

# Summer 1995 Professional Responsibility IPI #1, 2

## IPI #1

Professional Responsibility  
Prof. Brill  
Summer 1995  
IPI #1

### 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) 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.

2) 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 had prior plans to be in Little Rock for a football game on the same day and told the client of his football plans.
- (3) Charging a client 10¢ a page for copies which cost the law firm 5¢ a page.
- (4) Charging the client 25¢ a page for copies that cost the law firm 5¢ a page.
- (5) 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.
- (6) 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), (4) and (6)
- B) (2), (3) and (6)
- C) (2), (4) and (5)
- D) (3), (4) and (5)
- E) (1), (2) and (5)
- F) (1), (3) and (6)

3) Attorney Alice has opened her office in Fort Smith. In the first month, she

- A) visits all the real estate brokers, introduces herself and leaves her card.
- B) gives a speech to the Women's Professional Associations on developments in employment discrimination law in the past decade.
- C) places an advertisement in the newspaper, "None of my clients have ever been dissatisfied with my representation."
- D) sponsors a girls' softball team and puts her name on their uniforms.
- E) contacts principals and offers to speak to high school government classes.

Which activity is most likely to be held unethical?

4) Lawyer is a real estate broker in State One and a member of the bar of State Two. In applying for a renewal for his real estate license in State One, Lawyer failed to disclose that he had just been charged with criminal fraud. This false answer to a specific question made his application materially false.

Is Lawyer, regarding this application, subject to discipline in State Two?

- A) No, because he was not acting as a lawyer.
- B) No, because he filed his application in State One.
- C) Yes, because he acted dishonestly.
- D) Yes, because as a lawyer he may not also be a real estate broker.

5) Sally practices law with a local firm. In addition, she and her sorority sister, Victoria, are partners in a local retail establishment known as "Kitchen Magic". On behalf of the partnership, Sally prepares the partnership tax `return`, negotiates the lease and reviews contractual documents, and represents the partnership in court when it sues debtors. She does not bill the partnership for her services.

- A) Sally has acted unethically in doing the tax returns because she is not a tax specialist.
- B) Sally has acted unethically because she may not represent the partnership in court because she is one of the partners.
- C) Sally has acted unethically in splitting legal fees with a non-lawyer.
- D) Sally has acted unethically in forming a partnership with a non-lawyer.
- E) Sally's actions do not violate the ethical standards.

6) Larry Liquor was usually the life of the party and had a little too much fun his first year of law school. During his second year Larry came to the realization that he was an alcoholic and sought treatment. Now, a recovered alcoholic, he is seeking admission to the bar in Arkansas. Under the Arkansas rules of professional conduct, will his treatment for alcoholism prevent his admission to the bar?

- A) No, because his being an alcoholic would not in and of itself prevent his admission, so its treatment likewise should not.
- B) Yes, the fact that he was treated for alcoholism demonstrates his emotional and mental instability.
- C) No, but he has the burden of demonstrating that, despite his past alcoholism, he is emotionally and mentally stable.
- D) No, because to deny him admission would deter other alcoholics in law school from seeking treatment.

7) Pamela is a solo practitioner in Jonesboro. Friend Fred who operates a towing business approaches her with the following proposition: "Give me a stack of your business cards. I see a lot of wrecks and injuries. Many victims have good claims for personal injuries and property damages. I'll pass out your business cards to the victims and the owners. In `return`, you give me 4% of the fees that you earn on their cases."

Can Pamela cooperate with the plan of her friend?

- A) Yes.
- B) Yes, but only with the modification that she does not give any portion of the fee to Fred.
- C) Yes, but only with the two modifications that she does not give any portion of the fee to Fred and that Fred does not give legal advice.
- D) Yes, but only with the two modifications that she does not give any portion of the fee to Fred and that Fred first asks if the victim already had a lawyer.
- E) Yes, but only with the two modifications that she does not give any portion of the fee to Fred and that Fred only give the cards to people who ask Fred if Fred knows of any lawyer who might be able to help.
- F) No, because a friend can never give out business cards to personal injury victims because the friend would be doing impermissible solicitation for the attorney.

8) After returning from Oz, Dorothy decided to go to law school at the University of Kansas. Upon graduation, she started her law practice in the hometown of her aunt, Auntie Em. Dorothy set up two (2) separate accounts to handle the income and expenses of practicing law: a trust account and an office account.

Dorothy's first client, Mr. Scarecrow, asked her to represent him in an action to quiet title to a small piece of farm land. He agreed to pay her \$75.00 per hour. During his visit, Scarecrow wrote Dorothy a check for \$300.00 as an advance for costs. Dorothy deposited the \$300.00 into her office account.

On her second day at the office, Dorothy was visited by The Wizard. He was representing his brick company, Yellow Brick, Inc. He requested that Dorothy represent his company in any future endeavors they might undertake. He paid her \$500.00 as a retainer for her services for the next year. Dorothy deposited the entire amount into the office account.

Approximately one month after his initial visit, Mr. Scarecrow returned to Dorothy's office and told her he no longer needed her services. He also asked for his \$300.00 back since Dorothy had not yet performed any work for him. Dorothy flatly refused.

- A) Dorothy acted ethically when she deposited the \$300.00 from Scarecrow into her office account.
- B) Dorothy acted ethically when she deposited the \$500.00 from The Wizard into her office account.
- C) Dorothy acted unethically when she deposited the \$300.00 from Scarecrow into her office account.
- D) Dorothy acted ethically when she refused to refund the Scarecrow's money.
- E) Both (A) and (B) are correct.
- F) Both (B) and (C) are correct.
- G) Both (A) and (D) are correct.
- H) Both (C) and (D) are correct.

9) 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?

- A) She reveals Item A to an associate who is working on the case.
- B) She reveals Item B to a second year law student 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.
- E) She called a lawyer in another law firm for ethical guidance on the case, and revealed Item A in the course of seeking guidance.

10) Vince is a decorated veteran of the Vietnam war. During a January 1994 parade, he was insulted by Dan, who publicly proclaimed "You don't love your country."

Vince went to Alan the Attorney (who was a 1994 law school graduate) in December 1994 and said he had been publicly insulted by Dan's attack on his patriotism and he wanted to sue him for defamation. Alan said: "I'll take care of it. I'll write a letter to Dan and demand a public retraction. Otherwise, we'll sue him. Don't pay me now. We'll talk about my fees later."

Alan promptly wrote the letter in December 1994 and Dan ignored it. When Alan began to prepare his lawsuit in February 1995, 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 located another attorney who sues Alan for legal malpractice. Which of the following seven defenses is likely to be the best chance for Dan to avoid liability?

- A) the lack of an attorney-client relationship, because there was no fee arrangement
- B) the fault of the plaintiff Vince, because he waited so long to contact an attorney
- C) the inexperience of the young lawyer
- D) the barrister's rule
- E) the lack of actual injuries suffered by Vince

- F) the lack of an applicable Rule of Professional Conduct
- G) Dan's conduct satisfied the standard of care

## IPI #2

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### 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. In ten years of practice Linda Lawyer has developed an extensive and successful personal injury practice. Last year Wal-Mart hired her (for the first time) to handle a debt collection case. She was successful at trial and she has now executed on the defendant's property. The public sale is scheduled for next week and buyers are eager to bid on the property. She anticipates no difficulty in collecting the debt by early July. She will then bill Wal-Mart for her services and will receive, probably in early August, a fee of approximately \$1500.

Today Connie Client contacts Linda and explains, in limited and cursory fashion, that she wishes to sue Wal-Mart because she suffered permanent injuries, and loss of earnings and loss of earnings capacity when she slipped and fell when Wal-Mart let water accumulate at the entrance to the store. The accident was late June 1992. Linda knows that the statute of limitations for negligence is three years.

Linda would like to represent Connie Client in this major case.

Which of the following statements best resolves her position?

- A) She should tell Connie to `return` in late August.
- B) She should enter into an attorney-client relationship with Connie, but not work on the case until late August.
- C) She should refer Connie to another personal injury lawyer and take a referral fee.
- D) She can represent Connie now because her work for Wal-mart is virtually finished, Wal-Mart is a big corporation, the two matters are unrelated, and no confidential information will be used against Wal-Mart.
- E) She can quit Wal-mart immediately and represent Connie.
- F) None of the above options seem plausible. She will be unable to represent Connie.

2. Alice Attorney and Connie Client are life-long friends. Alice is an government tax attorney and, although permitted to have a small private practice, rarely does so. Connie and Alice played tennis on Saturday and at lunch afterwards, in the course of a lengthy friendly conversation, Alice makes the following statement:

"I did something foolish. I hired attorney Larry Lawyer to assist in the purchase of my home. We were becoming friendly and I was encouraged by the developing relationship. He told me that, as his practice was developing, he was a little short of money, he asked if he could borrow \$5000 for three months. I had the money and I agreed. We shook hands on it. I purchased my home and paid his reasonable fee. Shortly thereafter I saw him at the disco in a passionate embrace with another woman. Six months have gone by, and he has never paid a dime. I wish I had never met him, but I have learned a valuable lesson."

Which of the following statements is correct under the Rules of Professional Conduct?

- (A) Larry Lawyer did nothing unethical. Lawyers can borrow money from clients.
- (B) Without saying anything to Connie, Alice should call the Committee on Professional Conduct and report Larry Lawyer because the statement made by Connie was not within the scope of Rule 1.6.

- (C) Alice should ask permission of Connie to report Larry to the Committee on Professional Conduct. Without permission she must keep quiet.
- (D) With the permission of Connie, Alice should call Larry and threaten to sue him in court unless he pays \$10,000 immediately.
- (E) With the permission of Connie, Alice should call Larry and threaten to file disciplinary charges against him, unless he repays the \$5000 immediately.
- (F) Alice should take no action and should also say nothing to Connie, except "Life is like a box of chocolates. You never know what you're going to get. You were unlucky and pulled out a bad piece."

3. Which of the following statements made in closing arguments are improper? (Assume that all the statements are factually correct).

- (1) "An appropriate award for the pain and suffering of my client is \$100 a day."
- (2) "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."
- (3) "Remember what it says 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."
- (4) "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."
- (5) "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."
- (6) "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."

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

4. Betsy Barrister and Candy Client have been best friends since grade school. Candy's mother died when Candy was nine, and Betsy's mother, Barb, became very close to Candy in order to ease the loss. Due to the nurturing of Barb, Candy has become a fine citizen with a successful career.

In the past, Betsy has handled many of Candy's legal needs. Candy now wants Betsy to draw up a deed granting a lovely piece of land to Barb in appreciation of Barb's care during Candy's fragile youth.

Is Betsy ethically permitted to do so?

- A) Yes; since Betsy and Candy have been friends for such a long time, there will be no appearance of impropriety.
- B) No; because clients cannot give property to the family of their attorney.
- C) Yes; as long as another attorney is present and watches the transaction and ensures that Barb is acting competently.
- D) No; because attorneys cannot draft deeds for clients that give land to family members of the attorney.
- E) Yes; because Candy has made it common knowledge that she is planning to grant the land to Barb, and Barb has consented to the transfer.
- F) No; but another lawyer in Betsy's firm may draw up the deed.

5. Marsha works at Starline, a boat factory that manufactures fiberglass boats. In her job she has to apply a highly flammable undercoating. One day at work the fumes burst into flames burning her severely. She wants to hold someone liable (under common law principles) for not having proper safety precautions.

Marsha goes to Attorney Sebastian for advice about her injuries. Marsha tells you that the assembly line mechanism causes sparks from time to time, and that could be the cause of the fire. She also tells you that workers are not supposed to smoke on the production floor, but on the day of the accident she could not wait to get to the break room and therefore she lit a cigarette in her work area. She is not sure if that caused

the accident, but the assembly line was operating.

He agrees to take the case and files suit immediately. He deposes the plant manager and other employees in the weeks that followed, with Starline's attorney present. Because he forgot to ask the plant manager a few questions, Sebastian calls the manager at home and asks the questions. The manager answers them without hesitation. The next day, Marsha calls Sebastian to ask him about her case and finds out what has happened. He says "don't worry about it, I've got everything under control. Leave all the 'legal stuff' to me", he then hangs up without telling her anymore.

Which of the following statements are correct?

- (1) Sebastian should not have filed the suit because it is not a meritorious claim and will lose at trial.
- (2) Sebastian was correct in telling Marsha not to worry about the 'legal stuff' because he only needs to tell her when to be in court and/or the details of a settlement offer.
- (3) Sebastian can call the plant manager at home as long as he does not ask any questions that would lead to an admission, and if he tells the opposing attorney everything that was said.
- (4) When communicating with Marsha, Sebastian should inform her fully concerning the aspects of her case rather than to tell her not to worry about the 'legal stuff'.
- (5) Sebastian should not have talked to the plant manager without the presence or consent of Starlines attorney since the manager may give a statement that constitutes an admission.

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

6. Carl Counselor is a former member of the ABC law firm. One of ABC's clients is the 2nd National Bank. Carl, an environmental attorney, never did any work for 2nd National and no ABC attorneys ever conferred with him on any matters involving 2nd National Bank.

Carl is now a partner in XYZ, a firm specializing in environmental litigation. A local farmer has contacted XYZ about representing him in litigation against 2nd National Bank concerning hazardous waste on property owned by the bank.

Which of the following is correct?

- A) Carl is disqualified from representing the farmer because of his relationship with ABC.
- B) XYZ is disqualified from representing the farmer because of Carl's former relationship with ABC.
- C) Neither Carl nor XYZ are disqualified.
- D) Both Carl and XYZ are disqualified.

7. Attorney Kirk is defending an assault and battery case. In the course of investigation, Kirk's law clerk happens upon a surprise witness, whose testimony would be very helpful to the plaintiff. The witness was a customer in the tavern where the assault took place. The law clerk tells Kirk of the new witness.

Which of the following responses by attorney Kirk is consistent with the Rules?

- A) "Hide him at the Holiday Inn in Springdale under an assumed name until the trial is over."
- B) "Give him instructions not to talk to anyone from the other side."
- C) "I don't like this ridiculous rule, but as officers of the court we are compelled to tell the plaintiff about the witness."
- D) "Keep quiet and perhaps no one will find him."
- E) "Thank him for his help and give him \$100."
- F) "Do what you think is best for our client; you're only a law clerk, and I'm not responsible."

8. Lawyer, P's attorney, knows that the statute of limitations on P's claim against D has run. However, the statute of limitations is an affirmative defense that D would waive if he failed to plead it.

What is Lawyer's ethical duty?

- A) To inform P of the problem, but to file the suit if P is willing to incur the legal fees and court costs.
- B) To file the suit but inform the court that the statute of limitations has run.
- C) Not to file the suit unless P consents to disclose the fact that the statute of limitations has run to the court.
- D) Not to file the suit as it is now a frivolous claim.

9. Your client is charged with armed robbery. The victim has testified at a hearing (and will testify at trial) that he was robbed at midnight. Your client tells you in confidence that he robbed the man and knocked him unconscious at 10:00 p.m. He then went to a friend's house to play poker. His friends will testify that he arrived at 11:00 p.m. and stayed until 1:00 a.m.

May you ethically have the friends testify as to the presence of your client?

- A) No, because you know the victim is mistaken as to the time.
- B) Yes, because they will testify truthfully.
- C) No, because you will be assisting in fraud on the court.
- D) Yes, because your duty to your client always outweighs any responsibility to the court.
- E) No, because you know your client is guilty.

10. Which of the following actions, if any, are unethical?

- (1) You are representing XYZ Corp. and litigating the value of its stock. Without telling XYZ, you buy a 5% ownership interest in XYZ.
- (2) You ask the judge to withdraw from the representation of a criminal defendant accused of robbery because the client is unwilling to go to church.
- (3) You own 100 shares of Ford Motor Company Stock. On behalf of a plaintiff you sue Ford Motor Company. You do not tell the plaintiff that you own the stock.
- (4) You hire a client (who is financially hard-pressed) to provide janitorial services in your offices and you pay him at the same rate as the last janitor.
- (5) You agree to represent a party who is disputing title to Blackacre. You and the client agree that if you are successful your fee will be a 10% ownership interest in Blackacre.

- A) Only (1) and (2) are unethical.
- B) Only (1) and (5) are unethical.
- C) Only (2) and (3) are unethical.
- D) Only (3) and (4) are unethical.
- E) Only (2) and (4) are unethical.
- F) Only (3) and (5) are unethical.
- G) None are unethical.
- H) All are unethical.