

Ethics Update

Professor Leslie Griffin

Question #1

Robert Clark is an attorney who is handling a case about a contract. The other party is represented by Charles Rothermel. One day, Clark receives an e-mail that appears to be from Rothermel to Rothermel's client. The e-mail states that "we should now attempt to settle the case in the \$100,000 to \$150,000 range. I am attaching to this e-mail a memo that describes the negotiation strategy that I believe we should follow. Please call me with your comments." The e-mail clearly has been sent to Clark inadvertently.

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

Answers #1

- A. Clark must promptly delete the e-mail to Rothermel without opening the attachment and inform Rothermel of what has happened because the e-mail contains privileged information.
- B. Clark may delete the e-mail without opening the attachment if he obtains informed consent from his client to do so.
- C. Clark may open the attachment, read it, and use the information in the negotiations without informing Rothermel that the e-mail was misdirected, because Rothermel waived any privilege to the message and the attachment by sending it to Clark.
- D. Clark must inform Rothermel that he has received the e-mail and the attachment, and Clark may choose to return the e-mail without obtaining informed consent of his client.

Question #1

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

- D. Clark must inform Rothermel that he has received the e-mail and the attachment, and Clark may choose to return the e-mail without obtaining informed consent of his client.**

metadata

Question #2

Charlene Darmony is an attorney who recently helped a client negotiate a settlement with an unrepresented party. That party has now retained legal counsel, and that counsel has contacted Charlene to tell her that the settlement was obtained fraudulently and that Charlene is likely to be a defendant in the suit that is forthcoming. The alleged fraud involved something about which Charlene's client apparently lied to Charlene, and Charlene could prove that if necessary.

Which of the following statements best describes Charlene's options under the Model Rules of Professional Conduct?

Answers #2

- A. Charlene may disclose the client's lie because attorney-client communications lose their confidential status if they are made as part of a fraud.
- B. Charlene cannot reveal her client's lie in defense of her own actions because this dispute is not with the client.
- C. Charlene may reveal her client's lie to the lawyer before suit is filed in order to protect herself.
- D. Charlene may reveal her client's lie to protect herself once suit is filed against Charlene but not before.

Question #2

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Which of the following statements best describes Charlene's options under the Model Rules of Professional Conduct?

- C. **Charlene may reveal her client's lie to the lawyer before suit is filed in order to protect herself.**

California Business & Professions Code
§ 6068(e) (“B&P § 6068”) provides that “[i]t
is the duty of an attorney to ... maintain
inviolable the confidence, and at every peril to
himself or herself to preserve the secrets, of
his or her client.”

Question #3

Attorney had been representing Client for several months in a matter involving the ownership of some antique jewelry. Client claimed he purchased the jewelry for his wife with his own funds. Partner, Client's business partner, claimed the jewelry was a partnership purchase in which he, Partner, had a one-half interest. While the matter was pending, Client brought a valuable antique jewelry box to Attorney's office and said:

“Keep this in your vault for me. I bought it before I went into business with Partner. Do not tell him or anyone else about it until my matter with Partner is settled.”

Later that same day, a police officer, who was in Attorney's office on another matter, saw the jewelry box when a clerk opened the vault to put in some papers. The police officer recognized it as one that had recently been stolen from a collector. Attorney was arrested and later charged with receiving stolen property.

Is Attorney subject to discipline if Attorney reveals that Client brought the box to her office?

Answers #3

- A. Yes, because Client instructed Attorney not to tell anyone about the jewelry box.
- B. Yes, if the disclosure would be detrimental to Client's interests.
- C. No, because the jewelry box was not involved in the dispute between Client and Partner.
- D. No, if the disclosure is necessary to enable Attorney to defend against a criminal charge.

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Attorney had been representing Client for several months in a matter involving the ownership of some antique jewelry. Client claimed he purchased the jewelry for his wife with his own funds. Partner, Client's business partner, claimed the jewelry was a partnership purchase in which he, Partner, had a one-half interest. While the matter was pending, Client brought a valuable antique jewelry box to Attorney's office and said:

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D. No, if the disclosure is necessary to enable Attorney to defend against a criminal charge.



Question #4

Attorney's advertisement in the local newspaper includes the following information, all of which is true:

- I. Attorney, B.A., magna cum laude, Eastern College; J.D., summa cum laude, State Law School; LL.M., Eastern Law School.
- II. My offices are open Monday through Friday from 9:00 a.m. to 5:00 p.m., but you may call my answering service twenty-four hours a day, seven days a week.
- III. I speak modern Greek fluently.

For which, if any, of these statements is Attorney subject to discipline?

Answers #4

- A. III Only
- B. I and II, but not III
- C. I, II, and III
- A. Neither I, nor II, nor III

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- III. I speak modern Greek fluently.

For which, if any, of these statements is Attorney subject to discipline?

- D. Neither I, nor II, nor III**

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blog
Attorney Advertising

Question #5

Attorney advertises on the local television station. In the advertisements, a professional actor says:

“Do you need a lawyer? Call Attorney ~ her telephone number is area code 555-555-5555. Her fees might be lower than you think.”

Attorney approved the prerecorded advertisement and is keeping in her office files a copy of the recording of the actual transmission and a record of when each transmission was made.

Is the advertisement proper?

Answers #5

- A. Yes.
- B. No, unless Attorney's fees are lower than those generally charged in the area where she practices.
- C. No, because she used a professional actor for the television advertisement.
- D. No, if she makes a charge for the initial consultation.

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Attorney approved the prerecorded advertisement and is keeping in her office files a copy of the recording of the actual transmission and a record of when each transmission was made.

Is the advertisement proper?

A. Yes.

Larry Lessig – Superlawyer



Question #6

Emily Truehart is a prospective client who comes to meet with Jay Dantzler, an attorney with the firm of Dantzler & Simmons. During the initial client interview, Emily reveals to the attorney that she was involved in an automobile accident and was seriously injured. In the course of describing the accident, Emily reveals that she was talking on her cell phone and changing the DVD in the in-car DVD player when the accident occurred. These actions are strong evidence of contributory negligence on Emily's part. Emily does not retain Jay or his firm, and then Jay is asked by the other party to the accident to represent him in litigation against Emily about the accident.

Which of the following most accurately describes Jay's options under the Model Rules of Professional Conduct?

Answers #6

- A. He may represent the other party to the accident because Emily was never a client.
- B. His firm, but not Jay, may represent the other party to the accident because only Jay learned significantly harmful information about Emily in his interview with her.
- C. His firm, but not Jay, may represent the other party to the accident as long as Jay took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent Emily and as long as Jay is screened from participation in the case and receives no part of the fee, and as long as Emily gets written notice.
- D. Neither the firm nor Jay may represent the other party to the case without Emily's informed consent, confirmed in writing.

Question #6

Emily Truehart is a prospective client who comes to meet with Jay Dantzler, an Attorney with the firm of Dantzler & Simmons. During the initial client interview, Emily reveals to the attorney that she was involved in an automobile accident and was seriously injured. In the course of describing the accident, Emily reveals that she was talking on her cell phone and changing the DVD in the in-car DVD player when the accident occurred. These actions are strong evidence of contributory negligence on Emily's part. Emily does not retain Jay or his firm, and then Jay is asked by the other party to the accident to represent him in litigation against Emily about the accident.

Which of the following most accurately describes Jay's options under the Model Rules of Professional Conduct?

- C. His firm, but not Jay, may represent the other party to the accident as long as Jay took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent Emily and as long as Jay is screened from participation in the case and receives no part of the fee, and as long as Emily gets written notice.**

Question #7

Abraham Regenstein is an attorney in a city that is in close proximity to another state. He is admitted to practice only in his home state. His practice frequently requires him to go into the neighboring state to meet with clients. To facilitate his practice, he is considering opening an office in that neighboring state.

Which of the following statements most accurately describes his obligations under the Model Rules of Professional Conduct?

Answers #7

- A. He must not establish a continuous and systematic presence in the neighboring state unless he is admitted to the bar of that state.
- B. He may establish the office as long as he does not hold himself out as licensed to practice law in that state.
- C. He may establish the office as long as its sole purpose is to facilitate temporary legal services in the neighboring state.
- D. He may establish the office if he associates an attorney licensed in the neighboring state for his activities in that state.

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Which of the following statements most accurately describes his obligations under the Model Rules of Professional Conduct?

- A. **He must not establish a continuous and systematic presence in the neighboring state unless he is admitted to the bar of that state.**



**Run past first
base on every hit.**

