

REPRESENTING REPUGNANT CLIENTS

Every Lawyer's Duty?

By Elizabeth A. Wolford

Upon entering law practice, few attorneys, I suspect, aspire to represent clients whose conduct or actions are repulsive or violate the lawyer's beliefs. Criminal defendants may be charged with morally revolting crimes, from serial murder to terrorism to sexual abuse. Certainly no respectable attorney would endorse this type of behavior.

Yet the Sixth Amendment dictates that all criminal defendants—even those charged with the most heinous crimes—are entitled to the right to assistance of counsel. Attorneys are the guardians of the legal system. When admitted to practice, lawyers take an oath to uphold the Constitution and to discharge their duties faithfully. That oath is not qualified by “only if I really want to” or “unless the client or case is unpopular” or “only if it won't impact my ability to make my law school loan payments.”

Attorneys are morally and ethically obligated to take on difficult cases and clients exactly because the willingness to do so is fundamental to the integrity of our judicial system. Our democratic society depends upon the rule of law, which is itself based upon an effective and fair judicial system. Lawyers play a vital role in ensuring that the rule of law is followed and the system of justice, fair. If lawyers refuse to participate actively in that judicial system, or to participate only with those cases or clients they personally support, the entire system falls at risk.

The assumption that somebody else will take the case is no excuse for a lawyer's unwillingness to get involved. Each attorney has an individual responsibility to live up to the expectations and duties of the profession.

Some may suggest that no attorney carries an obligation to

take on personally upsetting cases. Surely, however, those attorneys who represent controversial clients or issues do not necessarily embrace the alleged conduct or endorse the alleged behavior. But they do embrace the fundamental principles underlying our justice system and Constitution.

It is the rule of law and our judicial system that sets the United States apart from much of the rest of the world. As Supreme Court Justice Sandra Day O'Connor warned in the recent Supreme Court decision in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), involving an American citizen who was detained as an enemy combatant, “It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.”

Naturally, a lawyer must be concerned about the financial impact of or public reaction to publicly sensitive representation. Yet if law school loans prevent an attorney from protecting the Constitution and the efficient administration of justice, then that attorney is in the wrong profession and should never have incurred those loans in the first place.

It also seems too easy a way out for an attorney to decline representation under the theory that he or she cannot zealously advocate on behalf of the client. The ethics rules do provide this easy way out. The ABA Model Rules of Professional Conduct do not require attorneys to take on clients or causes that they find “repugnant.” Rule 6.2 provides that good cause will exist to avoid appointment by a tribunal to represent a person where the “client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.” However, the comment to the rule goes on to state:

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. *The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service.* See Rule 6.1. *An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients.* A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Elizabeth A. Wolford is a partner with the litigation firm of Wolford & Leclair LLP in Rochester, New York. She can be reached at ewolford@wolfordleclair.com.

may have difficulty accepting your representation of a known pedophile or racist hate group.

Being concerned about how existing clients will react is a valid concern. I can recall several political campaigns in which an attorney was characterized as implicitly unfit to hold public office because of having represented criminal defendants. Here, opponents were attempting to capitalize on the public's naiveté.

Attorneys also may face pressure from personal relationships—friends and family who may disapprove of the representation of an unpopular client. Some might go so far as to question the lawyer's loyalty to friends and family and lose confidence in the lawyer's overall judgment as a result. Personal relationships represent an important source of client referrals—and some people may no longer recommend a lawyer who represented a serial rapist.

The fact is that lawyers may often be called upon to be an advocate for a client who engaged in reprehensible behaviors or to advocate positions that the lawyer personally finds unacceptable. Part of advocacy involves bringing clarity to complex issues or neutralizing the emotional content of a case in seeking resolution. Effective advocates are able to put their personal views aside to represent clients with whom they may personally disagree. This is not always possible, however.

If a lawyer is repulsed by a client, can the lawyer really be an effective advocate? In such a case, it may be a greater disservice to the client to accept the case. Being forced to accept the case exacerbates this dilemma by preventing the attorney's option to decline the case.

As attorneys, we do not give up our personal moral standards when we become members of the bar. Attorneys who are personally repulsed by the beliefs and actions of white supremacists should not be forced to represent them. Further, although the lawyer does not implicitly or explicitly endorse the client's actions or beliefs by establishing a defense, that representation can unfortunately become a conduit for promoting those very beliefs. Ideally, attorneys would not let the moral or ethical status of a client's actions or position impair

their ability to be effective advocates; unfortunately, this is not always possible in the real world.

Taking on an unpopular case might even lead to a malpractice claim if the lawyer is unable to provide zealous representation. Although the competence of the lawyer's defense may be intellectually intact, conflicting personal values may render the lawyer's performance subpar.

Asa P. "Pete" Gullett, CEO of Lawyers Mutual Insurance Co. of Kentucky, frequently speaks at seminars on the ethical problems caused by procrastination, and how it can lead to a legal malpractice claim. Although he speaks in general of "dog" cases, his advice is equally applicable to attorneys' representations of unpopular clients. Dog cases are those that are always bumped to the end of the lawyer's to-do list or sit in the corner of the desk taking up space and collecting dust. A week turns into a month, and then six. Eventually, the lawyer's lack of diligence in the case can become a malpractice claim. If the lawyer dreads taking the case in the first place, how strong will that defense be after six months or two years? A malpractice claim—and the effect even one claim may have on a career—is a serious consequence for something in which the lawyer had no choice.

Attorneys should know how to deal with unacceptable clients in nonconfrontational ways. Often, it is easier to sugarcoat the reason for not taking a case: "I have a conflict and cannot represent you" or "I am simply too busy to take your case right now." Why should attorneys feel compelled to give such answers? After all, one of a lawyer's ethical obligations to clients is a duty of candor. We are not being candid, with ourselves or our clients, if we perpetuate these responses. Comment 1 to Rule 6.2 of the ABA Model Rules of Professional Conduct does not mandate the representation of a client who is regarded as "repugnant."

We need to be honest with our clients and ourselves. Clients are better served if we can be candid about why we will not represent them, without fear of ethical violation or the burden of professional obligation. **GPSOLO**