

PROFESSIONALISM FOR THE ETHICAL LAWYER

Hypotheticals

Thomas E. Spahn
McGuireWoods LLP

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Hypothetical 1

You and your law school roommate have continued to stay in touch with each other, and debate some of the issues that you covered together in law school. Over one recent lunch, your friend took the position that lawyers could be professionally sanctioned for discourteous behavior. You have always tried to act as courteously as possible, but you wonder whether lawyers falling short of such behavior could suffer bar discipline.

Do the ethics rules prohibit discourteous behavior?

YES

NO

Hypothetical 2

You just hired two new lawyers and one new assistant. The lawyers recently graduated from law school, and the assistant had previously worked only for doctors. Having been a sole practitioner until now, you wonder about the ethical and professional implications of bringing on new folks like this.

- (a) Do you have any responsibility for assuring that lawyers and nonlawyers you supervise comply with the ethics rules?

YES

NO

- (b) Can you be held responsible for any ethics violations by lawyers and nonlawyers you supervise?

YES

NO

Hypothetical 3

You just finished your first week of work at a new law firm, and you already have some qualms. In particular, the partner who supervises your work seems to be a bit "shady." You begin to wonder what responsibility you might have if your supervisor asks you to do something that makes you feel ethically uncomfortable.

May you be held responsible for conduct you undertake at your supervising partner's direction?

YES

NO

Hypothetical 4

One of your senior partners has the habit of telling racial jokes.

What should you do?

Hypothetical 5

You are representing a particularly ornery client, who clearly does not like having to deal with lawyers. You believe that this client frequently makes the wrong decisions, and you would like to provide advice to the client. However, you want to make sure that you do not fall short of your duty to diligently represent even difficult clients.

(a) May you offer your advice to your client before he seeks it?

YES

NO

(b) May you offer advice to your client even if you know that the client will not like it?

YES

NO

(c) May your advice include a moral as well as a legal component?

YES

NO

Hypothetical 6

Your client tends to be a "hands on" participant in her legal matters. Over the past few months, she has expressed some frustration at the civility that you have shown toward the lawyer representing your client's adversary. She tells you that she thinks the other lawyer is taking advantage of you, and wants you to start being a little "tougher" when you deal with the other lawyer.

What should you do?

Hypothetical 7

You have had difficulty from the start dealing with an overly aggressive client. Now she has asked you to take several actions that you consider inappropriate and unprofessional -- both in the transactional and litigation work you are handling for the client. You satisfy yourself that the actions would not be unethical. However, you still balk at following your client's direction, and you wonder if you can withdraw from the representation without violating your duties to the client.

May you withdraw from a representation if the client insists on pursuing conduct you think is offensive?

YES

NO

Hypothetical 8

Your first supervisor frequently reminded you to try your best to return all telephone calls (or have your assistant return them) by the end of each day. This has become increasingly difficult as e-mails have either supplemented or replaced telephone calls. One of your newest associates just asked you several questions about this type of constant communication.

- (a)** Should he still try to respond to each communication on the same day (in light of the deluge of modern electronic communications)?

YES

NO

- (b)** What should he do if the adversary's lawyer does not return his phone calls or e-mails?

Hypothetical 9

One of your newest associates has followed your advice to answer voicemail and e-mail messages as quickly as he can conveniently do so. Unfortunately, his responsive e-mails sometimes reflect a quick temper, and contain angry words that you think inappropriate.

What should you do?

Hypothetical 10

Perhaps it is because you married your firm's long-time receptionist, but you are especially sensitive to the way lawyers treat nonlawyer staff working for an adversary's lawyer. Two recent incidents have raised this issue again.

- (a) Your adversary's lawyer just acted discourteously toward your assistant -- what should you do?

- (b) You just heard one of your newest associates react with inappropriate anger when communicating with the receptionist at your adversary's law firm -- what should you do?

Hypothetical 11

As a new lawyer, you feel pressure to bill as many hours as possible, and try to begin attracting business to your firm. However, your daughter's middle school principal just asked if you could serve on a board seeking to improve parent-teacher relations at your daughter's school.

Should you accept the principal's invitation?

YES

NO

Hypothetical 12

As a new lawyer, you quickly signed up to accept court appointments in criminal matters. However, you now begin to wonder about the wisdom of your action -- the court just asked you to represent an accused child abuser.

Should you turn down the court appointment because you do not want to be associated with the accused child abuser?

YES

NO

Hypothetical 13

You are litigating a case in a circuit court known for complicated and quick deadlines for different kinds of motions. You wonder to what extent your duty of diligence to your client requires you to take advantage of the complex local rules to decrease the time your adversary has to respond.

- (a) Should you file a motion at 4:59 p.m. to deprive the adversary of an extra day to respond to your motion?

YES

NO

- (b) Should you file a motion on a Friday to assure that your adversary's lawyer will have to work over the weekend to prepare a response?

YES

NO

Hypothetical 14

You have always tried to cooperate with the other side in scheduling depositions, but you have had real trouble with one particular lawyer on the other side of a case. She either refuses to give you her avoid dates, or gives you so many avoid dates that you suspect she is making herself unavailable on the thinnest of pretenses.

What should you do?

Hypothetical 15

Your adversary has been fairly courteous, but occasionally acts in a way that you think is inappropriate. She just asked you for an extension of time to file a responsive pleading. You think that your client will want you to turn down the request.

What should you do?

Hypothetical 16

The other side has filed a very extensive set of requests for admissions. Your client wants you to resist admitting as many facts as you can, and has directed you to do so.

May you ethically admit facts that cannot be reasonably denied?

YES

NO

Hypothetical 17

The lawyer representing your adversary has been troublesome from the beginning, but his lack of courtesy reached a crescendo yesterday at a deposition. He was loud, sarcastic, and demeaning. The deposition will resume next week, and you worry about a repeat performance.

What should you do?

Hypothetical 18

You have scheduled several videotaped depositions of non-party witnesses. The lawyer representing your adversary just called to ask that you not videotape a witness who has a problem stuttering under stress.

What should you do?

Hypothetical 19

You just took one of your new associates to court for the first time. Unfortunately, she acted rudely to one of the judge's secretaries, and argued to the court that the lawyer representing the adversary "lied through his teeth" about an important matter.

What should you do?

Hypothetical 20

Your client attends most hearings on the case you are handling for him. At the last hearing, your client's emotions apparently got the better of him, and he used various facial expressions (grimaces, scowls, etc.) to express displeasure with the court's adverse rulings.

What should you do?

Hypothetical 21

You have been representing a very aggressive client in litigation that is nearly ready for trial. As you explain your trial outline to the client, she asks why you are not planning to call a witness whose testimony she thinks assists her case. When you explain to your client that you believe that the witness is being less than truthful, your client sternly insists that you call and rely on the witness. Your client knows enough to cite the various ethics provisions requiring you to diligently represent her.

If your client insists, must you present evidence that you reasonably believe is false?

YES

NO

Hypothetical 22

You just received a call from a former client, who wants you to represent him in a construction contract dispute. You hesitate at first, because the client previously has been overly aggressive in dealing with adversaries. You particularly want to avoid representing the client in any litigation, because he was particularly disagreeable during the last litigation.

May you limit your representation to non-litigation matters only?

YES

NO

Hypothetical 23

One of your business clients just called to ask if you are willing to participate in what seems like an unusual arrangement. Your client is trying to resolve a contractual dispute with one of her customers. Under your client's proposed arrangement, both clients and both lawyers would agree to negotiate a possible resolution of the dispute. If the negotiations fail, both lawyers would agree to withdraw from representing their clients -- and the clients would have to retain new lawyers to litigate. This concept sounds intriguing to you, but you worry that your contractual agreement to withdraw in case of litigation would create an insoluble conflict with your duty of loyalty and diligence -- because you and the other lawyer would have an incentive to recommend settlement even if clients would be better served by litigating.

May you enter into the arrangement your client has proposed?

YES

NO

Hypothetical 24

You remember from law school that lawyers are supposed to represent their clients "zealously." Although you are not exactly sure what that term means, one of your partners just told you that she considers it to require her to seek every advantage for her client -- even if the client does not direct her to do so. You are now in the midst of representing a client in tough business negotiations, and you wonder how far you must go.

Are you required to seek every advantage for your client?

YES

NO

Hypothetical 25

Despite the "lore" that clients involved in litigation become more emotional than those involved in transactional matters, one of your business clients has been quite a challenge for you. Your client tends to "fly off the handle," and sometimes engages in discourteous conduct himself or asks you to do so. You know that you have to loyally and diligently serve your client, but you wonder if you can ask your client to forego such inappropriate actions.

May you ask your client to forego discourteous or other inappropriate actions?

YES

NO

Hypothetical 26

You realize that the ethics rules require you to diligently serve your client, and generally take the client's direction. However, in some situations you have wanted to refuse to follow the client's direction to engage in discourteous (although not unethical) actions. This issue just came to a head in contentious business negotiations, because your client has directed you to take some actions that you think are unprofessional.

May you refuse to follow a client's direction?

YES

NO

Hypothetical 27

You have tried to cooperate with the lawyer representing your adversary, but found that she has not relented in her remarkably discourteous behavior. Her rudeness is most apparent during telephone calls, when she tends to scream at you and then hang up. You had always thought that transactional lawyers tended to be somewhat more civil than litigators, but this lawyer has tested that generality.

What should you do?

Hypothetical 28

You are working with your client to set up a series of negotiation sessions with the other side in a complex business transaction. Your client wants you to insist that the other side meet at a location of her choosing, and at a time that your client has selected (even though your client is free on the dates that the other side has suggested). Your client tells you that she thinks compromising on the date and place of the negotiation sessions will "show weakness."

What should you do?

Hypothetical 29

You and your client have been furiously negotiating transactional documents with the other side in a big deal -- frequently working well into the early morning. Late last night you and the other side agreed to add a certain indemnity provision into the documents, but you realize this morning that the other side had not included the agreed-upon provision in the draft they sent you at 3 a.m.

(a) Must you tell the adversary of its oversight?

YES

NO

(b) Must you advise your client of the adversary's oversight?

YES

NO

Hypothetical 30

During a long conference call with executives of your corporate client about contentious negotiations, you were monitoring e-mail message traffic. When an e-mail appeared from the lawyer representing the adversary, you alerted the folks on the phone that you had just received an e-mail from "the other side." Everyone on the call waits for you to see what the e-mail says. However, you very quickly realize that the other lawyer sent the e-mail to you by accident -- it uses her client's name in the body of the e-mail and also attaches a document entitled "Negotiation Strategy." When you describe the situation to those on the conference call, they all insist that you open up the attached "Negotiation Strategy" document and read it to them. When you balk at doing so, the in-house lawyer on the call reminds you of your duty of loyalty and diligence.

Must you read the inadvertently transmitted communication?

YES

NO