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Exam 592

QUESTION #1

CLIENT 1

Because the firm is representing the City of Albuquerque in a number of lawsuits there is the possibility that representing Client 1 in her tort claim against the city could create a conflict under 1.7. This would be a current conflict because the firm is still representing the city in thos issues. Under 1.7 the Default rule is that a lawyer shall not represent a client if the representation involves a concurrent conflict. A concurrent conflict is on where there is direct adversity to another client or where there is a significant risk that the representation of one or more clients will be materially limited by the representation of another client. This is a case where there would be direct adversity because you represent the City and the potential client wants to sue the City. However, 1.7(b) has some narrow exceptions which would allow representation if all of them are satisfied. Even if there is a concurrent conflict if the lawyer reasonably believes that the lawyer will be able to privide competent and diligent representation to each client, if the representation is not prohibited by law, there is not assertion of a claim by one client against the other client in the same litigation or proceeding and each client gives informed consent it would be allowed.

(2) (2)

In this case because there is a firm of 10 lawyers, possibly the firm could reasonably belive that they can provide competent and diligent representation to both clients if they keep seperate attorneys on the cases and keep everything seperate. This is obviously not one of the representations that is prohibited by law, and this is not the same litigation so neither 2 or 3 of section B would apply. It would come down to whether or not the client would be willing to give informed consent, confirmed in writing. Comment 18

(1)

Analysis 7 Must analyze 1.7(b)(1)

and 19 talk about informed consent and require that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that a conflict could have adverse effects on the interests of that client. So it would require prompt and thorough communication of those issues under Rule 1.4. If they did consent then you probably could represent them. However, because of concerns for loyalty and how the clients might feel I would most likely not choose to represent client 1 in this issue. I dont think either client could feel that the attorneys are completely loyal when the firm represents both even if they are under different circumstances.

CLIENT 2

Client 2's situation involves a potential conflict with a former client which is governed by rule 1.9. 1.9 tells us that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in teh same or substantially related matter in which that person's interests are materially adverse to the interests of the former cient UNLESS the former client gives informed consent. This is the default. 1.9(b) is the section which is really at interest in this case. 1.9 (b0 helps us know what conflicts move with the lawyer to his new firm. The rules says a laywer shall not KNOWINGLY represent a person in the same or substantially related matter in whicha firm with which the lawyer formerly was associate had previously represented a client (1) whose interestes are materially adverse to that person AND (2) about whome the lawyer had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter UNLESS the former client gives informed consent confirmed in writing. In this case, while it is not litigation, the fathers interests can still be defined as materially adverse to the former client, Child A. The issue would be whether or not the divorce, and his father writing a will adverse to him would qualify as the SAME or SUBSTANTIALLY RELATED MATTER.

Comment 2 tells us that the question on whether it is the same matter is whether the lawyer was so invovled in teh matter that the subsequent representation can be justly regarded as changing sides in the

matter in question. That does not appear to be the case in this situation. What about Substantially related? Comment 3 tells us that Matters are substantially related if they involved the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. While the new lawyer in the firm might have gotten some confidential information in that matter, it likely won't advance the interests of the Father in this case because he already has his mind made up on wanting to limit the son's inheritence and drafting a will doesn't necessarily involve stategery when it comes to disinheriting or limiting someones inheretence. If there was something that did, then it might apply. From what we know of the fact pattern I don't believe it would come to that level so this likely is not a substantially related matter. For this reason, I believe the firm would be able to represent Client 2 for the purposes of writing his will and trust instruments. If the Child made a challenge of this issue the burden of proof would rest on the firm whose disqualification is sought. So our firm would have to keep that in mind when approaching this issue. Even if the conflict did apply in this case, it is likely that under 1.10 (a) the firm could still take the issue if the new lawyer was timely screened, they gave written notice to the former client and certifications of compliance withe these rules and screening are provided to the former client at reasonable intervals.

EXTRA CREDIT QUESTION 1

If the Firm cannot represent Potential Client 1, the Firm would still owe her some duties. First, under 1.4 you would have to consult with the client about the limitation of representing her because of the 1.7 conflicts issue. Reasonable communication is necessary and should be delivered to her promptly in a situation like this. You would also owe her duties under 1.18. That rule tells us that a someone who discusses with the lawyer the possibiility of forming a client-lawyer relationship is a prospective client. (b) of that rule tells us that even when the relationship does not ensue, a lawyer who has had discussions

witha prospective client shall not use or reveal infoiemaiton learned in the consultation, except as arule 1.9 permits. Under (c) we also SHALL NOT represent a client with interests materiallya dverse to those of a prospective client in the same or substantially related matter if the lawyer recieved information from the prospective client that could be significantly harmful to that person in the matter. Unless we followed paragraph (d) and got her informed consent, or the intake attorney limited the the exposure of more disqualifying information in his interview We would owe her all of these duties going forward.

QUESTION 2

Several Rules of Professional Conduct are implicated by the actions of Lawyer 1. By destroying the emails sent to the plaintiff Lawyer 1 would be violating Rule 3.4 which requires fairness to Opposing Party and COunsel. This rule states a lawyer SHALL NOT unlawfully obstuct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. The alshou should not counsel or assit anothe rperson to do any such act. So telling your client to do would also violate the rule. (b) also says you cant falsify evidence, or counsel and assist witnesses to testify falsely. Comment 2 says a lawyer may take temporary possession of physical evidence for the purpose of conducitna limited examination but by no means may they destroy it. By having the client delete the emails he is obviously violating 3.4. If he represented to the court that there were no emails you could also come into a problem with 3.3 which requires candor to the tribunal and making false statements knowingly would violate that rule as well.

By making a false statements to the Court in a brief that Lawyer 1 Filed he also has violated the Rules of professional conduct. RUle 3.3(a)(1) says a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or lawy previously made to the tribunal by the lawyer. The key is KNOWINGLY, if the lawyer had actual knowledge that what he is saying is

false then he violated this rule. Failing to state controlling legal authority would also fall into this rule as required in 3.3 (a)(2) and is offering false evidence under (a)(3). Comment 3 tells us that even sometimes a failure to make a disclosure is the equivalent of an affirmative misrepresentation. It also says that an assertion purporting to be knowledge of the lawyer must only be made to the court when the lawyer knowws it is true or believes it is true on teh basis of a reasonably disligent inquiry.

Both of these actions would also involve Rule 8.4 which says it is professional misconduct for a lawyer to: violate or attempt to violate the Rules of professional Conduct, or knowingly assist or induce another to do so. 8.4(c) also says a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, or even possibly (d) which says a lawyer shall not engage in conduct that is prejudicial to the administration of justice. All of these things are implicated byt he actions of Lawyer 1. 4.1 might also be considered which says a lawyer shall not knowingly make false statement of material fact or law to a third person. All of these rules have to do with the important role of a lawyer being honest and candid with the court and with each other. Deceit and misrepresentations are not a part of being a diligent or competent lawyer as required by 1.3 and 1.1. Therefore a lawyer should not be invovled in them.

In this Case I as the lawyer for Client A would have a responsability as well. Under 8.3 (a) a lawyer who KNOWS that another lawyer has committed a violation of the Rules of Professional COnduct that raises a substantial question as to the that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. (C) tells us that the rule doesn't apply to information protected by 1.6 or information gained in a lawyers assistance program. That is not the case from what we know of this situation so I believe we would be bound by the rules to report the violations we KNOW to have happened - like the emails being deleted and the false statements made to the court in the brief because both of those things raise a substantial question as to opposing counsels trustworthiness and fitness as a lawyer.

QUESTION 3

During the meeting with the Client you learn that some of the answers provided in the discovery was false. The Client refuses to authorize you to amend the disvocery answers and says he will faire you and even sue you if you do. The question you must ask is the information you got from the client confidential. Certainly 1.6 would apply to this case as a baseline starter point. 1.6 says a lawyer shall not reveal information relating to the representation of a client UNLESS the client gives informed consent, the disclosure is impliedly authorized in order to carry out he representation or it is permitte by the narrow exceptions to the rule. The exceptions say a lawyer "may" reveal to prevent reasonably certain death, or substantial bodily harm, to prevnet a crime or fraud where the client used the lawyers services in furtherance of, or to prevent mitigate or rectivy substantial injury to the interests or propery of another when the client used the lawyers services in furtherance of, or to secure legal advice, or to establish a claim or defense on behalf o the lawyer in controversy between lawyer and client, or to comply with other law or court order. Most of these exceptions don't apply to this case, so one would think that the lawyer may not reveal this information at all because trust is the hallmark thing in a lawyer-client relationship. Certainly the lawyer could speakk in hypotheticals in order to get advice under this rule but the other exceptions don't seem to apply and allow an adverse disclosure. However, digging deeper into other rules will help us answer this question.

Rule 3.3 tells us that a lawyer shall not knowingly (1) make a false statement or fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Or (3) offer evidence th lawyer knows to be false. that rule goes on to state that If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidene and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, inclduing if necessary, disclosure to the

tribunal. A lawyer may refuse to offere evidence, that that the lawyer reasonably believes is false. (b) also says that a lawyer who represents a client in an adjudicative proceeding and who KNOWS that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonably remedial measures, including, if necessary, disclosure to the tribunal. 3.3 (C) is key to this analysis as well. it says that the duties of thsi ruel continue to the conclusion of the proceeding and apply even if compliance requires "disclosure of information otherwise protected by Rule 1.6". As comment 3 says there are times when failing to make a disclosure is the equivalent of an affirmative misrepresentation. Comment 5 also tells us that lawyers must refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. The duty is premised on the lawyers obligation as an "officer of the court" to prevent the trier of fact from being misled by false evidence.

3.4 also comes into play in this situation because it is unfair to opposing party to make the false statements in the discovery answers. This could be seen as obstructing access to evidence under (a) or possibly even failing to make a diligent effort to comply with legally property discovery reques by opposing party under (d) of the rule. We also would be violating 8.4 if the lawyer did not do something about it because of violations of other rules under 8.4(a) or (c) engaging in dishonest, fraud, deceit or misrepresentation.

I think knowing these rules, the lawyer, under 2.1 should meet with his client and give him candid advice that ammending these things are in his best interest. Also under 1.4 (a)(5) a lawyer shall consult witht he client about any relevant limitations on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by law or rules of conduct. So the lawyer would have to tell the client he cannot assisst him in those false answers and that he has a duty under 3.3 and 3.4 to reveal those things to the opposing party and the tribunal. Even if revealing those things are protected by 1.6, they are material facts and would need to be revealed. Not everything about the representation has to be revealed, but to the extent necessary to correct the misrepresentations and false statements they need to be. Communicating

those things would be important and a way you could possibly get him to comply with the requests to ammend them without having to end the relationship. However, it is likely that the client either will not agree and fire you, or your relationship will be so strained that you might feel that withdrawing would be in both of your best interests.

Withdrawing would be authorized under 1.16(a) wich says a lawyer shall not represent a client where representation has comments and shall withrdraw if the representation will result in a violation of the rules of professional conduct. That clearly would occur if you continued to represent without disclosing the false statements. (6)

B would allow you to withdraw even if it wasn't required if you could do it without material adverse effect on the client, or the client persists in a course of action the lawyer believes to be fraudulent or criminal. Also under (4) if the lawyer considers the clients actions repugnant, could possibly apply in this case. Under C you would have to comply with the applicable law about withrdrawing and give notice and get permission of the tribunal. You would also remember that in 1.16 (d) you should take steps to protect the clients interests. So I would try to get him to comply, but if he refused I would have to reveal and I would also seek to withdraw from the representation.

QUESTION 4

The first Rule or Privilege that comes to mind in a situation like this would be Attorney-Client Privilege. Restatement 68 states that except as otherwise provided in this Restatement, the Attorney-Client Privilege may be invoked with respect to: (1) a communication, (2) made between privileged persons, (3) in confidence and (4) for the purpose of obtaining or providing legal advice. (3)

Was the contact and Ned's statement that he was in trouble a communication? Section 69 of the Restatement calls a communication is an expression through which a privileged person, undertakes to convey information to another privileged person. This statement to you from Ned clear was a communication. Was it made between privileged persons? Privileged persons is defined in Section 70 which states that they are a client(including prospective client), the client's lawyer, agents of either who facilitate communications between them, and agents of the lawyer who facilitate the representation. Ned was a former client, so in seeing me Ned could have seen me still as his lawyer, or he in the least was a prospective client if our relationship had completely ceased and so I think it was made between a privileged persons. (2)

The third prong requires the statement to be made in confidence. Section 71 states that it is in confidence at the time and in circumstances of the communication, the communicating person reasonably believes that no one will learn the contents of the communication except a privileged person. In this case, the conversation was outside a busy side-walk cafe which doesnt show much privacy, however he did whisper it my ear which shows he didnt want everyone to know and that he expected it to remain in confidence. So I think the third prong would be satisfied as well.

The fourth prong requires that the comminucation be for the purpose of obtaining or providing legal assistance for the client. Section 72 says that it is made for that purpose if made to or assist a person who is a lawyer or who the client believes is a lawyer, and whom the client or prospective client consults for the purpose of obtaining legal assistance. In this case, was the statement Im in trouble, really big trouble and I need to talk with you for the purpose of obtaining legal advice? It is a little unclear since you dont know exactly what he wanted to talk to you about, but you were his lawyer, so it probably did have something to do with legal issues and it was you who ended the conversation by telling him to call you. I think you could reasonably believe that his statement was for the purpose of obtaining legal advice, and so I think the statement would be governed by the Attorney Client privilege. Work product would not (2) (1.5)

apply because nothing was Work Product, it was just a communication.

The Attorney Client privilege belongs to the client and must be asserted byt he lawyer even beyond the death of the client, and even after the attorney-client relationship has ended. However, it does not protect the underlying facts. See Section 77. However, there are a few issues not with the privilege itself, but that might have implicated a possible waiver of the privilege. Section 78 states taht the Privilege is waived if the client, the lawyer, or agent of the client: agrees to waive the privilege, disclaims protection of the privilege, or fails to object property to attempt by another person to get information protected by the privilege. Section 79 also states that the attorney-client privilege is waived if the client, the client's lawyer, or another authorized agent of the client voluntarily discloses the communication in a non-privileged communication. There are 2 questionable instances in this case. Does when the Lawyer told his legal assistant that Ned told him he was in big-big trouble constitute a subsequent disclosure? Under 70 a privileged person is still and agent of the lawyer who facilitates the representation so a legal assistant would qualify as someone under that definition. The issue is whether or not that assistant was there at the time of the communcation matters. In all honesty, I am not sure. It seems like as long as it is not revealed to someone who is not an agent of the lawyer or an agent of the client then it still would be privileged and not count as a subsequent disclosure.

However, the other issue is did when your assistant told Neds Wife about the communication waive the privilege. In this case, I think that did waive the privilege becasue it would clearly be a subsequent disclosure to an un-privileged person. In that case under 79 the privilege would be waived.

The communication also might be protected by 1.6 Confidentiality which says a lawyer shall not reveal information relating to the representation of a client unless informed consent or it is impliedly authorized. In (b) there are limited circumstances which allow disclosure. One that might apply to this case is (6) to comply with other law or court order. If the court found that you were not protected by attorney client

privilege because of a subsequent disclosure and you were then subpoenaed to appear and testify you "may" do that under 1 6 (b)(6).

In this case I think you will have to disclose the statement because of the subsequent disclosure. I would try all I could not to disclose it and to keep my confidences under 1 6 but if I was court-ordered to appear and testify I would feel Ok about disclosing and feel I was in compliance with the rules. But I probably would not reveal it until I was court-ordered to appear in this type of a situation so that i could honor the wishes of the former client and protect his confidences. Because 1 6 is applied to even former clients and i should not use their confidences to their detriment.

EXTRA CREDIT #2

Model Rules allow screening in limited circumstances but New Mexico Permits Screening completely. Attorney Client Privilege New Mexico Evidentiary law is a little different from the restatement versions of it. Also trial publicity issues.

Answer-to-Question-_1_

Question 1:

We can take the representation here despite conflict under 1.7.

There is a potential for conflict of interest if we represent PC1 against the city in the bus accident because we represent the city police force against brutality charges. The matters here don't appear to be directly related on their face. Rule 1.7 would govern whether we could take the case, the rule that governs conflict of interests among current clients. Under 1.7 a lawyer SHALL NOT represent a client if the representation involves a concurrent conflict of interest which exists if 1) the representation of one client will be directly adverse to another or a significant risk representation of one or more clients will materially limit the layer's responsibilities to another client. However, according to Rule 1.7 we can represent PC! if we reasonably believe we can provide competent and diligent representation to each affect client, its not prohibited by law (assume it is not here) and it doesn't involve representing two different adverse clients in the same litigation in the same matter, and each affected client gives informed consent.

1.7(b) (2)

The firm, by checking whether a conflict exists before taking the case is meeting comment 3 of 1.7 rule by detmeriining if a conflict exists before undertaking the representation by using reasonable procedures, ie when evaluating the client with other clients.

1.7(a) (2)

Comment 2 describes a four step procedure to use in order to analyze conflict of interest concurrently. First the clients must be clearly identified, a lady hit by a city bus, and the city as representing the police department. Second it must be determined if a conflict of interest exists. Comment 6-7 describes a directly adverse relationship and that loyalty requires not to take a representation directly adverse w/o client consent. Comment 6 states even if the matter is wholly unrelated between the two, the lawyer may need consent. Here, the matter seems wholly unrelated. ON the one hand we represent police officers and we want to represent the victim of a bus accident. The bus

and police department are two different departments in the city and the matter of police brutality is wholly unrelated to the accident. However, we must further inquire about any police testimony that will be at issue because Comment 6 states that direct adversity may arise when you have to cross a client. since we represent many police, we must ensure the officers involved in the bus accident are not clients we work with because we will have to cross examine. Without further inquiry though, we cannot know for sure.

The third object we must do is determine if this conflict is consentable, which it is because they are not directly adverse in the same litigation if we look at the departments instead of the city as a whole. IT is not police vs. PC1 in the same related matter. If we believe we can offer competent representation to both, we should move forward and get informed consent from both parties.

Informed consent is a term of art defined in 1.0(e) that demonstrates that the lawyer told the client he adequately communicated the information about the relationship, and comment 6 of 1.0(e) lays out guidelines, such information as taking reasonable effort to ensure client posses information reasonably available to make an informed decision by disclosing facts and circumstances, and the material advantages and disadvantages of the proposed representation to both clients. these factors must be kept in mind as analyzing the problem so that adequate communication to the client is given.

Also, because 1.10 imputes conflicts from one lawyer to all lawyers, we can ignore the analysis because we have two different lawyers working on the different matters.

B. We can represent the father here.

`HEre we have a conflict under Rule 1.9, duties to former clients. The rule demands that we cannot represent one client against a former client in a matter that is the same or substantially related if the interests are materially adverse to the interests of the former client without informed consent. As per comment 1, we have a continual duty to the former client, the son A. HEre the 1.9(b) controls, that a lawyer shall not knowingly represent a person in same or substantially related matter in which a laywer used to represent whose interest are materially adverse to that person AND about whom the laywer

acquired information protected by 1.6 and 1.9(c) **that is material to the matter**, unless the former client gives informed consent in writing.

Though we are representing the grandpa and his interest is materially adverse to Son A by giving him less money in hte will, which is against the interest of Son A, the rule says AND material to the matter. Here, the information learned in the Divorce and really all information learned about Son A is not material to drafting the will because the father already has his mind made up. The representation will not involve making any decisions as to so, A, simply drafting an instrument instead. Furthermore, this issue matter of drafting a will is not material to the divorce representation because the father was not involved in that and really Son A is not involved in the will process, only the result.

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1.6 confidences aree implicated here. We have to make sure not to share information about son A with the father, even if it is to further son A's interst (he did so much in the divorce to help his kids) without informed consent of A, which if we told him about we would be violating confidence of Father.

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Imputation, though the attorney did not work at the firm when she represented son A, her conflicts are still imputed to the firm through Rule 1.10 because the conflicts travel with the attorney. Rule 1.10 dictates that a conflict with one lawyer carries to all the other lawyers. Plus, rule 1.9 says attorneys that worked at other firms on the matter.

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EX: Her duties will be under 1.18. IF WE DECIDE we cannot take the case or cannot get informed consent, we can not then represent the city in the bus accident because of Rule 1.18. Rule 1.18 lists duties to prospective clients, which even if a relationship is not formed, if a client discusses with the lawyer the possibility of forming a relationship is a prospective client. According to 1.18(c), a lawyer SHALL NOT represent a client with interests materially adverse to the prospective client. We would need informed consent to move on.

q2.

Q. 2

There are two issues of conduct to analyze here, the emails and false statements to the court. Rule 8.3 reporting Professional Misconduct is implicated in both questions.

EMAILS:

Under Rule 3.4 FAirness to Opposing PArty Counsel, a laywer SHALL NOT obstruct another's parties access to evidence or unlawfully destroy or conceal a document having evidentiary value. This is because as Comment 1 says that the adversary system very survival hinges on a fair competition and destroying or concealing evidence jeopardizes this. IT is a curb on the zealous advocacy duty. Additionally, under Comment 2, documents, such as emails at issue here that are destroyed, impedes a very important procedural right for our client. Though I do not know if it is against the law to destroy documents (most likely is in this district, at the least by destroying the emails he has impeded my ability to receive the evidence. Thus, if the allegation is true, I have been obstructed by obtaining material evidence. It is material ~~because it is central~~ to the case. Therefore, the attorney violated a rule, which is a violation of 8.4 to not violate ethical rules. → other 8.4 violations?

Rule 8.3 dictates that a lawyer who KNOWS another lawyer has violated the rules of Professional conduct that raises a substantial question to that lawyer honesty or trustworthiness SHALL INFORM the appropriate authorities. this means if you know rather than suspect you must reprot. Plus, you duty of loyalty and zealous advocacy dictate you report violations of ethics if it will further your client's cause under 1.2. The important thing here is the WORD KNOW. DO I know, rather than suspecta violation? HEre I can reasonably say I do know because I have the missing emails from a third party so I have some evidence that he deleted the emails. I may not be able to speak to his motive without proof because I do not know his motive, but I do know he obstructed access to evidence. A violation of Secondly I must determine if it raises a substantial question of honesty. Destroying evidence is one of the worst things a person can do and implicates the entire legal system. You cannot trust someone who destroys evidence and the entire system loses credibility. this is definitely a substantial violation.

Because it is a substantial violation I have a duty to reprot to the ethics board. Because of the

SHALL language of 8.3(a), it is not discretionary and I can be disciplined if I fail to report. Plus it is in the clients best interest to inform a tribunal of cheating.

False Court Statements:

3.3 of the model Rules states that a laywer shall not knowingly make a false statement of fact or law to the tribunal or fail to correct these false statements. this is perhaps one of the most important rules because lying to the court destroys credibility in the system. 3.3(a)(3) also states that a layer cannot offer evidence that is false or allow his client or a witness to give false evidence. HEre the facts seem to state the lawyer himself nmade the false statements, a violation of 3.3(A)(1). If the lawyer did make flase statements he violated this sacred rule of candor toward the tribunal. IF he breached this rule, he has committed misconduct under 8.4

Rule 8.3 demands I report misconduct that I know of and that substantially implicates honesty. Well to lie to a judge definitely implicates the lawyer honesty. However, the question here is if I KNOW it to be true. With the facts given, MAY have violated may not be enough to report as a duty. Without further evidence that convince me that I know he lied to the court by making false statements, I probably don't have a duty to report. However, I would report this as well. I have aduty to report the email destroying and since I am reporting this, the false statements may show a pattern of misconduct conduct that is undermining the entire system. Also a duty an a moral obligation do not have to conflict. I feel if a lawyer is lying to a judge, I should inform the ethics board to investigate so I can rest assured the sytem is not in jeopardy.

Q3:

1. Here a client is essentially lying under oath and is trying to get the attorney to build his case around these lies. Foremost, Rule 1.2 sets out the scope of the representation between the attorney and client. The client sets the objective while the lawyer sets the means. Though I owe a duty of loyalty and zealous advocacy to the client, this does not mean I do everything the client says. He does pay me, but I have

duties independent to the client In fact, 1.2(d) states that I cannot assist a client commit fraud or a crime. Though the scope of this rule is more like tortious fraud, it has been defined as a deliberate deception that could be any substantive or procedural legal standard. Here, lying in discovery could, but not definitely, be considered fraud If the discovery was done under oath, as an affidavit is, it is a crime of perjury. The affidavit might contain (not signed yet) false statements and that is also the crime of perjury. I have not yet assisted the client, but if I build my case around his false statements, I then am assisting the client in commiting fraud against the court and my opponent. Also, if I allow the client to sign the affidavit with false statements, I am assisting the client to commit a crime, a violation of 1.2. This is a violation of an ethical duty under 8.4 that says misconduct is any violation of the Rules Under Comment 10 of Rule 1.2, a laywer may not continue assiting a client in conduct that the lawyer originally supposed was legally proper but then discovers is fraudulent or criminal. If I continue without taking action and allow false discovery statements and flase information on affidavits, I am breaking 1.2 by assiting a client to commit fraud.

I have a duty under 3.4 of fairness to the opposing party, but at this point have not violated the rule because I have not assited or known about the false information. However, if I let the client sing a false affidavit wihtout disclosure I could be violating Rule 3.4 (b), assiting a witness to testify falsely (even if only in discovery). I should refrain from this course of action so as to not violate the rules.

Though I have not yet violated 3.3 of tribunal conduct, if I make a false case knowingly I am violating candor toward the court which requires that a lawyertake remedial measures or prevent a client or witness from make criminal or fraudulent conduct (which perjury is crime). The ultimate step would be to disclose to the tribunal the false statements even if I violate 1.6 Attorney cLient Confidences. It would greatly hartm my client to do this and is a great tension described in Comment 11, that of protecting the client vs. upholding the high standards of the court. That is a worst case scenario. Ideally I should advise the client about the fact he is or is going to commit perjury which is jail time as advised in comment 10 of 3.3. Comment 10 advises trying to get the client's cooperation to act right. If I cannot I can try to avoid asking questions that would allow the client to perjur himself, but we are not even in

court yet.

IF the case hinges on false evidence, if I continue the case even by trying to avoid having my client give false evidence, I could be violating Rule 3.1 merits claims and contentions that demands I can only brting cases based on law and fact, not frivolous claims, which if the central evidence is a lie and I know about it, I would be bringin a frivolous claim.

Disclosing the information to anyone but the tribunal at this point would violate Rule 1.6 Attorney client confidences which dictates that I SHALL NOT disclose information learned from the client (like that he is lying). Though 3.3 provides violating this rule as a remedial measure, if I allow it to get that point I am probably assign a crime or fraud. Therefore I have a tension of disclosing the lies to the court and protecting confidentiality of my client, two of the most basic and fundamental principles of the system.

Gets more complex if there is an attorney client privilege issue

So lets assume I tried to get my client to cooperate with the law and continued to tell me he was the boss. I must withdraw from the representation, which is controlled by Rule 1.16. IN fact, this rule dicates that I SHALL withdraw from representation if it will result in a violation of the rules or other law. Because I may assist perjury and will likely break several rules as stated earlier, I must withdraw. Because the representation has started, I must comply with 1.16(c), and give notice and receive permission from the tribunal. That will be tricky because of the 1.6 confidence that I shall not disclose confidential client information. However, because the candor rules allows a way out, I may be able to inform the judge without the other side knowing (though not through an ex parte communication which breaks the rule, simply tell judge some violations, want to discuss privately and hope judge does so without other client). Otherwise I am in a great tension between 1.6 and my other obligations and must examine Comments 6-15 closely. I would not be able to sleep at night knowing I am risking my career for a liear so I would err on the side of disclosure if I couldn't convince the client to be truthful.

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+1 overall quality of tension

Q4:

I do not have to disclose Ned's statement because it is protected communication under both attorney client confidentiality and privilege.

Foremost is whether a attorneyr client relationship was formed or if the outside the street communication was forming a relationship. First, NEd is a former client, but NED may not have known that he was a former and not current client. If I have a paper record that says I am formally ending all representation of NED than I could be said to have ended the representation under 1.16 and 1.2. If I do not have such a record, it was likely that NEd still thought of me as his attorney. Additionally, under 1.18 someone who discusses the possibility of forming a relationship is a porepective client and gets the AC and ACP benefits. Because NEd may not have known the relationship ended, because he knew I was an attorney, and because he asked for some help, it would difficult to say an attorney client relationship didn't exist. Thus, I will nto disclose the information.

The demand by the insurance company with a subpoena implicates the court room and is evidence. In a court room setting both 1.6 and the attorney client privilege is implicated. The attorney client privilege is an evidence rather than model rule and is dealt with extensively in the restatement. I would assert the ACP to avoid giving the evidence (the statement) over. RST. 68 lists 4 elements of the privilege, a communication, made between privileged persons, in confidence, for puropose of obtaining legal assistance.

Here there is definitely a communication verbally.

It was for prupose of obtaining legal assistance because under Restatement 72 it is defined as communication to pa erson that is a lawyer or client reasonably believes is a lawyer, which here since he knew me as his lawyer is true.

The prospective client and me are the privileged persons

In confidence is an issue because the communication was made in a public place. IF at the time and the place of communication the communicating person reasonably believed no one would learn of the contents, except the other privileged people, it is inconfidence according to Restament 71. Because Ned whispered in my ear he clearly intended for it to be in confidence only to me. He could have siad it

without leaning close and whispering, but de did it that way to ensure only I heard. this it was in confidence.

Between myself and Ned, we are both privileged people as per Restatement 70 which states Restatement 70 a privileged person is the client, the lawyer, and agents of either that facilitate the communication between them. So we have established ACP.

However, the privilege must be asserted, which I will do on his behalf though he owns the privilege. Furthermore, even though he is dead, that does not mean the ACP or ACC goes away. In fact, these privileges remain long after death except in California where it is shorter time after death. The privilege extending beyond death was established in *Swindlet & Berline v. US (1998)*.

Another problem is whether ACP was waived. Waiver can occur when it is disclosed in a non-privedged communication (restatement 79). I disclosed it to my assistant who disclosed it to Neds wife.

My assistant is an agent of me and thus is a priveldged person under 70. IF secretaries, paralegals and assistants were not agents of the lawyer, my life would be complicated indeed because I would have to do way more work myself.

The part where it is tricky is when the secretary contacted the wife and told her about the communication. RST 70 states a privileged person is the client, the lawyer, and agents of either that facilitate communication between them. It must be established whether the wife is a agent to facilitate communication. I would argue because of the unique legal relationship between husband and wife recognized by law she is an agent that fits under the ACP. Alos, most states have laws that treat husband and wife the smae for evidentiary pruposes, so I would assert that law as well.

Under 1.6 I can also assert I will not share the confidences because it was a confidential communication and has nothing to do with underlying facts.

Therefore, Ned's communication to me, which contains no underlying facts (what that rouble was) is completely protected by ACP and ACC.

Extra Credit 2:

1. The model rule 1.8(j) states that a lawyer should not have sex with a client. NM has no such rule, but its still a bad idea.

2. NM allows screening in imputed conflicts of interest for all rules, while the model rules do not.