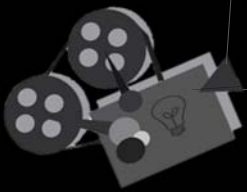


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Reel Legal Ethics

Part Deux



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Reel Legal Ethics Part Deux

Introduction

I presented *Reel Legal Ethics* at this conference two years ago. *Reel Legal Ethics Part Deux* is *The Godfather Part II* of ethics PowerPoint sequels. Those fearing the *Grease 2* of ethics presentations need not worry. As was the case with my prior presentation, *Reel Legal Ethics Part Deux* presents movie scenes that are compelling as entertainment. More importantly, these new scenes present situations that are thought-provoking as legal ethical dilemmas. This sequel, like the original, will identify and discuss these dilemmas accurately, but concisely. The information and analysis will give you a good understanding of the ethical considerations applicable to each dilemma. For an exhaustive analysis of each, however, I would be forced to just talk about, maybe, two scenes. That would both create a false impression (that I am boring) and present unnecessary details (that would only put you to sleep).

To prepare for this presentation, I watched (and re-watched) many movies. Most, surprisingly enough, would not be considered “courtroom dramas.” In fact, many of the movies that provide the most interesting ethical dilemmas have just the slightest tangential connection to the law. Their genres run the gambit from heart-stopping thriller to screwball comedy to bloody drama. Most contain very authentic courtroom scenes. Disappointingly, the movies’ treatments of outside-the-courtroom shenanigans are not as authentic. Some attorneys, like Vincent “Vinny” Gambini and Atticus Finch, are depicted as genuinely decent and humble. Most, however, are depicted as self-centered and self-righteous Machiavellians. Thankfully, this dramatic conceit is far from the truth!

These movies are all set in different locations throughout the United States and in different eras. My presentation, however, will focus on how current Texas rules or laws, unless otherwise indicated, offer guidance to ethically resolve the various scenes’ dilemmas. I highly recommend that you watch these movies in their entirety. You will be able to identify even more ethical dilemmas once you have a better understanding of the context surrounding the scenes.

This presentation will enable you to do more than just identify cinematic legal ethical dilemmas, however. With the knowledge acquired and careful observation, you will be able to recognize and address real-life legal ethical dilemmas encountered far outside the buttery confines of the omniplex.

Description of scene one: Tom Hagen (Robert Duvall) is the attorney/consigliere for the Corleone crime family. Hagen meets with Don Vito Corleone (Marlon Brando) and Santino “Sonny” Corleone (James Caan) regarding an upcoming meeting with Virgil “The Turk” Sollozzo (Al Lettieri). Hagen explains that The Turk is well-connected in trafficking heroin. Hagen advises Don Vito that the Corleones should work with The Turk because selling heroin is a lucrative enterprise with a tremendous future. Hagen also points out that, with the additional proceeds, the Corleones will be better able to further their other criminal endeavors.

Discussion: The Texas Disciplinary Rules of Professional Conduct (TDRPC) “define proper conduct for purposes of professional discipline.”¹ “They are imperatives, cast in the terms ‘shall’ or ‘shall not.’”² All Texas lawyers “shall be governed by the [TDRPC].”³ Consequently, these rules form the basis of almost all ethics complaints against Texas attorneys.

Generally, “a lawyer shall exercise independent professional judgment and render candid advice.”⁴ Here, Hagen should be concerned that he is being asked for an opinion outside his area of legal expertise. Though certainly able to give his thoughts regarding investment advice, Hagen should make it clear that he is not an expert in the drug business. “Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation.”⁵ Simply stated, sometimes the best advice that you can give your client is to seek the advice of someone more qualified.

Perhaps more troubling than the fact that Hagen is offering advice in an area outside his area of expertise is the fact that he is advising his client to engage in criminal conduct. Literally, rule number one is that “A lawyer shall not assist . . . a client to engage in [criminal] conduct.”⁶ Of course, determining whether a matter is criminal or not can be a very complicated matter requiring a sound legal analysis. Here, Hagen is advising the Don to sell heroin. The legal ramifications, in contrast to the illegal ramifications, of such advice require very little analysis.

If a client reveals plans to commit a crime “likely to result in substantial injury to the property or financial interests of another,” then the attorney should try and convince the client to not commit the crime.⁷ Heroin-trafficking does not seem to fall within these parameters. Nonetheless, in his role as an advisor, Hagen could advise the Don against this course of action because of its potential “substantial adverse legal consequences.”⁸

Of course, Hagen is not merely a disinterested attorney giving theoretical advice. He is a part of the Corleones, and the proceeds of the proposed illegal conduct would benefit him

¹ TEX. DISCIPLINARY R. PROF’L CONDUCT SCOPE 10, (1989) *reprinted in* TEX. GOV’T CODE, tit. 2, subtit. G app. A (TEX. STATE BAR R. art. X, § 9) [hereinafter, TDRPC].

² *Id.*

³ ORDER OF THE SUPREME COURT, Oct. 17, 1989.

⁴ TDRPC R. 2.01.

⁵ TDRPC R. 2.01 cmt. 4.

⁶ TDRPC R. 1.02(c).

⁷ TDRPC R. 1.02(d).

⁸ TDRPC R. 2.01 cmt. 5.

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