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Two Fables

Monroe H. Freedman

Maurice A. Deane School of Law at Hofstra University

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Recommended Citation

Monroe H. Freedman, *Two Fables*, 74 ABA Journal 57 (1988)

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BY MONROE H. FREEDMAN

Laura Eagle is a sole practitioner in a large city. One evening an acquaintance who is a social worker mentioned to Laura the horrible conditions he had seen that day on a visit to a private nursing home in the city—filth, poor food and neglect. Because the patients are poor, elderly and bedridden, and are rarely visited by anyone, they have no way to help themselves or to get help.

Laura offered the social worker \$100 if he would return to the nursing home, explain to some of the patients about the possibility of a class action on their behalf, and sign up one or more of them on a contingent fee. Laura made it clear that the social worker was not to mislead or pressure the patients in any way, and he followed her instructions.

Monroe H. Freedman is a professor of law at Hofstra University.

Two Fables



Thus, Laura became attorney for the patients and obtained a substantial recovery and a court order protecting their rights to adequate care. She also received a substantial one-third contingency fee.

Laura was charged with violating Model Rule 7.3 and 7.2(c). Rule 7.3 reads: "A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in-person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. ..." Rule 7.2(c) says: "A lawyer shall not give anything of value to a person for recommending the lawyer's services. ..."

At Laura's disciplinary hearing she admitted that a significant motive for her taking the case was to earn the fee. She pointed out that she could not have afforded to handle such a difficult and time-consuming case on a pro bono basis. She pre-

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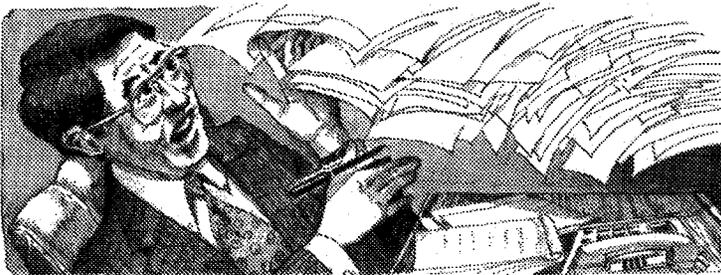
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ferred representing the patients, but she also admitted that, if someone else had been representing the patients, she would have been willing to represent the nursing home operators. "You can call me a hired gun if you like," she said. "I believe in the Eng-

lish barrister practice of taking the next client in line."

Laura was suspended from practice for one year. The lawyer who represented the nursing home spent the same year serving as president of the state bar association.



Overcoming Mergerphobia!

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Moral: "The practice of law 'in the spirit of a public service' can and ought to be the hallmark of the legal profession." *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (ABA, 1986).

Raul Mottel has been a faculty member at the Ivy Law School for six years. He teaches Property and Civil Procedure. Raul is a competent classroom teacher, but he has never published a law review article. The principal reason is that he spends all of his non-teaching time litigating landlord-tenant cases for poor people in the community near the school.

Raul has involved the students in his litigation, and they have been enthusiastic about helping him to interview clients and witnesses, research cases and write legal memoranda and drafts of briefs. In one of his cases, the highest state court overruled a longstanding rule that there is no implied warranty of habitability in the lease of an apartment.

David Sklar has been a member of the same faculty for six years. He teaches Contracts and Commercial Transactions and is a competent classroom teacher. David spends relatively little time with students out of class, because he is a highly productive scholar.

In the past six years David has published three long and heavily footnoted articles in well-regarded law reviews. One article is on promissory estoppel, another on bad faith discharge of employees who are terminable at will, and the third on unconscionability. None of the articles breaks new ground, but each one is well-written and analyzes and synthesizes the relevant cases in a thorough, scholarly way. David is planning to produce a one-volume treatise on contracts.

Raul and David come up for tenure together. Neither is considered a hard case. David is granted tenure. Raul is turned down due to his lack of publications and leaves teaching.

Moral: "Unquestionably, an important mission of law schools must be ... the setting of proper role models for law students." *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (ABA, 1986).