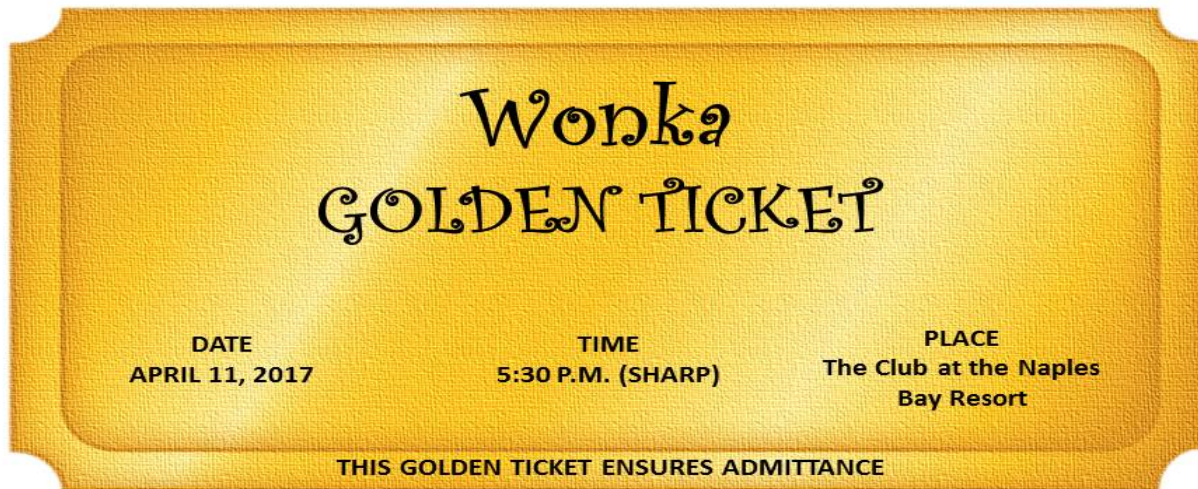


# The Michael R. N. McDonnell



APRIL 11, 2017



## WILLY WONKA AND THE CONFLICT FACTORY

### TEAM 6

Judge Brodie  
Tamara Nicola (co-captain)  
Anthony McClure (co-captain)  
Nathalie Nozile  
Jennifer DeVries  
Victor Bayata  
Ashley Cooper  
Ryan Tarnow  
Matt Goodwin  
Misbah Farid  
Jennifer Ruiz-Garay

## **Characters**

Announcer/Moderator- Tamara Nicola  
Wonka- Tony McClure  
Charlie - Ryan Tarnow  
Wilhelmina Gruntz- Judge Brodie  
Augustus Gloop- Victor Bayasta  
Veruca Salt- Jennifer DeVries  
Danielle "Danny" Vinegar- Ashley Cooper  
Associate at Salt & Vinegar- Misbah Farid  
TV reporter- Jennifer Garay  
Violet Beauregarde - Nathalie Nozile  
Mike Teavee - Matt Goodwin  
Oompa Loompas • Tamara's daughter and friends  
roped into it

## **Plot**

Charlie our hero is a senior associate at a firm in town and gets one of five "golden tickets" inviting him to tour the mysterious Wonka chocolate factory and bid on handling Wonka's legal work.

## **Ethics Points**

Conflicts with existing clients  
Conflicts with former clients  
Conflicts between a client and the interests of the Firm or Firm Attorney  
Conflicts representing multiple clients in a single matter

**Scene One:** In law offices of Gloop, Glop and and Gruntz. LLP

**Scene Two:** At the Law offices of Salt and Vinegar

**Scene Three:** Violet Beauregarde's law offices

**Scene Four:** At the Wonka factory

**Scene Five:** Charlie after the wonkavatorRide

## Rule 4-1.7. Conflict of Interest; Current Clients

**(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 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.

**(b) Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (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 involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(c) Explanation to Clients.** When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

**(d) Lawyers Related by Blood, Adoption, or Marriage.** A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(e) Representation of Insureds.** Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

## **SOME COMMENTS TO THE RULE:**

Risks in criminal cases: The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than 1 co-defendant.

Common representation with similar interests: Common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivisions (b) and (c) are met.

Antagonistic interests: A lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other.

It goes without saying that a lawyer cannot represent opposing parties in litigation

## **RELEVANT CASE LAW**

***Fla. Bar v. Ticktin*, 2008 Fla. LEXIS 2525, 34 Fla. L. Weekly S 329 (Fla. May 21 2008)**

Attorney violated former R. Regulating Fla. Bar 4-1.7(a) through (c) by agreeing to assume a client's executive positions in the client's corporations, because:

- (1) simultaneously representing the client and the corporations was a conflict of interest;
- (2) the attorney's self-interest and a corporation's interests limited the attorney's independent judgment, and the attorney did not prevent the client's interests in the corporations from being extinguished; and
- (3) the attorney performed no required consultation.

***Fla. Bar v. St. Louis*, 967 So. 2d 108, 2007 Fla. LEXIS 762, 32 Fla. L. Weekly S 191 (Fla. 2007)**

Attorney violated R. Regulating Fla. Bar 4-1.7(a) where the attorney agreed to represent an opposing corporation in a mass tort suit, forming a lawyer-client relationship with the corporation while still representing the attorney's clients, and subsequently pressured some of his clients to accept the corporation's settlement offer.

***Wagner, Vaughan, McLaughlin & Brennan, P.A. v. Kennedy Law Group*, 64 So. 3d 1187 (Fla. 2011)**

Where there is no commonality of interest among the survivors, the personal representative's attorney cannot represent all of the survivors without their consent.

## **Rule 4-1.8. Conflict of Interest; Prohibited and Other Transactions**

**(a) Business Transactions With or Acquiring Interest Adverse to Client.** 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, except a lien granted by law to secure a lawyer's fee or expenses, 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 to the client 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) Using Information to Disadvantage of Client.** A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

**(c) Gifts to Lawyer or Lawyer's Family.** 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 subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

**(d) Acquiring Literary or Media Rights.** 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) Financial Assistance to Client.** 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) Compensation by Third Party.** 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 relating to representation of a client is protected as required by rule 4-1.6

**(g) Settlement of Claims for Multiple Clients.** A lawyer who represents 2 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 aggregated 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) Limiting Liability for Malpractice.** A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer shall not settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

**(i) Acquiring Proprietary Interest in Cause of Action.** 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 granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee.

**(j) Representation of Insureds.** When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date on which the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer or affect the extradisciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

## **SOME COMMENTS TO RULE 4-1.8**

### **Aggregate settlements**

Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer.

Under rule 4-1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent.

In addition, rule 4-1.2(a) protects each client's right to have the final say in deciding whether to accept or

reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case.

before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted.

Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

## **RELEVANT CASE LAW:**

### **1. Conflicts involving personal interest of lawyer**

#### ***The Florida Bar v. Kane, 202 So.3d 11 (2016)***

Settlement between insurer and attorneys bringing personal injury protection (PIP) claims against insurer was a conflict of interest and an improper aggregate settlement, in violation of bar rules; settlement was an aggregate settlement in that it encompassed both PIP claims and bad faith claims against insurer, as well as attorney fees and costs, and settlement left it entirely to the PIP attorneys to determine how much each client would receive and how much money would be taken as attorney fees.

#### ***The Florida Bar v. Swann, 116 So.3d 1225 (2013)***

Independent professional judgment of attorney, who served as personal representative of his father's estate, was materially limited by his own personal interests, in violation of rule governing conflicts of interest; attorney provided two explanations for use of money from estate, i.e., that money he took from estate was a loan from his mother, and that he invested money on estate's behalf, which supported conclusion that attorney's independent professional judgment was materially limited by his own personal interests, in that attorney borrowed a large sum of money and did not act to protect estate by reducing loan terms to writing, and all investment properties purchased by attorney with estate money were in either his own name or in name of corporations he controlled.

#### ***The Florida Bar v. Adorno, 60 So.3d 1016 (2011)***

Attorney violated bar rule prohibiting a lawyer from representing a client if there is a substantial risk that the representation of one or more clients will be materially limited by a personal interest of the lawyer, where attorney negotiated a \$7 settlement on behalf of seven named plaintiffs that included a \$2 million fee for attorney's law firm, while abandoning thousands of putative class members, in action against city to recover allegedly improper assessments.

#### ***The Florida Bar v. Roberto, 59 So.3d 1101 (2011)***

Loyalty may be impaired, for purposes of professional conduct rule that a lawyer shall not represent a client if there is a substantial risk the representation will be "materially limited" by the lawyer's own

personal interests, when a lawyer cannot consider, recommend, or carry out an appropriate course of action on behalf of his or her client because of the lawyer's other interests.



## **Rule 4-1.9. Conflict of Interest; Former Client**

A lawyer who has formerly represented a client in a matter must not afterwards:

(a) 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 the former client gives informed consent;

(b) 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

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

### **RELEVANT CASE LAW**

#### ***The Florida Bar v. David Wilson, III, 714 So.2d 381 (Fla.1998)***

Attorney's representation of a wife in dissolution proceeding was a conflict of interest and in violation of disciplinary rules, where attorney had previously represented both the husband and wife in a declaratory judgment action against Department of Lottery.

#### ***Phillip Morris USA Inc. v. Ada Caro, 207 So. 3d 954 (Fla. 4<sup>th</sup> DCA 2016)***

Personal representative of smoker's estate brought products liability action against tobacco company. Company moved to disqualify personal representative's attorney and law firm at which attorney worked, asserting that attorney had previously represented company in similar litigation while working at another law firm. The District Court of Appeal held that: 1) attorney's previous work representing company was substantially related to issues attorney worked on in current action against company, so disqualification was warranted, and; 2) attorney acquired confidential information in previous representation that was material to current action, so disqualification of law firm was warranted.

#### ***Paul Steinberg v. Robyn and Robert Marlin, 201 So.3d 129 (Fla. 3d DCA 2016)***

Attorney's counsel was properly disqualified in consolidated lawsuits between attorney and law firm regarding assignment of interests in firm and capital contributions, where counsel had attorney-client relationship with other partners at firm, and counsel had represented one of the partners and firm in a substantially related matter.

#### ***ATC Logistics Corporation v. Latascha Jackson, et. al., 168 So.3d 292 (Fla. 1<sup>st</sup> DCA 2015).***

Judgment creditor's associate attorney acquired material, confidential information during her representation of creditor in proceedings below and in her drafting of creditor's motion for summary judgment, which was the subject of the appeal, and therefore law firm attorney had since joined was disqualified from representing judgment debtor in appeal, even though arguments made in creditor's favor were public once the summary judgment motion was filed, where attorney actually discussed legal strategy and relative strengths and weaknesses of creditor's case with partner representing creditor.

***Daniel Rombola and Maria Hernandez v. Michelle Botchey, 149 So. 3d 1138 (Fla. 1<sup>st</sup> DCA 2014)***

After attorney switched sides without client's consent in personal injury suit, client moved to disqualify attorney from any further representation. The District Court of Appeal held that: 1) trial court departed from essential requirements of law when it limited disqualification of attorney, and; 2) disclosure or misuse of confidential information resulting from order presented ongoing and unacceptable risk of harm to client.

***The Florida Bar v. William Sumner Scott, 39 So. 3d 309, (Fla. 2010)***

The Supreme Court held that: 1) attorney represented client's business partner in attempt to have frozen funds released; 2) attorney violated rules of professional conduct regarding conflicts of interest by representing multiple clients who all had claims to the same limited funds; 3) attorney violated rules of professional conduct prohibiting lawyer from making false statements or engaging in dishonesty by making misrepresentations to business partner of client; and 4) three-year suspension was warranted.