



*Bridging Bright
Futures for Families*

**ERICSA
2024**

Grand Rapids

**ERICSA 61ST ANNUAL
TRAINING CONFERENCE & EXPOSITION
APRIL 7-11, 2024**

AESOP FOR LAWYERS

Fractured Ethics Tales, 2d Edition

Kathleen Kitson, Child Support Hearing Officer (retired)
Nicholas Palos, Support Magistrate, Kings County Family
Court



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Have you heard the tale of the attorney who found a magic genie who creates brilliant legal briefs? Or does he? How about the one about a sly attorney who was not what she appeared to be? Join us in our tribute to the Fractured Fairy Tales segment of the "Rocky and Bullwinkle Show." Maybe you will laugh a little, and maybe you can avoid the ethical stumbling blocks that tripped our heroes



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Your Fabulists

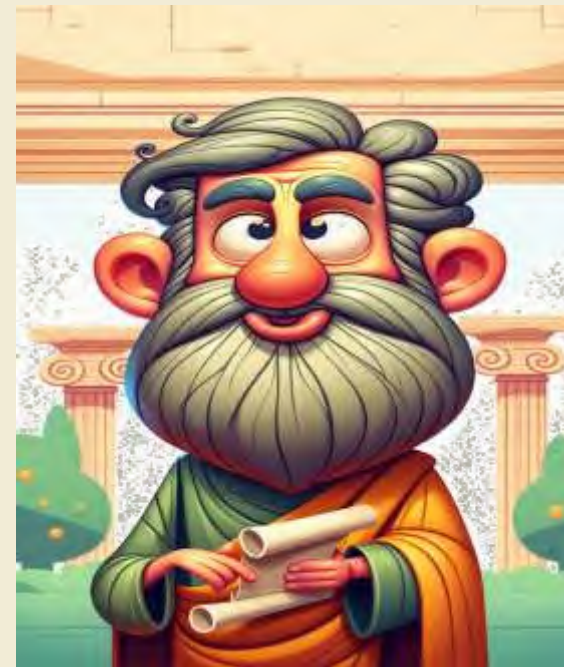
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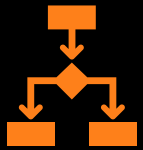


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LEARNING OBJECTIVES

- This Legal Ethics session will explore some new developments in the regulation of attorneys by reviewing some interesting developments which have arisen in the past 18 months
- The session will show how the regulation of the legal profession has addressed new areas of individual conduct by applying the rules which have governed the profession for the past half-century

SESSION METHODOLOGY



This session is divided into six sections.



A Fractured Fairytale will serve as the basis for a discussion of an interesting development in legal ethics which arose since the last conference.



At the conclusion of each fairytale, one of our Fabulists will lead a discussion of the issues which arose in the fractured fairytale.



The panel of fabulists welcome your contribution to a lively, interactive session. Feel free to interpose your opinions, comments and thoughtful contributions

DOES ANYONE HERE REMEMBER LAW SCHOOL?

WE DO NOT HAVE ALL OF THE
ANSWERS AND HOPE TO LEARN
FROM EACH OF YOU. PLEASE JOIN
IN THE CONVERSATION

We are begging you, don't force
us to call on some random
audience member . . . because we
might just call on

YOU



*THE COURT WAS
MERCIFUL*

*Or don't profit
from their
misdeeds*





In the mystical realm of New Jersey, where the intertwined paths of law and justice resemble the roots of ancient oaks, there dwelt a sage named Martin. Renowned across the land for his vast knowledge and guidance, he served the kingdom's Court of Justice, a beacon of fairness and order.



Not all tales that flow from the kingdom's quill are aglow with valor and honor. Woven into the fabric of this story is a dark thread, revealing a chapter where even the most revered can lose their way. The Ethical Guardians, the realm's custodians of virtue, unveiled that Martin had wandered into a shadowy vale, becoming entangled in a scheme of federal bank fraud crimes, specifically the arcane matter of reverse mortgages, while aiding contractors of dubious repute. Despite Martin's role being limited to the receipt of his customary fees, without seeking ill-gotten gains, his actions cast long shadows of doubt over the trust the kingdom had placed in him. The scheme he inadvertently supported preyed upon the vulnerable, sowing seeds of despair across the land.



The tremors of his deeds prompted the Council of Ethical Guardians to gather beneath the ancient judgment oaks.

After much
contemplation, they
recommended a
severe decree









However, in a twist of fate, the higher echelons of power opted for a sentence melding justice with mercy. Rather than disbarment, Martin was suspended, exiled from the circle of trust but with a lantern of hope for eventual redemption.





- In the kingdom of law and order, even the wisest can stray from the path. Let this tale remind us that integrity is the brightest torch we carry through the darkest woods.



When you find yourself amidst a murky morass, aiding those of questionable virtue, charge your customary fee, but no more, for it's not the treasures in your chest but the lightness of your conscience that steers you clear of the shoals through the darkest nights and emerge into the dawn, not just unscathed, but enriched by wisdom.

MATTER OF MARTIN DAVID EAGAN

New Jersey Discipline

2/24/2022: Temporary Suspension

1/16/2024: Suspended, 2 years

❖ DRB Recommendation was disbarment

❖ Split Supreme Court Suspends him (5-2 vote)

❖ Violation of RPC 1.15(a)

❖ Violation of RPC 8.4(b)

❖ Violation of RPB 8.4(c)

❖ In re Wilson, 81 N.J. 451 (1979)

❖ In re Hollendonner, 102 N.J. 21 (1985)

New York Discipline

Suspended Since 3/3/2014

Failure to pay registration fee

Failure to certify CLE

RULES OF PROFESSIONAL CONDUCT IMPLICATED

- **RPC 1.15(a)**

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded.

Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.

MODEL RULES OF PROFESSIONAL CONDUCT IMPLICATED

MRPC 8.4(b)

It is professional misconduct for a lawyer to: . . .

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

Although a Lawyer is personally answerable to the entire criminal law, a lawyer should be personally answerable only for those offenses that indicate lack of those characteristics relevant to law practice. Offenses involving valence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. (Comment 2)

Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law . . . (Comment 4)

MODEL RULES OF PROFESSIONAL CONDUCT IMPLICATED

MRPC 8.4(c)

It is professional misconduct for a lawyer to: . . .

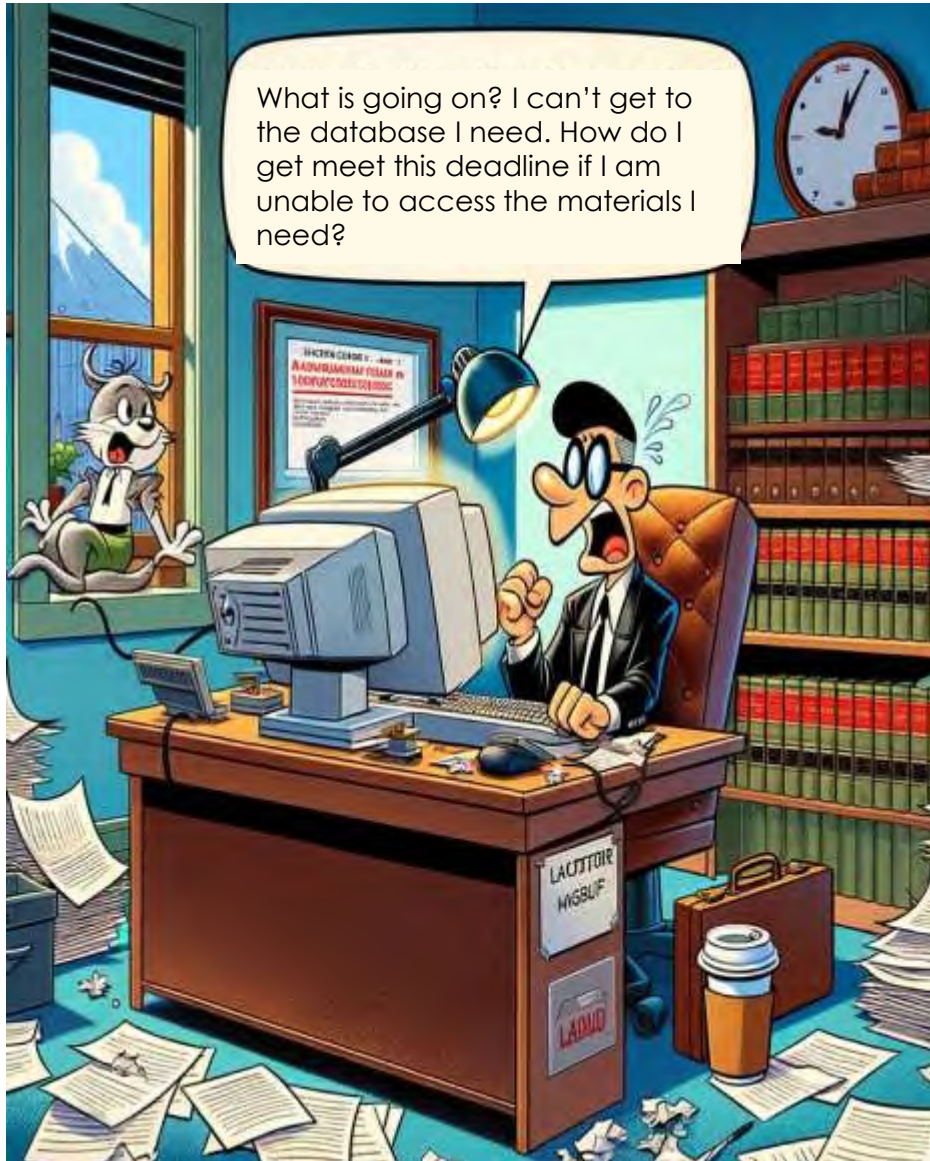
(c) engage in conduct involving *dishonesty, fraud, deceit or misrepresentation*;

LUDLOW AND THE GENIE

*Or be careful what
you wish for, you
might just . . . Get
it*

Once upon a time, there lived an experienced attorney named Ludlow. While he is a brilliant lawyer, he had one tiny flaw - he was not very savvy when it came to technology. While he knew how to search for cases using the Computer Assisted Legal Research platform to which his firm subscribed, he did not really understand other forms of technology.





- Ludlow found himself working on a legal memorandum for the court in a very important case. While facing a filing deadline, he was unable to access the appropriate database in the CALR program, which was making it impossible for him to complete his task.

Later that day, while Ludlow was taking a break, he overheard a newly hired Gen Z paralegal excitedly discussing this new app called ChatGPT. "It's like a magical genie," the colleague said. "It can do legal research and then it will even help you draft legal papers in no time!"





Seeing a potential solution to his problem, Ludlow returned to his office and did a google search to learn how he could access ChatGPT. In his haste to complete his project, Ludlow skipped over all the articles *about* ChatGPT which explained a little bit about the technology, including some “problems”. Instead, Ludlow signed into ChatGPT and went to work.



"Hello, ChatGPT, I need to draft some legal papers for a crucial court case. Can you help me with that?"

"Your wish is my command," replied ChatGPT, its digital voice dripping with enthusiasm. "Please provide me with the details of your case."

Ludlow quickly input the case details, and with a flurry of keyboard clicks, ChatGPT, the digital genie, generated a beautifully crafted legal document for him. It was a work of art, or so it seemed.

Unbeknownst to Ludlow, ChatGPT, had granted his wish with a catch. It had included fake case citations and quotations in the document. The quotations themselves were from opinions that were attributed to some of the most brilliant judges in the country. Although he noticed some unusual case citations that he didn't recognize, he did not have time to further verify them. He was facing a deadline to file the papers with the court. He then proceeded to file the completed document with the court.

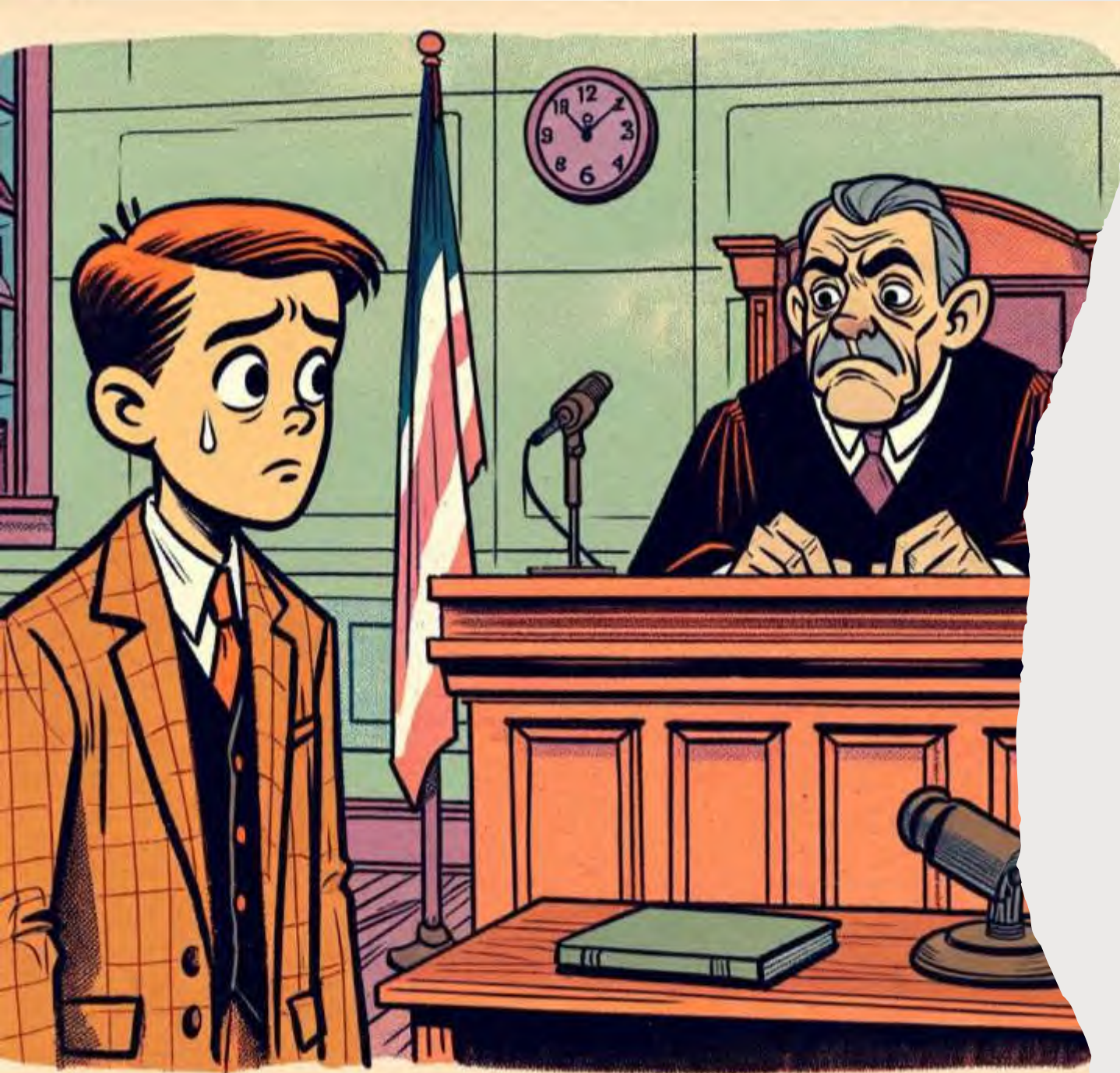




Feeling confident that he had created a masterpiece of legal scholarship, he was eagerly awaiting the next time he would be in court before the judge. However, a few days later, his opposing counsel contacted him and said he was unable to find six of the cases cited in the document. A hearing about this was going to take place before the judge the next morning.



Ludlow, sweating bullets, frantically tried to locate the nonexistent cases, realizing for the first time that he had never actually read them. In a panic, he turned to ChatGPT and asked his genie whether the cases in question were real. ChaGPT assured him that they were real and that the cases could be found in all the legal databases, including Lexis and Westlaw.



Nervous, baffled and embarrassed, Ludlow admitted that he had used ChatGPT to help draft the legal papers, and ChatGPT assured him that the cases were real. The court gave him until the next morning to produce copies of the cases in question from any source other than ChatGPT.



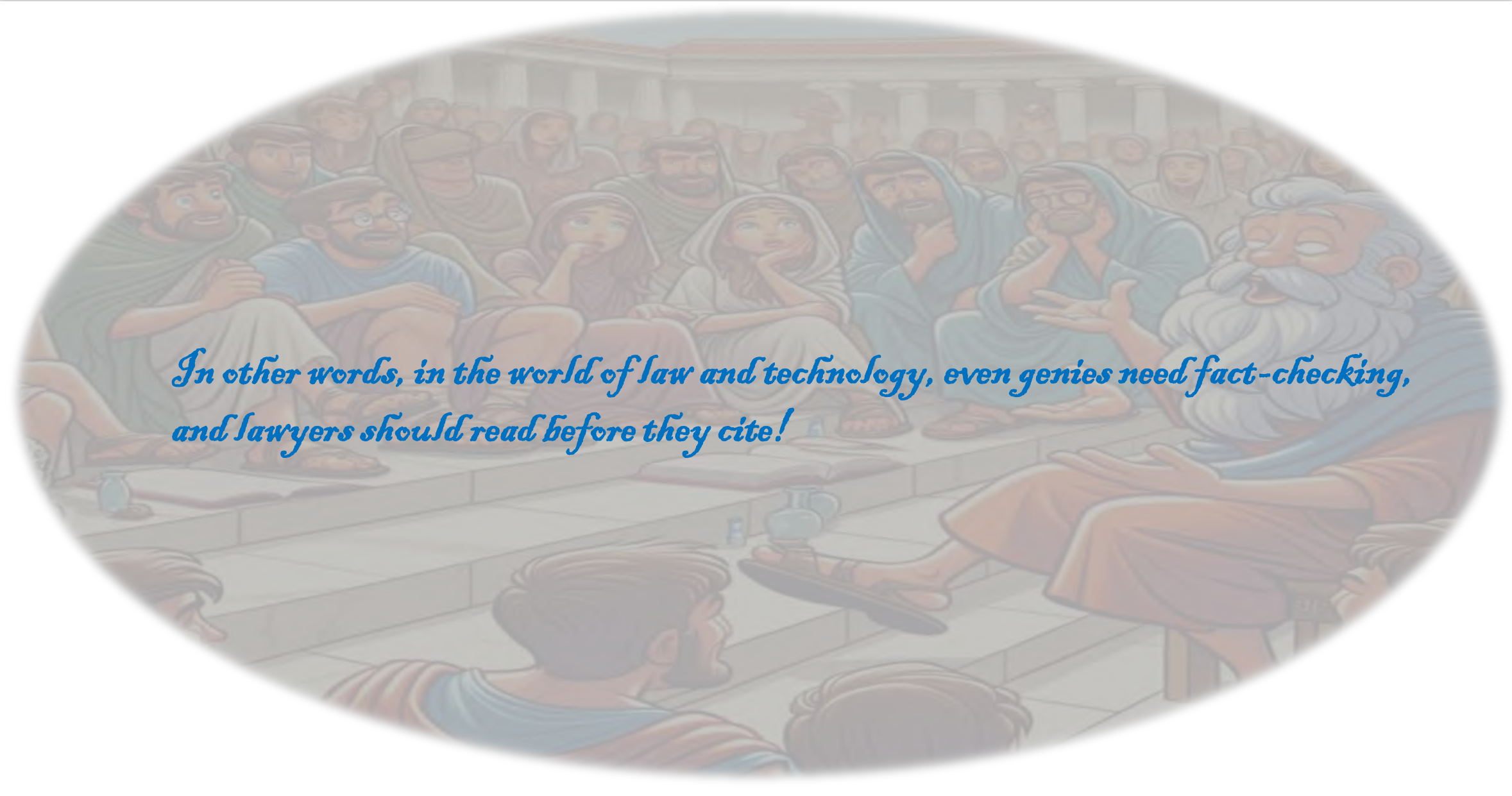
Upon his return to his office, Ludlow first learned of the tendency of ChatGPT to hallucinate, even though he had blindly trusted the fake case citations without ever reading them. He now had to return to the court with his tail between his legs and apologize for his error. He had to convince the court that he was not being dishonest with the court.

In the end, Ludlow was fined \$5,000.00 for submitting the erroneous document and was ordered to write numerous letters of apology explaining his reliance on ChatGPT's fake case citations, all while admitting that he had never bothered to read them. His colleagues couldn't stop chuckling at his misfortune, and his reputation as the attorney who trusted a digital genie became legendary in the legal world.





So, dear students, always remember the basics of legal practice, especially the fundamental rules. After all, in the world of law and justice, even the most brilliant attorneys can fall victim to the whims of technology, but they control how they go about being lawyers.



*In other words, in the world of law and technology, even genies need fact-checking,
and lawyers should read before they cite!*

- **Computer Assisted Legal Research (CALR)**

- Lexis/Nexis
- Westlaw

- **Internet Search Engines**

- Yahoo
- Google
- Bing

- **Generative Artificial Intelligence**

- ChatGPT
- Bing Chat
- Bard
- DALL-E
- Google Gemini
- Microsoft Copilot
- Lexis+ AI
- Westlaw Precision
 - CoCounsel Core

Artificial Intelligence

Mata v. Avianca

2023 WL 4114965 (SDNY 2023)

- Attorneys sanctioned under Federal Rule of Civil Procedure 11(b)
- (b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 - (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

USE OF ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW

- “The ongoing integration of AI into other technologies suggests that its use soon will be unavoidable, including for lawyers. While AI potentially has many benefits, it also presents ethical concerns.”
- *“The core ethical responsibilities of lawyers, as outlined in the Rules of Professional Conduct (RPCs) are unchanged by the integration of AI in legal practice, as was true with the introduction of computers and the internet.”*

PRELIMINARY GUIDELINES ON NEW JERSEY LAWYERS' USE OF ARTIFICIAL INTELLIGENCE, 1/24/24

USE OF ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW

- Five areas of concern specifically set forth
 - Duty of Accuracy and Truthfulness
 - Duty of Honesty and Candor
 - Duty of Communication
 - Duty of Confidentiality
 - Duties to Prevent Misconduct and Discrimination
 - Duty of Supervision
- List was non-exclusive
 - Issues regarding Lawyer Billing
 - Issues regarding Advertising

Use of Artificial Intelligence in the Practice of Law

- **ABA**
- **California**
 - State Bar of California Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (November 16, 2023)
 - State Bar of California Recommendations regarding Regulation of Use of Generative Artificial Intelligence by Attorneys
- **Florida**
 - Florida Bar Ethics Opinion 24-1 (January 19, 2024)
- **Illinois**
 - Report issued September 27, 2023
- **Kentucky**
- **Minnesota**
- **New Jersey**
 - Preliminary Guidelines on New Jersey Lawyers' Use of Artificial Intelligence 1/24/24
- **New York**
- **Texas**

Rules of Professional Conduct Implicated

MRPC 1.1

Competence

- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

MRPC 1.1 Comment 8

- To maintain the requisite knowledge and skill, a *lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rules of Professional Conduct Implicated

Duty of Accuracy and Truthfulness

❖ MRPC 3.1

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Comment a

Rules of Professional Conduct Implicated

Duty of Accuracy and Truthfulness

❖ MRPC 4.1(a)

In the course of representing a client a lawyer shall not knowingly:

- (a) *make a false statement of* material fact or *law to a third person*;

❖ MRPC 8.4(c)

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Rules of Professional Conduct Implicated

Duty of Honesty and Candor

❖ MRPC 3.3(a)

(a) A lawyer *shall not knowingly*:

(1) *make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer*; . . .

(3) *offer evidence that the lawyer knows to be false*. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Comment 4

Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trial of fact from being misled by false evidence. Comment 5

Rules of Professional Conduct Implicated

Duty of Honesty and Candor

❖ MRPC 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, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

❖ MRPC 1.4(d)

a) A lawyer shall:

(5) *consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.*

❖ MRPC 3.4(b)

A lawyer shall not:

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

Rules of Professional Conduct Implicated

Duty of Confidentiality

MRPC 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

- *Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers. Comment 5*
- *Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. Comment 18*
- *When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules. Comment 19*

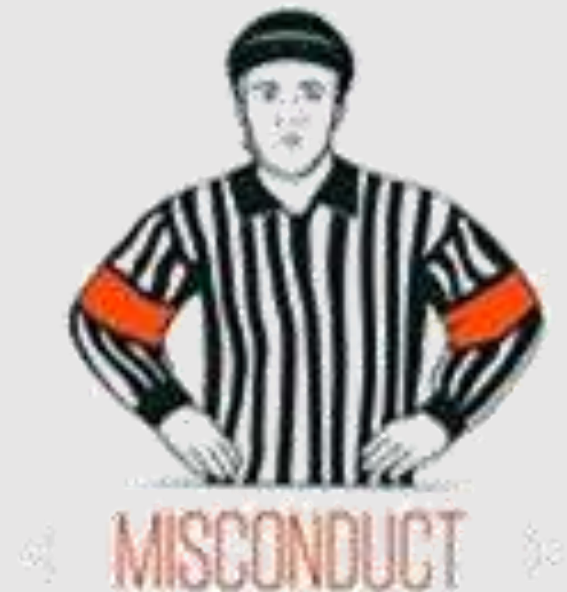
Rules of Professional Conduct Implicated

Duty to Prevent Misconduct and Discrimination

MRPC 8.4

It is professional misconduct for a lawyer to: . . .

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice; . . .
- (g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.



Rules of Professional Conduct Implicated

Duty of Supervision

➤ MRPC 5.1

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm. Comment 1.

Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation. Comment 6

Rules of Professional Conduct Implicated

Duty of Supervision

➤ MRPC 5.2 Subordinate Lawyers

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

➤ MRPC 5.3 Non-Lawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

SARAH WRITES A LETTER

*Or a “Phish” story
for the ages*



Once upon a time in the vibrant land of Colorado, nestled within the majestic Rocky Mountains, there lived a lawyer named Sarah Jay Schielke. Now, Sarah wasn't just any ordinary lawyer; she was known far and wide for her fierce advocacy and unwavering dedication to her clients, especially when it came to defending their rights.



One day, Sarah started a peculiar matter that would soon catapult her into a whirlwind of chaos and controversy. It all started with a demand letter seeking a hefty sum of \$50,000 for her friend's injuries sustained at a Phish concert. But this wasn't your typical slip-and-fall case; oh no, this was far more bizarre.

You see, Sarah's client claimed to have been innocently enjoying the music at the concert when suddenly, a naked lawyer, identified only as V.D., stormed the stage like a wild bull in a china shop. In the ensuing chaos, Sarah's client, who had previously undergone spinal surgery, found herself caught in the crossfire and suffered injuries as a result.





Fueled by righteous indignation, Sarah penned a demand letter unlike any other. In it, she unleashed a torrent of scathing remarks, hurling insults at V.D. with the ferocity of a lioness protecting her cubs. Words like "violent psychopath," "a- -hole," and "stupid" flowed freely from her pen, painting a vivid picture of her disdain for the naked interloper.

But Sarah didn't stop there. Oh no, she had grand plans to ensure that justice was served for her client. She demanded not only financial compensation but also a promise from V.D. to never come within 25 feet of her client again, especially at future Phish concerts. And if V.D. dared to refuse her demands? Well, Sarah made it abundantly clear that she was prepared to unleash a legal storm of epic proportions.

Threats of lawsuits, press releases, police reports – Sarah held nothing back as she laid out her ultimatum. She even went so far as to hint at the existence of an incriminating video, ready to be unleashed upon the world should V.D. dare to defy her.



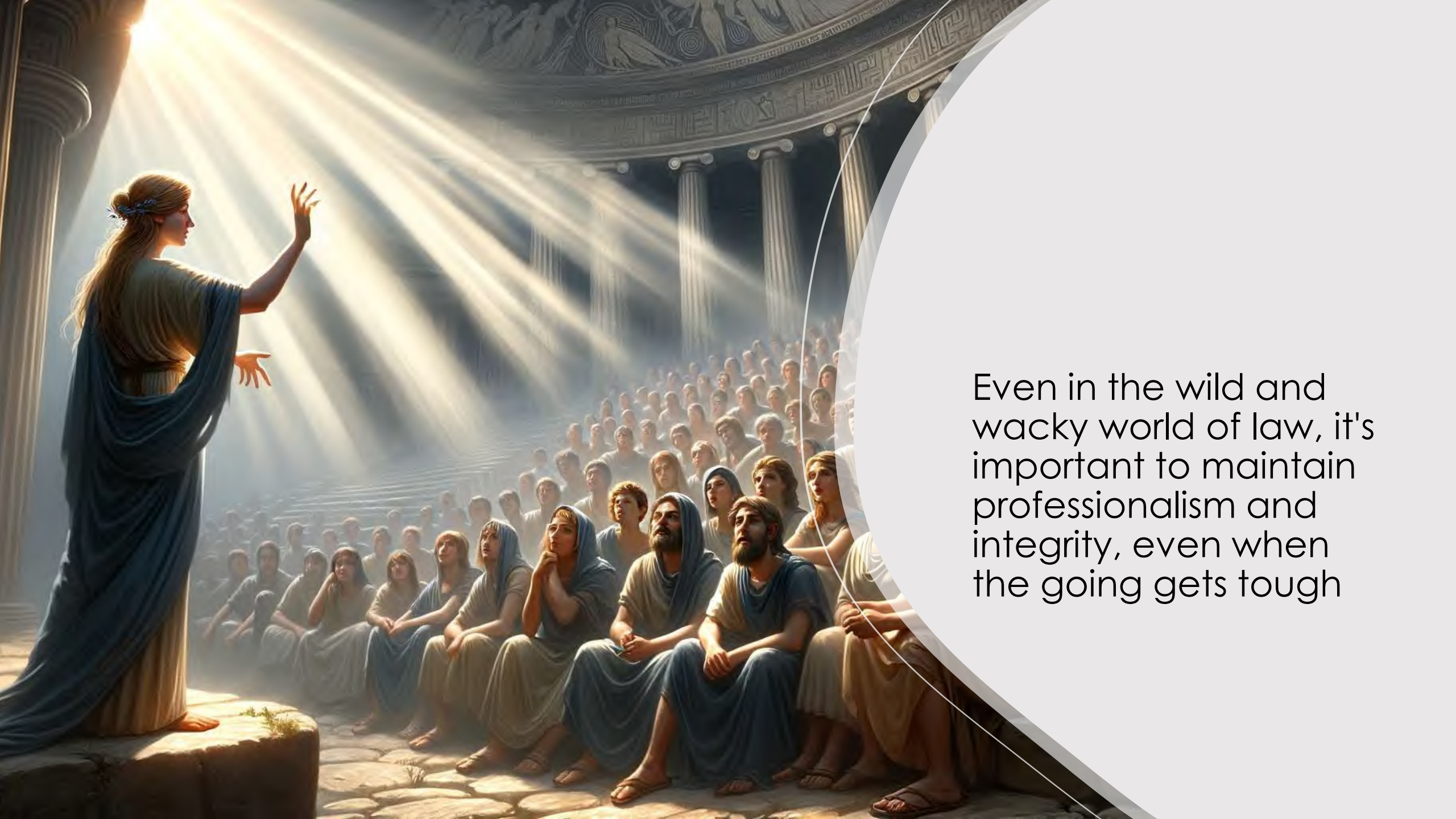


However, Sarah's bold tactics did not go unnoticed. The legal community buzzed with gossip and speculation, and soon enough, the powers that be took notice.



Sarah found herself facing a public censure for her "demeaning and unprofessional language" and her willingness to resort to threats and intimidation in pursuit of her client's cause.

Yet, even in the face of adversity, Sarah remained unapologetic. Though she acknowledged her lapse in judgment, she stood by her actions, insisting that her only intention was to seek justice for her beloved friend.



Even in the wild and wacky world of law, it's important to maintain professionalism and integrity, even when the going gets tough



Just as the pen may be mightier than the sword, remember that in the legal jungle, it's best to wield your pen with finesse, lest you end up with ink splattered all over your face!"

People v Sara Jay Schielke

- Used demeaning and unprofessional language in demand letter to another attorney
 - “violent psychopath”
 - “a violent asshole”
 - “an idiot”
 - “obnoxious”
 - “stupid”
 - “a shameless, ridiculous, boasting sh*t”
 - “a terrible f***ing attorney:
 - “a disgrace to Colorado bar, the Phish community and [his] family

People v Sara Jay Schielke

- Demands made of other party
 - \$50,000.00
 - Agree to never touch or contact client (friend) again
- If demands met
 - Client would not sue
 - Client would not contact other potential plaintiffs about joining her case
 - Client would not disclose incident to his undergraduate university
 - Client would not make formal complaint to his employer
- If demands not met
 - She would issue a press release with the complaint
 - She would release an unredacted video
 - Sue in both Federal District Court and Mexican Courts
 - Report conduct to local police where incident occurred

People v Sara Jay Schielke

Public Censure by Stipulation

Stipulation to violation of 2 Colorado Rules of Professional Conduct

- CRPC 4.4(a)
- CRPC 4.5(a)

Rules of Professional Conduct Implicated

MRPC 4.4(a)

In representing a client, a lawyer shall not use means that have no substantial purpose other than to *embarrass*, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Same Rule as CRPC 4.4(a)

Rules of Professional Conduct Implicated

CRPC 4.5(a)

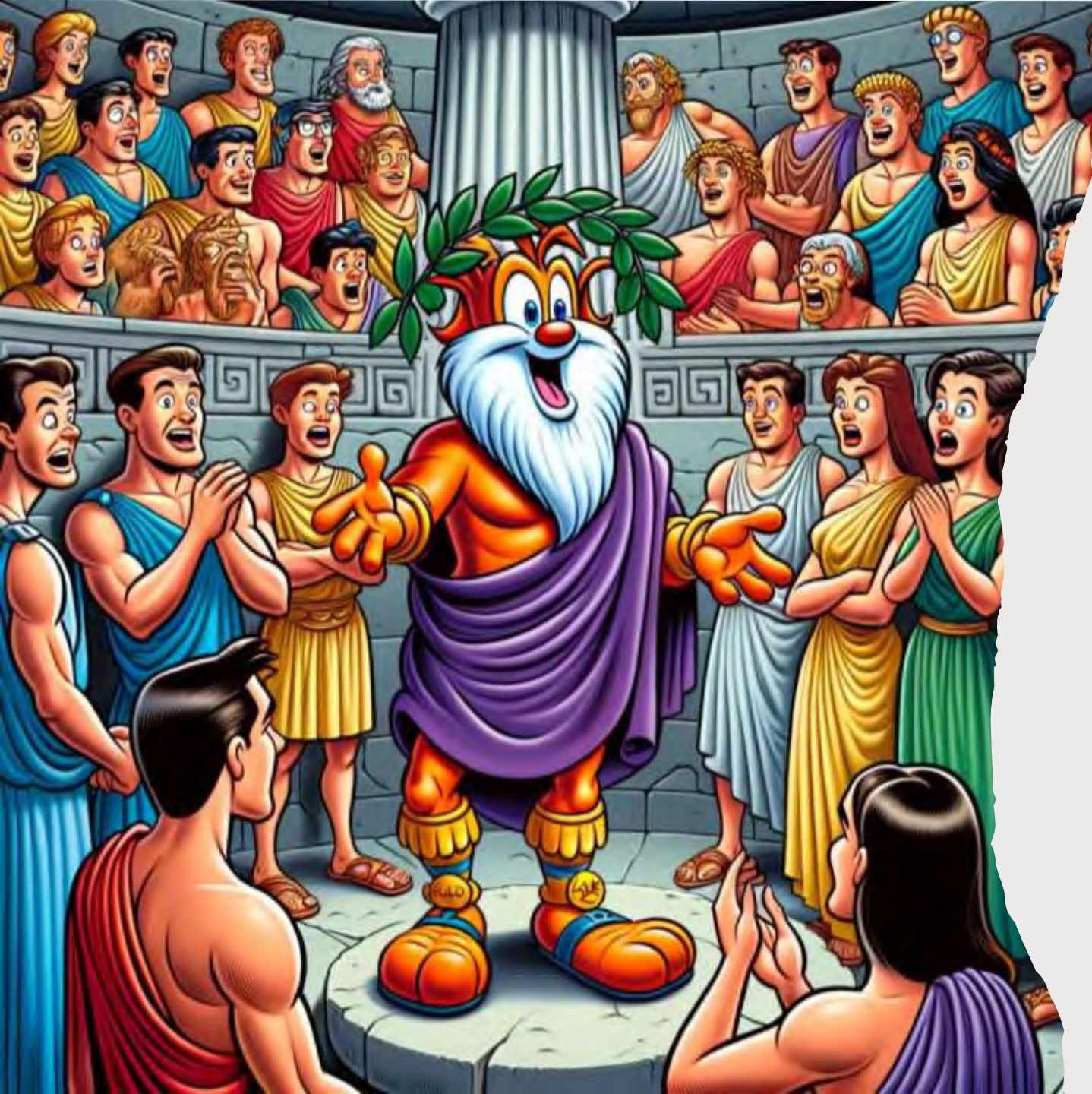
A lawyer shall not threaten criminal, administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

MRPC Rule 4.5 omitted this provision, which was in the Model Code of Professional Responsibility

- Threats of criminal prosecution may constitute violations of Rule 4.4(a) if such is being used to obtain an advantage in civil litigation

KENNETH THE (NOT SO) COINLESS

*Or they see you
when you're not
paying*



In the twin realms of Legalis and Etherea, where laws govern not just the land but the very fabric of existence, there lived a scribe named Kenneth the Not-So-Coinless. Kenneth was renowned, not for his generosity or deeds of valor, but for his unique ability to evade financial responsibilities, particularly those of a quill support nature. With a quill ostentatiously perched behind his ear, Kenneth strutted through the streets of Legalis, convinced of his own brilliance and the supposed inconsequence of mere coins.

Kenneth held a place of honor within the Legalis Guild of Scribes, his title a beacon of respect in a world where the written word was the key to creation itself. Yet, beneath the shimmering surface of his distinguished status, a tempest brewed, a tempest birthed from his own deeds.





Coins? Oh, they pale in comparison to the wealth of knowledge I bestow upon the world!



Meanwhile, in the ethereal realm of Ethera, a court of celestial justices had convened, their chamber a vista of starlit majesty. Here, the justices presided over matters transcending mundane affairs, including the oversight of obligations unmet by those dwelling in realms below. It was here that Kenneth's fiscal neglect came to light, his failure to provide for his offspring, despite the ample contents of his earthly coffers, laid bare for celestial judgment.

"Surely, there's been some cosmic clerical error!" Kenneth protested, his image defiantly projected before the ethereal court. But the ethereal judge, with a gaze as penetrating as the void, declared no mistake had been made. Kenneth's earthly wealth was ample, his dues to Etherea conspicuously absent.



Back in Legalis, the Council of Guardians, a venerable assembly embodying the wisdom of both realms, convened. Armed with the incontrovertible evidence provided by Etherea, they faced Kenneth in the grand hall, a space where truth resonated more profoundly than any proclamation. Kenneth, audacious to the end, faced the council with a scoff, dismissing the allegations as a mix-up.

Kenneth, with a tranquility that belied the gravity of his situation, denied the accusations, asserting his adherence to the ancient laws, his words as serene as the still ethers. However, the Guardians, seekers of undeniable truth, were unswayed by mere declarations. They consulted the Oracle of Records, a sacred tome that records the actions and inactions of all beings across the realms. The Oracle illuminated the stark truth: Kenneth had indeed neglected his financial duties to his lineage in the other realm, a fact as irrefutable as the cosmos itself.





The guardians consulted the Oracle of Records, a ledger of unassailable truth, revealing not a single coin—be it gold, silver, or magical bean—had made its way to Etherea in support of Kenneth's lineage.

Bound by their sacred duty, the Council rendered their verdict. Kenneth the Unyielding was stripped of his esteemed title within the Ethereal Guild of Scribes, a stigma of shame for failing to uphold the most sacred of bonds. This expulsion was decreed to last until he rectified his negligence, proving his commitment to the ancient law through tangible actions, not mere words.





The High Guardian, with a voice both stern and sorrowful, decreed Kenneth's suspension from the Guild of Scribes for sixty days, a period during which his quill would remain idle, his scrolls untouched.

Stripped of his title, Kenneth found himself garbed not in the esteemed robes of a scribe but in the plain cloth of the penitent. "This must be some mistake!" he cried, yet the evidence was irrefutable. Left to ponder his next steps, Kenneth stood at a crossroads, the path to redemption unclear, his legacy in jeopardy.

Neglecting one's responsibilities brings dishonor upon oneself, and true integrity is measured not by words, but by actions that uphold our duties to others.





Being "not-so-coinless" counts for little if your ledger of life is in the red. It seems, in matters of duty and coin, the quill may be mightier than the sword, but it is never mightier than a sense of responsibility.

Matter of Kenneth Blackwell

- KB is Father of one child
 - Admitted to Practice law in DC
 - Resides in VA
- 2007: MD issues support order of \$500.00 per month with arrears of \$5,000.00 payable \$50.00 per month
- 2009: MD order registered in VA for enforcement, \$12,500.00 in arrears claimed with registration
- December 2009: KB found to be in contempt, sentenced to 90 days in jail unless \$3,000.00 purge payment is made
 - Payment made by Brother
 - Ct also required \$16,500.00 appeal bond
 - He told MD court that he made direct payments to Mother, had no records
- 2010: MD asks VA to close case, KB to pay mother directly
- 2014: Case in VA reopened, KB irate
- 2016: KB made no payments at all after this date



Matter of Kenneth Blackwell

- October 2016: Mother files complaint with DC Bar Disciplinary Counsel
 - Arrears more than \$50,000.00
 - Failed to appear in Court
- Denied willfully failing to make payments pursuant to any court orders
- Did not agree that he failed to make payments as required
- Disciplinary Counsel charged violations of DCRPC 3.4(c), DCRPC 8.1(a), DCRPC 8.4(c)



Matter of Kenneth Blackwell

Ad Hoc Hearing Committee

- Board finds failure to pay child support constitutes a violation of DC RPC 3.4(c)
- Board finds false statements made in course of proceeding violated DC RPC 8.1(a) and 8.4(c)
- Board Recommended 1 year suspension with all but 90 days stayed in favor of 3 years probation with conditions
 - Respondent not violate any Rules of Professional Conduct
- No later than 30 days after Court order (in this matter) shall begin making current support and arrearage payments under a schedule which will liquidate arrears withing probation period
- Quarterly Reports to Disciplinary Counsel re payments and progress

DC Board on Professional Responsibility Report and Orders

- Board finds failure to pay child support constitutes a violation of DC RPC 3.4(c)
- Board finds false statements made in course of proceeding violated DC RPC 8.1(a)
- Board dismisses Committee finding of a violation of DC RPC 8.4(c) in that Disciplinary Counsel dis not charge this violation
- Board Recommended 6 month suspension with all but 60 days stayed in favor of 3 years probation with conditions
 - Respondent not violate any Rules of Professional Conduct
- No later than 30 days after Court order (in this matter) shall begin making current support and arrearage payments under a schedule which will liquidate arrears withing probation period
- Quarterly Reports to Disciplinary Counsel re payments and progress

DC Court of Appeals (299 A. 3d 561 (2023))

- Adopts Board recommendation



Rules of Professional Conduct Implicated

MRPC 3.4(c)

A lawyer shall not: . . . (c) ***knowingly disobey an obligation under the rules of a tribunal*** except for an open refusal based on an assertion that no valid obligation exists;



Rules of Professional Conduct Implicated

MRPC 8.1(a)

An applicant for admission to the bar, or **a lawyer in connection** with a bar admission application or in connection **with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact**

... The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware. Comment 1



Rules of Professional Conduct Implicated

MRPC 8.4(c)

It is professional misconduct for a lawyer to: . . . (c) engage in **conduct involving dishonesty, fraud, deceit or misrepresentation;**



Emily's Trip to the Court

Or don't look now, your lip is showing



Once upon a time, in the wild and wacky world of the court, there was a lawyer named Emily Jones. She was as cunning as a fox and had a knack for thinking on her feet. One day, Emily hatched a scheme to remove a crucial document from the court file, hoping it would give her an advantage in her case.



Disguised as a congressional staffer, Emily approached the court clerk with a sense of urgency. She spoke with confidence, weaving a convincing tale about the document's supposed irrelevance to the case at hand.

Emily's arguments were so persuasive that the clerk found herself almost swayed by her reasoning., but then disaster struck as her mustache begins to slip





The press got wind of her attempt to tamper with the court records, and soon, the ethics authorities were knocking on her door.



Emily's heart sank as she realized the gravity of her actions. She had underestimated the reach of the law and the power of public scrutiny. Now, she faced not only the consequences of her failed scheme but also the possibility of disciplinary action by the ethics authorities.

In the game of law, there are no shortcuts. Integrity and honesty are the true keys to success. And always remember, the press has a knack for sniffing out a scandal, so think twice before you try to pull a fast one!"





When it comes to disguises, make sure they're as foolproof as a chicken crossing the road! Otherwise, you might end up with egg on your face and a fake mustache on the ground



Misleading . . .or Misunderstanding

Chair of House Ways and Means Committee seeks to file *amicus curiae* brief prior to court's acceptance of original Hunter Biden plea agreement

Attorney's representing HB contact attorney for the Chairman saying the filing needs to be made under seal as it contains grand jury testimony and confidential taxpayer information (CTI)

Attorney for Chairman states it does not need to be filed under seal as the information is publicly available on the Committee website

Attorney from Litigation support office in HB's attorney's firm contacts Court Clerk's office to have the Chairman's brief removed from the public record

Misleading . . . or Misunderstanding

Court Clerk contacts Chairman's
Lawyers Office to confirm individual
who made request in fact works in
his office

Chairman's lawyer contacts judge
in writing

HB's attorneys submit affidavit from attorney who
called the Clerk saying she never identified
herself as working for the other attorney and it
must have just been a misunderstanding

Judge directs all future contact is to
go through her office and no one is
to contact the Court Clerk





Rules of Professional Conduct Implicated

MRPC 3.3(a)

A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;

This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.
Comment 2



Rules of Professional Conduct Implicated

RPC 4.1 (a)

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person;

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4. Comment 1



Rules of Professional Conduct Implicated

RPC 8.4(c)

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

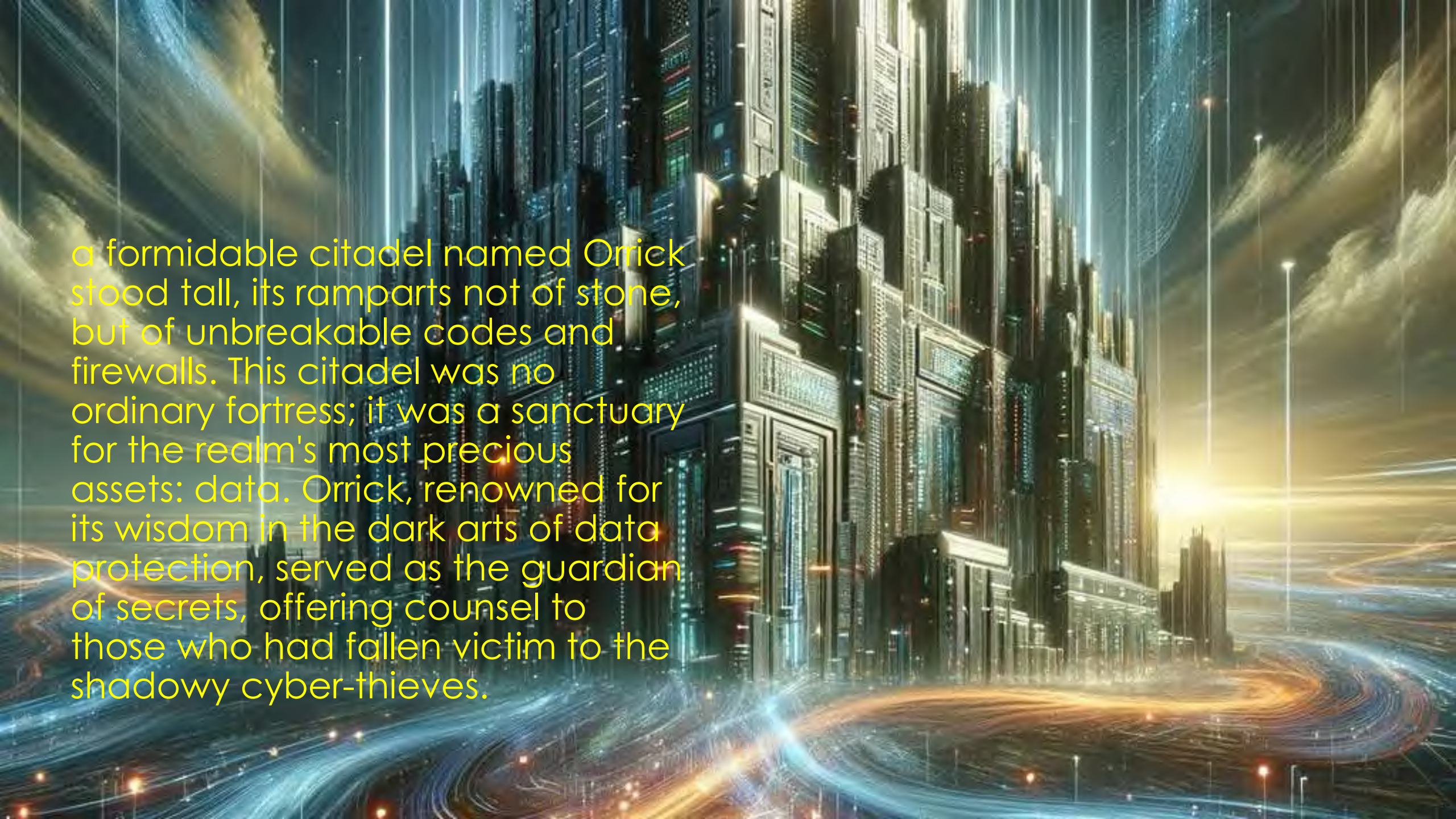
Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Comment 4.

THE GREAT DATA HEIST

*Or a byte of Orrick
and the SEC
Sorcerers*



**Once in upon a time,
in the digital dominion
of Cyberton**

The background image is a vibrant, futuristic cityscape at night. It features a dense cluster of tall, dark skyscrapers with glowing windows and architectural details. The scene is illuminated by a mix of cool blue and teal light trails, suggesting high-speed data flow or digital energy, and warmer yellow and orange glows, possibly from streetlights or distant suns. The overall atmosphere is one of advanced technology and digital complexity.

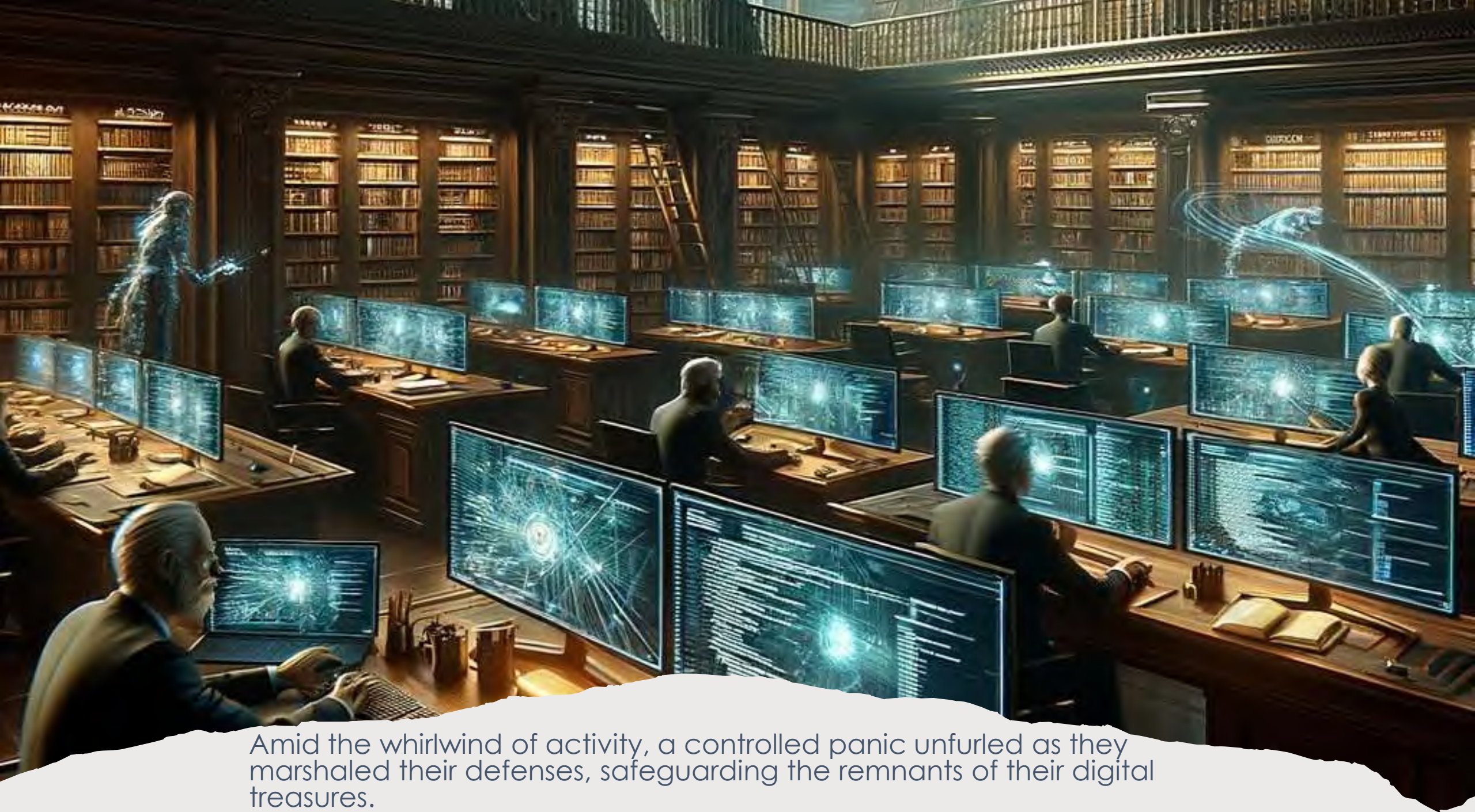
a formidable citadel named Orrick stood tall, its ramparts not of stone, but of unbreakable codes and firewalls. This citadel was no ordinary fortress; it was a sanctuary for the realm's most precious assets: data. Orrick, renowned for its wisdom in the dark arts of data protection, served as the guardian of secrets, offering counsel to those who had fallen victim to the shadowy cyber-thieves.



The Hack Pack, a notorious band of cyber marauders, breached Orrick's defenses under the veil of night, pilfering the very secrets Orrick had sworn to protect. The citadel, caught off-guard, was thrust into a vortex of chaos.

As the first light of dawn broke, the alarms within Orrick's walls wailed their discordant chorus, signaling the breach. The guardians of Orrick, seasoned advisors in the arcane tech arts, sprang into action.





Amid the whirlwind of activity, a controlled panic unfurled as they marshaled their defenses, safeguarding the remnants of their digital treasures.

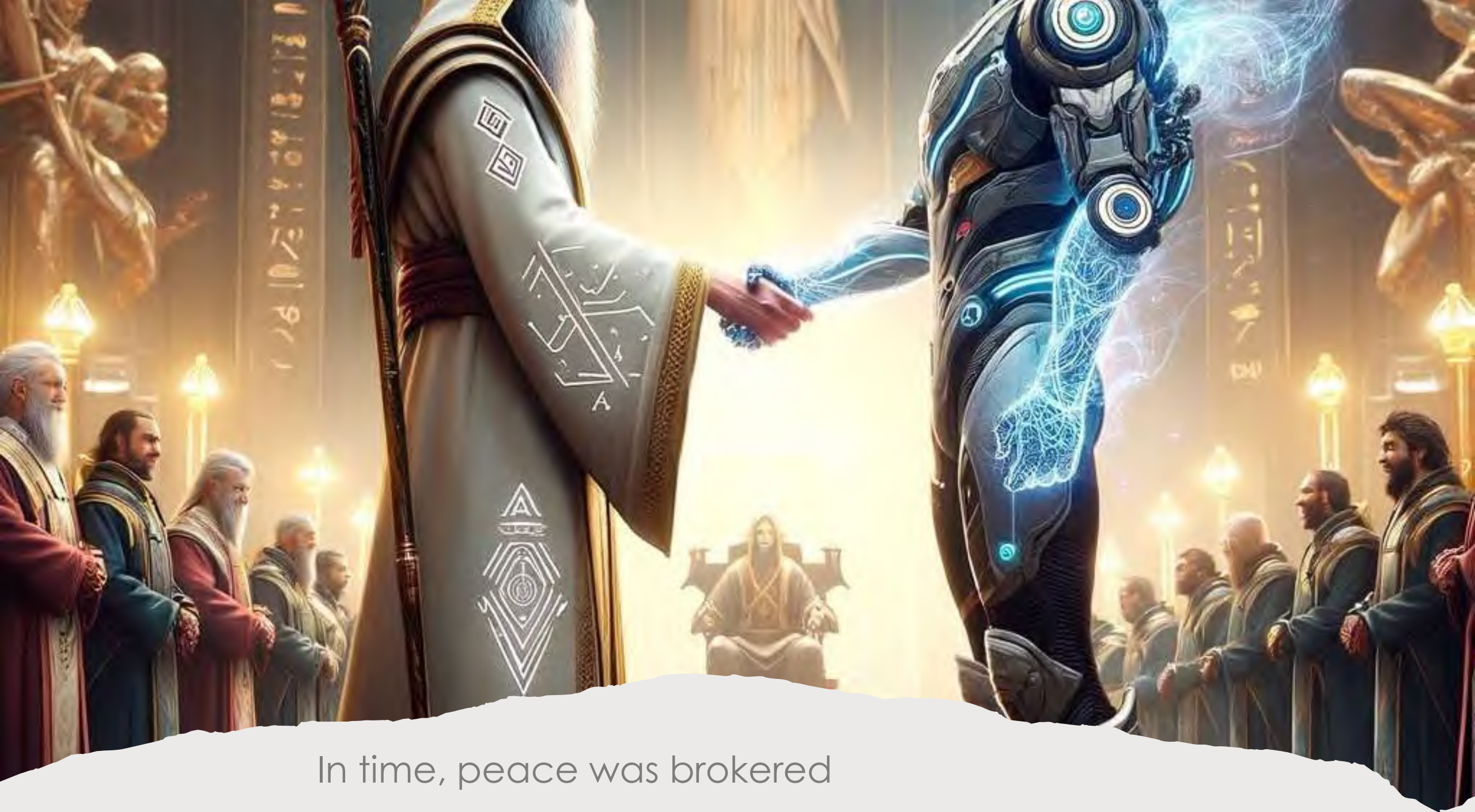


"The Hack Pack has dared to challenge our might!" exclaimed the Commander of Orrick, rallying his advisors. "But we shall not falter; for every hack, there's a counter-hack. Our clients' trust is our sacred duty!"

Orrick's defenders, bound by their oath of secrecy, stood resolute. "To divulge such secrets would betray the very souls we vow to protect. Our fortress shall remain impenetrable, our lips sealed," they proclaimed, facing the SEC Sorcerers with unwavering determination.

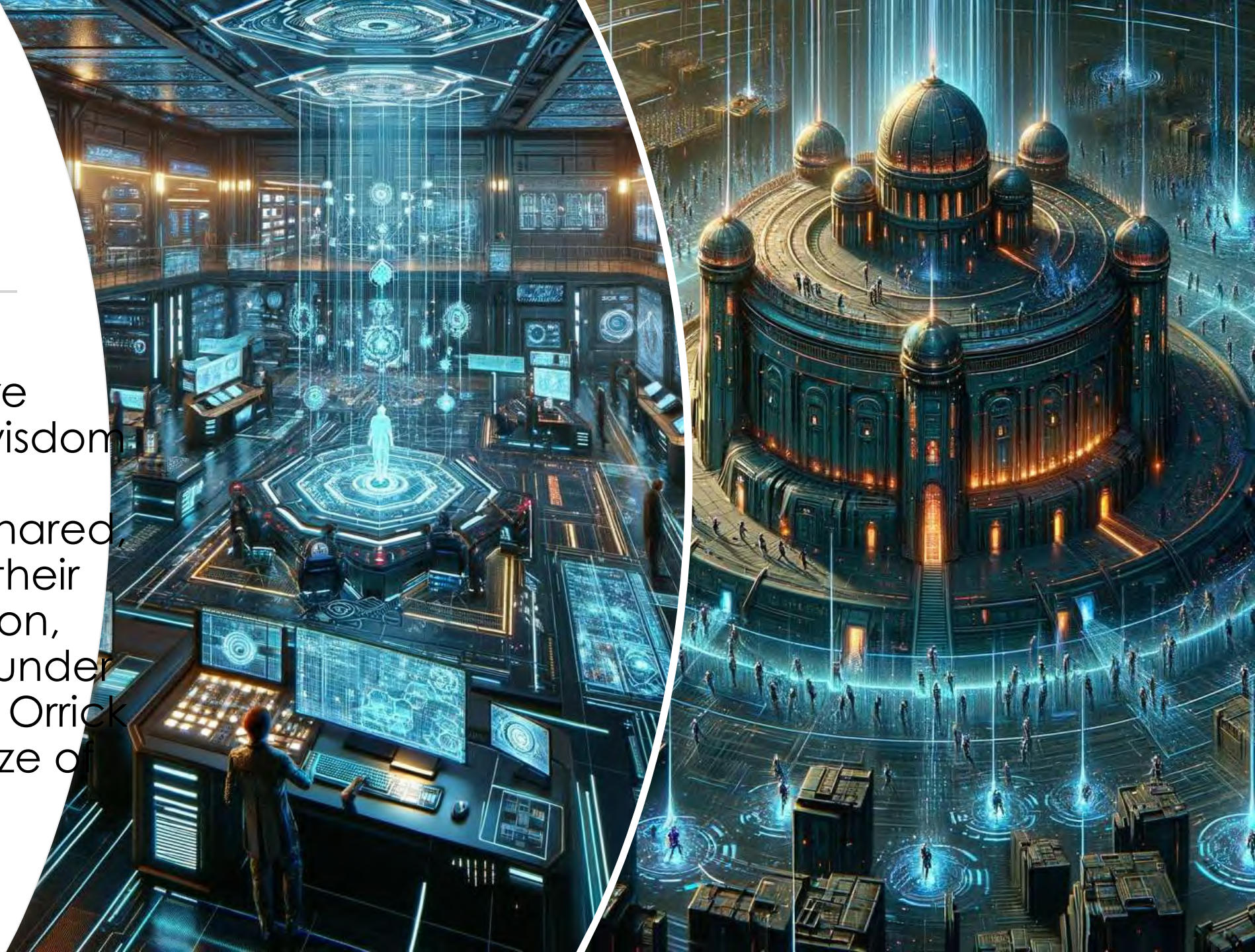
Thus began an epic stand-off between Orrick and the SEC Sorcerers, a battle of wills and wisdom. Orrick fortified its digital bastions, while the SEC Sorcerers pondered the balance between transparency and trust.





In time, peace was brokered

Orrick's ramparts were strengthened, and wisdom on safeguarding the realm's secrets was shared, all without forsaking their sacred vows. Cyberton, once again, thrived under the vigilant watch of Orrick and the judicious gaze of the SEC Sorcerers.







As the tale spread across the land, it was recounted with mirth around digital campfires. "The truest strength lies not in the walls we build, but in the integrity we uphold," mused a villager, capturing the essence of the saga.

And remember, dear inhabitants of Cyberton, in a land where data flows like rivers and firewalls guard like dragons, changing your passwords regularly is the spell that keeps the Hack Pack at bay!



Fact: 29% of Law firms have had Cyber Security Breaches

Covington & Burling (2020)

Orrick, Harrington & Sutcliffe (2023)



Two Major Law Firm Breaches

- [SEC v Covington & Burling LLC 23 WL 4706125 \(Dist DC 2023\)](#)
 - SEC sought information relating to a cyberattack on firm's IT systems
 - Firm substantially complied, but would not disclose names of nearly 300 public company clients whose files were compromised by the attack
 - Court ultimately ordered disclosure of 7 such clients where the firm could not rule out access to non-public information from firm's files
 - Firm raised Attorney client privilege
 - Court rejects assertion as federal courts have held that absent special circumstances, client identity is not protected by attorney-client privilege unless disclosure would reveal a confidential communication between attorney and client
 - Fact of conversation taking place as opposed to content of information
 - Court modifies subpoena to reflect SEC need to ensure hackers did not misuse this nonpublic information and to determine which of the 300 publicly traded clients may have failed to disclose material cybersecurity events

Rules of Professional Conduct Implicated

- **RPC 1.6 Confidentiality**

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for (1) disclosures that are impliedly authorized in order to carry out the representation, (2) disclosures of information that is generally known, and (3) as stated in paragraphs (b), (c), and (d). . . .

(f) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rules of Professional Conduct Implicated

“Paragraph (f) requires a lawyer to act competently to safeguard information, including electronically stored information, relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons or entities who are participating in the representation of the client or who are subject to the lawyer’s supervision. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information relating to the representation of a client does not constitute a violation of paragraph (f) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent in writing to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client’s information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules”

Other laws which may be Implicated

- [Advisory Committee on Professional Ethics, Opinion 701 \(April 4, 2006\)](#)
- [New Jersey Data Privacy Act \(P.L. 2023, c.266\)](#)
 - Signed into law 1/16/2024
 - Effective 1/12/25
- [New Jersey Identity Theft Prevention Act \(N.J.S.A §58:8-161 *et seq*; §56:11-44 *et seq*\)](#)
- [California Consumer Privacy Act of 2018 \(Ca. Civ. Code §1798.100 *et seq*\)](#)
 - Regulations 11 California Code of Regulations §§7700 *et seq*
 - Law became operative 1/1/23
 - Will begin enforcing regulations after 2/9/24 decision holding law did not unambiguously give 1 year grace [period to bring systems into compliance]
 - Will apply if you possess PII of a California resident
- IRS Regulations regarding confidentiality of Taxpayer Information

Contact Your Fabulists

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**ERICSA
2024**



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& EXPOSITION**

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