

## Hypotheticals for Trial Ethics

### Scenario I

Mr. Suem contacts attorney Kelly Youngblood, Esq. about taking on a new motor vehicle/personal injury case. Mr. Suem says he was referred by one of Attorney Youngblood's regular investigators who will receive a referral fee for the case and try to identify helpful witnesses.

After serving a verified complaint and taking discovery, Attorney Youngblood files a Note of Issue. Liability and damages are at issue. Attorney Youngblood appears before Judge Alwaysright at the Pretrial conference. There is a \$100k offer on the table but Mr. Suem does not accept it because, after deducting legal fees and expenses, he will not realize enough funds.

The Court's calendar has freed up three weeks from now and the judge wants to hear the case at that time because there is no available trial date until 8 months later. Attorney Youngblood is already engaged to be on trial the week before.

Trial has commenced. During jury selection, opposing counsel, Johnny Heavyhitter, Esq., continues to refer to Attorney Youngblood as "young lady." He also laughs at a comment Attorney Youngblood makes during voir dire. His comments are blatantly sexist. Attorney Youngblood makes a remark to him on a break, and he tells her that if she has a problem with him, she should speak to the judge.

The evening before Day 1 of proof, Mr. Suem gives Attorney Youngblood a certified letter that he just received from an eyewitness to the accident who states that the accident was the plaintiff's fault.

The next day, while on a break on the first day of trial, Attorney Youngblood sees that her adversary has left a file on counsel table which is open to the examination of Mr. Suem. The file has a big stamp marked "CONFIDENTIAL" on it.

### Scenario II

This is a criminal case captioned *People of the State of New York v. Johnny Topgun*. Mr. Topgun is currently charged with four counts of Criminal Possession of a Weapon in the Third Degree and two counts of Criminal Possession of a Weapon in the Fourth Degree. He is currently on parole on a conviction out of Montana. He served 10 years on his previous conviction and is on parole for five years.

Cliff Newlaw, Esq. was assigned to represent Mr. Topgun on the original charges in City Court. Attorney Newlaw had never tried a felony case. At arraignment, Attorney Newlaw expressed to Judge Heavyhand that this was his first felony case but Judge Heavyhand did not appear concerned. Approximately three months later, Judge Heavyhand contacted the attorneys and ordered them to trial in two weeks. Attorney Newlaw felt panicked but indicated to the Judge that he would be ready for trial nonetheless.

The jury trial commenced. The People's key witness, the defendant's sister, testified that she observed the defendant in possession of a gun. She described the gun in detail.

On cross examination, Attorney Newlaw questioned the witness about her description of the gun. Attorney Newlaw continued to ask questions about the gun and tried to get the witness to admit that the gun she described could have been a pellet gun, which is legal to possess in New York. Judge Heavyhand yelled at Attorney Newlaw and told him to move on with his questioning because the question had been asked and answered. The ADA had not made any objection. Attorney Newlaw, frustrated that he did not get the answer he wanted, asked the question again. At this point, Judge Heavyhand rose from the bench and pointed his finger at Attorney Newlaw and said, "Don't disrespect me. When I tell you to move on, I mean it!" Attorney Newlaw moved on and was unable to finish his line of questioning. Within minutes of being reprimanded, he felt his face turn flush and he broke out in hives.

During a recess, Mr. Topgun told Attorney Newlaw that if he was convicted, he was going to kill himself. He could not face another prison sentence. He appeared extremely agitated and Attorney Newlaw took his statements seriously.

Prior to summations, the People offered the defendant a plea to Criminal Possession of a Weapon in the Fourth Degree, a misdemeanor. Attorney Newlaw was thrilled to put an end to this case and convinced his client to accept the offer.

### **Scenario III**

This case involves a matrimonial action entitled *Handy v. Handy*. Mr. Handy is *pro se*. Mrs. Handy is being represented by Sally Smart, Esq. Mr. Handy owns his own construction/home improvement business where Mrs. Handy claims he earns approximately \$200,000 per year. Mrs. Handy is disabled and claims she cannot work. The parties have resolved issues of custody but the financial issues concerning the family business, commercial real estate, division of assets (equitable distribution) and maintenance remain to be litigated.

Sally Smart, Esq. has been practicing law for five years but has never tried a case against a *pro se* litigant.

As to the appropriate maintenance payments, Mr. Handy claims that Mrs. Handy is not disabled and that she is capable of working. Mrs. Handy claims that Mr. Handy earns approximately \$200,000 annually even though the parties' joint tax return only reflects \$55,000. At a meeting with Mrs. Handy, Attorney Smart learned that Mrs. Handy has been babysitting for friends and has not been claiming her income. Mrs. Handy then instructed Attorney Smart to take Mr. Handy "to the cleaners" and to get her the money she is owed "by any means necessary."

Attorney Smart has requested business documents from Mr. Handy but he refuses to produce them. Judge Sunshine issued an interim order requiring him to comply with the discovery request within thirty days. The thirty days have passed and Mr. Handy has continued to ignore the Judge's order.

Mr. Handy claims that Attorney Smart should be removed from the case because his wife has an Order of Protection against him in the Town of Boondocks and Attorney Smart represents the Town of Boondocks as its town attorney.