

# **Monaco & Cardillo's Nondenominational Winter Holiday Carol**

\*\* text noted as "Screen ##" and in blue with a grey background should be a separate screen on the final cut of the video\*\*

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| <p><b>Screen 1</b></p>   | <p><b>Monaco &amp; Cardillo's Nondenominational Winter Holiday Carol</b></p> <p><b>Thomas S. Biggs American Inn of Court</b></p> <p><b>Team 4</b></p> <p><b>December 8, 2015</b></p>   |
| <p><b>Screen 2</b><br/><i>{{Scrolling Text}} with star wars theme music, if possible</i></p> | <p><b>ATTENTION!</b></p> <p>This motion picture is protected under the copyright laws of the United States and other countries throughout the planet. And this galaxy. And galaxies far, far away.</p> <p>Any unauthorized exhibition, distribution, or copying of this film or any part thereof (including soundtrack) may result in civil liability and criminal prosecution if you are lucky.</p> <p>The story, all names, characters, and incidents portrayed in this production, while "inspired" by people in attendance tonight, are, in fact, entirely fictitious. Any similarity to any person, living or dead, is coincidental. And by "coincidental", we mean an effort to make this interesting.</p> <p>No animals were harmed in the making of this motion picture.</p> <p>Nor was John P. Cardillo.</p> <p><b><i>The Honorable Daniel R. Monaco disclaims all involvement with this.</i></b></p> <p>Copyright ©2015 Last Minute Productions.</p> <p>All rights reserved.</p> |

**the Present  
- Prologue**

First client of the Firm of Monaco and Cardillo is reminiscing with JPC about honoring Dan and their career as attorneys.

First Client: It's great of the Inns of Court to honor Judge Monaco this evening. He's most deserving.

JPC: He is. I couldn't be prouder.

First Client: Seems like yesterday I walked into your office for that dog bite case. How many years ago was that?

JPC: At least forty.

First Client: I was your first client, want' I?

JPC: You were. & on Christmas Eve, no less.

First Client: You and Judge Monaco have both had such rewarding careers.

JPC: Thank you.

First Client: It wasn't always easy, though, was it?

JPC: No. I keep telling my son, he has no idea how difficult it was.

First Client: The next generation never really understands the trials and tribulations of the one before it. You know, this time of year always make me sentimental. It's worth revisiting your past. For example, do you remember the time I referred my uncle into your office. You had both done such a great job with the dog bite case, I figured you'd have no issue with that case.

JPC: It was quite a debacle.

**Screen 3**  
*With a song from  
1970s Playing*

**The Law Firm of Monaco & Cardillo**

**Naples, Florida**

**Before 1975**

|            |  |
|------------|--|
|            | <b><i>Dan Monaco sitting at his desk on an old rotary phone. Secretary enters the room.</i></b>  |
| Secretary: | Mr. Monaco, here's your coffee sir, just the way you like it. Your 11 o'clock appointment is here. Should I show him in?   |
| DM:        | Who am I seeing ?  |
| Secretary: | Didn't you look in that big red book containing today's calendar?? Your consultation is with your first client's uncle. Apparently he is looking for a lawyer to handle his 9th divorce. |
| DM:        | <i>(Shaking his head)</i> Yes, we did such a good job for our first client in that dog bite case. Never was quite sure why he bit that dog. Anyway, send in his uncle.                   |

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|                 | <b><i>Client enters DM office</i></b>   |
| DM:             | A real pleasure to meet you Uncle of our first client.  |
| Husband:        | Oh Mr. Monaco, thank you so much for seeing me on such short notice.  |
| DM:             | So what brings you in?  |
| Husband:        | Oh Mr. Monaco, you see, I'm honeymooning at the Naples Beach Hotel with my 9th wife...  |
| DM:             | Ah yes, a great place for a romantic honeymoon!   |
| Husband:        | Right, until she caught me (air quotes) "frolicking" with the maid for our room.  |
| DM:             | Oh dear....   |
| Husband:        | And Mr. Monaco, I have enough experience in these matters that I think it important for us to beat her to the punch!  |
| DM:             | You want to do what?  |
| Husband:        | I want to get her to agree to the terms of the divorce before she finds an attorney that will drag this out.  |
| DM:             | Well, let's see what we can do. How fast do you want to do this?  |
| Husband:        | Before the honeymoon is over. In fact, to make it easier on everyone, can you represent both of us?   |
| DM:             | No, I cannot represent both of you. I can, however, draft an agreement that would settle matters, but I cannot give your wife any advice about the agreement.   |
| Husband:        | Sounds like you've handled these matters before. I wasn't sure whether to come to you or just have the notary at the hotel mediate our dispute. Sounds like my nephew knew exactly who I should call. My nephew told me you were the best regarded family law attorney in town. How long you been practicing. |
| DM:             | Just under five years locally.  |
| Husband:        | Well, your reputation proceeds you. There may be a complication.  |
| DM:             | There always is.  |
| Husband:        | One of my minor sons is with us on the honeymoon.   |
| DM:             | Why wouldn't he be. How old is he.  |
| Husband:        | 7. He didn't witness anything material, but I'm concerned my wife may try to call him to testify about my character.  |
| DM:             | Almost impossible that the court would want to speak with that child.   |
| Husband:        | What does something like this usually cost? Do I pay you a percentage of whatever she doesn't get in the divorce?   |
| DM:             | No, that would be a contingency fee. Say, you've been through this eight times before, I sure hope one of your previous attorneys didn't charge you in that manner. I handle this on a flat fee. I'll draw up an agreement for you to sign. Now, about the timing issue. I'm headed out of town in two weeks  |
| Husband:        | Well, I guess we better get going then.   |
| DM:             | Well, I guess we better.  |
| <b>Screen 4</b> | <b>Meanwhile, in the remarkably similar office of fellow young attorney John P. Cardillo....</b>  |

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|                 | <b>Location:</b>   | Same office as previous scene. Attorney is typing on a type writer.   |
|                 | JC:  | "Please Govern Yourself Accordingly."   |
|                 |  | <b>Secretary enters the office</b>  |
|                 | Secretary  | What are you typing Mr. Cardillo?   |
|                 | JC:  | Just got back from a hearing in Court before Judge Smith. Would you believe that an attorney sent his assistant to cover a hearing this afternoon? Attorney said he saw it happen once on the East Coast and thought it was a good idea. Just writing a warning letter to make sure it doesn't happen in one of my cases. |
|                 | Secretary:   | Well, your 11 o'clock is here.  |
|                 | JC:  | Ah, yes. The wife of the uncle of our first client. Unlikely number nine. Show her in please.   |
|                 |  | <b>Wife enters the office</b>   |
|                 | JC:  | Good morning, Ma'am.  |
|                 | Wife:  | (a little taken back) You're awfully...young. Wasn't I supposed to meet with someone more experienced?  |
|                 | JC:  | I get that a lot.   |
|                 | Wife:  | Well, when I called to make the appointment I asked for a bull dog.   |
|                 | JC:  | Yes, well, I understand this is a marital dispute, not a dog bite case. So, let's get started, shall we.  |
|                 | Wife:  | Do you have any experience with family law.   |
|                 | JC:  | Some, not as much as my partner, but we work closely together. Why don't you tell me what happened.   |
|                 | Wife:  | My no good husband and a chambermaid. That's what happened. And to think, on our honeymoon!   |
|                 | JC:  | Right. And where are you are staying here in town?  |
|                 | Wife:  | The Naples Beach Hotel  |
| <b>Screen 5</b> |  |   |
|                 | JC:  | Of course, the best in town   |
|                 | Wife:  | That's right. I always get the best. How long did you say you've been practicing?   |
|                 | JC:  | I didn't. I've been practicing long enough. So, you were saying?  |
|                 | Wife:  | I was at the pool with his son. I mean, who brings their son along on a   |

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|                            |       | honeymoon. Anyway, I was at the pool with his son, and I went back to the room...  |
|                            | JC:   | You left the child in the pool?  |
|                            | Wife: | That's not material. I went back to the room and I found him there with that maid playing ... horsey....and (Sobbing uncontrollably) it's just so awful.   |
|                            | JC:   | Here take my handkerchief. It's clean.   |
|                            | Wife: | Oh, Thank you... I am devastated.... (composing herself) .... But that having been said, Mr. Cardillo, all's fair in love and war, and now, now this is war!<br><br>I want you to serve that philandering, cheater husband of mine with divorce papers immediately! And I want half of everything that he has, and sole custody of the child, and I want...<br><br>I'll pay you half of everything you get for me. Money's not an object. It's about the principle!                      |
|                            | JC:   | One step at a time. I'm not taking this on a contingency fee. I appreciate you are upset, but perhaps we could try to work things out before proceeding with a hotly contested case.   |
|                            | Wife: | Well, I don't want to agree to a thing. Besides his son is going to testify and bury him.  |
|                            | JC:   | Do you really think it's a good idea to call the child as a witness? Look, I'm trying to keep the dispute under control to keep you from incurring unnecessary fees.   |
|                            | Wife: | How would you handle it then?  |
|                            | JC:   | We could try a pre-filing mediation.   |
|                            | Wife: | I don't know, you seem too nice. How old are you again?  |
|                            | JC:   | Old enough.  |
|                            | Wife: | I mean my husband is getting the best family law attorney in town. Besides, we need to move on this quickly. His attorney is going out of town in two weeks.   |
|                            | JC:   | Two weeks? What did you say your husband's attorney's name was?  |
|                            | Wife: | I don't know. But I heard my husband's nephew refer to him as "Dan, the man"   |
|                            | JC:   | Bleep. I'll be right back.   |
|                            |       | After a few moments away, while the Wife looks through JC's desk...  |
|                            | JC:   | Ok. I just talked to my partner, Dan Monaco. I'm sorry, but we have a conflict.  |
|                            |       | <i>Fade to next scene</i>  |
| <b>Back to the Present</b> | JPC:  | "Dan the Man." Really?<br><br>First Client (chuckling): Well, he was the man, then. You both were. And you handled that situation well. Think of all the ethical traps you could have fallen into. As young attorneys you could have been overly aggressive and tried to represent both parties. You did overstate your experience to get the case and both of you quoted an appropriate fee. Also, even though it seemed obvious, you weren't willing to involve the child in the case. |

JPC: Looking back, I wasn't that upset to lose her as a client. But we were young and we needed cases. It would have been a good case for fees.

First Client: You had a lot of good cases to come in the years after. And with the success came more challenges.

JPC: Yeah. It's like I keep telling my son, with more success comes more expectations.

First Client: Wow, your son must be really wise with all the advice you give him. Do you recall when I referred you my two cousins that were in that car accident?

JPC: How could I forget?

**Screen 6**  
*With Miami Vice theme Song playing*

**10 Years Later ... 1985**

**Naples, Florida**

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| Secretary: | Mr. Cardillo, your 11 AM has arrived.   |
| JC:        | oh good, please put them in the conference room, and see if Dan is free to meet with them too. If he's free, send him in here for a minute before we talk to the clients... |
| Secretary: | yes sir   |
|            | <b><i>DM enters the upscale office.</i></b>   |
| JC:        | Dan! Thank goodness for our first client. He's referred us another case!  |
| DM:        | Hopefully it goes better than the last one. What's it about?  |
| JC:        | This is no dog bite case. His two cousins were a Passenger and Driver in a very luxurious 1985 Cadillac.  |



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| DM: | The new one? With the cassette player and the car phone? She's a real beauty that one...  |
| JC: | Yes! So anyway, they are traveling in Driver car down Thomasson, and out of nowhere, BANG! a truck slammed right into them! The Cadillac was totaled, and |

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|                 |   | both Driver and Passenger suffered some serious injuries... Let's go meet with them in the conference room  |
|                 | DM:   | Alright man!  |
| <b>Screen 8</b> | <b>An hour later...</b>                         |   |
|                 | JC:   | We landed them both!  |
|                 | DM:   | Thankfully, there's a hefty policy to cover this accident!  |
|                 | JC:   | It's going to be a good year!   |
|                 |   | <b>Cardillo and Monaco give one another a high-five</b>   |
| <b>Screen 9</b> | <b>The Deposition of Driver, Vicki Andretti</b> |   |
|                 |   | <p>Defense attorney:</p> <p>Q: <i>What is your name?</i></p> <p>A: <i>Vicki Andretti.</i></p> <p>Q: <i>Any relationship to Mario Andretti ?</i></p> <p>A: <i>Yes, he is my uncle. He taught me how to drive.</i></p> <p>Q: <i>Ms Andretti: Tell us about the accident on May 1, 1975 when you were involved in.</i></p> <p>A: <i>Well, I was with my friend, Lulu Fun, and we decided to run down to the beach to meet some friends when out of nowhere this big truck came and hit us.</i></p> <p>Q: <i>What road were you on?</i></p> <p>A: <i>We were on Thomasson Drive, you know where that is? The road isn't very busy because it's a gravel road miles from the beach and nothing ever happens on that road.</i></p> <p>Q: <i>What happened then?</i></p> <p>A: <i>Well Lulu wanted to hear the new Bee Gee's album and somehow or other my 8 track fell between the front and the back seat. I could see it wedged behind the passenger seat and Lulu tried to get it but she couldn't reach it. I knew I could reach it so since the road wasn't very busy and I know Lulu is a good driver, I turned around and reached into the back seat to grab the 8 track. I had to reach a little far than I thought to get it and guess my foot kinda pushed down on the gas pedal and the car started going kinda fast. Just as I grabbed the Bee Gee's, our car got hit by a big truck that came out of nowhere. He wasn't watching where he was going and he hit us.</i></p> <p>Q: <i>What happened then?</i></p> <p>A: <i>Well what do you think happened then? My beautiful new car began spinning and Lulu had a hard time holding onto the wheel and we ended up in the ditch next to Del's Grocery store. My car was totaled and we couldn't get out of the car. Lulu's door was smashed in and her body was hugging my side of the car. Lulu was crying and steam was coming out of the hood. I thought the car was going to blow up like in that Earthquake movie with Charles Heston, you know the one I mean? Where cars are banging together because of the earthquake? The truck driver got out of his truck and began yelling at us. Can you believe that? He was yelling at us???? The nerve of that guy and here we were hurt and crying and he's yelling at us that we caused the accident. Can you believe that ??</i></p> <p>Q: <i>Was there any traffic signage at the site of the accident?</i></p> <p>A: <i>Yeah – there was a stop sign somewhere around there but I don't think I was close to at the time of the accident. I think it was far ahead down the road for me. Why do you ask?</i></p> |

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|  | <p>Q. Did you ever tell your attorneys this story , of how the accident happened?</p> <p>A. Well, they never asked me all the questions you just did. I told them your truck driver ran into my car and totaled it. Whenever I tried to talk to them about anything with my accident they would not return my phone calls and they were always out of the office when I would stop in. I never saw them after that 1<sup>st</sup> office visit and not again until today at this deposition. I wasn't even sure I would recognize who my attorney was.</p> <p>Q: Who is your attorney?</p> <p>A: I'm not sure it's him (pointing at JC) or him (pointing at DM). One of them is mine and the other is my friend' Lulu's attorney.</p> <p>JC is holding his head in his hands and shaking his head..... DM sits motionless..... F. Lee Bailey is smiling smiling smiling.....</p> |
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| <b>Screen 10</b> | <b>Back at the office</b> |
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|     | <p>JC: Dan, you have got to be kidding me? The driver was reaching behind to grab a crappy Bee Gee 8 track and that's how the accident occurred? It wasn't even an 8 track worth retrieving. Geez !</p> <p>DM: Didn't you ask her about how the accident occurred when you signed up the driver? Or earlier today when you prepped the driver for the deposition? Or read the Accident Report about how the accident occurred?</p> <p>JC: No, I thought you took a summary from them about how the accident occurred. I just figured 2 pretty girls on their way to the beach get hit by a big hairy truck driver, that the truck driver must be wrong. Who would find fault with 2 pretty girls on their way to the beach???</p> <p>Needless to say, this was quite a different version than what they initially presented.</p> |
| JC: | I'm sure the defense attorney was quite pleased. What does this do to our case?  |
| DM: | Well, the driver doesn't have much of a case. But I think the passenger's case is still in tact.   |
| JC: | Well, at least we still have the passenger as a client.  |
| DM: | Yes, but we also have the driver. She's desperate for us to keep her case. She's even offered to increase our fee to 60% if we keep her as a client and get a recovery.  |
| JC: | You know, I don't want to lose them like we did that divorce case years ago. The fees on this could be substantial.  |
| DM: | I tell you these negligence cases are tricky. I cannot wait to get into foreclosure cases. Those must be some much easier to deal with...  |

**FADE TO JPC in OFFICE**

|                    |               |  |
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| <b>the Present</b> | First Client: | I bet it was tempting for you to try and keep that case.   |
|                    | JC:           | Why not? The driver was willing to pay us more and she would have signed a waiver of conflict and of a grievance. I had four kids to put through school. The fee was attractive. |
|                    | First Client: | Have you ever considered what would have happened if you kept the case?  |

***Somehow create a transition so its clear that the next scene is a dream***

|   |                             |   |
|---|-----------------------------|---|
| <b>Alternate Future<br/>– Bar Grievance</b> | <b>Committee<br/>Member</b> | {With First Client and JPC in background} We have the grievance filed against Attorneys Monaco and Cardillo   |
|   |                             | What are the allegations.   |
|   |                             | The attorneys had a car accident case where they were representing the driver and passenger. The evidence showed that that the driver was at fault. The attorneys kept the case, had the client sign a waiver of conflict and of grievance and a new fee contract for a higher contingency.   |
|   |                             | Can you do that?  |
|   |                             | No.   |
|   |                             | Is there any conceivable way they could have kept this case?  |
|   |                             | No.   |
|   |                             | Did they have a joint conflict waiver at the beginning of the case?   |
|   |                             | No.   |
|   |                             | Once the conflict arose, they needed to withdraw.   |
|   |                             | I think that fee is excessive, as well.   |
|   |                             | Investigative member Jimmy Do Right (played by Maria):  |
|   |                             | <ol style="list-style-type: none"> <li>1. I have reviewed the Fla Bar file, I have spoken with both JC and DM, their clients the driver and the passenger involved in a MVA. as well as the defense attorney and the presiding Judge</li> <li>2. My investigation has indicated the following: <ol style="list-style-type: none"> <li>a. <u>Was there a violation of the Rule against representing two persons with potentially competing claims:</u> <ol style="list-style-type: none"> <li>1. The law firm signed up two potential competing clients without<br/>Informing Lulu Fun and Vicki Andretti that they have competing claims for personal injury settlement against limited insurance proceeds and / or personal assets of the at-fault party<br/>That the attorneys did not know they cannot represent both parties without disclosing this conflict <ol style="list-style-type: none"> <li>i. And either recusing themselves (the law firm from one or both claims)</li> <li>ii. Or by obtaining a full and complete waiver and consent from the clients.</li> <li>iii. But even this may not be sufficient because they have confidential information about a competing client’s claim and can’t use it for gain</li> </ol> </li> </ol> </li> <li>b. <u>Was there a violation of the Rule against filing false claims against parties:</u><br/>DM and JC filed a lawsuit against a person alleging fraudulent acts, that they knew, or should have known were false. <ol style="list-style-type: none"> <li>i. The question here is whether DM and JC did this purposeful ? or was it due to ignorance and laziness on their part, in not conducting a thorough evaluation of the facts.</li> <li>ii. Is this a violation of the attorneys roles as Officers of the Court?</li> <li>iii. Violation of an ethical obligation ?</li> </ol> </li> <li>c. <u>Was there a violation of the Rule requiring attorneys to</u></li> </ol> </li> </ol> |

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|  |                    | <p><u>communicate with clients:</u></p> <p>i. the attorneys failed to communicate with their clients, by failing to return phone calls, not meeting with clients, etc</p> <p>d.</p> <p><b>Florida Bar attorney asks the Committee whether there is probable cause to find violation of professional ethic rules and the scene fades out.....</b></p> <p><u>JC and DM are seen hanging their heads with their heads in their hands.....</u><br/>(played by Brad and John T)</p> <p><b>Scene 7 – Ghost of present or Old man .....</b> (Jim Boatman)<br/> <i>“Woe are these young lawyers , my little grasshoppers., as they try to afford their big mortgages to pay for their Port Royal homes and Ferrari cars and private school for their children ..... Has the allure of easy money grabbed ahold of them without looking at the consequences of their actions? Of conducting a through inquiry of a case before taking it? Or thinking about their reputation before the Court as to whether or not the Court can trust them ?? Now they are in hot water with the Fla Bar and facing grievances which could take their Bar license to practice law; suspend their license for a time period, or order them to attend CLE’s to learn how to be an ethical lawyer.....”</i></p> <p>Q: Will the two young attorneys keep this accident case and let their greed guide them down the road to bad reputations and Florida Bar Grievance filings?<br/> Q: Or will they recognize the conflicts and all the pitfalls that can befall them and follow an ethical pathway.....”</p> |
|  |                    | {committee to bar counsel} in your experience bar counsel, how will this end up   |
|  | <b>Bar Counsel</b> | In my experience this will result in at least a suspension of their licenses.   |
| <b>Somehow create a transition so its clear that the next scene is the end of that dream</b> |                    |   |
| <b>Back to the Present</b>   | First Client:      | John, wake up   |
|  | JPC:               | {startled} I didn’t mean it. I want to go back and do it again differently.   |
|  | First Client:      | There’s nothing to do differently. You didn’t keep the case. You went on to become A Lion of the Law and Dan went on to be recognized by Inns of Court for all of his work with foreclosures {Bells Rining}   |
|  | JPC:               | Is it Christmas morning?  |
|  | First Client:      | It is. But before you go off to celebrate, I have a referral for you....  |
|  |                    |   |

**Santa:**  
*Well, don't forget to "pass it on to the younger generation" now that you are learned souls. Now that you know to memorize the Rules of Professional Responsibility, to ask questions of more learned colleagues of how to handle a case, and to use your common sense when evaluating a situation. Any if a young lawyer learns to do all those things, one day they will be sitting here, feet propped up, bellies full, and enjoying the fruits of Scotland's rivers.....*

**JC/ DM:**  
*Hey Santa, have time to join us? Want to enjoy the fruits of Scotland with us??*

JC and DM sit together sipping their scotch, they pat each other on the back and saying: " did it all really happen ? did we really survive all those pitfalls the Bar put in front of us? But boy, was it fun ! "

Santa turns to the audience/ camera and says:

1. Now all you good little boys and girls I want you to listen to a tale
2. A tale of 2 men diverged on a road.
3. A road that could have set them up to fail
4. or to jail
5. but they chose the road less taken, so they would not need bail.
6. The road which sent DM to the bench to be hailed
7. and JC to shine among lawyers and off he sails.

**FADE To next screen**

**Screen 11**  
**(scrolling with Christmas music - maybe jingle bells?? In the background)**

**Team Four Wishes You All Happy Nondenominational Winter Holiday!**

**Hon. James McGarity**  
**Co-Captains: Sharon Hanlon & John T. Cardillo**

**James Boatman**  
**John P. Cardillo**  
**Ashley Cooper**  
**Katy Esquivel**  
**Brad Friedman**  
**Michael Hedberg**  
**Rachael Loukenen**  
**Holly Ann Rice**  
**Maria Kathleen Vigilante**  
**Ted Zelman**

**THOMAS M. BIGGS INNS OF COURT – December 8, 2015 presentation**

**RULES REGULATING THE FLORIDA BAR**

**1. Rule 4-1 Client –Lawyer Relationship**

- a. Rule 4-1.1 Competence – A lawyer shall provide competent representation to a client. Requires the legal knowledge, skill, thoroughness, preparation necessary for representation.
- b. Rule 4-1.2 Objectives and Scope of Representation – a lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows, or should know, is criminal or fraudulent.
- c. Rule 4-1.4 Communication – a lawyer shall keep a client informed of the case objectives, the status of the matter, promptly respond with reasonable requests from the client, consult with the client about relevant information, and has a duty to explain matters to the client.
- d. Rule 4-1.5 Fees and Costs for Legal Services – An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited or clearly excessive fees or cost.
- e. Rule 1-1.7 Conflict of Interest, Current clients – A lawyer must not represent a client if the representation will be directly adverse to another client, or will materially affect the representation of another client

**2. Rule 4-3 Advocate**

- a. Rule 4-3.1 Meritorious claims and contentions - A lawyer shall not bring or defend a proceeding, or assert an issue, unless there is a basis in law and fact for doing so

**3. Rule 4-8 Maintaining the Integrity of the Profession**

- a. Rule 4-8.4 Misconduct – discusses the violation, or attempt to violate, the Rules of Professional Conduct, to engage in fraud or dishonesty, deceit or misrepresentation of the facts, which can be prejudicial to the administration of justice

## **Infidelity**

- Fla. Stat. § 61.052: Marriage must be irretrievably broken or spouse must allege and prove that the other spouse has been adjudged incapacitated for at least 3 years.
- Florida is a no fault divorce state.
- However, under Fla. Stat. § 61.08, “The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.”
  - o Adultery is not a bar to alimony. See, e.g., Coltea v. Coltea, 856 So. 2d 1047 (Fla. 5th DCA 2003).
  - o Adultery may be the basis for an alimony award only where such adultery translates into greater financial need for the non-adulterous spouse or where the adultery resulted in a depletion of marital assets. Noah v. Noah, 491 So. 2d 1124 (Fla. 1986). **In other words there must be some sort of marital waste.**
- Ethics point: As a practical matter, it is often not cost-effective to pursue this avenue. For example, proving that one spouse spent \$10,000 on his or her affair would result in recuperating only \$5,000 for your client (because, presumptively, each spouse is entitled to half of the \$10,000) and probably would cost at least that much to prove (through requests for production, subpoenas, depositions, etc.). Therefore, the attorney should consider the ethics of pursuing a position that is may not be cost-effective.

## **Contingency Fees**

- NO contingency fees in family law cases!
- Fla. R. Prof. Conduct 4-1.5(f)(3) A lawyer shall not enter into an arrangement for, charge, or collect: (A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof. . . .

## **Dual Representation**

- NO dual representation of spouses in a dissolution of marriage!
- Fla. R. Prof. Conduct 4-1.7 deals with conflicts of interest.
  - o A lawyer must not represent a client if their representation is directly adverse to another client.
  - o Cannot obtain informed consent because the representation involves the assertion of a position adverse to the other client in the same proceeding.
- There are multiple ethics opinions on this as well. See, e.g. Opinion 71-45 (available: <https://www.floridabar.org/TFB/TFBETOpin.nsf/ca2dcdaa853ef7b885256728004f87db/239291f7ca61ace185256b2f006cb679?OpenDocument>)
- “Bounds of Advocacy” Rule 4.1: An attorney may not represent both parties in a family law matter, even if the parties do not want independent representation.

## **“This is War”**

- Take a look at the “Bounds of Advocacy” [Sharon – Not sure how to properly cite this]
  - o These are not “enforceable” rules but rather rules that family attorneys should strive to follow. They are goals.
- Rule 1.1: An attorney should strive to lower the emotional level of family disputes by treating counsel and parties with respect.
- Rule 2.3: An attorney should refuse to participate in vindictive conduct and should strive to lower the emotional level of a family dispute by treating all participants with respect.

## **Rule & Ethics involved in children testifying**

- Local Rule: Don’t bring children to court or to a deposition without first obtaining an ORDER from the Judge permitting such.
- Excerpt from Judge Greider’s Order Setting Pretrial and Trial:
  - o Pursuant to Rule 12.407, no minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing, or subpoenaed to appear at

a hearing without prior order of the court. To obtain such an order, a motion must be filed and heard by the Court no later than during the Judge's family law motion week immediately preceding the trial week in which your case has been scheduled--NOT at the time of your trial. **If a party seeks to introduce child hearsay, the requirements of Section 90.803(23) apply. The motion to admit child hearsay must be completed prior to the first day of trial or hearing.**

- "Bounds of Advocacy" Rule 6.2: An attorney should advise the client of the potential effect of the client's conduct in disputes involving children.
  - o Comment: "The lawyer should explain that adversarial litigation may be harmful to children. . . ."
  - o Comment: "The lawyer should consider whether the client's position on children's issues is asserted in good faith. If not, the lawyer should advise the client of the harmful consequences of a meritless claim. . . . If the client persists in demanding advice to build a spurious case or to use a parenting claim as a bargaining chip or a means of inflicting revenge . . . the lawyer should withdraw."
- Bounds of Advocacy Rule 7.1: The attorney should consider the welfare of the minor children, and seek to minimize the adverse impact of the litigation on the children.
  - o Comment: "The best thing a lawyer can do for a child is keep the child out of the case . . . ."
- Bounds of Advocacy Rule 7.3: An attorney should not communicate with a child unless they first obtain court's permission, or unless they do so in the presence of the child's attorney or guardian ad litem.
- Bounds of Advocacy 7.4: Attorney should not bring a child to court unless they first discuss the matter fully with the client and reasonably believe it is in the child's best interest.

### **Custody or Timesharing**

- Florida no longer uses the word “custody.” We use timesharing and parental responsibility.
- Fla. Stat. 61.13 primarily governs timesharing & parental responsibility.
- Fla. Stat. 61.13(2)(c) states, “The court shall determine all matters relating to parenting time and timesharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the UCCJEA. . . .”
- Fla. Stat. 61.13(2)(c)(1) states that it is Florida’s public policy that each child has “frequent and continuing contact with both parents. . . .”
- Fla. Stat. 61.13(2)(c)(2): The court *shall* order shared parental responsibility (i.e. parents jointly make decisions affecting welfare of the child) unless shared parental responsibility would be *detrimental* to the child. . . . Subsection (c)(2)(b) requires the court to award sole parental responsibility if it would be in the child’s best interest to do so.
- Fla. Stat. 61.13(2)(c)(3) states that the best interests of the child is the court’s primary consideration, and goes on to list factors for the court to consider when determining the best interests of the child.
- Stepparents generally have no right to visitation. See Meeks v. Garner, 598 So. 3d 261 (Mem) (Fla. 1st DCA 1992) (involving a case where the child’s biological mother had died).

### **Equitable Distribution**

- Fla. Stat. 61.075 defines marital and non-marital assets and liabilities.
- Presumption is that marital property is equally divided. Fla. Stat. 61.075(1) (includes factors that the court may consider when making an unequal distribution of marital assets)
- Lawyers must identify what assets are marital v. non-marital
- While non-marital assets stay with the party to whom the assets belong, they may be considered for purposes of alimony and child support when considering need and ability to pay.
- This is a very basic summary and does not address burdens, presumptions, etc.