

# Spring 1999 Professional Responsibility IPI #1, 2

## IPI #1

Professional Responsibility

Prof. Brill

Spring 1999

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. A first year law student, clerking for a private law firm, may ethically:

- (1) draft pleadings.
- (2) sign pleadings.
- (3) advise clients whether a settlement offer is fair and reasonable.
- (4) interview witnesses at their residences.
- (5) conduct depositions in the presence of the lawyer.
- (6) question witnesses at trial in the presence of the lawyer.

A) Only (2) and (3) are permitted.

B) Only (1) and (4) are permitted.

C) Only (5) and (6) are permitted.

D) Only (1) and (5) are permitted.

E) Only (3) and (4) are permitted.

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

Two months later, Attorney Alan dies. His estate is worthless. Three months later, the IRS informs Connie Client 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 Attorney Alan was not suspended or disbarred.

3. Laura Lawyer practices law in Fayetteville, Arkansas. She has a very successful and busy personal injury practice. There are several settlement checks which come in to her office every week. Paul Plaintiff is one of her most successful cases. His vehicle was hit head on by an eighteen wheeler. Due to the hard evidence as to the defendant's fault, as well as witnesses placing Paul's car square in his own lane going approximately the speed limit, the extent of Paul's injuries, and the fear of a substantial court judgment, the defendant settled for \$1.2 million. This check came to Laura's office on a Friday afternoon before a major holiday and was mixed in with several other pieces of mail.

Which of the following actions taken by Laura are incorrect under the Arkansas Rules?

(1) Laura does not deposit the check in her trust account that Friday, but discovers it the following Wednesday and immediately deposits it in her trust account and notifies Paul.

(2) Laura goes to the bank Friday to deposit the check but discovers she's out of trust fund deposit slips but she has deposit slips from her office account with her. For safe-keeping, she decides to go ahead and deposit the check in her office account. She goes to Hot Springs for the long weekend, has a wonderful time, and once back to work the following Tuesday, transfers the \$1.2 million from her office account to her trust account and notifies Paul.

(3) Laura discovers the check on Friday, but in her haste to get away for the long weekend, fails to deposit it in her trust account. She goes to visit her dad in Texas, who is another personal injury attorney, and deposits the check in his trust account for safe-keeping. When she gets home Tuesday, she has the \$1.2 million transferred to her trust account and promptly notifies Paul.

(4) Laura deposits the check into her trust account, promptly notifies Paul, makes an accounting and distributes to Paul. Six years later, Laura cleans out her office and shreds all records and documentation of the deposit of the \$1.2 million check.

(5) Laura deposits the check in her office account, withdraws it all in small bills, and is never heard from again.

- A) All of the above are incorrect.
- B) None of the above are incorrect.
- C) (1), (2), (3), and (5) are incorrect.
- D) (2), (3), (4), and (5) are incorrect.
- E) (2), (3), and (5) are incorrect.
- F) (4) and (5) are incorrect.
- G) Only (5) is incorrect.

4. Joe Client goes to see attorney Bob. Joe tells Bob that the reason he is there is because he bought some gifts for his girlfriend while she was seeing another guy and now Joe wants to get the gifts back because they were really intended to be used by both Joe and his girlfriend.

Attorney Bob said he would think about Joe's claim and get back with him. Attorney Bob decides to take Joe's case and calls Joe and tells him. He also tells Joe that they need to set up a time to discuss attorney Bob's fees. In the meantime, Bob does some work for Joe, and Joe never makes it in to Bob's office to discuss fees.

Unfortunately, attorney Bob determines Joe cannot get the gifts back. Needless to say, Joe is unhappy and a dispute arises about the fees.

Who has the burden of establishing the reasonableness or unreasonableness of the fees?

- A) Joe, because he was told to come see attorney Bob about the fees, but never did.
- B) Attorney Bob, because the attorney always has the burden.
- C) Joe, because the client always has the burden.
- D) Attorney Bob, because he did not tell Joe his fees before he started doing work.
- E) Neither, because it should be left up to the court to decide.

5. Attorney Al was appointed to represent Client Cal for assault and battery. During the course of the representation, Attorney Al obtained confidential information about Client Cal. Following Cal's conviction, Cal filed a motion for a new trial due to ineffective counsel. During the hearing Cal testified that Attorney Al was an incompetent lawyer for various reasons.

Which of the following statements are correct?

- A) Attorney Al may not disclose any confidential information obtained about Client Cal.

- B) Attorney Al may disclose enough information he reasonably believes necessary to defend himself at the hearing.
- C) Attorney Al may disclose enough information he reasonably believes necessary to establish a defense, only after Client Cal files a criminal charge or a civil claim against Attorney Al.
- D) Since the attorney client relationship has ended, Attorney Al may disclose any confidential information at the hearing.

6. The following ad was found in the town newspaper:

**\*\*Attention all owners of a 1997 Oldsmobile Cutlass\*\***

Your Olds may have a Chevy engine, which means that you may have a claim against the GM corporation. Come by for a free consultation where we can discuss your important legal rights. Don't delay, or you could lose your chance! Come by the ACME Law Firm, 12 W. Dickson. Or call 555-9999.

Are the lawyers in ACME subject to discipline for the ad?

- A) No, because the First Amendment protects such ads.
- B) No, as long as the words "Advertising Material" are stamped at the beginning of the advertisement.
- C) Yes, because an attorney's name is not included.
- D) Yes, because a lawyer cannot solicit from a person known to be in need of legal services in a particular matter.
- E) Yes, because the name of the firm is improper.

7. Adam was accompanying his wife, Laura, to a restaurant for Valentine's Day. Her brother, Matlock, was a local attorney known for soliciting clients for pecuniary gain. Before Adam reached the restaurant, he was hit by the town drunk, Otis. Both Adam and Laura were injured.

Matlock hearing of the news from his parents, rushed right over to the hospital. He tried to solicit employment from both Adam and Laura.

(1) Matlock asked Laura, his sister, if he could represent her in a claim against Otis.

(2) Matlock asked Adam, who is not a blood relative, if he could represent him in a claim against Otis.

(3) Laura had previously expressed to Matlock her wishes never to be solicited by him. Matlock went to the hospital and told Laura that he was only there as a brother, but mentioned that she had a good claim against Otis and would be happy to represent her.

(4) Matlock told Adam that he saw Adam with another woman the night before, but wouldn't tell Laura if he could represent Adam in suit against Otis.

In which of the above did Matlock act unethically?

- A) Only (2), (3) and (4).
- B) Only (1), (2) and (3).
- C) Only (3) and (4).
- D) All are violations.
- E) None are violations.

8. Lawyer Lucy and Client Connie have confidential communications concerning a partnership dispute. Litigation follows.

Which of the following statements are correct according to the Arkansas Rules of Professional Conduct?

- (1) If Lucy has died, Connie may disclose what she told Lucy.

(2) If Lucy has died, Connie may disclose what Lucy told her.

(3) If Connie has died, Lucy may disclose what she told Connie.

(4) If Connie has died, Lucy may disclose what Lucy told her.

- A) All four are correct.
- B) Only (1) and (2) are correct.
- C) Only (3) and (4) are correct.
- D) Only (1) and (3) are correct.
- E) Only (2) and (4) are correct.
- F) None of the four statements are correct.

9. A lawyer, a certified public accountant and a certified life underwriter wish to serve the public in the area of comprehensive estate planning and related services. The lawyer will draft wills and trusts. How can they do so?

(1) The lawyer hires the CPA and the CLU as her employees. She calls her firm the "Estate Planning Law Firm."

(2) They practice in the same suite of offices, and with a common waiting room and a single secretary; but with separate checking accounts, separate fee arrangements, separate letterhead; and separate relations with the state and federal governments.

(3) The CPA and the CLU set up a partnership and hire the lawyer as an employee; they provide complete services, including legal services to the clients; the client pays the partnership.

(4) The three form a corporation, "Estate Planning, Inc." and market themselves to the public. The client is billed for the services provided and pays the corporation.

In which of the above can the attorney ethically participate?

- A) None of the above.
- B) Only (1).
- C) Only (1) and (2).
- D) Only (1) and (3).
- E) Only (1) and (4).
- F) Only (1), (2) and (3).
- G) Only (2).
- H) Only (2) and (3).
- I) Only (2) and (4).
- J) Only (2), (3) and (4).
- K) Only (3) and (4).
- L) Only (4).
- M) All four of the above.

10. Jennifer wishes to be licensed in law in Arkansas. [Assume the facts in each answer are correct].

- A) Because she resides in New York City, she cannot be licensed here.
- B) Because she has practiced for 7 years in another state, she can be admitted by reciprocity.
- C) Because she graduated from an Arkansas state law school, she need not take the bar examination.
- D) Her felony conviction prior to law school will automatically bar her from admission.
- E) Non-criminal fraud committed in Ohio since law school is likely to bar her from admission.

## IPI #2

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IPI #2

#### 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 law firm of ABC has a practice that is dedicated primarily to defending manufacturers in products liability cases. Bill Clerk worked for ABC during his final summer in law school. Upon graduation, however, Bill received an offer to work as an attorney with the firm of XYZ, which primarily represents plaintiffs in products liability cases.

- A) If Bill accepts the offer from XYZ, the firm would be prohibited from representing any more plaintiffs in products liability cases because Bill's knowledge obtained at ABC would be imputed to them.
- B) If Bill accepts the job, he will be prohibited from working on any products liability cases.
- C) If Bill accepts the job, the firm must build a "Chinese wall" around him to shield him from any case which is the same matter or substantially related to cases handled by ABC while he clerked for the firm.
- D) If Bill accepts the job, there would be no restrictions on what cases he may handle because he wasn't a lawyer at the time he worked for ABC.

2. Attorney Alice is representing Client Carol in a property dispute. Carol is in danger of losing all 40 acres. Carol is unemployed and disabled. Alice wants to help Carol during the expected one year before the lawsuit is tried. Which of the following can she ethically do?

- (1) She can let Carol live in her house on Beaver lake for a year rent-free.
  - (2) She can let Carol live in her house during the 5 days of the trial.
  - (3) She can buy clothes and send Carol to a beautician so she will look presentable for the trial.
  - (4) She can buy food and make car payments for Carol.
  - (5) She can send Carol to the benevolence society of Alice's church. (Alice is a major contributor to the society).
  - (6) She can send Carol to the government for financial assistance.
  - (7) She can help Carol fill in the forms to gain financial assistance from the government.
  - (8) She can send Carol to a foundation which assists needy litigants. (Alice is a major contributor to the foundation).
  - (9) She can loan money to Alice, provided the requirements of Rule 1.8(a) are met.
  - (10) She can hire Carol on a legitimate and reasonable basis to do janitorial jobs at the law office.
  - (11) She can have a law clerk drop a basket of money at Carol's mobile home at midnight.
- A) All of the above are permitted because it is not a personal injury case.
  - B) All but (1), (4) and (11) are permitted.
  - C) All but (7), (9) and (11) are permitted.

- D) All but (11) are permitted because Carol is financially desperate.
- E) Only (3) and (10) are permitted.
- F) Only (5) and (8) are permitted.
- G) None of the above are permitted because she is financially assisting a client.

3. On television, the prosecutor in the Descoine (defendant) murder trial was interviewed and made the following statements:

- (1) "Descoine was arrested in his home at 3:00 a.m."
- (2) "In my opinion, we have the right man. All the evidence points to him."
- (3) "Descoine failed a lie detector test."
- (4) "Descoine was arrested by Office George E. Mulch."
- (5) "Descoine is an interior decorator."
- (6) "His accomplice will testify against him."

Which extrajudicial statements are ethically permitted?

- A) Only statements (1), (2) and (3) are permitted.
- B) Only statements (1), (4) and (5) are permitted.
- C) Only statements (2), (4) and (6) are permitted.
- D) Only statements (3), (5) and (6) are permitted.
- E) Only statements (2), (3) and (5) are permitted.
- F) Only statements (1), (2) and (4) are permitted.

4. Arthur Attorney is representing a client on a trade secret matter. He has filed a motion for summary judgment in Washington County circuit court based on an interpretation of a trade secret statute. In which of the following situations is this representation ethical?

- (1) Arthur has another client for which he will argue a contrary interpretation of the trade secret statute before the same trial court.
- (2) Arthur is defending another client and has filed a motion to dismiss the plaintiff's claim in Pulaski County circuit court based on a contrary interpretation of the trade secret statute.
- (3) Arthur just published a law review article in which he argues that the trade secret statute is unconstitutional.
- (4) Arthur's law partner represented the opposing party in the same matter but has since withdrawn from the case.
- (5) Arthur's wife, an attorney, practices with the firm that is on the other side in the litigation. However, she is not involved in the case and she and Arthur have not discussed it. No clients know of their marriage.

- A) None of the five representations are ethical.
- B) Only (1) and (3) are ethical.
- C) Only (2) and (4) are ethical.
- D) Only (3) and (5) are ethical.
- E) Only (2) and (5) are ethical.
- F) All are ethical.

5. Alan, an attorney in Jonesboro, represents Jimmy, the plaintiff in a products liability action against Cropdusters, Inc., a manufacturer of small airplanes. Over the past two weeks, Alan has put on evidence at

trial that Cropdusters made a defective airplane that crashed and crippled Jimmy while he was flying over a cotton farm last summer. On Wednesday, Alan finished putting on his evidence. Dan, the defense attorney, has moved for a directed verdict, and Alan and Dan will be orally arguing the directed verdict motion in front of the judge on Friday morning. Late Thursday afternoon, several interesting developments take place in the case:

(1) First, a disgruntled former employee of Cropdusters calls Alan and says, "I was just looking through some of my old files and found some information which indicates that it wasn't Cropdusters, but another company, who made the airplane Jimmy crashed in." Alan has never heard this information before and suspects that Dan has not heard it, either. Alan tells the former employee "I'm not interested. Thanks anyway," and hangs up. Alan doesn't tell Dan about the conversation.

(2) Next, Alan's secretary buzzes him and says "I have one of the jurors on the phone who wants to ask you some questions about the case." Alan takes the call and says to the juror "Hello, I'm Alan, the lawyer for Jimmy. I'm sorry, but I can't talk to you about the case during the trial. If you'd like to discuss it after the trial is over, please call me then."

(3) Then, Alan's secretary buzzes him again and says that Ned, a nosy reporter from the Jonesboro Sun, wants to ask him some questions about the trial. Alan takes the call and tells Ned, "I believe that my client will prevail in this very important trial. If you want more information on the case, I suggest you show up at the Craighead County Courthouse tomorrow morning and listen to me argue the evidence before the judge."

(4) Finally, during a routine Westlaw search, Alan's law clerk comes across a case that came down last week in which the Arkansas Supreme Court held that the plaintiff's burden of proof under the Arkansas Products Liability Statute is "convincing and compelling evidence." On Friday, when arguing the directed verdict motion, Alan mentions the case to the court but argues that his evidence has been convincing and compelling.

In which of these situations did Alan act unethically?

- A) Only (1) and (2).
- B) Only (1) and (4).
- C) Only (2) and (4).
- D) Only (2) and (3).
- E) Only (1).
- F) Only (2).
- G) Only (3).
- H) Only (4).
- I) None involve unethical conduct.

6. Plaintiff is represented by Paul in a personal injury accident. Defendant is represented by Dan. The plaintiff has accused Dan of drunken driving.

Defendant is married to Wife, but they are separated. Wife is not a party to the personal injury accident. Wife is represented by Wilma in the domestic relations matter.

By-stander Billy observed the accident. He does not have a lawyer.

Which of the following are improper?

- (1) Paul tells plaintiff "do not talk to Attorney Dan."
- (2) Without seeking the permission of Attorney Dan, Paul goes to visit Wife.
- (3) Without seeking the permission of Wilma, Paul goes to visit Wife to ask about defendant's drinking habits.
- (4) Without seeking the permission of Attorney Dan, Paul goes to visit Billy.

(5) Dan calls Wife and says "please do not talk to the plaintiff's lawyer."

(6) Dan calls Billy and says "please do not talk to the plaintiff's attorney."

(7) Dan says to Billy, "Here is \$1000. Take a long trip to Mexico."

- A) Only (3) and (5) are improper.
- B) Only (2) and (4) are improper.
- C) Only (1) and (6) are improper.
- D) Only (6) and (7) are improper.
- E) Only (1) and (4) are improper.
- F) Only (3) and (7) are improper.

7. Adam and Pete are partners in a small law firm in Fayetteville. Adam was a passenger in a car driven by his friend Richard. Richard was injured when a truck driven by the defendant allegedly crossed the center line forcing Richard to drive off a cliff. Richard wants to sue the defendant 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 Richard because he and Richard are friends.
- B) Adam may represent Richard, but only if the defendant consents.
- C) Adam may not represent Richard because he is a likely witness, but Pete, Adam's partner, may represent Richard.
- D) Neither Adam nor Pete may represent Richard in the lawsuit.

8. Which of the following statements made in closing arguments are improper? (Assume that all the statements are factually correct and consistent with the evidence).

(1) "An appropriate award for the pain and suffering of my client is \$100 a day."

(2) "The plaintiff has suffered severe ankle pain. Ladies and gentlemen, some of you have sprained or strained your ankles; how bad did it hurt right then? These are all bones and muscles and ligaments; it's the same thing. Use your own experiences to decide when a sprain or strain begins to hurt."

(3) "I've had an injury like that of the plaintiff. It hurts, day and night, every minute of the day. I remember my inability to sleep. The plaintiff deserves a generous award."

(4) "Ladies and gentlemen of the jury, before you send my client to prison, I want you to think about how you would feel if your husband or father was sent to that prison in Pine Bluff."

(5) "Remember what it says in the Book of Proverbs in the Bible, 'the guilty flee but the innocent remain'. The defendant was in the car, driving 80 miles an hour toward the state border when the police finally stopped him."

(6) "Ladies and gentlemen of the jury, before you send my client to prison, remember that his wife will be staying home on their little farm in West Fork struggling to raise and support their three preschool age children."

- A) Only (1) and (6) are improper.
- B) Only (3) and (4) are improper.
- C) Only (5) and (6) are improper.
- D) Only (1) and (5) are improper.
- E) Only (2) and (4) are improper.
- F) Only (2) and (3) are improper.

9. Jesse Young, a 19 year old mentally disturbed youth, was caught in a stolen car. The facts are unclear as

to whether joy riding (unlawful use of a car without an intent to permanently appropriate it) or grand theft auto is the proper charge.

Assume you are the prosecutor. In which instances have you acted ethically?

(1) The defense lawyer has told you, and you believe, that Jesse wants to go straight, that he comes from a broken home, and that he is a good risk for society. You believe he is guilty of grand theft auto. But you refuse to prosecute him and instead accept the guilty plea to the lesser charge of joy-riding.

(2) You and the defense attorney work out an agreement of a guilty plea to joy-riding. You tell the attorney to tell Jesse that if he does not accept the agreement and plead guilty, that you will also prosecute him on the charge of grand theft auto.

(3) In light of your evaluation of the evidence, you are convinced that the facts only support a charge of joy riding. However, in an effort to persuade him to plead guilty, you indict him for grand theft.

- A) You have acted ethically in both (2) and (3).
- B) You have acted ethically in both (1) and (3).
- C) You have acted ethically in both (1) and (2).
- D) You have acted ethically in (1), (2) and (3).

10. Same facts as question 9, but this time you are the defense attorney.

Jesse tells you in your office that in fact he was with a group of his regular friends and he joined them as the group entered the unlocked car and drove away. They planned to sell the car to someone who deals in stolen cars.

In your plea bargaining with the prosecutor, which of the following statements, if any, may you ethically make?

(1) "You won't be able to prove joy riding, much less grand theft auto. Let's settle this one."

(2) "Jesse's innocent. I know personally he was only taking a little ride."

(3) "At trial Jesse will maintain his innocence. He will testify that he had just met the other guys."

- A) You may ethically make all of these statements.
- B) You may ethically make none of these statements.
- C) You may ethically make only (1) and (2).
- D) You may ethically make only (1) and (3).