CARBOLIC SMOKEBALL PRESENTATION: APRIL 16, 2013

SKIT 1

The Present Day Show

MC will introduce name of show

(Judge Keyser) = Havana Mushrie

(Lou) = Matt Sour

(Jim) = Jackie Childs (Attorney)

(David) = Charlie Bean

Havana (speaking and sitting with Matt Sour) : Welcome to The Present Day Show. I'm Havana Mushrie, and this is my co-host Matt Sour. As you may have heard, Charlie Bean is back in the news. Famous for his hotel escapades and extravagant spending, not to mention his affinity for tiger blood, rumors are swirling that Charlie's ex-wife, Bernice Richards has petitioned for a modification of timesharing due to concerns about Charlie's Adonis DNA lifestyle. In particular, stories have surfaced about Charlie's less-than-conventional parenting style. To discuss these rumors, speaking out is Charlie's attorney to discuss these issues here today. (Fake Continue Talking)

(Cut to Offstage)

(Jackie and Charlie talking offstage):

Charlie: My PR person says I need you to make me look good. That's why you are here. Nobody knows, except you, about my goddesses. Remember, they are "nannies" and only "nannies." You can't talk about how many there are. You know I have nocturnal visitations with some while others babysit the kids. I don't know if they feed or watch them, but whatever, I'm busy.

Jackie: Jackie Childs is not gonna talk about that. That's lewd, lascivious, salacious, and outrageous!

Charlie: This is important Jackie, make me look good. You also know about my discipline but you can't tell anyone. I used to spank my son in the past, and as you know, a couple months ago I left some bruises.

Jackie: Jackie Childs is not gonna talk about that. That's egregious, preposterous, outlandish, and outrageous!

Charlie: I'm serious Jackie. I still spank 'em. Bernice is too gentle. I believe in running a strict household and using "corporal punishment." When my boy misbehaves, I don't hold back because he's got to toughen up. He can take it, he's got my Adonis DNA, not to mention tiger blood in his veins.

(Someone from offstage): We are live in 5, 4, 3, 2 – (Jackie points to watch and starts to walk to chair by Havana).

Charlie: ---And don't tell anyone what's in my cup!!!! (Puts on sunglasses and drinks from cup throughout sketch)

Havana: Thank you for being with us. So Jackie, let's just get right into it. It has come to our attention that one of the points of contention in Denise's modification of timesharing request is Charlie's numerous ladyfriends, that Charlie refers to as "goddesses." Jackie, this must be tough to handle for you as Charlie's attorney. If true, these rumors could be devastating to Charlie's case. We're watching Charlie fall apart. Have you talked to Charlie about his "goddesses?" Don't you feel like you need to do something?

Question 1

What should Jackie do upon learning of Charlie's behavior involving his "goddesses?"

A) Do nothing. It is Charlie's life after all and the court has no business in Charlie's sex life.

B) Counsel Charlie on the "best interest" standard that a court will look to in evaluating how to allocate timesharing on behalf of the children, and tell Charlie how his behavior with the "goddesses" will look to the court.

C) Attempt to dissuade Charlie from engaging in said behavior in the presence of his children, as it may be detrimental to his children; Jackie should consider the welfare of the children.

D) Both B and C

Answer: D) Both B and C.

Under section 61.13(3), Florida Statutes (2012), the court is required to determine whether modification of the parties' timesharing schedule is in the best interests of Charlie's children, assuming that Denise will also be able to show a "substantial, material, and unanticipated change in circumstances." Pertinent to this question, in considering whether modification of timesharing is in the child's best interest, the court must consider "[t]he anticipated division of parental responsibilities, including the extent to which parental responsibilities will be delegated to third parties," Charlie's capacity to act upon

the needs of his children as opposed to his own needs or desires, and the moral fitness of Charlie.

Further, "[i]n representing a client, a lawyer shall . . . render candid advice," and may refer to moral and social factors that may be relevant to the client's situation. Fla. R. Prof'l Conduct 4-2.1.

Finally, the American Academy of Matrimonial Lawyers publishes "Bounds of Advocacy" which aspire to a level of practice above the minimum established in the rules of professional conduct. Bound of Advocacy 6.1 provides, "[a]n attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children. The comment to this rule states that matrimonial attorneys should counsel parties to examine their wishes in light of the needs and interests of the children and the relationship to other family members. Bound of Advocacy 5.2 provides that a family law attorney "should advise the client of the potential effect of the client's conduct on a [timesharing] dispute."

Thus, Jackie should tell Charlie how his "goddess"-related behavior will look to the court under the "best interests of the child" standard, as well as provide counsel to Charlie generally about the potential effects of his behavior on his children.

Havana: Jackie, Bernice has complained that Charlie has been too rough with the children in the past. You have been heard on record as calling child abuse in general (Havana does air quotes) "excessive, extreme, exorbitant, and outrageous." I am not sure these particular adjectives apply. In any event, given your general views, did you do anything about this Jackie?

Question 2

Upon Jackie learning that Charlie's spanking of his child in the past left bruises on child, Jackie must:

A) Disclose the information about Charlie's spanking to law enforcement or the Department of Children & Families.

B) Do nothing, as the information about Charlie's particular spanking is confidential and privileged.

Answer: B) Do nothing, as the information about Charlie's particular spanking is confidential and privileged.

Florida Rule of Professional Conduct 4-1.6 provides that "[a] lawyer shall not reveal information relating to representation of a client" absent the client's consent. However, an exception to the rule is that "[a] lawyer shall reveal such information to the extent the lawyer reasonably believes necessary" "to prevent a client from committing a crime."

Under section 827.03, Florida Statutes, an intentional act that could reasonably be expected to result in physical injury to a child constitutes the crime of child abuse. Here, though, disclosure of the specific, past incident of spanking would not serve to prevent Charlie from committing a crime. *See The Florida Bar v. Lange*, 711 So. 2d 518, 520 n.2 (Fla. 1998) ("rule 4-1.6 . . . forbids attorneys to disclose client confidences unless disclosure is necessary to prevent a crime from occurring"). *See also* § 90.502, Fla. Stat. (providing that a lawyer-client communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of legal services to the client and those reasonably necessary for transmission of the communication, and that the client has a privilege to prevent any person from disclosing the contents of confidential communication when that person learned of the communication because it was made in the rendition of legal services to the client).

Havana: Do you believe that Charlie is currently too rough with his children?

Question 3

Upon Jackie learning that Charlie currently uses "corporal punishment" and doesn't "hold back" when his son misbehaves, Jackie must:

A) Jackie must do nothing as client communications are privileged and confidential

B) Jackie must call the central abuse hotline of the Department of Children & Families if lawyer has reasonable cause to suspect that a child is being abused

C) Attorney must inform law enforcement

D) Attorney may do nothing but must disclose this information to the extent necessary to prevent Charlie from committing a crime.

Answer: Probably D) Jackie may do nothing but must disclose this information to the extent Jackie reasonably believes necessary to prevent Charlie from committing the crime of child abuse.

Section 39.201(1)(a), Florida Statutes (2012) states, "[a]ny person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent . . . or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department" via the department's toll-free central abuse hotline.

But Section 39.204, Florida Statutes (2012) provides, "[t]he privileged quality of communication . . . between any professional person and his or her patient or client, and any other privileged communication *except that between attorney and client* . . . as such

communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with law enforcement or the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

However, depending upon how broadly the scope of the maintained attorney-client privilege in section 39.204 is interpreted, Florida Rule of Professional Conduct 4-1.6 still likely applies to require Jackie to disclose the information to the extent Jackie reasonably believes necessary to prevent Charlie from committing a crime. *But note The Florida Bar v. Glant*, 645 So. 2d 962 (Fla. 1994) (attorney representing mother in custody case disciplined for informing Department of Health and Rehabilitative Services that father sexually abused children; disclosure was contrary to the client's objectives where she wanted custody terminated and never testified that she knew the father was abusing the children). Charlie's statements regarding not holding back and that he performs corporal punishment arguably do not provide Jackie with a sufficient basis for disclosure.

The interplay between child abuse reporting statutes, the attorney-client privilege, and rules of professional conduct is complex and largely unsettled. The extent of the family law attorney's duties in such a situation is thus ripe for further legislative and judicial clarification. For further reading, *see* Robert P. Mosteller, *Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and the Specter of Lawyer as Informant*, 42 Duke L.J. 203 (1992); Lewis Becker, *Ethical Responsibilities of a Lawyer for a Parent in Custody and Relocation Cases: Duties Respecting the Child and Other Conundrums*, 15 J. Am. Acad. Matrim. Law 33, 58-68 (1998).

Havana: Jackie, while you were giving your answer to my last question, one of our disgruntled cameramen panned over Charlie backstage. Charlie was mistakenly broadcast to our entire audience. Is he wasted at this very moment?

Question 4

For purposes of this question, assume that at the hearing on Bernice's petition for modification of timesharing the next day, the trial judge tells Jackie that he saw Charlie drinking from his "cup" with a white powder residue around his nose on The Present Day Show the previous day. What is Jackie's duty to the court regarding Charlie's drinking/drug use?

A) Jackie must inform the court of Charlie's drug use

B) Jackie must inform the court only that the cup contained the substance on the one occasion

C) Jackie may deny all knowledge of the nature of the substance in the cup

D) Jackie must withdraw

Answer: Probably B) Jackie must inform the court that the cup contained the substance when Charlie was offstage at The Present Day Show

Pursuant to an attorney's duty of candor to the tribunal, a lawyer shall not knowingly 1) make a false statement of material fact or law to a tribunal; or 2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client. Fla. R. Prof'l Conduct 4-3.3(a)(1), (2). The duty of candor to the tribunal generally trumps the duty of confidentiality. *The Florida Bar re Rules Regulating the Florida Bar*, 494 So. 2d 977 (Fla. 1986). A parent's drug use that interferes with the parent's ability to meet the needs of the child or otherwise harms the child is a factor that weighs in favor of modifying timesharing. *See Sullivan v. Sullivan*, 736 So. 2d 103 (Fla. 4th DCA 1999). At the very least, Jackie's duty of candor to the court requires Jackie to answer honestly about the contents of the cup. Whether Jackie must disclose the fact that Charlie ingests the substance several times per week to the tribunal perhaps depends on whether Bernice already plans to litigate the issue of Charlie's substance abuse as it pertains to the best interests of the children. If Bernice has no knowledge of Charlie's substance abuse, Jackie's position is more precarious, as a failure to disclose could be construed as prejudicial to the administration of justice.

Charlie: Now it's time for me to have timesharing with my boys. WINNING!

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SKIT 2

10 MINUTES WITH TED

Ted: Welcome to 10 minutes with Ted. I am your host... Ted. Today we are at 90210 High, speaking with students who participate in a divorce support group here the school. I have Navid Shirazi a student here at 90210 High and member of the divorce support group. Navid how long have you been a member of this group?

[Navid]: About 6 months.

Ted: And how long have your parents been divorced?

[Navid]: My parents aren't divorced.

([Navid to another student): Dude, check it out. I just got a text from the guy/girl in history class!
(other student): Nice! (if the 2 students are guys, they can hi-5 each other). . . . wait- you go to history class?

Ted: So, then your parents are going through a divorce?

[Navid]: Yeah, dude.

([Navid] Not paying attention to Ted, playing on his phone instead.)

Ted: Ok. Give me your phones!
Now, I would like to talk with you about the current situation. How old are you?

[Navid]: 15.

Ted: How do you feel about your parents getting divorced?

[Navid]: I don't know.

Ted: Are you worried about possibly not seeing one of your parents as much anymore?

[Navid]: Not really, man.

Ted: Well, your parents will be separated so you don't think that you might be seeing each of them a little less than you do now?

[Navid]: Oh, well. Yeah. I guess. But I will see both of them equally. I made sure of that.

Ted: What do you mean you made sure of that?

[Navid]: Well, like I told my dad's lawyer, I was checkin' out my dad's e-mail a couple of weeks ago, 'ya know, just for fun, and I saw some e-mails between my dad and his new chick-girlfriend. There were some pictures of like a sex party or something, and some of them drinking and smoking, and some of the guys with my dad had young chicks there too! Man, seeing my dad like that—it was pretty gross…. So I deleted all the e-mails because I remembered that my friend Johnny told me that when his parents got divorced, his mom had found some e-mails like that and so now he spends less time with his dad. And I didn't want that to happen 'cause dad has the wave-runners and dirt bikes. (guy next to Navid says "Nice!" And they hi-5)

[GO TO QUESTION 1]

WHAT IS THE HUSBAND'S ATTORNEY'S DUTY WHEN HE IS TOLD BY THE SON, THAT HE HAD DELETED THE E-MAILS OF THE HUSBAND

PARTAKING IN SOME ACTIVITIES WHICH MAY HAVE IMPACTED THE TIME-SHARING DETERMINATION BY THE COURT?

ANSWER:

(A) The Husband's attorney has no duty to either opposing counsel or the Court to disclose the existence of the deleted emails. The emails were deleted by the son, not the client, and neither the Husband nor the Husband's attorney were consulted or in any way participated in the son's decision to delete the emails.

(B) The attorney must disclose the existence of the deleted emails to the Court if they are otherwise not discovered by opposing counsel or the Wife

(C) The attorney must disclose the existence of the deleted emails to Wife's attorney if they would otherwise be discoverable, but for the son's interference in deleting the emails.

(D) Both B and C.

Answer: D

Rule 4-3.3 Candor Toward the Tribunal provides:

(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

Rule 4-3.4 Fairness to Opposing Party and Counsel provides:

A lawyer shall not:
(a) Unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document of other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

Analysis: The ethical question is not whether the attorney is subject to discipline for destroying the emails (clearly he is NOT) but whether he has an obligation to opposing counsel and/or the court to disclose the existence (and destruction) of the emails, once the attorney learned that the son had tampered with the evidence (by deleting the emails) during the pendency of the divorce. In *Florida Bar v. Nicnick*, 963 So2d 219 (Fla. 2007), an attorney was suspended from the practice of law for concealing the existence of a settlement agreement. While the attorney was not involved in the execution of the settlement (which was done between the two represented parties WITHOUT involvement of counsel), once the attorney learned of the existence of the Settlement, he had a duty to disclose it to both opposing counsel and the Court The court expressly stated "Nicnick's misconduct was intentional because he knowingly concealed the documents. Among the rules violated were 4-3.3 (a) (2) (lack of candor to tribunal) and 4-3.4 (a) obstructing another party's access to evidence.

[BACK TO TED]

[Annie Wilson]: Yeah man, I had kinda the same situation when my parents were getting divorced!

Ted: And, what is your name?

[Annie Wilson]: Annie Wilson

Ted: How old are you?

[Annie Wilson]: 17

Ted: How long have you been in this group?

[Annie Wilson]: Like a year, I guess.

Ted: Ok. So tell us what happened with you?

[Annie Wilson]: Well, I had found some e-mails like that too. I hadn't done anything though. Then one day, I had to talk with my dad's attorney and I wound up telling him about the e-mails. Dad's lawyer told me to delete the e-mails. I almost did, but then I didn't. I talked with Mom's lawyer and told him about the e-mails and that dad's lawyer wanted me to delete them.

[GO TO QUESTION #2]

WAS THE REQUEST OF THE HUSBAND'S ATTORNEY FOR THE DUAGHTER TO DELETE THE E-MAILS IMPROPER?

(A) Yes.
(B) No, because the deleted emails could still ultimately be recovered if opposing counsel hired an IT expert to examine the computer's hard drive
(C) No, because dad's attorney did not know or reasonably should know that the incriminating emails were relevant.
(D) Maybe not, because there is no general duty to preserve evidence in Florida
(E) Maybe not, because deleting another person's emails (or intentionally destroying evidence) is evidently not a crime in Florida.

Answer – (A)

See Rule 4-3.4(a)
A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; not counsel or assist another person to do any such act

See also Comment to Rule 4-3.4 Subdivision (a) applies to evidentiary material generally, including computerized information

The rule prohibiting an attorney from concealing evidence may apply, even if copies of a concealed document are available to the opposing party and even if the concealment lasts for only a short period of time. *The Florida Bar v. Forrester*, 818 So.2d 477 (2002)

The comment to Rule 4-3.4(a), although not binding authority, supports our finding that the availability of copies of evidence is irrelevant to whether concealment of an original violates the rule. A trial need not occur before a document is considered relevant evidence under the rule. *Forrester*, 818 So.2d at 482.

For (D) A duty to preserve evidence does not exist at common law. The duty must originate either in a contract, a statute, or a discovery request for purposes of a claim of spoliation. See *Gayer v. Fine Line Const. & Elec., Inc.*, 970 So.2d 424 (Fla. 4th DCA 2007).

See also *Royal & Sunallliance v. Lauderdale Marine Center*, 877 So.2d 843 (Fla. 4th DCA 2004) … However, *Hagopian* does not expressly establish any common law duty to preserve evidence. But see *Sponco Mfg., Inc. v. Alcover*, 656 So.2d 629 (Fla. 3d DCA 1995) – Under certain circumstances, the destruction of evidence may confer in an aggrieved party a separate cognizable claim. And *Silhan v. Allstate Ins. Co.*, 236 F.Supp.2d 1303, N.D. Fla 2002 - Florida law recognizes a duty to preserve evidence after a lawsuit has been filed. However, this Federal district court interpreted *Hagopian* to expand the common law duty to include the filing of a lawsuit, which the 4th DCA in *Royal & Sunalliance* stated wasn't so.

Send a preservation of evidence letter in Florida State Court!!

See also Comment to Rule 4-3.4 – Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding.

[BACK TO TED]

Ted: What happened after you spoke with your mom's attorney?

[Annie Wilson]: Well, my Mom's lawyer called my dad's lawyer to let [him/her] know that [he/she] knew about the e-mails and that [he/she] had told me to delete the e-mails and that if they didn't enter into an agreement about alimony and stuff, then he was going to report him to the Bar. So they reached an agreement.

[GO TO QUESTION #3]

IS THE MOM'S LAWYER VIOLATING THE FLORIDA RULES OF PROFESSIONAL CONDUCT BY USING THE THREAT OF A BAR COMPLAINT AS LEVERAGE AGAINST THE HUSBAND'S ATTORNEY?

ANSWER:
(A) No, because everyone knows that a lawyer is supposed to do whatever they can to zealously represent their client.
(B) No, because what else is the lawyer supposed to do?
(C) No, because the other lawyer was acting improperly by telling the teenager to delete the e-mails.
(D) Yes. Threatening a bar complaint violates the Rules of Professional Conduct.

The Answer is (D)

According to Ethics Opinion 94-5, under most circumstances, it is unethical to threaten a fellow member of the bar with a grievance complaint. Under the "Reporting Professional Conduct Rule, Rule 4-8.3, an attorney is obligated to report another attorney if the attorney has actual knowledge of misconduct that raises a substantial question as to the offending attorney's "honesty, trustworthiness, or fitness as a lawyer in other respects." *See* Rule 4-8.3(a). However, an attorney, may not report the violation if the information is protected by the confidentiality rule, Rule 4-1.6, unless the attorney has the consent of the client. As a result, in cases where an attorney is required to report a violation, failure to do so would result in misconduct under Rule 4-8.4(a). Also, an agreement not to file a bar complaint would violate Rule 4-8.4(a) where the filing of a complaint would be required by Rule 4-8.3(a). *See Florida Bar v. Fitzgerald*, 541 So. 2d 602 (Fla. 1989) (holding that a client's agreement not to report an attorney's misconduct is unenforceable). Therefore, if an attorney is obligated to report another attorney's professional misconduct, the attorney must report it rather than threaten to do so.

Even where an attorney is not required to report misconduct, threatening to do so may violate one or more rules, such as Rules 4-8.4(b), 4-4.1, 4-4.4, and 4-8.4(d). Rule 4-8.4(b) prohibits an attorney from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Therefore, an attorney is prohibited from conduct that would constitute extortion under criminal law.

[BACK TO TED]

Ted: And, please tell us your name and age.

[Naomi Clark]: [Naomi Clark] and I am 17.

Ted: How long have you been in this group?

[Naomi Clark]: About 10 months.

Ted: And please tell me your story regarding your parents' divorce.

[Naomi Clark]: Well my parents have been really nasty to each other. They can't stand each other and are basically at each other's throats all the time. Well, one day I came home from

school, and my dad called and left me this really nasty voicemail all about ME. [**Play Alec Baldwin Clip**] Boy, was I pissed! I went right to my mom, and we marched straight to her lawyer's office. My mom was great! She played the tape for her lawyer, and said that he better make my dad pay or else! He yelled out "CHA-CHING BABY!" and did some kind of weird happy dance or something. Next thing I know, my mom's lawyer called my dad's lawyer, and said that if my dad didn't give my mom and me everything we wanted, the tape was going straight to CNN. Well, after that everything pretty much was resolved and I get to spend most of my time with my mom in this awesome new house on the beach.

[GO TO QUESTION #4]

IS THE MOM'S LAWYER VIOLATING THE FLORIDA RULES OF PROFESSIONAL CONDUCT BY THREATENING TO PUBLICIZE THE VOICEMAIL TO GET A BETTER RESULT FOR HIS CLIENT?

ANSWER:
(A) No, the lawyer is simply engaging in zealous representation for the client.
(B) No, because the child was happy with its mother's actions by giving that tape to the lawyer.
(C) Yes, because the lawyer is not considering the child's interests in its actions.
(D) Yes

A. In this case, there is no evidence that the child is represented by a guardian ad litem. Had the child been represented by a guardian ad litem, according to Shienvold v. Habie, the Fourth District Court has held that a guardian ad litem may file any necessary pleadings, motions, or petitions for relief as the guardian ad litem deems appropriate or necessary. 627 So.2d 1023, 1025 (Fla. 4th DCA 1993). Here, the lawyer was engaging in zealous representation of the mother, and the fact pattern demonstrates that the child was pleased by the mother's actions by allowing this tape go to the lawyer. IF the child had been appointed a guardian ad litem, this representative would have the right to intervene if they saw it fit to do so..

[BACK TO TED]

Ted: Well, my 10 minutes are up. This was a riveting expose. Join me next week when I go to 90210 rehab, to see where most of this group will be in the near future thanks to their parents' wonderful parenting skills. Thank you. Good night!

[END]

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SKIT 3

CARBOLIC SMOKEBALL-TOPIC 3, ZEALOTRY FOR MONEY

Characters and their names

Moderator: [Kristi]

Host of the show: [Sab]

Client: [Colleen]

Lawyer for Client: [Michael]

Lawyer for Husband: [Andy]

Judge: [Kiran]

Scene 1: We open on the television set of the Host show; canned applause would be a really nice touch here

Host: Welcome everyone to another edition of the "Tell me Your Story and I will Call You Stupid" show. Today I want to introduce my audience to Mrs. Gothrocks a wife who was never beaten or battered while she was married but certainly got hammered when she went to court.

Wife/Gothrocks: That's right, Host. I just cant imagine what I have done to deserve such awful treatment. What a miserable experience. (canned applause)

Host: Well, your divorce was nothing short of brutal.

Wife/Gothrocks: No, I was referring to being on the show. (rimshot-download from instantrimshot.com)

FLASHBACK (a little flash back music and some wavy lines would be nice, otherwise how about a simple sign to be held up that says FLASHBACK)

[wavy transition lines on poster board?]

Wife/Gothrocks: Here I am in the at Bloomingdales ladies room. Hmm, sign says "Bill Padden Attorney at Law", "getting divorced?"… "see me before you settle your divorce, I have a double alimony guarantee!"…"I am the best; way better than the rest"… "Daily office hours in the parking lot enter at the rear of the motor coach in the parking lot."

Wife/Gothrocks: I have a proposed settlement which my attorney told me to review. Why not get a second opinion.

Lawyer/Paddem: What can I do for you? Mrs. Gothrocks?

Lawyer/Gothrocks: Well I am in the process of divorcing my Husband who is an investment banker. I saw your advertisement where you have a double alimony guarantee. And I thought since this is your area of expertise I would have you take a quick look at some divorce settlement documents I just received from my attorney.

Lawyer/Paddem: So you are currently represented by an attorney?

Wife/Gothrocks: Yes

Lawyer/Paddem: Sure, I will look at them, he is probably an amateur, and there is no way he can get you the results I can. By the way what attracted you to my mobile law office?

Wife/Gothrocks: The double alimony guarantee-how does that work exactly?

Lawyer/Paddem: I start with the fact that I am better than everyone else at family law. The first thing you must know is that you never take a settlement offer, until after you have softened up the other side with some good old legal gamesmanship and litigation. It is my absolute belief that only weak and worthless attorneys try to get along with the other side, but that does not get results. I bet your lawyer just handed this settlement to you, said to you that he had looked it over and recommended that you sign it didn't he?

Wife/Gothrocks: You must be a mind reader that is what he said and did! I have the agreement right here in my [Louis Vuitton prop] purse.

Wife/Gothrocks: Well, I like the sound of getting better results, but I still love my husband Mr. Gothrocks and I still respect him, we were married for 7 years and we just grew apart over the years. He loves New York City and I am more of a Palm Beach gal, so we have agreed to separate amicably and we both wanted to avoid protracted litigation. This settlement agreement seems fair. How about you take a look at it and tell me what you think?

Lawyer/Paddem: Well I would be happy to look at that agreement for you. But before I start I do need to ask you a few simple questions.

****PROP/ LARGE ADDING MACHINE/AND CHA-CHING[MONEY] NOISE****

Lawyer/Paddem: So how much does your husband make a year?

Wife/Gothrocks: Well last year he cleared over $500,000 but it was a slow year.

**[cash register noise cha-ching , cha- ching, cha-ching, three times]

Lawyer/Paddem: Is there any valuable property in the marriage?

Wife/Gothrocks: We do have a nice art collection. It is described in the agreement. [cha-ching, cha-ching,]

Lawyer/Paddem: How many houses do you own which were acquired during the marriage?

Lawyer/Paddem: One each in Florida, California and New York and no mortgages. [cha-ching]

Lawyer/Paddem: What assets have you brought to the marriage?

Wife/Gothrocks: I have a modest inheritance, but no other significant assets.

Lawyer/Paddem: Excellent

Lawyer/Paddem: Now let me take a look at that settlement agreement.

[Examines the voluminous document for less than 2 seconds flips pages] [prop huge stack of papers clipped together]

Lawyer/Paddem: This document is a joke right, are we on candid camera? , you were really going to sign this? My poor deceived women, you need to fire your attorney right now. He is an amateur for sure. I can do much better than this. In fact, I will guarantee that if you fire him, today, I will definitely double your alimony. You saw my double alimony guarantee didn't you, what do you have to lose?

Wife/Gothrocks: As long as it will be quick and amicable?

Lawyer/Paddem: I am willing to take this case on a contingency fee, I will only take my fees if I recover alimony, support or property distribution on your behalf.

Wife/Gothrocks: I am concerned about your attorney fees; will this cost a lot?

Lawyer/Paddem: Under Florida law your husband will be paying for it all anyway, think of my services as free of charge thanks to the Florida legislature.

Wife/Gothrocks: OK, you are my new attorney.

[Mr. Donahue moderator hiding in audience] [pops up]

DONAHUE /MODERATOR:

Question No 1: Can Lawyer Bill Paddem advertise that he is better than all other attorneys?

A. Yes
B. No
C. Maybe

CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A LAWYER'S RESPONSIBILITIES . . ."A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. . . .A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials."

(c) Permissible Content - Rule 4-7.2(b)(1) [ADVERTISING]

(1) Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading, or deceptive communication about the lawyer or the lawyer's services. A communication violates this rule if it:

(A) contains a material misrepresentation of fact or law;

(B) is false or misleading;

(C) fails to disclose material information necessary to prevent the information supplied from being false or misleading;

(D) is unsubstantiated in fact;

(E) is deceptive;

(F) contains any reference to past successes or results obtained;

(G) promises results;

(H) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(I) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

Answer: No. A lawyer cannot compare his services with other lawyers services in written advertising unless the comparison is specific and factually substantiated.

Question No. 2. Can Lawyer Bill Paddem offer a contingency fee in a divorce case?

Rule of Professionalism 4-1.5(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."

Answer: B, No a contingency fee is not legally permissible in this instance.

Question No. 3. Can Lawyer Bill Padden ethically adopt a strategy to incur massive attorney fees in order to ultimately recover a better settlement for wife, Mrs. Gothrocks?

A. Yes
B. No
C. Maybe

61.16 Attorney's fees, suit money, and costs.—

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals.

Florida Statute 61.16, allows for attorney's fees to be charged to the party better able to bear the financial burden in a divorce case. The purpose of the law is to ensure that both parties will have similar ability to obtain counsel. See, Canakkaris v. Canakaris, 382 So.2d 1197 (Fla 1980); However, the statute is also designed to "promote the amicable settlement of disputes that arise between parties to a marriage. See Perlow v. Berg-Perlow, 875 So. 2d 383 (2004).

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION
(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.

Comment to RULE 4.1.2 Allocation of authority between client and lawyer
Subdivision (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, **the lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred** and concern for third persons who might be adversely affected.

Answer: B, No. Wife/Gothrocks said she wanted Lawyer's services as long as the divorce was "quick and amicable"and thus, the lawyer's tactics would conflict with his client's original directive. In addition, the lawyer should not engage in excessive litigation purely as a tactic to advance a settlement in a divorce case because to do so runs contrary to the intent of F.S. 61.16., which could also adversely impact the wife if her lawyer's request for attorney fees were denied by the trial Judge.

Question No. 4: Would Husband's lawyer be committing an ethical violation if he asserts as a defense that husband should not have to pay wife's attorney's fees because they are illegal or prohibited contingency fees?

A. Yes
B. No
C. Maybe

Rule 4-1.5(e) states "... The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved."

Answer: A, Yes. The rule prohibits using an illegal fee arrangement as a defense in the action. The issue is purely contractual and is to be initially dealt with between lawyer and client.

CHAPTER II- III, FLASH GETS A CUSTODY HEARING AND SOMETHING IS FISHY WITH THE JUDGES ORDER

Moderator: During the prolonged divorce proceedings Mrs. Gothrocks, finds out Mr. Gothrocks has a new girl friend Ms. Ima Cruel to Animals. She sees Ima mistreat the family pet an adopted Greyhound called Flash. Ms. Gothrocks knows that Mr. Gothrocks will be out of town on

business for a month and she cannot bear the thought of Ms. Cruel to Animals taking care of Flash.

Motions are filed and the matter comes before a Judge.

At the conclusion of the hearing, and without making any factual findings.

Judge turned to Wife's Attorney, winked at Wife's Attorney, and asked:

Judge:"Would you be so kind as to prepare a proposed order setting forth what you think my ruling should be?"

Husband's Lawyer: "should I also submit a proposed Order, Your Honor?"

Moderator: Judge shot Husband's Attorney an icy stare, responding:

Judge:"Please don't."I have read the drivel you have written in the past. You are not a writer. If I decide to rule in your client's favor, I'll just have my staff attorney draft an order. Don't you worry."

Moderator: Following the hearing, Wife's Attorney sent a "proposed"35 page order to Judge. The proposed order not only granted the motion to prohibit Husband's Girlfriend from babysitting Wife's Greyhound, but it also ordered Husband to pay all attorney's fees for the entire divorce proceeding. The order characterized the husband's behavior as atrocious, as that of a scoundrel and referred to the wife's conduct as blameless and justified.

Prior to submitting the proposed order to Judge, Wife's Attorney did not provide a copy to Husband's Attorney. Within an hour of Wife's Attorney's submission of the proposed order, the Judge had signed the order verbatim without making any changes.

Question No. 1: Was Wife's Attorney's conduct in drafting the one-sided proposed order and submitting it to Judge without sharing it with Husband's Attorney proper?

a. Yes, because Wife's Attorney has a duty to competently and zealously

represent his client and get the best possible results for her in the divorce proceeding.

b. No, because attorneys should never submit proposed orders to judges;

only judges and their law clerks should write orders.

c. Yes, because Judge requested a proposed order from Wife's Attorney

setting forth what Wife's Attorney thought should be Judge's ruling, so Wife's Attorney

had to submit the proposed order to avoid being held in contempt.

d. No, because Wife's Attorney should have provided the proposed order to

Husband's Attorney prior to submitting it to Judge and should not have included one-

sided findings that were not made, or even at issue, at the hearing.

ANSWER: d. See Perlow v. Berg-Perlow, 875 So. 2d 383, 391 (Fla. 2004)(Pariente, J., concurring). "First, the proposed final judgment that was submitted by the wife's attorney to the trial court should have been given to the husband before it was provided to the trial court, to afford the husband an opportunity to make objections. See American Academy of Matrimonial Lawyers [AAML], Goals for Family Lawyers § 7.12 (2000)('An attorney should submit proposed orders promptly to other counsel before submitting them to the court.')." Regarding the one-sided proposed order:

"Advocacy of this sort is unprofessional, does little to assist the trial court in it decisionmaking....See The Florida Bar, Ideals and Goals of Professionalism Goal 7.3 (1990)('A lawyer should not permit the client's ill will toward an adversary...to become that of the lawyers'.'); Goals for Family Lawyers § 1.3 ('An attorney should refuse to assist in vindictive conduct and should strive to lower the emotional level of a family dispute by treating all participants with respect.')."

Question No. 2: Was Judge's conduct in requesting a proposed order from only Wife's Attorney, deterring Husband's Attorney from submitting a competing proposed order, and then signing Wife's Attorney's proposed order verbatim proper?

a. No, because Judge's conduct gave the appearance of impropriety by not permitting Husband's Attorney to submit a proposed order and by entering the proposed order in a short time period without any changes despite its one-sided and overreaching nature.

b. Yes, because judges can ask counsel in their courtroom to do whatever they want, they are judges after all.

c. No, because a judge may never request counsel to prepare proposed orders.

d. Yes, because Husband's Attorney was known to be a poor writer whose proposed order would have been of no value to Judge.

ANSWER: a. See Perlow v. Berg-Perlow, 875 So. 2d 383, 388-390 (Fla. 2004).

"When the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case. This is especially true when the judge had made no findings or conclusions on the record that would form the basis for the party's proposed final judgment. This type of proceeding is fair to neither the parties involved in a particular case nor our judicial system." Incidentally, Canon 3B(7) of the Florida Code of Judicial Conduct provides,"A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions."

[end of PowerPoint]

[Scene-back in the studio]

Host: Did you tell your lawyer that you wanted to resolve the case quickly?

Wife: Yes (spoken in a demure tone)

Host: Did Lawyer ever explain to you some of the possible negative outcomes if you litigated your divorce instead of accepting your husband's settlement proposal?

Wife: No. (starting to get louder)

Host: Did Lawyer tell you that it was possible to protect your legal interests even if you settled the case.

Wife: No.

Host: Did lawyer discuss the value of your case and the risks of litigation

Wife: No.

Host: Did Lawyer ever tell you that by having a hearing where evidence was going to be presented as to why the girlfriend was unsuitable for taking care of the dog was going to cause a major delay in the case.

Wife: No. (by now screaming and Host is grinning ear to ear, the show is again a success)

Host: Did Lawyer represent you during the appeal?

Client: Of course. And my ex-husband stopped paying alimony while the appeal was pending. Lawyer was also retained to get my alimony paid?

Host: Did he charge you for that?

Client: Yes, 40% of whatever was collected.

[Kiran, what follows is for PowerPoint.]

Question: Did lawyer violate any professional responsibility rules by charging a contingency fee to collect alimony?

a. yes

b. no

c. maybe

Answer: **No.** Comment directed to Rule 4-1.5 (f)(3): This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Question: How many ethical violations has lawyer committed?

a. 2

b. 3

c. Enough to be suspended from practice.

d. Enough to be disbarred.

e. Who cares, we want to eat dinner.

Answer: (please insert the text of the following Rules of Professional Responsibility)

4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

4-1.2(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

4-1.4(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

4-8.4(d) A lawyer shall not: Engage in conduct in connection with the practice of law that is prejudicial to the

administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

See: The Florida Bar v. Richard Shankman, 41 So.3d 167, (Fla 2010)

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