



LAWYER EDUCATION AND DEVELOPMENT | DUKE LAW

Where Do You Draw the Line? **Ethics and Professionalism Hypotheticals**

In preparation for the ethics and professionalism discussion and luncheon on Monday, August 17, please read the attached hypotheticals, give some thought to what issues arise in each situation, and consider the decisions you would make in each scenario. Be prepared to share your thoughts with your orientation group; discussions will be facilitated by alumni, LEAD Fellows, and faculty members. You should familiarize yourself with all of the hypotheticals, as we cannot predict which three or four the group leaders will choose to discuss during the break-out sessions.

These hypothetical situations are intended to expose you to professional challenges of the type you may encounter as a law student and in the day-to-day practice of law. We intend for these scenarios to stimulate thoughtful discussions about what it means to be a professional and about the ethical standards that should apply to the study and practice of law. This exercise also introduces the idea that the actual practice of law takes place within a context of responsibility to your client, to your profession, and to yourself. When acting as advocate, a lawyer represents the client's interests in a vigorous and committed manner, while at the same time honoring the duties he or she has to other lawyers, the legal system, and the community in general.

To put these discussions in context, it is important for you to be aware of the common understanding of the terms *ethics* and *professionalism* among lawyers and judges. As you begin law school, the word *ethics* most likely connotes upright, moral behavior. To most lawyers, however, the connotation also is to the American Bar Association's Model Rules of Professional Conduct, various forms of which govern the practice of law in every state. Thus, to lawyers, the word *ethics* means the rules or laws of lawyering that govern the legal profession. *Professionalism*, on the other hand, refers to the attitudes and conduct that rise above these minimum standards and embody the values of competence, character, civility, and commitment to the rule of law, to the lawyer's role as an officer of the court, and to public and community service. Professionalism is a commitment to carrying out both the letter and spirit of the law.

All we ask you to bring to this exercise are your life experience and values. We are not asking for any professional knowledge or research, nor should you ignore your “gut reaction.” We encourage you to write down your initial reactions and any subsequent reflections and to bring those notes with you to the orientation event, so that you can better share your thoughts within your orientation group.

We gratefully acknowledge the State Bar of Georgia’s Committee on Professionalism for developing and sharing these instructions and some of the fact patterns contained herein. We are indebted to the Georgia Bar for its assistance and applaud its members’ far-reaching efforts in advancing the cause of professionalism throughout Georgia and beyond.

PROBLEM 1

Sally and Jane are first-year law students and roommates who are in the same Contracts small section. On the day their Contracts take-home exam was due, Sally returned to their apartment after handing in her exam to find Jane in tears. Jane said that she had not been able to study for days. She didn't even feel like getting out of bed in the morning. Sally knew Jane had been going out a lot in the past few weeks and coming home late and very drunk. Sally convinced Jane to spend the remaining few hours on the exam. Jane's eventual grade in the class was barely passing.

In the spring semester of their third year of law school, Jane learns that her mother is seriously ill. Jane begins ignoring phone calls from her friends and family. Sally hears from other friends that Jane is not attending classes or study group appointments. Jane begins to drink alcohol at home alone and is often drunk on weeknights. Sally decides to approach Jane and tell her that she is concerned about her drinking and how Jane is dealing with her mother's illness. Jane says that her drinking is no big deal and that she was thinking about going to Counseling and Psychological Services (CAPS) on campus, but someone told her that if she did she would never get admitted to the state bar.

Does Sally have an obligation to disclose her concerns about Jane's drinking to the law school or anyone else? Would your answer change if Jane were abusing cocaine in addition to alcohol?

What if Sally were one year ahead of Jane in law school and admitted to the NC bar, and Jane asked her to complete a "character and fitness" reference form relating to Jane's NC bar application?

SYNOPSIS: A law student is concerned about her fellow student's apparent substance abuse.

PROBLEM 2

Amy is a first-year law student. She is anxious to get a law job over the summer between her first and second years. She submits her resume to many government agencies and private law firms. When she has not landed a paying job by April, Amy sends resumes to a number of non-profit organizations, along with offers to volunteer for the summer. She subsequently interviews with the local Legal Services office and is offered an unpaid internship for the summer. Amy immediately accepts. The day before she is to start work at Legal Services, a partner in a law firm that she had contacted earlier calls to say he has an unexpected opening and would like Amy to work for his firm. This job offers substantial compensation, which leads Amy to quickly accept the offer. That night, Amy leaves a voicemail message at Legal Services explaining that she has found other employment. She does not show up for work at Legal Services the next day.

What are the ethical and professional implications of Amy's action?

Would your answer change if Amy were in serious financial difficulty? What if Legal Services selected Amy from dozens of other interested interns?

SYNOPSIS: A law student rejects a volunteer commitment at the last moment to accept a paying job.

PROBLEM 3

Michael Holt is a recent law school graduate from the state of East Carolina who last year passed the East Carolina bar exam. Holt is also a fundamentalist Christian and founder of the Global Church of the Creator (“GCC”), an organization that calls for “the return of Jesus Christ to His rightful place at the head of this great nation” and for the passage of laws deporting all non-Christians from the country. The GCC does not call for violence against non-Christians and states in its promotional material that it and its members intend to change the law by peaceful means. Six months before Holt sat for the bar exam, another member of the GCC was convicted of planting pipe bombs in a synagogue and a mosque in the state capital. Holt was not charged in those bombings and denies any involvement.

An East Carolina state bar committee charged with evaluating the character and fitness of all bar applicants denied Holt’s application to the bar. The committee based its decision in part on the conclusion that Holt was “actively involved in inciting religious hatred and ... had dedicated his life to destroying equal rights under law.” The committee stated that Holt’s views were “diametrically opposed to the letter and spirit” of the state’s Rules of Professional Conduct that govern attorney admission and practice. Two members of the seven-person bar committee dissented, stating that an applicant should not lose the right to practice law simply because of his “open advocacy of an obnoxious belief.”

Holt has exercised his right to appeal the state bar committee’s decision to the East Carolina Supreme Court. Should the court reverse the committee’s decision?

SYNOPSIS: A bar applicant espouses religious discrimination and supports efforts to change existing laws to accomplish goals that many members of the bar and the public find repugnant.

PROBLEM 4

You are a new associate in a law firm and are working on a matter assigned to you by a senior partner. It is a case for one of the firm's wealthiest clients in which the client claims her gardener negligently over-fertilized her roses and made them unfit for a neighborhood flower show. She claims \$5,000 in damages. The gardener is indigent and has been unable to obtain work since being "blacklisted" by your client. The gardener is being represented pro bono by a lawyer who is extremely busy and is unlikely to spend much time on the matter. You have just deposed the gardener, who apparently has very limited assets and was distraught about the whole matter. You are confident that your client will never be able to collect a judgment, even if she were to prevail on what appear to be very weak claims. In general, you find the litigation to be petty and spiteful. But, this is your first case and you are anxious to make a good impression on your employer. You are excited about the opportunity to take a case to trial.

What would you tell the supervising partner about the case?

What would you tell the client about the case?

If you thought proceeding with the case was wrong, but the senior partner instructed you to do so, what would you do?

SYNOPSIS: You are a new lawyer who has been asked to take a petty and mean-spirited case to trial by a wealthy client of the firm.

PROBLEM 5

You have agreed to draft a will and a complicated estate plan for a client. You quote your client a flat fee of \$1,500, rather than an hourly rate. In arriving at the fee, you took into account several factors, but the primary consideration was that it would take you 10 hours to do the work. The client pays the fee in full and in advance. Just as you are about to get started, you learn that another lawyer in your office recently prepared a will and an estate plan for a client with circumstances that are similar to your client's. Your work now will consist of only two hours of editing the other lawyer's work.

Must you refund a portion of the fee to the client? Should you?

SYNOPSIS: You have quoted your client a package price for the preparation of an estate plan, based a fair estimate of the time needed for its completion. You then discover that the matter will require much less time than you thought, because a partner has done similar work for another client.

PROBLEM 6

In January of this year, Ms. Nita Newlife filed for divorce against her husband, David, in Chatham County, North Carolina. You represent David. In the divorce, Ms. Newlife asked for no alimony, but she did ask for custody of her two minor children and related child support. She was represented by Chatham County attorney Robert Welling. In mid-February, you filed an answer and counterclaimed for custody of the children. In March, Ms. Newlife moved to Virginia, and her lawyer withdrew from the matter. She sent her new address and telephone number to you and informed you that going forward she would be representing herself in the case. Last week, you received word that the divorce case would be called to trial today. You noticed that the clerk's notice to Ms. Newlife was sent to her prior local address. You appear at the trial call and notice that Ms. Newlife is not present. You know that if you proceed to put on evidence that Mr. Newlife will be granted a divorce and custody of the children.

Should you proceed to trial?

Should you notify the court or the clerk about the wife's new address?

Does it matter if your client forbids you to reveal the wife's address?

SYNOPSIS: Your unrepresented adversary does not appear for trial, probably because she did not receive notice.