

Legal Ethics & Technology for the Bankruptcy Lawyer

Professional Responsibility &
Ethics Program

University of Miami School of Law

Jan Jacobowitz, Esq., Director
Camila Rivero-Fernández, Fellow
Katelin Stephens, Fellow
Karina Oms, Fellow
Fahim Gulamali, Fellow





Camila Rivero-Fernández, Fellow

- Camila is a 3L from Puerto Rico with a background in Cognitive Science. At the University of Miami, she is a member of the International and Comparative Law Review and the Hispanic Law Student Association. Currently, she is an extern at Bacardi.



Katelin Stephens, JD, Fellow

- Katelin Stephens, a Tampa native, earned her JD from UM in May and is currently completing coursework towards her LLM in Entertainment and Sports Law. In addition to serving as a former Intern and now a Fellow for PREP, she has previously served as President of the Black Law Students Association and Senator in the Student Bar Association. She is currently interning with the Baldonado Group, P.C. and Olken Law, PLLC gaining practical experience working on transactional matters in the music industry (... and studying for the bar).



Karina Oms, Fellow

- Karina Oms ('21) is a 3L from Miami, Florida at the University of Miami. In addition to participating in the PREP program as a Fellow, she serves as the Events Editor for the International and Comparative Law Review, she is the Alumni Chair on the Executive Board of Miami Law Women, she is Vice-President of the Insightful Mind Initiative and is currently a competitor in the John T. Gaubatz Moot Court Competition.



Fahim Gulamali, Fellow

- Fahim Gulamali is a 3L at the University of Miami. In addition to participating in the PREP program as a Fellow, he serves as a Civil Procedure I Dean's Fellow, Senior Notes and Comments Editor on UM's International and Comparative Law Review, Moot Court Board Member, Trial Team Member, and President of South/West Asian and North African Law Students Association. Currently, he works at the Miami-Dade State Attorney's Office.



Act I: Hamilton Takes A Shot

Alexander Hamilton, a Florida lawyer, guarantees a large bank loan to save his friend Hercules Mulligan's tailoring business.

A few years later, Mulligan's business fails, and the bank seeks payment from Hamilton. Shocked, Hamilton considers filing for bankruptcy. Hamilton googles Aaron Burr, a former law school classmate.

Burr's LinkedIn profile includes links to his firm website and blog, "This Week in South Florida Legal News." Burr has posted many articles on LinkedIn that contain general bankruptcy information and the dates of his speaking engagements. He also has posted about several cases that he has handled both for corporations and individuals.

Burr is listed on AVVO and Yelp, where he has many 5-star reviews and a few negative ones. Burr generally responds to the reviews with thanks. However, on one particularly negative review, Burr responded, "So sorry that you feel that way, but if you had put your money in the bank instead of the casino, then you might have had a better result."

Based upon Burr's glowing online profile, Hamilton contacts Burr. After consulting with him, Hamilton elects to file for Chapter 7 Bankruptcy.

Consider the ethical implications of:

1. Burr's use of LinkedIn and the connections to his law firm blog and website.
2. Burr's response to the negative review.

Burr's Use of LinkedIn



Competence

Fla. Bar R. 4-1.1



Confidentiality

Fla. Bar R. 4-1.6



Misconduct

Fla. Bar R. 4-8.4



What May I Reveal?



FL

- May not disclose client confidences regardless of source without informed consent
- If ashamed of the content on a billboard, don't post it

DC

- Must be truthful and not mislead
- Can ethically write about cases (but not client info.)
- Prudence requires obtaining informed consent before sharing info. related to representation or client confidences
- Consider sensitivity of the matter and identity of the client

PA

- Must not reveal confidential client info
- If post "generally accessible publicly," then don't post about ongoing matters if posting reveals confidential client info.

Do Advertising Rules Apply?

- FL
 - Solely social purposes
 - Promote you or firm's practice
- NY
 - Basic biographical info on LinkedIn
- CA
 - Personal news
 - Bragging about court victories



Best Practices

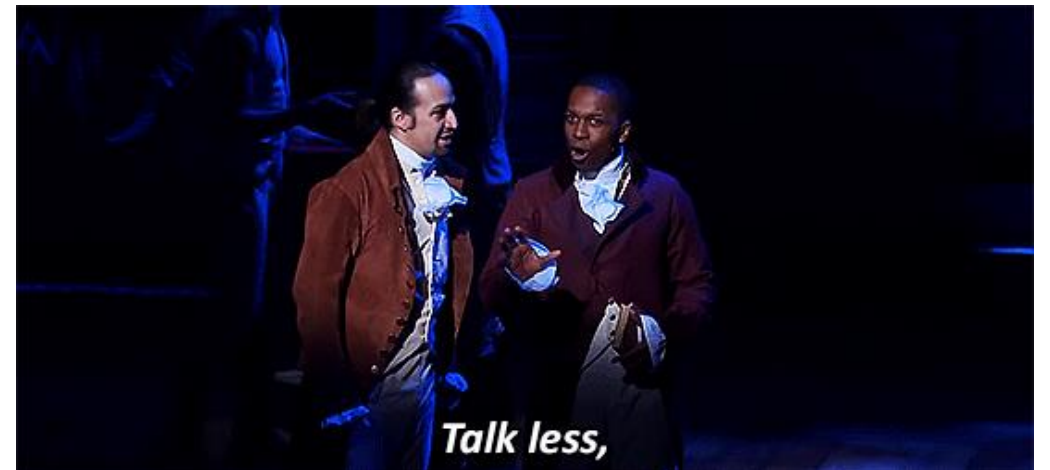
- Share draft post with client
- Obtain written client consent
- Create firm-wide policy
- Check profiles often



Burr's Response to The Negative Review

Fla. Bar. R. 4-1.6: Confidentiality

- (c) When a lawyer may reveal information
- Self-defense exception?





Illustrative Examples

- Tsamis (IL, 2013)
 - *I feel badly for him, but his own actions in beating up a female co-worker are what caused the consequences he is now so upset about.*
- Isaac (CO, 2016)
 - *For all of the many hours that I spent, in vigorous defense of her, against felony assault, felony eluding of police, and driving under the influence of alcohol, [D.] paid me, with a \$4,000.00 insufficient-funds check.*
- Calpin (NJ, 2019)
 - *Well, [she] is a convicted felon for fleeing the state with children. A wonderful parent. Additionally, she has been convicted of shoplifting from a supermarket. Hide your wallets well during a massage. Oops, almost forgot about the DWI conviction. Well, maybe a couple of beers during the massage would be nice.*

Florida Bar's Proposed Advisory Op. 20-1 (Feb. 2020)



Write a limited response to
online criticism



No client confidences



Even if public record contradicts
client, not ok



Sample Limited Response

"A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events."

- Florida Bar Professional Ethics Committee
Proposed Advisory Opinion 20-1, citing Texas
Ethics Opinion 662

Best Practices



Take a deep breath



Remember your audience



Write a limited response



Restrained and proportional



The Florida Bar Ethics Hotline: 800-235-8619



Act II: Falling Apart at the Seams

Hercules Mulligan's entrepreneurial spirit fell short and he is overloaded with debt. Realizing he'd rather dedicate his time to social causes rather than sewing pants, Mulligan decides to quit his tailoring business. He needs a fresh start and is seeking a low-cost bankruptcy lawyer to file a Chapter 7 Bankruptcy petition. After a Google search, Mulligan consults several local lawyers who offer him various payment options.

M. Lafayette Law Offices

Marquis de Lafayette offers Mulligan a dual contract option. Lafayette will provide reduced legal services after Mulligan pays a partial fee. Lafayette explains that he will file a skeleton petition with a list of creditors, along with a motion to pay the filing fee in installments. He will not perform any other services until they meet again and sign a second retainer agreement. The agreement will obligate Mulligan to pay the remainder of the fee in installments. Mulligan's total cost will be \$1,500.

What are the ethical implications of Lafayette's dual contract option?

General Rules on Fees

- **Fla. Bar R. 4-1.5: Fees & Costs for Legal Services**
- **11 U.S.C. § 329**
- **11 U.S.C. § 528**
- **11 U.S.C. § 2016**
- **Local Rule 1006-1 for S.D. Fla.**
- **No-Look Fees**



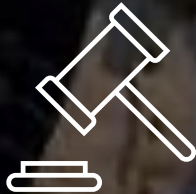


Lafayette's Dual Contract Option



Scope of Representation

Fla. Bar R. 4-1.2



Bankruptcy Lawyers

N.D. Fla. 2090-1E(3)



Attorney's Fees

11 U.S.C. § 1006

Relevant Resources

In re Walton (Bankr. M.D. Fla. 2012)

In re Carr (KY 2020)

In re Ruiz (Bankr. M.D. Fla. 2014)

In re DeSantis (Bankr. M.D. Fla. 2008)

Fla. Ethics Op. 79-7 (Reconsidered)

Utah Ethics Op. 17-06

Best Practices



CLEAR
EXPECTATIONS



CLARIFY
RELATIONSHIP



ENGAGEMENT
LETTER



INFORMED
CONSENT LETTER

Yorktown, LLP

Attorney John Laurens offers Mulligan a zero-down option. Laurens does not require any payment to begin the bankruptcy filing. Instead, Mulligan will be required to pay Laurens' ten monthly payments of \$160, which will begin a month after the filing date of the petition. Mulligan's total cost will be \$1,600.

What are the ethical implications of Yorktown's zero down option?

Yorktown's Zero Down Option



Scope of Representation

Fla. Bar R. 4-1.2



Bankruptcy Lawyers

N.D. Fla. 2090-1E(3)



Attorney's Fees

11 U.S.C. § 1006



In re Hazlett (Bankr. D. UT 2019)

"The propriety of using bifurcated fees agreements in consumer Chapter 7 cases is **directly proportional** to the level of **disclosure** and **information** the attorney provides to the client, and the existence of documentary evidence that the client made an **informed and voluntary election** to enter into a post-petition fee agreement."

Best Practices



SIGN ALL
PAPERWORK



CLARIFY
RELATIONSHIP



ENGAGEMENT
LETTER



INFORMED
CONSENT LETTER



WAIT FOR PRE-
PETITION
PAYMENT



Schuyler Fabricators, PLLC

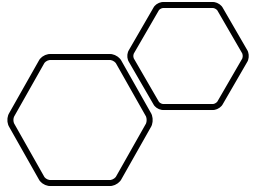
Schuyler Fabricators, PLLC, is a New York-based firm that practices law primarily through the Internet. Because Schuyler Fabricators has partners across the country splitting fees, it charges less than its competitors. Schuyler Fabricators promises to connect Mulligan with a Florida lawyer. Mulligan's total cost will be \$800.

What are the ethical implications of Schuyler Fabricators, PLLC's arrangement?

Avoid Creative "Firms"

Jacobs v. Law Sols. Chicago LLC (Ala., Tex., La.
Courts reviewed in 2018 and 2019)

- Chicago-based firm had partners around the nation
- Local partner could not name his other partners
- Partners did not share equity or ownership in any way
- More like a referral service and marketer of legal services



Best Practices



Use single firm model



Disclose



Know partners and firm
name



Verify attorneys are in-
state

Seabury & Reynolds, LLP

Samuel Seabury suggests that Mulligan file a Chapter 13 Bankruptcy petition. Seabury explains that although the attorney's fees for filing are more expensive, Mulligan will not have to pay any fees now. Instead, Mulligan will pay Seabury over time as part of his bankruptcy plan. Seabury also explains that Mulligan will likely be entering into a three to five year repayment plan. Mulligan's total cost will be \$3,200.

What are the ethical implications of Seabury suggesting Chapter 13 Bankruptcy and his method of getting a fee?



Seabury's Fee-Splitting



Communication

Fla. Bar R. 4-1.4



Unlicensed Practice of Law

Fla. Bar R. 4-5.5



Disclosure of Compensation

Fed. R. Bankr. P. 2016(b)

Seabury's Recommendation



No-Look Fees

- \$4,500 in M.D. Fla.

Relevant Case Law

- *Brown v. Gore* (11th Cir. 2014)
- *General Lending Corp. v. Cancio* (11th Cir. 2014)

A large, irregular orange watercolor splash shape on the left side of the slide, with some smaller orange dots scattered around it.

Why Chapter 13?

- No attorneys' fees upfront
- Regular income; disposable income great enough to make payments
- Can keep assets
- Client has non-dischargeable debts

Determining Good Faith



Income



Living expenses



Attorney's fees



Duration of Chapter 13 plan



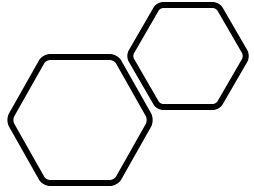
Motivations of debtor



Earning ability



Frequency



Best Practices



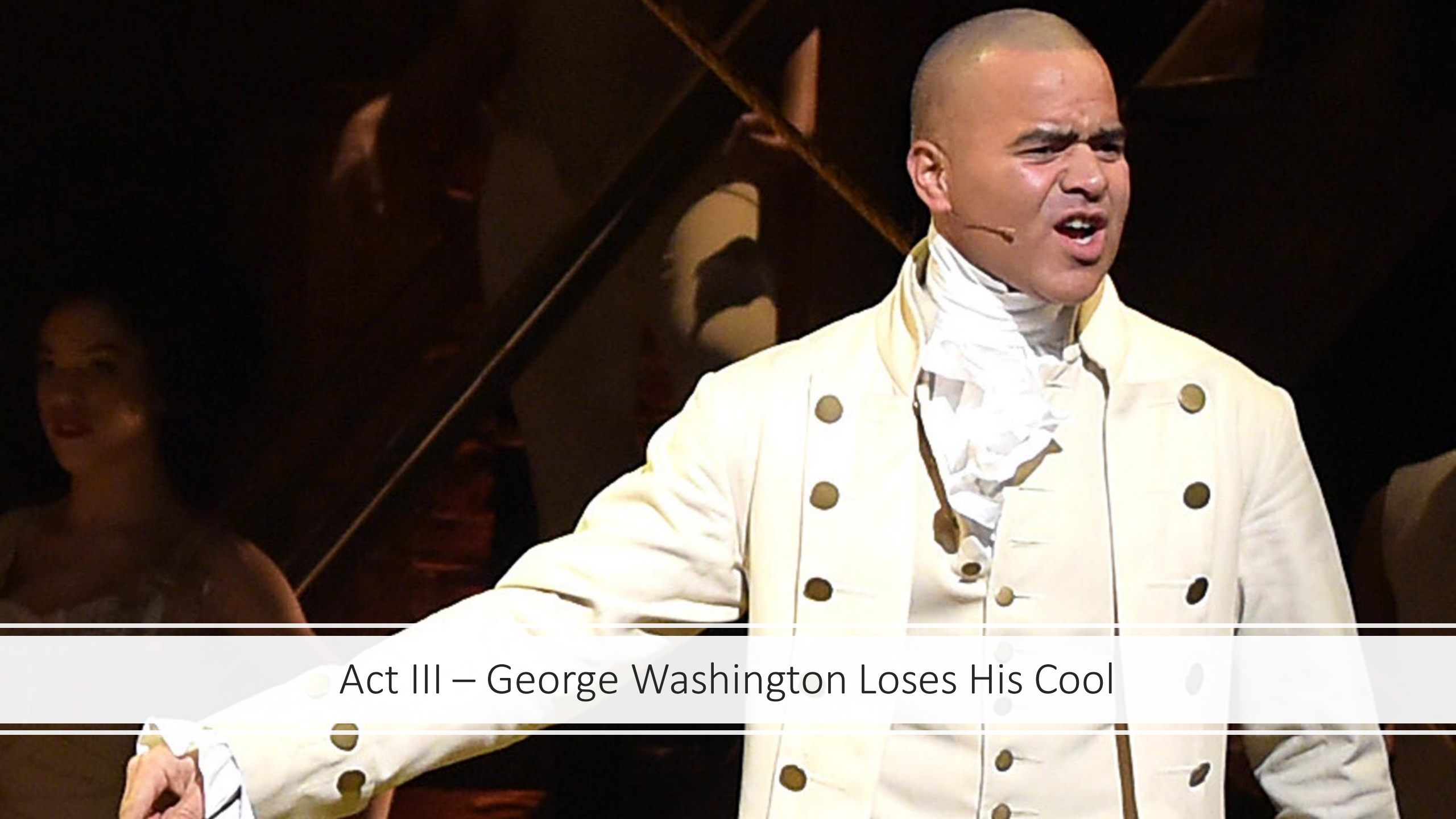
DOCUMENT
REASONING



INFORMED
CONSENT



DISCLOSE RISKS



● Act III – George Washington Loses His Cool

George Washington enters into a contract with King George III, LLC, to build a new library. King George III fails to adhere to the terms of the contract, and George Washington sues King George III for breach of contract in local state court. King George III files for Chapter 11 Bankruptcy and obtains an order to stay the state court case.

Washington hires his friend, Thomas Jefferson, to represent him. Due to COVID-19, Jefferson is working from home. He asks his daughter to borrow her laptop, because Jefferson's work laptop has died. To prepare for a proceeding the next day, Jefferson asks his Alek Echo to call his client.




Consider the ethical implications of:

A thick yellow horizontal bar spans the width of the slide, with a vertical yellow bar extending downwards from its right end.

1. Jefferson using Alek Echo to call his client.
2. Jefferson using his daughter's laptop.

Using Alek Echo & Working from Home





Working near an Amazon Echo? | **TURN IT OFF.**

Working From Home & Maintaining Client Confidentiality



4-1.1 Competence




4-1.6 Confidentiality

Sharing a Computer

Confidentiality is key!

- If you are using a personal laptop for work and others have access to it:
 - Use multiple profiles.
 - Use high security passwords.
- If you are using a firm-issued laptop do not share.



A portrait of Thomas Jefferson, showing him from the chest up. He has a large, dark, curly wig and is wearing a white cravat with a large bow and a dark coat. He is looking slightly upwards and to the right.

"The next day, Jefferson posts on social media, "I have learned that Bankruptcy Court is a bigger zoo than the Court of Chancery in England. If the judge does not rule in my client's favor, it is clear that the court has turned a blind eye to fraud in land deals but appears to otherwise be operating one fry short of a happy meal."

Consider the ethical implications of Jefferson's social media comments.



Ashley Ann Krapacs, Esq. @Nol... · 5h ✓

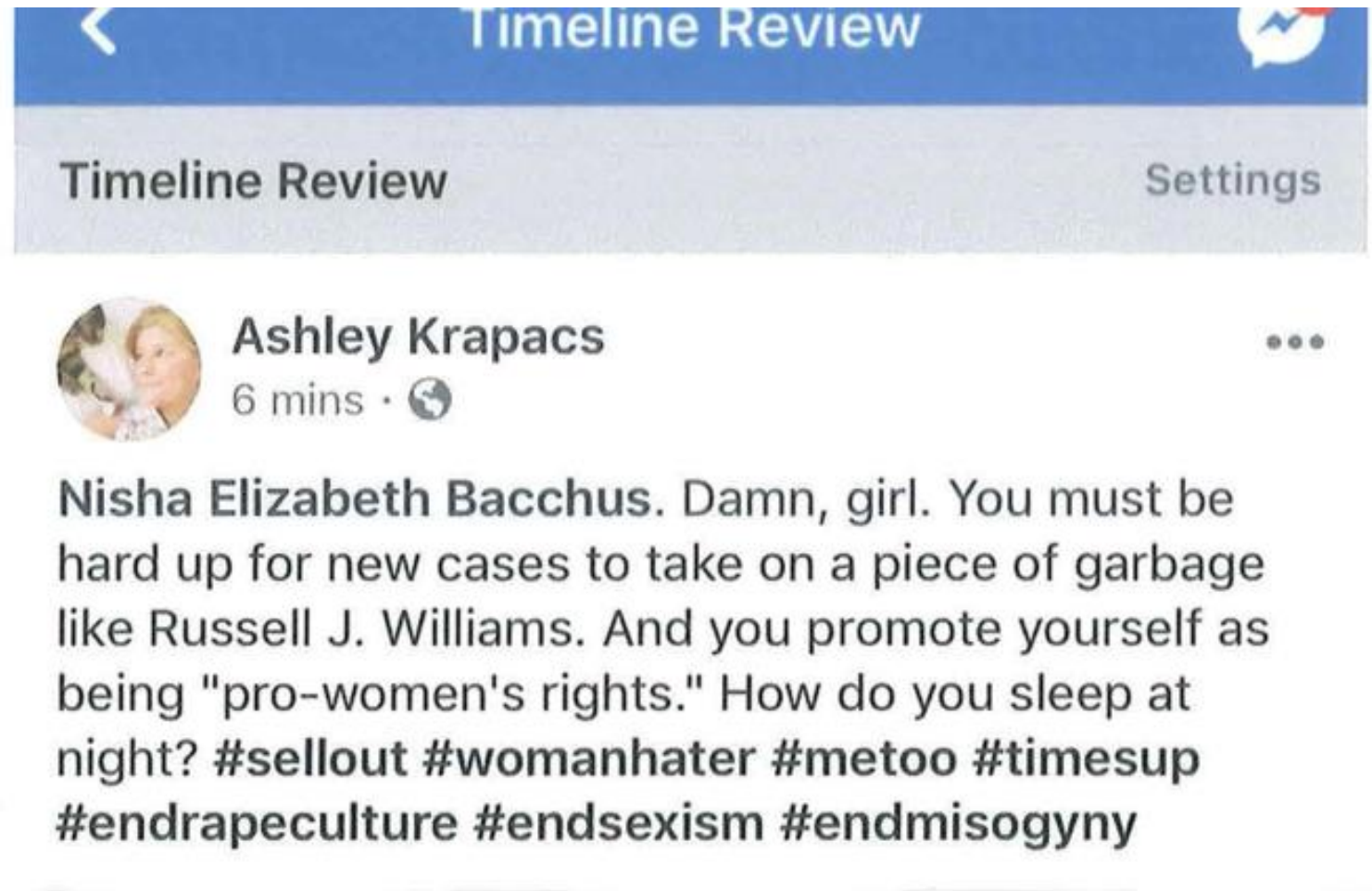
Russell J. Williams, partner at @WHWG_LAW, sued me for #defamation. Way to harass a survivor of #domesticviolence and #rape, you pig! Oh, and #TRUTH is an absolute defense to defamation, moron, so good luck with that. Smfh. #metoo 🙌 #timesup #frivolous #vindictive #bully



noidonotyield Exposing @bacchus_law for the woman she REALLY is. #traitor #sellout #womanhater

Fla. Bar v. Krapacs

Fla. Bar v. Krapacs



Fla. Bar v. Krapacs

Ashley Ann Krapacs

Disbarred

Not Eligible to Practice Law in Florida

Ethical Implications

Fla. Bar R. 4-1.1
(Competence)

Fla. Bar R. 4-1.3
(Diligence)

Fla. Bar R. 4-8.4
(Misconduct)

Florida Bar Oath of Civility.

"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."



Best Practices



Mind Full, or Mindful?

Be mindful.

If you don't have anything nice to say, don't say anything.

During the virtual adversary proceeding, Jefferson continuously mutters, "Lie, lie, lie." The judge admonishes Jefferson.

The Bankruptcy Court finds that King George III, LLC, breached the contract. Jefferson goes home and washes down the stress of the proceedings with his favorite homemade martinis while listening to his favorite song, "Take a Break."





Consider the ethical implications of Thomas Jefferson's courtroom conduct.

Muttering "Lie, Lie, Lie," throughout the adversary proceeding.

Fla. Bar v. Ratiner.

- Overheard saying "lie, lie, lie" while opposing counsel spoke.
- Kicked the leg of counsel's table where he was seated.
- Wrinkling and throwing documents.



Ethical Implications

Fla. Bar R. 4-8.4(d):
Misconduct

Fla. Bar R. 4-3.5(c)
Disruption of a Tribunal

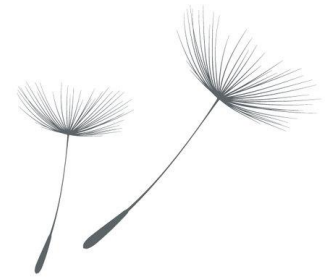


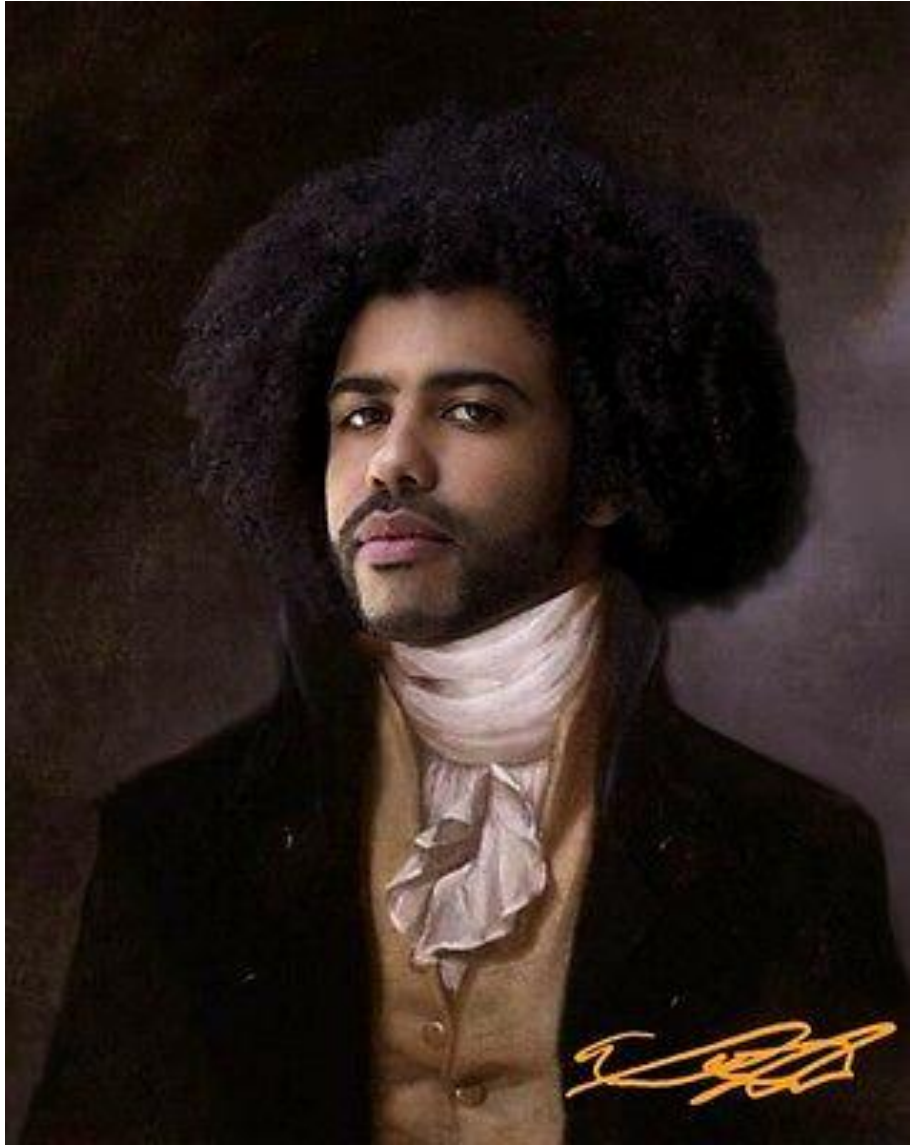
Best Practices

Keep calm:

- Quickly write out your feelings.
- Do a quick breathing exercise.
- Request a short recess or a bathroom break.
- Respect courtroom decorum.

take a breath





Thomas Jefferson's Wellbeing

"A lawyer's well-being includes the ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients."

Source: *National Task Force on Lawyer Well-Being*, ABA (Aug 14, 2017).

HEALTH & WELLNESS



LAWYERS:



Suicide rate is **double** that of gen. pop.



18% alcoholics (double national average)



33% diagnosed with mental disorders



3.6 times more likely to suffer severe depression



7/10 would change careers

Coping Mechanisms For Working from Home



Make a manageable to-do list for the day.



Stay connected. Be social.



Keep a routine.



Set boundaries between work-space and home.



Regular exercise and time outdoors.



Thank 