

# LEGAL ETHICS IN THE EMERALD CITY: WHAT THE RULES OF PROFESSIONAL CONDUCT SAY ABOUT BRAINS, HEART, AND COURAGE

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The Wizard of Oz follows the story of Dorothy Gale, Toto the Dog, the Scarecrow, the Tin Man, and the Cowardly Lion as they travel down the Yellow Brick Road to the Emerald City in search of the Wizard of Oz. In some respects, the Scarecrow’s quest for a Brain, the Tin Man’s quest for a Heart, and the Cowardly Lion’s quest for Courage have parallels found in the ABA Model Rules of Professional Conduct (the “Rule” or “Rules).

The Scarecrow’s quest for a brain implicates Rule 1.1 with respect to “Competence”; appreciating the ethical obligations of maintaining the confidentiality of information relating to the representation of the client under Rule 1.6 (and how the lawyer’s Rule 1.6 ethical obligation to maintain confidentiality is related to, and yet distinct from, the attorney-client privilege evidentiary rule); the understanding that, as recognized by Rule 1.2, the client in the attorney-client relationship is the principal and the attorney is the agent; and yet, under Rule 1.4, the lawyer has an ethical obligation to communicate with the client and provide information and guidance to the client so that the client can make informed decisions about the representation.

The Tin Man’s quest for a heart reminds us that, as lawyers, we are also public citizens having special responsibility for the quality of justice. With respect to this special responsibility, the Preamble to the Rules recognizes: “Lawyers should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those

who because of economic or social barriers cannot afford or secure adequate legal counsel.” In that regard, Rule 6.1 addresses “voluntary pro bono publico services,” the work that we lawyers should aspire to do, and what efforts and endeavors qualify under the Rule. In addition, Rule 8.4(g) identifies as professional misconduct harassment or discrimination based on “race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” These Rules remind us that, as lawyers, we have a higher calling.

The Cowardly Lion’s quest for courage includes recognizing under Rule 1.2(b) that lawyers are sometimes asked to represent unpopular clients or clients with whom the lawyer’s own beliefs and opinions differ greatly. Rule 1.2(b) reminds us that, just because a lawyer represents a client does not mean that the lawyer shares their client’s political, social or moral opinions. Other Rules implicate the need for an attorney to sometimes tell a client “no” or that, as Rule 1.4(a)(5) makes clear, a lawyer cannot and will not take action in representing the client that will be contrary to the Rules of Professional Conduct or other laws. Likewise, Rule 1.2(d) prohibits a lawyer from advising the client to engage in a criminal or fraudulent act or with assisting the client in doing so. The lawyer may – and probably should – not only advise the client against such criminal or fraudulent action, but may advise the client about the possible adverse consequences of the client continuing down that criminal or fraudulent path.

In addition, depending on the circumstances, the lawyer may also be permitted to disclose otherwise protected information relating to the representation of a client. At least four of Rule 1.6(b)’s exceptions to a lawyer’s ethical obligation to maintain confidentiality permit disclosure either when third-parties are about to be harmed by the client’s actions or when the lawyer is required by other law or court order to make such a disclosure. Furthermore, when a lawyer is representing an organization or entity, it may be necessary – and required – under Rule 1.13(b) for that the lawyer report “up the ladder” when a client constituent is engaging or about to engage in conduct that either violates the law or violates a legal obligation of the organizational client – and such conduct is likely to result in substantial injury to the client. It takes courage to stand up to the client and tell the client no. But sometimes it has to be done, as the Rules of Professional Conduct themselves recognize.