

HYPOTHETICALS – NEW LAWYERS SECTION

May 15, 2014 Meeting

1. HYPO: Gus passed the most recent bar exam (just got his passing results in early April). Recently, he printed up business cards to help him network into a decent job. Mike is 21 years old, working as a used car salesman, and going to school at a local university. He married his high school sweetheart a year ago, but the last 6 months have been difficult. Mike's spouse has been staying out all night at The Famous WarmKoot-Harvy's Bar and Grill a few nights a week with her girlfriends since she turned 21 six months ago. Last week Mike woke up one morning and found his wife passed out on the floor with a few of her friends. This was the last straw. Mike was walking to work later that day and found one of Gus's business cards lying on the sidewalk. Mike called Gus and asked if Gus could help Mike get a divorce. Mike said he had a little savings and "could offer a couple grand up front." Realistically, Gus knows that he is not prepared to represent Mike in a divorce or any other type of action but the money is too hard to pass up. Gus decided he would take the case.

1) Does he have an obligation to tell Mike about his lack of experience?

2) Gus knows he needs to find a mentor to show him the ropes on a divorce case. What are Gus's obligations to Mike re: taking on a mentor with whom Gus splits fees?

3) What are the ethical implications of fee splitting in this situation?

2. HYPO: Same as HYPO 1, but in this case, Gus was unable to find a mentor.

1) Is Gus obligated to tell Mike about his inexperience?

2) Is it malpractice if Gus decides he can prepare himself for a divorce case by going to the Family Law Self Help Clinic and carefully reading the various court rules?

3. HYPO: Same as HYPO 1. Gus does not have malpractice insurance, has absolutely no assets, and lives in a buddy's garage while looking for work. Does Gus need to disclose to Mike that Gus doesn't have malpractice insurance?

4. HYPO: Same as HYPO 1. After filing for divorce, Mike tells his spouse to move out. The two get into a heated argument. Tempers flare, and blows are landed. Mike brandishes a kitchen knife. Mike's spouse calls the police, who arrest Mike for Third-Degree Assault, and DV Assault 4. An indictment ensues. Mike wants Gus to represent him in the criminal case as well because Mike has no other cash to pay a criminal defense attorney. Gus has no experience in criminal law. Can Gus represent Mike in the criminal case? How should he revise his fee agreement? What recourse does Mike have if Gus fails to recognize an issue with the grand jury proceedings that could have resulted in dismissal of the felony charge?

5. HYPO: Rose got a job working as a Judicial Clerk at the Anchorage Superior Court right after she took the bar exam. Her year-long clerkship is coming to an end so she decided to start passing out resumes and business cards. The law firm of Payne & Fears LLP has an open murder case with Rose's judge and the firm of Dewey, Cheatham, & Howe, A Professional Corporation, has a high profile drug dealing case with Rose's judge. Both cases will likely go to trial before her clerkship ends, and she is currently working up draft orders on motions to dismiss and motions to suppress evidence in each. Her judge will also rely heavily on her expertise in ruling on motions *in limine* in advance of trial. These two firms have been growing at a high rate and are each in need of several new attorneys. Both firms are offering very competitive compensation and benefits packages. Rose feels that either Payne or Dewey would be a good fit, and the salary package would really help with those six-figure student loans.

1) Would it be unethical for her to apply to a firm that has an open case with her judge?

2) Does she need to disclose anything to her judge prior to finishing her work in the pending motions? What about the law firms or the prosecution?

3) What are her ethical obligations about applying to these firms after her clerkship ends?

4) If she accepts a job with one of the firms, how much can she discuss about the cases with the attorneys who were involved in arguing them?

6. HYPO: You are representing a criminal client for an extended period of time. Client and state come to an agreement that client will provide information to state for leniency in criminal case. As part of the ongoing agreement with the state, client is no longer allowed to work in a certain industry. During a later interview with state, client divulges he has been working in that industry in order to "pay his lawyer bills". Client has been paying cash retainer and is current on billing. Does attorney need to refund all legal fees to client?

7. HYPO: when doing work as a contract attorney (private contractor) does the contractor need to inform the contractee ("employer") in writing that the contractor does not have malpractice insurance per RPC 1.4 (c) and comments?

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