

Spring 1995 Professional Responsibility IPI #1, 2

IPI #1

Professional Responsibility
Prof. Brill
Spring 1995
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. The following statements concern statements about legal malpractice insurance in Arkansas. Only one statement is correct. Which one?

- A) A recently admitted attorney can expect to pay approximately \$3000 a year for typical malpractice insurance (that is, \$100,000/\$200,000 coverage).
- B) State law requires every lawyer to have malpractice insurance.
- C) Approximately 95% of lawyers have malpractice insurance.
- D) The largest malpractice award in the history of Arkansas is \$750,000.
- E) Legal malpractice insurance provides a set amount of coverage (for example, \$100,000) and an additional amount (another \$100,000) for attorneys' fees and related expenses for defending the claim.
- F) The insurance carrier has authority to settle the case and pay the claim, despite the objection of the insured (the defendant attorney).

2. After a long day in the office, Linda Lawyer frequently stops by Frank's Place and engages in pleasant conversations with the bartender, Frank. She does not do any legal work for Frank. One day Frank asks her to leave him some of her business cards so he can give them to other customers who need lawyers.

May Linda ethically leave some business cards with Frank?

- A) Yes, provided she does not give Frank money or any other gift in return.
- B) No, because she would be using Frank to solicit customers.
- C) Yes, provided she specifically instructs Frank not to give any legal advice.
- D) No, because she has a business relationship with Frank, not the relationship of an attorney and client.
- E) No, because bartenders cannot recommend lawyers.

3. 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 George 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 George firm may advertise "Practice limited to tax law."
- (4) The George Law Firm may put up a sign stating: "The George 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.

4. After their graduation from law school, three young women formed a partnership to open a law firm. They would like to call their firm the "Women's Law Collective." May they do so?

- A) No, because it improperly suggests specialization.
- B) Yes, the use of a tradename is permitted in these circumstances.
- C) No, because it does not indicate that they are a partnership.
- D) Yes, provided that they expand the tradename to include their own surnames.
- E) No, because the use of a tradename for a law firm is deceptive.

5. Billy Winkin, a lawyer who is licensed in Texas but resides in Arkansas, is hired by Joe Bob, who has a drunk driving charge pending in an Arkansas Municipal Court. For Billy Winkin to represent Joe Bob in Arkansas, he must:

- A) Pass the limited Arkansas Bar Examination given to experienced attorneys.
- B) Apply for reciprocity admission to practice.
- C) Ask the court to be allowed to represent Joe Bob pro hac vice.
- D) Take primary responsibility for the case but associate an Arkansas attorney on the matter.
- E) None of the above are available options.

6. Attorney Athena has a Clients' Trust account at the local bank; she also has an Office account which she uses to pay office expenses and salaries. She customarily bills at \$50 an hour.

Client One retains Athena to assist in a step-child adoption. Athena sets the fee at \$500; Client One brings in \$250 so that Athena will start working on the matter; Athena deposits the check in the trust account.

Client Two is a local government agency which wishes to hire Athena for the fiscal year. She quotes the agency a basic fee of \$1000 for the year to ensure her loyalty and availability. After the minimum hours of work have been completed, she will then bill the agency at her hourly rate. The agency brings the \$1000, and she deposits it in her office account.

Client One changes his mind and decides to cancel the adoption. He asks for a refund of his \$250. Athena responds that she has worked on the matter for 3 hours and has earned \$150 and will only refund him \$100. Despite his strong objection, she writes a check to him for \$100 and one to her office account for \$150.

After several months, Client Two decides it is disappointed in the quality of Athena's work and asks for a partial refund. She refuses.

- A) Athena acted ethically in placing the \$250 in the trust account.
- B) Athena acted ethically in writing the check for \$150.
- C) Athena acted unethically in placing the \$1000 from Client Two in her office account.
- D) Athena acted unethically in refusing to make any refund to Client Two.
- E) Both (A) and (D) are correct.
- F) Both (B) and (D) are correct.
- G) Both (A) and (B) are correct.
- H) Both (C) and (D) are correct.

7. First State Bank hires Attorney Alicia as a salaried part-time attorney. She also retains her private practice of law in a separate building.

- (1) Using a bank office and facilities, she prepared wills for bank customers, who then pay a fee to the bank.
- (2) She brings actions for the bank against defaulting borrowers.
- (3) Using a bank office and facilities, she drafts trusts for bank customers, who they pay a fee directly to Alice.
- (4) She writes a pamphlet on "The Tax Advantages of an Individual Retirement Account," which is then published by the bank and given to its customers.
- (5) She probates the estate of Witt Wilson, whose will names the bank as executor.
- (6) In her private office, she handles the divorce of Debbie, a bank customer referred to her by a bank officer.

She has acted ethically in:

- A) (1), (2), and (5) only.
- B) (2), (3), and (5) only.
- C) (3), (4), and (5) only.
- D) (2), (4), and (6) only.
- E) (1), (3), and (6) only.
- F) (1), (4), and (6) only.

8. Susan Stardust is married to Brian Biggerstar and they have two children. Stardust caught Biggerstar engaging in an extramarital affair in their home. Subsequently, Stardust attacked Biggerstar with a paring knife, causing him severe bodily harm. Biggerstar has filed criminal charges and a civil lawsuit against Stardust. Stardust has asked Andrew Attorney to represent her in an action for divorce and child custody, to defend her in the criminal and civil lawsuits, and to file a cross-claim against Biggerstar for intentional infliction of emotional distress. Stardust has spent most of her money and is interested in paying Andrew on a contingency basis, if possible.

In which matters may Andrew accept a contingency fee, provided that the fee is reasonable and is in writing?

- A) The divorce
- B) Property settlement, alimony, and child support
- C) Collecting delinquent alimony and child support payments
- D) Stardust's civil lawsuit
- E) Stardust's defense at criminal trial
- F) (A), (C), and (E) only.
- G) (C) and (D) only.
- H) (D) and (E) only.
- I) None of the five.
- J) All of the five.

9. 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. In addition to his regular salary, James and Thomas have the following arrangement: for every personal injury case James works on that Thomas wins for a client, James will receive five percent of the net profit.

Is this 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.
- 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.

10. Farmer Crawford needed to borrow money. A lender agreed to lend the money, provided that the farmer gave an adequate security interest in his farm machinery. The lender required the farmer to obtain a letter from a lawyer, assuring the lender that there were no prior liens on the machinery.

Farmer Crawford went to Attorney Alan and asked him to prepare the letter. Alan wrote a letter, on his legal stationery, to the lender stating: "On behalf of my client Farmer Crawford, I have conducted a UCC, tax and judgment search and the machinery is free and clear of any liens or encumbrances." The lender loaned \$1,000,000 to Farmer Crawford. The \$300 attorney's fee was paid by Farmer Crawford.

A year later Farmer Crawford defaulted on the loan and went into bankruptcy. The lender then learned that most of the farm machinery had previously been pledged to other lenders. The lender has sued Attorney Alan for malpractice. The evidence reveals that the law clerk for Attorney Alan forgot to examine one book at the courthouse when conducting the search.

In the legal malpractice suit against Attorney Alan, the lender is likely to:

- A) Lose, because the lawyer did not personally make a mistake.
- B) Win, because the lawyer knew that the lender was to be benefitted and he personally notified the lender.
- C) Lose, because any mistake was only one of judgment.
- D) Win, because the lawyer committed fraud.
- E) Lose, because there was no attorney-client relationship between the attorney and the lender.

IPI #2

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IPI #2

Instructions

Choose the best answer for each question. You may choose any of the lettered responses. 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. You represent First National Bank in its employment relations work. Friend Fred consults you with respect to a "prepayment penalty" in the residential mortgage loan he has with Second National Bank. You agree with Fred that such a penalty does not seem to be in the best interests of consumers. You agree to file a declaratory judgment action for Fred challenging the validity of such a prepayment penalty. You know that First National Bank does not use prepayment penalties.

You have written Second National Bank informing them of the civil lawsuit that is about to be filed. You now receive a call from the President of your client, First National Bank: "I've heard about your proposed lawsuit. As you know, we do not use prepayment penalties in our loans. But regardless, we do not want the law of prepayment penalties changed. You owe it to the First National Bank to withdraw from representing the plaintiff in this suit."

- A) You should not have agreed to take the case because Fred and First National Bank are directly adverse.
- B) You should not have written Second National Bank before filing the lawsuit.
- C) You should have informally told First National Bank before agreeing to represent Fred.
- D) You should have obtained the consent of First National Bank before agreeing to represent Fred.
- E) You had an obligation to tell Fred (before agreeing to represent Fred) that you represent First National Bank on employment relations matters.

2. Attorney Alice is representing Client Carl in his purchase of a warehouse in Little Rock. One day, during a session at Carl's office, while Alice's secretary was present, and during a coffee break, Carl suddenly said, "This has been a rough week. I just found out that my 25 year old son Sonny has been arrested in California for selling drugs." Alice responds, "I'm truly sorry to hear that."

That evening, at a local dining establishment, Alice tells another businessman that Carl's son had been arrested.

If ethical charges are brought against Alice, is the Committee on Professional Discipline likely to find out that Alice acted unethically?

- A) No, because this information was a matter of public record in California.
- B) No, because a third party was present when Carl made the disclosure.
- C) No, because this information was not related to the subject matter of the representation.
- D) No, because the disclosure by Alice was not made to another attorney.
- E) Yes.

3. Alice represents Client Carla. Which of the following actions on the part of Attorney Alice would most likely be acceptable?

- A) Failure to inform Client Carla of a settlement offer based on her initial reluctance to accept any offer.
- B) Failure to inform Client Carla that the judge has ordered a hearing on the defendant's motion for summary judgment.
- C) Failure to immediately inform Client Carla, based on advice of her doctor, of a recent psychiatric exam which showed her to have suicidal tendencies.
- D) Failure to gain Client Carla's consent before placing her mentally handicapped son on the witness stand to give necessary testimony.

4. Attorney is a member of the bar and a practicing lawyer. One of his clients, Mary Smith, in the course of seeking legal advice, has just told Attorney that Smith has had financial reverses because her former lawyer (Former) stole money from her. Mary Smith told Attorney that she does not want Attorney to reveal this information because of her concern for her Former's sick wife, who is Smith's sister and would be devastated if she knew of Former's financial dealings. Attorney told her: "Unless you are willing to let me reveal this information, there is little I can do. But I assure you, I will keep your secret."

Is Attorney subject to discipline if he does NOT reveal this information to the disciplinary authorities?

- A) Yes, because he must report such unfavorable information to the appropriate tribunal empowered to investigate it.
- B) No, unless the amount stolen is large.
- C) Yes, if Smith's concerns for Former's wife is groundless.
- D) No, because the information is privileged.

5. Mr. Crain and Dr. Smith come to your office. They are having a dispute over a medical bill, which Mr. Crain believes is too high. Dr. Smith does not want to waste time with a lawsuit, and really doesn't want his name all over the headlines either. As a licensed attorney, what may you ethically do to help these clients?

- A) Act as a mediator for both clients, and if it can't be worked out through advisement, pick which client you like best and represent him in the lawsuit.
- B) Get all the information from both parties, and then pick which one you want to represent.
- C) Act as a mediator for both clients, and if it can't be worked out by mediation, withdraw from the whole case.
- D) Listen to what they have to say, tell them both you would rather not handle the case, and then have your law partner call the one you feel is the best client and offer representation to only that client.

6. For two years Sarah Wilson has worked for the Little Rock firm of Adams and Baker in the bankruptcy section. She is eager to do legal work other than Chapter 11 proceedings. Out of frustration, she leaves the firm and joins a small North Little Rock firm. The senior partner immediately assigns her to the defense of a tenant, accused of not paying rent on a commercial building. In examining the file, she discovers that the plaintiff landlord is represented by the firm of Adams and Baker.

May Sarah represent the defendant tenant?

- A) No, because she is barred by the irrebuttable presumption that she knew about this case while in Adams and Baker.
- B) Yes, because there is an appearance of impropriety.
- C) No, because she has not complied with the one year cooling off period that governs attorneys who switch from one firm to another.
- D) Yes, provided that she can establish that while she was in the Adams and Baker firm, she knew nothing of this case.
- E) No, but the new firm can build a Chinese Wall around her and represent the tenant.

7. An attorney represents a landlord in federal court in Fayetteville seeking to have a landlord/tenant statute upheld by the court. The same attorney is in federal court in Little Rock representing a tenant seeking to have the same statute overruled. There is a strong chance that both cases will be appealed. Is it proper for the attorney to represent both of these clients?

- A) No, because the communication that takes place between federal courts, through written opinions, would create too great a conflict even though the attorney is in a separate court in a different district.
- B) No, because the rules say a lawyer may not represent clients with antagonistic positions.
- C) Yes, because the rules do not forbid representing clients with antagonistic positions.
- D) Yes, if in both cases the attorney can be loyal and zealous, and if the attorney does not tell either client about the other case.

8. 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 volunteer as a tutor in a local literacy program at the University of Arkansas.

9. Attorney Suzanne Sugarbaker of the Sugarbaker Law firm is sitting in her black Cadillac, waiting to make a left-hand turn. There is a big Coca-Cola truck in front of Suzanne that is also waiting to turn left. There is no opportunity for the Coca-Cola truck to turn while the light is green or yellow. After the light is red, the truck then turns left, hitting three pedestrians in the crosswalk. Suzanne is the only witness. Coincidentally, the Sugarbaker Law Firm defends Coca-Cola in all of its personal injury cases. When Coca-Cola contacts the Sugarbaker Law Firm about the personal injury case to which Suzanne was a witness, may the firm take the case?

Choose the best answer.

- A) Yes, if Suzanne submits an affidavit describing the events taking place, rather than testifying in open court.
- B) Yes, only Suzanne is a necessary witness in the case; the other attorneys in the firm are not disqualified from acting as advocates.
- C) No, there is a definite conflict of interest.
- D) No, when one attorney in a firm is a necessary witness, and thus disqualified from a case, the entire firm is disqualified from the case.
- E) Yes, because the Sugarbaker Law Firm provides regular and continued representation of Coca-Cola in these types of cases, forcing Coca-Cola to seek new counsel would place too great a burden on the client.

10. Client retains Attorney to represent her in litigation. Client agrees to pay all costs of litigation. Attorney schedules 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.

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.