



Chapter Seventeen – 0445LQ

Ethics Plenary: Deal or No Deal



Course Summary



This interactive course puts the attorney on the spot! After being explained the facts of a real case, the attorney will be presented with a deal. Should the attorney take the deal ... or take his or her chance at trial? We will cover inappropriate contact with jurors, fist fighting judges, lying attorneys, inappropriate romantic interludes with clients, substance abuse, and much more.

Featured Speaker:

Joel Oster, Esq.

President and General Counsel

Comedian of Law, LLC

Shawnee, KS

BIOGRAPHIES

Deal or No Deal



Featured Speaker:

Joel Oster, Esq.

Joel is a seasoned litigator and regular speaker to attorneys and non-attorneys alike. He currently is in private practice in Kansas City, specializing in constitutional litigation, campaign finance, sports law and appellate advocacy. He previously served as senior counsel with Alliance Defending Freedom at its Kansas City Regional Service Center. While at ADF, he was counsel for the Town of Greece, New York in the landmark case *Galloway v. Greece*. Joel argued the case before the United States District Court for the Western District of New York and the Second Circuit, and was part of the legal team presenting the case to the U.S. Supreme Court where they successfully defended the Town against a challenge to its practice of opening its sessions with an invocation.

Oster regularly litigates First Amendment issues. As lead counsel in *Freedom from Religion Foundation v. Obama*, Oster skillfully defended the constitutionality of the National Day of Prayer against an Establishment Clause challenge. Before the U.S. Court of Appeals for the 8th Circuit, he successfully defended the right of an organization to have a pro-life specialty license plate in Missouri in *Roach v. Stouffer*. In *Wigg v. Sioux Falls School District*, he successfully represented an elementary school teacher in obtaining equal access to school facilities after contract time after she was denied that right based on the viewpoint of her speech. In addition, Oster has defended various churches based on the Religious Land Use and Institutionalized Persons Act, against discriminatory zoning codes and regulations. Oster also has defended various individuals, corporations, and political committees against discriminatory and unconstitutional campaign finance regulations.

Joel has also spoken to thousands of attorneys across the United States and has learned from their successful and unsuccessful legal practices. Joel brings this practical perspective to all his seminars.

Oster earned his J.D. in 1997 from the University of Kansas School of Law. Oster is admitted to the bar in Kansas, Missouri, Florida, and numerous federal courts.

Joel is a seasoned litigator and regular speaker to attorneys and non-attorneys alike. He currently is in private practice in Kansas City, specializing in constitutional litigation, campaign finance, sports law and appellate advocacy.

Deal or No Deal!

Joel L. Oster, Esq.
Comedian of Law, LLC
President and General Counsel



Deal or No Deal!

After learning the predicament of certain attorneys, you must decide if you will take a deal or take your chances at trial!

Case #1 - In re Hartke, case no. 15-BG-984 (2016)

Facts: “During the morning session, Mr. Hartke fell asleep and began snoring, causing the seminar's coordinator to intervene and wake Mr. Hartke. During the afternoon session, Mr. Hartke began talking loudly at a video presentation and continued to do so after the seminar coordinator asked him to stop. In response to Mr. Hartke's continued outbursts, another attendee led Mr. Hartke from the room. That attendee smelled alcohol on Mr. Hartke's person. Another attendee saw a nearly empty liquor bottle among Mr. Hartke's possessions and noticed that Mr. Hartke appeared to be intoxicated. Mr. Hartke admitted to one attendee that he had been drinking.” But when asked about it by an investigator, he lied about sleeping in class.

Rules:

- 8.1 (“[A] lawyer . [,] in connection with a disciplinary matter, shall not . [f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer . to have arisen in the matter .”)
- 8.4 (Misconduct)

Offer: Complete and total banishment from all things law related. The “apocalyptic” disbarment.

Outcome: _____

Case #2 – In re Kent Nicholas

Facts: An attorney slapped his client who was handcuffed and in jail. The slapping was caught on video tape and became part of a news report on a local TV station.

Offer: 90 day suspension

Outcome: _____

Rule:

- 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s ... fitness as a lawyer
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case # 3 – In re: Quitschau, case no. 2017PR00084

Facts: Attorney created fake dating profile for opposing counsel on Match.com. The Match.com profile included the following representations: Mosby-Scott was separated from her husband; her children sometimes live with her; she smokes but is trying to quit; she regularly drinks alcohol; she is an agnostic; she is 56 years of age; she does not exercise and enjoys auto racing and motor cross; she has cats; and her favorite hot spots are the grocery store, all restaurants, the Pizza Ranch, all buffets, and NASCAR.

The attorney then downloaded several photos of opposing counsel from her law firm website. He then uploaded those photos to the Match.com profile he created so that the photos could be viewed by the general public.

In about July 2016, the attorney completed an online registration in opposing counsel's name for an organization entitled Obesity Action Coalition (OAC) so that she would be a member of and receive materials from that organization. The Obesity Action Coalition is a non-profit organization dedicated to helping individuals affected by obesity to improve their health through education, advocacy and support. Members receive daily emails and a yearly subscription to the organization's magazine, Your Weight Matters.

In July or August 2016, the attorney completed an online registration in opposing counsel's name for an organization entitled Pig International so that she would be a member of and receive materials from that organization. Pig International has a global nutrition and health publication for pork production. Members of Pig International receive daily emails about pork production.

Rule:

- Model Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Offer: 90 day suspension

Outcome: _____

Case #4 – In re Moriarty

Facts: A California attorney faked a heart attack to get out of trial. This was his second “Fred Sanford” stunt, and his third ethical violation.

Offer: One year suspension

Outcome: _____

Rule:

- 3.3 – A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation

- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case # 5 – In re Brett Klein

Facts: Los Angeles County Judge Brett Klein was presented with a proposed class-action settlement in which the plaintiffs' attorney would get \$125,000, but class members would get only a \$10 gift card, usable only at the store that allegedly violated the law in the first place. Judge Klein modified the settlement and ordered that the attorneys be paid in coupons to the store, a woman's store. Which was fairly peculiar since the attorney was male.

Offer: Fine of \$5,000 in Amazon gift cards, payable 6 weeks prior to next Christmas shopping season.

Outcome: _____

Case #6 – In re Hon. John C. Murphy, Florida Judicial Qualifications Commission, Case No. 14-255.

Facts: A judge, in open court, told a public defender that he did not need his help, to sit down, and then invited the public defender to a fight in the back hallway. The public defender accepted the invitation to fisticuffs, and the ensuing fight was caught audibly on the videotape.

Offer: One year suspension

Outcome: _____

Rule:

- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #7 - Pi-Net International Inc. v. JPMorgan Chase

Facts: Attorney filed appellate brief in excess of 14,000 words by deleting spaces. The Federal Rules of Appellate Procedure limit an appellant's opening brief to 14,000 "words." Fed. R. App. P. 32(a)(7). Appellants attempted in their first corrected brief to create "words" by squeezing various words together and deleting the spaces that should appear between the words. For example, the following is not one word, although that is how it appears on page 3 of Appellants' first corrected opening brief:

Thornerv.SonyComputerEntm'tAm.LLC,669F.3d1362,1365(Fed.Cir.2012).

Case #8 - In re Sutton, 265 Kan. 251; 959 P.2d 904 (1998).

Facts: During the course of a hearing, an attorney whispered to his own witness, the arresting officer, that the judge was acting like a cockroach. The comment was picked up on a tape recording machine that was used in the courtroom. He later got into a bar fight and was charged with disturbing the peace. He pled not guilty and the charges

were dropped. On another occasion, he encountered road construction that limited the highway to just one lane. Rather than wait his turn, he tried to drive through the construction. When a road worker waived the stop sign at him, his car hit the stop sign. At which point he got out of his car, yelled at the road worker, and threw a Pepsi bottle at her. He then got in his car and drove through the road construction out of turn. Finally, the attorney attended a seminar and was reimbursed twice for his expenses, once by the county (his employer) and once by the National Association of Prosecutor Coordinators.

Offer: 1 year suspension

Outcome: _____

Rule:

- 3.3 – A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's ... fitness as a lawyer
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #9 - In re Hess,

Facts: An attorney represented a man in a divorce case. During that representation, the attorney has sexual relations with the client's girlfriend. The attorney then represents the girlfriend in a stalking charge against the client's soon-to-be ex-wife. The attorney's office manager becomes suspicious, and looks through the attorney's emails and text messages to discover the affair. The office manager is also the attorney's wife. The office manager then sends privileged documents to the attorney for the soon-to-be ex-wife out of spite.

Offer: 1 year suspension, probated

Outcome: _____

Rules

- 1.6 – Confidentiality of information
- 1.7(a)(2) – A lawyer shall not represent a client if there is a concurrent conflict of interest, including if there is a significant risk that the representation will be adverse to the client by a personal interest of the lawyer
- 1.8(k) – A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
- 5.3 – Responsibilities regarding nonlawyer assistance

Case #10 - In re Harrod, Illinois Disciplinary Commission,

Facts: An attorney drafted a will which he knew was improperly attested to. He had his own brother sign as an attesting witness when, in fact, his brother was not present. He then filed the will for probate knowing it was invalid. The attorney lied under oath and committed perjury regarding the signing of the will, on three occasions. To make matters worse, in April 1986, while he was on probation for his perjury conviction, the attorney committed retail theft by stealing about \$26 worth of merchandise from a K-mart store, to which he plead guilty. The Panel also noted the immature acts of the attorney. For example, a few years prior to his disbarment, he sent anonymous letters to certain attorneys and obtained magazine and book subscriptions for members of the Courts Commission who investigated and ruled against him. (The implication here is that these magazine and book subscriptions were of the adult variety and slightly embarrassing to receive at work.).

Offer: 3 year suspension

Outcome: _____

Rule:

- 3.3 – A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #11 - In re Alberg, 296 Kan. 795; 294 P.3d 1192 (2013).

Facts: An attorney began an attorney/client relationship with a woman to represent her in a divorce, and a sexual relationship with the woman. But the attorney failed to secure the financial terms of the attorney/client relationship. The attorney then tried to bill the woman for his services. (We will assume only for the legal services.) The romance fizzled, and the woman wanted an accounting of her money in the trust account. While the attorney provided an accounting, he omitted the money that he had borrowed from time to time.

Offer: 1 year suspension

Outcome: _____

Rules

- 1.7(a)(2) – A lawyer shall not represent a client if there is a concurrent conflict of interest, including if there is a significant risk that the representation will be adverse to the client by a personal interest of the lawyer
- 1.8(k) – A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

- 1.15 – Safekeeping of client’s money in a trust account
- 3.3 – A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #12 - In re Svitlana Sangary

Facts: Photographs on an attorney’s website were photoshopped to show that the attorney hobnobbed with the rich and powerful of Hollywood.

Offer: Public reprimand and take pictures down

Outcome: _____

Rules

- 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case No.13 - In re Mintz, 298 Kan. 897; 317 P.3d 756 (2014).

Facts: Attorney lied to investigators about the death of his girlfriend. His girlfriend struggled with alcohol, and had just successfully graduated from a treatment program. Shortly thereafter, the attorney went with his girlfriend to several drinking locations and consumed a lot of alcohol. When he found her dead the next morning from a fall, he deleted text messages, moved her car from a restaurant to her apartment and lied to authorities about his activities the night before. He defended himself by saying he feared what her family would do to him when they found out.

Offer: Public reprimand

Outcome: _____

Rules

- 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s ... fitness as a lawyer
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #14 - In re Joe Caramagno,

Facts: Las Vegas attorney showed up in court drunk. His blood alcohol content was a .075 by the time he agreed to blow. His client was facing life in jail on kidnapping charges. A mistrial was ordered.

Offer: 1 year suspension, probated, and enroll in substance abuse program

Outcome: _____

Rule:

- 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.
- 3.3 – A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
- 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s ... fitness as a lawyer
- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #15 - In re Diaco Law Firm and the Bubba the Love Sponge Story

Facts: Three attorneys concoct a plan to get opposing counsel drunk during a high profile jury trial to secure a litigation advantage in trial and to embarrass the opposing counsel

Offer: A sternly worded public reprimand

Outcome: _____

Rules:

- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice

Case #16 – Varana v. FORBA Holdings, LLC, 42 Misc. 3d 303; 974 N.Y.S.2d 913 (N.Y. Misc 2013).

Facts: An insurance company hired a lawyer to monitor a trial involving an insured. This attorney took his job a little too seriously, so much so that the jurors complained to the court that this attorney was “creepy” and “scary”. The court overturned a defense verdict due to the “stalking” actions of this attorney.

Offer: Public reprimand

Outcome: _____

Rule:

- 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice