

# RCBA Ethics CLE

## Candor Toward the Tribunal

October 28, 2016

# Does the Law Promote Dishonesty?

*“Why no, sir, if you act properly. You are not to deceive your clients with false representations of your opinion. You are not to tell lies to a judge.”*

<sup>4</sup> Boswell, *The Life of Samuel Johnson*, at 47.

# **RULE 3.3, RPC**

**“SHALL NOT KNOWINGLY”**

**LIE TO OR MISLEAD THE TRIBUNAL**

# TRIBUNALS

- **Court**
- **Arbitration**
- **Legislative body or administrative agency acting in an adjudicative capacity**
- **Ancillary proceeding to the tribunal's adjudicative authority**

Rule 1.0(q), RPC, Rule 407, SCACR.

# Commission on CLE

Don't claim CLE credit for ethics when you arrive at the seminar after it's over.

(Or sign in and then leave.)

*In re Diggs*, 344 S.C. 392 (2001).

# Depositions



*In re Hammer*, 395 S.C. 385 (2011).

# Integrity of the adjudicative process

“present the client’s case with persuasive force”

“while maintaining confidences of the client”

“qualified by the advocate’s duty of candor to the tribunal”

Rule 3.3 cmt. 2, RPC.

# Potential Sanctions

| <b>Sanction</b> | <b>Attorney's Mental State</b> | <b>Actual or Potential Injury to Party or Effect on Proceeding</b>   |
|-----------------|--------------------------------|--|
| Disbarment      | Intentional                    | Serious injury to party or Significant adverse effect on proceedings |
| Suspension      | Knowing                        | Injury to party or adverse effect                                    |
| Reprimand       | Negligent                      | Injury to party or adverse effect                                    |
| Admonition      | Isolated Incident              | Little to no injury or Little to no adverse effect                   |



# Disclosure of Legal Authority

In the controlling jurisdiction,

Known to be directly adverse, and

Not disclosed by opposing counsel

Rule 3.3(a)(2), RPC.

# Use of Unpublished Orders or Opinions

“Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.”

Rule 268(d)(2). SCACR.

# Ex Parte Proceedings

All material facts known

that will enable an informed decision

whether adverse or not

Rule 3.3(d), RPC.

# Ghostwriting

*“With such participation, the attorney guides the course of litigation while standing in the shadows of the Courthouse door.”*

*In re Mungo, 305 B.R. 762 (Bankr. D.S.C. 2003).*

# AVOID ANY COVER-UP

*In re Dodds*, 366 S.C. 304 (2005).

1. Don't forge court documents.
2. Don't mislead the Court.
3. Don't misrepresent the Court's ruling in proposed order.

*In the Matter of Jennings*, 321 S.C. 440 (1996); see also S.C. Bar EAO 00-06 (subpoena where attorney does not believe the court has jurisdiction); S.C. Bar EAO 97-39 (second attempt at guilty plea).

# DO NOT ENGAGE IN MONEY LAUNDERING

LOCAL

AUGUST 8, 2014 7:17 AM

## Former state Rep. Thad Viers facing federal criminal charges

... indicted by a federal grand jury on 14 felony charges related to helping an associate hide assets in a road construction project.

The charges carry a combined maximum sentence of 145 years in prison.



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CRIME

APRIL 8, 2015 6:25 AM

# Viers pleads guilty to money laundering





Don't file affidavits with  
material misrepresentations.

(Also, attorney must review an affidavit before submitting it to the Court.)

*In re Massey*, 408 S.C. 483 (2014); see also S.C. Bar EAO 08-14 (identify  
hearsay).



Developer...

*"I thought I was guilty until my lawyer straightened me out on that."*

# Former Texas prosecutor Charles Sebesta disbarred for putting innocent Anthony Graves on death row for 12 years

February 10, 2016, 9:13 AM



Don't file a false voucher for CJA payments.

*In re Cleaver-Bascombe*, 892 A.2d 396 (D.C. 2006).

Candor is required of attorneys as parties, too.

Preamble cmt. 5, RPC; *In re Barker*, 352 S.C. 71 (2002).

89° FULL FORECAST

# Tampa Bay Times

WINNER OF 12 PULITZER PRIZES

Today's Paper | E-Newspaper  
Search

Bay Area AIR CONDITIONING INC. 40 Years in Business

SPA MANUFACTURERS, INC. CELEBRATING 34 YEARS IN CLEARWATER

Make us your home page 4:29.PM, Wednesday, October 19th, 2016

- HOME
  - MY EDITION
  - NEWS**
  - POLITICS
  - SPORTS
  - THINGS TO DO
  - VIDEO
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## Florida Bar recommends disbarment for three Adams & Diaco lawyers guilty of DUI setup

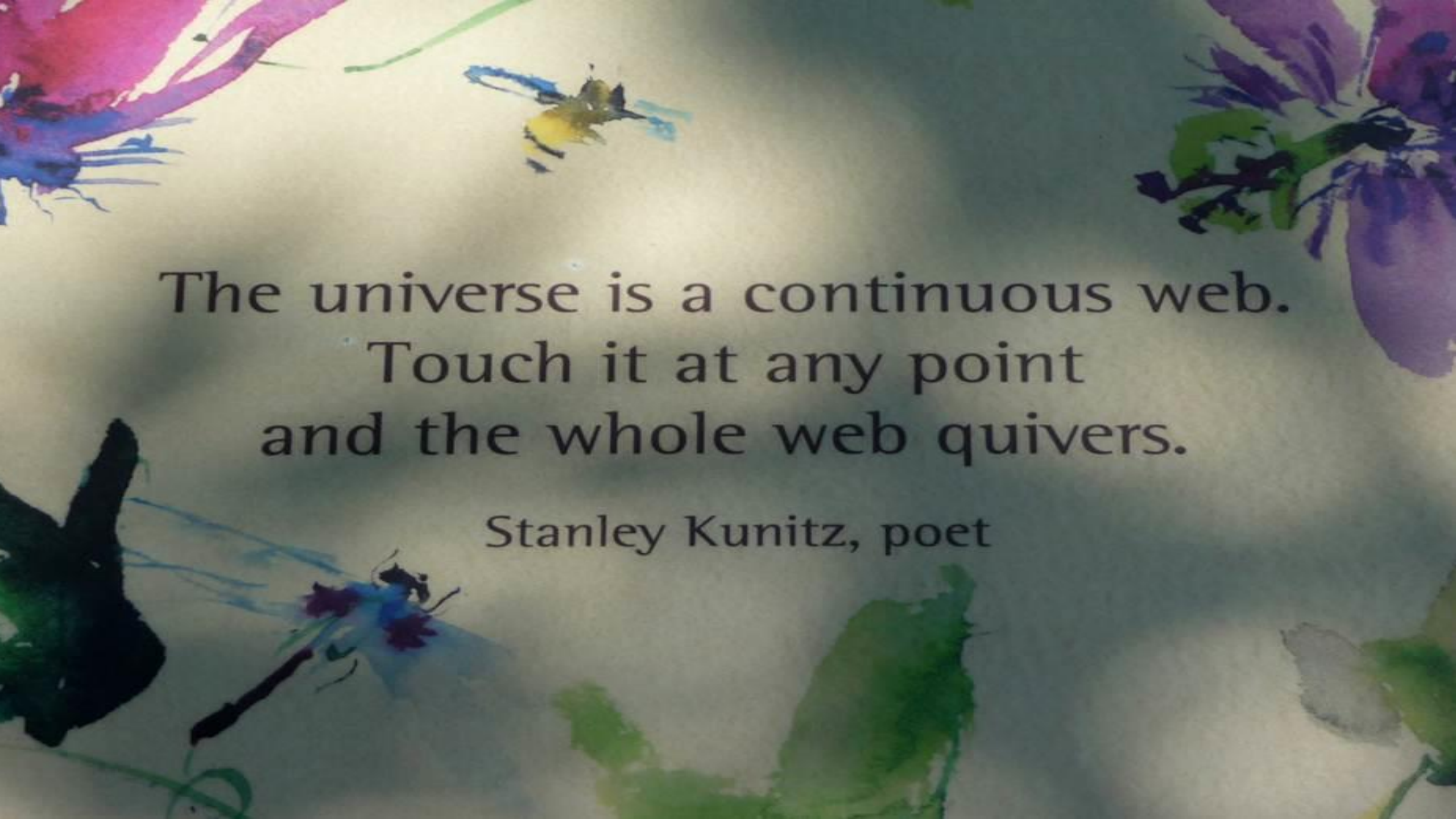
Monday, August 17, 2015 6:50pm





“Back at Malio's, Personius slipped onto a bar stool next to a man in his 60s. She drank and flirted, playing with her long dark hair.”

*Tampa Bay Times*

A watercolor illustration of a garden scene. In the upper center, a yellow and black striped bee is flying. To the left, a black butterfly is partially visible. The background is a light, textured wash of colors, including a large pink flower in the top left, a purple flower in the top right, and a blue and purple flower in the bottom left. Green foliage is scattered throughout the scene.

The universe is a continuous web.  
Touch it at any point  
and the whole web quivers.

Stanley Kunitz, poet



# RCBA Ethics CLE

## Fee Sharing with Legal Marketing Companies

October 28, 2016



*"Then we carefully disguise the bribes as legal fees  
by changing the word 'bribes' to 'legal fees.'"*

CN  
COLLECTION

# Fee Sharing

Compare S.C. Bar EAO 16-06 (advising against fee sharing)

with

S.C. Bar EAO 11-05 (allowing vouchers to be sold legal services).

# RCBA Ethics CLE

**Thank you**

October 28, 2016