When on Mars

Arthur Garwin*
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Abstract

While mining for ore on Mars, earth settlers found evidence of a ancient civilization that apparently flourished for centuries and then suddenly disappeared.
While mining for ore on Mars, earth settlers found evidence of an ancient civilization that apparently flourished for centuries and then suddenly disappeared. Artifacts revealed a culture much like our own. Linguists, upon successfully learning to translate some of the Martian language, discovered one startling difference between the cultures. Martian society covered what appeared to be the Martian language, which literally translates as wise, virtuous and impartial seekers of truth and justice. Archaeologists also came upon what seemed to be the Martian legal system that paralleled the structure of the current ABA Model Rules of Professional Conduct (leading historians to believe that Martians and earthlings may have communicated—a theory later supported by the discovery of photographs of Martians on earth in the company of Howard Hughes). The Martian Ethics Rules, though similar in regard to structure and subject matter, differ greatly from our own in terms of approach. Therefore, it is with an open mind toward change that we present the loosely translated Martian rules of professional conduct for lawyers.

1.1 Competence

If during the initial interview with a client, a lawyer states on three or more occasions, "It's very technical and difficult to explain, just trust me," the lawyer is not competent to handle the client's matter.

1.2 Scope of Representation

If a client is paying for a lawyer's services, the lawyer shall follow all of the client's instructions, unless the instructions are illegal, immoral, or cause the lawyer to lose sleep at night.

* © 1993 Arthur Garwin. Arthur Garwin is Assistant Professionalism Counsel in the American Bar Association's Center for Professional Responsibility. His sense of humor is on regular display as a writer and performer for the Chicago Bar Association's Chicago Countdown. His more serious writing includes bimonthly articles...
1.3 Diligence

A lawyer shall treat every representation as if it were extremely important but not life threatening (unless of course it is).

1.4 Communication

A lawyer shall give a client at least as much timely information as the lawyer would hope to receive from a used car salesperson.

1.5 Fees

If upon receiving a fee from a client, a lawyer declares "I really made a killing on this one," the fee is unreasonable. The percentage and appropriateness of contingent fees shall be determined by reference to accepted formulas of the Economists National Organization of Fees (ENOF). A lawyer shall not have sex with a client in lieu of a fee unless the client regularly earns his or her living through the delivery of sexual services.

1.6 Confidentiality of Information

A lawyer shall not reveal information relating to a representation on a local or national radio or television talk show or in any printed publication subject to the following exceptions. A lawyer shall reveal such information as is necessary to prevent the commission of any criminal act or to achieve a catharsis under the supervision of a trained psychotherapist.

1.7 Conflict of Interest: General Rule

A lawyer shall represent only one client at a time unless all the lawyer's clients consent in writing pursuant to a document approved in form and content by the National Organization of Public Examiners (NOPE).

1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not sell client confidences or throw a case for money.

(b) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation wherein the addendum exceeds or will exceed the lawyer's total fees for the prior two years.

(c) A lawyer shall not represent family members (you're welcome).

(d) Any gifts made to a lawyer from a client shall be turned over to the Official Halfway-House for Exiting Legal Practitioners (OH-HELP).

1.9 Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall swear on a stack of retainer agreements that the lawyer will not knowingly, subconsciously or metaphysically use any confidential information obtained in the prior representation in a matter adverse to the former client.

1.10 Imputed Disqualification: General Rule

A lawyer is a firm. A firm is a lawyer. A lawyer and firm are one. (Confucius, cocktail party, lunar crescent, 572 B.C.)

1.11 Successive Government and Private Employment

A lawyer is not the government. The government is not a lawyer. A lawyer and the government are not one if properly screened. (Confucius, later that same night).

1.12 Former Judge or Arbitrator

Every case has two lawyers and a judge. A lawyer shall not be two of those people. However, a firm is not a judge if properly screened.

1.13 Organization as Client

A lawyer employed or retained by an organization shall proceed as is reasonably necessary in the best interest of the organization as determined by giving due consideration to the lawyer's favorite color and the chances that the lawyer will be sued by third parties or brought up on disciplinary charges.
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1.14 Client Under a Disability

A lawyer shall not assume that a client cannot make intelligent decisions unless the client either owns an Edsel or believes this is the year the Chicago Cubs and the Cleveland Indians will meet in the World Series.

1.15 Safekeeping Property

A lawyer shall not steal anyone’s property, even accidentally, or give it away on a whim or a bet. Any lawyer in violation of this section shall, upon panel review, be immediately jettisoned to the far ring of Saturn and become ineligible for inclusion in the Juris Hall of Fame.

1.16 Declining or Terminating Representation

(a) A lawyer may decline or terminate representation any time prior to the morning of trial and for any reason, except that the dog ate the file.

(b) A lawyer shall decline or terminate representation if the lawyer’s mental condition is such that he or she is unable follow the story line of a prime time television sitcom.

1.17 Sale of Law Practice

A lawyer may buy and sell clients as if they were cattle, but must give them notice of the intention to do so and permit them to refuse the honor.

2.1 Advisor

In rendering advice to a client, a lawyer may refer not only to the law, but also to information gathered from reading advice columns in the daily newspaper, and from psychic predictions made in reputable tabloids.

2.2 Intermediary

A lawyer may act as intermediary between clients if the lawyer has passed a proficiency test regarding the Marquis of Queensberry rules.

2.3 Evaluation for Use by Third Persons

A lawyer may not act as intermediary between clients if the client consents after consultation.

3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer can do so while keeping a straight face and without admitting in private that it’s bogus.

3.2 Expediting Litigation

A lawyer shall treat every case as if the lawyer represents the plaintiff.

3.3 Candor Toward the Tribunal

A lawyer shall tell the truth in all court proceedings. If the lawyer is unsure of what the truth is, the lawyer may toss a coin or consult tarot cards.

3.4 Fairness to Opposing Party and Counsel

A lawyer may do anything to win short of lying, disobeying the rules and orders of court, or showing opposing counsel’s prom pictures to the jury.

3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not try to bribe or improperly influence a judge or juror and shall behave in a manner that would make the lawyer’s mother proud.

3.6 Trial Publicity

A lawyer may make any extrajudicial statement the lawyer wants to, with the following exceptions: no lies, no slander and no mention of information contained in the Warren Report.

3.7 Lawyer as Witness

A lawyer is not a witness. A witness is not a lawyer. A lawyer and a witness are not one. (L.A. Law)

3.8 Special Responsibilities of a Prosecutor

Prosecutors are not subject to Rule 3.4.
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3.9 Advocate in Nonadjudicative Proceedings

A legislative or administrative tribunal is not a tribunal, but a lawyer is a lawyer. So, any tribunal is a tribunal for a lawyer.

4.1 Truthfulness in Statements to Others

A lawyer shall not knowingly lie. The existence within the lawyer of multiple personalities shall not be an excuse if any of the personalities was aware of the lie.

4.2 Communication with Person Represented by Counsel

Not.

4.3 Dealing with Unrepresented Person

A lawyer shall not mislead, deceive, or permit a misunderstanding by a person who is not represented by counsel, even if the lawyer is absolutely sure that no one will ever find out.

4.4 Respect for Rights of Third Persons

In representing a client, a lawyer shall treat third persons in a manner consistent with the way the lawyer would treat them if they were rich relatives.

5.1 Responsibilities of a Partner or Supervisory Lawyer

The buck stops with the partners and supervisory lawyers.

5.2 Responsibilities of a Subordinate Lawyer

A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of someone who could destroy the lawyer’s entire life with a single phone call.

5.3 Responsibilities Regarding Nonlawyer Assistants

The buck hasn’t moved since 5.1.

5.4 Professional Independence of a Lawyer

(a) A lawyer may share legal fees with anyone who does not carry around the names of ambulance drivers or have a radio that picks up police calls.

(b) A lawyer shall not form a general partnership with a nonlawyer regarding the practice of law, but may take on limited partners looking for a tax shelter.

(c) A lawyer shall not permit anyone, other than a client or the people inside Herman’s head, to direct or regulate the lawyer’s professional judgment.

(d) A lawyer may allow nonlawyers to own up to a 49% interest in a professional corporation authorized to practice law so long as none of the nonlawyer owners are politicians or S & L executives.

5.5 Unauthorized Practice of Law

A lawyer shall not do anything to jeopardize the legal profession’s monopoly.

5.6 Restrictions on Right to Practice

A lawyer shall not participate in an agreement that restricts the free agency of another lawyer, except for partnership provisions that give a departing lawyer big bucks in return for promising not to steal firm clients.

5.7 Provision of Ancillary Services

A lawyer shall be allowed to own and operate a business ancillary to the delivery of legal services in even numbered years. In odd numbered years a lawyer may only offer ancillary services within the law firm in years a lawyer may only offer ancillary services within the law firm in conjunction with the delivery of legal services to a pre-existing client. Every twenty five years there shall be a one year moratorium when no ancillary services may be provided. The operation of a drive through car wash shall not be deemed an ancillary business for purposes of this rule.
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6.1 Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by annually turning over one-half of the lawyer’s net income to organizations that provide legal services to the poor. A lawyer who fails to meet the obligation shall be flogged by Michael Jackson on national television during half-time of the Super Bowl.

6.2 Accepting Appointments

A lawyer may avoid appointment by a tribunal to represent a person for any good cause, but upon doing so, the lawyer must read one Russian novel for each appointment declined.

6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization without conflict as long as the lawyer doesn’t actually say or do anything productive.

6.4 Law Reform Activities Affecting Client Interests

(Repealed after determination by martian high consulate that the law was no longer in need of reform).

7.1 Communications Concerning a Lawyer’s Services

A lawyer shall not lie, tell half-truths or even fudge a little in a communication about the lawyer or the lawyer’s services. A communication is prohibited if it omits the fact that the lawyer is currently disbarred or states that the lawyer would make Clarence Darrow look like a blathering idiot if Clarence were still around.

7.2 Advertising

Subject to the requirements of 7.1 and 7.3, a lawyer may advertise services through any medium except the jacket cover of a phonograph album that contains lyrics which may be considered unfit for underage audiences.

7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not solicit professional employment in person or by telephone unless simultaneously offering a free trial home delivery newspaper subscription.

(b) Every written or recorded communication from a lawyer soliciting professional employment shall include the words “Advertising Material—Client Beware.”

7.4 Communication of Fields of Practice

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law unless the lawyer has been certified by the Organization to Knockout Attorneys’ Yarns (OKAY).

7.5 Firm Names and Letterheads

A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used if it does not imply connection with a major movie star, a foreign government, or a domestic beer.

8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar or a lawyer in connection with a disciplinary matter shall provide an accurate, detailed, day-by-day account of the person’s entire life from past lives to the date of application or hearing. (No one ever expects the Spanish Inquisition).

8.2 Judicial and Legal Officials

A lawyer shall not lie, even when talking about a judicial or legal official or candidate for office.

8.3 Reporting Professional Misconduct

A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct shall inform the appropriate
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A lawyer having knowledge that another lawyer has committed a
professional authority unless the other lawyer begs, rectifies the misconduct, and promises to never do it again.

8.4 Misconduct

It is professional misconduct for a lawyer to violate any of the Rules of Professional Conduct. (Duh)

8.5 Jurisdiction

A lawyer from another planet practicing on Mars shall be subject to martian disciplinary authorities.

Becoming a Partner

Ralph Warner & Toni Ihara

My enjoyment of practicing law with a good-size firm was hampered by three factors: I didn’t like the work, I didn’t like the other lawyers, and I didn’t like the clients. Nothing I’ve done in the years since I quit the law has been nearly as boring.¹

Everyone who has ever read a book by Louis Auchincloss knows about the rewards of getting to be a partner in a big firm—the $400,000 draw (in a bad year), membership in an all male yacht club, March in the Virgin Islands, etc. Unfortunately, while being a senior partner isn’t too hard to take (except for your colleagues), getting to be one is not easily accomplished. Here are some helpful hints:

Hint 1: Start Early. Plan to be born white, male and Protestant. If you can’t manage this, try female, black, Buddhist and handicapped—it’s hard for even the stuffiest old hardline firm to resist a quadruple minority if, in addition, she is also the editor of the Harvard Law Review and agrees not to bitch about being excluded from the yacht club (see Hint 2, below).

Hint 2: Character is Formed in Kindergarten. Not only must you pile your blocks higher than any of the other kids, you must also learn to kick over the piles of the other smart kids without getting caught. Later this will be called “aggressive advocacy.” Your only goal in your school years is to be number one in everything so that you are sure to be accepted at Yale. (Harvard, Princeton and about thirteen other schools will also work. If you have to ask which ones, consider setting your sights on the legal department of a good-sized insurance company in the Midwest.)

Hint 3: The Rewards of Abstinence. When you reach Yale, you must study manically so that you graduate with honors, get 750 on your law boards, and are accepted at Harvard Law School (there are eight, maybe ten other law schools that will keep you on the partnership ladder and several hundred or so others that won’t).

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REASONS NOT TO GO TO LAW SCHOOL 142 (1987).

1. Robert Flaherty, University of Michigan Law School, currently a restaurateur.