

IDEAS & TIPS

# I'll Take Turkewitz on Ethics Over Jack Marshall Any Day of the Week

April 5, 2010 | 5 Comments



[April 6, 2010 – Update] Jack Marshall offers a response at his blog, [here](#) and describes his position in the comments section below. Jack explains that his post was not intended to linkbait and I take him at his word for that and apologize for the accusation. However, I don't apologize for the tenor of my post. Too many solo and small firm lawyers have had their careers tarnished by over the top ethics accusations (such as [this one](#) where a lawyer faced discipline for criticizing a judge online) and I felt that Jack, in particular, should have understood the consequences to tossing around ethics charges.]

Over at his sparsely populated and impossible to navigate blog [Ethics Alarm](#), American University Washington College of Law adjunct ethics professor Jack Marshall accuses wildly popular [New York Personal Injury Law Attorney Law](#) blogger Eric Turkewitz of violating [Ethics Rule 8.4](#) (prohibiting dishonest conduct by lawyers) by [fooling a New York Times reporter with an April Fools prank](#). For those who missed the [joke](#), on April Fools Day, Eric posted that he was named the official White House blogger – and the New York Times' City Room blog covered the story, only to have to remove the post when it learned of the hoax.

Not that Eric needs any defense from these ludicrous assertions (he's done [just fine on his own](#)), but Marshall ought to know that ethics charges, even as flimsy as those he lobbs against Eric, can leave tracks, especially when a solo is involved. So I'm compelled to speak out. As Scott Greenfield posts at [Simple Justice](#):

That Jack Marshall may not have found Turk's prank funny is another matter. I did, but humor is personal and not everyone finds it in the same place. But his complaint isn't that the joke was lousy, but that it was unethical. That's a horse of a different color.

I agree – Marshall has no business levying ethics charges against Eric. Period. Moreover, like Scott, I can't help but wonder whether Marshall is [linkbaiting, i.e.](#), "posting these provocative half-baked accusations to draw business to his ethics consulting firm." (to quote Scott who puts it best).

But the other thing that really, really bugs me about Marshall's post is that Eric has done heaps more to educate the blogosphere on ethics than supposed "ethics guru," Marshall. If Marshall took twenty seconds to actually read Eric's blog, he'd see that Eric has spoken out against the practice of [ethics laundering](#) and he's impressed upon all lawyers that [outsourcing marketing = outsourcing ethics](#) (a concept that's so important that I've quoted it in my upcoming [Social Media book](#) with Nicole Black. Indeed, Eric's persistent efforts to e-shame lawyers into compliance has [actually produced results](#).

So when it comes to ethics, who should you listen to? An adjunct law professor and C-list blogger or someone who practices law, can talk ethics and play a mean April Fools' joke besides? I think the answer is clear.

Update: Per Ken's comment below I have de-emphasized Professor Marshall's adjunct status.

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Update (8/13/2011, 10 am - Please read through the comments and my responses in the Comment Section. I plan to update this post but for now, I In "Ethics & Malpractice Issues"

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Carolyn Elefant • 8 years ago  
I think Eric's past ethics conduct is relevant. I do not think that Rule 8.4 is black and white. What might be deceptive on any other day of the year is less so on April Fools Day. Deception is subject to interpretation. If I am interpreting what the rules say, I am going to look at context. April Fool's Day was one such context. Eric's stellar ethical conduct and his commitment to improving the ethics of the practicing lawyers is another. Oh - and by the way, did Jeremy Blachman also violate Rule 8.4 with his Anonymous Lawyer blog (that was later turned into a book)? I guess you'd probably say yes. Finally, I do sincerely apologize for accusing Professor Marshall of linkbaiting - he's said he did not post with that intent and I take him at his word. At the same time, Jack's post upset me because a solo, I'm concerned about my ethics conduct. One slip and I might be shut down for three months or a year and I can't afford that. So when someone starts raising ethics charges about a lawyer making a joke in the blogosphere, yes it frightens me enough to fight back.

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Jack Marshall • 8 years ago  
Wow. Your defense of Eric's™s prank (which IS an ethics violation, though not one that is worth prosecuting) is even lamer than his, though it is gratuitously nastier. But now I can use BOTH yours and his ethical non-sequiturs as examples of how many otherwise competent and sensible lawyers don't™t â€œgetâ€ ethics, and see it as some kind of game. 1) I didn't™t â€œchargeâ€ Eric with anything. I said putting out web hoaxes is misrepresentation and irresponsible, which it is, and that misrepresentation, even on April 1, is a violation of the ethics rules, which is also correct. There is nothing wrong or unfair about publically calling an unethical public act unethical. And it also is my job. 2) The fact that Eric has done many wonderful things, loves puppies and has at other times championed ethical practice has zero relevance to the question of whether what he did was unethical. This is called â€œthe Popeâ€™s Defense,â€ on my blog, the â€œSaintâ€™s Excuse,â€ and it is a rationalization. 3) Show me the â€œif itâ€™s funny, the misrepresentation doesn't countâ€ exception in the Rules. Then try it on a judge. I dare you. 4) Go ahead, stick with Eric's™s understanding of legal ethics, which apparently includes the delusion that anything the First Amendment permits is permitted by the Rules of Professional Conduct. (Hint: Eric is full of beans on this. I bet even you can think of plenty of statements a lawyer CAN make that are still Rules violations. You can't™t? Come to one of my seminars. 5) I don't™t â€œlink bait.â€ It's™s unethical. And if Eric was so concerned about the â€œchargesâ€ on my â€œsparsely populatedâ€ blog, heâ€™"and you-- shouldn't™t have mentioned the post.

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B.Tanner → Jack Marshall • 6 years ago  
Okay, you are just an idiot. You never have any idea what you're talking about, and you seem to convince yourself that you "prove" others wrong by insulting them and repeatedly insisting that you know what you're talking about.

You are an ethical fraud, and your own son has publicly referred to you as a Jackass. You should be ashd of yourself.

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Ken Adams • 8 years ago  
Carolyn: An utterly tangential point: I suggest that Marshall's status as an adjunct professor is neither here nor there. Adjuncts run the spectrum, from hacks to the exalted. For example, Vice Chancellor Leo Strine of the Delaware Chancery Court is an adjunct professor at Penn Law. Heck, I'm one myself (or rather, a "lecturer"). By definition, adjunct professorship can only be a modest component of someone's professional profile; it's the other part that really counts. Ken

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Eric T. • 8 years ago  
Thanks Carolyn. But link-baiting would be a pretty poor idea, since those that might seek to hire the baiter would then stumble across his post. I have to think that he was on the level for his post (that was made on April 3rd, after my deconstruction took place).

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