

Session Two

9:00 – 10:00 a.m.

(Law Practice Management)

Horrible Bosses (and Attorneys):

*How the Rules of Professional
Conduct Govern an Attorney's
Behavior Toward Clients, Employees
and Other Attorneys*

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Grant J. Guillot joined the Baton Rouge office of Adams and Reese LLP in 2017 as an associate in the Litigation Practice Group. Practicing law since 2009, Grant has a broad litigation background and has maintained a practice in various areas including appellate litigation, business and contractual disputes, campaign finance, constitutional law, election law, governmental ethics, insurance, labor and employment, and real estate. Upon graduating from law school, Grant served a one-year term as a judicial law clerk for the Honorable Chief Justice Catherine D. "Kitty" Kimball of the Louisiana Supreme Court. He was a member of the 2012-2013 Leadership Louisiana State Bar Association Class, and went on to serve as co-chair of the 2013-2014 class. He also served as a member of the 2014 Young Lawyers Section Council of the Baton Rouge Bar Association.

Grant is an Assistant Editor and contributing writer for *Around the Bar*, the Magazine of the Baton Rouge Bar Association. He has also contributed articles to the *Louisiana Bar Journal*, a publication of the Louisiana State Bar Association. In connection with his publications, Grant has presented seminars on various legal issues including the legal implications of the utilization of social media and other forms of electronic communications, employment discrimination issues and other labor and employment matters, open meetings and public records laws, professionalism in the practice of law, and law practice management.

Grant earned his J.D. and Graduate Diploma of Civil Law *magna cum laude* from Louisiana State University's Paul M. Hebert Law Center, where he was selected to join the *Louisiana Law Review* and inducted into the Order of the Coif for graduating in the top ten percent of his class. He earned his B.A. in Mass Communications with a Minor in Business Administration *summa cum laude* from Louisiana State University, graduating first in his college class and participating in the Honors College program.

**Horrible Bosses (and Attorneys):
How the Rules of Professional Conduct Govern an Attorney’s Behavior
toward Clients, Employees, and Other Attorneys**

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Table of Contents

I. Introduction to Presentation.....	1-2
II. Scenario 1: Putting Off the Persistent Client.....	2-3
III.Scenario 2: Deflecting Blame for Deficient Discovery Responses.....	3-4
IV.Scenario 3: Avoiding Your Annoying Opposing Advocate.....	4-5
V. Scenario 4: The Forgotten Deposition.....	5
VI.Scenario 5: Avoiding the Avalanche of Antagonism.....	5-6
VII. Scenario 6: Promising a Pitbull Performance at all Points.....	6-7
VIII.The Catchall Concern.....	7
IX. Conclusion.....	7

I. Introduction to Presentation

A. The “Sandbox Rule”

1. As children we are taught to play nice with others, to behave in the sandbox.
 - a. Our parents instill in us that friendliness, responsibility, and common courtesies are characteristics required for one to develop and maintain relationships.
 - b. Furthermore, we are taught that those children who never learn to play well with others often find themselves estranged from the other children and without any meaningful friends or allies.

B. These lessons, which most attorneys are taught at an early age, become increasingly relevant as an attorney continues to practice law. They are also critical to an attorney’s treatment of his clients, employees, and other attorneys.

1. For example, an attorney who treats his secretary with respect is more likely to find that treatment reciprocated.
 - a. This scenario is especially true if the secretary ever leaves the attorney’s employment and shares her opinion of her former employer with other members of the legal community.
 - b. A lawyer with a reputation as a great boss will be more likely to attract and employ a high-quality secretary than will an attorney with a reputation for treating his employees like dirt.
 - c. In addition, an attorney who strives to provide a pleasant office environment for her employees will likely achieve higher productivity from those employees.
 - d. On the other hand, employees will be far less motivated to perform their jobs well if they are demoralized by their boss’s antagonistic actions.
2. The same can be said for the attorney-client relationship.
 - a. An attorney with a reputation of treating clients professionally will be more likely to appeal to prospective clients than will an attorney known for giving his clients the run-around.
 - b. In turn, a lawyer with a reputation for responding to his clients in an expeditious manner will likely attract more clients, thus resulting in a more successful law firm.

3. In addition, while there are some lawyers against whom an attorney would welcome the opportunity to litigate, there are also lawyers whose enrollment in a case would immediately fill the attorney with dread.
 - a. An amicable and professional relationship between the attorneys certainly benefits the opposing parties, as both attorneys can work together to facilitate the progression of the lawsuit and minimize costs for their clients.
 1. Again, the more the attorney's clients are satisfied, the more likely it is the attorney will attract more business via word-of-mouth.
 - b. However, how does an attorney "play nice" while at the same time zealously represent his client?
 - c. More importantly, do the Rules of Professional Conduct require the attorney to do so?
4. The following vignettes depict scenarios in which a lawyer's decision to be a jerk, whether it be to a client, secretary, or opposing counsel, just might land him a date with the Office of Disciplinary Counsel.

II. Scenario 1: Putting Off the Persistent Client

- A. A persistent client calls his attorney for the third time in three days.
 1. The attorney has no desire to speak with the client.
 2. The attorney instructs his secretary to lie and tell the client that he is in court, and thus, unable to talk.
- B. Has the lawyer violated the Rules of Professional Conduct?
 1. Pursuant to Rule 1.3, "A lawyer shall act with reasonable diligence and promptness in representing a client."
 2. In addition, Rule 1.4(a) requires a lawyer to "keep the client reasonably informed about the status of the matter" and "promptly comply with reasonable requests for information."

3. Furthermore, Rule 5.3 provides, “With respect to a nonlawyer employed or retained by or associated with a lawyer...(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
- C. By purposefully dodging his client’s telephone calls, perhaps to delay telling his client that he has not yet done what he was supposed to do, the attorney risks violating Rules 1.3 and 1.4. See *In re Hollis*, 2015-0876 (La. 8/28/15), 177 So.3d 110; *In re Back*, 2009-2636 (La. 4/23/10), 33 So.3d 884; *In re Domm*, 2004-1194 (La. 10/8/04), 883 So.2d 966.
- D. Moreover, the attorney may be in violation of Rule 5.3, which pertains to nonlawyer assistants, by ordering his secretary to lie to the client and assist the attorney with his unprofessional actions. See *In re Tooke*, 2009-1784 (La. 11/20/09), 22 So.3d 902.
- E. The better course of action would be for the attorney to admit his delay to the client or, even better, to immediately execute the task (if practical) before promptly returning the client’s call.
- F. For attorneys, reputation is everything. An attorney with a reputation for promptly responding to his clients is more likely to gain and retain clients, thus resulting in increased profits for the law firm.

III. Scenario 2: Deflecting Blame for Deficient Discovery Responses

- A. An attorney is contacted by her opposing counsel and asked why she has not yet sent the supplemental discovery responses she agreed to send more than three weeks ago.
 1. The attorney, having recalled that she never supplemented her responses to opposing counsel’s requests for production of documents, first lies and insists that she sent the documents via email.
 2. Realizing she will not be able to prove she sent the email, the attorney then blames her secretary for not sending the documents to the opposing counsel.
- B. Has the lawyer violated the Rules of Professional Conduct?

1. Pursuant to Rule 3.4, “A lawyer shall not (a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act...(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.
- C. By failing to follow-through with sending opposing counsel the requested documents, the attorney may be in violation of Rule 3.4, which prohibits an attorney from failing to “to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.” See *In re Hairford*, 2013-2280 (La. 12/2/13), 130 So.3d 302.
- D. Furthermore, by throwing her secretary under the bus and using her as a scapegoat, the attorney has placed her reputation as an employer at jeopardy.
 1. Should the secretary decide to work at another law firm, she will take her opinion of her former employer with her and will likely trade “war stories” with other employees in the legal profession.
 2. A reputation as a bad boss will severely hinder the attorney’s ability to employ a first-rate secretary, which, in turn, may have notable consequences for the law firm’s productivity and profits.

IV. Scenario 3: Avoiding Your Annoying Opposing Advocate

- A. An attorney has been purposefully playing phone tag with his opposing counsel, who he deems an annoyance, to avoid having to speak with him.
 1. Whenever opposing counsel calls the attorney’s office, regardless of the time of day, the attorney is somehow always unavailable to talk to the opposing counsel.
 2. However, the attorney always returns opposing counsel’s calls between noon and 1:00 P.M., when the attorney knows opposing counsel will be at lunch and unable to take his call.
- B. Has the lawyer violated the Rules of Professional Conduct?
 1. Rule 3.2 provides that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”
- C. While there may not be a rule that specifically prohibits the attorney’s actions in the above scenario, the attorney may be impeding the progression of the litigation by refusing to communicate with his opposing counsel.

1. By speaking with his opposing counsel, the attorney may be able to resolve certain issues without the need for court intervention, thus saving both parties time and money.
2. Therefore, by purposely avoiding communications with his opposing counsel, an attorney may be compromising his duty to act in his client's best interests.
3. Moreover, an attorney who is unnecessarily hostile to his opposing counsel may jeopardize his reputation in the legal community, thus resulting in less referrals from fellow attorneys and missed profit opportunities.

V. Scenario 4: The Forgotten Deposition

- A. An attorney is told by her secretary that opposing counsel has called the office asking why the attorney has not shown up for an out-of-town deposition set for that morning, which was scheduled three months ago.
 1. The attorney instructs her secretary to lie and tell opposing counsel that the deposition was not on the attorney's calendar but that the attorney is on her way.
- B. Has the lawyer violated the Rules of Professional Conduct?
 1. The same Rule 5.3 issues present in Scenario 1 are also present in this scenario. See *In re Tooke*, 2009-1784 (La. 11/20/09), 22 So.3d 902.
 2. Furthermore, Rule 1.1 mandates that an attorney provide competent representation, which requires, among other things, "thoroughness and preparation reasonably necessary for the representation." See *In re Powers*, 98-2826 (La. 1/29/99), 731 So.2d 185.
- C. The attorney may be in violation of Rule 5.3 by ordering his secretary to lie to the opposing counsel and assist the attorney with his unprofessional actions.
- D. By failing to prepare for the deposition and by deciding to just "wing it," the attorney may be in violation of Rule 1.1 because the attorney has failed to provide competent representation.
- E. An attorney who encourages her secretary to lie and who fails to adequately prepare (or even show up) for depositions risks damaging her most valuable asset – her reputation, which will likely have an adverse impact on her law practice.

VI. Scenario 5: Avoiding the Avalanche of Antagonism

- A. While discussing a case over the phone, an opposing counsel tells an attorney, "Now, you listen to me!" in a very antagonistic manner.

- B. What can the attorney do to prevent the downhill slide that is about to occur?
- C. Has the attorney's opposing counsel violated the Rules of Professional Conduct?
- D. There is no Rule of Professional Conduct that simply prohibits opposing attorneys from being jerks to each other.
 - 1. As stated above, the Rules require the attorney to provide competent, diligent, and zealous representation to his client and to make reasonable efforts to expedite the litigation in accordance with his client's interests.
 - 2. But how can the attorney fulfill these obligations when opposing counsel is acting like a tyrant?
- E. Perhaps the best approach would be to allow opposing counsel a couple of days to "cool off" and then to reopen communications with the preface that doing so would ultimately be in the best interests of all parties involved.
- F. Again, forming and maintaining a positive and professional relationship with other attorneys in the community is a golden opportunity for an attorney to bolster his reputation and maximize profits for his law firm.

VII. Scenario 6: Promising a Pitbull Performance at all Points

- A. An attorney is retained by a client after promising the client that she will do everything she can to obstruct the resolution of the case and to delay the matter whenever possible in order to "stick it" to the other side.
- B. Has the lawyer violated the Rules of Professional Conduct?
 - 1. Rule 4.4 provides that "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." See *In re Cook*, 2006-0426 (La. 6/16/06), 932 So.2d 669.
 - 2. Rule 3.1 states, in part, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. See *In re Cook*, 2006-0426 (La. 6/16/06), 932 So.2d 669.
 - 3. Rule 3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."
- C. By setting out to "play dirty" against her opposing counsel and promising to make things as difficult as possible for the other party, the attorney has risked violating Rules 4.4, 3.1, and 3.2.

- D. By purposefully prolonging the litigation and unnecessarily making matters more difficult for her opposing counsel, the attorney risks damaging her reputation among other attorneys within the community.

VIII. The Catchall Concern

- A. Rule 8.4 provides a catch-all regulation that can be applied to each of the above scenarios.
- B. That Rule declares that it is professional misconduct for a lawyer to “[v]iolate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;” to “[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation”; or to “[e]ngage in conduct that is prejudicial to the administration of justice.”

IX. Conclusion

- A. Professionalism is not just an ideal standard to which the Louisiana Supreme Court holds the members of its bar; it is also a powerful mechanism that can be utilized by an attorney to ensure that he complies with his duty to competently, diligently, and zealously represent his clients.
 - 1. The simple courtesies an attorney shows his clients, employees, and opposing counsel will contribute to the molding of the attorney’s reputation in the legal community.
 - 2. Therefore, even without the imposition of the Rules of Professional Conduct, attorneys should safeguard their reputations and relationships with others by treating one another with courtesy and respect. Doing so will only serve the interests of all parties involved.
 - a. An attorney who treats his employees well will be more likely to attract productive employees, thus facilitating the maximization of profits in his law firm.
 - b. Likewise, an attorney who is known for treating his clients and opposing counsel with respect is more likely to bolster her reputation in the legal community and to obtain referrals, thus resulting in increased profits for her law practice.
- B. As for those lawyers who choose to not to abide by these standards, the message is simple – play nice or get out of the sandbox!