

Fall 1993 Professional Responsibility IPI #1, 2

IPI #1

Professional Responsibility
Prof. Brill
Fall 1993
IPI #1

Instructions

Choose the best answer for each question. Put the letter on the answer sheet. If you feel a question is misleading or ambiguous, place an Asterisk (*) next to your answer and write your qualification on the back of the answer sheet.

1. Thomas is an attorney who specializes in plaintiff tort cases. James, a full-time employee of the law firm, is an investigator who is not a lawyer. They have the following financial arrangement: for every case James works on that Thomas wins for a client, James will receive five percent of the award or settlement: if Thomas' client loses, James will receive nothing.

Is this fee arrangement permitted by the rules?

- A) No, unless the client consents after full disclosure.
- B) Yes, because lawyers may include nonlawyer employees in a compensation plan based on a profit sharing arrangement; investigators have to get paid and their pay in fact comes out of clients' fees. Thomas' arrangement simply recognizes that economic fact.
- C) No, because it involves James in the unauthorized practice of law.
- D) Yes, because it is a valid referral fee.
- E) No, because an attorney may not divide his legal fees with a non-attorney.

2. Client Alfred comes to see Attorney Betty because Alfred has been charged with simple DWI. Alfred is concerned about the legal fees involved in the defense. Betty explains the costs and all the other required information. Alfred then pulls out a list with the following information on it:

- (1) Furs trapped by Alfred in the forests of Northwest Arkansas.
- (2) VISA Credit Card.
- (3) Paint Betty's house.
- (4) Part ownership interest in Alfred's fur trapping business.
- (5) An item that Alfred found in south Arkansas which he describes as a "pretty, but worthless hunk of glass," but which Betty recognizes as a diamond.

Alfred asks Betty if he can pay Betty's legal fees with any of the things listed above. Which may Betty take as payment for her legal services?

- A) Only (1), (2), and (4).
- B) Only (2), (3), and (4).
- C) Only (1), (2), (3), and (4).
- D) Only (2), (3), and (5).
- E) All of the above.

3. Attorney Sally was contacted by an employee of a magazine called Working Person. The company employed 120 persons. The employees had heard the company was in financial trouble but were not worried because they knew, by law, they were to receive 60 days notice before they could lose their job. On May 3, when the employees walked into the building they were each handed a letter that said that day was their last working day. One of the employees, Bob, contacted Attorney Sally to file suit for him against the magazine for not adhering to this law. After talking with Sally, Bob moved to Texas. Sally believed there was still a good case and wanted to pursue this. Attorney Sally knew she would have a better case if she could

get as many employees as possible to join in on this suit and make it a class action.

How can Attorney Sally contact the other employees that have lost their job to see if they want to join the class action without violating the Arkansas Rules of Professional Conduct?

- (1) Call them on the phone, explain the law that has been violated, and set up an appointment.
- (2) Have her secretary contact them, explain the situation, and set up an appointment.
- (3) Advertise in the paper that Attorney Sally is holding a meeting and any employees who lost their job from Working Person is invited to attend because they may be due some money.
- (4) Write the employees a letter, identifying herself as an attorney, discussing their rights are under the law, and asking them to call her office; the words "ADVERTISING MATERIAL" are clearly printed on the envelope and on the letter.

- A) Only (1) and (2).
- B) Only (1) and (3).
- C) Only (1) and (4).
- D) Only (2) and (3).
- E) Only (2) and (4).
- F) Only (3) and (4).

4. Lewis Lawclerk has finished two years of law school. His parents are the owners of a family corporation which operates a tire business. During the summer a customer is injured by an exploding tire at the tire store. The damage is nominal. The customer has hired an attorney and has filed a claim in Circuit Court seeking \$10,000 for the corporation's alleged negligence. The family does not want to hire an attorney because they don't want to pay an attorney and because they believe that the customer can't possibly show any damages. Under the Arkansas Rules of Professional Conduct:

- A) Lawclerk's father (who is the president of the family corporation) can represent the corporation in Circuit Court.
- B) Lawclerk can represent the corporation in court because he is the son of the owner.
- C) Lawclerk can represent the corporation because he has completed two years of law school.
- D) Lawclerk can represent the corporation because the corporation is a small family corporation and as such exempt from the general rule that corporations cannot represent themselves.
- E) The corporation must hire an attorney because a corporation is not allowed to represent itself in Circuit Court.

5. Mike M. Probity graduated from law school, passed the bar, and moved to Conway, Arkansas, where he has just opened his private practice. He intends to specialize in personal injury suits. On the day he opens his office, Mike begins his advertising blitz. In his newspaper ad, Mike states that he has never lost a personal injury case. His radio ad begins with the sounds of screaming tires, a crash, shattering glass, screams, and sirens. Following this there is this little jingle which Mike wrote himself and is sung to the tune of Camp Town Races: "If you've been hit on the freeway, sue 'em, sue 'em. Get 'em by the throat and make them pay, let's sue them today." Mike's business cards state that he handles nothing but personal injury suits and that if he can't win your case for you, no one can. Mike leaves a stack of these cards at a local hardware store and he gives another stack to his brother, who is a local doctor, and asks him to give them to anyone who might be in need of a good lawyer.

Mike has violated the Arkansas Rules of Professional Conduct because:

- (1) the newspaper ad, although true, fails to mention that he has yet to handle a personal injury case.
- (2) the radio ad evidences poor taste and unprofessional conduct.
- (3) he cannot state on his business cards that he handles only personal injury suits.
- (4) he cannot state on his business cards that if he can't win your case, no one can.
- (5) he cannot leave the stack of business cards at the local hardware store.
- (6) he cannot ask his brother to pass out his cards.

- A) Only (1) and (3) are correct.
- B) Only (1), (4), and (6) are correct.
- C) Only (3), (4), and (6) are correct.
- D) Only (2) and (3) are correct.

- E) Only (3), (5), and (6) are correct.
- F) Only (1), (2), (3), and (6) are correct.

6. Andrea Advocate is an attorney, who has practiced for eight years in Illinois. She has moved to Fort Smith, where she is a salaried attorney for a bank. One of her responsibilities may be to represent the bank in foreclosure proceedings.

- A) Because she has substantial experience, she can be admitted to the practice of law in Arkansas by reciprocity.
- B) She should seek admission pro hac vice.
- C) Because she is a salaried bank employee, and not in private practice, she does not need to be concerned about admission to practice in Arkansas.
- D) Provided she engages only in office practice for the bank (such as preparing loan documents and writing title opinions), she does not need to be admitted to practice.
- E) She must take the Arkansas bar examination, regardless of whether she brings foreclosure actions for the bank or engages in office practice for the bank.

7. Smith is a member of the Arkansas bar. He does not practice law, but operates a licensed investment counseling business. Investor consults Smith, who persuades Investor to invest \$10,000 in a business venture. Smith does not reveal to Investor that he, Smith, owns 100% of the business venture.

Is Smith subject to discipline?

- A) Yes, because a lawyer cannot have an interest in a business.
- B) Yes, because Smith's nondisclosure of his interest is a form of fraud.
- C) No, because Investor did not consult Smith as an attorney.
- D) No, because Smith does not practice law.

8. Attorney, a sole practitioner, receives a check for \$20,000 from an insurance company in settlement of Client's personal injury case. The check is made out to both Attorney and Client. Client is out of the country for a week and cannot be reached, but Attorney has a power of attorney from Client and can endorse the check for both herself and Client. Attorney, under a written agreement with Client, is entitled to \$6,500 as her fee. Tomorrow Attorney has to make a payment of \$7,500 on a note executed by her for a land purchase, and due to her ex-husband's failure to make his child support payments for several months, Attorney has a cash flow problem.

It is proper for Attorney to:

- A) Deposit the \$20,000 in her Clients' Trust Fund account and withdraw her \$6,500 fee.
- B) Deposit the \$20,000 in her Clients' Trust Fund account, execute a demand note to Client for \$1,000, and then withdraw from the Clients' Trust Fund account the \$7,500 needed to make her loan payment provided she restores the \$1,000 to the Clients' Trust Fund account before Client returns.
- C) Deposit \$6,500 in her office account and \$13,500 in her Clients' Trust Fund account.
- D) Deposit the \$20,000 in her Clients' Trust Fund account and leave it there until Client returns with the interest paid to the law firm.

9. Three years ago, attorneys Hudson and Sneed formed a law partnership called Hudson & Sneed. A year later, Hudson died, and Sneed continued practicing under the former firm name. Then Sneed hired a salaried associate, attorney Twinkle, and, the firm name was changed to Hudson, Sneed & Twinkle. The following year, Sneed left law practice to become a full time commissioner on the Arkansas Public Service Commission. Twinkle continued in practice with the same name. Later, because he had more space in the office than he needed, he entered into a space-sharing agreement with attorney Gregory. The sign on the door was changed and now reads Twinkle & Gregory, Attorneys at Law. Which of the following are ethically correct?

- (1) After Hudson died, it was permissible for Sneed to continue using the firm name Hudson & Sneed.
- (2) When Sneed hired Twinkle, it was permissible to change the firm name to Hudson, Sneed & Twinkle.
- (3) After Sneed joined the PSC, it was permissible for Twinkle to continue using Sneed as part of the firm name.
- (4) The present sign on the door is permissible.

- A) Only (1) and (2).
- B) Only (1) and (3).
- C) Only (2) and (3).
- D) Only (3) and (4).
- E) Only (1), (2), and (3).
- F) Only (1), (2), and (4).
- G) All are correct.

10. Micheal Adams has recently been recognized by the Board of Legal Specialization as a tax specialist in Arkansas. He has accepted an associate position with the Osmon Law Firm, a small Mountain Home firm. Which of the following statements, if any, are ethical?

- (1) Micheal has the right to handle environmental law litigation and may advertise his availability in addition to his tax specialty.
- (2) Client Carter was referred to Micheal by George Roberts, a tax attorney with the Arkansas State Attorney General's Office concerning a tax matter. After successfully disposing of Carter's tax problem, Micheal uses this contact to solicit Carter's future legal business.
- (3) The Osmon firm may advertise "Practice limited to tax law."
- (4) The Osmon Law Firm may put up a sign stating: "The Osmon Law Firm - Board Recognized Tax Specialists."

- A) Only (2) and (3) are ethical.
- B) Only (1), (3), and (4) are ethical.
- C) Only (1), (2), and (4) are ethical.
- D) Only (2), (3), and (4) are ethical.
- E) Only (1), (2), and (3) are ethical.

IPI#2

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Instructions

Choose the best answer for each question. Put the letter on the answer sheet. If you feel a question is misleading or ambiguous, place an Asterisk (*) next to your answer and write your qualification on the back of the answer sheet.

1. A rich young man is on trial for rape. His attorneys (assisted by various consultants) engage in the following strategies for trial. Which strategy is unethical?

- A) They tell him to wear an off the rack navy-blue blazer. "Navy blue is the dress-up color of the working man, what he wears to his best friend's wedding or his grandfather's funeral. A jury will appreciate the implied respect."
- B) They persuade his current girl friend to come to the courtroom with him. The most potent visual signal the defense can send is "the accused rapist holding hands with a pretty woman who isn't afraid of him."
- C) They send the current girl friend to a beauty salon and a make-up parlor, and buy her a complete wardrobe to wear to trial.
- D) They tell him that during a recess in the trial, he should embrace his mother lightly and shake hands with his father. He should have a sober face and employ a brief shoulder clasp when greeting male friends. For female friends, he should keep his lips closed in a Mona Lisa smile, and tilt his chin up, thus manifesting both spirit and wistfulness.
- E) Since he doesn't have close friends, they hire 3 actors (at \$50 a day) to sit behind the defendant looking concerned and talking to him during breaks in the trial.

F) To improve his image in front of thousands, they have him enter the Slam Dunk contest at Midnight Madness at the University of Arkansas.

2. Paula is representing the plaintiff in a civil lawsuit. Two months before trial, Defense lawyer Dave locates a very beneficial witness. He writes a memo to his personal file about the surprise witness, whom he intends to use at trial.

During the course of discovery, a serious mistake occurs. The law clerk for Dave sends copies of requested documents to the Plaintiff lawyer Paula. By mistake the law clerk sends a copy of the memo about the surprise witness.

When Paula looks through the documents, she finds the memo and immediately realizes its significance.

Which of the following best describes Paula's ethical obligation?

- A) Report Dave to the Committee on Professional Conduct for his sloppy office practice.
- B) Destroy it and pretend that she never saw it and never act on it.
- C) Send it back to Dave with a note, saying she received it by mistake and will not use the information.
- D) Use the information to prepare for trial.

3. Attorney Susan is a partner in a large law firm. She represents a plaintiff in a slander suit. The client tells Susan a highly confidential piece of information (Item A). In addition, Susan learns another highly confidential piece of information (Item B) from a separate source. Both items are arguably relevant to the lawsuit, and both are not the type of information that the plaintiff wants revealed.

In which of the following instances has Susan acted unethically?

- A) She reveals Item A to an associate who is working on the case.
- B) She reveals Item B to a law clerk who is working on the case.
- C) She complies with an appropriate judicial order to reveal Item A to the opposing party.
- D) She reveals Item B to a partner who is not working on the case.

4. Attorney June Cleaver has represented Drug Emporium, a chain of stores selling cosmetics, pharmaceuticals and personal hygiene products for the past three years. Among other things, Cleaver negotiates landlord-tenant lease agreements for the chain's outlets and has recently negotiated one for an outlet in a new shopping strip mall. She has also recently drafted a contract to govern relations between Drug Emporium and Product Sales, Inc., one of its primary suppliers.

In light of the previous paragraph, which of the following representations can Cleaver properly undertake?

- A) Cleaver represents Target, Drug Emporium's prime competitor, in negotiating a contract with Drug Emporium's supplier.
- B) Cleaver represents Target in negotiating a landlord-tenant lease agreement in the same strip mall from which Drug Emporium is leasing.
- C) Cleaver represents Product Sales, Inc., in a breach of contract action against Drug Emporium after Drug Emporium has failed to pay for products received from Product Sales, Inc. in the past 8 months.
- D) Cleaver represents a slip-and-fall plaintiff against Drug Emporium.
- E) None of the above.

5. Marsha works at Starline, a boat factory that manufactures fiberglass boats. In her job she has to apply a highly flammable undercoating. One day at work the fumes burst into flames burning her severely. She wants to hold someone liable (under common law principles) for not having proper safety precautions.

Marsha goes to Attorney Sebastian for advice about her injuries. Marsha tells you that the assembly line mechanism causes sparks from time to time, and that could be the cause of the fire. She also tells you that workers are not supposed to smoke on the production floor, but on the day of the accident she could not wait to get to the break room and therefore she lit a cigarette in her work area. She is not sure if that caused the accident, but the assembly line was operating.

He agrees to take the case and files suit immediately. He deposes the plant manager and other employees

in the weeks that followed, with Starline's attorney present. Because he forgot to ask the plant manager a few questions, Sebastian calls the manager at home and asks the questions. The manager answers them without hesitation. The next day, Marsha calls Sebastian to ask him about her case and finds out what has happened. He says "don't worry about it, I've got everything under control. Leave all the 'legal stuff' to me", he then hangs up without telling her anymore.

Which of the following statements are correct?

- 1) Sebastian should not have filed the suit because it is not a meritorious claim and will lose at trial.
- 2) Sebastian was correct in telling Marsha not to worry about the 'legal stuff' because he only needs to tell her when to be in court and/or the details of a settlement offer.
- 3) Sebastian can talk to the plant manager as long as he does not ask any questions that would lead to an admission, and if he tells the opposing attorney everything that was said.
- 4) When communicating with Marsha, Sebastian should inform her fully concerning the aspects of her case rather than to tell her not to worry about the 'legal stuff'.
- 5) Sebastian should not have talked to the plant manager without the presence of Starlines attorney since the manager may give a statement that constitutes an admission.

- A) Only (1) and (2).
- B) Only (1) and (4).
- C) Only (2) and (3).
- D) Only (3) and (4).
- E) Only (1) and (5).
- F) Only (4) and (5).

6. Plaintiff Patsy is injured in an automobile accident. She sues Defendant Dave, alleging that Dave was going 75 miles per hour. Dave has \$50,000 of automobile liability insurance with National Drivers Insurance Co. NDIC hires attorney Joe, on an hourly basis, to defend Dave.

During the course of the representation Dave makes two disclosures to his attorney Joe: "(1) I was going 90 miles per hour. (2) When I applied for my insurance with NDIC, I lied and did not tell them about my prior accidents in Arizona."

What is the ethical obligation of attorney Joe?

- A) Because his client is Dave, he is obligated to keep both statements confidential.
- B) During the representation, he may and probably should disclose the first statement to NDIC, but must keep the second statement confidential.
- C) He should lecture Dave. If Dave refuses to disclose both statements to NDIC, then Joe must disclose.
- D) Because his client is NDIC, he must disclose both statements to NDIC immediately.
- E) He must withdraw as attorney for Dave and have nothing else to do with the case.

7. Plaintiff and Defendant are engaged in settlement negotiations on a heated and controversial alienation of affections law suit. Yesterday the Supreme Court handed down a decision abolishing the tort and foreclosing all pending actions.

Today's negotiations are taking place at the defendant's office and without the knowledge of the court. Plaintiff's attorney realizes that the defendant's attorney does not know of yesterday's decision. Plaintiff's attorney then changes his demeanor and style and says, "Bill, we're all tired of this lawsuit. I've been demanding \$50,000; you've offered \$20,000. I'm authorized by the plaintiffs to accept \$35,000 if we can settle immediately." Defendant agrees.

The papers are drawn up, the money disbursed, and the tort action dismissed with prejudice that afternoon.

Has plaintiff's attorney acted unethically?

- A) Yes, because he committed fraud on his adversary.
- B) No, because he obtained a fair settlement for his client.
- C) Yes, because he had a duty to tell the defendant's attorney of the Supreme Court decision.
- D) No, because he did not commit fraud on the court.

E) Yes, because he had a duty to tell the trial court of the Supreme Court decision.

8. Kelly Criminal has been arrested and charged with the murder of Vinny Victim. Kelly has retained Dudley Dooright as her defense attorney. During a meeting between Dudley and Kelly, Kelly admits to Dudley that she did, in fact, kill Vinny. At Kelly's trial, it becomes apparent that the Government's case is based entirely upon circumstantial evidence. Which option would allow Dudley to effectively defend Kelly while, at the same time, allow Dudley to comply with relevant Rules of Professional Conduct?

- A) In closing argument, Dudley asserts that, "in my opinion, Kelly is innocent."
- B) In closing argument, Dudley asserts that, "Kelly Criminal did not kill Vinny."
- C) In closing arguments, Dudley states "The government has not proven beyond a reasonable doubt that Kelly killed the victim."
- D) Dudley puts Kelly on the stand and elicits her testimony that, "I didn't kill Vinny. I loved him!"
- E) Both (1) and (3) are ethical.
- F) Both (1) and (4) are ethical.
- G) Both (2) and (3) are ethical.
- H) Only (2), (3) and (4) are ethical.
- I) Only (1), (2) and (3) are ethical.
- J) All are ethical.
- K) None are ethical.

9. H and W, husband and wife, come to you for estate planning advice. They want to be able to take advantage of all of the tax credits, deductions, etc. to preserve the estate for their one child, Carl and the other beneficiaries of each and they want you to draft the proper documents because you have done so much for W's family business in the past.

This is the third marriage for H. He has two children from his first marriage and one from his second marriage. His assets are few and he pays most of his expendable income in child support.

This is the first marriage for W. She has the bulk of her wealth (\$1.4 million) in a close, family held corporation. She wants her interest to "stay in the family"; that is, go to Carl, but if he should predecease W, then it should go back to members of her family.

Can you ethically represent H and W in making their estate plan?

- A) Yes, you can represent both of them because your client is the combined estate and not the individual spouses.
- B) Yes, but only if you reasonably believe that the representation of both will not adversely affect either one and both H and W consent after consultation.
- C) No, because H's and W's interests are directly adverse to each other.
- D) No, because you would always violate the rule of confidentiality by simultaneously representing two persons in the same matter.

10. The prosecutor is present at a private meeting when the Defendant assaults a court reporter. The testimony of the prosecutor will be essential in demonstrating the acts and the intent of the defendant. The prosecutor assigns the case to an assistant part-time prosecutor in the office.

May the assistant prosecutor ethically accept the case and prosecute the defendant?

- A) Yes, because his boss instructed him to do so.
- B) No, because he will not be able to effectively conduct the direct examination of the prosecutor.
- C) Yes, because the disqualification of the Prosecutor is not imputed to the assistant prosecutors in the office.
- D) No, because he is subject to the ultimate control of his boss.
- E) Yes, because part-time government attorneys are not subject to all the ethical standards.