

IPI #1

1. Larry, a successful lawyer from Chicago, recently decided that he wanted a change of pace. He submitted resumes to several firms around the country and eventually landed a job with a Little Rock firm. Larry packed some clothes, moved to Little Rock and now resides in a luxury apartment.

The firm's senior partner immediately assigned Larry to a hearing in circuit court. When Larry asked whether he could practice in Arkansas (Larry is only licensed in Illinois), the partner said he could practice Pro Hac Vice until Larry took and passed the Arkansas Bar Exam in three months.

May Larry practice Pro Hac Vice under these circumstances?

- A) Yes, if Larry is still registered to vote in Illinois.
 - B) Yes, if Illinois extends the same privilege to Arkansas lawyers.
 - C) Yes, provided he is accompanied to court and supervised by an Arkansas attorney.
 - D) Yes, provided both (b) and (c) are satisfied.
 - E) No. Larry is now a resident of Arkansas and may not appear and represent clients in court in Arkansas.
2. Chloe is a recently admitted attorney. She has a booth at the Hispanic Culture Fair, which attracts thousands of local visitors. The sign (in English and Spanish) says "Chloe Attorney, practice focusing on immigration issues. Come by and visit. Free margaritas and Mexican snacks." She stands at the front of her booth, passing out business cards and cheerfully greeting visitors to the fair. Her booth is decorated with scenes of Latin America, and appropriate music in the background.

Has she violated the Arkansas Rules of Professional Conduct?

- A) Yes, she is improperly soliciting clients in person.
- B) Yes, she is luring clients with an alcoholic drink and snacks.

- C) Yes, she is limiting her practice to a speciality without being certified as such.
- D) Yes; the entire tone of her booth is more like a retail business, and does not meet professional standards.
- E) No.

3. Attorney Alan had a long standing alcoholic problem, with arrests and convictions. Ultimately a person was killed. He pled guilty to negligent homicide, was given 24 months in jail, and surrendered his law license in 2008.

Since his release from prison, he has undergone counseling and lived an exemplary life.

May he seek re-admission to the practice of law? [Do not address the ultimate question of whether re-admission may be granted or should be granted.]

- A) No; he must wait 10 years before seeking re-admission.
- B) Yes; the requisite mental state of his crime was not intentional.
- C) No; he killed a person with his actions.
- D) Yes; convincing proof of rehabilitation always permits a request for re-admission.
- E) No; he must first be cleared by a committee of the Mothers Against Drunk Driving.

4. Laura, a third year law student, is certified under Rule XV and clerks for a private law firm. Her law firm permits each activity described below. Which activities are ethically permitted?

- 1. In a private one on one meeting she advises a client that a settlement offer is fair and reasonable.
- 2. She writes letters on the firm stationery and signs them "Laura, Law Clerk".
- 3. She conducts depositions in the presence of the supervising attorney.

4. At trial, in the presence of her supervising attorney, she makes a closing argument.
5. The law firm pays her the normal \$10 an hour for her services in the courtroom.
 - A) All are permitted because her law firm consents.
 - B) Only (2) and (3) are permitted.
 - C) All but (1) are permitted.
 - D) All but (5) are permitted.
 - E) None are permitted because Rule XV applies to students enrolled in the law school clinic, but not to students working for private law firms.
5. Criminal defense attorneys have restrictions on their attorney fees. Which of the following fee arrangements are prohibited?
 1. Put the fee on a credit card.
 2. Demand cash before doing any work.
 3. Require a mortgage on the defendant's house as security for a promised fee.
 4. Bill by the hour.
 5. Take a small cash bonus if the defendant is acquitted.
 - A) None are prohibited.
 - B) Only (3) and (5) are prohibited.
 - C) Only (1) and (5) are prohibited.
 - D) Only (3) is prohibited.
 - E) Only (5) is prohibited.
6. Terri Taxlawyer received an LL.M. in tax law and joined a large firm that handled business work for large corporations. All her work at the firm involved the taxability of large corporate divisions and reorganizations. One Friday evening she received a telephone call from her friend, Tom Trouble, who lived in the same apartment house. Apparently, Tom had been stopped for driving his automobile with a defective taillight, and the police found marijuana in the automobile trunk. Terri explained to Tom that she had no experience in criminal law. Tom pleaded with her to bail him out, and Terri agreed to try.

Terri read over the criminal law and procedure outlines she received in her bar review course two years previously. However, because she did not understand the “in plain sight” and search and seizure rules, Terri was not able to get Tom released. Monday morning, Tom’s cellmate referred him to a competent criminal lawyer who secured Tom’s release in two hours.

Was Terri’s conduct proper?

- A) Yes, because this was an emergency situation where referral was not practical.
- B) Yes, because Tom was a personal friend of Terri, not an ongoing client of the law firm.
- C) No, because Terri did not have the required proficiency to undertake a criminal law representation.
- D) No, unless Terri did not charge Tom for the representation.

7. The law firm of A, B and C practices in Hot Springs Village. Its focus is elder law, as well as estate planning.

Their marketing approach has three elements.

1. A billboard that has a photograph of an old cemetery, and the words: “Everyone has to go sometime. Are you ready to die? We are ready to assist you now. Call A, B and C.”
2. It pays an annual fee of \$1000 to the local funeral home. The firm then places business cards and flyers in the lobby of the funeral home. They are seen by guests making arrangements and visitors coming for services.
3. Its web page contains this audio message from the senior partner: “As Benjamin Franklin wrote in 1779, ‘in this life only two things are certain: death and taxes.’ Our firm helps with both of these inevitable events. Usually we can reduce the tax burden on your survivors. Usually we can make the law of dying more understandable. Our fees are minimal. We practice by the advice of Benjamin Franklin: “Tell me and I forget. Teach me and I remember. Involve me and I learn.” You will be involved with our representation. Our first priority is you.”

Are these elements of the marketing campaign in violation of the Arkansas Rules of Professional Conduct?

- A) Only #1 is a violation.
- B) Only #2 is a violation.
- C) Only #3 is a violation.
- D) All are violations.
- E) None are violations.

8. The name on the letterhead and the office door is "Adams, Butler, Carson, Davis and Edwards, Attorneys at Law." Assume each of the following statements is factually correct.

The sign is improper because:

- A) Adams is retired and only comes to the office one day a month and is not guaranteed any income.
 - B) Butler is a part-time state legislator.
 - C) Carson is the founder of the firm, but he died five years ago.
 - D) Davis accepted a vacancy position on the Arkansas Public Service Commission (a full-time job) and started her one-year term two months ago.
 - E) Edwards was admitted to practice last month and is paid a salary.
9. Assume that Arkansas, where Tax Attorney practices, levies an annual tax on trusts for the benefit of minors. Tax returns must be filed, and the taxes must be paid, by March 15; late filing results in an automatic penalty of 15%. In mid-January, the trustee of such a trust retained the attorney to prepare and file a tax return. The trustee heard nothing from the attorney during February, and he became seriously alarmed when the first week of March passed with no apparent action from the attorney. He called the attorney repeatedly during late February and early March, but each time the attorney was in a conference, in court, or in a deposition. The attorney never returned any of the trustee's phone calls. On March 10, the trustee fired the attorney and hired a certified public accountant to do the necessary work. She was able to complete the tax return and get it filed on time.

Is the Tax Attorney *subject to discipline*?

- A) Yes, even though the March 15 deadline had not yet passed.
- B) No, because the attorney had legitimate excuses for not taking the client's calls.
- C) No, because the March 15 deadline had not passed.
- D) No, because neither the trustee nor the trust suffered any loss.

10. Randy Sanders is an attorney who handles only divorce and related matters. He recently undertook to collect overdue alimony for a new client, who signed a contingent fee contract of one third. Randy was able to conclude the matter with one forceful phone call to the ex-spouse's attorney.

Which of the following most accurately describes Randy's options under the Arkansas Rules of Professional Conduct?

- A) Randy must not charge the client the one-third fee because it would be unreasonable for services that only took a few minutes.
- B) Randy may charge and keep the fee of one-third because the client agreed to that fee in writing.
- C) Randy may charge and collect the one-third fee if the fee is reasonable given the risks of recovering nothing that existed at the time the contract was signed.
- D) Randy may not charge or collect a contingent fee in connection with this domestic relations matter.

IPI #2

1. A) Patricia is an assistant Prosecuting Attorney. While preparing to prosecute a robbery at a convenience store, she interviews an 8 year old witness who was present in the store. The little boy says to Patricia, “Don’t tell my uncle I talked to you. He told me never to talk to the police or any lawyers, or he would hurt me again, really bad. I’m scared of him.”
- B) Thelma is a plaintiff’s lawyer. While preparing a big truck case, she interviews an 8 year old witness of the accident. The little boy says to Thelma, “Don’t tell my uncle I talked to you. He told me never to talk to the police or any lawyers, or he would hurt me again, really bad. I’m scared of him.”

Do the lawyers have a duty to report the conversation to proper child abuse authorities?

- A) Both Patricia and Thelma have a duty to report.
 - B) Patricia has a duty to report.
 - C) Patricia is under no duty, but has discretion to report.
 - D) Patricia must do some preliminary investigation of the boy’s charges before reporting any information.
 - E) Neither has a duty to report.
2. Lorraine Landlord hired the lawyer Ed Environment to assist her in securing a rezoning permit for her proposed shopping center. Nancy Neighbor was very vocal against the project and attempted to reduce the size of the ultimate project. In the hearing, Lorraine became very hostile towards Nancy. The rezoning was granted and the shopping center constructed.

Two years later, Nancy, who was shopping in the shopping center, slipped and fell because of Lorraine’s alleged negligence. Nancy approached Ed and asked if he would represent her in suing Lorraine. Ed called Lorraine, who said, “No, I do not approve because you represented me in the rezoning, and Nancy was an adverse party.” However, Ed needs the fee and accepts Nancy’s case against Lorraine’s disapproval.

Is Ed subject to discipline?

- A) No, as long as no confidential information from the rezoning proceeding is used by Ed in Nancy’s case.
- B) No, because Ed’s representation of Lorraine in the rezoning was successful.
- C) Yes, because Ed is representing a client with materially adverse interests to his former client Lorraine without consent.

D) Yes, because Ed's prior client Lorraine refused to consent to his representation of Nancy.

3. William sues the Purina Dog Food Company for breach of a contract. Attorney Abigail represents William, and the case is settled for \$50,000. Attorney Abigail receives the check (made payable to Attorney Abigail), deposits it in her law firm trust account, and schedules a meeting with William to distribute the proceeds.

But a problem develops. Attorney Abigail claims she is entitled to \$8000 in fees, but William strongly disagrees and says only \$5000 is owed.

How should Attorney Abigail properly and ethically handle this dispute?

- A) Give William \$42,000; transfer \$5000 to her office account; and leave the remaining \$3000 in the trust account.
- B) Give William \$42,000 and transfer \$8000 to her office account.
- C) Retain the \$50,000 in the trust account until the fee dispute is resolved.
- D) Either A or B is acceptable.
- E) Either A or C is acceptable.

4. Walter Doplinger is an attorney who specializes in estate planning. His long-time client, Birdie Nash, who is not related to Walter, has come to him and asked him to revise her will, now that her husband and her children have all predeceased her. Birdie tells Walter that she would like to make a substantial bequest to Walter's daughter for purposes of the daughter's education.

Which of the following most accurately describes Walter's obligations under the Arkansas Rules of Professional Conduct?

- A) Walter must not permit Birdie to make a substantial bequest to his daughter.
- B) Walter may prepare Birdie's revised will to provide the bequest as long as Birdie gives her informed consent to the gift to Walter's daughter and as long as Walter reasonably believes that Birdie has the mental capacity to give that consent.
- C) Walter may not prepare the new will if it contains a substantial bequest to his daughter.
- D) Walter may prepare the new will because it does not contain a substantial bequest to Walter.

5. Jerry Jackson is a land speculator and his wife Mary is president of a large local manufacturing company. Each has an annual income which regularly exceeds \$50,000, although Jerry's fluctuates from as little as \$30,000 to in excess of \$150,000. You have represented the couple for several years and have never seen any conflict of interest in doing so.

Two weeks ago Jerry disclosed to you that he had engaged in a transaction involving overseas real estate which earned income greatly in excess of the amount which he had reported on last year's income tax. He had the money in an account in the Bahamas but lost it gambling there on a recent vacation. You estimate that his tax liability may be as high as \$100,000, a sum which he does not have in liquid assets, and that his criminal liability may be up to 5 years in prison.

Now Jerry wants to enter into a large shopping center development in the area. Because he is short of funds he has asked his wife to invest as well. The success of this development will require that all investors put their money into the project for at least three years and will mean that they have virtually no liquid obligations to meet unexpected expenses (or the potential tax liability if it should arise).

Mary now comes to you. She sees no objection to the investment and wants your confirmation of her business judgment. You know that she does not know of the true state of her husband's business affairs or his potential criminal liability.

Which of the following statements best states your ethical obligation?

- A) A lawyer is forbidden to give business advice to a client, such as Mary.
- B) You are obligated to disclose to Mary the financial status and the possible tax status of her husband.
- C) You must tell Mary that you are unable to discuss this matter with her.
- D) Because you had previously represented Mary, you had an ethical obligation to refuse to give any advice to Jerry.
- E) You have discretion whether to disclose to Mary the financial status and tax status of her husband.

6. Robert Simpson is about to go to trial on a criminal charge of burglary. His lawyer, Raymond Browder, has interviewed his client and learned that his client wishes to testify at trial that he was with his girlfriend at her apartment at the time of the crime. Simpson tells Browder that he insists on testifying and he insists that his girlfriend be permitted to testify to corroborate the alibi. Browder does not believe that either Simpson or his girlfriend is telling the truth, but he is not sure they are lying.

Which of the following most accurately describes Browder's duties under the Arkansas Rules of Professional Conduct?

- A) Browder must permit his client to testify but may decline to offer the testimony of the girlfriend.
- B) Browder must follow his client's instructions and have both the defendant and his girlfriend testify.
- C) Browder may decline to offer the testimony of either the defendant or his girlfriend.
- D) Browder must not allow either the defendant or the girlfriend to testify because to do so would be to present false evidence to the tribunal.

7. Tim Lybrand is an attorney who is representing a prominent businessman in litigation over a multi-million dollar contract. On the eve of trial, Tim learns that his client has hidden a crucial document that was written by the client. The rules of procedure clearly mandate its disclosure. The client refuses to permit Tim to turn the document over to the opposing party. After long counseling by Tim, the client defiantly says, "I don't care about your ethical dilemmas. You are my attorney. I am ordering you not to turn this document over to the court or the other side, and do not reveal anything about this document to anyone. Remember, it is my document! Period. End of discussion."

Which of the following statements most accurately reflects Tim's duties under the Arkansas Rules of Professional Conduct?

1. Tim is ethically obligated to seek court permission to withdraw from the case.
 2. Tim has ethical discretion whether to seek court permission to withdraw.
 3. Tim may reveal the existence of the document only if ordered by the court. Otherwise, he is ethically obligated to keep it confidential.
 4. Tim has ethical discretion whether to reveal this document to opposing counsel.
- A) (1) and (3) are correct.
B) (2) and (3) are correct.
C) (1) and (4) are correct.
D) (2) and (4) are correct.

8. Attorney Tony has a large medical malpractice case in which he represents the defendant. Tony undertakes an investigation of the potential jurors. He hires Peggy, an independent contractor and a licensed investigator, and tells her: "Find out what you can about the potential jurors and their attitude about doctors. Do not contact the jurors or their relatives." In the course of her investigation, Peggy telephones and interviews numerous persons, including the employer of a potential juror and the brother of a potential juror.

Is Tony subject to professional discipline?

- A) Yes, because he should not have authorized any investigation.
B) No, because he undertook reasonable measures to ensure that Peggy acted properly.
C) Yes, because he permitted Peggy to contact the employer.
D) No, because Peggy is an independent contractor and not an employee of Tony.
E) Yes, because he did not first obtain the consent of the judge to the investigation.

9. Attorney Amy graduated from law school and worked for the prosecutor for five years. Last year she successfully prosecuted Clarence for a white collar felony.

She now works for ABC law firm. Clarence asks her to handle his appeal from the felony

conviction. She explains that because she worked on his case personally and substantially, she cannot represent him. Clarence asks whether another experienced member of ABC will represent him. Which of the following are correct?

- A) ABC law firm may not represent Clarence. Amy's disqualification is imputed to the firm.
- B) ABC may represent Clarence. Her interest is personal, and is not imputed to any member of the firm.
- C) ABC law firm may represent Clarence, but only if a Chinese Wall is built around Alice, she receives no part of the fee, and notice is given to the prosecutor's office.
- D) ABC law firm may represent Clarence, but only if the prosecutor's office waives the conflict and consents to the creation of a Chinese Wall.

10. Same as above, but Amy worked for five years for a plaintiff's firm. The firm successfully obtained a money judgment against Clarence for common law fraud. Amy was not the primary counsel, but merely did some incidental research on some minor legal issues in the case.

She now works for ABC law firm. Clarence asks her to handle his appeal from the fraud judgment. Which of the following are correct?

- 1. She may handle the appeal because she did not work on the fraud judgment personally and substantially.
 - 2. Amy may represent Clarence if the plaintiff (in her former firm) waives the conflict.
 - 3. Amy is disqualified from representing Client Clarence and her disqualification is imputed to all members of ABC law firm.
 - 4. Amy is disqualified from representing Clarence; but ABC law firm may represent Clarence, provided a Chinese Wall is built around Amy, she receives no part of the fee, and notice is given to the other law firm.
- A) Only 1 and 3 are correct.
 - B) Only 1 and 4 are correct.
 - C) Only 2 and 3 are correct
 - D) Only 2 and 4 are correct.