LEGAL ETHICS PROGRAM

1.5 CLE HOURS

SPONSORED BY THE MISSOURI FEDERAL PUBLIC DEFENDER OFFICE

FRIDAY, OCTOBER 2ND, 8:30 AM til 10:00 AM

KANSAS CITY, MISSOURI
Scenes from “The Verdict”
Legal Ethics Provisions Applicable to Scenes From “The Verdict”

• Rule 4-1.2(a): Scope of Representation

  - A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Rule 4-1.2(c), (f) and (g), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
Legal Ethics Provisions Applicable to Scenes From “The Verdict”

- Rule 4-1.4(a)(1-3): Communication

  - A lawyer shall:

    - keep the client reasonably informed about the status of the matter;
    - Promptly comply with reasonable requests for information; and
    - consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.
Legal Ethics Provisions Applicable to Scenes From “The Verdict”

• CANON 2: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY
  
  – Rule 2.6(B). Ensuring the Right to Be Heard

• A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

  – Cmts. [2]-[3]: The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party’s right to be heard according to law. The judge should keep in mind the effect that the judge’s participation in settlement discussions may have, not only on the judge’s own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.
Scenes from
“Michael Clayton”
Legal Ethics Provisions Applicable to Scenes From “Michael Clayton”

- Rule 4-1.1: Competence
  
  A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- Cmt. [1]: In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.
Legal Ethics Provisions Applicable to Scenes From “Michael Clayton”

- Rule 4-1.6(b)(1)-(4): Confidentiality of Information

  - A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

    • to prevent death or substantial bodily harm that is reasonably certain to occur;

    • to secure legal advice about the lawyer's compliance with these Rules;

    • to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

    • to comply with other law or a court order.
Legal Ethics Provisions Applicable to Scenes From “Michael Clayton”

• Rule 4-1.13(b). Organization as Client

  – If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization.
Legal Ethics Provisions Applicable to Scenes From “Michael Clayton”

• Rule 4-1.16(a)(1)-(3). Declining or Terminating Representation

  – A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

  • the representation will result in violation of the rules of professional conduct or other law;

  • the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

  • the lawyer is discharged.
Scenes from “Cape Fear”
Legal Ethics Provisions Applicable to Scenes From “Cape Fear”

- Rule 4-1.7(a)(2): Conflict of Interest: Current Clients

  A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

  - there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
Legal Ethics Provisions Applicable to Scenes From “Cape Fear”

- Rule 4-1.8(b): Conflict of Interest: Prohibited Transactions
  
  - A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
Legal Ethics Provisions Applicable to Scenes From “Cape Fear”

• Rule 4-8.3(a): Reporting Professional Misconduct

– A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.
Scenes from “Anatomy of a Murder”
Legal Ethics Provisions Applicable to Scenes From "Anatomy of a Murder"

• Rule 4-1.2(f): Scope of Representation

  – A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
Legal Ethics Provisions Applicable to Scenes From “Anatomy of a Murder”

• Rule 4-2.1: Advisor

  – In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.
The End
JENNIFER HORAN graduated *Magna Cum Laude* with a Master’s Degree in English Literature from the University of Arkansas at Fayetteville and thereafter obtained her J.D. Degree with high honors from the University of Arkansas School of Law in 1983. Ms. Horan served as Director of the Legal Writing and Appellate Advocacy Program immediately upon graduation and has taught Trial Advocacy at both of Arkansas’ Law Schools. She also maintained a solo law practice for several years and served on the National Defender Services Advisory Committee before being appointed by the Eighth Circuit Court of Appeals as Arkansas’ first Federal Public Defender in 1994. In that position, Ms. Horan established the Federal Public Defender Organization for the Eastern and Western Districts of Arkansas - - including a Capital Habeas Unit to handle death penalty cases at the post-conviction stage. Ms. Horan has served on the Eighth Circuit Model Criminal Jury Instructions Sub-Committee for over fifteen years and has been a guest lecturer at the Harvard University School of Law and elsewhere. Earlier this year, Ms. Horan was reappointed by the Eighth Circuit Court of Appeals for a sixth term as Federal Public Defender for the Eastern District of Arkansas.

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