

TEN PLUS RULES OF ETHICAL DECISION MAKING

Michael P. Maslanka
Constangy, Brooks & Smith, LLP
1201 Elm Street,
Suite 2550
Dallas, Texas 75270
(214)646-3420
mmaslanka@constangy.com

Note: This paper was converted from a scanned image. The conversion has been reviewed for accuracy; however, minor spelling or text-conversion errors may still be present.

Client expectations are changing. Increasingly - especially in a post-Enron and post-economic meltdown world — clients look to us to help them make ethically based decisions. We are morphing into consiglieres. And, we must be ready to meet their changing expectations. Or, clients are putting *us* in ethical dilemmas, sometimes inadvertently, sometimes deliberately. So to help us all, I've put together these keys on ethical decision making

Key No. 1; *Ethics Isn't a Movie*

While *Norma Rae* and *Erin Brockovich* are entertaining movies, they don't reflect real life. Seldom is an ethical decision a matter of high drama. Instead, it's difficult, grueling, and often thankless work. But, plaintiff and defense lawyers sometimes fall into the trap of thinking it is a movie, and becoming a hero of their own story. Lawyers on the defense side tend to make everything a "*High-Noon*" scenario between them and the employee, while lawyers on the plaintiffs side often cast themselves into the roles of one brave soul against a heartless corporate machine. As with life, the truth is in the middle, and you lose your effectiveness as a counselor by buying into either story line.

I know this may sound odd, but let me tell you a story on why to delete the word "ethics" from your vocabulary. I was picking a jury in an employment case several months ago. A new lawyer was picking one just before us. He consistently asked the jury pool the following question: "Do you think if selected to serve on this jury, that you could be fair?" Not surprisingly (at least to me), they all thought they would be. When I ran into him in the hall later that day, I gave him some advice on jury selection and, well, he told us to mind our own business.

But the same principle applies here: everyone thinks that she is an ethical person, or she is a better person than she really is, or convinces herself that she is more ethical than those around her. Instead of using "ethics," try using "business integrity." It's easier to talk about ethical issues by using the "Trojan Horse" of business integrity. Once you start talking about ethics and morality, the discussion slips into argument, with the client becoming defensive. Remember: framing the issue matters just as much as the issue itself and, when counseling an individual, try framing it in terms of "personal integrity." It's all about making integrity based decisions.

Key No. 2: *It's Not about You*

The essence of being a good adviser, especially on issues that are integrity related, is to understand that it's about the client, not about you. This is somewhat akin to the idea of being a hero in your own movie. When you make it about you, you're incapable of giving advice on dealing with situations involving business or personal integrity. It's like the scene in *The Verdict* with Paul Newman.

He's ready to accept \$250,000 in settlement, but decides to go the hospital to take some photographs of his client - the victim of a botched operation in a Catholic hospital - who is on a respirator. He takes a few pictures hoping to get more money in settlement when he meets with the Cardinal that afternoon. Not a word is said in the scene, and all you hear is the hiss of the respirator. You see it all in his face: it moves from interest, to concern, to a bulb going off above his head saying essentially, "If I win this case, I can make up for everything I've done wrong in my sorry life." Cut to the Cardinal's office, where he rejects \$250,000. He made it about himself and he was wrong.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Ten Plus Rules of Ethical Decision Making

Also available as part of the eCourse

[Ethics for Health Lawyers](#)

First appeared as part of the conference materials for the

26th Annual Health Law Conference session

"Ethics Roundtable"