

SEC Speaks 2022

Ethics Issues for SEC Practitioners

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Disclaimer

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Our remarks reflect solely our personal views, and do not necessarily reflect the views of the Securities and Exchange Commission, the individual members of the Commission, or its Staff.

Today's Roadmap:

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1. Attorney Rule 102(e) statistics
2. History of Attorney Rule 102(e) and Recent/Illustrative Proceedings
 - Rule 102(e)(3): Follow-on to ENF actions
 - Rule 102(e)(2): Forthwith suspensions
 - Rule 102(e)(1): OGC original investigations and proceedings
3. Reinstatements (Rule 102(e)(5))
4. Attorney Reporting
5. Work with Bars

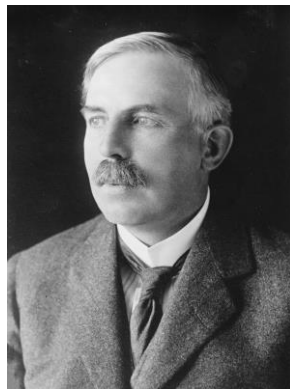
Attorney Rule 102(e) Statistics

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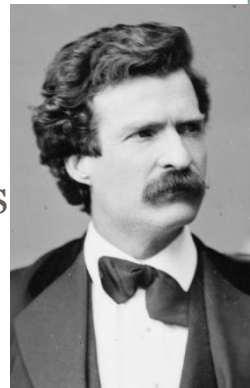


Gregg Easterbrook: “Torture numbers, and they’ll confess to anything.”

Ernest Rutherford:
“If your experiment
needs statistics, you
ought to have done
a better
experiment.”



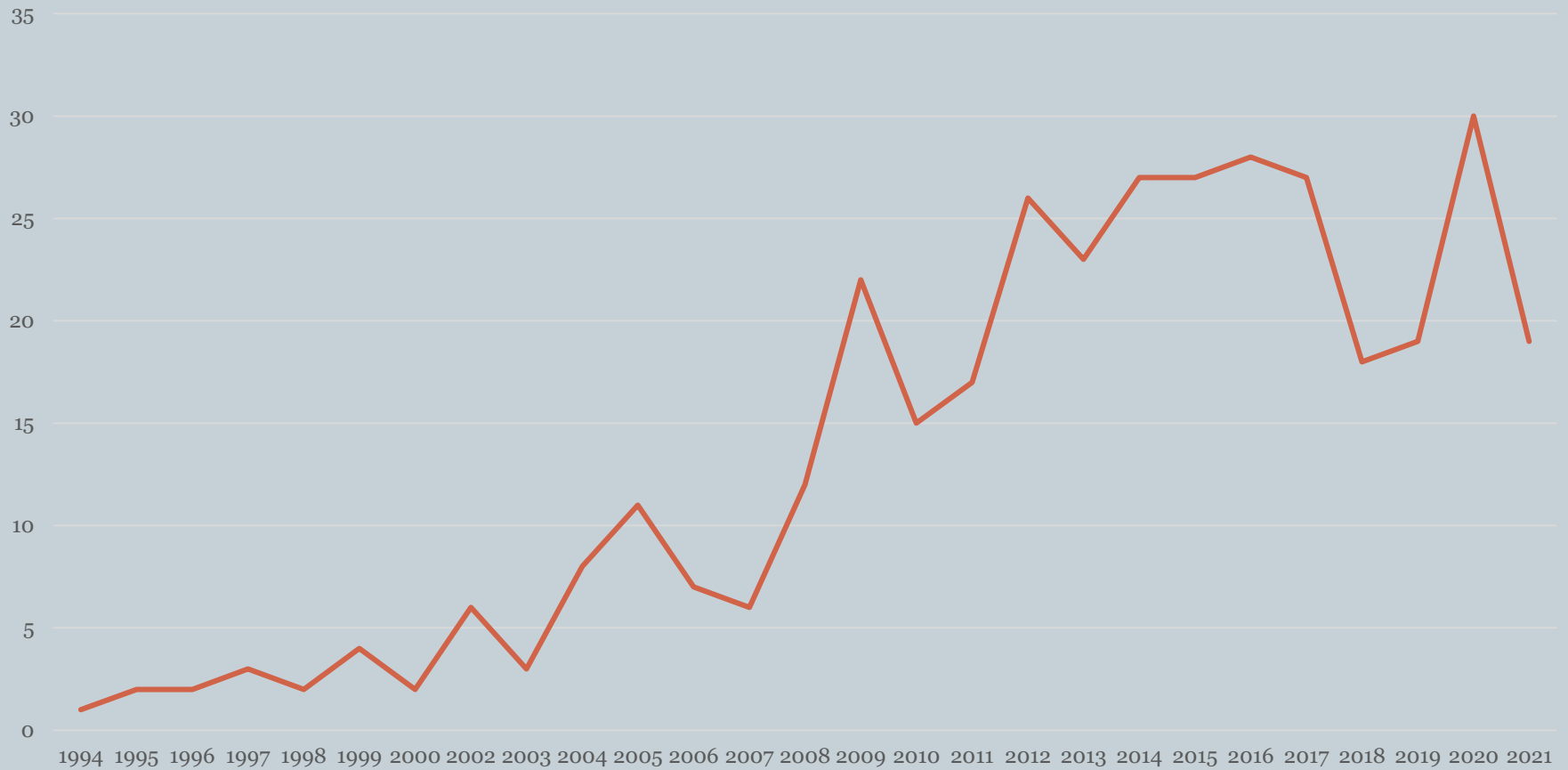
Mark Twain: “Facts are
stubborn things, but statistics
are more pliable.”



Attorney 102(e) Suspensions by Year

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Total



If you had to guess ...

6

What has happened to the ratio of types of suspensions over the past several years?

- A. Smaller percentage of E3 (follow-ons to ENF actions; *i.e.*, relatively fewer attorneys being charged with serious securities law violations)
- B. Smaller percentage of E2 (forthwith; *i.e.*, relatively fewer attorneys being criminally convicted or suspended/disbarred)
- C. Neither A nor B

Trends 2018-2021

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Answer: C



1(iii) is, for current purposes, functionally equivalent to (e)(3)s

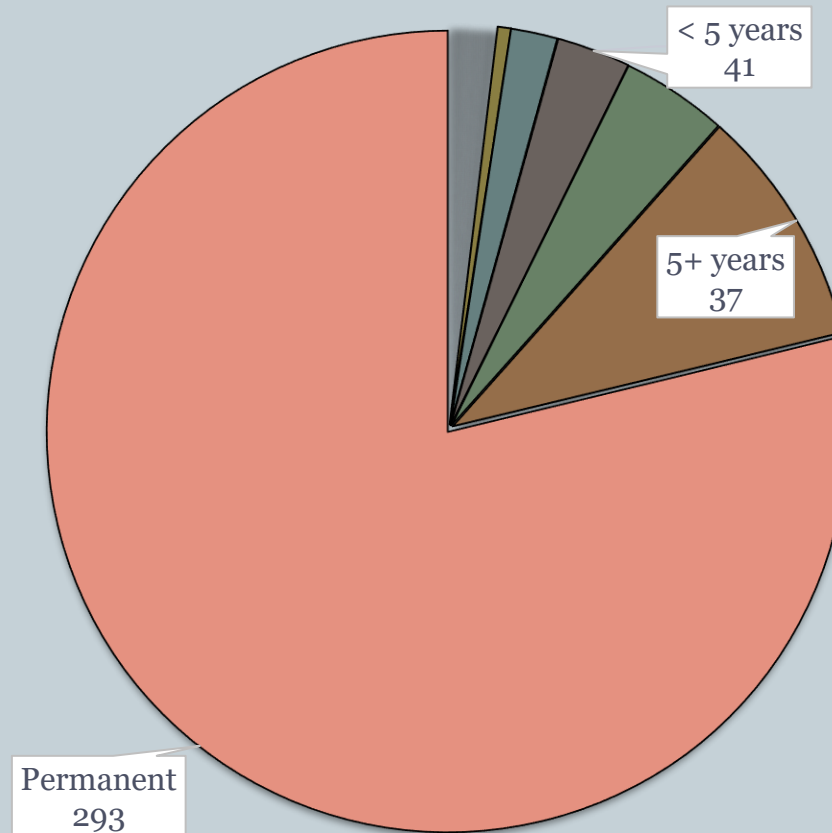
2019-22 Attorney Suspension by Misconduct

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1. Misrepresentations to investors / offering fraud (46)
2. Conversion of investor funds (15)
3. Fraudulent opinion letters (15)
4. Other crimes (*e.g.*, money laundering) (14)
5. False Filings with / Misrepresentations to SEC (10)
6. Other registration violations (6)
7. Insider trading (5)
8. Unauthorized Practice of Law / Facilitating UPL (5)

Length of Suspensions*

9



* Cumulative totals 1994 - Present

Rule 102(e)(3): aka Follow-Ons

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- (i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:
 - (A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or
 - (B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Rule 102(e)(3) Overview

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- ❑ Most follow-on suspensions are part of a settlement package with ENF.
- ❑ If ENF obtains a court or administrative ruling that is a basis for an (e)(3) and there *hasn't* been a settlement, then OGC handles the institution and litigation of an AP to determine what, if any, Rule 102(e) relief is appropriate.
 - A non-settled order instituting an (e)(3) proceeding will immediately temporarily suspend the person for the duration of the litigation.
 - If the Respondent doesn't respond to the order within 30 days, the suspension will automatically become permanent.
 - ❑ If the Respondent does reply, the proceeding will generally be handled via summary disposition because cannot re-litigate the district court case. *See* Rule 102(e)(3)(iv).
 - ❑ The focus will be on the *Steadman* factors (egregiousness, recognition of wrongdoing, opportunity for future violations, etc.).

William E. Gericke

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- Attorney with a large international law firm – served as firm’s conflicts counsel. Also was increasingly involved in ethics work.
- In his capacity as conflicts counsel, Gericke ran a confidential conflicts check related to a potential merger involving the firm’s client, Liberty Property Trust (“LPT”).

Gericke Quiz

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Did Mr. Gericke:

- A. Maintain his duty of trust and confidence to his firm and the firm's client, *or*
- B. Use the information about the potential merger to purchase 1,000 shares of LPT (without telling the client or his employer), then sell those shares for a profit of \$10,002 after the merger was announced?

Gericke cont'd

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- His short-term gain was \$10,002 but his long-term pain included
 - ✦ Settlement with SEC that included finding he willfully violated Section 10(b) and Rule 10b-5 (*i.e.*, engaged in securities fraud)
 - ✦ Ordered to pay \$20,004.40 civil penalty
 - ✦ No longer at that firm
 - ✦ Permanent SEC suspension

Ronald Prague

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- GC and CLO of Synchronoss Technologies, Inc. (SNCR), a publicly-traded company.
- Knew SNCR booked \$4.35 million in revenue related to an anticipated purchase by one of its biggest customers.
- Also knew the customer sent 2 letters denying it had made a commitment to that deal, plus an email informing SNCR it was not a finalist for the contract.

Prague Quiz

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In a meeting with the audit committee, when the CFO said there were issues with that receivable because of “management changes” at the client company but that the receivable was collectible, should Prague have:

- A. Disclosed to the auditors that the company had actually thrice denied there was a deal, so the auditors could make an informed decision whether GAAP permitted the receivable to continue to be booked? *or*
- B. Stayed silent because he’s a lawyer, not an accountant?

Prague cont'd

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- In the Commission's view, A: He should have disclosed what he knew that contradicted the CFO's representations.
- Not only did he not, he also signed minutes from that meeting (as Secretary), still without correcting the misrepresentations he knew had been made to the auditors.

Prague cont'd

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- In a separate transaction, SNCR entered into a deal to acquire a business.
- At the same time, SNCR sold a license to the business it was buying for \$10m. SNCR then reported that \$10m as revenue.
 - ✦ The Commission found that Prague knew or should have known:
 - The acquisition and license were negotiated together;
 - The acquisition was contingent on the sale of the license; and
 - SNCR did not identify the purported basis for the license until *after* negotiations for the acquisition had begun.

Prague Pop Quiz 2

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When the auditors asked Prague for information about the transaction, should he have:

- A. Created the impression the license and acquisition were separate transactions, because it's the auditor's job to fully investigate every transaction, *or*
- B. Disclosed the timing of the basis for the license, that the license and acquisition agreements were negotiated at the same time, and the two parts were contingent upon each other?

Prague cont'd

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- Because Prague chose not to speak (re transaction 1) and chose to be misleading (re transaction 2), he became a respondent in an SEC action. In a settlement:
 - ✦ The Commission found that Prague violated Rule 13b2-2(a) of the Exchange Act (regarding misstatements to auditors) and was a cause of SNCR's violation of Sections 13(a) and 13(b)(2)(A) of the Exchange Act (and related Rules) (regarding accurate books, records, and filings).
 - ✦ Ordered Prague to pay a \$25,000 civil penalty.
 - ✦ Suspended him, with a right to apply for reinstatement after 18 months (subject to conditions).

Howard S. Kleyman

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- Minnesota lawyer since 1971
- Agreed to act as a “paymaster,” and to accept money from investors into his IOLTA account.
 - ✦ The funds were purportedly advanced fees for the purchase or lease of bank instruments
 - ✦ But in classic prime bank-scheme fashion, any such instruments were purely fictitious

Kleyman Quiz

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When preparing to disburse monies from an escrow account, should an attorney:

- A. Use their own judgment about what would be in everyone's best interests;
- B. Follow their client's instructions; *or*
- C. Follow their client's instructions IF there is sufficient, reliable indicia that the conditions under which a disbursement is authorized have been met?

Kleyman cont'd

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- “Kleyman disbursed the investors’ funds per [his client’s] instructions, without performing any inquiry into whether the investors had received the promised bank instruments or returns.”
- Consequences:
 - ✦ Permanently enjoined (by consent) from violating anti-fraud provisions of the federal securities laws;
 - ✦ Enjoined from most activities involving the issuance / offer / sale of securities;
 - ✦ Agreed to permanent SEC suspension;
 - ✦ Disbarred.

Rule 102(e)(2)

aka Forthwith Suspensions

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- (2) ***Certain professionals and convicted persons.*** Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as an accountant, engineer, or other professional or expert has been revoked or suspended in any State; or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbaring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

Michael M. Krill

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- Krill pled no contest to a 24-count complaint filed by the Wisconsin bar alleging (among other things) that he engaged in professional misconduct related to an advance fee scheme by
 - ✦ Preparing documents related to the scheme,
 - ✦ Providing documents related to the scheme to investors, and
 - ✦ Offering a promissory note related to the scheme, all while recklessly disregarding whether the scheme was fraudulent.

Consequences:

1. License suspended for 4 1/2 years (retroactive to August 23, 2017);
2. Ordered to pay \$22,900 in restitution to harmed investors; *and*
3. Suspended by the SEC.

Christopher K. Davies

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- Pled guilty to conspiracy to commit securities fraud, in connection with a pump-and-dump scheme.
- Sentenced to time served + \$97,320.75 in restitution
- Suspended by the SEC

RULE 102(e)(1) aka OGC Investigations

(28)

(e) *Suspension and disbarment -*

- (1) **Generally.** The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:
- (i) Not to possess the requisite qualifications to represent others; or
 - (ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or
 - (iii) To have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

Our group handles all aspects

- Investigation (Same basic tools as ENF)
- Settlement
- Litigation (SEC Administrative Proceedings, district court actions to enforce SEC suspensions, and appeals)

Rule 102(e)(1) Examples (not an exhaustive list)

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- Violate Commission Suspension Order
 - Ex: Reilly, Hackman
- Violate Conflict-of-Interest Rules for Ex-Government Employees (18 USC 207, RPC 1.11)
 - Ex: Barasch, Bailey (accountant)
- Engage / Assist in Unauthorized Practice of Law (RPC 5.5)
 - Ex: Gewerter/Dowling/Hackman, Rubin, Craft
- Engage in dishonest conduct (RPCs 8.4(c), 4.1), including:
 - Providing doctored documents (Tamman)
 - Offering to compensate witness if not cooperative (Altman)
 - False statements

Rule 102(e)(1) Example:

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**NONCOMPLIANCE WITH A
SIDE OF UNAUTHORIZED
PRACTICE OF LAW**

**MESSRS. GEWERTER AND
HACKMAN AND MS. DOWLING**

Poll:

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If planning to hire a paralegal to work at your (predominantly) securities-law firm, which of the following do you think would be an ethical red flag?

- A. The paralegal is a felon who has pled guilty to securities law violations.
- B. The paralegal is a former attorney who was disbarred for misappropriating client funds.
- C. The paralegal has been permanently suspended from appearing or practicing before the SEC.

Gewerter & Dowling

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- Gewerter had been a securities-law specialist for years. He came to know Hackman, who was a disbarred, SEC-suspended, securities fraud-related felon.
- Notwithstanding that, he hired Hackman to act as a “paralegal” in his law firm.
- Along the way, he also hired Dowling, who was a litigator but not a securities lawyer.
- When Dowling left Gewerter for her own practice, she likewise hired Hackman as a “paralegal” to predominantly work on securities matters.

Gewerter & Dowling cont'd

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If you do decide to hire a disbarred felon as a paralegal, be particularly mindful of these RPCs:

- **Rule 5.3** : Make reasonable efforts to ensure non-lawyer staff's conduct is compatible with your own ethical obligations
- **Rule 5.5** : Do not engage in, or assist someone in, UPL
- **Rule 8.4** : Do not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

Poll**:

*** Possible spoiler alert*

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Which of the preceding RPCs* did the Commission find Gewerter and Dowling each violated vis-à-vis Hackman?

- A. (Failure to supervise)
- B. (UPL)
- C. (Dishonesty)
- D. All of the above

Gewerter

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Specifically, the Commission found that Gewerter:

Failed to make reasonable efforts to prevent Hackman from engaging in the practice of law, which enabled Hackman to assume the representation of Gewerter Law clients before the Commission.

Dowling

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And found that Dowling:

Failed to properly supervise Hackman by knowingly allowing him to engage in the unauthorized practice of law by performing legal work in appearing and practicing before the Commission notwithstanding his disbarment and suspension from appearing or practicing before the Commission as an attorney.

Respondent's conduct also reflected "dishonesty" and "deceit" in that by knowingly allowing Hackman to appear and practice before the Commission to perform legal services on behalf of EAD Law clients she created the false impression that he was legally authorized to perform such work.

Gewerter & Dowling cont'd

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- As a result, Gewerter and Dowling each agreed to be permanently suspended from appearing or practicing before the Commission.

See Matter of Gewerter, SEC Admin. Proc. 3-20377 (June 29, 2021) and *Matter of Dowling*, SEC Admin. Proc. 3-20378 (Nov. 2, 2021)

- While not directly related to aiding Hackman's UPL, Dowling was also sanctioned by the Nevada bar earlier this year. One condition imposed is that she "cease all business relationships with former Nevada attorney Shawn Hackman."

See In the Matter of Discipline of Elaine A. Dowling, Nev. Sup. Ct. No. 83817 (Jan. 14, 2022)

Shawn F. Hackman

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1. Presented himself to clients, persons working with each firm, and the public as a lawyer who was authorized to practice before the Commission, without taking measures to correct that misimpression or to avoid a recurrence.

Clients and other persons with whom he worked repeatedly referred to him as an “attorney” (or similar term, e.g. lawyer) in conversations, and in documents sent to the law firms, without correction by Hackman (or Gewerter or Dowling).

2. To conceal that he was providing legal services he was not legally authorized to perform, Hackman routinely used Gewerter & Dowling’s own email addresses and electronic signatures so it would appear they had performed such services instead of him.

Hackman cont'd

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3. Undertook engagements with the firms' clients that would involve practicing before the Commission. For some of those engagements, even negotiated the fees to be paid to the firm(s) *and/or directly to himself*.

Rule 102(f)

- (f) **Practice defined.** For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:
- (1) Transacting any business with the Commission; and
 - (2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

Part 205

- (a) **Appearing and practicing** before the Commission:
- (1) Means:
 - (i) Transacting any business with the Commission, including communications in any form;
 - (ii) Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;
 - (iii) Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or
 - (iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

Hackman cont'd

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Hackman's substantive legal work included:

- Drafting more than 100 SEC filings, for ~80 clients, without meaningful oversight by any licensed attorney
 - Including providing legal advice about the filings and associated securities laws / rules / regs
- Corresponding directly with clients, outside counsel (who were unaware he was disbarred), auditors, etc. as part of preparing SEC filings
- Directly charging and accepting fees for SEC-related legal work
- Corresponding with SEC staff (who were unaware at the time he was disbarred and suspended) about filings
- At Dowling's firm, drafting and signing (using her name) attorney opinion letters to be included in SEC filings, which Dowling did not review.

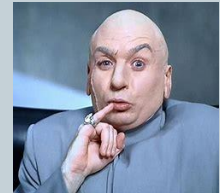
Remedies for noncompliance include:

- If suspended for term of years, can increase that suspension to and including permanent.
 - Example: Reilly – 3 years became permanent
<https://www.sec.gov/litigation/admin/2013/34-68599.pdf> (Jan. 8, 2013)
- Converting our order to a federal court order (Section 21(e)(1))
 - *SEC v. Hackman*, 2:21-cv-01234 (DNM)
 - *SEC v. Vinson*, 3:19-MC-0075 (NDTX) (2020)

Hackman cont'd

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- Disgorgement of fees received for work that violates the SEC's suspension
 - First awarded in accountant 102(e) cases. *See, e.g., SEC v. Taber*, 2013 WL 6334375 (SDNY Dec. 4, 2013)
 - First applied to attorney 102(e) cases in *Vinson*
 - *Agreed to disgorge \$6,000*
 - Extended in *Hackman*
 - *Ordered to pay nearly \$1 million in disgorgement and PJI* (April 29, 2022)



Reinstatements

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(5) ***Reinstatement.***

- (i) An application for reinstatement of a person permanently suspended or disqualified under [paragraph \(e\)\(1\)](#) or [\(e\)\(3\)](#) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.
- (ii) Any person suspended under [paragraph \(e\)\(2\)](#) of this section shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under [paragraph \(e\)\(2\)](#) of this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

Reinstatement reviews

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- Before the staff will make a recommendation on a petition for reinstatement, it will see—among other things—if complied with suspension order.
 - ✦ Term-of-years suspensions detail in the suspension order what must be shown
- Variety of tools to make further inquiry if we have any questions based on our compliance research.

Reinstatement orders are posted on the SEC's website. *See, e.g., Gasarch, available at <https://www.sec.gov/litigation/admin/2021/34-92106.pdf> (June 3, 2021)*

Daniel C. Masters

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- Permanently suspended in Sept. 2020, by agreement, as part of settling a Commission case alleging fraudulent misrepresentations and omissions. *See SEC Admin. Proc. File No. 3-20051 (Sept. 23, 2020)*
- Jan. 2022, filed a Motion to Vacate the Commission's 2020 order, including the suspension.*
 - ✦ Challenged the validity of the findings and order to which he had agreed
 - ✦ Argued withdrawing the related bankruptcy petition was akin to withdrawing a motion under FRCP 11, so no Rule 102(e) sanction was merited.

Masters cont'd

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- To be reinstated after a permanent suspension, Rule 102(e)(5) requires a showing of “good cause.”
 - ✦ *Wolfe* cases address what constitutes “good cause.” In *Wolfe I*, SEC said “the time elapsed since the imposition of the sanction [2 years] ... is not sufficient to permit a reasonable determination whether *Wolfe* possessed the qualifications and fitness necessary to justify reinstatement.” SEC Release No. 34-39209, 1994 WL 17094101 (June 14, 1994)
 - ✦ In *Wolfe II*, granted reinstatement after 7 years, noting the determination is “highly fact specific.” *Wolfe* had cooperated in a related criminal action, exhibited candor in his submissions, acknowledged the severity of his actions, and agreed to have his work reviewed by an independent audit committee and periodic peer review. *See* 1998 WL 28039 (Jan. 28, 1998)

Masters cont'd

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- OGC and ENF opposed Masters' motion to vacate.*
Re the 102(e) suspension, OGC argued he had not shown good cause to be reinstated because
 - He had engaged in egregious fraudulent conduct
 - He agreed to the permanent suspension
 - By contesting the underlying facts found by the Commission in its Order, he demonstrated that he did not appreciate the wrongfulness of his conduct,
 - Unlike in the *Wolfe* cases, he did not cooperate with the underlying enforcement action
 - An insufficient amount of time had passed (~16 months)

Masters cont'd

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- Commission denied Masters' motion to vacate.
See Masters, SEC Admin. Proc. File No. 3-20051 (May 20, 2022)
 - ✦ Masters “had not established the requisite compelling circumstances to justify vacating his settlement” and had “not shown good cause for reinstatement”
 - Serious misconduct
 - Letters of reference and good standing certificate from the California Bar did not outweigh the severity of his conduct
 - Failed to recognize his wrongdoing
 - Refused to cooperate during the Commission's investigation
 - Citing *Wolfe I*, the time elapsed “is not sufficient to permit a reasonable determination whether he presently possesses the qualifications and fitness necessary to justify reinstatement.”

Masters has appealed the Commission's decision.
See Masters v. SEC, Case No. 22-70131 (CA9)

Attorney Reporting

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**OR, HOW ATTORNEYS CAN
USE CONFIDENTIAL
INFORMATION
(SOMETIMES)**

External Reporting

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Post-Enron, at Congress' direction, the SEC issued Part 205 which includes:

- (2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:
 - (i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;
 - (ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury, proscribed in [18 U.S.C. 1621](#); suborning perjury, proscribed in [18 U.S.C. 1622](#); or committing any act proscribed in [18 U.S.C. 1001](#) that is likely to perpetrate a fraud upon the Commission; or
 - (iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

External Reporting cont'd

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- Some state versions of Model RPC 1.6 permit, or even in a few cases require, disclosure.
 - See, e.g., NJ RPC 1.6(b)(1): “A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person: (1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in . . . substantial injury to the financial interest or property of another[.]”
 - *See also* Wisc. SCR 20:1.6(b).

Internal Reporting: Retaliation

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- Anti-retaliation protection is important for lawyers.
 - *Lawson v. FMR LLC*, 571 U.S. 429 (2014)
- Practically speaking, attorneys need to use otherwise-confidential information (especially their own report) to prove a claim for retaliation.
 - Fortunately, this is permitted under most states' equivalent to Model RPC 1.6(b)(5) - can use client confidences to prove claim or defense in dispute with client.
 - Also permitted under Rule 205.3(d)(1):

Any report under this section ... or any response thereto ... may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

Retaliation cont'd

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- To the extent a state's rules do conflict with Part 205, the Commission takes position, and at least two tribunals have agreed, Part 205 preempts state law.
 - ✦ *Wadler v. Bio-Rad*, 212 F.Supp.3d 829, 855-57 (N.D. Cal. 2016)
 - ✦ *Jordan v. Sprint-Nextel*, 2009 WL 3165850 (DOL Adm.Rev.Bd Sept. 30, 2009)

Work With Bars

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Work with Bars Quiz

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What state Rules of Professional Conduct have been applied by state bars to attorneys who have been subject to discipline for misconduct related to securities work or Commission matters?

ANSWER: Many.

Beyond the state bar rules that have figured in Commission Rule 102(e)(1) proceedings,** the following RPCs* have been applied by state bars in disciplinary actions against attorneys related to SEC proceedings:

**References below are for the applicable state's version of the ABA's Model RPC's*

***See slides 30 and 34, above*

State Bar Sanctions in SEC-Related Cases

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- Rule 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.”
E.g., Guy Jean-Pierre, 2014 WL 144823 (Fla. Jan. 13, 2014);
<https://www.floridabar.org/public/acap/disc-docs/?icn=201151158&member=936421>
- Rule 1.8(a) – Limiting the circumstances where an attorney may “acquire an ownership, possessory, security or other pecuniary interest adverse to a client.”
E.g., Donald Tescher, 2018 WK 3635071 (Fla. July 16, 2018)
<https://www.floridabar.org/public/acap/disc-docs/?icn=201650292&member=121086>
- Rule 1.15(a), (b) – Requiring, inter alia, lawyers to keep their clients’ funds separate from their own.
E.g., State of Nebraska ex rel Counsel for Discipline of the Nebraska Supreme Court v. Nimmer, 300 Neb. 906 (2018); In re Disciplinary Action against Kleyman, 960 N.W.2d 566 (Minn. 2021).
- Rule 3.4(a)-(c) – Regarding, inter alia, altering or falsification of evidence.
E.g. David Tamman (CA) (corresponding Cal. Code provision); see generally
<https://discipline.calbar.ca.gov/portal/>

State Bar Sanctions cont'd

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- Rule 4.1(a) – “A lawyer shall not knowingly. . . make a false statement of material fact or law to a third person.”
E.g. Jean-Pierre; Adam Tracy (IL) (<https://www.iardc.org/Lawyer/Search>)
- Rule 5.5(a) – “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.”
Jonathan Lynch (PA), <http://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/137DB2018-Lynch.pdf>
- Rule 7.1 – “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”
Lynch
- Rule 8.1(b) – A lawyer in a disciplinary matter shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.”
Kleyman

State Bar Sanctions cont'd

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➤ Rule 8.4 – Lawyer shall not:

- (a) – “violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another”
Tescher; Nimmer
- (b) “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects”
Tescher; cf. Craft (FL),
[https://lsg.floridabar.org/dasset/DIVADM/ME/MPDisAct.nsf/DISACTVIEW/CF96336BD44A1C7A852587AE0010FC73/\\$FILE/_44.PDF](https://lsg.floridabar.org/dasset/DIVADM/ME/MPDisAct.nsf/DISACTVIEW/CF96336BD44A1C7A852587AE0010FC73/$FILE/_44.PDF)
- (c) “engage in conduct involving dishonesty, fraud, deceit or misrepresentation”
Kleyman; Lynch; Tracy; Tescher; Tamman; Cincinnati Bar Ass’n v. Wiest, 72 N.E.3d 621 (Ohio 2016), and Kentucky Bar Ass’n v. Wiest, 514 S.W.3d 530 (Ky. 2017); In re Altman, 137 A.D.3d 87 (NY App. Div. 2016) (precursor rule; also noted estoppel effect)
- (d) “engage in conduct that is prejudicial to the administration of justice.”
Tracy; Kleyman; Altman

Conclusion

Knowing what's right
doesn't mean much
unless you do what's right.

Theodore Roosevelt

**“Do the right thing. It will gratify
some people and astonish the rest.”**
- Mark Twain

