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Divided Loyalties and Good Intentions Snag Two Lawyers in Disciplinary Proceedings

In two recent but unrelated disciplinary actions, the lawyers' good intentions did not insulate them from suspension or disbarment. Both lawyers shared confidential information learned from clients – arguably from a desire to redress a perceived wrong rather than from self-interest.

Ohio criminal defense lawyer, Christopher Cicero, learned from prospective client, Edward Rife (a tattoo parlor owner), that Ohio State University football players were selling and trading memorabilia for tattoos in violation of NCAA rules. Cicero sent e-mails to Ohio State football coach, Jim Tressel, warning him of the situation and promising to try to get the items back if he was retained by Rife. The resulting scandal led to an NCAA investigation, severe sanctions against the university, and Tressel's firing. [In a 5-2 decision](#), the Ohio Supreme Court suspended Cicero for one year, rejecting his argument that Rife was owed no duty of confidentiality because he never became a client. The two dissenting judges observed that: "Cicero's intentions were not for personal aggrandizement or personal gain, as found by the majority, but were to alert the coach about misconduct by his players that could affect the team."

In another [case](#) involving an even stranger fact pattern, a Kansas lawyer was disbarred for disclosing the names of Guantanamo Bay detainees to the Center of Constitutional Rights. The attorney, Matthew Diaz, served as a Judge Advocate for the U.S. Navy (like the Tom Cruise character in [A Few Good Men](#)) and was assigned to the Joint Task Force in Guantanamo Bay in 2004. Concerned for the detainee's civil rights, Diaz printed out a list of their names and other identifying information, cut the list into strips and inserted the strips into a Valentine's Day card, which he mailed to Barbara Olshansky at the Center of Constitutional Rights. Ms. Olshansky had previously requested the detainees' names in order to file writs of habeas corpus, but was denied the information because it was deemed "classified." Believing the list was a hoax, Ms. Olshansky submitted it to the judge handling the detainee litigation and an investigation ensued. Diaz was court-marshaled, sentenced to six months confinement, and dismissed from the Navy. In the subsequent disciplinary proceeding, the Kansas Supreme Court found that Diaz had violated Rule 1.6 by disclosing the confidential information of his client, the Navy, without consent and Rule 8.4(b) by disclosing classified government information.

Interestingly, both of these lawyers seemed to have been affected by emotional connections or experiences that traced back to their youths. Cicero himself had been an Ohio State University football player and may have been motivated by a misplaced sense of loyalty. Diaz's father – a nurse - had been sentenced to death for murdering 12 patients when Diaz was sixteen years old, but was spared execution because his habeas corpus petition remained pending until his death many years later. The upshot is that

lawyers must be wary of confusing their loyalties, even where the justifications for disclosing confidential information may feel compelling. Lawyers should also be mindful of their duties under Rule 1.18, which protects confidential information received from prospective clients, even when the lawyer is never retained.

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