



## Are You Ever *Not* A Lawyer?

As lawyers, we are held to certain behavioral standards by virtue of Arizona’s Rules of Professional Conduct.<sup>1</sup> These include prohibitions against engaging in any criminal act that reflects adversely on our honesty, trustworthiness or fitness as a lawyer in other respects<sup>2</sup> as well as engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.<sup>3</sup> Over the years, lawyers have occasionally taken the position that, at least in disciplinary matters, these standards apply only when they are acting as lawyers while representing clients or as lawyers dealing with issues relating to their practice. If you think that you can ignore the ethical rules once you get home from the office, you need to consider the case of Michigan lawyer Edward Czuprynski.

According to a recent news release,<sup>4</sup> the Michigan Attorney Discipline Board found that Mr. Czuprynski committed professional misconduct when he put glue in the door locks of a tenant in an apartment he owned and let air out of the tires on her automobile. Finding no humor in the situation, the tenant complained to the bar. Mr. Czuprynski explained his actions as a businessman operating in his capacity as a landlord rather than as a lawyer. He claimed his tenant had changed her locks, contrary to the lease terms, and that she had continually parked her car so as to block his garage access. Unimpressed, the panel found that his actions exposed the legal profession to contempt and that his conduct was “contrary to justice, ethics, honesty or good morals.” It stated that there are “many, many circumstances where misconduct by an attorney occurs outside of the context of an attorney/client relationship. The disciplinary rules do not limit misconduct solely to acts performed in the practice of law.” As of this writing, discipline in the case hasn’t been determined.

This appears to represent the clear majority of cases involving complaints about lawyers involved in situations having little or no relationship to their professional status as lawyers—several arising in Arizona. Note that these are matters that, if any civil or criminal liability were to follow, would probably not be based on the lawyer’s failure to meet a standard of care or on a failure to comply with a fiduciary duty toward a client. And they don’t involve felony and serious misdemeanor convictions that are otherwise required to be self-reported under Arizona Supreme Court Rule 61(c). Thus, where the lawyer was also an optometrist and found by the state optometry board to have submitted false documents to support his claim for optometry continuing education hours required to maintain his license, the Court found violations of ER 3.3(a)(1) (making false statement of fact to a tribunal) and ER 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).<sup>5</sup>

In a case decided under the old Code of Professional Conduct,<sup>6</sup> the Director of Arizona’s Drug Control District was found to have failed to keep the required books and records of

his travel expenses. The Court found that although the lawyer was not representing the district as its lawyer, the manner in which he neglected his duties as director was so “slipshod and sloppy” as to call into question his fitness to practice and was a violation of the rule then in effect prohibiting conduct that adversely reflects on his fitness to practice law.<sup>7</sup> The Court stated that it made no difference whether the lawyer was acting as an attorney or in some other capacity: “There is nothing to prevent an attorney from engaging

in business or other activities, but when he does so he does not abandon his professional ethics if he wishes to remain a member of his profession.”

Another case<sup>8</sup> involved a lawyer who participated in the purchase of a hotel with several non-clients and who was accused of inducing the others by means of misrepresentations concerning the value of the hotel and the amount he actually paid toward its purchase. The Court found that the lawyer had engaged in deceit and misrepresentations in violation of the old ABA Canons and of former Arizona Supreme Court Rule 29, providing for disciplinary action against any lawyers for such behavior, “either related or unrelated to the practice of law.”<sup>9</sup>

Other jurisdictions have similar rulings, including a lawyer who: used fraudulent representations to obtain a loan from a mortgage company<sup>10</sup>; misappropriated money from a mortgage closing company he owned<sup>11</sup>; and posted messages using the name of a local high school teacher implying that the teacher engaged in sexual relations with his students.<sup>12</sup>

Not all opinions go against the lawyer, however. Consider a 1989 Virginia ethics opinion<sup>13</sup> that opined that a lawyer, who

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Ethics Opinions and the Rules of Professional Conduct are available at [www.azbar.org/Ethics](http://www.azbar.org/Ethics)




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participated in a protest against an abortion provider which included blocking access to the clinic and who was convicted of misdemeanor charges of trespassing and disturbing the peace, was not subject to discipline. The panel thought the misdemeanor convictions for a single act of civil protest did not constitute “misconduct” as would be demonstrative of a lack of honesty, trustworthiness or fitness as a lawyer in other respects as contemplated under the former Code of Professional Responsibility.

As lawyers, we are held to higher standards of behavior than others. As the disciplinary authorities remind us from time to time, we are officers of the court 24/7. 

### endnotes

1. Rule 42, ARIZ.R.S.Ct.
2. ER 8.4 (Misconduct) at subsection (b).
3. *Id.* at (c).
4. [www.mlive.com/news/saginaw-bay-city/2019/03/attorney-panel](http://www.mlive.com/news/saginaw-bay-city/2019/03/attorney-panel).
5. *In re Tatham*, 829 P.2d 1215 (Ariz. 1992) (public censure).
6. *In re Grimble*, 757 P.2d 594 (Ariz. 1988) (censure).
7. DRI-102(A)(6), the predecessor to ER 8.4(b), which now requires a “criminal act” as a prerequisite for a violation.
8. *In re Zussman*, 344 P.2d 1021 (Ariz. 1959) (public censure).
9. This matter would probably be prosecuted today under ER 8.4(c).
10. *People v. Parsley*, 109 P.3d 1060 (Colo. 2005).
11. *In re Disciplinary Action Against Pugh*, 710 N.W. 2d 285 (Minn. 2006).
12. *In re Carpenter*, 95 P.3d 203 (Ore. 2004). Other cases are collected in ABA CENTER FOR PROF. RESP., ANNOTATED MODEL RULES OF PROF. CONDUCT (8th ed. 2015) at 670.
13. Va. Ethics Op. 1185 (Feb. 22, 1989).