

# Plaintiff Counsel Caught in the Crosshairs of Ethical Dilemmas: Practical Solutions

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# Hypothetical

- Attorney John Jones (Jones) represents husband and wife who were injured in a motor vehicle accident.
- At the time husband and wife told the police that wife was driving.
- While husband has recovered, wife has not, having sustained a serious neck injury which required neck surgery.
- Within weeks of filing the Complaint, the husband alone advised Jones that from the start, husband and wife had lied, and that in fact husband was driving and not the wife.

# Attorney Jones' Questions

1. Can or must Jones withdraw as counsel?
2. Does the Complaint need to be withdrawn?
3. Can the existing Complaint be amended to reflect the facts as Jones now knows them to be?
4. What disclosures are necessary to the Court and the insurance carrier who is handling the third party liability claim?
5. What may Jones disclose without violating any applicable privilege even if the potential ramifications include criminal charges?
6. Would it be permissible (of course with the client's consent and authorization) to discontinue the action & walk away without the need to notify anyone of anything? In other words does the requirement of candor to the tribunal extend to correcting a pleading even if the action is discontinued?

# Relevant Rules of Professional Conduct

# RPC 1.0 Terminology

(e) "Informed consent" denotes the agreement of a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

# RPC 1.16 Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - (1) the representation will result in violation of the rules of professional conduct or other law
- (b) except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
  - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
  - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation....
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests....

## RPC 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
- (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or
- (5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

# RPC 4.1 Truthfulness in Statements to Others

- (a) In representing a client a lawyer shall not knowingly:
  - (1) make a false statement of material fact or law to a third person; or
  - (2) 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.
- (b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.