

Region 18 Hot Dish

Volume XI, Issue 2

JUNE 2017

Jennifer Hadsall appointed Regional Director

By Ashok Bokde, Supervisory Attorney

You might have expected that a descendant/relative of at least six attorneys would follow a career in law, especially when those had such distinguished careers.... You may not know that Regional Director Jennifer Hadsall's grandfather, James Hetland, finished first in his law school class at the University of Minnesota, and was appointed by then-Minnesota Governor Harold LeVander to be the founding chair of the Metropolitan Council. Or that her great uncle had a long and distinguished career as a law professor at UC Berkeley, and her father, though trained as a teacher, became instead a machinist and continues in that career. Now where, I wonder, can someone descended from lawyers and a skilled tradesman fit in? Holy law and labor practice Batman! Is it the NLRB?

Jennifer Hadsall was appointed Regional Director of Region 18 in January 2017. While pursuing an undergraduate degree in Psychology, a professor in Industrial/Organizational Psychology recommended she consider studying Human Resources/Industrial Relations. Jenny applied to the University of Minnesota's Master's program, and after admission, applied to work an internship in Region 18 of the NLRB. Jenny loved investigating cases and helping people, and after graduation embarked on a career as a Field Examiner in Region 18. It turns out that investigating and analyzing cases as a field examiner is the best of both worlds – you can engage in almost the same type of work as attorneys, but you do not have to go to

law school. How's that for a double treat? It's like a Reese's, chocolate and peanut butter, or a combined unfair labor practice/election objections hearing. The fun is endless...

Not only is Jenny blessed with the "smarts" of her ancestral DNA, she is energetic, positive, and able to foster positive relationships within and outside the NLRB. (And despite her asking me to write that last sentence, it turns out to be true anyway, so I have no qualms about it.)

Ms. Hadsall has also served as the Officer-in-Charge of the now-closed Des Moines, Iowa office, and Assistant to the Regional Director. An informal polling of those "in the know" suggests that she has risen through the NLRB quicker than anyone in recent memory. While she may not have followed the exact career of her ancestors, we are confident she will reach the same heights.

In her new role, Jenny has not been shy about generating a "wish list" of goals for the Region and the Agency to achieve during her tenure. One such

item is for the Board to expedite consideration of cases that have been earmarked for Section 10(j) relief. Jenny argues that the Board should prioritize cases in which injunctive relief has been denied by the District Court but sit before the Board on exceptions to an Administrative Law Judge's decision.

Regional Director Hadsall's initiation ceremony is currently scheduled for June 12, at 2:30 p.m. with a reception to follow. Please contact our office if you would like details; we would love for you to join the celebration! Congratulations, Jenny!



Regional Director Hadsall with kids Leah and Kyle, and family dog Roxy. Behind the camera: Jenny's husband, Ryan.

INSIDE THIS ISSUE:

Hadsall Appointed RD 1

Kahler Hospitality 2

Dear Abby 3

Staff Spotlight: Promotions 4-5

Grenzer—Where is she now? 6-7

Sticks and Stones 8-9

Region 18 Pet Corner 10

HOT DISH EDITORS:

RENEE MEDVED,
FIELD ATTORNEY

CHINYERE OHAERI,
FIELD ATTORNEY

ABBY SCHNEIDER,
FIELD ATTORNEY

Kahler Hospitality Group: ALJ Decisions, Pending Litigation, & Pending Charges

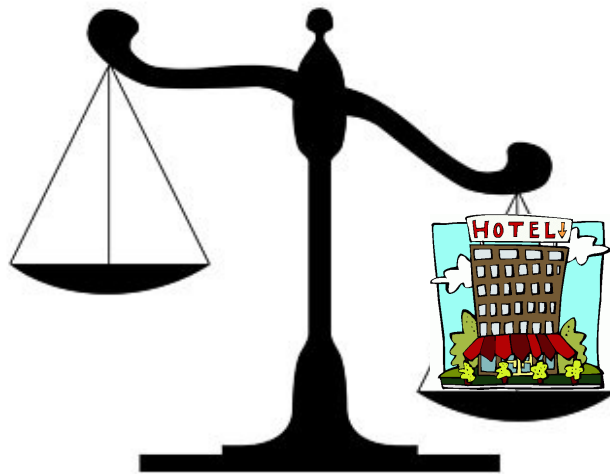
By Jennifer Hadsall, Regional Director

On May 27, 2016, Administrative Law Judge Sharon L. Steckler issued a decision finding Kahler Hospitality Group had violated the Act as follows:

- Engaging in unfair labor practices within the meaning of Section 8(a)(1) by:
 - a. Telling employees they could have raises if their collective-bargaining representative signed a new collective-bargaining agreement;
 - b. Telling the union representative, in the presence of employees, to leave the premises;
 - c. Removing postings from company bulletin boards.
- Engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) by:
 - a. Disciplining an employee
 - b. Refusing to assign additional work hours as a bartender and a houseman to an employee.
 - c. Discontinuing longevity pay increases provided in the Sunstone collective bargaining agreement.
- Engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) by:
 - a. On February 28, 2015 and thereafter, unlawfully discontinuing longevity pay increases contained in the Sunstone contract, Appendix A, without notifying the Union or negotiating to impasse.
 - b. Unilaterally discontinuing the past practice of visitation for a union representative on hotel properties, without notifying the Union or negotiating to impasse.
 - c. Unilaterally discontinuing the past practice of allowing the Union to post notices on Respondent bulletin boards, without notifying the Union or negotiating to impasse;
 - d. Proposing confusing terms and conditions of employment with the intent to stall negotiations;
 - e. Failing to explain the Union leave proposal sufficiently;
 - f. Since November 11, 2015, refusing to collectively bargain upon request with the Union.

g. Refusing to provide requested information to the Union, related to the cost of Union's healthcare proposals and the Employer's vacation proposal.

ALJ Steckler's decision and the exceptions Respondent filed over the decision remain pending before the Board. On the same date that the decision issued, the Union filed a new charge with the NLRB. Pursuant to the Region's investigation of that charge, the Region issued Complaint and Notice of Hearing. The hearing was held on October 4, 2016 and concluded with oral arguments held by phone on November 18. On May 4, 2017, ALJ Keltner W. Locke issued a decision finding Kahler had violated the Act as follows:



- Engaging in unfair labor practices within the meaning of Section 8(a)(1) by threatening employees that union representation was futile.
- Engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) by:
 - a. Engaging in surface bargaining by endeavoring to create the impression of bargaining in good faith, while having a fixed intent not to reach agreement and while taking various actions to avoid reaching agreement;
 - b. Unilaterally implementing portions of its wage proposal, over the Charging Party's objections and without the Charging Party's consent, at a time when no valid impasse existed.

Judge Locke's order provided for creative and effective remedies. Those remedies include requiring Respondent to compensate the Union for all bargaining expenses the Union

has incurred or will incur during a period beginning February 25, 2016 and continuing until the Respondent begins bargaining in good faith. Additionally, Judge Locke's remedies include a notice reading in addition to the traditional posting requirement. Particularly interesting is Judge Locke's recommendation to the Board that it order Respondent to permit the Union to bring a camcorder or audio-visual device to the notice reading(s) so that the Union can share it with any employee unable to attend. Judge Locke's decision also contains some personality, in the form of noteworthy footnotes, included below. The period for the parties to file exceptions to this decision is currently open and the matter is pending before the Board.

The Region has issued a *third* complaint against Kahler, alleging it violated Sections 8(a)(5) and (1) by unilaterally changing a meal benefit program for employees. The hearing in this matter has been indefinitely postponed based on a new charge filed in the Region on May 10, 2017, which is pending investigation. The new charge alleges Kahler violated Sections 8(a)(5) and (1) by, on about April 16, 2017, engaging in direct dealing with members of the Union, making unilateral changes, and undermining the Union.

Judge Locke's humorous footnotes include:

Judge Locke's observation of Charging Party Witness Martin Goff, Sr., who had allegedly been referred to during a name-calling event in bargaining, as looking like Colonel Sanders. Judge Locke at fn. 3 describes this event and states, "It may also be noted that, observing Goff as he testified, I did not notice any particular resemblance, in either features or attire, to the iconic chicken restaurateur."

A second amusing footnote occurs at fn. 14, in which Judge Locke wrote, "Stokes's effectiveness in sowing confusion may be heightened by his amiable and disarming manner. However, based on my observations of Stokes while he testified, I conclude the cheerful, harmless and slightly doddering character he played was a role, and one he likely had practiced for some time. Behind the persona was a mind so brilliant it could even weaponize a pie chart."

NEED A SPEAKER? CALL ON US!

The NLRB is continuing its efforts to reach community groups with information about the Agency. Regional staff members are available to speak to organizations, large and small, at your request. We regularly provide speakers to make presentations to colleges, high schools, technical schools, labor unions, employer associations, staff of legal services or other civil rights agencies, or any group with a particular interest in the nation's labor laws.

We have given presentations on introductory and general information such as the history of the Agency and the National Labor Relations Act, how to file charges and petitions with the



Agency, and how the Agency investigates cases. The Region has also given more in-depth presentations on specific issues such as successorship, the duty of fair representation, Beck Rights, protected concerted activity in a non-union workplace, etc.

For Region 18 inquiries, please contact **Chinyere Ohaeri at 952-763-2886 or via email at Chinyere.Ohaeri@nlrb.gov** to make arrangements for a speaker.

For Subregion 30 inquiries, please contact **Percy Courseault at 414-930-7195 or via email at Percy.Courseault@nlrb.gov** to make arrangements for a speaker.

VISIT OUR REGIONAL WEBSITE: [HTTP://WWW.NLRB.GOV/CATEGORY/REGIONS/REGION-18](http://www.nlrb.gov/category/regions/region-18)

	<p><i>Each day, an agent is responsible for serving as the Region's Information Officer (I.O.). In this series, we share particularly interesting and informative I.O. questions and answers.</i></p>
○	<p>Dear Abby...</p> <p><i>I am gathering information about recently-filed charges and petitions, and I'd like to see some of the cases in your region. Do I need to come to the office to look through papers? Should I file a FOIA request? What should I do!?</i></p>
○	<p>On August 12, 2015, the General Counsel issued GC Memorandum 15-07, which directed Regional offices to no longer make these Agency documents available to the public to maintain consistency with FOIA processing. This required removal of the binders from Regional lobbies and that information officers and Board Agents direct inquiries for copies of Agency documents to the FOIA branch of the Agency.</p>
○	<p>Beginning in February 2017, FOIA started to post the following information online, with appropriate redactions: non-CA charges, RC/RD/RM petitions, non-CA dismissals, and RC/RD/RM certifications. To find this information, go to www.nlrb.gov and click on "Recent Filings." You can then sort by Region, Status, Case Type, and more. Each listing will display the associated documents and will contain a link to make a FOIA request to obtain a copy of the documents you would like to review.</p>

Staff Spotlight: Congra

Carol Collins

Secretary to the Regional Director

Carol Collins has worked in Region 18 for more than 27 years, and we are thrilled to announce her promotion to Secretary to the Regional Director! Previously, Carol worked as Secretary to the Assistant Regional Director. In her previous role, Carol had many responsibilities regarding Representation Cases, and in her new role, she gets to be more involved in C-Case matters, including the issuance of dismissal, withdrawal, and deferral letters. She is also training Josie Castro (pictured on the next page), who was recently promoted to the position of Secretary to the Assistant Regional Director.



Carol and her husband Jeremiah have two daughters, Melanie (23) and Juliann (16). The family has two young short-haired tabby cats, Lucy and Desi, who provide hours of entertainment and stories to share at work. In her free time, Carol enjoys gardening, reading, and attending sporting events. Go Wild! Go Twins! She is also quite the traveler! In November, the Collins family traveled all the way to Hawaii to see Juliann's marching band perform at the 75th anniversary of Pearl Harbor. Having been bitten by the travel bug, the family is planning a trip to San Francisco this summer to see a Twins vs. Giants baseball game. Congratulations, Carol!

Carrie Klusman

Secretary to the Officer-In-Charge

Carrie Klusman, SubRegion 30's long-time (17 years!) Compliance Assistant, has been promoted to "OIC Secretary," the Secretary to the Officer-In-Charge, Benjamin Mandelman. In her new role, Carrie has greater contact and communication with Ben to ensure the Region's work is on target and nothing slips through any administrative cracks! She particularly enjoys preparing weekly reports for Ben to see how the agents' cases develop in real-time. Carrie also continues to perform certain Compliance tasks, having acquired significant expertise during her tenure in that role.



Along with her exciting promotion, Carrie is also enjoying other significant life changes as she and her husband Tom recently moved from their home in Milwaukee to suburban Franklin in preparation for empty-nesting. The youngest of her three sons is graduating from college this year. Congrats to Carrie and Tom on a job well done!

ntulations are in Order

Josie Castro

Secretary to the Assistant to the Regional Director

Josie Castro, the newest addition to the Sub-Region 30 family (she was introduced in the December 2015 Hot Dish!), is our new “ARD Secretary,” the Secretary to the Assistant to Regional Director. Although the ARD position is currently vacant (most recently held by now-Regional Director Hadsall), Region 18 agents voluntarily rotate through this position to perform ARD duties. In her new role, Josie assists with R-cases and elections. She has impressed everyone by adjusting to the often-complicated and incredibly time-sensitive nature of R-case processing.



Josie is headed to Puerto Rico at the end of May to celebrate both her promotion to ARD Secretary and her daughter Gabby’s 21st birthday. We hope she enjoys this much-deserved vacation! Congratulations, Josie!

Andrea Wichman

Secretary to the Regional Attorney



Andrea Wichmann joined Region 18 in November 2015 as an Office Automation Assistant, and the Region is happy to announce her promotion to Secretary to the Regional Attorney! In her new role, she assists with all aspects of litigation, from scheduling of trials, issuing complaints and subpoenas, preparing exhibits, and assists with the editing/formatting/filing of briefs. Whew!

Andrea has one son, Matt (32), and two dogs, Maggie and Jake. Maggie is a feist that Andrea adopted from an animal rescue. Jake (or “Jake!” depending on whether he is being bad), is a blue heeler/Australian cattle dog. Andrea also has one cat, Kittybob. Naturally, none of the animals get along.

Andrea lives an active lifestyle. She commutes to work by bike (through rain, sleet, and snow!), goes on lots of walks with her dogs, and is a passionate gardener. Her garden takes up her entire lawn. Her favorite flowers are Old Mexico Zinnias, Morning Glories, Canna Lilies, Tithonia Mexican Sunflowers...and the list goes on, and on, and on. Congratulations, Andrea!

Office Manager Bernie Grenzer: Where is She Now?

by Olga Bestilny, Region 18 Office Manager

It was May 1, 2015, a day steeped in tradition, in which workers of the world historically march with pride and righteous dissent. More importantly, it was the day on which Region 18's Office Manager Bernadette Grenzer chose to officially retire. Coincidence? We think not. Unbeknownst to many, Ms. Grenzer had actually delayed her exit to help coordinate Region 18's office relocation in April of the same year. Read on for the post-retirement dirt:

Feeling the Bern

Along with her sacrificial delay, Ms. G (best known as Bernie) remained on-call for certain clueless colleagues, something for which the gods will one day reward her. We caught up with Bernie that innocent summer, who modestly mused over her career.

About the dream job she performed so effortlessly, she quipped, "It seemed like a nightmare!" "Actually," she admitted, "the first two years were a nightmare. It was very challenging, but it was nice because you helped somebody through a crisis, got something repaired, got office supplies, got things that were needed..."

Fahrenheit 451

At one point, Bernie declared, "I felt like I was always putting out fires." Asked to share humorous moments, she hesitated. Whether due to inscrutable loyalty, and/or because the job was just not that funny, we'll never know. Bernie was not done commenting on fires. "You think you're getting stuff done on your list -- A B and C -- then other fires spring up somewhere else!" she exclaimed, her eyes misting with memories.

Motorcycle Diaries

During Bernie's tenure at Region 18, she and her husband John frequently criss-crossed the North American continent on "a regular motorcycle." By 2013, when the couple invested in a 2005 Honda Goldwing trike, their road trips had become legendary.

For her first post-retirement foray, she described a cozy one-nighter in a hotel on Lake Mille Lacs near her aunt and uncle's 50th anniversary scrum. The following weekend, they motored up north, to one of Minnesota's most scenic regions.

That same year, the lust for the road continued, and Bernie and John

embarked on "a wonderful motorcycle road trip," spanning sixteen glorious days in the deep South.

Surprising herself, she declared, "We hit like 14 states in 15 days." A feat rivaled only by that year's roving presidential candidates.

It's a Tornado. Toto!

During this southern trek, Bernie and John roared into Kentucky and smack into a weather brouhaha. While the two were en route to historic sites in Fredericksburg, including an "old jail," sirens began to wail, as a tornadic storm threatened!

"We had to seek shelter in a city hall," she revealed.

While sopping wet and shivering, Bernie and John huddled under governmental cover during Mother Nature's assault. After the battering, they calmly collected themselves, and not unlike TR's Rough Riders, proceeded to their next destination.

Ship Ahoy

But were their travels done for the year? Not by a longshot! In the crispness of October, B and J boarded a Royal cruise ship in Baltimore, beginning a 9-day romp on the Eastern seaboard.

The odyssey involved disembarking in Maine and Canada, including St. Johns, New Brunswick, and Halifax, before looping back up the northeast coast.

"That was a really fun trip," she recollected.

As for choosing their locales, Bernie

revealed her secret, "My brother! He should be a travel agent. He and my sister-in-law tell us, 'Hey, we're going on a cruise -- you should come along!'" As for travel planning, she minced no words. "It's a lot of work setting up trips. I hate it, but my brother thinks it's a big fun game trying to get the best deal. I think it's dreadful."

In other words, knock yourself out, Bro.

Mexican Plights

Just to mix things up, that November, Bernie and John flew to Cancun for a week. Alas, their sunny plans went cucaracha.

"I spent a couple of days seriously sick," Ms. G explained. And as an explanation point, she warned of local land pirates who, under the umbrella of a legitimate shop, engage in dubious commerce.



Bernie Grenzer and her husband, John, with a motorcycle-riding-inspired cake to celebrate Bernie's retirement.

The resort “was beautiful, people were friendly. It’s just when you go off the resort,” she noted diplomatically, “you run into people that are not necessarily on the up and up... I wouldn’t go there again,” she murmured.

Hearth and Others’ Homes

If home is where the heart is, the couple make a point of periodically re-introducing themselves to their kith and kin. Earning the “Grand” in their Grandparents’ title, in between their extensive traveling. Bernie and her skilled husband have assisted their offspring on house painting, digging new basements, pouring concrete floors, and suffering under major landscape yard work on 90-degree days. Besides acting as general contractors and laborers, the pair’s many grandkids keep them judiciously hopping as exalted sitters.

Back on the Road

In the Spring of 2016, Bernie and John headed southwest (sans motorcycle) to visit her sister-in-law who had recently moved back home to Texas. But before the reunion, Bernie had booked a three-day pit-stop at one of their favorite haunts - Branson, Missouri.

“You’ve been to Branson before,” her interviewer said accusingly. “This is our third time,” Bernie confirmed, with a disturbing lack of sheepishness.

Speaking of sheep, what else does Ms. G love about Branson, MO?

“There’s so much to do!” she exclaimed. “We’re going to see a couple of shows. We have three nights, two shows scheduled, then something else on the third day. The first show is *Acrobats from China* – similar to *Shin Yuen!*” Ms. G launched into an animated description of a famed acrobatic troupe.

“The other [show] is *Six*, it’s six brothers who sing, and make sounds of instruments. They don’t have instruments,” she explained patiently. “Last time we saw them, they were fabulous.” She described Branson as “a tiny Vegas, but no gambling. We don’t gamble,” Ms. G hastened to clarify.

Branson’s charms inspired Ms. G to full-on infomercial mode.

“There’s all kinds of shows like gospel, country, comedy. There’s museums like the *Titanic*, *Ripley’s Believe It or Not*, the *Silver Dollar City* theme park, even a zip line. There’s a lot to do! [It] started out as country and gospel singing, and ballooned from there, big-name people went down to perform.” Taking a breath, Ms. G mentioned *Showboat*, a “fun” comedy dinner show cruise on Lake Taneycomo.

“Never thought I’d like Branson, but there’s something for everyone,” she assured me, as I suspiciously awaited a timeshare sales pitch.

Blue Blood

Few are aware that Ms. G’s talents literally run skin deep. In fact, Bernie comes equipped with rare blood cell antigens. Thanks to this rarity, and the downtown location of her quarterly blood donations, Ms. G coordinates her generous blood drives with her visits to Region 18. Coincidence? Absolutely! “They pay me a hundred bucks,” she

reminded me. “They sell it and send it for research. That’s how desperate they want it,” she added matter-of-factly.

Milwaukee Memories

We close this look at Ms. Grenzer’s escapades with some comments from Carla Becker, Region 18’s trusty Assistant Office Manager in Milwaukee:

“I remember a Friday when Bernie was totally frazzled. Marlin was in Milwaukee at the time. I said to her, ‘Geez Bernie, go for a walk or something!’ She said that she couldn’t - had to get payroll done, slips were coming in, etc.”

“I think that knowing she doesn’t have to have those Friday afternoons anymore is peaceful for her. And that is a good thing for a human being!”

Although from the looks of things, peace is the last thing she seeks.

Natural Nurturer

Ms. Becker mused on Ms. G’s many attributes, and added, “She was a confident OM that had no problem troubleshooting my problems. She dropped everything just to help me figure a voucher question, or anything else. It was second nature for her to help.”

The whole of Region 18 wishes Bernie continued enjoyment in her retirement, retro-thanks her for her fire-dousing skills, steady arm at the rudder, and career-capping loyalty.

Bon Voyage!

Ms. G recently returned to the office to further infuriate her former colleagues. Why so furious? Oh, maybe because she already had another adventure planned for the Fall....

“We’re booked on a Royal Caribbean Cruise - 12 nights from Barcelona and back with stops along the way.” Was Ms. G prepared? “Not at all, I’m sure! That’s a lot to pack!” she cried. “We’re talking all kinds of weather,” she explained. “Fall weather in the Mediterranean, then we got the summer heat in Tampa, where the ship leaves...” Such a predicament!

So once again did Bernie part from her envious colleagues - a living lobbyist and testament for the Zeitgeist of our time: dutifully drawing on those ever-growing airline miles and hotel points...

Congratulations, Bernie, on your wonderful career, and kudos to you for enjoying every moment of retirement!



Sticks and Stones in a Virtual World—Part I

By Abby Schneider, Field Attorney

Originally published in the NLRB's *All Aboard Newsletter* as part of a series of articles addressing ethical duties in the realm of social media.

This article is the first of two in which we focus on attorneys' responses to online criticism. In this article, we discuss what attorneys can and cannot do under the legal ethics rules in response to online criticism posted by former clients. Although NLRB attorneys do not have private clients and this issue is not directly relevant to us, we think it is interesting to see how ethics opinions have approached this issue. In the next issue, we will examine more specifically how far attorneys can go when implementing "damage control" in response to online posts.

Each year when kids go back to school, parents are presented with the age-old dilemma: how do I want my child to handle conflict on the playground? Do I teach her to fight back? Is it better to just walk away? Should she tell a teacher? It's a complex decision, and, as it turns out, it's a matter lawyers in private practice must consider too!

How should lawyers handle conflict created by a former client on the social media playground? Be it a negative review on a professional ratings website, a whining post on Facebook, or an airing of complaints on Twitter, when a former client posts something negative, should the attorney fight back? Walk away?

[Ethical considerations regarding an attorney's response to online criticism posted by former client](#)

Just as a child might overreact to public criticism in front of classmates to maintain popularity status, "the psychological dynamics at play in online communications from online reviews unleash processes of ego threat and cognitive distortion that encourage overreaction."¹

However, even if an online post could harm a lawyer's reputation and demonstrate a shift in power from lawyer to former client, lawyers must be mindful of the rules of professional conduct while crafting a response. In a 2014 opinion from The Bar Association of San Francisco,² a former client posted general statements that a lawyer had mismanaged the client's case, did not communicate appropriately with the former client, provided sub-standard advice, and was incompetent. The lawyer wanted to post a response that addressed these assertions by discussing the details of the management of the case,

the frequency and content of communications with the former client, the advice provided, and why the lawyer believes the advice was appropriate under the circumstances. For the reasons discussed below, state bars have uniformly concluded that such a response would be unethical.

As you are aware, a lawyer has an obligation to preserve confidential client information. ABA Model Rule 1.6: Confidentiality of Information, provides that a lawyer shall not reveal information relating to the representation of a client absent informed consent from the client. This obligation is a basic tenet of legal ethics and covers all information relating to the representation, including that which has become generally known, and even continues after the death of a client! This obligation "contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer..." ABA Model Rule 1.6, Comment 2 (See also Rule 1.9, which describes a lawyer's duties to former clients.) There are several exceptions to this obligation, enumerated in Model Rule 1.6(b) (1)-(7). The one we focus on today is Rule 1.6(b)(5), aka the "self-defense exception".

The "self-defense exception" permits a lawyer to disclose confidential information to the extent necessary

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

However, recent ethics opinions have all agreed, under their respective versions of the relevant ethics rules, that the exception does not extend to informal complaints, such as posting criticisms on the internet.

Pennsylvania Bar Association Formal Opinion 2014-200 considers the "self-defense exception." The Opinion discusses that an online disagreement about the quality of a lawyer's services might be genuine, but because such a disagreement does not constitute a "controversy" in the sense contemplated by the Model Rules, a lawyer cannot reveal confidential client information in response to a negative online review without the client's informed consent. Specifically,

the Pennsylvania Bar Association Legal Ethics and Professional Responsibility Committee was asked whether the Pennsylvania Rules of Professional Conduct (PA RPC) impose restrictions upon a lawyer who wishes to publicly respond to a client's adverse online comments about the lawyer's representation of the client. The Committee considered the "self-defense exception" quoted above (the language in PA RPC 1.6(c)(4) is identical to 1.6(b)(5) in the Model Rules) and focused on the word "controversy." After considering the Oxford Dictionary definition of "controversy," which is a "disagreement, typically when prolonged, public, and heated," the Committee reasoned that a disagreement as to the quality of a lawyer's services might qualify as a "controversy" but such a broad interpretation is problematic for two reasons. "First, it would mean that any time a lawyer and a client disagree about the quality of the representation, the lawyer may publicly divulge confidential information. Second, Comment [14] makes clear that a lawyer's disclosure of confidential information 'to establish a claim or defense' only arises in the context of a civil, criminal, disciplinary or other proceeding."³ Thus, the Opinion concluded that "the literal language of.... the self-defense exception does not authorize responding on the internet to criticism" and "any decision to respond should be guided by the practical consideration of whether a response calls more attention to the review. Any response should be proportional and restrained."⁴

Other states have reached the same results under their versions of the relevant rules. For example, consider a situation in Nassau County, New York.⁵ There, a lawyer represented a man in a divorce and related proceeding commenced by the client's wife. After the husband was arrested for violating a stay away order of protection, the lawyer advised his client that he did not handle criminal matters. The client got upset, fired the attorney from the divorce proceeding, and claimed he was owed fees. The lawyer advised the former client that no refund was due, and instead provided a breakdown of the moneys owed for the divorce proceeding. Subsequently, someone claiming to be the client's brother posted comments on a lawyer-review website, criticizing the lawyer and describing him as a "thief." The lawyer believed that certain information about his representation of the client would help rebut the posted criticisms and inquired whether he could include such information in a response to the comments. However, the bar said no, because the information the lawyer wished to disclose constituted "confidential information" gained during or relating to the

representation of the client. While the Pennsylvania bar focused on the word “controversy,” the Nassau County bar focused on the word “accusation.” Under New York’s version of the “self-defense exception” (Rule 1.6(b)(5)(1)) a lawyer “may reveal or use confidential information to the extent that the lawyer reasonably believes necessary... to defend the lawyer or the lawyer’s employees and associates against an *accusation* of wrongful conduct.” (emphasis added) The Opinion explained that an “accusation” “means something more than just casual venting.”⁶ Accordingly, the Nassau County bar concluded that the “self-defense exception” does not apply to informal complaints such as posting criticisms on the internet. To the contrary, “critical but less formal comments on the skills of lawyers and his law firm, whether in the coffee shop, a newspaper account, a blog, or a website, are an inevitable incident of the practice of a public profession, and may even contribute to the body of knowledge available about lawyers for prospective clients seeking legal advice.”⁷

Although California does not follow the ABA Model Rules, it too has found that the “self-defense exception” does not apply to a lawyer responding to online criticisms. See Los Angeles County Bar Association Formal Opinion 525 (2012). There, the bar stated that a lawyer may publicly respond to a former client’s adverse public comments about the lawyer “as long as the rebuttal: (1) does not disclose any confidential information; (2) does not injure the former client in any matter involving the prior representation; and (3) is proportionate and restrained.”⁸ See also San Francisco Formal Ethics Opinion 2014-1, *supra*, (facts discussed above). There, even though the bar recognized that a former client’s posting could have an impact on the lawyer’s reputation, it nevertheless agreed with the other opinions outlined herein that absent informed consent or waiver, disclosure of otherwise confidential information is not ethically permitted unless there is a formal complaint by the client, or an inquiry from a disciplinary authority based on a complaint by the client. Interestingly, the bar said that the lawyer may not be able to respond at all if the matter previously handled for the former client has not concluded because of an attorney’s duty of loyalty to clients.⁹

As demonstrated by the examples above, when someone picks an argument and posts a criticism on the social media playground, a lawyer must think twice before responding in a way that would disclose information about a client or representation of a client.

Sanctions Administered

Whereas the opinions described so far addressed inquiries that arose before the lawyer posted a response online, a lawyer in Washington, D.C. did not inquire before he posted a response to a negative comment online, and he received an informal admonishment because the D.C. Disciplinary Counsel also found that the “self-defense excep-

“ The self-defense exception does not authorize responding on the internet to criticism. Any decision to respond should be guided by the practical consideration of whether a response calls more attention to the review. Any response should be proportional and restrained ”

tion” did not apply.¹⁰ A former client posted a comment online, summarizing her principal complaint that the lawyer’s fees were excessive and he billed an inordinate number of hours to proof and edit documents she had prepared for him to submit on her behalf, when it turned out that a concise presentation would have been sufficient. Though he did not identify his former client by name, the lawyer’s online response revealed specific information about the client’s case, including where she worked and dates of relevant events that could be traced back to her. Based on his conduct, the D.C. lawyer received a written Informal Admonition that became public when issued. The admonition states that disclosure of this information constituted a violation of Rule 1.6 and the “self-defense exception” did not apply because the attorney was not defending himself against a formal charge.¹¹

Additional examples of sanctions can be found in the Pennsylvania Bar Association Formal Opinion 2014-200, *supra*. See *In re Skinner*, 740 S.E.2d 171 (Ga. 2013) (A lawyer admitted to posting confidential information about a former client in response to that former client’s negative reviews of the lawyer on consumer websites, and the Georgia Supreme Court rejected as inadequate a recommendation of the State Bar General Counsel seeking a review panel reprimand for the lawyer.); *In re Tsamis*, Commission

File No. 2013PR00095 (Ill. 2013) (a Chicago lawyer was reprimanded by the Illinois Lawyer Registration and Disciplinary Commission for revealing client communications in a response to a former client who posted a negative review of the lawyer on Avvo, an online attorney directory providing client reviews, disciplinary actions, and peer endorsements.)

So it goes. Just as children who are called names on the playground are taught to respond with self-restraint, lawyers who receive harsh rebukes online must respond professionally and with ethical limitations in mind. Next month we will consider a number of issues related to lawyers’ efforts at damage control, including the ethical dangers of “astroturfing” on the social media playground. What’s “astroturfing”? Stay tuned!

¹ Robertson, Cassandra Burke, *Online Reputation Management in Attorney Regulation* (May 1, 2015), at 2. 29 *Georgetown Journal of Legal Ethics*, 2015. Robertson’s article addresses many topics related to lawyers’ online reputation management, including the growing popularity and use of reputational capital and regulation of reputational capital. She cites Jonathan Macey, *The Demise of the Reputational Model in Capital Markets: The Problem of the “Last Period Parasites”*, 60 *Syracuse L. Rev.* 427, 429 (2010), which defines reputational capital as “the primary mechanism by which businesses establish trust in markets and in contracting relationships.” Although reputational capital is not a new concept, what is new is the influence of online reviews. “Aggregated consumer reviews are taking on an ever-increasing role in shaping business success (and failure), as individual reviews combine to form a type of reputational capital for businesses.” Robertson at 5.

² San Francisco Bar Association Formal Ethics Opinion 2014-1.

³ Pennsylvania Bar Association Formal Opinion 2014-200.

⁴ *Id.*

⁵ Nassau County Bar Association Formal Opinion 2016-1.

⁶ *Id.*, citing Roy D. Simons, *Simon’s New York Rules of Professional Conduct Annotated* 230 (2013 ed.).

⁷ *Id.*

⁸ Los Angeles County Bar Association Formal Opinion 525 (2012).

⁹ San Francisco Formal Ethics Opinion 2014-1.

¹⁰ Hays, Kali “DC Atty Admonished for Response to Ex-Client’s Complaint.” *Law 360*, July 6, 2016.

¹¹ *Id.*

NEW!

Meet Our Four-Legged Friends!

Drumroll, please....

The Hot Dish is about to become your place to meet the Region's pets! Get to know us by getting to know those we love the most! Each issue will feature a pet or two, and once you've gotten to know many of our beloved fur babies, we'll publish a "match the pet to the person" game. Stay tuned!



Everyone, meet Louie! Louie lives with Field Examiner Amanda Bahnson. She adopted him from a rescue in northern Illinois after seeing his photo on Petfinder. He was one-and-a-half at the time, and has lived with Amanda for five years. Louie is a German Shepherd/Shiba Inu mix. At just over 50 pounds, his unlikely best friends are a 20-pound Silky Terrier and a nine-pound Pomeranian/Yorkshire Terrier mix. He loves to chase balls and then chew them into little pieces. Much to Amanda's consternation, this has led her to purchase tennis balls by the case. Louie is eager to give kisses and snuggle with anyone he considers to be one of his people. He is a great companion!



Meet Harriet, a member of Field Attorney Rachael Simon-Miller's family! Harriet is originally from Kentucky and was adopted a little over four years ago through an organization called Safe Hands Rescue. Harriet is a fan of walks, jumping, racing around the back yard, laying in the sun, licking faces, and curling up on the couch – preferably as close to a human as possible. She is decidedly against car rides, baths, and anyone who walks by her fenced-in yard. Harriet enjoyed a blissful 8 months of full attention and ridiculous pampering with her new family before the arrival of baby Neil, 3 1/2 years ago. Though one would understand if she resented the new family member, Harriet has loved him from day one and even lets him give her bunny ears, as seen in this photo.

