

Summer 1994 Professional Responsibility IPI #1, 2

IPI #1

Professional Responsibility
Professor Howard Brill
Summer 1994
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. In which of the following arrangements is attorney Alice ethically permitted to participate? (Note: Each agreement stands alone.)

- 1) Sears Roebuck hires attorney Alice, pays her a salary as a full-time employee, and directs her to defend Sears in employment discrimination suits filed by Sears employees.
- 2) Sears hires Alice, pays her a salary as a full-time corporate employee, and instructs her to handle adoptions for Sears employees, without cost to them.
- 3) Sears hires Alice, pays her a salary as a full-time employee, gives her an office in the Sears store, and advertises to the public: "A Sears attorney will draft your will for a fee as low as \$50." All legal fees are paid to Sears.
- 4) Alice rents space in the Sears store at \$300 a month. Alice advertises: "I will draft a simple will for \$40. Visa and MasterCard accepted." All fees are paid to Alice.
- 5) Alice rents space from Sears and agrees to pay \$150 and 10% of her gross revenues, up to a total of \$500 a month. Alice advertises: "Practice limited to family matters. No criminal cases." All fees are paid to Alice.

- a) Only 1), 3) and 4) are permitted.
- b) Only 2), 4) and 5) are permitted.
- c) Only 2), 3) and 4) are permitted.
- d) Only 1), 2) and 4) are permitted.
- e) Only 1), 2) and 5) are permitted.

2) The name on the letterhead and the office door is "Adams, Butler, Carson, Davis and Edwards, Attorneys at Law." Assume each of the following statements is factually correct. The sign is improper because:

- a) Adams is retired and only comes to the office one day a month and is not guaranteed any income.
- b) Butler is a part-time state legislator.
- c) Carson is the founder of the firm, but he died five years ago.
- d) Davis accepted a vacancy position on the Arkansas Public Service Commission (a full-time job) and started his one-year term two months ago.
- e) Edwards was admitted to practice last month and is paid a salary.

3) Bill is fresh out of law school and has returned to his hometown to open up a private practice. Bill is fairly well-known in the town. He wants to have a general practice doing work in probate, criminal defense, domestic relations, and workers' compensation, along with any other civil cases he can get his hands on.

Bill has rented an office and has a legal secretary lined up to begin work. He knows that it is going to be hard to get started and is trying to think of ways to get a client base established. He goes to Attorney Oak and asks him how Oak has gained such a large practice.

Attorney Oak gives him the following suggestions on how to get his practice started:

- a) "Go over to the judge's office here in town. Introduce yourself to him and tell him you would gladly take on any appointments that the judge may have."
- b) "Also, call Martha Thompson. I have heard that a drunk driver ran her off the road last week and she was pretty banged up. Tell her if she needs anything, whatsoever, to call you. Tell her that I have told you to call her, she likes me and will listen to you. It is best that you should probably talk her into setting up an appointment with you."
- c) "You should also go over to Ted Martin's office and introduce yourself to him. He has more work than he can handle right now and I'm sure he would be able to send some of his overflow cases your way."
- d) "Next, go over to the office supply store and have business cards printed up. Take those cards over to the bank and give one to the loan officer that is loaning you the money for your start-up costs. That way he will have one if he needs to get in touch with you. He may also have your name on hand when someone mentions lawyers or such. Anybody else you meet in the next few months, be sure you give them a business card."

Which piece of advice that Attorney Oak gave to Bill is unethical?

4) Which of the following statements about specialization are correct?

- 1) Any Arkansas attorney may practice tax law.
- 2) No one may be a "specialist in tax law" unless he has a LL.M. in taxation.
- 3) Any Arkansas attorney may advertise that her practice is "limited to tax law."
- 4) A firm may advertise that it is a "tax firm" if a majority of its partners and associates are certified tax specialists.
- 5) Any Arkansas attorney who has spent 50% of her time over the past five years in Domestic Relations cases may advertise that she is a "specialist in Domestic Relations."
- 6) An attorney may advertise that she is "Certified by the National Board of Trial Advocacy as a Civil Trial Specialist."

- a) Only 1), 3) and 5) are correct.
- b) Only 2), 4) and 5) are correct.
- c) Only 1), 2) and 6) are correct.
- d) Only 2), 3) and 4) are correct.
- e) Only 1), 3) and 6) are correct.
- f) Only 2), 3) and 6) are correct.
- g) Only 1), 5) and 6) are correct.

5) Vinny is a lawyer in Fayetteville. His friend, Doogie, recently graduated from law school and is applying for admission to the bar. Vinny knows that the only reason Doogie went to law school is because he was caught cheating on an exam in medical school and expelled. Doogie told his dark secret to Vinny as a friend one Saturday night while fishing on Beaver Lake, and has never told anyone else. Doogie also told Vinny that he was not disclosing it on his bar application. Vinny is not a member of a bar committee or other agency concerned with admissions to the bar. He decides to do nothing. Can he be disciplined for not taking affirmative action to report Doogie to the admission authorities?

- a) Yes, because Doogie's actions are directly related to his fitness as a lawyer to practice law, and Vinny, as a member of the profession, has a responsibility to uphold its integrity and turn Doogie in.
- b) Yes, because it is a professional offense for Vinny to knowingly make a misrepresentation or omission in connection with an admissions matter in front of the admissions committee.
- c) No, because the rules do not prohibit passive standing by where a lawyer such as Vinny has no connection with the admission process.
- d) No, because what Doogie did is his own business and bears no relationship to his fitness to practice law.

6) Assume each of the following advertisements by lawyers appear in the local newspaper. Which advertisement is most likely to be held unethical?

- a) "I charge modest fees."
- b) "90% of my clients have been satisfied with the results I've obtained for them."
- c) "The most I will charge is \$50 an hour. If your problem is not complicated, the hourly fee may be even less."
- d) "If you have been ripped off by your Chevrolet dealer, come to me."

- e) "I am also a CPA."
- f) "I'm mean. I'm lean. I'm hungry for your green."
- g) "10% discount to any client who brings in a church bulletin."
- h) "I'm a friend of the common man. I belong to the National Rifle Association."
- i) "Ich spreche deutsche."
- j) "I am happily married and have two children."

7) Mary wants Attorney Peter to represent her in a divorce. During her initial visit, she tells Peter that her husband, Paul, has made it clear that because Mary is the principal wage earner, he will refuse to make any child support payments regardless of what is required in the divorce decree. If Peter decides to take the case, which of the following may he tell Mary regarding his fees?

- a) His handling of the divorce will be based on a contingent fee because he is almost assured of subsequent litigation if Paul stands firm and violates a provision of the divorce decree.
- b) He will charge a flat fee for the divorce, but charge a contingent fee if future litigation is required relating to the collection of enforcement of accumulated alimony payments.
- c) He is required to charge a flat fee for the divorce and any subsequent representation on any matter relating to the divorce because public policy is concerned with preservation of the family.
- d) He will take her case, but charge three times the normal fee because as an equal rights advocate, he agrees with Paul's position.

8) Which of the following would be considered UNETHICAL billing?

- 1) Billing for travel time for a court appearance in Little Rock when the home office of the attorney is in Fayetteville. The attorney had no other business in Little Rock.
- 2) Billing for travel time for a court appearance in Little Rock when the home office of the attorney is in Fayetteville and the attorney was going to Little Rock on personal business.
- 3) Billing Client "A" for one hour when the attorney actually only worked on Client "A"'s case for 50 minutes. For the remaining 10 minutes of this hour, the attorney talked to Client "B" on the phone and billed Client B for this 10 minute call.
- 4) Had a law clerk do research and paid the law clerk \$10/hr. and billed the client \$25/hr. for "Legal Research Assistant."

ANSWERS:

- a) 1 and 2 f) 3 and 4
- b) 1 and 3 g) None are unethical
- c) 1 and 4
- d) 2 and 3
- e) 2 and 4

9) West Memphis, Arkansas and Memphis, Tennessee are located across the Mississippi River. Many people live in one state and work and shop in the other.

Attorney Adam is licensed in Arkansas and has an office in Arkansas. When he is asked to represent a criminal defendant in Memphis traffic court, he customarily refers the case to Terry Tennessee. She is licensed in Tennessee and has her office in Tennessee. Likewise, when Terry is asked to represent a client in Arkansas courts, she refers the case to Adam. The lawyer who does the work is completely and solely responsible to the client.

The attorney who does the work customarily sends the other a small referral fee. The precise amount of the fee varies in accordance with the gravity and complexity of the case. In no case does the referral fee increase the amount paid by the client. Adam and Terry have evolved this mutual agreement in order to provide better service to their respective clients?

Has Adam acted ethically?

- a) Yes, because Adam is not licensed in Tennessee, he cannot practice there and must refer the case to a Tennessee attorney.
- b) No, because, on the facts given, the referral fee is not proportionate to the services rendered by the

referring lawyer.

c) Yes, since the clients are not required to pay more than they would otherwise pay.

d) No, because a lawyer is not allowed to earn fees for work done in a state where that lawyer is not licensed.

10) The Arkansas Educational Organization, a voluntary association of approximately 50,000 public school teachers, offers a legal services plan to its members. For \$100 a year (through a payroll deduction plan), each member is entitled to the assistance of a lawyer in private practice.

The list of approved attorneys is limited to three per school district, selected by the AEO based on their fees and political leanings. After payment of a \$100 deductible, the AEO member is entitled to a variety of legal services, including preparation of wills, misdemeanor offenses, office services, contract preparation, real estate transactions, adoptions and domestic relations, up to \$1,000 a year. The plan covers employment actions against the school district. It also covers actions between AEO members, provided different attorneys represent the same.

Attorney Alice is invited to participate in the plan as an approved attorney. May she ethically participate?

a) No, because it is a closed panel.

b) Yes, provided the AEO gives her professional independence.

c) No, because representing a teacher in an employment action against the school district would involve her in a conflict.

d) Yes, because the First Amendment permits her to participate in any group legal services plan.

e) No, because the plan permits actions between members.

f) Yes, because it is an open panel.

IPI #2

Professional Responsibility

Prof. Brill

Summer 1994

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. 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 have written Second National Bank informing them of the 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 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 that you represent First National Bank.

2. Which of the following actions by Lawyer Linda are prohibited and which are permitted?

- (1) On behalf of Client A, Linda negotiates a contract with the city in 1993. On behalf of the city, Linda argues to a court in 1994 that the contract offends federal law.
- (2) Linda argued on behalf on Wal-Mart in 1992 that the price-fixing statute is inapplicable to Wal-Mart. The court agreed and dismissed the action. On behalf of a pharmacist Linda argues in a separate lawsuit against Wal-Mart in 1994 that the statute is applicable to Wal-Mart.
- (3) Linda represented Client F in 1992 and obtained confidential information. In 1993 (after the representation had ended), the confidential information became a matter of public record. In 1994 Linda represents another client against Client F. The 1994 representation is unrelated to the 1992 representation, but Linda will use the information from 1992.
- (4) Linda represented the Husband in 1985 on a drunk driving offense. He was acquitted. In 1994 she represents the Wife on an assault and battery charge against the ex-husband.

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

3. Norma, a local attorney, performs legal services for The Hot Tamale, a tortilla and tamale factory co-owned by husband and wife, Greg and Maxine. To ensure that Norma will always be available to provide legal services for The Hot Tamale, Greg and Maxine pay Norma an annual retainer of \$1000.

A week later, Greg privately asked Norma to prepare his will and, during the initial consultation in which drafting was discussed, Greg reveals that he has a terminal, noncommunicable disease and his health is rapidly deteriorating. Greg asks Norma not to tell Maxine because he does not want anyone else to know of his condition. He also discloses that he plans to leave the state and go where no one knows him because he wants to die in peace, alone and away from everyone's pity. Which of the following best describes Norma's ethical obligation?

- A) Norma must tell Maxine because she has a moral obligation to do so.
B) Norma must tell Maxine because she also represents Maxine and to fail to do so would be a failure of a lawyer to keep her client properly informed under Rule 1.4.
C) Norma should refuse to draft the will because to do so represents a potential conflict of interest.
D) Norma should counsel Greg to tell Maxine and suggest that unless he discloses this information to Maxine, Norma will tell her.
E) Norma should advise Greg of the possible consequences of his action, draft the will, and withdraw as counsel for The Hot Tamale if Greg does not tell Maxine.

4. Attorney Albert is shopping in the Piggly Wiggly. His wife, Alberta, sent him to the store during a dinner party to pick up some coffee for dessert. Alberta admonished Albert, "Hurry back, I don't want out guests to think we were unprepared." Albert remembered this instruction as he frantically race-walked through the aisles. After grabbing the package of mocha mint Irish cream, Albert discovers that he doesn't have his wallet or any money. He thinks to himself, "It's just a little coffee package. The store is packed. I'm gonna be late back for dessert. No one will know if I just walk out with this one little package in my coat pocket. I'll come back and pay them tomorrow."

So Albert takes the package out of the store in his coat pocket and the alarm sounds. Albert is arrested for shoplifting.

Is Attorney Albert subject to discipline for his conduct?

- A) Yes, even though the attorney's conduct is not related to the practice of law, Albert's conduct reflects adversely on the lawyer's honesty or fitness as a lawyer and the criminal act involved dishonesty, fraud and deceit.
B) Yes, any criminal conduct subjects an attorney to discipline.
C) No, the conduct has nothing to do with Albert's professional activities.
D) No, attorneys are not disciplined for misdemeanors.

5. Which one of the following actions by Attorney Alicia is most likely to be held unethical?

- A) She buys a 5% interest in a new corporation being started by a client (another firm is doing the corporate work).
- B) She accepts a gift of a compact disc player from a grateful client.
- C) She pays the fees of an expert witness that she hired for a plaintiff in a personal injury case.
- D) She accepts her agreed upon fee of a 1/4 interest in Blackacre after succeeding in a quiet title action concerning Blackacre.
- E) After the conviction of a client, she signs a contract to write an article about the criminal case.
- F) With the consent of the employee, she accepts a fee from the employer to defend the employee in a DWI case.

6. In a federal employment discrimination case brought by Theresa Jones who was not hired, the attorney for the defendant engages in the following tactics. Which one is unethical?

- A) He tells the manager of the defendant company to sit at the counsel table and "don't wear your normal business suit."
- 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 potential women from the jury because he believes they are "bleeding heart feminists." The jury consists of 7 men and 5 women.

7. 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 the plaintiff wants revealed.

In which of the following instances has Susan acted unethically?

- A) She reveals Item A to an associate who is working on the case.
- B) She reveals Item B to a law clerk who is working on the case.
- C) 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.
- D) After a few drinks at a holiday party for the partners, she jokingly revealed Item B to another partner.

QUESTIONS 8-10 are based on the following facts.

Attorneys Paulette and Deirdre have been close friends since childhood. Occasionally they find themselves on opposite sides of litigation, but they have always managed to be vigorous adversaries during work hours and friends the rest of the time. In the matter at hand, Deirdre represents an electric company that has converted one of its generating plants to burn recycled waste rather than natural gas. Paulette represents a group of middle class homeowners who have sued to prohibit the electric company from burning recycled waste because it allegedly pollutes the air with ash and foul smelling fumes.

8. Paulette's homeowner clients want prompt action. Thus, when Paulette filed her complaint on June 1st, she simultaneously scheduled a motion for a preliminary injunction to be heard on June 10th. Deirdre put aside other important work to prepare her opposition to the motion. On June 8th, Deirdre's youngest child was kidnapped from the schoolyard.

On June 9th, the child had not been found, and Deirdre called Paulette and asked her to postpone the hearing for ten days. (Meanwhile, Deirdre's client continues burning recycled waste in the generating plant.)

Paulette

- A) may grant Deirdre's request, even though it means that her clients will have to tolerate another ten days of ash and fumes.
- B) must refuse Deirdre's request, and thus require Deirdre to go to the courthouse to petition the judge for an emergency postponement.
- C) may grant Deirdre's request, but only on condition that Deirdre will stipulate that her client's plant is operating in violation of the regional air pollution control guidelines.
- D) must refuse Deirdre's request, since to grant it would create an appearance of impropriety in light of the close personal friendship between them.
- E) must inform her clients and let the clients decide.

9. Assume that Paulette's motion for a preliminary injunction was denied. Through cautious investigation, the electric company learns that Paulette's clients have little faith in their position and are likely to capitulate if the suit gets expensive. Thus, the electric company instructs Deirdre to take the deposition of every plaintiff, and to make the depositions lengthy and expensive. Deirdre explains that she does not want to do it that way; she can get all the information she needs for trial in a much less expensive way, through written interrogatories and requests for admissions of fact. Which of the following best expresses Deirdre's ethical obligation in this situation?

- A) If Deirdre concludes that her client is motivated in part by a desire to make the case expensive for the plaintiffs, her ethical duty is to refuse to take the depositions.
- B) Even if Deirdre suspects that her client's primary motivation is to make the case expensive for the plaintiffs, her ethical duty is to take the depositions in accordance with her client's wishes.
- C) Whatever Deirdre may conclude about her client's motivations, her ethical duty is to conduct the discovery in the manner that will impose the least financial burden on the plaintiffs.
- D) Whatever Deirdre may conclude about her client's motivations, her ethical duty is to conduct the discovery according to her own best judgment.

10. Paulette has submitted a set of interrogatories to the electric company. Interrogatory #15 states:

Identify by author, date, and title all studies and reports in your possession that concern air quality and the burning of recycled waste and that were prepared between February 1st and June 1st.

The electric company has in its possession a report that was prepared during the week of January 22nd and that is dated January 29th. The report is damaging to the electric company's position, and Deirdre suspects that the plaintiffs do not know of its existence. With respect to the electric company's response to Interrogatory #15:

- (1) Deirdre must advise the electric company to identify the report since she knows that it contains relevant information that the plaintiffs might not otherwise obtain.
- (2) Deirdre may advise the electric company not to identify the report since it is beyond the call of the interrogatory.
- (3) Deirdre must advise the electric company not to identify the report since it is beyond the call of the interrogatory.
- (4) Deirdre may advise the electric company to identify the report if she believes there are sound tactical reasons for doing so.

- A) (1) only.
- B) (3) only.
- C) (2) or (4) only.
- D) (4) only.