

Comment,
**PUNISHING ATTORNEY MISCONDUCT IN
FAMILY LAW MATTERS**

Family law attorneys are a very special breed of people. They are called upon to deal with the intimate ugliness and dark secrets that invade our families and courts on a daily basis. Issues involving child abuse, sexual abuse, parental kidnapping, threats, domestic violence and infidelity are inevitable to the practice and lead to a high degree of stress.¹ Attorneys who work in this area must be extremely careful not to become emotionally involved or to overstep the bounds of law or propriety.²

Cases involving attorney misconduct that could be construed as criminal but have not resulted in either a criminal charge or a contempt citation are rampant. While prosecutors and courts have nearly unlimited discretion with regard to charging attorneys criminally or holding them in contempt when representation exceeds the limits of the law, disciplinary committees and juries are not so forgiving. Scores of attorneys have been professionally disciplined or sued by their clients or third parties even when no criminal or contempt charges were filed against the attorney. This article explores the world of attorney misconduct that has resulted in discipline, criminal charges, contempt citations and civil suits involving family law matters.

I. Disciplinary Action

Disciplinary proceedings are those brought against lawyers by the entity that governs their conduct, usually the highest court in the jurisdiction. In 1996, a Colorado attorney was subject to disciplinary proceedings resulting from her representation of the mother of a two-year old boy and an unborn child in a dissolution of marriage case involving contested custody of both chil-

¹ "The burn out rate for those who practice family law is higher than the average. The stress factor is phenomenal too. Listening to stories day after day of individuals angry at their spouse, the court system, even their own attorneys creates an extraordinary amount of stress." Marsha Baucom, *Collaborative Divorce*, 41 ORANGE COUNTY LAW 18, 32-33 (1999).

² See Elizabeth Van Arsdale, *Reduce Stress by Redefining Your Role*, 16 FAM. ADVOC. 28 (1994).

dren.³ Early on, the parties entered into a restraining order prohibiting either of them from taking the little boy out of state, a hearing was scheduled on the issue of temporary custody and a custody evaluation was ordered by the court.⁴ Shortly thereafter, the mother and her attorney were advised that the evaluation would contain a recommendation that father be given sole custody of both children.⁵ The mother's attorney counseled her that, as an attorney, she had to advise her to stay, but as a mother, she would advise her to run.⁶ The mother's attorney then provided the mother with information about safehouses, aided her in converting property and liquidating bank accounts and assisted with storage of her property after the mother ran – taking the little boy out of the state for about two weeks.⁷

At the time the motion for temporary custody was heard, the mother's attorney appeared without her client and asked the court for a continuance, stating that "the child was doing well in his own home."⁸ When asked about the location of her client, the attorney invoked the attorney-client privilege.⁹ A temporary order of custody was entered in favor of the father and he was directed to continue making support payments to the mother.¹⁰ The mother's attorney requested that all payments be made through the court.¹¹

After the birth of the second child, the court held another hearing and found that the mother's attorney had committed "a fraud on the court" by accepting continuing support payments knowing that her "client was on the run with the child," but the court did not hold the mother's attorney in contempt.¹² The mother was later criminally charged with a Class 5 felony for violating a child custody order, but no criminal charges were lodged against the mother's attorney.¹³ The attorney, however, did not

³ *People v. Chappell*, 927 P.2d 829 (1996).

⁴ *Id.* at 829.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 927 P.2d at 829.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 830.

escape completely unscathed. She was disbarred by the Supreme Court of Colorado on November 4, 1996, for violating Colorado's Rules of Professional Conduct.¹⁴

Although the court determined that mother's attorney's misconduct could have been construed as criminal, she was not charged criminally or held in contempt of court for her actions—the sole repercussion was disciplinary proceedings resulting in disbarment.¹⁵

In a 2003 disciplinary case, a South Carolina attorney was suspended for a year for (among other things) engaging in misconduct that resembled criminal forgery.¹⁶ The attorney had been contacted by a man who said that he needed fake divorce papers to assist him and his wife in their “Gestalt” counseling sessions.¹⁷ The papers were to be used in the course of counseling to shock his wife into fixing the marriage.¹⁸ The attorney went to extreme lengths to make the papers look real although some of them contained errors as to the way certain individuals actually signed their names.¹⁹

¹⁴ *Id.* at 831-32. The Colorado Rules provide that: 1.2(d) [A] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent; 3.3(a)(2) [A] lawyer shall not knowingly fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; 8.4(b) [I]t is professional misconduct for a lawyer to commit a criminal act by aiding the lawyer's client to commit a crime; and 8.4(c) [I]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

¹⁵ In reaching its decision to disbar the mother's attorney, the court set out the provisions of Colorado Rules of Civil Procedure and controlling case law, to wit: C.R.C.P. 241.6(5). [A]ny act or omission violating the criminal laws of a state or of the United States constitutes ground for lawyer discipline; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action. *Id.* at 831; Conviction of criminal offense is not a condition precedent to attorney disciplinary proceedings involving the offense, nor is acquittal a bar. *Id.* citing *People v. Morley*, 725 P.2d 510, 414 (Colo. 1986).

¹⁶ *In the Matter of David E. Belding*, 589 S.E.2d 197, 200 (S.C. Ct. App. 2003).

¹⁷ *Id.* at 198.

¹⁸ *Id.*

¹⁹ Numerous papers were drafted including a motion to change venue, first interrogatories and a letter of engagement. Some of the paperwork con-

In making its determination to sanction the attorney, the *Belding* court cited two prior cases involving similar conduct.²⁰ In *In the Matter of Mozingo*,²¹ to make the client's family feel better, an attorney signed a judge's name to a letter purporting to indicate that the client's wage withholding for child support purposes was going to be set aside. In *In the Matter of Walker*,²² the attorney prepared an expungement order, signed the judge's name and forwarded it to his client to make the client think that it had really been done.²³

The court held that the attorney's conduct violates the rule forbidding "knowingly making a false statement of material fact or law to a third person or failing to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client."²⁴ The attorney maintained that he was not in violation because he did not intend to forge documents for criminal purposes.²⁵ The court ruled otherwise, stating that attorney misconduct does not have to equate to a criminal offense to be punishable in a disciplinary matter.²⁶ However, the *Belding* court distinguished the attorney's conduct from that involved in *Mozingo* and *Walker* in that the attorney did not attempt to present the divorce papers as real and therefore, the attorney received a lesser sanction than the attorneys in the other cases.²⁷

In a 1998 disciplinary case, a Colorado attorney was publicly censured for misconduct that occurred during a custody modification proceeding.²⁸ The attorney, who represented the mother, filed a motion to restrict the father's parenting time, after being notified that a doctor and social worker had concluded that the evidence was insufficient to support a finding of physical abuse of

tained purported signatures of opposing counsel and a judge, a docket number and a file stamp. *Id.* at 198-99.

²⁰ *Id.* at 200 citing *In the Matter of Mozingo*, 497 S.E.2d 729 (1998); *In the Matter of Walker*, 409 S.E.2d 412 (1991).

²¹ 497 S.E.2d 729 (1998).

²² 409 S.E.2d 412 (1991).

²³ *Belding*, 589 S.E.2d 197, 200 (S.C. Ct. App. 2003).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 200-201.

²⁸ *People v. Rolfe*, 962 P.2d 981 (Colo. 1998).

the parties' child by the father.²⁹ Rather than disclose this information in his motion, the mother's attorney stated that the investigation had not been concluded.³⁰ During the hearing, the mother's attorney lied to the judge regarding the guardian ad litem's absence from the hearing and failed to tell the court that the guardian did not believe the child had been abused.³¹

The disciplinary commission believed that the conduct amounted to "knowingly making a false statement of material fact or law to a tribunal" and "engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation."³² After making an allowance for mitigating circumstances, the disciplinary commission imposed the sanction of public censure.³³ In upholding the decision to publicly censure the mother's attorney, the Colorado Supreme Court noted that the presumptive sanction for this type of conduct was suspension; however, in light of the mitigating factors (including a discipline-free record, cooperation and "expressed remorse for his misconduct"), public censure was appropriate.³⁴

In 2003, an Ohio attorney was permanently disbarred for conduct that "could have been grounds for criminal prosecution."³⁵ The attorney was handling his first adoption case and based his fees on his personal understanding of what another couple had paid for legal fees during a foreign adoption.³⁶ The legal fees for the foreign adoption had been \$25,000.00 so the attorney charged the prospective adoptive parents a total of \$61,500.00 for the domestic adoption—\$1500.00 for the first interview, \$10,000.00 for medical expenses and \$50,000.00 in legal fees.³⁷

During the course of the birth mother's pregnancy, the attorney paid her a total of \$2,889.00 which she used for "rental payments, a motor vehicle inspection, a daughter's trip to Wash-

²⁹ *Id.* at 982.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 983.

³⁴ *Id.*

³⁵ Stark County Bar Ass'n. v. Hare, 791 N.E.2d 966, 971 (Ohio 2003).

³⁶ *Id.* at 967.

³⁷ *Id.*

ington, D.C., and living expenses.”³⁸ The attorney told a panel investigating the complaint that the payments were for medical expenses only and that if a mistake had been made, “it was because his secretary had written the checks after he had signed them in blank.”³⁹ The birth mother, on the other hand, said that she had not incurred any medical expenses prior to birth and therefore had not asked for funds to cover those kind of expenses.⁴⁰

After the attorney realized that a conflict existed in dual representation of the birth mother and the adoptive parents, he found other counsel to represent the birth mother. The attorney ultimately told the new counsel that the case would have to be pro bono because the birth mother was without funds to pay for her representation.⁴¹

The attorney failed to disclose both the money he had received from the adoptive parents and the monies he had paid to the birth mother during her pregnancy during the original adoption proceedings.⁴² The money had been placed into the attorney’s personal account and he had to borrow money to refund the fee to the adoptive parents.⁴³

This is a small sampling of the attorney’s misconduct throughout this adoption case. Numerous other instances abound.⁴⁴ Although the panel considered numerous mitigating factors, including the attorney’s discipline-free record, the panel decided that the aggravating circumstances of the attorney’s behavior during the course of the adoption proceedings outweighs them and therefore recommended disbarment.⁴⁵ The court agreed, stating that “respondent has attempted to evade respon-

³⁸ *Id.* at 966.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 967-68.

⁴² *Id.* at 968.

⁴³ *Id.* at 970.

⁴⁴ For example, the attorney told the adoptive mother not to worry about her prior divorces, the adoption would go through “because he was a friend of the probate judge.” *Id.* at 967. In obtaining the adoptive parents signatures on the accountings, the attorney told the adoptive parents that the monies had not been listed because “private adoptions are done differently than an adoption agency” and “the monies involved do not need to be disclosed.” *Id.* at 968.

⁴⁵ *Id.* at 971.

sibility for and conceal evidence of his shameful betrayal of his clients' interests and professional oath. Disbarment is the only appropriate sanction."⁴⁶ Not surprisingly, in a subsequent proceeding, the attorney was held in contempt of court for failure to pay costs associated with his disbarment.⁴⁷

These cases indicate that the profession does indeed police itself with respect to attorney misconduct. Other cases will demonstrate that the courts also are involved in regulating attorney conduct through mechanisms such as contempt actions.

II. Contempt of Court

An Illinois attorney was held in contempt of court, ordered to pay a \$100.00 fine and ordered to replace the opposing party's jacket which the attorney tore while cross-examining the husband during a hearing on his client's request for an order of protection.⁴⁸ The attorney argued that he was making a "good faith attempt" to recreate the incident which led to the wife's filing of the protective order to show that the husband's version of the events could not have occurred.⁴⁹

In upholding the order of contempt, the court noted that not only had the attorney's display resulted in the destruction of evidence and a courtroom disturbance, but "the record shows numerous instances of personal animosity between each spouse and the other spouse's counsel, during cross examination. . . [and] strongly suggests a kind of antagonism and acrimony between the parties' attorneys which exceeded a healthy adversarial spirit."⁵⁰ The court further noted that the attorney "knew or should have known" that his conduct was likely to result in an altercation with husband given the circumstances surrounding the hearing and his experience with the parties.⁵¹

⁴⁶ *Id.* at 972.

⁴⁷ Stark Cty. Bar Ass'n. v. Hare, 2004 Ohio LEXIS 1734 (July 2004).

⁴⁸ Lichtenstein v. Lichtenstein, 637 N.E.2d 1258, 1262 (Ill. App. Ct. 1994).

⁴⁹ *Id.* at 1262-64.

⁵⁰ *Id.* at 1263.

⁵¹ *Id.*

III. Disciplinary Action Plus Contempt of Court

In some cases attorneys may be subject to both disciplinary actions and contempt. A Colorado attorney who represented the husband during a dissolution of marriage action was both prosecuted and suspended for thirty days as a result of assaulting the wife's attorney in the courtroom.⁵² The circumstances of the misconduct exemplify the stressful nature of family law practice and the consequences that can result. The case was hotly contested and led to problems between the parties' attorneys.⁵³ The disciplinary commission itself found that the husband "was very difficult, and was, in fact, the most difficult client" the attorney had ever had.⁵⁴

The husband's attorney drove his client, who had been drinking, to a contempt hearing and on the way, the husband became upset, causing his attorney to become upset.⁵⁵ After they reached the courtroom, things got worse. The wife's attorney was standing in the entrance to the courtroom at the time the husband's attorney screamed at the husband, "I'm tired of this shit."⁵⁶ The husband's attorney then attempted to leave the courtroom and told the wife's attorney to "Get out of my way."⁵⁷ As he exited through the doorway, the husband's attorney pushed the wife's attorney out of the way with his forearm causing the wife's attorney to fall but not seriously injuring him.⁵⁸ The husband's attorney was then charged with third degree assault and harassment of the wife's attorney.⁵⁹ He was acquitted of the harassment charge but convicted of the assault charge which resulted in a \$500.00 fine.⁶⁰

The disciplinary commission considered mitigating factors before making its decision to suspend the husband's attorney for thirty days following his admission that he broke the Colorado Rules of Professional Conduct and Rules of Civil Procedure by

⁵² *People v. Nelson*, 941 P.2d 922 (1997).

⁵³ *Id.*

⁵⁴ *Id.* at 922-23.

⁵⁵ *Id.* at 923.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 941 P.2d at 923.

⁶⁰ *Id.*

“engaging in conduct that adversely reflects on the lawyer’s fitness to practice law” and “violating the criminal laws of a state or of the United States.”⁶¹ The disciplinary commission further ordered him to obtain counseling and to be supervised by another attorney for a period of six months following his suspension.⁶²

Conduct amounting to harassment of a party can also lead to charges. An Arizona attorney who represented a father in a visitation dispute was not only suspended from the practice of law but also convicted of criminal contempt of court, fined \$300.00 and sentenced to five nights in jail for harassing the pro se mother.⁶³ The mother had failed to return the child from visitation and the father sought the child’s return.⁶⁴ In response, the mother filed a motion for temporary custody.⁶⁵ The parties appeared in chambers and the case was set over to the next day.⁶⁶ As the mother left the chambers, the father’s attorney asked her “where she was hiding the child” and the judge told the father’s attorney to “leave her alone.”⁶⁷

The father’s attorney continued his demand for information about the child’s location after the mother reached the hallway outside the courtroom.⁶⁸ The mother became fearful and at one point hid from the father’s attorney.⁶⁹ The father’s attorney eventually found her and again asked about the child’s location “in an abusive and harassing manner.”⁷⁰ The police were called and the father’s attorney asked the officer to arrest the mother for interfering with the father’s custody rights.⁷¹ Instead, the judge became aware of the situation and instructed the police to remove the father and his attorney from the courthouse.⁷²

The contempt charge was not based on the father’s attorney’s refusal to abide by the trial court’s instruction to leave the

⁶¹ *Id.*

⁶² *Id.* at 924.

⁶³ *Hirschfeld v. State*, 908 P.2d 22, 23, 28 (Ariz. Ct. App. 1995).

⁶⁴ *Id.* at 23.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 23-24.

⁷⁰ *Id.* at 24.

⁷¹ *Id.*

⁷² *Id.*

mother alone—it was based on his mistreatment of the mother while in the vicinity of the court, which was a sufficient basis to hold him in contempt.⁷³ Affirming the trial court's order, the court of appeals stated that

“the court has the right and the duty to protect litigants . . . from misbehavior and harassment while they are in or near the courtroom whether they are arriving, waiting, or departing. Conduct like [the father's attorney's], because it impinges on that right and duty, lessens the dignity and authority of the court.”⁷⁴

In addition to the criminal penalties imposed, the father's attorney was suspended by the Arizona Supreme Court for “conduct prejudicial to the administration of justice.”⁷⁵

IV. Contempt Plus Criminal Charge

More serious attorney misconduct may lead to criminal charges as well as contempt. In 2001, the Arkansas Court of Appeals held that double jeopardy barred the prosecution of an attorney for interference with custody where the attorney had been convicted of criminal contempt for the same conduct.⁷⁶ In 1990, the attorney's client received custody of his children during a divorce proceeding in Tennessee.⁷⁷ The parties remarried and then divorced again in 1992 (this time in Arkansas) with the wife receiving custody.⁷⁸ In 1997, the husband, through his attorneys, registered a copy of the Tennessee divorce decree with the Arkansas court and then, using the registered decree, coaxed the local police department into assisting him in taking the children while they were at school.⁷⁹ After the husband obtained physical

⁷³ *Id.* at 25. The contempt citation was based on Ariz. R. Crim. Proc. 33.1, to wit: Any person who willfully disobeys a lawful writ, process, order, or judgment of a court by doing or not doing an act or thing forbidden or required, or who engages in any other wilfully [sic] contumacious conduct which obstructs the administration of justice, or which lessens the dignity and authority of the court, may be held in contempt of court. Hirschfield, 908 P.2d 211.

⁷⁴ *Id.* at 25.

⁷⁵ *Id.* at 28 *citing* In the Matter of A Member of the State Bar of Ariz., No. SB-95-0033-D (Ariz. 1995).

⁷⁶ Penn v. State, 44 S.W.3d 746 (Ark. Ct. App. 2001).

⁷⁷ *Id.* at 747.

⁷⁸ *Id.*

⁷⁹ *Id.*

custody of the children, he took them back to Tennessee and the wife immediately filed her motion for contempt.⁸⁰

The husband's attorney was held in contempt, ordered to serve five days in jail and sanctioned \$8,500.00 in attorney fees for "filing a fraudulent document and using [the] document to take physical custody of the two minor children."⁸¹ Criminal charges were then brought against the attorneys for "interference with court-ordered custody."⁸² The attorney filed a motion to dismiss the criminal charges, alleging double jeopardy under the Fifth Amendment.⁸³ In reversing the circuit court's denial of the motion, the appeals court applied the *Blockburger* "same-elements test" and concluded that the contempt charge was simply a "lesser-included offense" of the current charge. Therefore, prosecuting the attorney for interference with custody after she had been convicted of contempt violated her right against double jeopardy.⁸⁴

V. Disciplinary Action and Civil Suits

Attorney misconduct may also result in the filing of civil suits. For example, in 2004, a Maryland attorney was disbarred for numerous incidents of misconduct involving his representation of a female divorce client.⁸⁵ Prior to his disbarment, the attorney paid \$64,000.00 to settle a civil suit filed by the client stemming from the misconduct after summary judgment had been entered against him.⁸⁶ The case had originally been settled for \$60,000.00, but the attorney engaged in extensive legal ma-

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 748-49 *citing* *Blockburger v. United States*, 284 U.S. 299, 304 (1932) ("where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not."); *United States v. Dixon*, 509 U.S. 688 (1993) (overruling additional requirements and reaffirming *Blockburger*).

⁸⁵ *Attorney Grievance Comm. of Maryland v. Culver*, 849 A.2d 423 (Md. Ct. Spec. App. 2004).

⁸⁶ *Id.* at 431.

neuvering in an attempt to avoid paying the judgment which resulted in a larger, final settlement.⁸⁷

The most egregious claim was that the client's attorney had raped her during the course of his representation during the divorce proceedings.⁸⁸ The client testified during the disciplinary hearing that her attorney called her one night and said that he needed her to sign some papers for court the next day.⁸⁹ The client, accompanied by a friend, met the attorney at a nearby restaurant later that evening for the supposed purpose of signing the papers.⁹⁰ Although the client asked for the papers several times, her attorney never gave them to her.⁹¹ The client and her friend finally left the restaurant without signing the papers and went home.⁹²

A short time later that same evening, the attorney showed up at the client's home and asked to inspect the house because the client's husband was complaining that she did not keep it clean.⁹³ Because the client's children were sleeping upstairs, the client took the attorney downstairs to see their playroom.⁹⁴ The client testified that while they were in the playroom, her attorney "forced her to the ground, pulled up her blouse and bra, pulled down her pants and proceeded to force her to have sexual intercourse with him."⁹⁵ The client protested and her attorney "placed himself on top of her and covered her mouth with his

⁸⁷ *Id.* at 431-32. The attorney filed for bankruptcy protection after summary judgment was entered and one day prior to the hearing on damages. The bankruptcy court sent the case back down to the trial court but the maneuvering caused nearly a one-year delay. As trial approached, the attorney tried to get the case moved to Federal Court but once again, the case went back to the state court. The attorney's bankruptcy case was still on file so a portion of the settlement proceeds were provided by the attorney's father in the form of a certificate of deposit and additional funds were to be placed in escrow by the attorney's lawyer. When the client's lawyer attempted to collect the settlement funds, he discovered that the certificate of deposit had previously been cashed out and the attorney's lawyer refused to release the remaining funds.

⁸⁸ *Id.* at 430.

⁸⁹ *Id.* at 429-30.

⁹⁰ *Id.* at 430.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ 849 A.2d at 430.

⁹⁵ *Id.*

hands, demanding that she be quiet.”⁹⁶ The client did not call the police or fire her attorney because she was afraid that disclosure could lead to a negative outcome in the child custody decision.⁹⁷ In Maryland, adultery is a misdemeanor that can result in the imposition of a small fine.⁹⁸ Based on the advice of her attorney, the client pled the Fifth Amendment when questioned in a deposition as to an adulterous relationship with a person other than her attorney in the divorce proceeding.⁹⁹

The client’s attorney admitted that he had sexual relations with his client during the time he was representing her but maintained that the relationship had been consensual.¹⁰⁰ The court hearing the disciplinary case found that the acts were not consensual and the appeals court agreed.¹⁰¹ However, the appeals court specifically noted that its decision was for disciplinary purposes only and that it was not attempting to decide whether the attorney’s conduct could be considered non-consensual for criminal law purposes.¹⁰²

In addition to the act of sexual misconduct in itself, the lower court also found that the attorney “made threats to the client that if she did not accede to his sexual demands, he would deliberately sabotage her case so that she would lose custody of her children.”¹⁰³ The appeals court agreed with the trial court that because the conduct was “exploitative and coercive,” it was not consensual.¹⁰⁴

The court also found that the attorney engaged in “fraudulent conduct” by counseling and aiding the client “in committing a fraudulent act.”¹⁰⁵ Maryland law provides that “it is fraudulent as to both present and future creditors to enter into an obligation with the intent or belief that the debt will be beyond one’s ability

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 441.

⁹⁹ *Id.* at 430, 448.

¹⁰⁰ *Id.* at 438.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 443-444.

to pay when it matures.”¹⁰⁶ The client had been billed for attorney’s fees exceeding \$23,000.00 prior to the conclusion of her divorce case.¹⁰⁷ Acting on her attorney’s advice that she could file for bankruptcy at a later time and have the debt set aside, the client applied for credit cards (one of which was given to her by her attorney) and used “cash advances” to take care of her attorney fees.¹⁰⁸ The court holds that the attorney’s advice and assistance were not within the scope of permissible conduct because “[a] lawyer may not assist the client in breaking the law.”¹⁰⁹

Interestingly, the bankruptcy court that initially remanded the case back to the trial court for a determination of damages in the civil suit also mentioned the attorney’s “fraudulent conduct”:

To consider this case further and to keep it under the protection of the United States Bankruptcy Court would be a violation of the law. It would besmirch the role of a bankruptcy court by sending a message to the public that fraudulent cases like this one can be maintained and maintained for year after year after year with no end in sight by somebody who has manipulated the law to gain an unfair advantage over other people who have acted honestly.¹¹⁰

In disbarring the client’s attorney, the court seemed especially focused on the attorney’s sexual misconduct and noted that when other jurisdictions have decided cases involving “consensual sexual relations between attorney and client” co-mingled with “coercion or exploitation of the attorney-client relationship,” they usually have imposed harsh sanctions.¹¹¹ However, the court expressly states that the sanction imposed here results from the commission of numerous other ethical violations as well and that “[e]ach standing alone might warrant a sanction less than disbarment.”¹¹²

The court considered that “the purpose of [a] sanction is not to punish the lawyer, but to protect the public” and found that the attorney had “abused his relationship with his client, destroyed the trust clients should have in their attorneys, and repre-

¹⁰⁶ *Id. citing* Md. Code Ann., Comm. Law Art. I § 15-206 (1975, 200 Repl. Vol., 2003 Cum. Supp.).

¹⁰⁷ *Id.* at 429.

¹⁰⁸ *Id.* at 429, 444.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 447.

¹¹¹ *Id.*

¹¹² *Id.* at 450.

sents a danger to clients who entrust their future in his hands.”¹¹³ Therefore, the appeals court disbarred the attorney from the practice of law and ordered him to pay all costs, including the fees for transcripts on appeal.¹¹⁴

VI. Civil Suit and Criminal Charges

In November of 2001, the Supreme Court of Arkansas upheld a jury verdict of \$100,000.00 in compensatory damages in favor of prospective adoptive parents and against two attorneys arising from an adoption scam.¹¹⁵ The verdict held attorney Gordon Humphrey primarily accountable but assessed his employer, Jean Madden, with twenty-four percent and the attorney who referred the prospective adoptive parents to Humphrey (Webb) with one percent of the damages.¹¹⁶ In addition, the jury charged Humphrey with one million dollars in punitive damages.¹¹⁷ Madden’s compensatory damages were assessed on the basis of negligent hiring, retention and supervision of Humphrey.¹¹⁸ In addition, Humphrey was charged with violating federal criminal law and received a prison sentence of two years.¹¹⁹

Humphrey told Webb that he had a pregnant client who was seeking prospective adoptive parents for her unborn child.¹²⁰ Humphrey identified his client to Webb as his cousin.¹²¹ Webb initially found a couple interested in adopting the child but the adoption fell through.¹²² He subsequently found another set of prospective adoptive parents for the baby and told them to act quickly because he was afraid that the child might not be available much longer.¹²³ Webb notified Humphrey that he had found

¹¹³ *Id.* at 451.

¹¹⁴ *Id.*

¹¹⁵ *Madden v. Aldrich*, 58 S.W.3d 342 (2001).

¹¹⁶ *Id.* Although compensatory damages were assessed against Webb, he was not a party to the suit.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 351.

¹²² *Id.* at 342.

¹²³ *Id.*

another couple who wanted to adopt the baby and sent him a check for the mother's medical expenses.¹²⁴ Eventually, it was discovered that Humphrey had never had a baby available for adoption in the first place.¹²⁵

This case serves as a warning to attorneys who employ other attorneys who engage in criminal behavior. During the trial, evidence was presented that Humphrey had engaged in other adoption scams during the time he was employed by Madden with at least one of them resulting in a separate civil suit.¹²⁶ Madden challenged the verdict on numerous grounds but the court affirmed the jury's verdict in all respects.¹²⁷ In yet another unrelated matter, Madden, her firm, and Humphrey as an employee of the firm, had been sued by plaintiffs whose "complaint alleged that Madden and Humphrey undertook legal representation of the [plaintiffs], and [the complaint] listed fifteen separate acts alleged to constitute either legal malpractice or fraud."¹²⁸

Madden's difficulties resulting from her employment of Humphrey might have been avoidable. At the time Humphrey was hired by Madden, she knew that he had been previously suspended from the practice of law but she failed to confirm his version of the reasons for suspension.¹²⁹ As early as 1995, Madden began developing concerns about Humphrey's actions with regard to missing client funds and in early 1996, she began to worry about his "depressed mental state, which included suicidal thoughts, and his bad financial situation."¹³⁰ The situation caused her so much concern that "[s]he paid attention to who called him, she watched his mail, and she tapped his office telephone."¹³¹ At one point, she even had him followed by a fellow employee.¹³² Madden testified that she did not fire Humphrey during early 1996 because "she needed his cooperation and testimony in a lawsuit that had been filed against her."¹³³ Some three years after

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 356, 348.

¹²⁷ *Id.*

¹²⁸ *Madden v. Continental Cas. Co.*, 922 S.W.2d 731, 733 (1996).

¹²⁹ *Aldrich*, 58 S.W.3d at 348.

¹³⁰ *Id.* at 349.

¹³¹ *Id.* at 352.

¹³² *Id.*

¹³³ *Id.* at 349.

Madden's first indication of trouble with her employee, the Supreme Court of Arkansas accepted the surrender of Humphrey's law license on January 8, 1998.¹³⁴

VII. Conclusion

As the above cases illustrate, attorney misconduct in family law matters comes at a very high price. Misconduct that can be construed as criminal can result in disciplinary action, contempt of court charges, incarceration, civil suits and any combination of the former and latter. Moreover, attorneys have to be very careful in hiring and supervising other attorneys who work in this area. It has been said that reputation is the single most important thing that an attorney cannot afford to lose – it would appear that there is a lot more at stake.

Lorri Kobe

¹³⁴ In re Gordon Lee Humphrey, Jr., 958 S.W.2d 526 (1998).

