

Let's Spot the Ethics Issues: Scenario-Based Training

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Complaint Analysis

1. Review complaint for conflicts
2. Confirm you have time to handle the investigation
3. Consider what rules are involved



Hypothetical #1

Client hired lawyer for an asylum case. Complaint states:

- lawyer has been dishonest with me
- hired to handle my asylum case and also I have a hearing because I was detained when I came here illegally; also need my work papers.
- I have a contract and paid her a few days later. I have a receipt.
- She wasted a lot of my time—I still have no papers.
- Also, if you email, she does not respond. If you call, she does not answer.
- I hired her in August; paperwork to be submitted in August. Not done. Then, December, same thing. I only have one year to file asylum. I fired her in May, and asked for my money. Said no money will be provided. I did get a copy of my papers. The lawyer swore at me, yelled and kicked me out of their office; very disrespectful.



Hypo (cont'd)

Receipt states:

Received today a non-refundable initial retainer amount of \$2,000.

Receipt signed by lawyer.



Rules to Consider



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Rules to Consider

- Rule 1.3, Diligence
- Rules 1.4(a)(4), Communication— promptly comply with reasonable requests for information
- Rule 1.16(d)— refunding any advance payment of fees or expenses that have not been earned or incurred. (Could also be Rule 1.15(c)(4) or Rule 1.5(b)(3)).



Rules to Consider

- Rule 1.5(b)(3)—describing fee as non-refundable
- Rule 1.15(h), Appendix 1, II. 2—receipts must be countersigned by the payor if cash receipt? Was this a cash payment?
- Others? What about dishonesty? Rude behavior? Swearing at client?



Hypothetical # 2

- Lawyer is representing client in a criminal domestic abuse case.
- Client's mother paid attorney's \$5,000 flat fee that includes a \$1,000 availability fee. Unclear if there is a written fee agreement.
- During the representation, client's mother continually communicates with lawyer, including providing lawyer with e-mail exchanges from a witness to the alleged offense that are helpful to the client's case.
- Mother advises lawyer that lawyer needs to use the information, but tells lawyer that she cannot tell the client because the client does not want mother or the witness involved in the case.
- Lawyer contacts witness, who is represented by counsel in her own criminal matter.



Hypo #2 (cont'd)

- Client files complaint after terminating representation because upset with lawyer when client learns that lawyer has been communicating with his mother and the witness.



Rules to Consider



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Rules to Consider

- Rule 1.6(b)—disclosure of confidential information.
- Rule 1.8(f)—compensation from others
- Rule 1.5(b)(2)—availability fees
- Rule 1.5(b)(1) & Rule 1.15(c)(5)—flat fee rules
- Rule 4.2—contact with a represented party



Hypothetical # 3

- Wife hires lawyer to prepare estate documents. Husband attends meeting with wife. Both parties provide lots of information relating to assets and children. Lawyer agrees to prepare estate planning documents for W. Husband does not wish to engage lawyer regarding his own estate. Lawyer begins work.
- A few months later, W tells lawyer to stop work as getting a divorce. Asks lawyer to represent W in divorce.



Hypo #3 (cont'd)

- Lawyer agrees to represent W. Husband object through new counsel.
- Husband files a complaint and moves to disqualify lawyer in divorce.



Rules to Consider



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Hypo # 3

- Attorney-Client Relationship ?
 - Two ways to form—tort and contract theory

If so, then Rule 1.9(a) analysis.

If not, Rule 1.18 analysis

Same or substantially related?



Hypothetical #4

- Lawyer is drafting brief to court. Uses ChatGPT to draft a portion of the brief, but that is unknown to anyone. Does not review cases cited. Opposing counsel reviews cases and learns they do not exist. Raises issue with opposing lawyer who immediately discloses used ChatGPT, and writes court to withdraw brief.
- OC files complaint.



Rules to Consider



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- Rule 1.1
- Rule 3.1?
- Rule 3.3?
- Rule 8.4(c)?



Hypothetical #5

- Client hired lawyer to obtain an OFP against neighbor. Flat fee agreement, \$3,000. Gave lawyer info needed, and filed motion. Matter set on for a hearing. No one explained what was going to happen although client called a couple of times. Day before hearing, heard from another lawyer that he was going to handle matter and talked briefly about the hearing. Didn't know lawyer worked with anyone else. Hearing did not go well, client did not know what was happening, motion denied, and client files complaint.



Rules to Consider



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Hypo No. 5

- Rule 1.1 – competence (or Rule 1.3 – diligence?)
- Rule 1.4(b) – communication
- Rule 1.5(e) – fee splitting or
- Rule 5.1 – supervision?



Thank You



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