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Tip of the Month

All I Really Need To Know I Learned In Kindergarten

A couple years ago, I was invited to speak to my daughter's kindergarten class about being a lawyer. The kids were sweet and attentive but hearing about the legal profession as a six-year-old must have been boring. And how could I compete with the mom who was a zookeeper? We talked about law school, what it means to pass the bar, and how lawyers should address judges in the courtroom. The Q&A session that followed my presentation was priceless, with questions ranging from "What does the judge wear under the robe?" to "Do you like McDonald's?" (Of course! Who doesn't?!).

As a Risk Management attorney, I have the opportunity to offer guidance to our insured lawyers about ethical issues that often arise in the practice of law. While I always refer the attorneys back to the ABA Model Rules and the Rules of Professional Conduct of their jurisdiction, in one sense, the rules that govern our profession are much like the rules – and life lessons – we learned in kindergarten. No doubt your childhood home probably had a copy of Robert Fulghum's 1986 book, *All I Really Need To Know I Learned In Kindergarten*. And while you may no longer agree with the author's suggestion that warm cookies and cold milk are good for you and you should take a nap every afternoon, the book offered parents and children alike the fundamental rules to live by which mirror the Model Rules of our profession, a few of which follow:

- **Play fair** – If you haven't read the Preamble & Scope of the Model Rules, I would suggest it is worth a few minutes of your time. Not only is it instructive, it is inspiring and perhaps the most concise recitation of how and why we must play by the rules.
- **Share everything** – Model Rule 3.4 contains several requirements when working with opposing counsel, including a prohibition from unlawfully obstructing their access to evidence and making a diligent effort to comply with their legally proper discovery request. Make sure to comply with these rules and the specific discovery rules of your jurisdiction (read: share) to ensure the smooth administration of justice for your respective clients.

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- **Don't hit people** – Or, in other words, be kind and do your part to uphold the integrity of our profession. Model Rule 4.4 gives some examples. First, “a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” Second, when you are inadvertently copied on an email, be sure to advise the sender. Specifically, the Rule states that a lawyer who receives a document or electronically stored information and knows or reasonably should know it was inadvertently sent shall promptly notify the sender.
- **Don't take things that aren't yours** – As lawyers, we are frequently charged with safeguarding the property of others pursuant to Model Rule 1.15. Be sure to comply with your state's trust accounting rules and note whether the number of years you must maintain accounting records exceed the five-year minimum after termination of the representation as mandated by the Model Rules.

Interestingly, Mr. Fulghum contemplated these life axioms would arise in the legal world as he ponders in the book:

What we learn in kindergarten comes up again and again in our lives as long as we live. In far more complex, polysyllabic forms, to be sure. In lectures, encyclopedias, bibles, company rules, courts of law, sermons, and handbooks. Life will examine us continually to see if we have understood and have practiced what we were taught that first year of school.

So, when you are confronted with an ethical question, we would encourage you to review your state's iteration of the Model Rules for guidance and perhaps seek assistance from your local or state bar association ethics hotline. However, regardless of the complexity of the matter you are facing, you may consider whether you can arrive at an answer based on what you learned in kindergarten. And, no judgment for that afternoon cookie.

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