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Y O U N G L A W Y E R

Maintaining Ethical Obligations and Focusing on Client Goals as a Young Lawyer

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Special to the Legal

Spurred by a legal system composed of advocates, litigation proves to be a competitive environment where each lawyer functions as a zealous representative for his client. Whether it is merely human nature or the personality types drawn to litigation-based areas of the law, perhaps a bit of both, the atmosphere of litigation to an extent parallels that of a sporting event—abundant with a competitive spirit. Each advocate strives to move forward the interests of his client, avoiding pitfalls and maneuvering based upon the positions and strategies of opposing counsel. While litigation may mimic a sporting event in a sense, the truth is, it is far from it, yielding real and potentially life-altering consequences for the litigants engaged in the matter. With the potential of such a significant impact, young practitioners should not be blinded by the competition of litigation. They must always adhere to vital pillars of the practice—maintaining the



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ethical standards and protecting the integrity of the profession, all while focusing on client goals to achieve solutions for clients' legal issues.

Turning to the area of ethics, young practitioners cannot be misguided by the competitive nature of litigation when confronted by an unrepresented party. The ethical pillars of the practice cannot be forgotten, despite the temptation to obtain desirable results for your client. The Model Rules of Professional Conduct specifically address transactions with persons other than clients. Pursuant to Rule 4.1, "Truthfulness in Statements to Others," a lawyer shall not knowingly: make a false statement of

material fact or law to a third person; or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client unless disclosure is prohibited by Rule 1.6. Therefore, a young lawyer cannot be tempted by dishonesty or any form of misrepresentation when representing a client immersed in litigation, even when dealing with an unrepresented party. Rule 4.3 addresses how to deal with an unrepresented person and specifically discusses the need for a lawyer to disclose his role in the pending litigation with the individual unrepresented by counsel. Also, under Rule 4.3, the lawyer may not give legal advice, other than to advise to secure counsel, if the lawyer knows or reasonably should know the interests of such a person are adverse or conflicting with the interest of a client. Thus, when a new practitioner faces an unrepresented opponent, the competitive atmosphere of litigation must not overshadow his obligation to make proper disclosures of his role in the matter.

Communication is, of course, also an issue when dealing with a person represented by counsel. As outlined in Rule 4.2, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in a matter unless consent is given by the other lawyer or authorized to do so by law or court order.

The contest of litigation cannot blind an attorney when in the courtroom. Rule 3.3: “Candor Toward the Tribunal” forbids a lawyer from making false statements to the court. It also requires a lawyer to correct previously made false statements and to disclose proper legal authority, even authority known to be adverse to the position of the client. A lawyer must also not offer evidence that a lawyer knows to be false. The competition of litigation must not lead a young lawyer to stray from these principles, even if it may make winning a case seem more probable.

In addition to his adherence to ethical obligations when engaged in litigation, a young attorney must not fail to lose sight of a client’s goals and interests. Although the competitive nature of litigation may feel akin to winning or losing at all costs like in a sporting event, a client’s interests are often much more complicated than a binary outcome of a win or a loss. Rather than maintaining a myopic focus solely on results, a young attorney should develop a vision for creative solutions and alternative paths to outcomes desirable

to the client’s goals and interests. Instead of viewing litigation as a competition where one must win or lose, a young lawyer must embrace litigation as, at times, a winner-take-all event, but in other instances a leverage tool to balance exposure and risk. One must not lose sight of the risk of significant loss, especially when viable alternatives acceptable to a client’s goals are available, like a reasonable settlement.

When engaged in litigation, clients keep a watchful eye on expo-

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sure associated with the matter, weighing the associated risks, the odds of the potential outcomes, and the costs associated with continuing down the path of conflict. Remaining mindful of the costs associated with litigation, a win can be devalued if the costs outweigh the benefits achieved by litigation. A young counselor must be wary of expenses related to litigation and capable of communicating them to a client to assess the viability of litigation. The competition of litigation must not tempt a new attorney to press onward to a winner-take-all outcome, when

alternative and more attractive options may be available to a client.

To conclude, a young lawyer should approach litigation with a great deal of respect, avoiding the trap presented by the competitiveness of the endeavor. Choices and advice driven by a competitive spirit in some instances may run afoul of ethical principles and yield results undesirable to clients. A young lawyer, and any lawyer, when engaged in the arena of litigation, must never lose sight of ethical principles governing the practice and aimed to maintain its integrity. Furthermore, while the competitive nature of litigation may tempt a young lawyer to win at all costs, he must not lose sight of client goals, interests, and the costs associated with further litigation. Through experience and cognizance of the potential pitfalls, a young attorney will not be led astray by the contest posed by litigation and will harness its benefits to achieve client goals while maintaining an ethical practice. •