.

There are extra special rules for prosecutors. Any prosecutors in the room? They are not supposed to pursue charges they know are not supported by probable cause. What's probable cause, you ask. Probable cause is when there is a reasonable basis for believing that a crime may have been committed or when evidence of the crime is present in the place to be searched. The U.S. Supreme Court says while probable cause is a concept that is a "practical, non-technical" standard that calls upon the "factual and practical considerations of everyday life on which

reasonable and prudent men [...] act". Courts often adopt a broader, more flexible view of probable cause when the alleged offenses are serious.

There is a concept we lawyers are familiar with- weasel words. It means words that have a very wide range of possible meanings. Wiggle room, imprecise, vague, and hard to define. How many weasel words are there to define probable cause? Let's see- reasonable. Believing. May. Come on- even the Supreme Court recognizes there is no hard and fast definition. The Court calls for an approach that relies on a factual and practical basis like what a prudent person would use. It adopts a broad and flexible view of probable cause. I mean, really, could any regulatory agency discipline a prosecutor with this kind of standard?

Well, actually, yes. Here are the examples:

1. The prosecutor who was pursuing charges against a man for the sole purpose of getting that man to drop a civil complaint he was pursuing against the officers who beat him senseless when they arrested him.
2. The prosecutor who brought charges against the husband of the woman he was having an affair with.
3. The prosecutor who pursued charges against the child who harassed another child with name calling. OK, even with the ever expanding universe of political correctness and anti-bullying sentiment, there are some things better left to parents and not the courts.
4. Then there was the prosecutor who thought it would be cool to do his own detective work by going to the crime scene himself (never a good idea in the first place). What he found actually tended to show the defendant was innocent. So, instead of dropping the charges the prosecutor hid the evidence in order to keep his charges alive. He was disbarred.

You are prohibited from communicating with people you know are represented by their own lawyer. Refer to Oregon RPC 4.2. There was the case of the lawyer who knowingly called the represented opposing client. When the lawyer was asked why he communicated with a person he knew was represented he said that he was so excited by the information that he forgot the guy had his own lawyer. The lawyer was disciplined.

There is a rule that governs how you are supposed to deal with people who don't have their own lawyers. Refer to Oregon RPC 4.3. You have to make it clear that you are working for the benefit of their own client, not the unrepresented person. You may not give that person legal advice, except to tell that person they should consult with a lawyer. Sounds to me like a rule designed to get lawyers more work.

Another rule requires you to report misconduct by other lawyers. Let me read the rule:

Oregon RPC 8.3 says A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the bar.

Remember my earlier comments about weasel words? How about "knows" and "has committed" and "substantial question" and "honesty, trustworthiness or fitness". Pretty weasel-y.

And then this. A lawyer may not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects or engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

More weasel words like: may, reflect other respects, fitness.

Itsy bitsy crimes like most misdemeanors are okay unless they involve moral turpitude. In all my years investigating what moral turpitude means I never found a clear explanation. I suppose like the famous Supreme Court opinion defining pornography, you'll know it when you see it.

OK, what do people actually complain about? Pretty much everything from the quality of your services to your choice in ties. Here are some actual quotes from complaints my office received.

-I would like to submit a formal complaint about my attorney on below charges:

Discrimination due to my senseless knowledge of the law and my nervous, fidgety personality.

-I filed in California for disillusion of marriage.

Being disillusioned with your marriage is probably a good reason for getting divorced, but not such a good reason to file a complaint about your lawyer.

-My lawyer provided me with excellent legal misrepresentation in a very smart way.

I'm not sure if this is a backhanded compliment or forehanded criticism.

-I am writing this exposition in accordance with an expletive and explicit explication based on a malapropas incident.

I don't know what this means, but I like the alliteration.

-I am currently in jail on several charges of alleged arson. My character has been totally deflamated.

-I wrote my attorney a letter and told him I felt like I was being put on the back burner. He told me I was being put on the back burner.

The lawyer's response is not one we recommend.

-I told the judge that I was and am 100% positive that I'm not guilty and the crime would never happen again ever.

Well, that settles that.

-If you call my mother she will say that I'm not guilty and that prison is not the place for me.

You have to respect motherly love.

-Your bar members have broken the law over my head at least a dozen times.

-And a related complaint- My lawyer embarrassed and humiliated me by hitting me over the head with his legal pad.

And the lawyer's response- I admit that I hit my client over the head with my legal pad, but I warned him in advance that I was going to do it.

-I made no disturbance at all. The only sign that I was in a delusional state was probably my lack of any weapon and the fact that I wrote my demand letter in crayon.

Hard to argue with his logic.

-From an inmate: Look at my jail identification number: 666. See, they hate me.

-From another inmate: In August I turn in my prison number. Now, I beg you to please tell me what I can have in my possession. What length of knife blade, what stun device, what mace or pepper spray? PS- keep the drawing I made on the envelope as a free gift.

I suspect this fellow is back in jail. But, the drawing still adorns the wall in my former office.

-I was hysterical, naturally being a woman and all. . .

Look- I didn't write this, the complainant wrote it. Don't accuse me of being sexist. Sheesh.

-Perjury is a crime! Planting evidence is a crime! Bleach removes more than hair color!

It is a good strategy to mix helpful advice with bad news.

-I'm being held illegally in prison way beyond my expiration date.

-My lawyer made a comment to the judge. I asked her why she did that and she told me that she saw it in a movie.

Not a good explanation.

-From an inmate: As it is obvious I am a consumer of correctional services. Signed- Inmate #1471213.

Is there a customer service hotline for inmates?

-My lawyer told me that it was either her staff's fault or some other person's fault. The buck does not stop at her desk even though 3000 of my bucks did.

-The only time my attorney acted quickly was when he deposited my fee into his account

Complainants aren't the only ones who say odd things. Here are some remarks from lawyers.

-My client is willing to exchange the property on a weekend so long as it is not a weekend which falls on a full moon. In addition, Pisces and Aquarius have to be in alignment. My client will also require that an auger be present and will slaughter a lamb and read the liver. He will also observe

the flights of any birds over the sacrifice. If the auger gives his approval then we can exchange the property. Thank you for your cooperation.

I'm guessing this was a very contentious divorce case.

-My client's story is so full of holes that I could strain a shaken, not stirred martini through it and James Bond would be a customer for life.

-Actually, the last thing my client needs is a fair trial. What he needs is an unfair trial where the jury ignores the facts and the judge ignores the law. If my client does receive a fair trial he will be convicted on multiple charges.

Oh, and sometimes complainants are not too happy with the complaint system. Here are some examples:

-I believe a rookie meter maid with subpoena power could have done a better job considering my complaint.

-You can take your response and spread it on a garden to grow vegetables.

-Your investigation was premature and half witty.

At the time I thought I was quite witty.

-In the end of the state bar's ethics rules should be added "Just Kidding". It would save time and effort.

OK, so hopefully you know a little bit about lawyer ethics and maybe I even entertained you some. Seriously though, this stuff is important. I met hundreds of lawyers and nonlawyers who worked hard to keep lawyers honest and ethical. They took their jobs seriously. And for you this is also important. The regulatory agencies can take away your license to practice temporarily or permanently. They can suspend you and make you take remedial classes. The vast majority of lawyers I met or communicated with were decent, hardworking, good people trying to make a living and trying to help their clients.

In my experience in Oregon legitimate complaints were handled appropriately and lawyers were disciplined when they deserved it. Of course we made mistakes, but the system made accommodations for mistakes by having liberal appeal rights. Frivolous complaints were handled professionally, even when the complainant was rude or unreasonable. For Instance, even the fellow who wrote to me expressing his displeasure in this way was treated with respect. He wrote, "Your competence has not improved over the years. You did not accurately evaluate the charge against the lawyer at any time. I suggest whoever employed you should have analyzed your last name Morr-ill which means more sick. This behavior of yours is a sickness in this case and this state. I wouldn't be surprised that if the bar would drop its requirement of a law degree, I would pass the bar exam with higher scores than most bar employees."

It goes on, but you get the idea.

This letter went directly to the executive director of my agency who responded this way:

Dear Sir, I am satisfied that your complaints about the lawyer received a fair and appropriate review. While I fully understand your disagreement not only with the outcome of the criminal trial and our assessment of the lawyer's conduct, your opinions and beliefs do not constitute evidence. Sincerely.

Whether we got the complaint right or not is beside the point. The important point here is that unlike the complainant we did not make the matter personal.

If you have a concern about a lawyer, call the agency in your state that addresses these things. In Oregon a live person, often a lawyer when warranted, will discuss it with you. In every state there is an agency that handles lawyer complaints. Google lawyer ethics complaints for more information.

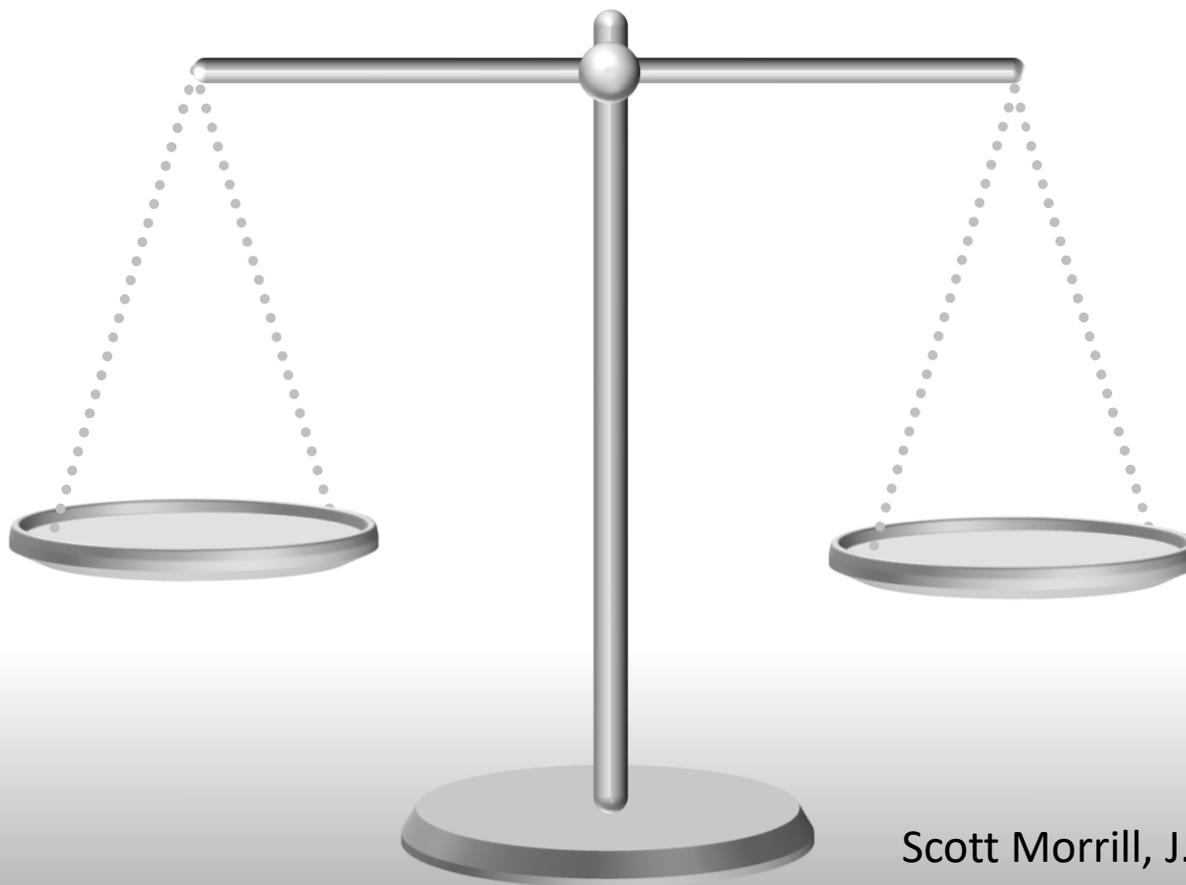
I will leave you with this: lawyers are known to use Latin from time to time. I already told you that *pro tem* is Latin for the judge needs a vacation. *Pro se* is Latin for representing yourself, or as we say this will be an easy win. But, my favorite Latin expression was one used by my boss at the Oregon State Bar. *Iipse dixit*, which means- because I said so. Very helpful when a judge asks what your authority is or if you are or think you are the boss.

FOR PRESENTATIONS IN OREGON:

Discuss impaired lawyer issues including SLAC, OAAP and OLAF. Suggest donations to OLAF if so inclined.

Thank you. I will be available to discuss any other questions or concerns you have. My hourly rate is \$300.

Lawyer Ethics

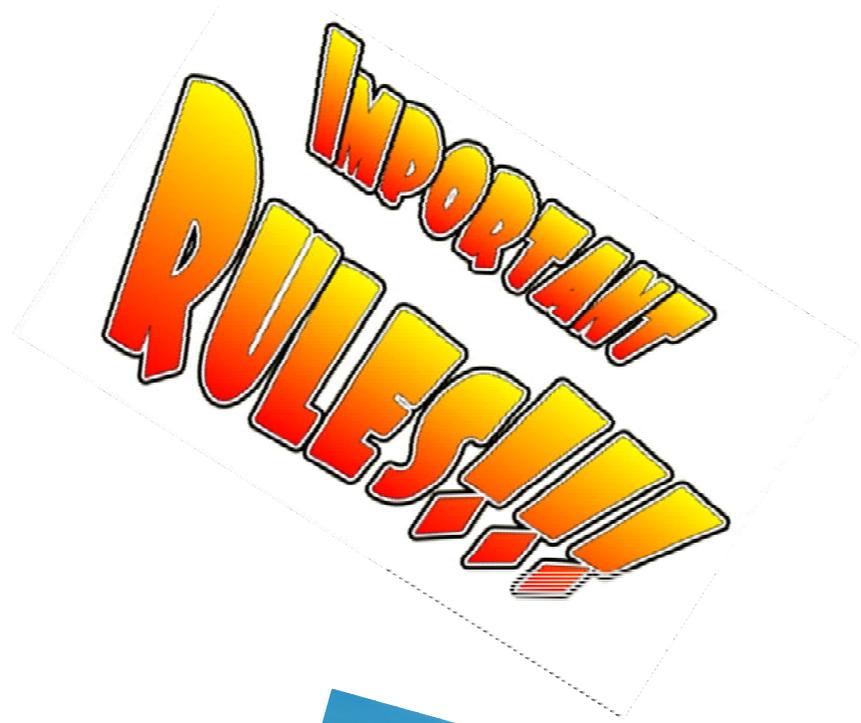
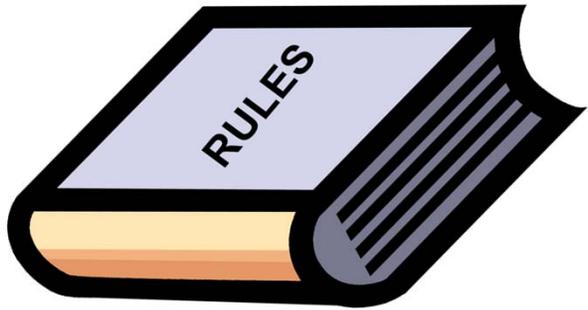


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scottamorrill@yahoo.com

TCP GBO SPI WE VBA SEET VRML TQM NDI
QoS DNS CGI API LDAP CERT SMTP
MM JIT Web TSP POP ISP SM
IIS DCOM HOP TC WWW DNA TPS GIS
ActiveX UML Y2K WPP SGML CSS QC WSE
DOT ONG RPC EUP IP CS DL V P CORBA
DM CBS NCC HTML DDE DTD XML USB
CM Java Jini COM PSP SE RM MFS Applet P
EC OLE RE DGT POP EJB PU CMM DOM IT C
ORB SQL ASP GUI IDL I M A P HTTPS ISO VM











Graphic Designer : Hussain Allam



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#1

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AMAZING!

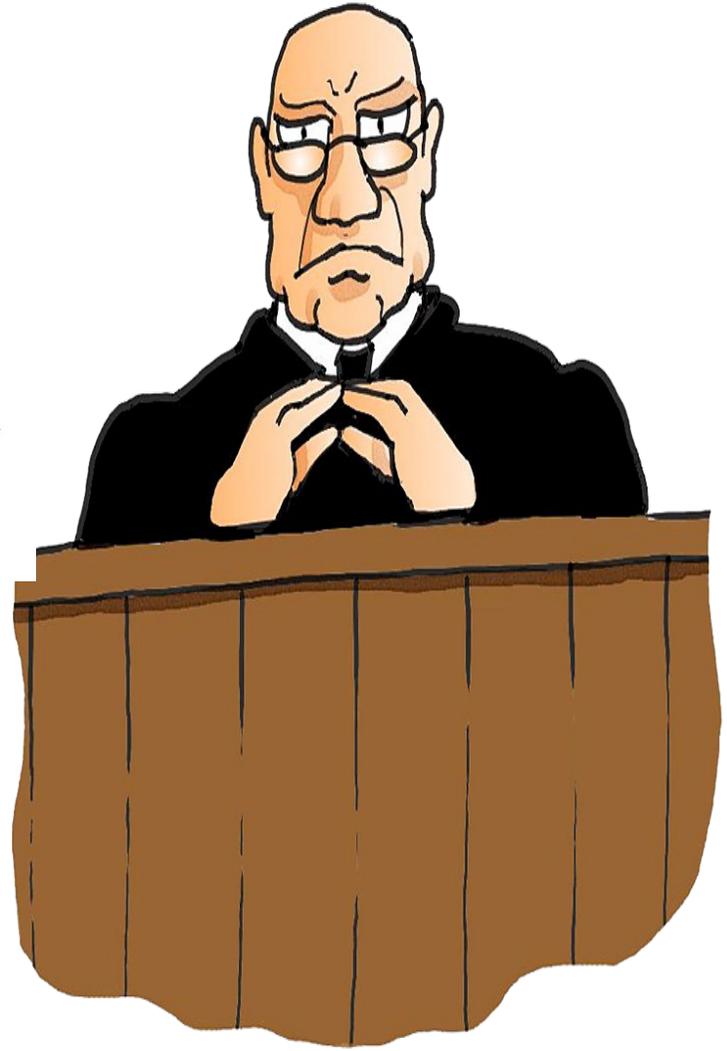










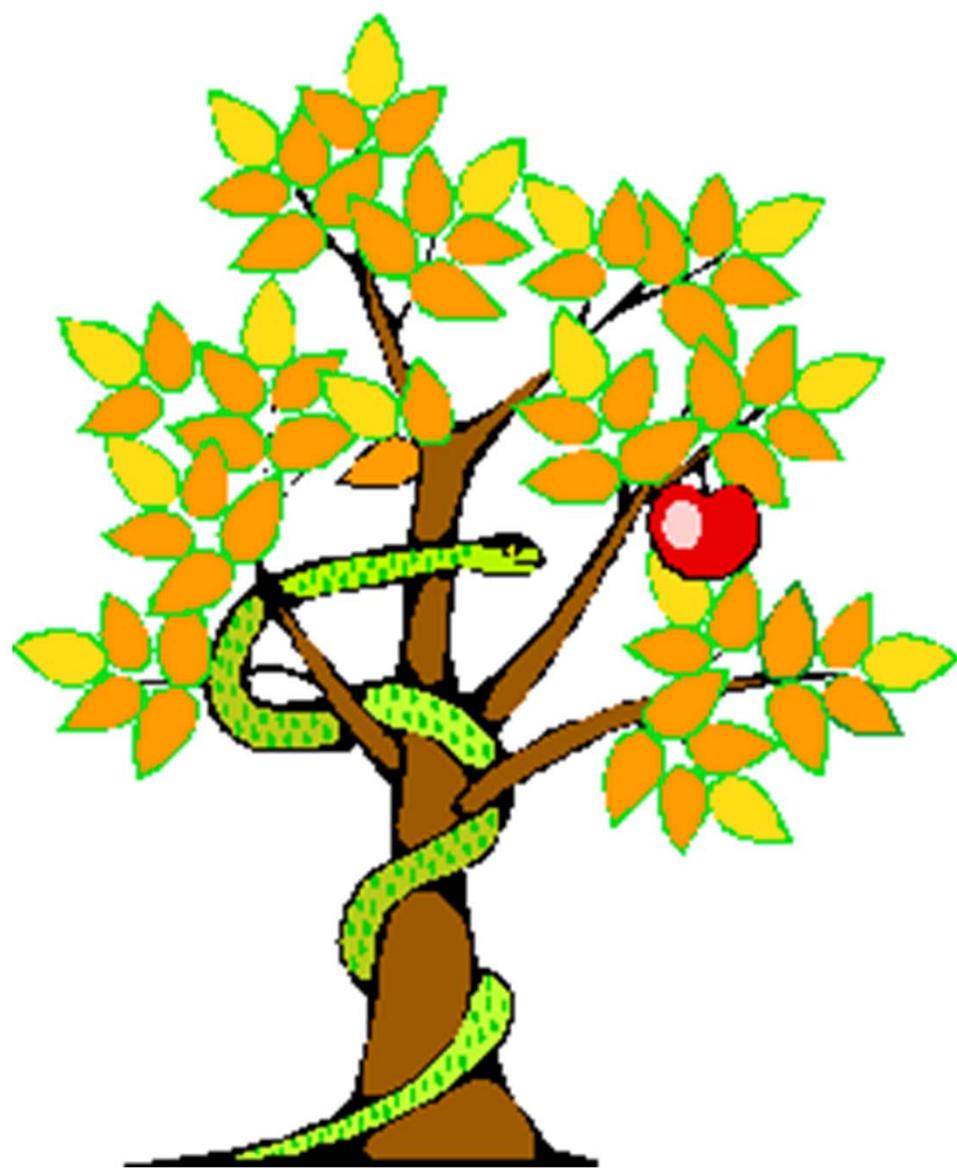














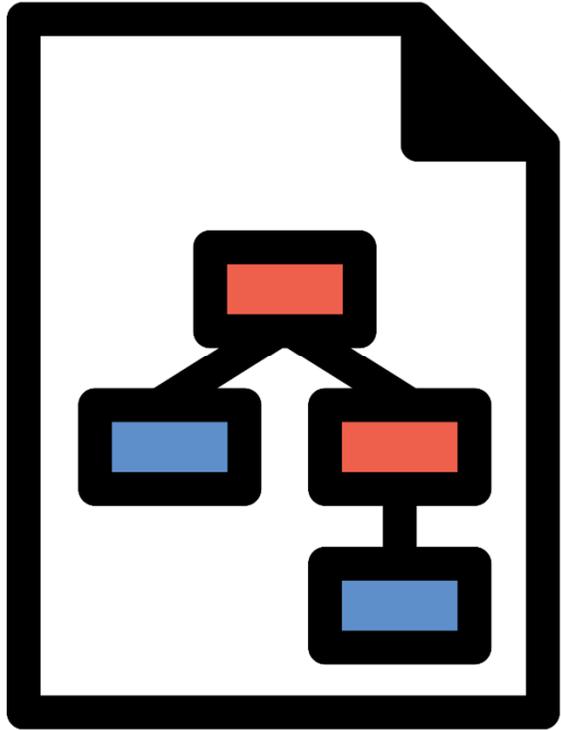
"I'm *not* being a tattle-tale! —
I'm being a reliable source!"

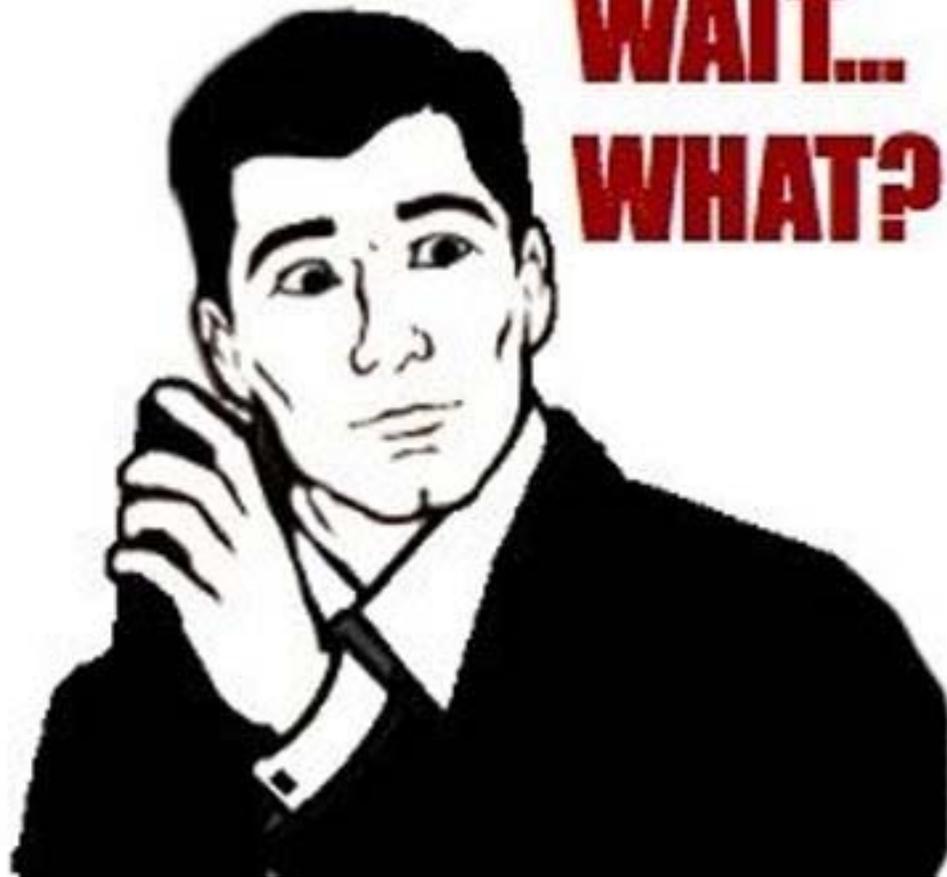
Truth



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Thank you.

Scott Morrill, J.D.
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A 2016 ABA/Hazeldon Betty Ford Foundation Study Found:

1. 20% of lawyers engaged in problematic alcohol use
2. 61% of lawyers suffered from anxiety
3. 45% of lawyers had symptoms of depression
4. 16% of lawyers experienced social anxiety
5. 12% of lawyers had ADD
6. 8% of lawyers had panic disorder

In Oregon there are services in place to help. They include:

1. OAAP a voluntary service through the PLF
2. SLAC a mandatory service imposed through the disciplinary system
3. Oregon Lawyer Assistance Foundation through OAAP
Financial support for treatment
POB 231600 Tigard, OR 97281-1600
503 684 7425