

PREJUDICIAL TO THE
ADMINISTRATION OF JUSTICE

Rule 4 - 8 . 4

THE CONFLICT BETWEEN “SECRET” CONDUCT AND THE ADMINISTRATION OF JUSTICE

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A Lawyer's Responsibilities

**“A lawyer as a member of the legal profession is . . . a public citizen having special responsibility for the quality of justice.”
MRPC Preamble [1]**

A lawyer who knows another lawyer has violated the rules of professional conduct “shall inform the appropriate professional authority.” MRCP 4-8.3(a)

A lawyer shall not engage in professional misconduct. MRCP4-8.4



Goals

- Highlight a lawyer's duty to society to maintain the quality of justice.
- Consider the impact of a lawyer's "secret" conduct on the administration of justice.



The Rules

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MRPC Preamble [1]

A lawyer who knows another lawyer has violated the rules of professional conduct “shall inform the appropriate professional authority.” MRCP 4-8.3(a)



The Rules

MRCP 4-8.4

“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;**
- (d) engage in conduct that is prejudicial to the administration of justice;**
- (g) manifest by words or conduct, in representing a client, bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation.”**



“Secret” Conduct

It was meant to be private:

I took precautions to make sure

I thought it was

**I am so far above the standards of others that it was private in
my mind**

I have a Constitutional right to behave as I see fit



Attorney Grievance Comm'n v. Markey
and Hancock, Misc. Docket AG

Maryland Rules of Professional Conduct

“The Forum Of Hate”

At the Board of Veterans' Appeals of the United
States Department of Veterans Affairs . . .

Markey, a Veterans Law Judge, Hancock, an
Attorney Advisor, and three others . . .

Used their departmental email to participate in an
email chain they called “the Forum of Hate” . . .

For seven years.



“The Forum of Hate”

“in one instance, in response to a photograph of Hancock’s son’s all-white Little league team, Markey asked where the white sheets were and stated “[bonfire after every victory[,] . . .”

“in another Markey referred to an African American woman Chief Veterans Law Judge as a “Ghetto Hippopotamus” and a “despicable impersonation of a human woman who ought to [have] her cervix yanked out of her by the Silences of the Lamb[s] guy and force fed to her.”.



Standards

“[W]here a lawyer engages in conduct that is related to the practice of law[,] the lawyer violates [8.4(d)] if the lawyers conduct would negatively impact [the] perception of the legal profession of a reasonable member of the public.”

Where a lawyer engages in purely private conduct – *i.e.* conduct that is entirely unrelated to the practice of law – the lawyer violates [8.4(d)] if the lawyers conduct is criminal or so egregious as to make the harm, or potential harm, flowing from it patent.”

Conduct that impacts the image or perception of the court or the legal profession or that engenders disrespect for the court and the profession may violate [8.4(d)].



Justifications

The Forum of Hate was just a way to blow off steam

There was no expectation that the emails would be shared outside of the Forum of Hate

In Re: Judge Maak v. Tranquill, Commonwealth of Pennsylvania
Court of Judicial Discipline

Aunt Jemima

Judge Tranquilli after sitting on the retrial of a possession with intent to deliver case and receiving a not guilty verdict called the ADA and defense counsel to his chambers and asked the ADA why he failed to strike certain jurors . . .



Aunt Jemima

Juror #4, a black female, apparently in her 20s, who wore her hair in a kerchief during trial

“Referring to Juror #4, [Tranquilli said] “You weren’t out of strikes when you decided to put Aunt Jemima on the jury.”

Tranquilli also said that the ADA “knew darn well that when she goes home to her baby daddy, he’s probably slinging heroin too.”



Hon. Richard F. Cebull (Ret.) Judicial Council of the Ninth
Circuit
In Re Complaint of Judicial Misconduct Nos. 12-90027

“There’s no doubt it’s racist”

The subject line Judge Cebull sent from his official courthouse e-mail address on Feb. 20 at 3:42 p.m., reads: “A MOM’S MEMORY.”

The forwarded text reads:

“Normally I don’t send or forward a lot of these, but even by my standards, it was a bit touching. I want all of my friends to feel what I felt when I read this. Hope it touches your heart like it did mine.

“A little boy said to his mother; ‘Mommy, how come I’m black and you’re white?’” “His mother replied, ‘Don’t even go there Barack! From what I can remember about that party, you’re lucky you don’t bark!’”



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“There’s no doubt it’s racist.”

Cebull said he did not write the introduction, but forwarded the e-mail to seven recipients, including his personal e-mail address.

“This is a private thing that was, to say the least, very poor judgment on my part. I did not forward it because of the racist nature of it. Although it is racist, I’m not that way, never have been.”

“There’s no doubt it’s racist. It wasn’t forwarded for that purpose. If anything, it was political.”



In Re Howard, 912 S.W.2d 61 (Mo. Banc 1995).

The genesis of MRCP 8.4(g)

“placing his own prurient interests paramount to and in conflict with his client’s best interest”



In Re Henry SC 95688

“I used to be very racial . . .”

Lawyer sent email to client’s wife to give to client who was in prison and had just had his habeas petition denied by The Honorable Judge Gaitan.

Lawyer wrote: “. . . it took nearly two years for the puppet [n-word] Giaten [sic] to write [the decision]. I used to be very racial, but I am not so anymore, but know [sic] and again, I must call a spade a spade.”

Indefinite Suspension for violation of M.R.P.C. 4-8.2(a) and 4-8.4(g)



Screen Shots and Hot Mics

Judge Jesse Leblanc

Donna Makowski, Esq.

Judge William Raines



What if . . . ?

Attorney A represents Wife in a dissolution of marriage case, and Attorney B represents Husband. Attorney A and Attorney B were negotiating on behalf of their respective clients, with their clients present, when Attorney A made a derogatory remark to Attorney B that was related to Attorney B's gender and national origin. Is Attorney B required to report Attorney A's conduct?



Scope of a lawyer's special responsibility . . .

What do you think?

When is a lawyer not a public citizen?

Don't all lawyer's actions have the propensity of impacting the public's perceptions of the administration of justice, the existence of justice?



Thank you!