

# Fall 1996 Professional Responsibility IPI #1, 2

## IPI #1

Professional Responsibility

Prof. Brill

Fall 1996

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. Alice owes \$35,000 to the IRS. She gives the money to attorney Ron and directs him to send it to the IRS on her behalf. Attorney Ron ignores the direction, puts the funds into his personal account, and converts the funds to his own use.

Two months later, Ron dies. His estate is worthless. Three months later, the IRS informs Alice that it has never been paid. She discovers the conversion of her funds.

- A) She will probably be awarded \$35,000 by the IOLTA Foundation.
- B) She will probably be awarded \$35,000 from the Client Security Fund.
- C) She can only recover a maximum of \$5000 from the Client Security Fund.
- D) She cannot recover anything from IOLTA because he did not put the funds into his trust account.
- E) She cannot recover anything from the Client Security Fund because Ron was not suspended or disbarred.

2. The following five examples are contingency fee agreements. All are in writing and carefully express all the necessary details.

One of the following is unethical. Which one?

- A) The plaintiff's attorney will charge \$5000 and 10% of any recovery above \$20,000 in a personal injury case.
- B) The defense attorney will charge \$75 an hour, plus a "bonus" of \$25,000 if the jury awards less than \$100,000.
- C) The attorney will charge 25% of any accumulated child support that is actually collected by the mother.
- D) The attorney will charge \$10,000 for the defense of a felony charge, and an additional \$5000 if the client is only convicted of a misdemeanor.
- E) The attorney defending a civil case will charge nothing if the defendant has to pay damages. If the verdict is zero, the attorney will charge \$10,000.
- F) The attorney in a quiet title lawsuit will take a partial interest in the land if the client prevails in the action.

3. John has been a successful CPA. He has just graduated from law school and been admitted to practice. He has had new business cards printed which indicate that he is an attorney. Which of the following can he ethically do?

- (1) put "CPA" on his new business card;
- (2) visit every CPA in town and give them his new business cards;
- (3) put an advertisement on television, saying "practice limited to tax matters and accounting problems;"
- (4) write his former CPA clients and tell them "I have opened my law offices;"
- (5) open a new office with the name of "Law and Accounting Offices of John";
- (6) visit his former CPA clients and ask them to hire him for their legal needs.

A) Only (1), (2) and (3) are ethical.

- B) Only (1), (3) and (5) are ethical.
- C) Only (2), (3) and (4) are ethical.
- D) All but (2) and (5) are ethical.
- E) All but (4) and (6) are ethical.
- F) All but (6) are ethical.
- G) All but (5) are ethical.
- H) All are ethical.

4. Patsy Plaintiff of Walnut Ridge wishes to file a products liability action against a Fort Smith dishwasher manufacturer. Her attorney is her brother, Pete, a resident of Kansas City and a graduate of the University of Arkansas Law School. Pete is licensed to practice law only in Missouri.

- A) Pete may represent the plaintiff, because he is an Arkansas graduate.
- B) Pete may represent the plaintiff, because of their relationship.
- C) Pete may represent Patsy pro hac vice if he consents to local discipline and accepts local counsel if required by the trial court.
- D) Patsy has a constitutional right to select her own attorney and to employ him in her Arkansas lawsuit.
- E) Pete may not represent the plaintiff, because he is not licensed in Arkansas.
- F) Pete must be admitted to the Arkansas Bar by reciprocity before representing Patsy.
- G) Pete has a constitutional right to represent the plaintiff.

5. You are a sole practitioner. In the past you prepared a will for Sue and did an adoption for Joe. Which of the following situations involve unethical conduct on the part of you as an attorney?

- A) You visit Sue at her home the day she gets out of the hospital. She was hit by a drunk Wal-Mart truck driver and she suffered numerous serious injuries. You tell her that you would like to represent her in her suit against Wal-Mart on a contingency fee basis.
- B) You visit your brother Steve while he is still in the hospital. He slipped and fell on a broken bottle of apple juice at Sam's. You tell him that you'd be glad to file a suit for him against Sam's on a contingency fee basis.
- C) You call Jan, your neighbor of 15 years, at her home. You just heard that her son was run over by a drunk Wal-Mart truck driver on his way home from school yesterday. You tell her that you would be happy to take her kids to school every day and feed them dinner until her son comes home from the hospital.
- D) You call Joe in the hospital after hearing on the radio that he was beaten up by the police during a routine traffic stop. Joe suffered a broken leg and jaw injury. You tell Joe that he can sue the policemen and that you would be happy to represent him on a contingency fee basis.
- E) None of the above.

6. Attorney Alpha, a new lawyer starting a solo practice, needs to hire a good paralegal to help him "learn the ropes" of the local courts, but cannot afford a large payroll. He has found a good candidate in Paula Paralegal, a certified paralegal with 15 years experience, but she has demanded a starting salary no less than \$2,000.00 a month. Alpha can not afford to pay this, but he really likes Paula's qualifications. He has developed a proposal which will allow him to hire her while holding to his budget. He's not sure, however, if the plan is permissible under the ethical rules.

Under Alpha's plan he would pay his paralegal a base salary of \$1,000.00 a month and keep books on all his revenues as he earns them. At the end of each quarter, after deducting for all allowable business expenses, Alpha will split off 10% of his net income and pay it to Paula to complete her compensation (regardless what cases she had actually contributed to). Alpha feels this plan will also work on an incentive to keep his future employee working her hardest.

He has asked for your opinion. What do you tell him?

- A) The plan would be a violation of the Rules which forbid lawyers from sharing legal fees with a non-lawyer.
- B) The plan would be permissible under the rules, provided Alpha includes a clause in his Client Fee Agreement informing clients how the fees are distributed and obtains their consent.
- C) Although fee splitting with non-lawyers is generally prohibited, this plan is permissible under the exception for certified paralegals.
- D) The rule is not completely clear in this situation, but you suspect this arrangement is permissible because there is little risk of the plan enticing Paula to engage in the unauthorized practice of law or solicitation.

7. Daniel Brown graduated from law school in May 1996, passed the bar exam, was admitted to practice in August, and opened his law office. He is engaged to Becky, a third year law student. They will be married in December and she will use his surname. She will graduate in May and upon admission to practice plans to practice with her husband Daniel.

Which of the following are permitted by the Rules of Professional Conduct?

- (1) Daniel calls the law office "Brown Law Firm."
- (2) Daniel calls the law office "Brown and Brown, Attorneys at Law."
- (3) Daniel's stationery is headed "Brown Law Firm" and lists Daniel Brown and Becky Brown.
- (4) Daniel's stationery is headed "Brown Law Firm" and lists Daniel Brown and Becky Brown\* (\* means "not admitted to practice in Arkansas.").
- (5) Daniel's newspaper ads say "Experienced trial lawyer."
- (6) Daniel's ads say "20% discount off normal fees to senior citizens during October."

- A) Only (1) is permitted.
- B) Only (1) and (2) are permitted.
- C) Only (1) and (3) are permitted.
- D) Only (1) and (4) are permitted.
- E) Only (1) and (5) are permitted.
- F) Only (1) and (6) are permitted.
- G) Only (1), (4) and (5) are permitted.
- H) Only (1), (2) and (3) are permitted.
- I) Only (2), (4) and (6) are permitted.
- J) All are permitted.
- K) None are permitted.

8. Sammy is an attorney in Fayetteville. He has a court appearance in Little Rock concerning representation of client Connie. He drives to Little Rock on Friday morning for his court appearance and then meets his long time friend and colleague Barrister Bob to go to the Oaklawn for the horse races in Hot Springs.

In between beers, cornbeef, and races, Bob asks Sammy about his practice in Fayetteville. Sammy spends a good part of the day talking about his present cases with Bob and asking Bob's opinion on strategy.

When Sammy returns to Fayetteville on Sunday, he dictates a note to his secretary to send out bills to certain clients for his weekend trip. Which of the following bills would most likely be consistent with the Arkansas Rules of Professional Conduct?

- A) Bill Connie for the round trip travel time, court appearance, and hourly rates for discussion of the case at the race track.
- B) Bill a one hour fee to all clients discussed with Bob at the race track and bill Connie only for the travel to Little Rock and back.
- C) Bill none of the clients discussed with Bob and bill Connie for the travel to and from Little Rock and the appearance in court.
- D) Bill Connie only for the brief appearance in court on Friday since Sammy had personal reasons to go to Little Rock as well.
- E) Bill Connie for Friday's travel and court appearance, but not Sunday's travel back to Fayetteville, which would be ethically prohibited.

9. Pat Fisher has just recently been admitted to the practice of law. She returns to her hometown where her mother operates "Susannah's Fashions." Pat begins to work part-time in the clothing store as a "fashion consultant." She has a small private office in the back next to the changing rooms.

Which of the following activities is most likely to be held unethical?

- A) Her business card from the clothing store says "Pat Fisher, Fashion Consultant and Attorney at Law."
- B) On behalf of the store, she sues debtors.
- C) Under Attorneys at Law in the telephone book, she lists and uses the same telephone number as the clothing store.
- D) The plate glass window of the store also says "Law Offices of Pat Fisher".

- E) As rent for the little office, she pays her mother 10% of her gross revenues from her law practice.
- F) She gives a discount of 10% off her normal fees for all customers of the clothing store.
- G) She has her trust account at the same bank as the clothing store's accounts.

10. Lawyer Harry has two bank accounts: a trust account and an office account. (1) Client Sally asks Lawyer Harry to handle her divorce. Lawyer Harry agrees to do so, and asks Client Sally for a \$500 fee and \$75 in court costs. Harry deposits the entire \$575 in his office account. (2) Client Bob has recently opened a new business and asks Lawyer Harry to be his attorney. They work out a monthly retainer fee of \$2500. Additionally, Bob tells Harry that he is fearful that he will be sued in the future in an anti-trust action. Lawyer Harry, recognizing that costs in defending such a suit will be high, asks Client Bob for \$2,000 to be spent on litigation costs. Bob writes Harry a check for \$4,500, which includes the first month's retainer of \$2,500 and the \$2,000 in costs. Harry deposits the entire \$4,500 in his office account. (3) Finally, Client Fred asks Lawyer Harry to be corporate counsel. They agree on a \$1,000 per month retainer, which Harry deposits in his office account. However, the next day, Client Fred changes his mind and wants his brother-in-law to represent his corporation and asks for a \$1000 refund. Lawyer Harry claims the entire fee is his, but to appease Fred, he writes him a check out of his office account for \$300 and leaves the other \$700 in his office account.

Lawyer Harry acted ethically in his dealings with:

- A) Sally only.
- B) Bob only.
- C) Fred only.
- D) Sally and Fred only.
- E) Bob and Fred only.
- F) Bob and Sally only.

## 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. You may choose any of the lettered responses. For example, in Question #8, you may choose any of the 11 answers (A-K).

1. Attorney Pete and Attorney Debbie are graduates of the University of Arkansas and enthusiastic Razorback supporters. (They attend games and contribute to the athletic program).

A dispute has arisen between a student athlete and the NCAA. The student wishes to play; the NCAA determines that the student is not eligible. The athlete hires Pete to bring a lawsuit; the NCAA hires Debbie to defend the lawsuit. (The University of Arkansas is not a party to the lawsuit, but in its heart of hearts would like the athlete to be able to play and hope that he wins). Both the athlete and the NCAA are fully aware of the athletic loyalties of the attorneys, and neither the athlete nor the NCAA has any objection.

- (1) Pete has acted unethically in bringing the lawsuit because of his primary allegiance to the University.
- (2) Pete may represent the athlete.
- (3) Debbie should not be defending the lawsuit. The University wants this player. Defending this lawsuit is not in the best interest of the University because if Debbie (and the NCAA) are successful, the University will be deprived of the player.
- (4) If Debbie can act zealously for the NCAA, she can represent the NCAA.
- (5) Debbie cannot represent the NCAA without the consent of the University.

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

2. Attorney Alice represents Client Connie, who was injured by defendant's slanderous statements. Negotiations are being conducted between Attorney Alice and the lawyer for the defendant. The attorneys have agreed generally on the settlement, and if the defendant consents to the cash payment, the settlement can be finalized. If the defendant does not consent, Alice will immediately file her lawsuit.

However, Attorney Alice has just realized that she has made a big mistake. She has assumed that the statute of limitations for slander was 3 years, the same as most torts. But her eager law clerk has just reminded her that the statutory period for slander is one year, and it has expired.

- A) Alice has an ethical duty to immediately tell the opposing attorney that the statutory period for commencing an action has expired.
- B) Alice has an ethical duty to inform her client Connie and ask Connie's permission to tell the opposing attorney.
- C) Alice has an ethical duty to say nothing to the client or to the opposing party.
- D) If the settlement fails, Alice is ethically barred from commencing the lawsuit because she knows the statutory period has expired.
- E) If the settlement fails, Alice may ethically sue, without telling the court of the statutory bar.

3. Client retains Attorney to represent her in litigation. Client agrees to reimburse attorney for all costs of litigation. Attorney retains Court Reporter for a deposition. The Court Reporter does the work and sends the deposition and the statement for her services to the attorney. The attorney does not pay. The client is bankrupt.

Is the attorney liable to the Court Reporter for the services provided?

- A) No; the attorney was acting as the agent of the Client, and the Court Reporter's only recourse is against the client.
- B) Yes; the attorney hired the Court Reporter and is personally responsible for the charges.
- C) No; but the Court Reporter may file ethical disciplinary charges against the attorney.
- D) Yes; because an attorney has an ethical obligation to advance the costs of litigation for a client.
- E) No; because the client agreed to be liable for all the costs.

4. Attorney Tillis is a partner in the 20 person firm of Dahlberg & Sneed. The Citizens Alliance for Lake Preservation has asked him to represent the Alliance in a public interest law suit against Vista del Oro, Inc., a real estate developer. Vista del Oro owns several thousand acres of beautiful shoreline, about an hour's drive from a large city. It is building vacation homes and condominiums to sell to the public. When the project is complete, the entire area will be fenced off to prevent access by non-owners. The Alliance suit seeks to force Vista del Oro to provide access paths across the property, so that members of the public can get from the state highway to the lake.

Attorney Prentice is also a partner in Dahlberg & Sneed. He is a member of the board of directors of Vista del Oro, and he owns seven of the vacation home sites as a personal investment. After careful consideration, Tillis has concluded that his representation of the Alliance would not be adversely affected by Prentice's stake in the matter. Which of the following conditions must be met before Tillis can represent the Alliance in the suit?

- (1) Tillis must tell the Alliance about Prentice's stake in the matter.
- (2) Tillis must obtain the consent of the Alliance.
- (3) Prentice must resign as a Vista del Oro director.
- (4) Prentice must sell the vacation home sites he is holding for investment.

- A) Tillis must satisfy only condition (4).

- B) Tillis must satisfy only conditions (1) and (2).
- C) Tillis must satisfy only conditions (1), (2), and (3).
- D) Tillis must satisfy only conditions (1), (2), and (4).
- E) Tillis must satisfy all four conditions.
- F) Tillis does not need to satisfy any of these four conditions.
- G) Even if Tillis satisfies all four conditions, he cannot represent the Alliance.

5. When may an attorney permissibly communicate with jurors or prospective jurors in an Arkansas state court? (Assume all inquiries are conducted in a reasonable, non-embarrassing, non-harassing manner.) You may choose any of the eight following options.

- A) The lawyer asks the neighbor of a prospective juror, "What is his stand on capital punishment?"
- B) The lawyer asks the brother of a prospective juror, "How would he feel about a million dollar judgment?"
- C) During trial the lawyer says to a juror, "sure is hot today. How is it in the jury room?"
- D) After the jury is discharged, the attorney calls the juror at home, "What did you think of my closing argument?"
- E) The attorney has acted ethically only in (A) and (B).
- F) The attorney has acted ethically only in (C) and (D).
- G) The attorney has acted in a proper fashion only in (A) and (D).
- H) The attorney has acted in a proper fashion in all four situations.

6. 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.

7. Carl Counselor is a former member of the ABC law firm. One of ABC's clients is the 2nd National Bank. Carl, an environmental attorney, never did any work for 2nd National and no confidential communication concerning 2nd National Bank was ever communicated to him.

Carl is now a partner in XYZ, a firm specializing in environmental litigation. A local farmer has contacted XYZ about representing him in litigation against 2nd National Bank concerning hazardous waste on property owned by the bank.

Which of the following is correct?

- A) Carl is disqualified from representing the farmer because of his relationship with ABC.
- B) XYZ is disqualified from representing the farmer because of Carl's former relationship with ABC.
- C) Neither Carl nor XYZ are disqualified.
- D) Both Carl and XYZ are disqualified.

8. The following statements are made in closing arguments to the jury. Which ones are improper?

- A) A prosecutor: "When the police officer approached the car, the defendant ran away. That is a sign of guilt. As it says in the Bible, "The guilty flee when no man pursueth while the righteous stand bold as a lion." Proverbs 28:1."
- B) A plaintiff's attorney: "How much money would you want to have to spend the rest of your life in a wheelchair? That's the future of the plaintiff after the negligence of the defendant."
- C) A civil defendant's attorney: "I have gotten to know my client well over the past months. I know he is telling the truth. He has always been a careful driver, and he certainly was on the night in question."
- D) A plaintiff's attorney: "It is difficult to evaluate the pain and suffering that my client has endured and will endure. However, I suggest that an award of \$200 a day is appropriate."
- E) Only (A) and (B) are improper.
- F) Only (B) and (C) are improper.
- G) Only (C) and (D) are improper.
- H) Only (A), (B) and (C) are improper.
- I) Only (B), (C) and (D) are improper.
- J) Only (A), (C) and (D) are improper.
- K) All are improper.

9. Last year the Chief Engineer of the corporation wrote some notes to himself on a yellow legal pad that said "Our widget is potentially dangerous. We should not be selling it." Six months later in a corporate staff meeting, Connie, the corporate attorney, looked at the yellow legal pad and told the Chief Engineer to "destroy the notes." The engineer destroyed the notes.

Two months ago a customer was injured using the widget. The customer's attorney has brought a lawsuit. As a part of discovery, the customer's attorney has commenced discovery proceedings. He has asked for "all memos, reports and notes concerning the widget." Connie, the corporate attorney, responded, "The corporation has no memos, reports or notes concerning the widget."

In addition, the attorney for the customer submitted an interrogatory asking, "Did the chief engineer write any memos or reports concerning the widget?" The corporate attorney answered, "No."

Did Connie, the corporate attorney, act ethically?

- A) She acted unethically in telling the chief engineer to destroy the notes.
- B) She acted unethically in her answer to the request for documents.
- C) She acted unethically in her response to the interrogatory.
- D) Both (A) and (B) are correct.
- E) Both (B) and (C) are correct.
- F) Both (A) and (C) are correct.
- G) She acted unethically in all three instances.
- H) She did not act unethically in any of the three instances.

10. Adam and Pete are partners in a small law firm in Fayetteville. Adam was a passenger in a car driven by his friend Fred. Fred was injured when a truck driven by Richard allegedly crossed the center line forcing Fred to drive off a cliff. Fred wants to sue Richard for the injuries. Adam will probably have to testify at trial as a witness.

Which of the following statements best states the current Arkansas law?

- A) Adam may represent Fred because he and Fred are friends.
- B) Adam may represent Fred and testify, but only if Richard consents.
- C) Adam may not represent Fred because he is a witness, but Pete, Adam's partner, may represent Fred.
- D) Neither Adam nor Pete may represent Fred in the lawsuit.