

# PRACTICE TIPS



## ETHICS AND PROFESSIONAL RESPONSIBILITY

### Can My Personal Behavior Land Me in Ethical Trouble?

By Bonnie C. Frost

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Lawyers might be surprised to find that they may get into ethical trouble because of their behavior outside of their day-to-day employment as a lawyer. The New Jersey Supreme Court has stated, “An attorney’s conduct [that] did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction.”<sup>1</sup> “The obligation of an attorney to maintain the high standard of conduct required of a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney’s clients.”<sup>2</sup>

Behavior which can result in discipline could have arisen from criminal activity, behavior which relates to clients, or third parties.

For example, road rage can trigger a violation of the Rules of Professional Conduct. In the matters of *Martin Milita* and *John Collins*, both attorneys’ actions resulted in criminal charges and attorney discipline.

Martin Milita was driving through a small town, below the speed limit, when a car with two men began to tail him. This upset him and when the speed limit increased to 40 miles per hour, he continued to drive 20 miles per hour. He gave the men “the finger” and they responded in kind. Then, Milita slammed on

his brakes, opened his door, and flashed a knife at the other drivers while they passed him. Milita then began to tailgate the men for nine to 10 miles, still gesturing at them with the knife. He received a one-year term of probation and was censured.<sup>3</sup>

John Collins, angered by another driver, exited his car and took a baseball bat from his trunk and proceeded to smash the other driver’s vehicle, breaking the windshield and side mirror while the driver and passenger were seated inside. He received three concurrent one-year terms of probation and a three-month suspension.<sup>4</sup>

In an extremely troubling scenario, Neil Cohen, a New Jersey Assemblyman, viewed 19 images of girls, 16 years old and younger, on the receptionist’s computer in his legislative office. Cohen served one year and two months of a five-year prison sentence and received an indeterminate suspension for his conduct.<sup>5</sup>

Inappropriate behavior using social media has also resulted in discipline. A recent case is one of first impression and is only the third case where an attorney has been disciplined for the crime of the invasion of privacy.<sup>6</sup>

John Toczydlowski was a Pennsylvania attorney who had been admitted *pro hac vice*. He engaged in a prolonged course of conduct where he sexually exploited his own wife. For three years he surreptitiously photographed her while naked and disseminated those photographs with graphic comments on social media, inviting others to live out their sexual fantasies with her. His website postings included information which viewers could use to find his wife just by using the internet. In its opinion, the Disciplinary Review Board noted that the photographs would “remain in cyberspace in perpetuity subjecting his wife to a lifetime of revictimization, each time the photographs are viewed by others.”<sup>7</sup> The court imposed a permanent bar to Toczydlowski’s plenary or *pro hac vice* admission in New Jersey.

In another case of first impression, Annmarie Smits, while in the process of moving to a new home, accidentally shot a minor in the thigh and buttock while packing her gun for moving. Police took the minor to the hospital two and a half hours after being wounded by Smits, after the minor’s friend called police to tell them he had been shot. Smits was charged with endangering the welfare of a child and abuse and neglect for failing to obtain medical attention for the minor. She was censured.<sup>8</sup>

Douglas Long was the managing partner of his law firm. Not only did he use the firm’s business account to pay his personal bills and expenses, he had the bookkeeper falsely classify his personal

expenses as legitimate law firm expenses, and he failed to report to the IRS more than \$800,000 of these “business” expenses as additional income. Long pleaded guilty to income tax evasion and spent 14 months in prison. He was subsequently disbarred.<sup>9</sup>

In an interesting factual scenario, Francis Bock, in a desire to live with his paramour, faked his death by drowning and concealed his whereabouts for five weeks despite knowing that an investigation was ongoing as to his disappearance. He left “contrived” evidence on Long Beach Island to give the impression that he had drowned. He left his judicial post as a municipal court judge unattended and left 60-70 files for his partners to address. He received a six-month suspension for abandoning his clients and his court responsibilities.

There is no doubt that the practice of law can be stressful and can lead to attorneys making mistakes, but as can be seen from these various scenarios, the attorney’s behavior in private life affected their license. Hopefully these examples demonstrate that the personal behavior of a lawyer is not outside the reach of the ethics system.

## Endnotes

1. *In re: Musto*, 152 N.J. 167, 173 (1997).
2. *In re: Schaeffer*, 140 N.J. 148, 156 (1995).
3. *In re: Milita*, 217 N.J. 19 (2014).
4. *In re: Collins*, 228 N.J. 23 (2016).
5. *In re: Cohen*, 220 N.J. 7 (2014).
6. N.J.S.A. 2C:14-9.
7. *In re Toczydlowski*, 256 N.J. 508 (2024).
8. *In re Smits*, 248 N.J. 222 (2021).
9. *In re Long*, 255 N.J. 436 (2023).

## WHAT I WISH I KNEW

### Be an Advocate, Not a Jerk, and be Thoughtful Enough to Know the Difference

By Megan S. Murray

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The practice of family law should be about crafting the best legal arguments for our clients based on the facts of their case. Unfortunately, many attorneys believe it is their job to argue as aggressively as possible for their client, even if that means taking baseless positions, prolonging litigation or entirely ignoring fair viewpoints of the adversary.

Attorneys practice in a very stressful field with high emotions. Under the circumstances, practitioners must be vigilant about not allowing the emotion of a case to manifest itself in impetuous case-handling decisions, which may reflect poorly upon the attor-

ney—not only in the case at hand but regarding the attorney’s reputation going forward.

Integral to being a successful family law attorney is the ability to act in a professional manner regardless of the difficulty or emotional intensity of the case. When attorneys forsake their professionalism by taking unreasonable positions, writing gratuitously nasty letters to the adversary, or being disrespectful to a judge or their staff, they are not only hurting themselves, they are hurting their clients. In most cases, unprofessionalism and overly aggressive practices lead to a needless increase in counsel fees to the client and often result in the divorce process exacting a far greater emotional toll on the clients involved.

The following suggestions are made for maintaining civility with colleagues, adversaries and judges alike.



### Pick up the phone and personalize your adversary

If my client’s spouse has already retained an attorney, I make it a priority to make a telephone call to the adversary—especially in a case where I have not worked with or do not know opposing counsel. When attorneys communicate with each other only via letters and writings, they tend to depersonalize each other. Lashing out at an adversary or writing an inflammatory response to a letter is easier to do when the recipient is just a name on letterhead.

Calling an adversary allows you to build a rapport with them. Oftentimes, I find that when I reach out personally to an attorney who may be known for being abrasive, that attorney is far more pleasant to deal with than reputation would suggest if lines of communication are opened early and person-to-person. Find common ground with your adversary on common interests; share a humorous story about the practice or bring up a (non-inflammatory) current event.

### It’s often true that you get more flies with honey

When dealing with abrasive adversaries or judges, reciprocating with gratuitous hostility has almost never yielded good returns. I find that many attorneys may act aggressively from the