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Life and the Law: Ethical Issues Facing the Young Lawyer

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Life and the Law: Ethical Issues Facing the Young Lawyer

by Price Ainsworth

Out on the road that lies before me now
There are some turns where I will spin
I only hope that you can hold me now
Til I can gain control again.

“Til I Can Gain Control Again”

By Rodney Crowell

If you are young (that is recently out of law school) and you want to try lawsuits, chances are that you will end up trying a few car wrecks. If your experience is like mine, the first cases you will be asked to try as a plaintiff's lawyer are cases you cannot win, the facts are bad, the plaintiff was at fault, the plaintiff wasn't injured, or the plaintiff is an impeachment magnet.

This type of job assignment makes economic sense. A law firm cannot give its biggest case to its greenest lawyer to try. A client who is seriously injured through no fault of his own deserves to have his case tried by an experienced attorney. Nevertheless, we all want to win – good case or bad case. The stress for the young lawyer trying to win an impossible case is roughly equivalent to the stress the experienced lawyer feels when trying to win a significant case into which she has invested a great deal of time and money. So, the take home message is this: you have chosen a stressful occupation. It starts out that way and it ends up that way. How you choose to handle the stress, the disappointments of failure, the mistakes in practice and judgment, the bounty of success, and the allure of schemes designed to avoid work, are the tests of your character that will determine whether or not you were good at your job.

The preamble to the Texas Disciplinary Rules of Professional Conduct tells us that “[i]n the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest.” Art. X §9, 7. The Disciplinary Rules attempt to

spell out in black and white specific conflicts that arise. Some of those rules have become axiomatic:

Rule 1.01 Competent & Diligent Representation

- (a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyers' competence unless:
 - (1) another lawyer who is competent to handle the matter is, with prior informed consent of the client, associated in the matter; or
 - (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

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Rule 1.15 Declining or Terminate Representation

- (a) A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw,... from the representation of a client, if:...
- (2) the lawyer's physical, mental or psychological condition materially impairs the lawyer's fitness to represent the client...

I know that back in law school in your ethics class or during the bar review course for the MPRE, you heard the rules regarding competence to handle a case and impairment of conditions affecting representation. Maybe you even memorized the rule numbers and were familiar with the fact scenarios that were used to explain the rules. But I doubt that you ever felt like you would be the person that would be called upon to ask yourself if you were competent to handle a case, or perhaps incompetent to handle a case, because of an impairment you had developed. You're young. You're not burned out - you're excited about launching your successful career. You're bullet-proof.

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