

Steering Clear of Ethics Pitfalls

By Susan Kidd

Ethical questions sometimes lurk in the midst of everyday, common tasks. They may arise when interacting with opposing counsel, responding to discovery requests, dealing with *pro se* litigants, and communicating with clients. Often the answers are not neatly laid out in the rules of professional conduct, but rather they require analysis, experience, and a bit of just plain common sense. Determining how to respond to these problems adds one more layer to our daily workload.

One of the goals of the Government and Public Sector Lawyers Division (the Division) is to help public lawyers respond to these ethical issues through articles, through web resources, and especially through the presentation of the Division's continuing legal education (CLE) program *Ethical Considerations in Public Sector Law*. Using an entertaining interactive format, *Ethical Considerations* panelists creatively dramatize hypothetical scenarios with a discussion period following each skit. Audience members observe real-life situations that they may encounter in their own practice. Compared to the traditional "talking head" format, rules and issues seem to be understood and retained much more effectively when presented this way. (See sidebar, page 16, for more information about the program.)

In the summer of 2004, *The Public Lawyer* analyzed two scenarios from our *Ethical Considerations* program involving conflicts of interest, confidentiality, meritorious claims and contentions, and reports of professional misconduct. This summer Division staff wrote several new program scenarios. We brainstormed, spoke with colleagues, and imagined ethical nightmares. Two products of our efforts are analyzed here by Division Ethics Committee Chair Ellen Lazarus, Deputy Assistant Director, Congressional Research Service, American Law Division, Library of Congress; and Continuing Legal Education Committee Chair Sharon Pandak, Counsel, Local Government Practice Group, Sands, Anderson, Marks & Miller, P.C.

First Scenario

Big Screen Pizza v. St. Mary's County *Is a Cookie Worth a Thousand Words?*

Scene 1

Stephen Eager, a St. Mary's County Assistant County Attorney, has a case before the county appeals board. The board hears appeals of agency decisions and the members of the board are notoriously obnoxious. Eager is representing the county in a case involving the denial of a permit to allow Big Screen Pizza to build a delivery-only pizza establishment. The question is whether the county agency interpreted the zoning ordinance correctly in denying the permit.

Eager does not have much experience in zoning matters, but he was assigned this case because....

Second Scenario

Tuffie v. City of Marlboro

TO SETTLE OR NOT TO SETTLE — IS THAT THE QUESTION?

Scene 1

Kate E. Thickle is an assistant city attorney for the City of Marlboro. She represents the city and Officer Fister in an excessive use of force suit naming the city and Fister as defendants. Seeking monetary damages, the 5' 2", 105-pound plaintiff, Ima Tuffie, has alleged that after Fister arrested her for DWI and took her to the police station for processing, he hit her several times. Tuffie has photos of bruises that she claims were caused by Fister. Her parents will testify that she had the bruises when she returned home from the police station early the next morning after her arrest.

Fister claims Tuffie “went ballistic” as he tried to escort her into the holding cell at the station. He says that Tuffie tried to kick him in the groin area and tried to gouge out his eyes. Fister claims that he was only using self-defense....