

Ethics in Negotiations: The True Cost of Representation

Michael J. Golden

A Very Old Question

"[S]uppose, for example, a time of dearth and famine at Rhodes, with provisions at fabulous prices; and suppose that an honest man has imported a large cargo of grain from Alexandria and that to his certain knowledge also several other importers have set sail from Alexandria, and that on the voyage he has sighted their vessels laden with grain and bound for Rhodes; is he to report the fact to the Rhodians or is he to keep his own counsel and sell his own stock at the highest market price? "

The Famine at Rhodes, Cicero, De OFFICIIS, BOOK III. xi.-xii

That Is Still Relevant

Spaulding v. Zimmerman

01/03/57 – Plaintiff's 1st doctor examines Plaintiff

02/22/57 – Defendants' doctor examines Plaintiff

03/01/57 – Plaintiff's 2nd doctor examines Plaintiff

03/04/57 – Case called for trial

03/05/57 – Parties inform Court of settlement

05/08/57 – Settlement approved

Spaulding v. Zimmerman, 116 N.W.2d 704, 706 (Minn. 1962)

That Is Still Relevant

Spaulding v. Zimmerman

Except for the character of the concealment in the light of plaintiff's minority, the Court would, I believe, be justified in denying plaintiff's motion to vacate, leaving him to whatever questionable remedy he may have against his doctor and against his lawyer. ...

There is no doubt that during the course of the negotiations, when the parties were in an adversary relationship, no rule required or duty rested upon defendants or their representatives to disclose this knowledge.

Spaulding v. Zimmerman, 116 N.W.2d 704, 706 (Minn. 1962)

That Is Still Relevant

Alton Logan

1982 – Murder at McDonald's

1982 – Alton Logan and Edgar Hope arrested

1982 – Andrew Wilson arrested for murdering two officers

1982 – Hope informs his counsel Wilson was the 2nd gunman

1982 – Wilson confesses to his counsel

1982 – Logan convicted

2007 – Wilson dies in prison and his counsel come forward

2008 – Logan freed

Aspiration

Texas Rules Preamble

“Each lawyer’s own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.”

Tex. Disciplinary R. Prof. Conduct, Preamble, n. 9

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