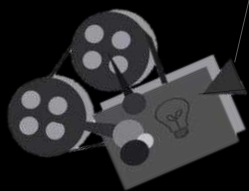


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# **Reel Legal Ethics**



AN  
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# Reel Legal Ethics

**Introduction:** I believe the movie scenes in my presentation are, for the most part, interesting and thought-provoking as entertainment. However, the described scenes also deal with some interesting legal ethical dilemmas. The presentation is intended to briefly identify and discuss each dilemma. It should be thought of as more of a jumping-off point for further discussion than a dispositive treatise regarding these issues. I have an hour to discuss about eleven different issues. Entire law review articles have been written about most of these issues.

If you have not already, I highly recommend that you watch these movies. You will be able to identify many more ethical issues (I plan on covering them, once I get the “green light”, in the sequel—“Bride of Reel Legal Ethics”). As stated, the movies are all entertaining and their genres run the gambit from heart-stopping thriller to hilarious comedy to bloody drama. Most contain realistic courtroom scenes. The best, however, are in *Anatomy of a Murder*.

Many other movies have the same ethical dilemmas addressed in this presentation. *Adam’s Rib* © 1949 Metro-Goldwyn-Mayer, for example, has the same husband/prosecutor and wife/criminal defense attorney premise as *Seems Like Old Times*. This presentation will, hopefully, allow you to not just recognize a cinematic legal ethical dilemma but will aid you in recognizing and addressing a legal ethical dilemma that you might encounter outside the omniplex.

Finally, these movies are set in different locations throughout the United States and in different eras. I, however, will limit my discussion to how current Texas rules or laws offer guidance to ethically resolve the dilemmas presented in the various scenes.

## ***The Wrong Man*** © 1956 Warner Bros. Pictures

**Description of scene:** Christopher Balestrero (Henry Fonda) has been arrested for robbing a business. Mr. Balestrero and his wife (Vera Miles) meet with an attorney (Anthony Quayle). The Balestreros hire the attorney despite the attorney’s lack of experience.

**Discussion:** Though the attorney is candid regarding his inexperience, he should have declined representing Mr. Balestrero in this matter. The scene insinuates that the Balestreros are willing to accept the attorney’s relative inexperience in exchange for the attorney charging a “rookie” attorney’s fee.

“Experience” can be a factor in determining a fee. Texas Disciplinary Rules of Professional Conduct (TDRPC) Rule 1.04(b)(7). However, TDRPC Rule 1.01 states that a “lawyer shall not accept employment in . . . [a] matter . . . beyond the lawyer’s competence.”

The attorney could have taken on the case if he were to handle the case with a more experienced attorney and the Balestreros agreed to that arrangement. TDRPC Rule 1.01(a)(1). In addition, the attorney could have taken on the case if it were an emergency. TDRPC Rule 1.01(a)(2).

The movie later reveals the trial of Mr. Balestrero where the defense attorney, though not stellar, performs adequately. The audience is left to conclude that the attorney took on the case knowing that he would obtain the knowledge necessary to adequately defend Mr. Balestrero through “additional study and investigation.” This would have actually put the attorney in compliance with TDRPC Rule 1.01 under Comment 4 (though it would have been better if the attorney had disclosed his intentions to become more competent at the initial meeting with the Balestreros).

### **Seems Like Old Times** © 1980 Columbia Pictures Corp.

**Description of scene:** Nicholas Gardenia (Chevy Chase) is being arraigned for a litany of different offenses. His attorney is his ex-wife, Glenda Parks (Goldie Hawn). The prosecutor at the arraignment is the District Attorney himself, Ira Parks (Charles Grodin). Ira Parks and Glenda Parks are currently married.

**Discussion:** Standing alone, there is nothing inherently improper with Ms. Parks’ representation of Mr. Gardenia. The movie makes clear that Ms. Parks believes that Mr. Gardenia is innocent of the charges and is working in his best interests. All the parties are aware of the past relationship between Ms. Parks and Mr. Gardenia. Since there is no apparent conflict regarding Ms. Parks’ representation, the judge, as depicted, is not required to inquire further into the relationship. See *Howard v. State*, 966 S.W.2d 821, 825 (Tex.App.—Austin 1998, pet. ref’d). There could, of course, be a conflict if the movie were tweaked just a little. For example, if Ms. Parks’ and Mr. Gardenia’s divorce were not final and they were fighting over custody of their kids, then it would be in Ms. Parks’ best interest that her client be convicted. TDRPC Rule 1.06 (b)(2) would prevent Ms. Parks from representing Mr. Gardenia in that case because her “representation would be limited by that lawyer’s own interests”.

Ms. Parks representing a client being prosecuted by her husband is slightly more problematic. There is not a TDRPC Rule specifically prohibiting this situation. Also, the case law reflects that where parties are represented by lawyers “related by blood, marriage, or otherwise on intimate terms, [it] is, standing alone, entirely proper, and neither disclosure nor consent by either client is required.” 48 *Handbook of Texas Lawyer and Judicial Ethics*, §6:8, at 773 (Texas Practice 2008).

In *Peek v. Harvey*, for example, the attorney disputing the results of an election was the son of the County Attorney seeking to uphold the election results. 599 S.W.2d 674 (Tex.Civ.App.-Texarkana, May 13, 1980), dismissed (Oct. 8, 1980). Though the Court of Civil Appeals opined that the court could have disqualified both attorneys, without a showing of harm, there was no reversible error. *Peek* at 676. Similarly, a guilty plea was affirmed where the judge was the father of the prosecutor because the State is not a “party”. *Lyon v. State*, 764 S.W.2d 1, 2 (Tex.App.-Texarkana, October 18, 1988), affirmed January 12, 1994, cert. denied. (A judge is prohibited from presiding over matters where the parties are related to him/her by “consanguinity or affinity within the third degree.”) (citing Texas Code of Criminal Procedure Article 30.01).

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