# Five Lessons Young Lawyers Can Learn from Tom Girardi of Erin Brockovich and The Real Housewives of Bravo Fame

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For decades, many young lawyers looked up to California trial lawyer Tom Girardi. Girardi achieved fame in the 1990s after the movie "Erin Brockovich" immortalized his historic win against Pacific Gas & Electric. Thanks in large part to Girardi, the public utility paid hundreds of millions of dollars to people who accused the company of exposing them to cancer-causing chemicals and pollutants. Girardi took this fame, built an important trial firm named Girardi Keese, won billions more dollars on behalf of plaintiffs, and eventually married a singer known as Erika Jayne, who is a cast member on the popular television show "The Real Housewives of Beverly Hills."

For years, Girardi seemed to have it all. He was a lovable, experienced lawyer who amassed both fame and fortune the right way—by fighting for the least among us. In the twilight of his life, he had the ear of politicians and judges, was a part-time celebrity on primetime television and maintained a busy law practice.

In late 2020, however, that façade shattered. In November, there were murmurings of lawsuits against Girardi for the worst kind of professional misconduct: stealing client funds. His law firm shuttered, his wife filed for divorce, and the pop culture vultures started asking the big questions. How long was Girardi doing this? Did Jayne know Girardi was misappropriating funds? Was she in on it? Or, was she oblivious that he was using client money to boost her singing career and celebrity status?

These questions—while important—are mainly salacious. They are the kind we expect to be answered on Bravo's next season of The Real Housewives. For lawyers, the most important pieces of this story are the details no one has focused on. How does a lawyer go from famous to infamous? What rules were broken? Which best practices were ignored? How can you avoid his mistakes?

As of this writing, the State Bar of California has suspended Girardi's law license and admitted that they mishandled their own investigations into Girardi's use of client funds in his 40 plus year career. His own lawyers believe him to be mentally incompetent to manage his affairs. It is nothing short of a tragedy that a storied legal career like Girardi's ends with financial mismanagement at best and intentional misconduct at worst. Luckily, the Kentucky Rules of Professional Conduct offer good guidance on how we can maintain the integrity of the profession. Here are five tips that will help young lawyers stay out of trouble.

1. **Communicate your fees in writing.** Kentucky Supreme Court Rule 3.130 requires all lawyers to explain to their clients the scope of representation and the basis for the legal fees or hourly rates. This should be communicated before you begin representing any client. While it might be inconvenient (when you are busy) or awkward (when dealing with a client who you *really* want to please), it is best to communicate all fees in writing. This is especially important for matters with contingent fees, domestic relations disputes, or cases in which fees will be divided between lawyers who do not work at the same firm.

2. **Maintain a separate account for clients' funds.** The most serious accusation against Girardi is that he received clients' settlement funds and failed to pass those funds along to his clients (and co-counsel). Girardi's former clients assert that Girardi made a habit of investing their settlement funds under the guise of making sure the clients were fiscally responsible with their windfall. Of course, this is in contravention with every jurisdiction's professional responsibility rules.

   Ideally, every lawyer would encourage any person or company owing a client money to deposit such money directly into the account specified by the client. If that is not feasible, Kentucky Supreme Court Rule 3.830 requires virtually all lawyers to create and maintain an interest-bearing trust account for clients' funds.

   If lawyers could gamble with client funds, we would be placing the fruits of our clients' hard-won victories in jeopardy. This is immoral, but it is also cruel. Losing a client's funds because of frivolous money management inflicts double trauma on those we have sworn to represent. This can be an acute problem for new lawyers as well as solo practitioners or small firms.

   The Kentucky Bar Association website has great information about how to establish a client trust account. Of course, on or before September 1, Kentucky lawyers are required to submit an annual certification noting their compliance with (or exemption from) Supreme Court Rule 3.830.

3. **Pay your bills.** Court filings and reporting by *The New York Times* suggest that various financial institutions lent money to Girardi Keese that was never repaid. While the public might view these loans as odd (or, even worse, nefarious), it is quite common for law firms to receive loans.

   Firms of all shapes and sizes routinely ask banks or litigation finance companies to fund daily operations or provide resources for work on a specific case that the lawyer believes will result in a "big win." These loans are secured by a firm's projected earnings. If the lawyer wins, the lender receives a cut of the earnings. If the lawyer loses, the lender receives a cut of the lawyer's next win.

   The litigation finance industry is strong and growing. At least one source expects this industry to reach $22 million by 2027. This industry works because lenders take bets on good lawyers and good cases, and those lawyers almost never default on the loans.

   Girardi's lenders have accused him of winning the cases but *not* returning the funds. Girardi purportedly kept the money to fund his lavish lifestyle and his wife's music career. Since Girardi has not repaid his lenders, three things have happened. First, he has been forced into bankruptcy. Second, he had to close his firm, threatening the livelihoods of his fellow lawyers and support staff. Third, his current clients—including 8,000 people involved in an environmental litigation regarding a 2015 gas leak that could lead to settlements worth over $1 billion—now need new representation.

4. **Conduct your business in writing.** On June 14, 2021, ABC News released a documentary about Girardi and Jayne called "The Housewife and the Hustler." The most shocking part of the documentary was the sheer volume of substantive voice messages Girardi left clients and fellow lawyers regarding where the settlement money was, what Girardi would do if the settlement money didn't appear by a certain date, and who is to blame for the missing money. These voice messages were strange and downright damning. Unfortunately, many attorneys use voicemail in the same manner. They have (one-sided) substantive conversations, respond to criticisms and offer plans of action. A shocking number of young attorneys use text messages to conduct business.

   This should go without saying but using text messages or voice messages for substantive conversations should be avoided at all costs. Professionally, texts and voicemails should only be used to: (a) notify a client or co-worker of your whereabouts; (b) ask a client or co-worker to call you; or (c) advise someone of an urgent, safety concern. Not only are texts and voicemails notoriously open to interpretation, but they also cannot be stored as easily as e-mails or letters and they are able to be transferred too easily, which will damage any claim you and your client have to attorney-client privilege.

5. **Keep clients informed.** Many of Girardi's clients claim that he failed to contact them within a reasonable time. This is a fatal mistake. We must keep clients reasonably informed. Kentucky Supreme Court Rule 3.130 requires all lawyers to communicate with clients promptly and keep clients reasonably informed about the status of their matter.

   In a 2019 study conducted by legal technology company Clio, 82 percent of clients said timeliness was important and 79 percent said they expected responses within one day. Unfortunately, only 40 percent of the lawyers surveyed responded to client inquiries by e-mail. Of the 500 firms the clients called, over half had not responded to a voicemail messaged after 72 hours. In a world with nearly universal access to e-mail and Instagram stories that disappear in 24 hours, we have a responsibility to do better than this.

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