

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. Marvin Adler is an attorney who is handling visitation litigation for Carol on an hourly fee basis. Carol made an advance payment of fees of \$3,000. Marvin put the money into his trust account. Marvin believes that he has to date earned \$3,000 of his fee, but his client disputes that. Carol believes that he has earned no more than \$1,000.

Which of the following statements most accurately describes Marvin's options under the Arkansas Rules of Professional Conduct?

- a) Marvin may withdraw \$1,000 from the trust account but must keep the other \$2,000 in the trust account until the dispute over his fee is resolved.
 - b) Marvin may not withdraw any of the funds from the trust account until the dispute over the fees is resolved.
 - c) Marvin may withdraw the \$1,000 immediately but only if he is willing to waive his claim to the remaining \$2,000.
 - d) Marvin may withdraw the \$3,000 from the account as long as the balance of his trust account remains above \$3,000 after the withdrawal.
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 Office of Professional Conduct 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. Which of these three fact patterns is a violation of the Arkansas Rules?

- (1) You represent Gil Gilbert, an indigent, in a personal-injury suit against the First National Bank of Springdale. As Gil was leaving the bank after being turned down for a mortgage, he slipped in the foyer and suffered injuries requiring hospitalization. In the course of your representation, you have paid the expenses related to the suit, including filing fees, expert witnesses and medical reports, out of your office account.
 - (2) You assist Carl Carlson, in the purchase of a large tract of land outside the city limits. During the course of the transaction, Carl tells you that the Highway Planning Commission intends to re-route the highway so that it passes across the land Carl has just bought - which will increase the land's value tenfold as businesses expand away from the city. After Carl leaves, you call your realtor and arrange the purchase of a neighboring tract of land for yourself.
 - (3) Your Aunt Buffy comes to you and asks that you draft her will. One of the provisions in the will is that you are to receive a one-half interest in the ancestral homeplace, which sits on eighty acres of Delta farmland. Your uncle Spike, who has never liked lawyers in general or you in particular, finds out about the proposed will and objects very strongly to your involvement.
- a) All of the above are violations.
 - b) (1) is a violation..
 - c) (2) is a violation.
 - d) (3) is a violation.
 - e) (1) and (2) are violations.
 - f) (1) and (3) are violations.
 - g) (2) and (3) are violations.
 - h) None of the above are violations.

4. XYZ law firm defended Wal-Mart in a slip and fall accident in Fort Smith in 2000. Ann Associate was with the firm at the time, but did not work on the case.

Ann is now with ABC law firm. On behalf of a client, ABC has now sued Wal-Mart for a slip and fall accident that occurred in Fayetteville in 2004. Ann will not be working on the case. XYZ will be defending Wal-Mart.

Can ABC ethically represent the plaintiff against Wal-Mart?

- a) Yes. There is no ethical issue because the three year cooling off period has been satisfied and any conflicts have lapsed.
 - b) Maybe. The burden rests on ABC to overcome the rebuttable presumption.
 - c) Maybe. The burden rests on XYZ (or Wal-Mart) to overcome the rebuttable presumption.
 - d) No. ABC hired a tainted lawyer. Under the rules of imputed disqualification, the firm is barred. The presumption is irrebuttable.
5. Harry Husband is seeking a divorce on grounds of 18 months separation. You represent Harry. You have instructed him to be truthful. The attorney for his wife takes Harry's deposition:

Attorney: Do you know Monica?

Harry: Yes. She is a co-worker.

Attorney: On the business trip to New Orleans during Mardi Gras, did you share a motel room with Monica?

Harry: No.

Attorney: Have you ever had sexual relations with Monica?

Harry: I have never had sexual relations with that woman.

Two days later, Harry tells you, "I don't want to go into any details, but I was not completely truthful during the deposition in answering the second and third questions."

What is your obligation under the Arkansas Rules?

- a) Keep quiet permanently and forever. It is only a deposition.
- b) Wait and see if there is a trial. If a trial is imminent, tell the judge quickly of his lies.
- c) Withdraw from representation of Harry.
- d) Keep quiet forever. The statements are personal in nature; the questions were designed to embarrass; the information is not relevant to the grounds for divorce.

- e) Call the prosecutor and report the crime of perjury (or false swearing under oath).
 - f) In a timely fashion, correct the deposition answers or withdraw the entire deposition or inform the judge.
 - g) Settle the case as quickly as you can without telling the judge or the other side of the false statements.
6. Annie Attorney represents Charles Client in a pending breach of contract suit against him. During their discussion, Charles demands that Annie call his next door neighbor as a witness to testify on his behalf. Annie inquires about his reason for wanting to call Nancy Neighbor. Charles informs her that he wants Nancy to testify about his character as typically a “man of his word,” despite the fact that he did, in this case, breach his contract with Patty Plaintiff.
- Annie refuses to call Nancy to testify on Charles’ behalf. Is this permissible under the Rules?
- a) Yes. Annie has the discretion as an attorney to determine which witnesses to call on behalf of her client as part of her ability to control the tactical aspect of litigation.
 - b) Yes. Annie fully believes that Charles intentionally breached the contract with Patty Plaintiff; therefore, any testimony Nancy might offer would be untrue.
 - c) No. The right to determine the objectives of an attorney’s representation belong to the client. Charles obviously feels that Nancy’s testimony will help prevail in his case, and therefore has the right to demand that such a witness be called on his behalf.
 - d) No. Annie does have the right to control the tactical and procedural decisions, but in this case, her client has clearly expressed his objective-to present witnesses that will testify that he did not intentionally reach his contract due to his nature. As such, Patty has an obligation to abide by her client’s request to advance his character as an element of the case.
7. In a federal employment discrimination case in Arkansas brought by Theresa Jones who was not hired, the attorney for the defendant engages in the following tactics. Which one is inconsistent with the Rules?
- a) He tells the manager of the defendant company to sit at the counsel table and "don't wear your normal business suit, and take that condescending smirk off your face."
 - b) On cross-examination, he asks Theresa Jones, "Did you ever apply for a job with this company under the name Sally Sue Simons?"

- c) In opening arguments, he says "The evidence will demonstrate that the plaintiff was not a Susan B. Anthony or Eleanor Roosevelt. She was uneducated and unqualified for this position."
 - d) He does not tell the court of a recent decision from a federal trial court in Oregon that effectively destroys a key aspect of the defense.
 - e) In closing arguments he states, "The plaintiff is seeking thousands of dollars. The defendant is a small struggling businessman. How would you feel if you had to pay all the money sought by the plaintiff?"
 - f) The defense has 3 peremptory challenges. The defense attorney uses 2 of them to strike two women from the jury because he believes they are "bleeding heart feminists." The jury consists of 7 men and 5 women.
8. Philip is in the midst of a contested divorce. He is represented by Attorney Priscilla in the matter, which has been going on for 6 months. Yesterday he slipped and fell in a Wal-Mart supercenter. He is currently in the hospital after surgery. The Wal-Mart attorney is aware of the injury, and would like to quickly settle the case without publicity or litigation. Therefore the Wal-Mart attorney visits Philip in the hospital to offer a cash settlement for any and all claims. She secretly tape records the meeting so Philip cannot later misconstrue the events.

Has the Wal-Mart attorney violated the Rules?

- a) Yes. She improperly contacted with Philip without notice to or consent of Attorney Priscilla.
 - b) Yes. The secret tape recording was improper.
 - c) Yes. She violated the 7 days "do not contact" period after an injury.
 - d) No.
9. Attorney Alex represents Client Cameron in a battery case against Defendant Donald that arises out of a fist fight between the two. Witness Wanda watched the fight take place. Cameron's brother, Bill, knows very little about the alleged fight but understands the complexity of the problems between Cameron and Donald over the years. In addition, Cameron tells Alex that he has already shared details of the incident with his hairstylist, Hattie.

Alex makes the following request to Wanda, Bill and Hattie: "Please do not voluntarily give any information about the fight to Donald or his attorney." Is it ethical for Alex to make this request of the following?

- 1) Witness Wanda.
- 2) Brother Bill.
- 3) Hairstylist Hattie.

Attorney Alex may ethically make this request to:

- a) None of the 3 witnesses.
- b) Only witness 1.
- c) Only witness 2.
- d) Only witness 3.
- e) Only witnesses 1 and 2.
- f) Only witnesses 1 and 3.
- g) Only witnesses 2 and 3.
- h) All 3 witnesses.

10. Attorney Andy and his wife are having marital problems. After several attempts to work things out, Andy decides that he wants a divorce; however, he is worried that his wife may get custody of his two children. Andy is worried because he knows that his wife is an alcoholic. The problem is that she is also very secretive about her drinking problem. Andy will likely have to testify against his wife in their divorce proceeding. Andy asks Ralph Bigbucks, one of the twenty attorneys in the firm where Andy works, to be his attorney for the divorce. Can Ralph take the case?

- a) No. Andy is a necessary witness and Andy's disqualification is imputed to the firm (including Ralph).
- b) No. Although Ralph has never been Andy's wife's attorney, he has known her and Andy personally for three years.
- c) Yes. If a lawyer is disqualified, this disqualification is not imputed to his entire firm.
- d) Yes. In Arkansas an exception to the Rule allows a lawyer's firm to represent him, if the lawyer who will be a witness in the matter is a party to the litigation.