

The 20th Annual Animal Law Conference at Lewis and Clark

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Animal Law Ethics presentation

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Presentation Materials

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and,

upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Client-Lawyer Relationship

Rule 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Client-Lawyer Relationship

Rule 1.18 Duties To Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these Rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (6) to comply with other law or a court order.

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.7 Conflict Of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Model Rules of Professional Conduct

Advocate

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Model Rules of Professional Conduct

Advocate

Rule 3.5 Impartiality And Decorum Of The Tribunal

A lawyer shall not:

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

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

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

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

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

(d) engage in conduct intended to disrupt a tribunal.

Model Rules of Professional Conduct

Transactions With Persons Other Than Clients

Rule 4.3 Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Model Rules of Professional Conduct

Information About Legal Services

Rule 7.3 Direct Contact With Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the

beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Model Rules of Professional Conduct

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate 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;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(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 Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

A cautionary tale

Billie Miller is an attorney who is passionate about helping animals. Billie volunteers at the local humane society and belongs to several national animal rights and animal welfare organizations. Billie's main practice area is family law.

One of the groups Billie belongs to a small shelter, the Green Valley Animal Protection League. One day when Billie was at the shelter volunteering, the shelter's director, Sam Glass, told her about a terrible situation occurring at "The Cat Ranch".

The Cat Ranch is a single-wide trailer sitting on a half acre of land just outside of town. While the Cat Ranch is a registered 501(c) 3 nonprofit, it is primarily the private "rescue" of Millie Barnes. The director of Green Valley Animal Protection League, Sam Glass, said to Billie, "you're a lawyer, right? What can we do legally to shut down the Cat Ranch and rescue all of those cats?"

Billie responded, "Well, we could go to the prosecuting attorney and see if the county would charge either The Cat Ranch or Millie Barnes with animal abuse. We could then see if the county would seize the cats and transfer them to the Green Valley Animal Protection League. I know the prosecutor; let me see if I can pull some strings."

The director commented, "That would be great, Billie. We need to do everything we can to get those poor cats out of that trailer. I am glad you can help; now we won't need to wait for her to go to the store for cat food, break in, and rescue the cats."

Discussion

Billie went to the prosecuting attorney's office to discuss The Cat Ranch. The prosecutor was having a difficult time seeing how an animal welfare group could be involved in animal cruelty. Billie explained the different types of animal hoarding, including institutional animal hoarders. The prosecutor told Billie that they would need to develop some proof that there was actual animal cruelty before the prosecutor would consider bringing charges. Billie told the prosecutor that she would be glad to volunteer some time to "help him get what he needed". The prosecutor said the prosecutor's office is always happy to have lawyers volunteer to help.

Billie decided that the best thing to do was to go to the Cat Ranch. When she got there she was appalled. The first thing she saw was a dead cat next to the front door of the trailer. It smelled, and was decomposing. She knocked on the door of the trailer and was greeted by Millie Barnes. Millie was in a housedress covered with cat hair. Millie wanted to know what Billie wanted.

Billie said, "I'm a lawyer here in town and I volunteer for animal nonprofits. I was wondering if you needed any legal help?"

Millie said, "Sure, I can always use help taking care of my babies". Billie almost threw up after she entered the trailer. There were feces on every surface, and she saw a mummified dead cat in the corner of the living room of the trailer. There were flies everywhere and food in every stage of rot and decay.

Millie said, "You know where I can use some help is with the County. Some of my neighbors don't love animals like I do and are constantly trying to shut down The Cat Ranch. When Millie went to the other

room to get them some tea, Billie took out her iPhone (the newest 15 version with 8 mega pixel camera) and took photographs. This included a photograph of a rat feeding on the carcass of the dead cat in the corner.

When Millie returned with the tea, Billie said that she just received a phone call and she needed to leave to attend to an urgent matter. This was not true, but Billie had what she wanted, photos of the cats being neglected and the filth. Billie quickly left the trailer.

On her way out of the fenced yard, she noticed a cat with a nasty eye infection, picked up the cat and took her to the vet. Happily, the cat was placed for adoption by the vet's staff.

Discussion

Pleased with her great undercover work, Billie went back to The Green Valley Animal Protection League and showed the director, Sam Glass, the photographs. Sam said, "Let me have those pictures to show the Board". Billie sent Sam the photos via her cell phone.

Without Billie's knowledge, Green Valley Animal Protection League took those photographs and posted them on the Internet with the caption "undercover operation shows criminal animal abuse at The Cat Ranch". The Internet posting went on to say that "that worthless County prosecutor is not lifting a finger to stop this animal abuse". The posting also stated that if the prosecutor were to seize the animals that the Green Valley Animal Protection League would gladly care for the animals if Millie Barns was "behind bars where she belongs."

Billie went to see the prosecutor again. The prosecutor was furious with Billie. The prosecutor said "What the hell you doing? I've had 100 telephone calls today about this Cat Ranch situation. Why didn't you just bring me the photos? I thought you were on our side!"

Billie explained that she did not know that the Internet posting was going up. The prosecutor told her that even if they did file charges and seized the animals, that he would not allow Green Valley Animal Protection League to have possession of the cats. The prosecutor said, "We just can't work with groups that attacked us like this".

Billie asked if the county shelter could take possession of the animals as they were seized. The prosecutor said probably not, the shelter's over booked as it is and the animals might need to be held for quite some time until there was a forfeiture hearing. Billie asked if it would be okay with the prosecutor's office if she looked around to try to find some other cat rescue group that would be willing to care for the animals. The prosecutor said, "Sure, maybe you can redeem yourself".

Discussion

Billie then went to Mountaintop Cat Rescue, a nonprofit that primarily uses foster homes when rescuing cats. Billie told the Board of Directors about everything she saw at The Cat Ranch and described her conversations with Green Valley Animal Protection League and the prosecutor. Mountaintop Rescue said that they would be glad to help but would need \$1,000 to help cover administrative costs in placing the cats in foster care.

Billie then went to Todd Simons, one of her previous family law clients who both loved cats, and was wealthy from Microsoft stock options. She asked him if he would donate \$500 to help out Green Valley Animal Protection League cat rescue project. If so she would match his donation. The client said, "Sure!", and pulled five \$100 bills out of a Starbucks coffee bag in his freezer. Billie put the money in her wallet.

Billie got a call from Sam Glass, the director of Green Valley Animal Protection League. He said Green Valley had been sued by the Cat Ranch founder, Millie Barns, for defamation. The suit was drafted pro se by Millie Barns. Sam asked Billie to come by his apartment after work to discuss the case. Billie went to Sam's apartment and was surprised to see that this was more than a business meeting. Sam had the lights dimmed, candles burning, a bottle of wine out, and his favorite dinner, Garlic Jim's Pizza, on the table. He told her that the Board wanted to hire her to represent Green Valley in the defamation suit.

After dinner and a second bottle of Red Cat wine, the new romance continued with Billie having an adult sleep over. (And to be clear, by anyone's definition, what transpired would be considered sex between consenting adults.)

Discussion

Finally, the County prosecutor filed animal cruelty charges against The Cat Ranch and Millie Barns. The animals were confiscated by the County and a forfeiture hearing was set before Judge Randel. Now one day the good Judge just happened to be standing in line at Voodoo Donuts in front of Billie. The Judge knew Billie from a presentation she made on institutional animal hoarding a year earlier. "Billie, do you know about this Cat Ranch fiasco?" asked the judge. Billie responded, "Yes, I actually went out and looked at the place. I shot those pictures showing the rat and dead cat in the trailer that have gone viral on the internet."

The Judge continued, "I am confused about who to hold accountable, the non profit The Cat Ranch, or the woman living in the trailer, Millie Barns?"

Billie answered, "Charge them both, Judge. It is the only way to deal with this effectively. It shuts down the bogus 'non profit' and labels the animal hoarder for life."

The judge just looked at her and nodded his head. After the Judge ordered two vegan doughnuts, Billie reached in front of him and handed the cashier a 100 dollar bill to pay for his doughnuts, as well as her

own. Then she took out a four hundred dollar bills, stuffed them in his shirt pocket and said, “This is for your re-election campaign.”

Then, Billie was walking around downtown and saw The Cat Ranch director, Millie Barns, with a long net. She was looking for “stray cats”. Millie Barns remembered Billie from her visit to the trailer, but did not put together that Billie was defending the defamation suit brought by Millie against Green Valley Animal Protection. “Aren’t you that nice lawyer that came to see me a couple of months ago?” asked Millie Barns.

“Yes, I was,” answered Billie.

“The county took my cats and they want to kill them,” she said. Then she continued, “and these animal groups that don’t know nothing about cats are spreading lies about me. I sued them but good though. My public defender is only handling my animal cruelty charges but won’t help me with keeping my cats. What should I do?”

“Well if it were me, I would plead guilty to just one charge of animal cruelty; you did have that dead cat in your house after all. That will be hard to beat. And I would just drop the suit against Green Valley if they agreed to pull down the website. That’s what I think is best for you,” said Billie.

Discussion

Conclusion

The Cat Ranch and Millie Barns lost the animal forfeiture hearing. The animals were released to the care of Mountaintop Cat rescue. All the local cat groups came forward and found homes for the friendly cats. The feral cats were spayed and neutered and moved to a feral cat colony. Millie Barns pleaded guilty to one count of animal cruelty and agreed to leave the Board of The Cat Ranch.

The defamation case was voluntarily dismissed after The Cat Ranch and Millie Barns lost at the forfeiture hearing.

Billie’s romance with Sam Glass ended when he met Glenda at a large scale hoarding cat rescue in Montana. But now Billie is seeing her old client, Todd Simmons, and “everything is going well”. She has even convinced him to participate in “Meatless Mondays”.

Billie was awarded “Animal Volunteer of the Year” by the local newspaper.

Final