
SEATTLE INTELLECTUAL PROPERTY AMERICAN INN OF COURT



ETHICS

MAY 21, 2015



INTRODUCTION

JONATHAN MCFARLAND





IN RE REINES - CASE OVERVIEW

CHRISTIE MATTHAEI



APPLICABLE RULES

THERESA WANG



APPLICABLE FEDERAL RULES

- Federal Rules of Appellate Procedure (e.g., Rule 46(b)-(c))
- Local District Court Rules (e.g., Western District of Washington LCR 83.3)
- Local Appellate Court Rules (e.g., Federal Circuit Rule 46(f))
- Local Appellate Court Discipline Rules (e.g., Federal Circuit Attorney Discipline Rule 5(b))
- USPTO Rules of Professional Conduct 37 CFR § 11.804

FEDERAL RULE OF APPELLATE PROCEDURE 46

(b) SUSPENSION OR DISBARMENT.

(1) *Standard.* A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

....

(c) DISCIPLINE. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. . . .

FRAP 46 APPLIED TO IN RE REINES

- SCOTUS has interpreted FRAP 46 to “require[] members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.” *In re Snyder*, 472 U.S. 634, 644-45 (1985).
- Courts are to be guided “by case law, applicable court rules, and ‘the lore of the profession,’ as embodied in codes of professional conduct.” *Id.* at 645.

“CONDUCT UNBECOMING” STANDARD

- No intentional conduct needed
- Examples (often premised on State RPC)
 - Failing to prosecute an appeal with due diligence
 - Submitting false statements to the court
 - Refusing to return excess fees despite court order
 - Failing to respond to communications regarding a pending case
- Other instances
 - Fed. Cir. Attorney Discipline Rule 2
 - USPTO RPCs § 11.804 “engages in conduct that adversely reflects on the practitioner’s fitness to practice before the Office.”

WESTERN DISTRICT OF WASHINGTON LOCAL COURT RULE 83.3

- **(a) Standards of Professional Conduct**
- In order to maintain the effective administration of justice and the integrity of the court, attorneys appearing in this district shall be familiar with and comply with the following materials ("Materials"):
 - (1) The local rules of this district, including the local rules that address attorney conduct and discipline;
 - (2) The Washington Rules of Professional Conduct (the "RPC"), as promulgated, amended, and interpreted by the Washington State Supreme Court, unless such amendments or additions are specifically disapproved by the court, and the decisions of any court applicable thereto;
 - (3) The Federal Rules of Civil and Criminal Procedure;
 - (4) The General Orders of the court.

WESTERN DISTRICT OF WASHINGTON LOCAL COURT RULE 83.3

- (3) *Grounds for Discipline*. An attorney may be subject to disciplinary action for any of the following:
 - (A) violations of the Standards of Professional Conduct stated in subsection (a) above;
 - (B) disbarment, suspension, sanctions or other attorney discipline imposed by any federal or state court, bar association or other governing authority of any state, territory, possession, or the District of Columbia, or any other governing authority or administrative body which regulates the practice of attorneys;
 - (C) conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the Washington Rules of Enforcement of Lawyer Conduct ("ELC");
 - (D) misrepresentation or concealment of a material fact made in an application for admission to the Bar of this court or in a pro hac vice or reinstatement application;
 - (E) violation of this court's Oath of Attorney.

FEDERAL CIRCUIT RULE 46(F)

(f) Disciplinary Action. Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

FEDERAL CIRCUIT ATTORNEY DISCIPLINE

RULE 2 GROUNDS FOR DISCIPLINE

- (a) **Conviction.** Conviction in another court of a serious crime may be the basis for discipline.
- (b) **Disbarment or Suspension.** Reciprocal discipline may be imposed based on disbarment or suspension by another court or by an agency.
- (c) **Resignation.** Disbarment may be imposed based on an attorney's disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending.
- (d) **Act or Omission.** An act or omission by an attorney that violates the Federal Rules of Appellate Procedure, the Federal Circuit Rules, these rules, or orders or instructions of the court, other than an act or omission contemplated by Rule 3(d) of these rules, may be the basis for discipline. A failure to notify the court in compliance with Rule 6(a) may itself be the basis for discipline.
- (e) **Conduct Unbecoming.** Any conduct before the court unbecoming a member of the bar may be the basis for discipline.

USPTO RULE OF PROFESSIONAL CONDUCT

37 CFR § 11.804

It is professional misconduct for a practitioner to:

(a) Violate or attempt to violate the USPTO 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 practitioner's honesty, trustworthiness or fitness as a practitioner 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 USPTO Rules of Professional Conduct or other law;

...

USPTO RULE OF PROFESSIONAL CONDUCT

37 CFR § 11.804 CONT'D

It is professional misconduct for a practitioner to:

(f) Knowingly assist a judge, hearing officer, administrative law judge, administrative patent judge, administrative trademark judge, or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) Knowingly assist an officer or employee of the Office in conduct that is a violation of applicable rules of conduct or other law;

(h) Be publicly disciplined on ethical or professional misconduct grounds by any duly constituted authority of (1) a State, (2) the United States, or (3) the country in which the practitioner resides; or (i) Engage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

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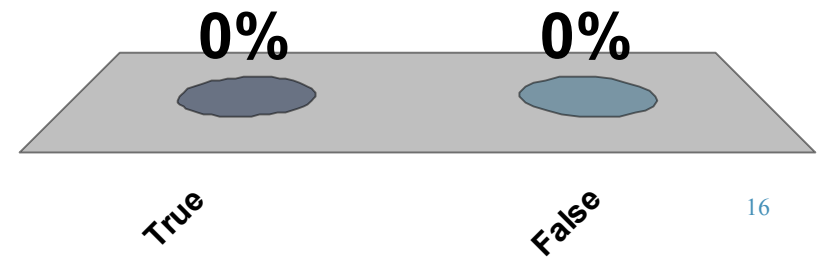
HYPOTHETICALS

GINA CULBERT & JONATHAN MCFARLAND



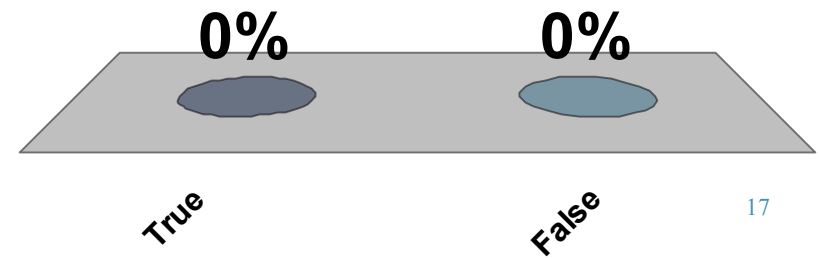
HYPO 1: ETHICAL VIOLATION?

1. True
2. False



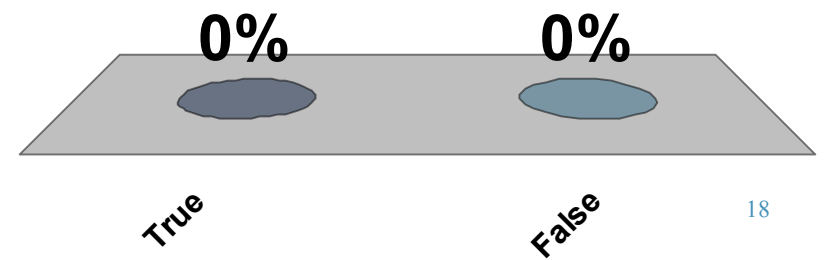
HYPO 2: ETHICAL VIOLATION?

1. True
2. False



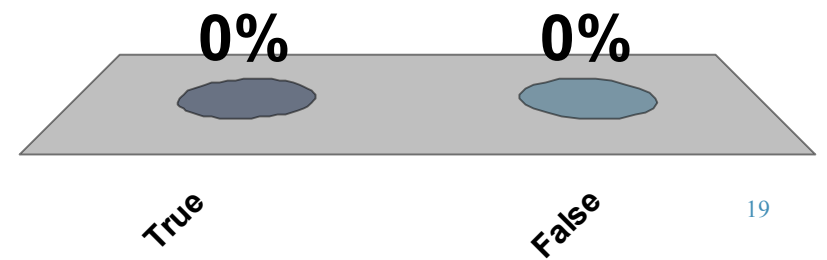
HYPO 3: ETHICAL VIOLATION?

1. True
2. False



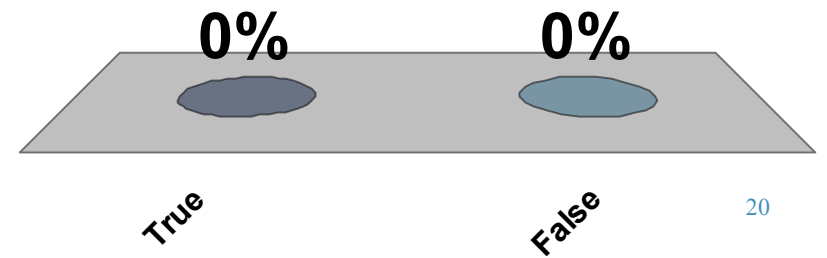
HYPO 4: ETHICAL VIOLATION?

1. True
2. False



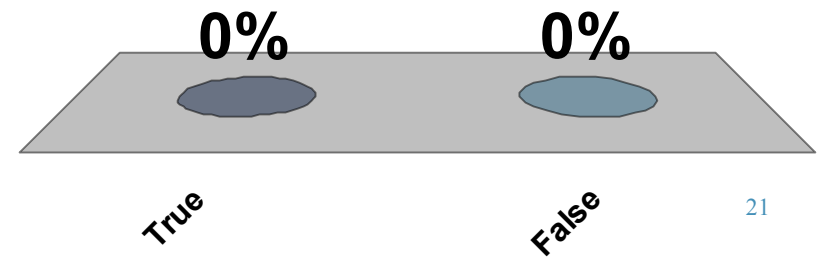
HYPO 5: ETHICAL VIOLATION?

1. True
2. False



HYPO 6: ETHICAL VIOLATION?

1. True
2. False





QUESTIONS?

