

UI COLLEGE OF LAW ORIENTATION PROGRAM 2013

PROFESSIONALISM SCENARIOS: MATERIALS FOR STUDENTS

SCENARIO #1

You are an attorney in a three-person Idaho law firm representing a computer software designer. Your client has been sued by a former customer (the plaintiff) who claims that the software had programming errors causing the customer's business to be disrupted and to lose money. During pre-trial proceedings, the plaintiff's lawyer, whose office is located in Los Angeles, schedules a deposition (an out-of-court interview under oath) of a software design expert in Seattle on a Monday afternoon, one week from today. This is short notice, but you hurriedly rearrange your schedule to be able to attend the deposition. The Saturday before the deposition, you receive a phone call indicating that a close member of your family has been in a serious auto accident in Texas. You rush to the airport. Before your plane takes off you call your staff assistant, leaving voice mail messages on the assistant's home phone and office phone. You explain what has happened and ask the assistant to call the plaintiff's lawyer and the product design expert, to tell them the deposition will have to be rescheduled. The assistant, who does not get either message until early Monday morning, is able to contact the expert but not the plaintiff's lawyer, who has already departed for Seattle. The plaintiff's lawyer arrives in Seattle, where she sits for a while at the deposition location with a technician hired to videotape the deposition. She then calls the expert and your office, only to learn that the deposition will not occur that day. Upon returning to Los Angeles she tells her client, the former customer, what happened. The former customer now insists that she file a motion asking the court to impose sanctions on you for causing the deposition not to take place as scheduled. Possible sanctions include entering judgment against your client and/or requiring you or your client to pay the technician's costs as well as the travel costs and professional fees of the plaintiff's lawyer for time wasted going to the deposition.

Have you and the plaintiff's lawyer both acted professionally? What should you do, now that you know what happened to the plaintiff's lawyer? If you were the plaintiff's lawyer, how would you respond to your client's insistence on seeking sanctions?

SCENARIO #2

You are corporate counsel to Widget World, Inc., a manufacturer of widgets. The corporation has received bad publicity lately because several consumers claimed that the widgets are defective, break easily, and are useless. Sales of the widgets have begun to decline. The chief executive officer of the corporation wants to regain market share for the widgets, not by improving their quality, but by selling them with an extended warranty for ten years. He also wants you to lay the legal groundwork for the corporation to move its headquarters and factory overseas. This will make it more difficult for customers to get satisfaction on warranty claims or to collect any judgments they might obtain in lawsuits for breach of warranty. You are convinced beyond doubt that the extended warranty scheme is a fraud.

What should you do?

SCENARIO #3

Your client has been charged with the crime of burglarizing a home, and has pleaded not guilty. The client tells you that he actually did commit the crime, but that he doubts the elderly homeowner got a good enough look at him to provide a solid identification at trial. “The old guy only caught a quick glimpse of me in dim light,” the client says. “You’re a sharp lawyer. Use your cross-examination skills. There’ll be plenty of ‘reasonable doubt’ hanging in the air. And don’t worry. I’ll be ready to testify that I didn’t do the crime, if it looks like your cross-examination hasn’t shaken things up enough.”

The client pauses and then says, “Here’s something else a sharp lawyer like you can use: I’ll bet if you use your Facebook account – and don’t tell me you don’t have one -- you could find out what people in the jury pool have Facebook accounts, too, and you could become their Facebook “friend” and find out whether they’ve ever posted anything about religion. You know why? Because I just happen to know the old guy testifying against me is a Muslim. I read something about him and a Muslim organization in the newspaper. So ... maybe someone in the jury pool wouldn’t like that. We want that kind of person on the jury, right? And then you could bring up that Muslim thing during the cross-examination. Or, better yet, you could use Facebook just to give the jurors a tip, or encourage them to do their own research on the old guy. Hey, you never know what might pop up on the Internet, and it’s fair game, right?”

Should you conduct the cross-examination as the client has suggested? Should you call the client to testify as he has indicated?

Should you inject religion into the case if it might benefit the client? Should you (or someone in your office) use social media to do research on, or to communicate with jurors, or to encourage them to do independent research on witnesses?

SCENARIO #4

You represent Henry Husband in a proceeding for divorce from his wife Willa. The divorce will entail a division of the marital property. During a deposition, responding to questions from the wife’s attorney. Henry provides a list of property he has purchased with income earned during the marriage. His list fails to include several assets of substantial value that you and he had discussed earlier in your office. During a recess in the deposition, you ask him about the discrepancy, and he replies: “Well, come on. Willa is trying to grab everything, and I’m just trying to hang on to something. She probably has a few secrets, too. Let’s see if we can settle this thing. Use your negotiating skills, counselor. If we have to go to trial, my testimony in court will include all of the property.” A moment later, Henry says to you, “Hey -- whose side are you on, anyway? Remember who is paying your legal fees.”

Should you proceed immediately to negotiate a settlement? Why or why not?

SCENARIO #5

You have agreed to draft a will and a complicated estate plan for a client. You quote your client a flat fee of \$20,000. Your client, who is well-to-do but not sophisticated in estate planning matters, says \$20,000 seems like a lot of money. You explain truthfully that in arriving at this figure, you have taken in account several factors; but you stress that the “paramount factor” is the amount of time you believe will be required for the research and drafting work. The client acquiesces, saying “Well, you’re the lawyer; I trust your judgment.” The client provides a full payment in advance. Just as you are about to get started on the research, you strike up a conversation with a partner in your law office who has just finished putting together a will and estate plan for another client in almost exactly the same position as your client. Consequently, your work on this case will now take much less time than you originally contemplated.

Do you tell the client what has happened? Is the client entitled to any adjustment of the fee? If so, how would you go about determining an adjusted fee?

SCENARIO #6

A thirteen-year old child was discovered carrying a knife at his junior high school -- a serious infraction of school policy that has caused him to be summarily expelled. The child’s indigent mother, an unemployed single parent, has approached you about appealing the expulsion. She says her son was fearful of bullies at the school; that she is now worried her son’s education will be impaired; and that she believes her son will be abused by an “even rougher crowd” of older boys in the alternative school for expelled students. She has come to you because she heard that you are a local expert in school law and that you recently received a *pro bono* award from the Bar for providing free representation to indigent clients. Your conversation with the mother about the facts of this case leads you to conclude that she is indigent and that the summary expulsion of her son, without a hearing, quite likely violated the child’s right to procedural due process.

Your own child attends the same school and you have concerns about your child’s safety. In addition, your spouse is the president of the school’s parent-teacher association. Your spouse has been a major proponent of a “zero tolerance” approach toward students who bring deadly weapons to school. Your spouse probably would not be happy about your taking such a case.

What should you do?