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Course S13 Ethics -Sleese

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Count (s)	Word(s)	Char (s)	Char (s) (WS)
Section 1	1011	5002	6007
Section 2	877	4416	5285
Section 3	821	4084	4898
Total	2709	13502	16190

Question 1

Arnie does have big problems. First, when Arnie persuaded Etta to invest in his company, AA Shopping King, he was in violation of Rule 1.8(a). Rule 1.8(a) states that a lawyer shall not enter into a business transaction with a client or acquire an interest adverse to a client. Comment 1 states that this kind of a business transaction could undermine the trust relationship between lawyer and client. Even if the transaction is not closely related to the subject matter of the representation, there is a problem. In order for this transaction to be ok, the terms of the transaction would have to be fair and reasonable to Etta, and fully transmitted in writing. It is not clear that this happened. Furthermore, Arnie should have given Etta a reasonable opportunity to seek independent legal advice regarding the transaction, and Etta would have to give her informed consent in writing. It is not clear from the facts whether these factors were met, but the transaction does seem shady, especially since later she becomes angry at losing money as a result of the transaction. Again, although it is not entirely clear from the facts, Arnie may be in violation of 1.5(d)(1) if the transaction was contingent upon Etta's success in the divorce

settlement.

There is a major conflict issue that Arnie will have to deal with, and he may have already violated several rules regarding the conflict. It sounds as though Arnie has terminated his lawyer-client relationship with Etta. If so, when Arnie agreed to represent Alice and Stan, he has a concurrent conflicts problem between a former client and a new client. This implicates both Rule 1.7 for current clients, and Rule 1.9 for former clients. Both will have to be analyzed. For Alice and Stan, Arnie may be violating 1.7(a)(2) if there is a significant risk that his representation will be materially limited by his responsibilities to Etta, his former client. The limitation would be material if he could not carry out the appropriate course of action. Material limitation is almost certain here, because of Arnie's pecuniary interest in Etta's assets. If Etta is liable, this could have an impact on the health of his company. Arnie will also have a 1.1 (competence) issue, a 1.3 (diligence) issue, and a 1.4 (communication) issue because he will not be able to convey knowledge of Etta as a defendant that he learned about during his representation of her. This also implicates Rule 1.6 confidentiality problems. He will not be able to be a vigorous advocate for Alice and Stan when he cannot reveal

or use knowledge about Etta in his representation of the couple. 1.6 always also implicates attorney/client privilege issues as well.

Stan has also violated Rule 1.9 dealing with conflict with former clients. (First it must be said that it is not clear whether Etta is a former or current client. Since his relationship with her seemed only to involve her divorce, we can assume that the relationship was properly terminated and that she is a past client). Under 1.9, a lawyer shall not represent a new client in a matter substantially related to the representation of a former client, or in which the former client is materially adverse. Etta's interests may be materially adverse because she could be harmed by Arnie's switching sides on her. 1.9(b) states that Arnie may not become adverse to Etta after he has acquired information from her protected by 1.6. In a 1.9 analysis, the question is whether Arnie might have or should have learned confidential information from Etta. Clearly, Arnie has in depth knowledge of Etta's assets which is relevant to his representation of Alice and Stan. 1.9(c) states that a lawyer shall not hurt former clients by using their confidential information against them. In order to resolve the conflict, he would need to obtain informed consent from both clients in writing, and that is

only if he believes he can competently represent Alice and Stan, which he cannot.

Stan could have avoided having this conflict had he not been in violation of 5.1. The facts state that Arnie "quickly" agreed to representation, which indicates that he probably did not have adequate screening procedures in place. Rule 5.1 states that a firm shall have in effect measures that give reasonable assurance that the firm complies with the Rules of Professional Conduct. It seems that Arnie had no system in place to properly screen clients before agreeing to representation to find out if there is a potential conflict.

It seems that Stan may have a 1.1 competence issue with representing Stan and Alice in a personal injury suit. The facts state that in the past he has focused his work on divorces. The factors that will weigh against him are the complexity of the matter, his general experience, his preparation, and the availability of experienced help.

Even if Stan was able to competently represent Stan and Alice in a PI suit, he has unfortunately involved himself in another potential conflict, this time between Stan and Alice. Again, 1.7 states that Arnie may not represent both if the parties are directly adverse or if he would be materially limited in his representation because of his

responsibilities to the other. So far, Stan and Alice seem not to be adverse, but this could change, if, for example, they were competing for damages, or if it turned out that Alice was in fact responsible for the crash. At this point, Arnie's professional responsibility and loyalty toward both Stan and Alice would limit vigorous representation if Stan became adverse to Alice because of her fault. This conflict could be consentable if Arnie reasonably believes he can represent both, if it is not prohibited by law, and if Alice and Stan are not directly adverse. They would need to give their informed consent in writing. To be safe (and since Alice was actually cited in the accident) Arnie should advise one of the two to seek other representation. But given the conflict with Etta, Arnie should terminate representation of both.

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Question 2

Bonnie is in deep trouble with the disciplinary authority. First, Bonnie violated 1.6 confidentiality, and

the attorney client privilege numerous times when she involved Grace in confidential communications regarding representation of Louise. The unauthorized communication does not fall under any of the exceptions under 1.6(b), and Louise is a competent adult so Rule 1.14 does not apply. Bonnie may have been in violation of Rule 1.8(f) when she accepted payment from Louise's mother. 1.8(f) states that a lawyer shall not accept compensation for representation from anyone other than the client unless there is informed consent, and there is no interference with Bonnie's professional judgment. Clearly Bonnie was swayed by Grace's involvement in the case, so this is a violation. 1.8(f) also reiterates the importance of 1.6 confidentiality, which was breached. Even if Bonnie had not been swayed by Grace's imposition, and if Louise had consented to the payment, Bonnie also violated 1.5(d)(2) when she agreed to a \$10,000 bonus if Louise was found not guilty. 1.5(d)(2) plainly prohibits any contingent fee when representing a defendant in a criminal case.

Bonnie seems to have more communication with Grace than with her client, such as when she informed Grace that she would enter her appearance and file a plea of not guilty on behalf of Louise. This is a violation of both 1.4 and 1.2. 1.4 states that a lawyer shall promptly inform the client

of any decision, and must consult with the client about the means by which the objectives are to be accomplished.

Instead, Bonnie informed a third party and kept her client in the dark regarding her intentions. Furthermore, 1.2 states that the client, not the lawyer, has decision-making power as to plea decisions. Bonnie should also communicate her tactics and means to her client as per Rule 1.2.

Bonnie then deposited Grace's check for the \$10,000 retainer into her operating account. This is a violation of 1.15. Under Rule 1.15, Bonnie has a duty to place advance funds in a trust account that should only be drawn upon as she earns the money. Any unearned money should be promptly returned. This is a serious violation, and would be grounds for disbarment by itself, regardless of the rash of rules that she violated in addition.

Bonnie's next communication with Louise revealed that Louise in fact wanted to plead guilty. Bonnie needs to obide by Louise's decision as per Rule 1.2. However, Bonnie goes on to tell Luoise that "it would be in her best interest to enter rehab." This is not Bonnie's place to make that decision, although this could simply be seen as benign counseling and advice. When Bonnie called Grace at this point, she again violated Rule 1.6 confidentiality and attorney-client privilege. Grace is a third party and

should have no say in what Louise's plea should be. She should not be "insisting" anything: this puts Bonnie's professional independence in jeopardy. When Grace announced that she is paying, and that she could decide what the plea should be, she has put Bonnie in danger of violating Rule 1.8(f) (a third party should not be paying - for this very reason); Rule 1.2 (the client should be making such decisions); and Rule 1.4 (this statement was made after Louise had hung up, and Louise must included in any communication regarding her representation).

Bonnie then unilaterally rejected the plea offer by the DA. Bonnie's decision violated both 1.4 (she should keep Louise informed of any decision in her case), and Rule 1.2 (the client is in charge of such decisions and the lawyer oversteps her authority when making such decision for a client). She again violated 1.6 confidentiality when she told Grace of the plea offer.

When Grace demanded that Bonnie fully refund the \$10,000, and Bonnie refused, Rule 1.15 was implicated. Rule 1.15 states that a lawyer must distribute any undisputed portions, and keep disputed portions in a trust account until the dispute is resolved. This, again, is grounds for disbarment.

Next, Bonnie tells Louise that she will no longer

represent her. Bonnie may withdraw under Rule 1.16 if (1) it has no adverse effect on Louise; (2) if the client's actions are repugnant or there is a fundamental disagreement; (3) if the client fails to fulfill an obligation; or (4) if there is another good cause. However, if the trial is imminent and it would cause a hardship to Louise, Bonnie may not withdraw. Even if she was justified in her withdrawal, Bonnie would need to terminate the relationship in an orderly manner. According to Rule 1.16, Bonnie would need to give notice to the appropriate tribunal and possibly gain permission, give notice to Louise and give her time to find a replacement, refund any unearned fees, and surrender certain documents. She should also send a letter of termination just to be very clear that the relationship has ended. However, it seems that Bonnie did none of the above, and simply did not appear at Louise's hearing the next day. Since she technically still represents Louise, this is a violation of Rule 1.3 diligence.

Bonnie's actions altogether are a violation of Rule 8.4, because she either violated or attempted to violate numerous rules of professional conduct, undermining the integrity of the profession.

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Question 3

Libble

Libble has some big problems with his client. First, Libble represents Red Eye, the organization, not its individual officers or employees (1.13). When Red Eye initially lied about Angerst's history, Libble had no way of knowing that the org. was covering up information; likewise, he did not know that Angerst lied in his affidavit. At first blush, it would seem that up until this point, Libble has not violated any rules of professional conduct. However, a lawyer has a duty to perform competently (1.1), diligently (1.3) and to communicate with his client (1.4), so he probably should have discovered the information about Angerst's history through reasonably thorough client consultations. Still, Libble's trouble really began when Clean went to his office. When he received the documents, he knew that the company had been lying, and he should have reported this as per 1.13(b), even if this meant violating confidentiality under rule 1.6. What Red Eye was engaged in

was a type of fraud, and certainly obstructing justice, which may be a crime in Libble's jurisdiction. This would fit under the 1.6(b)(2) exception, and since Angerst is violent and could hurt someone else, it may also fit under the 1.6(b)(1) exception as well. At this point, Libble also knew that Angerst had lied on his affidavit. If Libble does not correct the lie, he is in violation of Rule 3.3 because this is a false statement to a tribunal, and it is evidence that he knows to be false. 1.6 may not apply because (1) Angerst is not his client, Red Eye is, and (2) the client is using his services to commit fraud.

When Libble spoke with Oak, Oak ordered Libble to shred the incriminating documents. This would be a violation of Rule 1.2(d) because Libble may not counsel or assist a client in conduct he knows to be fraudulent. Rule 2.1 states that he should use his professional judgment and render candid advice to Oak. But, because Libble actually did shred the documents, he is also in violation of 8.4(c) because he himself engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation. The shredding would also violate 3.4(a) because he is obstructing another party's access to evidence, and unlawfully altering, destroying and concealing a document with evidentiary value. What Libble could have done is held on to the

documents, then counseled his client and explained that you cannot destroy evidence. Eventually he should have turned the documents over to Lyman. Oak claims that the documents should not be turned over because Lyman "did not ask the right questions." However, Rule 3.4 states that a lawyer shall not fail to make a reasonably diligent effort to comply with a discovery request. Although Lyman may not have asked for these specific documents, they are clearly relevant to the request and should be turned over.

When Libble went ahead with the motion for summary judgment, he was in violation of Rule 3.1 because he knew that there was no basis in fact for the motion, and it was not made in good faith. In the motion, and at the hearing, Libble also violated Rule 3.3 because he made a false and misleading statement to the tribunal, and failed to correct a false statement of fact previously made to the tribunal. In addition, if Libble were to find out about Clean's statements to Lyman, he could report her behavior to an authority of the organization under 1.13 because her statements will substantially injure Red Eye. Finally, Libble is also in violation of Rule 8.4 because he violated or attempted to violate the rules of professional conduct, undermining the integrity of the profession.

Lyman

Lyman has also violated the Rules of Professional Conduct. First, he communicated with Clean, a represented party (although she was suspended, she is still a constituent of Red Eye and therefore a party to the litigation). Rule 4.2 prohibits a lawyer from communicating about the subject of representation with a person the lawyer knows to be represented by another lawyer in the matter. Although he is not prevented from saying hello, he should have immediately cut off the conversation when she asked about discovery. Even if Lyman thought Clean was not represented, he would still be subject to Rule 4.3 (this is unlikely since he knew who she was). As soon as Lyman began speaking about the discovery, he was in violation of his 1.6 duty of confidentiality and also of the attorney-client privilege. Although Clean offered to give him the right answers if he asked the right questions, comment 7 of rule 4.2 states that in communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. Finally, Lyman is also in violation of Rule 8.4 because he attempted to violate the Rules of Professional Conduct, undermining the integrity of the profession.

