

Spring 2000 Professional Responsibility IPI #1, 2

IPI #1

Professional Responsibility
Prof. Brill
Spring 2000
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. You may choose any of the lettered responses. You have 30 minutes for this IPI. The answer sheet must be turned in by the time written on the blackboard.

1. Attorney Alice graduated from a New York law school and is licensed to practice in New York. After practicing there for five years, she has moved to central Arkansas to be a full time professor of business law at a state university. In a high profile case involving consumer protection issues, which is her speciality, she wishes to enter an appearance at the appellate level and file an amicus brief on behalf of an interested party explaining legislative intent.

May she do so?

- A) Yes, under the reciprocity provisions.
- B) Yes, under the pro hac vice provisions.
- C) Yes, under the First Amendment.
- D) Yes, with the permission of the court.
- E) Yes, with the permission of the other attorneys on the matter.
- F) Yes, provided she passes the mini bar exam for practitioners.
- G) Yes, because she is not appearing at the trial court level.
- H) No.

2. The lawyer has a television advertisement featuring him, sitting in his office, discussing the need for legal representation. Which of the following are permitted to accompany him in his advertisement? (The ad is not a dramatization; it has no disclaimers, identifications, or announcements.)

- A) a former client
- B) the attractive secretary of the law firm
- C) the handsome husband of a lawyer in the firm
- D) the lawyer's dog
- E) the lawyer's wife
- F) Actually all are improper, because television advertisements are no longer permitted.

3. Linda Lawyer is eager to attract clients. She engages in the following activities. Which are prohibited by the Arkansas Rules?

- (1) She goes to a widow and says, "You are being treated unfairly by the IRS. I will represent you for no charge."
- (2) She sends announcements to every real estate professional in town, announcing a free seminar on "Current Developments in Real Estate Law."
- (3) She has a home page on the Internet. It says, "I'll try to answer your questions on Arkansas law. Contact me by e-mail for a quick, short and free response."
- (4) She reads the birth announcements, writes all new parents and says "Come see me for a free book on child rearing and a free simple will. No obligation."
- (5) She calls every CPA in town and says, "Please refer to me any of your clients who need legal help."
- (6) She tells her hairdresser, "Send me a client and I'll give you \$25."

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

4. 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.

5. A third year law student is certified under Rule XV and clerking for a private law firm. Her law firm consents to each activity and supervises her. Under the Rules she is permitted to

- (1) advise clients whether a settlement offer is fair and reasonable
- (2) write opinion letters on the firm stationery and sign them "Laura, Law Clerk"
- (3) conduct depositions in the presence of the supervising attorney
- (4) interview witnesses at their residences
- (5) be paid at her normal \$10 an hour rate by the law firm when questioning witnesses at trial in the presence of the attorney

- A) All are permitted because her law firm consents
- B) Only (3) and (4) are permitted
- C) All but (1) are permitted
- D) All but (2) and (5) are permitted
- E) Only (2) and (4) are permitted
- F) None are permitted because Rule XV applies to students enrolled in the clinic, but not to students working for private law firms

6. Josie came to see Attorney Ann about an accident. Josie was seriously injured when a Wal-Mart truck went out of control and hit her car. Ann knows that she is competent to take the case but she lacks experience.

Which of the following options available to Ann are permitted by the Rules?

- (1) Evaluate the matter and then refer Josie to a competent personal injury lawyer and charge her a \$250 fee for the services provided.
- (2) Sign up Josie on a contingency fee, and then tell Josie that she is bringing in another firm, but it will cost her nothing.
- (3) Sign up Josie on a contingency fee, and then explain to Josie that she would like to bring in another firm to help and needs her consent, also explaining that the Little Rock firm will be charging her a fee as well.
- (4) With Josie's consent, refer the case to a Little Rock firm; watch and learn from them; and split the contingency fee.
- (5) Enter into a 3 way written agreement with the Little Rock firm and Josie; let the other firm do all the work, but still collect a sizeable portion of the eventual contingency fee.

- A) Only (1) and (5) are permitted.
- B) Only (2) and (3) are permitted.
- C) Only (2) and (4) are permitted.

- D) Only (1) and (4) are permitted.
- E) Only (3) and (5) are permitted.
- F) All are permitted.
- G) None are permitted.

7. Client Carl brings \$15,000 to Attorney Alice for safe-keeping. Attorney Alice puts it into her trust account. At the current interest rate, it will yield \$40 for the unexpected period that the attorney will hold it.

- A) Attorney is entitled to the interest.
- B) Client will receive the interest.
- C) Interest will be paid to the IOLTA Foundation.
- D) Client must be informed that he has a right to set up a separate account to receive the interest.
- E) To simplify matters, Attorney may place the money into a non-interest earning account.

8. Attorney Alice is sitting at a basketball game. She hears the person in front of her say to a companion, "Do you know what Attorney Tom did? He filed some fraudulent papers with his insurance agency to collect for fire damage to his house."

- A) Alice can forget the conversation because she was not a party to it.
- B) Alice has an obligation to call Tom and obtain his side of the story.
- C) Because the evidence is of questionable value, Alice has discretion and may keep quiet.
- D) Because Alice is currently involved in highly contested corporate litigation with Tom, she may call Tom and threaten to reveal the information unless he is more willing to settle the corporate dispute.
- E) These acts fall outside the scope of disciplinary authority, and the Committee is likely to refuse to hear the matter.
- F) Alice has no discretion and must report the information to the Committee.

9. Vince is a distinguished employee with more than 30 years' experience at his corporation. In January 1999 a new manager publicly and verbally denounced Vince, "You're lazy and incompetent and you sleep on the job."

In June 1999 Vince went to Alan the Attorney (who was a 1998 law school graduate) and said he had been publicly insulted and he wanted to sue the manager for defamation. Alan said: "I'll take care of it. I'll write a letter demanding a public retraction. Otherwise, we'll sue him. Don't pay me yet. We'll talk about my fees later."

Alan wrote the letter in July 1999, but the manager ignored it. When Alan began to prepare his lawsuit in February 2000, he discovered to his shock what he had never learned in law school: While the statute of limitations for written defamation (libel) is 3 years, the statute for oral defamation (slander) is only one year. He explained the mistake to Vince by saying "these rules are so complex that hardly any lawyers understand them."

Assume that Vince locates another attorney who sues Alan for legal malpractice. Which of the following grounds or arguments offers the best chance for Attorney Alan to avoid liability to Client Vince?

- A) the lack of an attorney-client relationship, because there was no fee arrangement
- B) the comparative fault of plaintiff Vince, because he waited so long to contact an attorney
- C) the innocent mistake of the inexperienced attorney
- D) the barrister's rule
- E) the complexity of the legal issue as to the governing statute of limitation
- F) the inability of Vince to demonstrate damages in a "trial within a trial"

10. The following advertisements appear in a newspaper. All statements are truthful as to what is written. Which of the statements is most likely to be held unethical?

- A) "The victims of some abortions have suffered emotional and physical injuries. Women may have medical malpractice claims against the doctor who performed the abortion. Contact me for further information without any obligation."
- B) "The most I will charge is \$75 an hour. If your problem is not complicated, the hourly fee may be even less."

- C) "I am happily married and have two children."
- D) "Divorces \$100."
- E) "I'm mean. I'm lean. I'm hungry for your green."
- F) "10% discount to any client who brings in a church bulletin."
- G) "I'm a friend of the common man. I belong to the National Rifle Association."

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. You may choose any of the lettered responses. You have 30 minutes for this IPI. The answer sheet must be turned in by the time written on the blackboard.

1. A plaintiff in a slander case retains the ABC law firm. The case is assigned to partner Susan. 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 anyone would wish revealed.

In which of the following instances has Susan acted unethically?

- (1) She reveals Item A to an associate who is working on the case.
- (2) She reveals Item B to a second year law student clerk who is working on the case.
- (3) After she properly objected, a court of record ordered her to reveal Item A to the opposing party. She did not appeal, but instead revealed the information to the opposing party.
- (4) After a few drinks at a holiday party for the partners, she jokingly revealed Item B to another partner.
- (5) She called a lawyer in another law firm for ethical guidance on the case, and revealed Item A in the course of seeking guidance.

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

2. Husband comes to your office for a divorce. Which of the following statements by you is not permitted under the Rules of Professional Conduct?

- A) "Divorce is a sin."
- B) "Keep a diary of how she treats you. It will help support the claim of general indignities. Perhaps you can even go back and reconstruct prior events."
- C) "Buddy, grow up. Leave the little bimbo and go back to your wife and kids."
- D) "This property settlement that you two have agreed on is foolish. You're giving her too much."
- E) "All the psychological evidence that I have read leads to the conclusion that the children of divorced parents are more likely to have lower self-esteem, lower education levels, worse nutrition, and higher crime rates. Is that what you want for your children?"
- F) "This property settlement that you two have agreed on is foolish. You're cheating yourself."
- G) "Now that you have signed the property settlement, tell your wife to come in. I'll explain it to her and she can sign it, and then we will go to court for the divorce."

3. 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's law partner represented the opposing party in the same matter but has since withdrawn from the case.
- (4) 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) Only (1) and (2) are ethical.
- B) Only (1) and (3) are ethical.
- C) Only (1) and (4) are ethical.
- D) Only (2) and (3) are ethical.
- E) Only (2) and (4) are ethical.
- F) Only (3) and (4) are ethical.

4. Attorney represents a criminal client accused of murder. Client says in confidence "I did it." The client does not testify at trial.

- (1) While the criminal case is proceeding, Attorney can sign a contract agreeing to write a book about the case when it is over, provided he discloses nothing confidential.
- (2) While the criminal case is proceeding, Client can sign a media contract. Separately and independently he can promise to pay Attorney from any proceeds if and when they are received.
- (3) After the criminal case concludes, attorney can sign a book contract and in his book can write "Client told me, 'I did it'."
- (4) After the criminal case concludes, and after the client has been executed, Attorney can write a book and can write "Client told me, 'I did it'."

Which of the above are ethically permissible?

- A) None are ethical.
- B) All are ethical.
- C) Only (1) and (2).
- D) Only (1) and (4).
- E) Only (2) and (3).
- F) Only (2) and (4).
- G) Only (1).
- H) Only (2).
- I) Only (3).
- J) Only (4).

5. You have a criminal practice. Your current client, Jim, has been charged with the murder of a 12 year old boy. Jim confesses to you that he killed two girls last month and tells you where the bodies are. Of the following options, which is the most unethical (or the least defensible)?

- A) Ask the judge if you can withdraw from the case.
- B) Advise your client to provide the police with the information in the hope he may receive a lighter sentence.
- C) Anonymously inform the police of the location of the bodies.
- D) Keep quiet and speak only to your client Jim.
- E) Ask your client for permission to anonymously tell the parents of the location of the bodies.

6. Attorney Sarah worked for 3 years in the tax section of ABC, a major firm which has been involved in the defense of nursing home claims. Sarah left the firm and has now practiced by herself for approximately 18 months.

She has now been offered a job with a plaintiff's firm. The firm specializes in nursing home cases and has numerous ongoing cases against clients of ABC. Many of them have been in litigation for more than 3 years.

- A) If Sarah joins the firm, both she and the firm will be disqualified from all pending nursing home cases against ABC.
- B) If Sarah joins the firm, she will be disqualified from all pending nursing home cases against ABC, but the firm will not be.
- C) If Sarah joins the firm, neither she nor the firm will be disqualified because she left ABC more than 12 months ago.
- D) If Sarah joins the firm, the presumption is that she and the firm are disqualified. The presumption is rebuttable, and the burden is on Sarah and the firm.
- E) The presumption is that she and the firm have no conflict of interest. The burden is on ABC to rebut the presumption.

7. In a personal injury suit, Debbie is defending Driver Dave. Dave is alleged to have hit and injured Pete the Pedestrian. In preparation for the deposition of her client, Debbie asks him whether he was wearing his prescription glasses at the time of the accident, and he replies, "No, only my over-the-counter, non-prescription sun glasses."

During the deposition, the following interchange takes place:

Attorney: Were you wearing your glasses at the time of the accident?

Defendant: Yes

Debbie observes this interchange and says nothing.

Has Debbie acted consistently with the Rules?

- A) No, because she knows her client has committed a fraud.
- B) Yes, but only because it is merely a deposition. If the same interchange takes place at trial, she must take remedial steps.
- C) No, because she has taken unfair advantage of her adversary's incompetence.
- D) Yes, because her client answered the question truthfully.
- E) No, because she has been a party to dishonesty.

8. The press and the public are outraged about a hit and run driver who hit a child and sped away from the accident. Police attempts to locate the driver have been unsuccessful.

John Doe comes to Counselor Connie, seeks legal assistance, and confesses, "I was the driver". With his permission, she starts plea bargaining with the prosecutor. She complies with his demand that his identity not be disclosed. Word leaks to the press.

The parents bring a civil lawsuit against John Doe. They undertake appropriate discovery methods (under the rules of civil procedure) to discover the identity of John Doe. They schedule a deposition and intend to make her disclose the identity.

What is Connie's ethical obligation under the Rules of Professional Conduct?

- A) She must disclose because a crime has been committed.
- B) She may disclose because a crime has been committed.
- C) She must disclose because the identity of a client is not protected information.
- D) She must disclose because of the "last link" doctrine.
- E) She must not disclose because of the "last link" doctrine.
- F) She may disclose to the parents, but not to the police.

9. Jane is really excited about her first trial in Arkansas state court, and is extremely confident about the outcome. It involves a novel issue of common law torts. She has a week before trial and decides to run one more query on WestLaw just to be on the safe side. Unfortunately, the 8th Circuit Court of Appeals very recently handed down a case concerning her issue. The decision is right on point, and is unfavorable to her

case. The federal court predicted how the Arkansas state courts would decide the case when they handed down the decision. The way the Court decided the case would make Jane's clients's case a sure loser. Jane wrestled with her problem all night. She has to make a decision. Jane:

- A) must disclose the federal case because it is directly adverse to her case.
- B) should do nothing, because the opinion is not from a controlling jurisdiction.
- C) must disclose it, but can make it hard to find by string citing it in her trial brief.
- D) must do nothing because this would hurt her client and she has a responsibility as a zealous advocate.
- E) should seek and follow the advice of her clients.

10. During the course of a criminal investigation of your client for tax evasion, your client sent you a tape in the mail. In this tape your client states that he did not have time to come into the office so he sent you a taped statement instead. In this tape, your client confesses to purposely preparing false income tax returns for the last ten years. The client also asks you to prepare the best course of action for dealing with the Internal Revenue Service. However, quite to your surprise the next day you are contacted by the Internal Revenue Service. The Internal Revenue Service has become aware of the tape's existence and demands that it be turned over to them at once. You have no idea how the Internal Revenue Service has become aware of the tape's existence.

As a licensed attorney you should:

- A) Immediately destroy the tape and claim it never existed to prevent the Internal Revenue Service from gaining evidence which could be potentially damaging to your client.
- B) Immediately turn the tape over to the Internal Revenue Service, notwithstanding the fact that this will probably result in a successful prosecution of your client.
- C) Lock the tape in a safety deposit box and refuse to give the tape to the Internal Revenue Service, asserting claims of either confidentiality or privilege.
- D) Refuse to give the tape to the Internal Revenue Service until you are served with a subpoena.
- E) Fire all your office help because one of them informed the Internal Revenue Service about the tape's existence.