

# **MORE ATTICUS FINCH AND LESS LINCOLN LAWYER: USING LAWYERS PORTRAYED IN FILM TO ILLUSTRATE THE CODE OF PROFESSIONAL RESPONSIBILITY**

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## **I. INTRODUCTION**

The Portrayal of Legal Ethics in the Movies Negative (and Positive) Images of Lawyers and the Legal Profession in Popular Culture

William Shakespeare, “Henry VI”, Part 2 Act 4, Scene 2

“The first thing we do, let’s kill all the lawyers”

“The Godfather”, Mario Puzo (1969)

“A lawyer with his briefcase can steal more than a hundred men with guns.”<sup>1</sup>

“A Man For All Seasons” (1966)

William Roper: Yes, I’d cut down every law in England to [defeat the Devil]!

Sir Thomas Moore: Oh? And when the last law was down, and the Devil turned round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake!

**“To Kill a Mockingbird” (1962) - Video Excerpt**

“Miss Jean Louise stand up, your father’s passing.”

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<sup>1</sup> The most-quoted line of the book that never appeared in the film!

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**“Liar, Liar” (1997) - Video Excerpt**

**II. RULE 1.1: COMPETENCE**

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

**“My Cousin Vinny” (1992) - Video Excerpt**

**“The Verdict” (1986) - Video Excerpt**

**A. *Cleveland Metro. Bar Ass'n v. Brown*, 2011-Ohio-5198, 2011 Ohio LEXIS 2520**

An attorney accepted a bankruptcy court case although he had never been admitted to practice in bankruptcy court, had no bankruptcy law experience, did not have electronic-filing privileges for bankruptcy court, and was not aware that the filing fee for a bankruptcy petition is \$300. The attorney’s law license was indefinitely suspended in violation of Rule 1.1.

**B. *Disciplinary Counsel v. Ohlin*, 126 Ohio St. 3d 384, 2010-Ohio-3826**

An attorney violated Rule 1.1, among others, where the attorney accepted representation in a personal injury case and then failed to reply to the defendants' motion to dismiss or to the defendants' motion for summary judgment even after the trial court granted judgment in favor of the defendants. The attorney’s law license was indefinitely suspended.

**III. RULE 3.3: CANDOR TOWARD THE TRIBUNAL**

(a) A lawyer shall not knowingly do any of the following:

(1) 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;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer

has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person, including the client, intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the tribunal.

(c) The duties stated in divisions (a) and (b) of this rule continue until the issue to which the duty relates is determined by the highest tribunal that may consider the issue, or the time has expired for such determination, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **“My Cousin Vinny” (1992) - Video Excerpt**

### **“Class Action” (1991) - Video Excerpt**

#### **A. *Medina County Bar Ass'n v. Cameron*, 2011-Ohio-5200, 2011 Ohio LEXIS 2516**

Attorney violated Rule 3.3(a) when he misrepresented facts in a motion for continuance. Specifically, after a default hearing was set, the attorney filed a motion to continue stating that the case had been settled and requested a brief continuance to file an answer if the complaint was not dismissed before the hearing. When the opposing counsel opposed the motion, the attorney claimed that he had negotiated with the opposing counsel's client directly. The lawyer served a one year stayed suspension of his law license.

#### **B. *Disciplinary Counsel v. Mitchell*, 124 Ohio St. 3d 266, 2010-Ohio-135**

A lawyer was indefinitely suspended from practicing law for lying to a court regarding his status as a practicing lawyer. The attorney in question, had abandoned the practice of law and failed to renew his law license, but nevertheless, agreed to represent a friend's son in juvenile court. Respondent abandoned the practice of law in 1992 to accept a job in the insurance industry. The attorney provided false

information about himself in response to a magistrate's inquiries into his license. The magistrate checked the online attorney-registration records. Because she was unable to find his record, the magistrate asked the attorney for his middle name. In an effort to mask the fact that he was not licensed, the attorney identified his middle name as Alan, when it was actually Cameron. The attorney then falsely stated that he was licensed in Kentucky and not Ohio.

**C. *Cincinnati Bar Ass'n v. Marsick (1998), 81 Ohio St. 3d 551***

The attorney represented a truck driver that hit a parked car, killing the passenger. During his investigation, the attorney interviewed the tow truck driver who told him that the truck driver admitted to falling asleep at the wheel. The attorney failed to provide this information in discovery in response to specific questions. The truck driver then testified at trial that he hit the car when he swerved to avoid a deer. Under the analogous Code of Professional Responsibility provision, the attorney was suspended for six months for violating the rules during discovery and allowing his client to falsely testify.

**IV. RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL**

A lawyer shall not do any of the following:

- (a) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on a good faith assertion that no valid obligation exists;
- (d) in pretrial procedure, intentionally or habitually make a frivolous motion or discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence or by a good-faith belief that such evidence may exist, assert personal knowledge of facts in issue except when testifying as

a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;

\*\*\*(g) advise or cause a person to hide or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness.

**“Class Action” (1991) - Video Excerpt**

**“Anatomy of a Murder” (1959) - “Video Excerpts”**

**A. *Disciplinary Counsel v. Shaw*, 126 Ohio St. 3d 494, 2010-Ohio-4412**

The attorney’s clients asked him to help them obtain guardianship of their grandmother. She died shortly thereafter and the attorney accepted an \$800 check for “attorney fees” and a \$1,200 check for “legal fees and expenses” without first obtaining the probate court’s approval. The probate court later found the attorney “guilty of concealment of assets” of the estate for receiving the checks from the guardianship account and ordered him to reimburse \$1,200 to the estate. The attorney failed to comply with the court’s order. The attorney was sanctioned with a two year suspension, with one year stayed for violating Rule 3.4(c) by accepting fees from a guardianship account without obtaining prior approval from the court.

**B. *Disciplinary Counsel v. Robinson*, 126 Ohio St. 3d 371, 2010-Ohio-3829**

An attorney at a Columbus law firm entered into an employment agreement requiring him to keep all business information confidential during his employment and thereafter. He began looking for another job and took copies of confidential documents including client-billing reports for himself, engagement letters and PowerPoint presentations. He later entered the office while the rest of his firm was on a retreat out of state and took seven boxes of documents. The firm terminated the lawyer and the next day the lawyer joined another firm. The lawyer’s original firm filed a civil complaint for injunctive relief alleging that the attorney violated the non-solicitation and non-disclosure provisions of his employment agreement. At the injunctive relief hearing a few days later, the lawyer falsely testified that he did not take any business or marketing plans or any other sensitive information. Later, the attorney admitted that during the lunch recess he took his personal trial notebook into the men’s restroom, removed a firm report of his 2004-2007 billable hours, tore it up, and disposed of it. Later that day he took boxes of documents from his home and stopped three times to tear up and dispose of confidential documents. The attorney was suspended for one year.

**C. *Disciplinary Counsel v. Rohrer*, 124 Ohio St. 3d 65, 2009-Ohio-5930**

A lawyer was suspended six months for violating a court's order not to talk to the media. The lawyer in question represented a ten year old juvenile on five counts of murder and one count of aggravated arson as a result of a fire that killed his mother and sister and three other children. The judge issued an oral order that prohibited the lawyers from discussing the case with the media that was later journalized. In violation of that order, the lawyer had a staff member deliver a copy of a motion to compel to the Darke County Daily Advocate newspaper. A related article was later published. In a subsequent hearing, he testified in court that his staff misconstrued his request and that the motion was delivered without his knowledge. The lawyer was held to have violated Prof.Cond.R. 3.4(c), when he "knowingly told a member of his staff to deliver a copy of his motion to compel to the local newspaper, in defiance of the juvenile court's order prohibiting communications with the media."

**D. *Lioce v. Cohen* (Nev. 2008), 174 P.3d 970**

In Nevada, the court upheld motions for new trial after the court found that the defense attorney's comments not only violated Rule 3.4(e), but amounted to prejudicial misconduct. During closing argument, the attorney made remarks regarding his personal opinion about the justness of personal injury litigants' causes and his clients fault. For example, he stated: "it's cases like this that make people skeptical and distrustful of lawyers and their clients who bring personal injury lawsuits. And it's a big factor as to why our profession is not as honorable a profession as it once was in the eyes of the public" and "[b]ut the only way that people and their lawyers will stop bringing cases like this is if juries start saying: No. Enough is enough." Id. at 975. The Court determined that "[b]y representing to the jury his personal opinion that the plaintiffs' cases were worthless, Emerson not only violated his ethical duties, but also prejudiced the jury against the plaintiffs." Id. at 983. Furthermore, the court found jury nullification because in asking the jury to send a message about frivolous lawsuits, the attorney "asserted that the jury should accept an attorney's personal opinion on a public policy debate as a substitute for the evidence and law that should decide the case." Id.

**E. *Harris v. Mt. Sinai Medical Center*, 116 Ohio St. 3d 139, 2007-Ohio-5587**

In *Harris*, the Supreme Court of Ohio held that the plaintiff's attorney's misconduct during trial was sufficient to uphold the trial court's decision to order a new trial. Id. at ¶ 38. Plaintiff's counsel's conduct in this medical malpractice trial was described as "discourteous" and "theatrical." Id. at ¶9. According to the trial court, the attorney's behavior consisted of "constant interruption of opposing counsel without bothering to object and obtain a ruling" so that he could "convey to the jury his own idea of what the witness should be saying, thus testifying for the witness, rather than [sic] making a genuine and valid objection to the question." Id. at ¶ 10. The attorney

would interrupt the proceedings to make statements such as “This is all made up,” and “where did he come up with that, Judge?” Id. The trial court also determined that the attorney “intentionally and repeatedly mischaracterized testimony in an attempt to mislead or confuse the jury.” Id. at ¶10. Finally, the attorney repeatedly accused defense witnesses of dishonesty and misrepresentation by “covering up” the truth despite having no evidence that any cover up took place.

The same Michigan attorney later made a public apology and voluntarily withdrew from a case during trial after similar acts of misconduct. In *Willis v. Dillard's, Inc. et al.*, Cuyahoga County Court of Common Pleas Case No. CV-03-499877, attorney Geoffrey Fieger withdrew from the case after a hearing on a motion to revoke his Pro Hac Vice admission. According to the court’s docket entry (January 31, 2005), Mr. Fieger’s behavior included: “allegations of Fieger’s threats against an insurance adjuster and a witness; allegations that Fieger physically pushed another lawyer; Fieger’s comments in front of the court that other lawyers, witnesses and jurors are all liars; general unprofessional conduct, with numerous instances recorded on the record, including previous admonishments.”

## **V. RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL**

(a) A lawyer shall not do any of the following:

(1) seek to influence a judicial officer, juror, prospective juror, or other official by means prohibited by law;

(2) lend anything of value or give anything of more than de minimis value to a judicial officer, official, or employee of a tribunal;

(3) communicate ex parte with either of the following:

(i) a judicial officer or other official as to the merits of the case during the proceeding unless authorized to do so by law or court order;

(ii) a juror or prospective juror during the proceeding unless otherwise authorized to do so by law or court order.

(4) communicate with a juror or prospective juror after discharge of the jury if any of the following applies:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the lawyer a desire not to communicate;

(iii) the communication involves misrepresentation, coercion, duress, or harassment;

(5) engage in conduct intended to disrupt a tribunal;

(6) engage in undignified or discourteous conduct that is degrading to a tribunal.

(b) A lawyer shall reveal promptly to the tribunal improper conduct by a juror or prospective juror, or by another toward a juror, prospective juror, or family member of a juror or prospective juror, of which the lawyer has knowledge.

#### **“Anatomy of a Murder” (1959) - Video Excerpt**

#### **“My Cousin Vinny” - Video Excerpt**

##### **A. *Cuyahoga County Bar Ass'n v. Gonzalez* (2000), 89 Ohio St. 3d 470**

Under the analogous Code of Professional Responsibility section to Rule 3.5 (a)(6), attorneys were publicly reprimanded after engaging in an argument in chambers during which the attorneys called each other “a piece of shit,” and “a total asshole.” After deputies were called, the attorneys left chambers and escalated into a fight in the courtroom and continued to shout at each other.

##### **B. *Mahoning County Bar Ass'n v. Sakmar*, 127 Ohio St. 3d 244, 2010-Ohio-5720**

In this case, the attorney violated Rule 3.5(a)(6) when he was tardy or failed to appear for numerous hearings before the two municipal court judges in Mahoning County. The attorney also left a hearing early against the judge’s specific order. The attorney was found guilty of contempt and fined on numerous occasions. The attorney was suspended from the practice of law in Ohio for two years, with the second year of the suspension stayed.

##### **C. *Griev. Adm'r v. Fieger* (2006), 476 Mich. 231**

An attorney in Michigan was reprimanded and a \$15 million verdict in a medical malpractice judgment was overturned because of an attorney’s misconduct during trial and comments he made afterwards. A Michigan appellate court had reversed the judgment and held that the medical defendants were entitled to judgment

notwithstanding the verdict and also held that the attorney's repeated misconduct by itself would have warranted a new trial. Specifically, the attorney "(1) without any basis in fact, accused defendants and their witnesses of engaging in a conspiracy, collusion, and perjury to cover up malpractice, (2) asserted without any basis in fact that defense witnesses had destroyed, altered, or suppressed evidence, and (3) insinuated without any basis in fact that one of the defendants had abandoned the plaintiff's medical care to engage in a sexual tryst with a nurse." Id. at 236. The panel described Mr. Fieger's misconduct as "truly egregious" and "pervasive" and concluded that it "completely tainted the proceedings." Id. at 289, 290. After the Court of Appeals upheld the JNOV, the attorney in a daily radio show stated that the judges should "Kiss my ass, too " and "shove [a finger] up their asses." He later called them "three jackass Court of Appeals judges" and compared them to Hitler, Goebbels and Braun.

## **VI. RULE 8.4: MISCONDUCT**

It is professional misconduct for a lawyer to do any of the following:

(a) violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;

(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;

(h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

**A. *Disciplinary Counsel v. Longino*, 128 Ohio St. 3d 426, 2011-Ohio-1524**

A lawyer was disbarred after she, among other misconduct, violated 8.4(c)(d) and (h). It was discovered that the attorney filed affidavits containing false information, forged client signatures on affidavits and had clients sign blank affidavits that she later filled in. She also forged a client's signature on the release of claims and settlement check.

**B. *Columbus Bar Ass'n v. Vogel*, 117 Ohio St. 3d 108, 2008-Ohio-504**

An attorney was suspended from the practice of law for two years based on two separate acts of misconduct in court. During a criminal trial the attorney, anticipating a separation of witness order, prepared subpoenas for two persons to prevent them from attending the trial. The judge found out and prohibited the attorney from serving the subpoenas. The attorney told the judge the subpoenas were destroyed. After the judge reconsidered and allowed him to serve the subpoenas, the attorney served the original subpoenas that were never destroyed. The attorney also, despite the court's warnings had "repeatedly engaged in demonstrative and melodramatic reactions to adverse rulings and certain witnesses' testimony." After the trial, the judge held the lawyer had committed a fraud on the court in regard to the two subpoenas. *Id.* at ¶18.

**C. *Disciplinary Counsel v. Stafford*, 128 Ohio St. 3d 446, 2011-Ohio-1484**

Attorney was suspended from the practice of law for 18 months with 6 months stayed for obstructing discovery, making misrepresentations during discovery and violating his duty of candor towards the courts. After claiming potential damages included attorney fees and costs, the lawyer was served with discovery requests asking for his fee bills. The attorney stated that the documents were privileged and not discoverable. A motion to compel was filed and the attorney moved for a protective order. The court granted the motion to compel. The attorney filed a notice of appeal. The appellate court affirmed the trial court's order to compel. Nearly a year and a half after the initial interrogatories were sent, the attorney revealed that there were no responsive documents to the request. It was held that the attorney made misrepresentations in the discovery process in the way by describing documents that did not exist as privileged, thus implying to the courts and opposing counsel that documents existed when, in fact, they did not.