

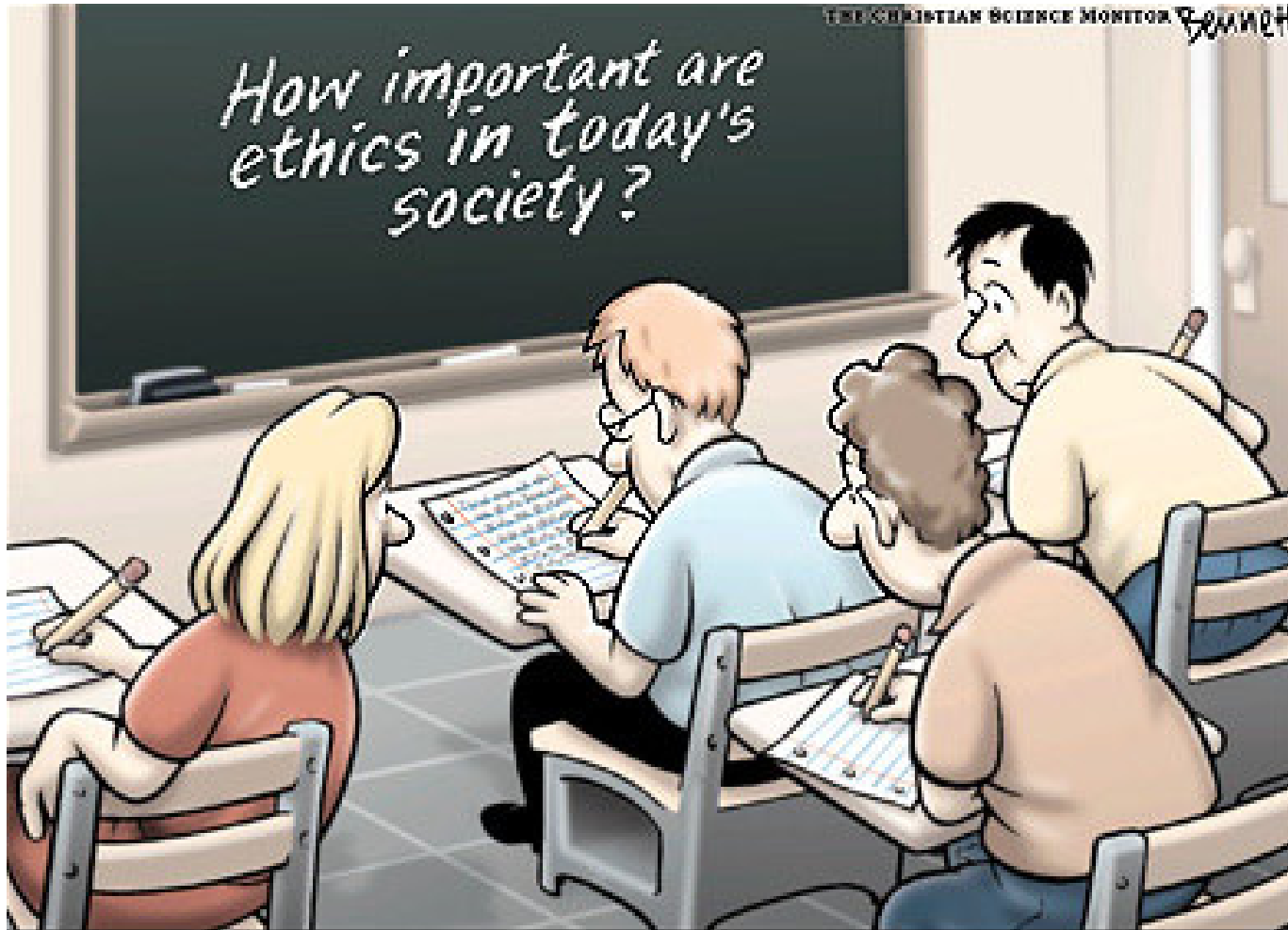
Legal Ethics: Going Beyond the Model Rules

A Presentation to the NACWA
National Clean Water Law Seminar
San Antonio, Texas
November 22, 2013

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Are Legal Ethics Compatible with Personal Ethics?



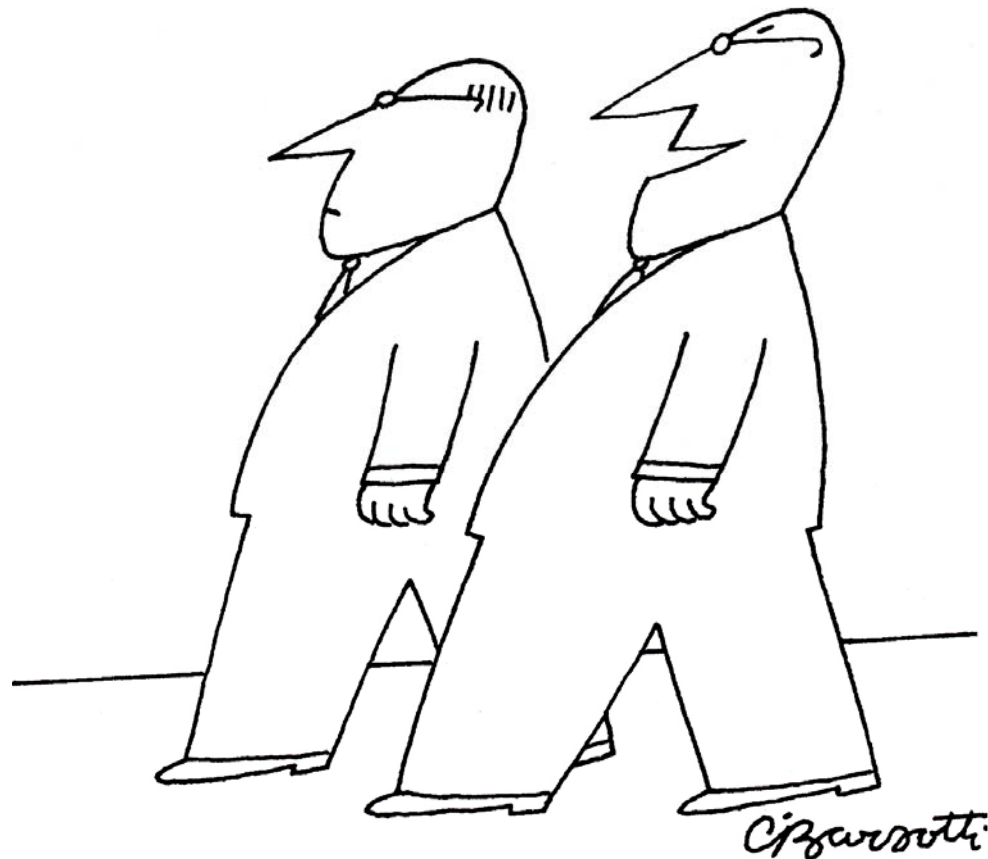
The Metropolis Hypothetical

The City of Metropolis plans to build a new wastewater treatment plant.
Three potential sites are under consideration.



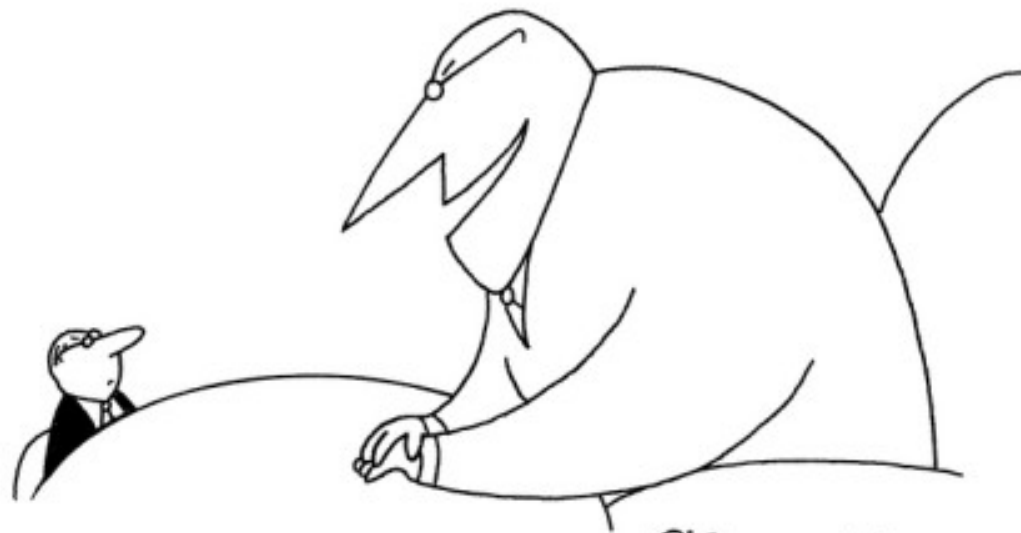
*"Have you noticed ethics creeping into
some of these deals lately?"*

Site 1 is in an economically disadvantaged neighborhood. It would have the lowest total cost due to very low land acquisition costs, but it has the least favorable engineering attributes. It would have the most severe adverse social impact, but it would involve the smallest disturbance to the natural environment.



"Empathy? Yeah, I can see how that could be useful."

Site 2 is in the path of new high-end residential and retail development. It would have the highest total cost but would have the most favorable engineering attributes (optimum location for system service needs, better access to discharge point, etc.) Selection of the site would involve moderate disruption of the natural environment, and it would significantly reduce the desirability of nearby land for future residential and retail development.



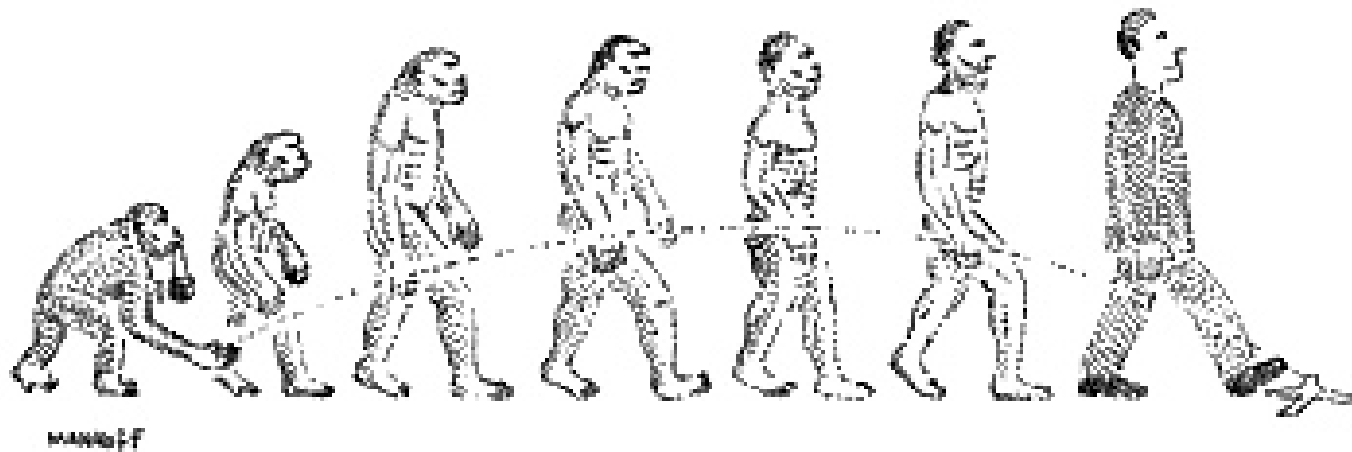
"I hope you don't think that you have a monopoly on ethics."

Site 3 is part of a large undeveloped parcel the City plans to buy and preserve as a municipal woodland park. Selection of this site would result in middle of the pack total project costs; and the site is in the middle of the pack with respect to engineering attributes. It would have the most severe adverse environmental impacts and the least severe social impacts.



Summary of Site Selection Issues

	<u>Total Cost</u>	<u>Engineering Attributes</u>	<u>Social Disruption</u>	<u>Environmental Impact</u>
<u>Site 1</u>	Lowest	Worst	Most	Smallest
<u>Site 2</u>	Highest	Best	Middle	Middle
<u>Site 3</u>	Middle	Middle	Least	Most



Question Set 1

The site selection has become extremely controversial and the Mayor has directed the City Attorney to provide legal advice regarding the site selection.

- What aspects of the site selection are appropriate for the City Attorney to advise on?
- Does the City Attorney have an ethical duty to address any of these aspects?
- Should he refrain from advising with respects to any aspects?



"Ms. Burney, do we have anything on right and wrong?"

Question Set 1 (continued)

The City Parks Department, a local environmental organization, the City Planning & Zoning Commission, the City Chamber of Commerce, a local neighborhood organization based in Site 1, and several City Council members have all actively engaged in the site selection process, primarily in opposition to selection of the site they care most about.

- Who is/are the City Attorney's client(s)?
- Does the City Attorney have any duties or ethical obligations to any of these constituents if they are not strictly speaking his clients?



"AS THEY SAY, DO THE RIGHT THING."

Question Set 1 (continued)

The City Attorney is seriously interested in running for public office in the near future.

- Does the City Attorney's interest in running for public office affect his duties or ethical obligations?
- Alternatively, what if the City Attorney is considering going into private practice?



"THERE'S JUST SO FAR YOU CAN GO WITH ETHICS,
AND THEN THE REAL WORLD KICKS IN."

Question Set 2

The site selection process results in the selection of Site 1, the economically disadvantaged neighborhood. The local neighborhood organization files suit challenging the selection of Site 1 on environmental justice grounds under state and federal civil rights statutes. Very early in the litigation the Plaintiffs succeed in getting an injunction that prohibits land acquisition for the project in Site 1 pending further hearings on the case. Shortly thereafter, Plaintiffs' counsel begins a series of delaying tactics for which she is famous and justly feared.



Question Set 2 (continued)

Plaintiffs' counsel knows the City urgently needs to proceed with construction of the new plant and justifiably expects that her delaying tactics will effectively defeat the City's selection of Site 1 without ever going to trial.

- Is the use of delaying tactics to defeat the selection of Site 1 ethical?
- Does it make any difference if the Plaintiffs' substantive legal claims are meritorious or frivolous?



**"Sometimes I wear this in court.
It's my frivolous law suit."**

Question Set 2 (continued)

In a desperate attempt to avoid losing the battle based on Plaintiffs' delaying tactics, the City Attorney moves to dismiss. If fully understood, the motion has only a slight chance of success. Plaintiffs' counsel, however, files a very weak response due to a clear mistake on her part regarding the relevant law. The mistake of law is such that the City Attorney is seriously concerned that he must disclose the adverse precedent on the subject to the court under Model Rule 3.3(a)(2). Before the motion is acted on, Plaintiffs' counsel proposes to settle on terms that are extraordinarily favorable to the City. It is clear that the favorable settlement terms are directly attributable to the mistaken understanding of the law on the part of Plaintiffs' counsel.

- What are the City Attorney's ethical duties regarding the settlement offer?
- Does it make any difference if the Plaintiffs' substantive legal claims are meritorious or frivolous?



The Moral of the Story?

