

LINCOLN INN CLE SKIT, October 27, 2015

Dealing With Difficult Clients, and Compensation Issues

Characters:

Rhea Amy Borman
Julie Ann Tami Augen Rhodes

John Harrison (Rothington Firm) JD Small
James M. McGill Brad Gies

Scene 1 (Courtroom Scene)

Kim Wexler Janice Rustin
Judge Alan Campbell Gary Brookmyer
Bailiff Anne Desormier-Cartwright
Chuck McGill Sean Ingram

Scene 2 (Kettleman's Tent)

Betsy Kettleman Denise Mutamba
Craig Kettleman David Klein
Warren Kettleman David Kim
Jo Jo Kettleman Karla Martinez

Scene 3 (Jail Scene)

Nacho Guillermo Flores, Jr.
Guard #1 Tiffany Mauer
Guard #2 Jennifer Miller-Morse

Greeter/Candy Rachel Rogozinski Hyman
Greeter/Candy/Tuba Lisa P. Glass
Power Point/Guitar/Narrator Helene Hvizd
Lights/Special Effects Kate Watson

Props/Candy/Courtroom/etc.! Judge Perez

[STAGE: 5 areas:

1. Overstuffed chairs for Rhea's apartment are in front of the jury box facing the opposite wall.
2. A table and 2 chairs for initial interview scene and scene 3 in the jail, are set-up close to the opposite wall near the pupilage groups.
3. The projector screen is in front of the Bailiff's area of the bench.
4. The two podiums are facing each other in the middle of the bench, and slightly turned toward the bench
5. When the Kettlemans arrive on stage, they bring the pop-up tent, two folding chairs, and the faux campfire, which is placed on the ground between the chairs]

[*Power Point Lincoln Inn Presents Better Call Saul]

INTRO

NARRATOR: The Craig S. Barnard Chapter of the American Inns of Court, Lincoln Inn Pupilage Group Proudly Presents, *Better Call Saul*, Difficult Clients and Compensation Issues

[*Power Point MPRE. *Knocking sound - 8 knocks]

[Julie Ann is standing near entrance to the jury room, between the jury box and the bench, and knocks on an imaginary door.]

RHEA: [Opening door and letting Julie Ann into apartment] Hi Julie Ann, how are you?

JULIE ANN: [Entering and heading for couch] Hi Rhea, I'd be better if the MPRE wasn't in 2 days. [Julie Ann taking selfie then posting on Instagram] #Studying for the MPRE. Where's Kerry? I thought she was studying with us.

RHEA: She has an Inns of Court meeting tonight. She'll be back in an hour.

JULIE ANN: [Taking selfie then posting] #Waiting on Kerry. I hope she finished summarizing the chapters on dealing with difficult clients and compensation issues. I didn't read those chapters.

RHEA: Me either. Want to watch an episode of our favorite TV show while we wait for Kerry? We can test how well we spot difficult clients and compensation issues.

JULIE ANN: I LOVE that show! [*Taking selfie then posting*] #Better Call Saul
#my idol

RHEA: [*Holding up and pressing remote to turn on TV*]

[**Powerpoint Better Call Saul billboard. PLAY sound*]

[*Guitar and tuba play opening riff of Better Call Saul – Jim and John take their places sitting across from each other at the table opposite the jury box*]

SCENE 1

[*When music stops*]

JOHN: Mr. McGill,

JIM: Please call me Jim. After this interview, when your firm hires me to assist with the Sandpiper Crossing RICO case, we'll be colleagues!

JOHN: Okay . . . Jim, I have the names of your two references, a Betsy Kettleman and a Taco . . . er, I mean Nacho Varga, correct?

JIM: Yes.

JOHN: I will contact Ms. Kettleman and Mr. Nacho after our interview. Now let's see, you're licensed to practice law in New Mexico, correct?

JIM: That's right, licensed and ready for action in the Land of Enchantment.

JOHN: Okay. Are you barred in any other State?

JIM: Barred from a state?! Nothing that exciting. Maybe from a couple of bars in THIS State. Just kidding. I took only the New Mexico bar exam. The third time was a charm!

[*JOHN looks skeptical/horrified.*]

JOHN: And you've always practiced solo?

JIM: That's right! Until now, I haven't been made an offer I couldn't refuse. [*Jim Winks*]

JOHN: Okay, well, along those lines, have you ever been reprimanded or disqualified from representing a client for any reason?

JIM: Do arrests count? [*Jim laughs*] Just kiddin', boy you're a hard nut to crack. I've never been disqualified from representation, though "the man" [*finger quotes in the air*] sure tried. And when I say "the man" [*finger quotes*] I mean a woman who is my ex-best friend and who used to work with me at HHM.

[*FLASH BACK MUSIC PLAYS – *Kim walks to podium. Bailiff walks to spot between jury box and bench*]

[**Power Point Second Judicial District Court of New Mexico*]

JIM: [*Enters area near podiums, faces audience and does "IT'S SHOWTIME" gesture with hands.*] IT'S SHOWTIME! [*Moves to behind his podium*]

KIM: Hello, Jim.

JIM: Oh Hello, Kim, I see we're still cordial. Thanks for "inviting" me here to be disqualified from the case. Such a pal. The first thing you do when you escape HHM's clutches is try to disqualify me from representing my own brother. Shouldn't YOU be disqualified since you just recently terminated your employment with Chuck's law firm?

KIM: You know it's not my call, Jim.

[**Power Point knocking sound*]

BAILIFF: All Rise

[*Lisa Plays Oompa Loompa song on Tuba*]

[*Judge enters from jury room, Bailiff escorts Judge from the jury room, toward the Inns members, then across the courtroom, in front of the projector screen, and turns back to head to the bench where the judge walks up to take his seat. With perfect timing – Judge is sitting down as Oompa Loompa song is ending*]

BAILIFF: [*Immediately after judge is seated*] The Second Judicial District Court of New Mexico is now in session. The Honorable Alan Campbell presiding.

JUDGE: Good Morning everyone. The first case on the docket, Chuck McGill v. Public Service Company of New Mexico, PNM. A suit against the electric company? Who hasn't wanted to sue them? This should be good. Please state your names for the record.

JIM: Jim McGill representing Chuck McGill.

KIM: Kim Wexler representing PNM.

JUDGE: And, why are we here today?

JIM: Your Honor, if I may, my client would very much like to be here for this hearing.

JUDGE: Of course! I know Chuck. He's one of the best! Where is he?

JIM: Well, your Honor, he is down the hall in a smaller room?

JUDGE: What "smaller room?"

JIM: The janitor's closet. [*Judge rolls his eyes*] Hear me out Judge. As you know, Chuck is suing PNM for damages he suffered because PNM willfully and wantonly exposed him to second-hand electricity. My brother is now so sensitive to electricity, that he requires a very specific environment or he suffers great pain.

JUDGE: What specifically are you asking?

JIM: Well, we'd ask that the lights be turned off in the courtroom, your Honor, and that everyone in the courtroom turn off his or her cell phone.

JUDGE: You can't be serious!

JIM: Serious as a dust storm in the dessert! Haha. Seriously, your Honor, my brother has a disability which was caused by PNM, and he also has a right to be present at this very important hearing. [*Judge groans*]

KIM: Your Honor, if I may, we are here on my motion to disqualify Mr. McGill as his brother's counsel . . .

JUDGE: [*Cutting off Kim*] Counselor, do you have any objection to Mr. McGill's unorthodox request?

KIM: No your Honor! I think it will underscore my point.

JUDGE: Well, Chuck is one of the best litigators I know. Out of respect for him, I will grant your unusual request. Bailiff, please turn off the lights. [*KATE – Some of Courtroom lights near bench are turned off*] Everyone, please power off your phones.

Bailiff, please get Chuck out of the, er, closet.

[*Bailiff steps to the door of the jury room and brings back Chuck, who is wearing the Teflon protective cape. Chuck joins Jim at the podium.*]

JUDGE: Hello, Mr. McGill. Are you ok?

CHUCK: [*Shaking and clutching the cape closed at his neck*]. Hello your honor. It's barely tolerable, to be honest. But thank you for granting my attorney's request.

JUDGE: This is a new one for me, but let's get going. Ms. Wexler?

KIM: Thank you, your honor. Chuck McGill claims he has been essentially housebound because of what he alleges to be an adverse reaction to electromagnetic fields created by my client's generation and distribution of electricity. He sued my client, and we have a capacity proceeding pending to determine whether Chuck McGill is mentally incapacitated.

Rule 4-3.7(a) [*Janice, pause here for a moment and narrator will have a quick line. Janice and Jim freeze.*]

NARRATOR: For the purposes of this evening's program, Florida's Rules of Professional Responsibility and Florida case law are being substituted for rules and case law of New Mexico. Thank you for suspending reality.

KIM: [*Resuming*] . . . clearly states that if James McGill is a material witness to the proceedings, then he cannot also be the attorney of record. James McGill is subpoenaed to testify at Chuck McGill's capacity hearing because he is the only person who has daily contact with his brother. James McGill is a critical witness. In the interest of justice, we respectfully ask this Court to disqualify James McGill as counsel.

JUDGE: Mr. McGill?

JIM: Your Honor, as Benedict Arnold over there states . . .

JUDGE: Excuse me?

JIM: Sorry, your honor. As Ms. Wexler states, it is true that I have been subpoenaed to testify at my brother's capacity hearing, which I believe, by the way, is a ridiculous attempt to undermine this lawsuit. What's the old adage? [*Jim points to Chuck*] Do not judge a book by its electro magnetic repellant cover?

JUDGE: Mr. McGill, get to the point.

JIM: Sorry, your Honor, it was a low hanging fruit. No, seriously, the Court knows that removal of counsel is a very serious and extraordinary measure. Simply because I am testifying in a mildly legal matter as a witness does not mean that I should be disqualified from representing my brother here. I mean – and this might be letting the cat out of the bag – but, I intend to testify that my brother might be eccentric, your Honor, but he certainly has a mental capacity and acumen that far exceeds my own.

[*Chuck reaches up and grabs Jim's arm and whispers to him.*]

JIM: Excuse me, your Honor, may my client address the Court?

JUDGE: Sure.

CHUCK: [*Shaking*] Your Honor, again, thank you for the special accommodations. I assure you that I am 100% in my right mind, though my body has betrayed me. This condition is unbearable. I just want to state, on the record, that I have brought suit against PNM on my own initiative, and I know beyond the shadow of a doubt that I will be found to have sufficient capacity to retain an attorney and initiate a suit.

JUDGE: Thanks Chuck. Anything further Ms. Wexler?

KIM: Your Honor, we ask the Court to bear witness to Mr. Chuck McGill's state. [*Kim waves her hand in Chuck's direction.*] It is a violation of Rule 4-3.7(a) for a material witness to be an advocate. Mr. James McGill should be disqualified from serving as his brother's counsel in this case.

[*Rhea, holding remote, points it toward the imaginary TV and presses pause. Jim, Kim, Judge, Bailiff and Chuck freeze.*]

[*Power Point FREEZE sound]

[Lights back on full]

RHEA: Hey, Julie Ann, wanna bet whether Kim's motion for disqualification will be granted? Loser drafts the study outline for Con Law.

JULIE ANN: It's a bet. While playing Angry Birds during my Professional Responsibility class I vaguely remember the professor mentioning something about the fact that a lawyer cannot represent someone if the lawyer is also going to be a witness. So, I say Kim's motion will be granted.

[Law students break character and approach the members to ask questions]

[*Power Point Question Should Kim's Motion be granted?]

RHEA: [To audience] **Carbolic Smokeball**, what do you think? Should Kim Wexler's Motion to Disqualify Jim McGill be granted?

[Follow-up] Why or why not? What factors should the Judge consider when ruling whether to disqualify?

[Amy – here are some of the factors, you may want to use if group is quiet]

- Is Chuck's capacity a contested matter?
- Will substantial evidence be offered in opposition to Jim's testimony?
- Would Chuck suffer a hardship if Jim was disqualified?

JULIE ANN: **Magna Carta**, does an individual have an absolute right to the attorney of their choice?

RHEA: **Gray's Inn**, what if Jim McGill is asked to reveal information that could be damaging to Chuck's claim?

[*Power Point Lieberman v. Lieberman slide 1]

RHEA: The facts we presented are similar to those in the case of *Lieberman v. Lieberman*, where the Former Husband was represented in post-dissolution proceedings by his current wife. The Former Wife moved to disqualify the Current Wife, arguing the Current Wife was a "material witness" to issues raised in contempt proceedings.

[*Power Point Lieberman slide 2]

The Fourth District held that the Current Wife should not have been disqualified, despite the fact that she was a potential witness at the contempt hearing.

[*Power Point Caruso v. Knight]

Lieberman cited to *Caruso v. Knight*, where the Fourth District Court of Appeal noted that “[d]isqualification of a party’s chosen counsel is a drastic remedy that should be used sparingly.”

[*Power Point of Rule 4-3.7]

JULIE ANN: Rule 4-3.7 provides guidance regarding when a lawyer must not act as an advocate. The four situations when an attorney can act as a witness AND advocate are: when the lawyer’s testimony: (1) relates to an uncontested issue; (2) will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; (3) relates to the nature and value of legal services rendered in the case; or (4) when disqualification would work substantial hardship on the client.

On these facts, the question is close. Arguably these facts could go either way.

[*Power Point final Lieberman slide]

Lastly on this issue, the *Lieberman* court noted that an attorney who is too personally involved in the litigation should consider withdrawing, or risk violating ethical duties of competence and exercising independent professional judgment.

[*Rhea and Julie Ann return to character on the couch.*]

RHEA: Grant the motion! Grant the motion!

[*Power Point slide of Chuck, Rhea picks up remote and pointing it toward TV, presses play, *Power Point sound for PLAY]

JUDGE: I am going to deny the Motion to Disqualify.

JULIE ANN: [To Rhea] Whatever!!!

KIM: Thank you, your Honor.

JIM: Thank you.

BAILIFF: All rise. [*Judge rises and exits the bench, remains on the side of the courtroom opposite jury box until students interact with Inn members again, then moves to jury box*]

JIM: [*Speaking to Chuck*] Go ahead, Chuck, I'll be right behind you.

[**Power Point slide of Second Judicial Circuit of New Mexico*]

KIM: I can't believe you are letting Hamlin bully you into pursuing this ridiculous law suit.

JIM: [*With a grin*] Whatever are you talking about?

KIM: I know you are pursuing this ridiculous farce to keep Chuck happy so he doesn't walk away from HHM and "cash out" his equity. I thought you always wanted Chuck to cash out, which is why this is even crazier.

JIM: Well, if you were still my friend maybe you would know that there are worse things than keeping Chuck happy. And, if you were still my friend, maybe you would also know that there are worse things than a "hypothetical" 50K retainer just to get this case to Summary judgment.

[*Kim's jaw drops*]

KIM: 50K! That's crazy! And Hamlin calls the shots?

[**Power Point of Harry Hamlin*]

JIM: I didn't say that, but I will say, he who pays is he who plays.

KIM: You know, when my client wins this case, we'll be pursuing fees against both you and Chuck for maintaining a frivolous claim. Jim, I don't want to have to do that, but PNM is livid and they want blood. They believe HHM is funding and directing this litigation because HHM is afraid Chuck will leave the firm if they don't help him with this crazy case.

RHEA: [*Holding remote and hitting pause button. Kim and Jim freeze, then leave the courtroom when the students begin talking. JIM, please*]

move one of podiums to area behind projector screen. Nacho will stand at this concealed location in Scene 3]

RHEA: I think Kim Wexler is MY idol! [*Students break character and approach Inn members*]

[**Power Point first slide of Jim*]

Inner Temple, should Jim have told Kim that Hamlin is paying for Chuck's legal fees, [**Power Point second slide of Jim*] or the amount of his retainer?

What do you think, **Middle Temple**? Where's the harm?

[**Power Point rule 4-1.6(a)*]

RHEA: Rule 4-1.6 concerns Confidentiality of Information, and prohibits an attorney from revealing information relating to representation unless the client consents, with certain exceptions that do not apply here.

[**Power Point of question whether HHM can call the shots*]

JULIE ANN: **Carbolic Smokeball**, can Harry Hamlin of HHM, the firm where Chuck is an equity partner, call the shots in Chuck's case against PNM, since HHM is paying Jim's fees?

If Harry Hamlin is paying Jim's fees, shouldn't he have input in how the litigation should be handled?

Magna Carta, what do you think? Do you agree?

[**Power Point rule 4-1.8*]

Rule 4-1.8 concerns Conflicts of Interest, and the rule prohibits an attorney from accepting compensation from one other than the client, unless each of three conditions are met: 1) when the client gives informed consent; 2) when there's no interference with the attorney's independence, or with the attorney-client relationship; **and** 3) when information about representation of the client is protected.

[*Julie Ann and Rhea return to couch.*]

JULIE ANN: Would you ever consider joining the Inns of Court, Rhea, like Kerry did?

RHEA: No way! Those Legal Geeks are too stuffy for me! Let's get back to Saul! [**Power Point Better Call Saul pointing*]

[*Rhea lift's remote and presses "Play"*]

SCENE 2

[*Guitar and tuba play opening riff. As they do so, Craig, Warren, and Jo Jo Kettleman set up tent and chairs behind campfire in middle of stage. Warren and Jo Jo sit down, while Craig remains standing next to kids*]

[*Betsy Kettleman moves to table opposite jury box and stands at the table, stirring in a metal bowl as if working in the kitchen. Old cell phone is on table. John, interviewer, is offstage and talks into microphone*]

[**Power Point old Nokia phone rings twice. Betsy puts down spoon and bowl and answers on flip phone.*]

BETSY K: Hello?

JOHN: Hello, Mrs. Kettleman?

BETSY K: Yes.

JOHN: Mrs. Kettleman, my name is John Harrison with the Rothington Law Firm in Sante Fe. I'm calling because James McGill listed you as a reference. Do you have a moment to speak with me?

BETSY K.: Oh, okay. Yes, I know James.

JOHN: I understand James represented you in the past, right?

BETSY K: Yes, he has. He represented us when we sued our HOA seeking an accounting from those no good busy bodies.

[**Power Point Flashback Music. Betsy moves to join the family at the tent*]

[*Courtroom lights dim, as we see Kettleman family in front of a pop-up tent, around a campfire, roasting marshmallows. Betsy and Craig are standing, while Warren and Jo Jo are sitting in folding chairs. Jim McGill is hiking from the jury room toward the Kettleman tent, disheveled with leaves and branches sticking to his suit.*]

[*Power Point of Jim hiking through the desert]

JIM: Hi there Kettlemans.

KETTLEMANS: [*In unison, David starts and stays with “Hi” until all join*]
Hi Jim!

JIM: Kids, why don't you roast a couple of those marshmallows for me while I talk to your parents?

JO JO K: Sure thing, Mr. McGill!

WARREN K: Okee Dokee, Mr. McGill!

[*Kids stay seated while Jim, Betsy, and Craig Kettleman move toward the audience, in front of the campfire*]

JIM: Listen, Betsy and Craig, I know you don't like what your HOA is doing about the camping restrictions, and that's why we filed suit against the HOA, but Betsy, you are an agent for the owners of this development. The Board of the HOA is upset that the owners, through you, are asking for an accounting from the HOA. They think your motives are not entirely pure, Betsy.

BETSY: [*Indignant!*] Is that right, Jim? Well I have a constitutional right to know how the Board of the HOA is using Craig's hard earned money!

JIM: Well, when I filed the request for production seeking an accounting, the HOA responded with a request for production of your attorney fee agreement. The HOA suspects that I am being paid by the development owners. I moved for a protective order, but Judge Perez denied the motion and she has ordered you to disclose your fee arrangement with me. How will you explain coming up with \$30,000 for a retainer in this case when neither of you are employed?

CRAIG: [*nervous/frightened/shaking, dropping marshmallow stick*]
What should we do, Jim?

[*Rhea, holding remote, presses “Pause.” *Power Point Pause sound. Betsy, Craig, Warren, and Jo Jo freeze*]

RHEA: Betsy Kettleman is a classic “difficult client.”

JULIE ANN: And she has no fashion sense whatsoever!

[*Students break character, walk toward members, and engage in dialogue*]

RHEA: **Inner Temple**, should Judge Perez have ordered the Kettlemans to disclose their fee agreement?

Middle Temple, what do you think?

[**Power Point Tumelaire v. Naples Estates Homeowners Ass'n Inc.*]

The facts we presented are similar to those of *Tumelaire v. Naples Estates Homeowners Association, Inc.*, where the plaintiff, who was also an agent of the development owners, sued her HOA, and ultimately was ordered by the judge to disclose her fee agreement.

[**Power Point Tumelaire slide 2*]

The Second District held that any information concerning the fee arrangement was protected by the attorney-client privilege of section 90.502(2).

[**Power Point 90.502(2)*]

JULIE ANN: Section 90.502(2) makes clear that a client has the privilege to refuse to disclose confidential communications.

[*Students return to the couch*]

JULIE ANN: If I was Jim, I would withdraw from the Kettleman's case.

RHEA: Let's see what he does.

[**Power Point of Jim at Phone Booth in the desert*]

[*Rhea holds up remote and presses "Play"*]

JIM: [*Exasperated*] Guys, seriously? Have you lost your minds sleeping out here in your tent? [*Jim glances back to the kids and gestures to them, signaling with his hand that Mom and Dad are crazy*]

WARREN & JO JO: [*Facing each other and playing a hand-slapping game*]
 [**Power Point "BINGO"*]
 B-I-N-G-O, B-I-N-G-O

JIM: Kids, why don't you check inside the tent for graham crackers?

[Kids crawl inside the tent]

JIM: *[Exasperated, walking around and looking for something to write on, feeling pockets while walking near entrance to tent]*

I need paper!

[Warren Kettleman hands a roll of toilet paper out of the tent]

*[*Power Point Jim writing in bathroom]*

This will do. *[Jim takes pen out of his pocket, breaks off a few squares of toilet paper, tosses the roll on the ground, and starts to write, as he speaks]*

I, James McGill, move to withdraw from this hopeless case.

[Holding toilet paper up to Kettleman's] Do you see this? It's my motion to withdraw! *[Jim hands "motion" to Betsy]* I withdraw as your attorney.

BETSY: But Jim, we'll tell that you took a retainer of \$30,000 from us. Everyone knows where that money came from.

JIM: What \$30,000? As we speak, 1.6 million of your so-called "hard earned money" is being dropped on the desk of the State Attorney.

*[*Power Point sound of large object dropping]*

Judge Perez will let me withdraw. You'll see.

RHEA: *[Pressing remote, * TV Pause sound]*

JULIE ANN: I could have written this script!

[Students break character and address Inn members.]

[Kettleman's walk off stage as students are speaking, bringing tent with them]

*[*Power Point – Will Jim's Motion to Withdraw be granted?]*

JULIE ANN: We'll open the questioning up to everyone, to see who wins the honor of first in line for dinner.

Under what circumstances can an attorney withdraw from a case?
Should Jim's motion to withdraw be granted?

Does anyone have another thought or opinion?

Under what circumstances would a Judge likely deny a motion to withdraw?

[*Power Point *Bowin v. Molyneaux*]

RHEA: The *Bowin* case provides that an attorney of record has the right to terminate the attorney-client relationship on due notice to his client and approval of the court. That approval should be rarely withheld.

A motion to withdraw may be denied when granting withdrawal would interfere with the efficient and proper functioning of the court.

[*Students return to couch.*]

RHEA: Kerry should be home any minute. This episode of *Better Call Saul* is almost over.

[*Power Point *Saul with car in desert*]

[*Rhea holds remote and presses PLAY*]

[*Guitar and tuba play opening riff of Better Call Saul*]

SCENE 3

[*John is standing near the center of the stage, holding papers, and talking into his old cell phone. Narrator and Nacho are offstage, talking into microphones. Nacho is at podium which has been moved behind the projector screen, and is concealed*]

[*Power Point *New Mexico Corrections Department. *Power Point Landline Phone rings once.*]

NARRATOR: New Mexico State Penitentiary. We've got your enchantment, right here.

JOHN: Hello, I'm calling from the Rothington Law Firm in Santa Fe. Is

Mr., er, um, Taco there?

NARRATOR: We don't have a taco. We have a burrito, a nacho, and a Gordito Supreme.

JOHN: Oh. *[pause while shuffling papers]* I'm sorry. I'm looking for a Mr. Nacho Varga.

NARRATOR: Yeah, we have a nacho. Hold on, I'll get him. Nacho, it's for you.

[Nacho is behind projector screen at podium, taking into microphone]

NACHO: Hey.

JOHN: Hello Mr. Nacho. My name is John Harrison, and I was given your name as a reference for Mr. James McGill. Can you tell me what you know about James McGill's qualifications to practice law?

NACHO: James McGill? You mean Jimmy? Yeah. Jimmy is a good lawyer. He saved my life.

*[*Power Point Flashback music]*

*[*Power Point Nacho in Jail]*

[Two guards escort Nacho, now handcuffed, while Lisa on Tuba is playing Taps. Guards walk Nacho from Jury room area, toward Inn members, then across to the table and chairs on the opposite wall. Guards open door to room, escort Nacho in single file, remove handcuffs, then leave room, shutting door behind them, and facing audience.]

GUARD 1: Man, I hate guarding inmates on death row. Who is this guy, Ignacio Varga? Never heard of him. What's he in for?

GUARD 2: Maybe you know him by his street name: Nacho Varga. Nacho is one bad dude. He was the right hand man to Tuco Salamaca, kingpin of one of the most notorious meth dealing gangs in New Mexico. Nacho decided to branch out on his own and diversify with prescription drugs, but he got caught.

GUARD 1: Tuco Salamaca? I heard about him. He's crazy scary. Kills people for fun.

GUARD 2: Nacho's lucky. The police caught him and put him in jail before Tuco got to him. That's why he's in protective custody.

GUARD 1: Nacho got a death sentence for buying pills? Must have been a really big deal.

GUARD 2: It wasn't the drugs. Just another drug deal gone bad. Nacho murdered the seller in cold blood. The seller accused Nacho of being short \$20 bucks on one of the sales, and Nacho shot him. Can you believe it? Why would you haggle over 20 bucks with someone as notorious as Nacho Varga? Do you think you're in Mexico or something?

GUARD 1: You know what they say: "New Mexico - Pretty much the same as the old one."

[Jimmy approaches from in front of jury room and walks up to guards]

JIM: Hello there officers. Listen, while your pals are sharpening up the hypodermic needle, mind if I have a little chat with my client?

GUARD 1: Go right ahead, Jimmy. *[Jimmy walks past guards, opens pretend door and sits down across from Nacho]*

NACHO: Jimmy? What are you doing here? I didn't ask for a lawyer on appeal.

JIM: You didn't have to, the court appointed me because I handled your trial. And man, you are lucky I got here when I did. I finished reviewing the record of the trial, and despite my exceptional trial skills on your behalf, the court made so many errors. Your trial was criminal – literally! I'm going to Alan Deshowitz the crap out of this appeal. When I'm done, they won't be calling it the Innocence Project. They'll be calling it the Jimmy project.

NACHO: No way, man. I don't want you defending me. I don't need a lawyer. I'll defend myself. I'll take the death penalty.

JIM: Listen Nacho, state law says that all death penalty cases are subject to automatic review. Like it or not, you are stuck with me.

NACHO: *[Angry! Gets up, pacing around, gesturing toward Jim]* Fine, you want to be my lawyer, then get me the death penalty. Argue that I should go straight to the chair or whatever "humane" way they kill people nowadays.

JIM: What? You can't be serious. Surely, you didn't mean to kill that guy. It was an accident, right? Crime of passion.

NACHO: I may be a criminal, but I'm not a bad guy. A dirty cop once told me: "You can be on one side of the law or the other, but if you make a deal with someone, you keep it." And I kept my deal. That guy was the one who messed up, miscounted or something.

JIM: Exactly. That's why you gotta let me win this appeal and get you off of death row. You gotta let justice work. You ever hear of the code of Hammurabi? Let the punishment fit the crime? Your only crime was protecting your reputation.

NACHO: Listen, Jimmy, you don't understand. I've got two death sentences. When Tuco finds out I struck out on my own, he'll give me a Columbian necktie. You know what that is? They slit your throat and pull your tongue out through the hole. No way man, give me a nice painless lethal injection. You're my lawyer and I know my rights. I'm telling you: no appeal. I want the death sentence.

JIM: I'm sorry Nacho. You are not the captain of this ship. I'm the one with the law degree from the University of American Samoa. I'm the one who gets to decide the strategy.

NACHO: So do nothing. Tell them you didn't find any mistakes in the trial.

JIM: I don't think I'm allowed to stand by and do nothing. It might be some kind of ethics violation. Best interest of my client and all that? I'm nothing, if not ethical! [*Jimmy steps out of character and smiles to the audience*]

[*Rhea holding remote, presses pause. *Power Point Pause sound. Jim and Nacho Freeze*]

JULIE ANN: I don't know about you, Rhea, but I think I'm learning more about law from *Better Call Saul*, than I learned in three years of law school!

RHEA: We could have saved a lot of tuition!

[*Students break character and approach Inn members*]

RHEA: Okay, Inn Members, if Nacho and Jim were in Florida, should Jim represent Nacho even though Nacho does not want to appeal his death sentence?

Any other Inns want to weigh in on this question?

Is an appeal of a death sentence automatic? Can a defendant on death row decide not to appeal?

[*Power Point Robertson case]

RHEA: In *Robertson*, the Defendant was sentenced to death on his attorney on appeal attempted to withdraw because his client wanted to argue in favor of the death sentence. The Florida Supreme Court denied the motion to withdraw and held that Florida law removes the decision to appeal from the purview of a defendant facing the death penalty.

[*Power Point How much input should Nacho have]

JULIE ANN: How much input should Nacho have as to Jim's appellate strategy?

Does anyone have any thoughts about whether the defendant's position may be heard on appeal, and if so, by what means?

The Robertson court noted that the defendant may file a pro se supplemental brief setting forth his personal positions and interests.

RHEA: Also, rule 4-1.2 expressly addresses the three circumstances when a lawyer shall abide by the client's decision in criminal matters, and that rule does not include appellate arguments.

JULIE ANN: Would Jimmy face an ethics violation if he did nothing and did not contest the death sentence?

The question is open to any Inn. [*Tami, call on people if need be*]

[*Power Point Robertson]

Again, from *Robertson*, it is ineffective assistance of counsel and therefore unethical for the lawyer to acquiesce to a client's desires to be executed.

And again, Rule 4-1.1 requires council to provide competent representation. In fact, there are special requirements that must be met to represent a defendant on death row, on appeal.

[*Students return to couch*]

RHEA: I don't know about you, but I'm getting hungry. I hope this episode is over soon.

[*Power Point Nacho in Jail slide]

[Rhea holds up remote and presses Play]

[*Power Point Play sound]

NACHO: Fine, you can represent me, but you've got to protect me from Tuco.

JIMMY: Tuco will be fine. I'm sure it's not the first time someone stepped out on him. He may even reward your initiative for seeking out new streams of revenue. I can guarantee you that he was once someone's right hand man, before he became king of his own little kingdom here in Albuquerque.

NACHO: You don't get it. Tuco doesn't care that I got my own gig. But when he finds out I used his money to pay for the pills, he's gonna go loco. It's the money he got from that Pollos Hermanos robbery.

JIMMY: The Pollos Hermanos robbery? The one where that cop was killed?

NACHO: Yeah. I was supposed to be holding the money to give it to his abuela, but now the police have the money.

JIMMY: You stole money from his abuela? Oh, man. This is worse than I thought. I once saw Tuco break a man's leg for calling his abuela a name. Tuco took GREAT pleasure torturing this kid in the desert.

[*Power Point Nacho with kids in desert]

He cheered like he had won the lottery or something. Don't you have anything left to give to abuela?

NACHO: No, man, I used the rest of the money to pay you that contingency fee for my trial.

JIMMY: [*Holding his hand against his head and pacing*] No, no no! Don't tell me you used the proceeds from some illegal enterprise to pay my fees at trial. That will surely get me in trouble with the bar.

Wait, wait, wait. I have an idea. I'll go to the police and tell them

that Tuco committed the Pollos Hermanos robbery. We'll make sure that he goes to a prison in another part of the state and you will be safe.

NACHO: Are you crazy, dude? Forget I told you anything about that robbery. You can't tell anyone.

JIMMY: But it might save your life!

NACHO: Dude, I'm already as dead as a Cinnabon Store in Albuquerque at 9 O'Clock on a Wednesday night.

JIMMY: [*Shaking head affirmatively*] Doesn't get any deader than that.

[*Rhea presses Pause, Nacho and Jimmy freeze, then exit stage when students begin talking*]

[**Power Point Jimmy in desert, Compensation Issues?*]

RHEA: Did anyone identify any compensation issues in that exchange between Nacho and Jimmy?

What about Jimmy's acceptance of fees from robbery proceeds? It seems Jimmy did not know the source of his fee. Does that matter?

[**Power Point Rule 4-1.2(d)*]

Rule 4-1.2 (d) Criminal or Fraudulent Conduct states that a lawyer shall not counsel a client to engage, **or assist a client**, in conduct that the lawyer **knows or reasonably should know** is criminal or fraudulent.

Depending on how much Jimmy knew, or reasonably should have known at the time he accepted the fee from Nacho, he may be considered to have assisted his client in criminal conduct by accepting stolen money.

JULIE ANN: What about the contingency fee for a criminal matter?

[**Power Point Rule 4-1.5 Contingency Fees*]

Rule 4-1.5 provides that an attorney cannot contract for a contingency fee in a criminal matter.

[*Power Point, Better Call Saul, Lawyer Up THE END]

NARRATOR: On behalf of Lincoln Inn, including Judge Perez who regrets that she could not be with us tonight because she is attending to a family member in need of her help, thank you!

GREAT JOB, everyone! Which Pupilage Group scored the most points and gets to go to dinner first?

RACHEL: Announces winning Pupilage Group.

Inns President Closes the Inns Meeting.