

2020 IN REVIEW

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OHIO ATTORNEY WHO HAD SEX WITH CLIENT GETS SUSPENDED
— BLOOMBERG LAW

SEX WITH CLIENTS

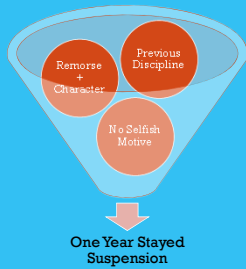
- 2011: Respondent retained
- Six months later, romantic relationship begins
- 2012: Civil case concludes with a favorable result for client
- 2014: Romantic relationship ends
- 2014-2016: Client hires respondent for two subsequent civil matters
- Late 2016: Friendship ends
- January 2017: Client files grievance for 2011/2012 conduct

CONSENT TO DISCIPLINE AGREEMENT

- Parties entered into a CTD Agreement—One-year, stayed
- Panel rejected the agreement
- Case proceeded to a hearing on stipulations
- Parties recommended the same sanction
- Panel and board recommend an actual suspension



POWER OF (THE) ATTORNEY



5-2 DECISION

- Justice Kennedy Dissents
- Irrelevant Factors
 - Lack of Coercion
 - Consent
 - Lack of Prejudice
- Attorney-client relationship
 - Dominance vs. Vulnerability



DISSENT



"In the absence of a preexisting, consensual sexual relationship, seeking or having sex with a client is a per se violation. The fact that a client appears to have consented does not mitigate the attorney's misconduct or provide a defense against a violation."

(¶ 25) A client's apparent consent and the absence of overt coercion are both irrelevant facts because "the client's reliance on the ability of her counsel in a crisis situation has the effect of putting the lawyer in a position of dominance and the client in a position of dependence and vulnerability."

(¶ 26) Nor is a lack of any apparent prejudice to the client relevant. We have recognized that "a sexual relationship between lawyer and client during the course of the professional relationship is inherently and insidiously harmful." * * * The client may be psychologically and emotionally harmed by an exploitative sexual relationship regardless of the outcome of the legal case."



DISHONEST CONDUCT

- Part-time Assistant Prosecutor with no previous discipline
- Non-custody DUI case
- Facts
 - Defendant had two prior OVI convictions
 - Three officers observed defendant driving
 - Defendant admitted driving on RR tracks
 - Slurred speech, odor, fails a few FST
 - Officer provided bodycam video
 - Afterward, defendant, through counsel, requests a reduction



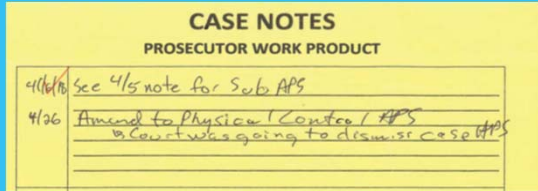
DISHONEST CONDUCT

- Facts, continued...
 - Next pre-trial, officer not present
- Prosecutor signs off on plea to Physical Control
- Municipal court—no prosecutor present
- Judge questions plea, calls for prosecutor
 - Police observation of defendant
 - Evidence concerns (i.e., defendant behind the wheel)
 - Officers' consented



THE COVER-UP IS *ALWAYS* WORSE THAN THE CRIME

- Case File
 - "Court was going to dismiss the case"



THE COVER-UP IS *ALWAYS* WORSE THAN THE CRIME

- Supervisor hears about the plea
- Admits no officer consent
 - Made a mistake in offering plea
 - Had not reviewed the file
 - Relied on defense counsel's rendition of facts
- Supervisor apologizes to Officer
 - Uhhhh...



THE DOMINO EFFECT

Cause and...



Effect

- Motion to Vacate Plea
- Appointment of a Special Prosecutor
- Judicial Recusal
- Hearing on Motion
- Defendant Pleads to OVI
- Terminated

SANCTION?

"A lawyer who engages in a material misrepresentation to a court or a pattern of dishonesty with a client violates, at a minimum, the lawyer's oath of office * * *. Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer. We cannot expect citizens to trust that lawyers are honest if we have not yet sanctioned those who are not."

--Six months.



GREED, MY FRIENDS, IS *NOT* GOOD

- Facts
 - 16 year-old died while in a hospital due to negligence
 - Minor's father handled negotiations, "compassionate collaboration"
 - Interviewed multiple lawyers; only if broke down
 - Retains Lawyer 1; consult only; no written fee agreement
 - Father handled all negotiations; reached settlement with hospital
 - Lawyer 1 refers to Lawyer 2 to open estate to accept settlement
 - Lawyer 1 spent approximately 15 hours on matter



SHOW ME THE MONEY

- Lawyer 1 tells Father he will get the necessary signatures from the hospital once Father signs fee agreement
- Lawyer 1 provides Father a 20% contingency fee contract; Father refuses to sign it. Lawyer 1 tells Father to contact Lawyer 2 about the estate.
- Father meets with Lawyer 2; discussion was about Lawyer 1's fee
- Father terminates Lawyer 2 the following day
- Lawyer 1 and 2 draft petition to remove Father as administrator of his daughter's estate. Alleges Father fraudulently told Lawyer 1 he would pay a 20% contingency fee
- Email "draft" to Father on Christmas Eve



SHOW ME THE MONEY

- Father's lawyer and lawyer for hospital advise Lawyer 1 and 2 to abandon fee claim.
- Lawyer 1 and 2 abandon motion to remove Father, but file fee application
- Father moves for sanctions against Lawyer 1 and Lawyer 2
- Settlement:
 - Lawyer 1 and 2 pay \$30,000 to mental-health charity
 - Issue heart-felt apology letters to Father



SANCTION

- Disciplinary Counsel and Lawyer 1 and 2 agree to PR
- Panel and Board cite 8.4(h) violation, six months, stayed
- Court weighs in: "...entirely inadequate..."
 - \$1,000,000 fee for 15 hours of work & basic probate forms
 - Coercion, threat to discredit Father, disclose confidential information
 - Accused Father of self-dealing by allocating percentage of funds
- One-year actual suspension for Lawyer 1 and Lawyer 2



QUESTIONS



The Business Case for Pro Bono

Kara Herrnstein

Energy Senior Associate, Pro Bono Coordinator
Bricker & Eckler LLP

Bricker & Eckler
ATTORNEYS AT LAW

Why do we do pro bono?





Doing meaningful work *for free* can help grow and strengthen your business

Developing Talent	Attracting and Retaining Talent	Brand awareness
<ul style="list-style-type: none"> - Hard skills - Soft skills 	<ul style="list-style-type: none"> - Morale - Professional fulfillment and company loyalty - Relationship building - Leadership opportunities 	<ul style="list-style-type: none"> - Public recognition - Client development - Connectivity to judges, the bar, community leaders and groups



Engaging in pro bono work makes one a better lawyer. You get to address issues that really matter to most people. You can make a real difference in their lives by assisting them with an eviction---even if it is only to buy them a few days to move out. You can save them from high stress when you negotiate a consumer complaint for them. **And best of all, the work that you do for them gives you a satisfaction that can't be achieved in a purely business setting.**

Sally Bloomfield
Partner, Pro Bono Superstar

Training your baby lawyers

(and your not-so-baby lawyers!)





Zach Eddy
Energy Associate (Marietta)

Bricker's promotion of pro bono volunteerism gave me first chair opportunities that I would not otherwise have gotten very early on in my career. I was able to develop my legal skills from my first month with the firm, including client communication, negotiation with opposing counsel, and courtroom etiquette. Those experiences have proven invaluable to me.

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The Hard Skills



- Drafting
- Trial skills (depositions, taking witnesses, etc.)
- Filing and service
- Courtroom procedures
- Mechanics of engaging a new client
- Increase "at bats"

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The Hard Skills



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According to a 2018 report from the Taproot Foundation, pro bono experiences provide important opportunities for employees to take on stretch assignments, which companies can leverage to focus on the leadership development of high-potential employees.

Taproot Foundation, *Pro Bono as a People Strategy* (2018)

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The Soft Skills



- Communication!
- Client relationships (and boundaries)
- Expectation setting, for both you and the client
- Courtroom and opposing counsel etiquette
- Delegation
- Case management procedures
- Increase "at bats"

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Pro bono programs are **95%** more effective at developing job-related skills than other volunteer programs.

Points of Light, *Benefits of a Skills-Based Volunteerism: ROI Tracker Findings* (2012)

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Lindsey Roberts
Litigation Associate

Working on a pro bono case during my first year as a lawyer not only gave me opportunities to practice my substantive litigation skills (such as taking a deposition, negotiating a settlement, and counseling a client on sensitive issues), but it also showed me in a tangible way how critical our work can be to the lives and/or businesses of our clients. I have found that to be a significant motivator as I continue to practice and improve my skillset as a young lawyer.

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Boy bye 🖐️

Getting and Keeping Top Talent

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A 2017 MetLife survey found that **90%** of people would rather work for a company that aligns with their personal values than a company with higher pay.

MetLife, Role of the Company Survey (2017)

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58% of job-seekers consider a company's social commitments when deciding where to work

Gallup, *How Millennials Want to Work and Live* (2016)

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Retention too!

88% of employees feel more professionally fulfilled when provided pro bono opportunities

Cone Communications, *2016 Cone Communications Millennial Employee Engagement Study*

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Brooke Mangiarelli
Public Finance Associate

As a primarily transactional attorney, pro bono work has allowed me to sharpen litigation skills that I otherwise would not have the chance to develop in my day-to-day practice.

Pro bono work has also allowed me to make a meaningful difference in the lives of those who are traditionally underrepresented, which has in turn increased my career satisfaction.

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Casey Cross
Construction Senior Associate

Being fortunate enough to pursue this career of being an attorney means that I have a duty and responsibility to give back to the community. **In doing so, I have received more joy and satisfaction than I could have ever imagined.** Helping and getting to know those in different situations than me is invaluable, and working on pro bono matters has taught me more about what it means to be an attorney than any other matters I have worked on.

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41% of pro bono practitioners report that they are more likely to remain in their current roles due to pro bono opportunities

Pyxera Global, *Global Pro Bono* (2018)

Building Employee Relationships



Pro bono activities provide a means to connect employees in your firm or company who would not otherwise work together





Elyse Akhbari
Senior Associate

Pro bono opportunities have sincerely enhanced both my personal enjoyment of the practice of law and my professional development. Within my first year of starting at Bricker I was able to take a pro bono case all the way to trial in Franklin County, winning a decisive victory for our clients, and working on my cross examination and deposition skills in the process. My pro bono work has allowed me to get to know colleagues outside of my own Industry Group, and hone talents that benefit my clients outside of a pro bono context.

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According to a Deloitte Volunteer IMPACT Survey, millennials who participate in workplace volunteer activities are:

- Twice as likely to rate corporate culture as very positive
- More likely to be proud to work for their company
- More likely to feel loyalty toward their company

Deloitte LLP, 2011 Executive Summary Deloitte Volunteer IMPACT Survey



Increasing and Enhancing Your Brand Awareness

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Visibility, Connectivity, and Community Relationships

BRICKER & ECKLER
ATTORNEYS AT LAW

Public awareness of the company, the working attorneys, and the institutional values

According to a 2000 report from The Pro Bono Institute, publicity garnered from pro bono activities is particularly valuable as it is less likely to be viewed as self-serving and self-aggrandizing

The Pro Bono Institute, *Making the Business Case for Pro Bono* (2000)




Aaron Bruggeman
Senior Associate (Barnesville)

Bricker is committed to the betterment of Southeast Ohio on all levels.


Pro bono service allows us to also serve those in need throughout the area and assist people in need of legal assistance with high quality services.

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The same number of hours devoted to skills-based volunteerism can generate over **500%** the value of traditional volunteerism, as measured by the perceived impact on the target nonprofit.

True Impact LLC, Volunteer ROI Tracker (May 2012)



Your clients (and targets) notice too




Craig Sweeney
Senior Counsel (Dayton)

Client relationships are nurtured by our physical presence. **The most effective way to maintain those relationships is to demonstrate that you are truly invested in your community.**

86% of Americans prefer to patronize a brand associated with a social or community cause

The 2004 Cone Corporate Citizenship Study

Zachary M. Simpson
Corporate Counsel, Gulfport Energy Corporation



"When choosing between similarly-situated firms in the same market space, you rarely make a decision based on dollars and cents, as each firm will have competent attorneys and comparable rates. So, how do you decide? You look to other indicators to differentiate, such as a commitment to pro bono activities, which tell you a couple of things.

First, it tells you that the firm has actively provided a community service that is very recognizable and appreciated by the courts in which we will inevitably appear. Second, a good pro bono program is evidence that the firm understands service to clients at its purest form and will be more than capable of forming a great relationship."

Jaclyn VanderMeer

Acting General Counsel, Kickstarter



"I am consistently impressed by my outside counsel colleagues who provide high-quality legal work to pro bono activities.

Beyond being a noble and important service, it opens up new opportunities for me to learn about their interests in the law (not just their current area of expertise), which can translate into future opportunities for growth."

Christine Shepard-Desai

General Counsel, Pin Oak Energy Partners



"I believe that pro bono work is one of the most important callings of our profession. **When choosing outside counsel, I look to a variety of factors, including what pro bono activities they list in their CVs.**"



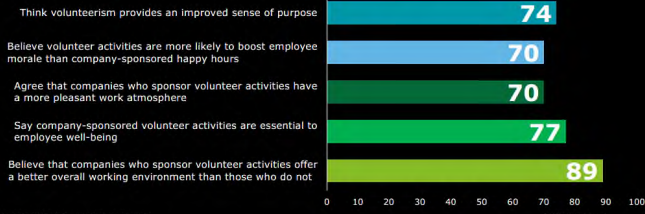
Personal Connectivity

- Judges
- The bar
- Community leaders and groups

2017 Deloitte Volunteerism Survey

Employers and employees may be missing opportunities when it comes to reaping the benefits of volunteering in the workplace. Deloitte's "2017 Volunteerism Survey" of working Americans found that creating a culture of volunteerism may boost morale, workplace atmosphere and brand perception.

Percentage of respondents





How to Grow a Robust Pro Bono Practice at Your Business

Institutional Commitment



- Billable credit
- Treat it like any other valued segment of your firm/business plan (track it, have goals, regular updates, etc.)
- Pro bono coordinator or committee



Leadership Buy-In

- Staff associates on your own pro bono matters
- **Example-setting is the *most* important thing you can do**



Options that Align with Interests

These are *some* of the areas in which Bricker attorneys have engaged in pro bono this year:

- Tenant advocacy
- Immigration and Hague Convention
- Veteran Assistance
- LGBT housing rights
- Racial equality
- Non-profit governance
- Sexual and domestic abuse survivors
- Consumer debt relief
- Estate planning and administration



Need more help?


- Deloitte and Taproot have useful implementation guides
- Your local Legal Aid is a great resource
- You can contact me!

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THE IMPORTANCE OF EVALUATING AND MAINTAINING OUR HEALTH AS LAWYERS

JANINE SCHROEDER, PSY.D.
PSYCHOLOGIST

TOPICS WE WILL DISCUSS TODAY...

- Review Stress and the Legal Profession
- Solve? Or Soothe?
- Wellness Wheel
- Matrix information

STRESS & THE LEGAL PROFESSION

RESEARCH ON STRESS IN THE PRACTICE OF LAW

- May 2019 Report of the Virginia State Bar President's Special Committee on Lawyer Well-Being – The Occupational Risks of the Practice of Law
- 20 occupational risks divided into 4 categories
 - Physical Risks
 - Mental and Emotional Risks
 - Adaptation Risks
 - Self-actualization risks

Physical	Mental/Emotional	Adaptation	Self-Actualization
Sedentary work	Adversarial nature of the work	Changing legal paradigms	Losing control of professional destiny
Long hours	Duty of confidentiality	Technology addiction	Values conflict with client/practice setting
Sleep deprivation	Professional demands	External Pressures on Lawyers Independence	Expectations vs reality gap in law practice
Work indoors	Vicarious trauma	Lack of diversity	
Aging of lawyers	Individual work		
	Educational debt		
	Business management		
	Display confidence & hide vulnerability		

STRESS MANAGEMENT

Solve

Soothe

**Evaluate
Overall
Wellness**

Use Matrix

**Negative
coping
strategies**



SOLVE

TIPS TO SURVIVE

THE PHYSICAL STRESS OF THE LEGAL PROFESSION

- Put movement in your routine somewhere
- Regular exercise and stretching routine
- Ergonomic equipment
- Prioritize & Set boundaries
- Practice good sleep hygiene
- Watch caffeine, sugar, alcohol
- Get outside a bit
- Get yearly medical exams to be aware of signs and risks of medical issues

TIPS TO SURVIVE THE MENTAL/EMOTIONAL STRESS OF THE LEGAL PROFESSION

- Replace toxins/bad with healthy/good
- Be aware of your own limitations
- Live at or below your means
- Engage in financial planning
- Get education and professional help on business management of practice
- Remember that you are human
- Know yourself and be honest with others about who you are

TIPS TO SURVIVE

THE MENTAL/EMOTIONAL STRESS OF THE LEGAL PROFESSION

- Build supportive relationships with your colleagues
- Work to separate your emotions from others when they are negative
- Take time to be social with others if not at work at home with friends/family
- Practice healthy conflict, time, stress management skills
- Always be aware of issues of risk management and ethics

TIPS TO SURVIVE THE ADAPTATION STRESS OF THE LEGAL PROFESSION

- Be comfortable being a lifelong learner and not knowing it all
- Be proud of your strengths but acknowledge your weaknesses
- Stay aware of relevant changes you need to know
- Take technology holidays/detox periods
- Set boundaries – tech free zones or times

TIPS TO SURVIVE

THE SELF ACTUALIZATION STRESS OF THE LEGAL PROFESSION

- Work to develop the type of practice that you can believe in
- Regularly re-evaluate the direction you are headed and look for and be open to new opportunities
- Develop a personal plan for how you will handle values conflict
- Consider the non-traditional routes you can take to improve your career satisfaction

OTHER TIPS TO REMEMBER

- Encourage others and the firm as a whole to focus on wellness
- Well-Being Toolkit for Lawyers and Legal Employers created by the ABA's working group to advance well-being in the Legal Profession.
https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf
- Ohio Lawyer Assistance Program (OLAP)
www.ohiolap.org

SOOTHE

Self-Care



**What makes you feel
soothed, nurtured,
comforted, and at peace?**

DO THIS MORE OFTEN!



EVALUATE OVERALL
WELLNESS





Physical Wellness

The ability to maintain a healthy quality of life without undue fatigue or physical stress.



Emotional Wellness

The ability to understand ourselves and cope with the challenges life can bring.



Spiritual Wellness

The ability to establish peace and harmony in our lives.



Financial Wellness

The ability to identify your relationship with money and skills in managing resources. An intricate balance of the mental, spiritual, and physical aspects of money.



Intellectual Wellness

The ability to open our minds to new ideas and experiences that can be applied to personal decisions, group interaction and community betterment.



Social Wellness

The ability to relate to and connect with other people in our world.



Occupational Wellness
The ability to get personal fulfillment from our jobs or chosen career fields while still maintaining balance in our lives.



Environmental Wellness

The ability to recognize our own responsibility for the quality of the environment that surrounds us.

USE MATRIX
PSYCHOLOGICAL
SERVICES

MATRIX CAN HELP!



WHAT CAN MATRIX DO FOR ME?

- Employee Assistance Program
- Free Sessions
- Qualified and Experienced Mental Health Professionals
- Virtual or in office
- Adults and Children
- Individuals and Couples
- Many areas of expertise
- Completely confidential

WHAT HAPPENS DURING MY FIRST APPOINTMENT?

PRIOR TO THE APPOINTMENT

- Call Matrix
- Set up as new patient
- Fill out paperwork
- Virtual? Or In person?
- Make sure you have link or location

AT THE APPOINTMENT

- Go to location
- Go to link
- Get support from and allow your therapist to get to know you
- Discuss basic treatment plan
- Ask any questions you may have

QUESTIONS
COMMENTS
DISCUSSION