



# ETHICS IN CRAZYTOWN

CRIMES, LIES AND DIRTY POLITICS

The page features several decorative circles of various colors (purple, blue, teal, orange, green) scattered in the corners. The main text is centered and reads: 

# CAST OF CHARACTERS

# SKETCHY COUNCILMAN HOGG



# THE MAYOR



# THE CITY MANAGER



# OUTSPOKEN COUNCILMAN



# ETHICS SITUATION #1



CITY ATTORNEY INFORMED BY OUTSPOKEN COUNCILMAN AND THEN VERIFIES THAT:

1. CITY LAND WITHOUT PAYING
2. WHEN ELECTED TO COUNCIL – CITY MANAGER PAID OF OVER \$200,000 NOT EARNED, WITHOUT COUNCIL AUTHORITY OR KNOWLEDGE
3. A CLEAR MONETARY CLAIM AGAINST THE COUNCILMAN

# WHAT DO YOU DO?



- A. CALL TEXAS RANGERS
- B. ORGANIZE MEETING WITH MAYOR AND CITY MANAGER TO DISCUSS AND REQUEST CLOSED SESSION AGENDA ITEM
- C. INFORM EACH COUNCIL MEMBER BY EMAIL
- D. CROSS YOUR FINGERS AND HOPE IT GOES AWAY



# ETHICS #2: WHAT IF - INSTRUCTED TO HIDE INFORMATION FROM COUNCIL



# INSTRUCTED TO HIDE INFORMATION



1. MAYOR AND CITY MANAGER INSTRUCT YOU "DO NOT TELL THE COUNCIL" COVER IT UP.
2. MAYOR USES CIGARS, FINE SCOTCH AND MOOSHINE TO REQUEST SILENCE OF CITY ATTORNEY AND OUTSPOKEN COUNCILMAN

# WHAT DO YOU DO?



- A. SHUT UP AND KEEP YOUR JOB
- B. RENEW YOUR REQUEST TO HAVE THE ITEM PUT ON THE AGENDA FOR EXECUTIVE SESSION
- C. LET THEM CONTINUE TO DRINK, GO WITH THE PERSON THAT DOESN'T PASS OUT DRUNK
- D. NOTIFY COUNCIL BY EMAIL

# CONCEAL INFORMATION

## Rule 1.03. Communication

A lawyer **shall keep a client reasonably informed** about the status of a matter and promptly comply with reasonable requests for information.

Comment:

2: . The guiding principle is that the lawyer should reasonably fulfill client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

# CONCEAL INFORMATION

## Rule 1.12. Organization as a Client

(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:

(1) an officer, employee, or other person associated with the organization **has committed** or intends to commit a **violation of a legal obligation to the organization or a violation of law** which reasonably might be imputed to the organization;

(2) the violation is likely to result in substantial injury to the organization; and

(3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(c) (3) referring the matter to higher authority in the organization

# ETHICS #3: REFUSAL TO FOLLOW CHARTER.

- REFUSAL TO PUT ON AGENDA



# WHAT DO YOU DO?



- A. CALL THE DISTRICT ATTORNEY
- B. SHUT UP AND KEEP YOUR JOB
- C. EMAIL THE INFORMATION TO ALL COUNCIL MEMBERS
- D. FILE A LAWSUIT TO ENFORCE THE CHARTER AND COMPEL THE ITEM BEING PLACED ON THE COUNCIL AGENDA



# VIOLATION OF CHARTER

- A. DISTRICT ATTORNEY HAS NO DOG IN THIS FIGHT
- B. CONCEAL FROM COUNCIL IS ETHICAL VIOLATION
- D. MANDAMUS ACTION TO ENFORCE COMPLIANCE WITH CHARTER.  
IN RE WOODFILL, 470 S.W. 3d 473 (2015) per curiam



# ETHICS #4 OPEN RECORDS VIOLATION



- A. CITIZEN REQUESTS RECORDS TO PURCHASE LAND
- B. CITY MANAGER CALLS CITIZEN AND ASKS HER TO WITHDRAW REQUEST AND SHE WILL GET THE LAND CHEAP
- C. CITY ADMINISTRATION FAILS TO PRODUCE ANY DOCUMENTS

# WHAT DO YOU DO?



- A. SHUT UP AND KEEP YOUR JOB
- B. ADVISE ADMINISTRATION IN WRITING OF THE DOCUMENTS THAT SHOULD BE PRODUCED
- C. ADVISE COUNCIL OF THE VIOLATION IN EXECUTIVE SESSION
- D. PRETEND THAT NOBODY KNOWS WHAT DOCUMENTS THE CITIZEN WANTS

# CRIMINAL OR FRAUDULENT

**Rule 1.02(c)** A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

**Rule 1.02 Comment 8** When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer may not reveal the client's wrongdoing, except as permitted or required by Rule 1.05. **However, the lawyer also must avoid furthering the client's unlawful purpose, for example, by suggesting how it might be concealed.** A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. See Rule 1.15(a)(1).

**Rule 1.02(d)** When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, **the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.**

# ETHICS #5 FALSE VERIFICATION



- ❖ ATTORNEY GENERAL INVESTIGATION
- ❖ REPLY WITHOUT CONSULTING ATTORNEY
- ❖ PRODUCE COUNTY CLERK WEBSITE PRINTOUT (NOT CITY DOCUMENTS)
- ❖ WITHHOLD DOCUMENTS AND SWEAR TO THE AG THAT THESE ARE ALL THE CITY DOCUMENTS RELATED TO THE REQUEST.

# WHAT DO YOU DO?



- A. REQUEST MAYOR TO PUT ON THE AGENDA
- B. EMAIL THE INFORMATION TO COUNCIL
- C. SHUT UP AND KEEP YOUR JOB
- D. SNITCH TO THE AG OFFICE
- E. CALL THE TEXAS RANGERS

# CONFIDENTIAL INFORMATION

## Rule 1.05. Confidentiality of Information

(a) “Confidential information” “Unprivileged client information” refers to information relating to a client or furnished by a client, other than privileged information acquired by the lawyer during the course of or by reason of the representation of the client. **Are public records confidential information?**

(c) A lawyer may reveal confidential information:

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act. **Act already committed.**

(8) To the extent revelation reasonably appears necessary to rectify the consequences of a client’s criminal or fraudulent act in the commission of which the lawyer’s services had been used. **Committed without participation by lawyer.**

# SCOPE OF REPRESENTATION

## Rule 1.02. Scope and Objectives of Representation

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. **Past occurrence.**

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud. **Past occurrence.**

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act **in the commission of which the lawyer's services have been used**, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action. **No lawyer participation.**

# SCOPE OF REPRESENTATION

## Rule 1.02 Comments:

8. When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer may not reveal the client's wrongdoing, except as permitted or required by Rule 1.05. However, the lawyer also must avoid furthering the client's unlawful purpose, **for example, by suggesting how it might be concealed.**

11. Paragraph (d) requires a lawyer in certain instances to use reasonable efforts to dissuade a client from committing a crime or fraud. If the services of the lawyer were used by the client in committing a crime or fraud, paragraph (e) requires the lawyer to use reasonable efforts to persuade the client to take corrective action.



# CANDOR TO TRIBUNAL

## Rule 3.03. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

### ***COMMENT: Past False Evidence***

7. It is possible, however, that a lawyer will place testimony or other material into evidence and only later learn of its falsity. When such testimony or other evidence is offered by the client, problems arise between the lawyer's duty to keep the client's revelations confidential and the lawyer's duty of candor to the tribunal. Under this Rule, upon ascertaining that material testimony or other evidence is false, the lawyer must first seek to persuade the client to correct the false testimony or to withdraw the false evidence. If the persuasion is ineffective, the lawyer must take additional remedial measures. **IS THE AG IS A TRIBUNAL.**

# DISCLOSE FALSE STATEMENTS

## Rule 4.01. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

### ***COMMENT: Failure to Disclose a Material Fact***

3. Paragraph (b) of this Rule also relates only to failures to disclose material facts. Generally, in the course of representing a client a lawyer has no duty to inform a third person of relevant or material facts, except as required by law or by applicable rules of practice or procedure, such as formal discovery. **However, a lawyer must not allow fidelity to a client to become a vehicle for a criminal act or a fraud being perpetrated by that client. Consequently a lawyer must disclose a material fact to a third party if the lawyer knows that the client is perpetrating a crime or a fraud and the lawyer knows that disclosure is necessary to prevent the lawyer from becoming a party to that crime or fraud. Failure to disclose under such circumstances is misconduct only if the lawyer intends thereby to mislead.**

# GOVERNMENTAL CLIENT

## **Rule 1.12. Organization as a Client**

A lawyer employed or retained by an organization represents the entity.

### ***COMMENTS: The Entity as the Client***

1. A lawyer employed or retained to represent an organization **represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents.** Unlike individual clients who can speak and decide finally and authoritatively for themselves, an organization can speak and decide only through its agents or constituents such as its officers or employees. In effect, the lawyer- client relationship must be maintained through a constituent who acts as an intermediary between the organizational client and the lawyer. This fact requires the lawyer under certain conditions to be concerned whether the intermediary legitimately represents the organizational client.

# GOVERNMENTAL CLIENT

## ***COMMENT: Government Agency***

9. The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, **a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved.** In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. **Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context.** Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances

# ETHICS #6 REPORT TO BAR?



1. MAYOR IS A PRACTICING ATTORNEY
2. WHAT IF.....HE INSTRUCTED CITY MANAGER TO MAKE FALSE RESPONSE TO AG

# WHAT DO YOU DO?



- A. REPORT MISCONDUCT TO STATE BAR
- B. SHUT UP AND KEEP YOUR JOB
- C. START YOUR OWN NANCY DREW INVESTIGATION

# DUTY TO REPORT

## Rule 8.04. Misconduct

(a) A lawyer shall not:

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; **(NOT LIMITED TO SCOPE OF REPRESENTATION)**

## Rule 8.03. Reporting Professional Misconduct

(a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

(d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information:

(1) by Rule 1.05

# SO WHAT'S THE DUTY?

## *COMMENT:*

2. **It should be noted that this Rule describes only those disciplinary violations that must be revealed by the disclosing lawyer in order to avoid violating these rules himself.** It is not intended to, nor does it, limit those actual or suspected violations that a lawyer may report. **However, if a lawyer were obliged to report every violation of these rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable.** This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. **A measure of judgment is, therefore, required in complying with the provisions of this Rule.**

- ❖ Possibly confidential information
- ❖ Attorney did not participate in any way with the AG response. LPast action. Not endorsed by attorney
- ❖ Not an ethics violation by city attorney



# ETHICS #7 THREATS, INTIMIDATION, VANDALISM, SMEAR CAMPAIGN



- ❖ I'M GONNA GET YOU. SLEEP WITH ONE EYE OPEN FROM NOW ON. YOU'RE GOING DOWN
- ❖ TIRES SLASHED AFTER CITY MEETING.
- ❖ HOUSE VANDALIZED AND SET ON FIRE
- ❖ FOLLOWED AFTER MEETING FOR MILES INTO OTHER CITIES
- ❖ SLEAZY TV GUY HIRED TO CREATE SMEAR CAMPAIGN OF FALSE ALLEGATIONS
- ❖ POLICE OFFICER FRIEND WARNS YOU RUMOR THAT AN OFFICER WILL PLANT DOPE IN YOUR CAR. (COUNCILMAN IS LICENSED PEACE OFFICER)

# WHAT DO YOU DO?



- A. WET YOUR PANTS AND GO CRY TO YOUR MAMA
- B. RESIGN AS CITY ATTORNEY
- C. CHALLENGE COUNCILMAN TO HAND TO HAND COMBAT TO RESOLVE HIS COMPLAINTS LIKE A MAN
- D. SLEEP WITH ONE EYE OPEN AT NIGHT AND HUGGING YOUR FIREARM OF CHOICE

# CONFLICT OF INTEREST

## Rule 1.06. Conflict of Interest: General Rule

(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

(2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person **or by the lawyer's or law firm's own interests.**

### *COMMENT: Conflict with Lawyer's Own Interests*

4. Loyalty to a client is impaired not only by the representation of opposing parties in situations within paragraphs (a) and (b)(1) but also in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for one client because of the lawyer's own interests or responsibilities to others. The conflict in effect forecloses alternatives that would otherwise be available to the client.

5. **The lawyer's own interests should not be permitted to have adverse effect on representation of a client, even where paragraph (b)(2) is not violated.** For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.01 and 1.04.

# TERMINATION OF REPRESENTATION

## Rule 1.15. Declining or Terminating Representation

(a) A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw, except as stated in paragraph (c), from the representation of a client, if:

(2) the lawyer's physical, mental or psychological condition materially impairs the lawyer's fitness to represent the client; or

**TRUE GRIT. IT'S EASY TO LOOK THE OTHER WAY, KEEP THE MAJORITY HAPPY, PLAY POLITICS TO KEEP YOUR JOB. IN THE PAST REPRESENTED HUNDREDS OF CRIMINAL DEFENDANTS. I HAD MORE THAN 100 CRIMINAL JURY TRIALS. TRIALS REPRESENTING MURDERERS, DRUG DEALERS, AND SOME OF THE WORST PEOPLE IN OUR SOCIETY.**

**WORKING WITH POLITICIANS HAS REQUIRED MORE GRIT THAN ANY CRIMINAL DEFENDANT.**