

General Resource Guide for Hypotheticals

The purpose of this Resource Guide is to provide information to presenters in order to facilitate discussion of the Professionalism Hypotheticals. This Resource Guide is not intended to be legal advice, to answer specific questions or to provide "the" answer to the discussion questions in the Hypotheticals.

AVAILABLE RESOURCES – find on-line at The Supreme Court's Commission on Professionalism's Web site:
www.supremecourtofohio.gov/Boards/CP

- Do's and Don'ts Series
Depositions
Professionalism in the Courtroom
Working with Opposing Counsel and Other Lawyers
Conduct of Prosecutors and Defense Attorneys
- A Lawyer's Creed
- A Lawyer's Aspirational Ideals
- Judicial Creed
- Ohio's Rules of Professional Conduct
- A Consumer's Practical Guide to Managing a Relationship with a Lawyer

HEALTH CARE SCENARIO #1 – Resource Guide

A Lawyer's Aspirational Ideals

As to Clients, I shall aspire:

(b)(4) – Communicate promptly and clearly with clients, and

(b)(5) – Reach clear agreements with clients concerning the nature of the representation.

(c)(3) Reach agreements respecting fees with clients as early in the relationship as possible

(b)(2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes

A Lawyer's Creed

To my clients, I offer, loyalty, confidentiality, competence, diligence and my best judgment. I shall represent you and I should want to be represented and be worthy of your trust.

Prof. Cond. R. 5.1 Responsibilities to Partners, Managers and Supervisory Lawyers and Comments

Prof. Cond. R. 5.2 Responsibilities of a Subordinate Lawyer and Comments

Prof. Cond. R 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer and Comments

Prof. Cond. R 1.4 Communication and Comments

Prof. Cond. R. 1.5(b) Fees and Expenses and Comments

IP SCENARIO #1 - Resource Guide

A Lawyer's Creed

To my clients I shall endeavor to achieve your lawful objectives as expeditiously and economically as possible.

A Lawyer's Aspirational Ideals

As to clients, I shall aspire

(c)(1) -(4) re fee agreements

(d) - re confidentiality

(e) - re competence

Prof. Cond. R. 1.1 Competence and Comments

Prof. Cond. R. 1.3 Diligence and Comments

Prof. Cond. R. 1.4(c) re: professional liability insurance and Comments

Prof. Cond. R. 1.6 Confidentiality of Information and Comments

Prof. Cond. R. 1.8(h)(2) re: settling potential malpractice claim and Comments

SPORTS LAW SCENARIO #1 - Resource Guide

A Lawyer's Aspirational Ideals

As to Clients, I shall aspire

(a), (b), (c), (d) and (e)

Prof. Cond R. 1.4 Communication and Comments

Prof. Cond. R. 1.6 Confidentiality of Information and Comments

Prof. Cond. R. 1.8(f) Conflicts and Comments

BUSINESS/COMMERCIAL CASES - Resource Guide

A Lawyer's Creed

To my Colleagues in the practice of law, I offer concern for your reputation and well-being. I shall extend to you the same courtesy, respect, candor and dignity that I expect to be extended to me.

A Lawyer's Aspirational Ideals

As to Opposing Parties and Their Counsel, I shall aspire

(b)(1) -(5) re: treatment of opposing counsel

Dos and Don'ts – Working with Opposing Counsel and Other Lawyers

Don't respond in kind when confronted with unprofessional behavior by another attorney

Don't be belligerent, insulting, or demeaning in your communication with other attorneys or their staff

Prof. Cond. R. 3.4 Fairness to Opposing Party and Counsel

3.4(a)-(d) and Comments

BOB BUILDER SCENARIO - Resource Guide

A Lawyer's Aspirational Ideals

As to Opposing Parties and Their Counsel, I shall aspire

(b)(2) – re courtesy and civility

(b)(4) - re avoid rudeness and other acts of disrespect

Dos and Don'ts Working with Opposing Counsel and Other Lawyers

Prof. Cond. R. 1.2(e) - re: threatening criminal charges to gain an advantage in a civil matter

Prof. Cond. R. 4.1 Truthfulness in Statements to Others

Prof. Cond. R. 4.4 Respect for Rights of Third Persons

Prof. Cond. R. 8.3 Reporting Professional Misconduct

PROBATE SCENARIO #1 - Resource Guide

A Lawyer's Aspirational Ideals

As to the Courts and Other Tribunals, and to those who assist them, I shall aspire

(a)(1)-(3) - re settlement and non-essential litigation

(a)(6) - advise clients re civility, courtesy, fairness, cooperation and other proper behavior

As to Opposing Parties and Their Counsel, I shall aspire

(b)(4) - re avoid rudeness and other acts of disrespect in all meetings

Dos and Don't's Professionalism in the Courtroom

Prof. Cond. R. 2.1 Advisor and Comments

Prof. Cond. R. 3.1 Meritorious Claims and Contentions and Comments

Prof. Cond. R. 3.3 Candor to the Tribunal and Comments

HEALTH CARE SCENARIO #1

Partner at holiday party met with a friend. The friend told her about his child being bitten by a dog. He said the hospital did a terrible job handling it. She gave him some quick observations about legal remedies as part of the small talk of the evening.

Month later, he called her and they set up a lunch date. During the course of the meal, he asked her how his lawsuit against the hospital was progressing.

#1 What should the partner do?

She did not correct him, nor did she put together a fee arrangement. Instead, she set up an appointment for an associate to meet with him and take down his version of the facts. She told the associate the situation and also that there was no fee contract in place as of yet, but that she wanted to get things rolling first.

#2 Upon the partner telling her associate the situation, what should the associate do?

The associate did as he was told and met with this “client.” It turns out that the insurance company for the hospital has already offered to settle this case for half of the cost of the medical bills. The “client” is not even certain that he should pursue the case, and his rendition of the facts indicates that the case is not particularly strong against the hospital. The associate relayed this information to the partner. All in all, the entire meeting took an hour and a half.

#3 At this point, what should the associate recommend to the partner about the case?

#4 At this point, what should the partner do with respect to the lack of a fee arrangement?

The partner decided that it was important to continue, and she insisted that the associate call the insurance company and negotiate settlement further. The associate reminded the partner that such an action would require representation of this client. The partner told the associate that she would take care of the fee arrangements over dinner and bade the associate to call.

#5 At this juncture, should the associate refuse to call the insurance company? Why?

#6 What should the partner tell the “client” with respect to his case “over dinner?”

The partner had dinner with her friend and explained that a fee arrangement would have to be entered. He balked and refused to enter into any agreement. The partner told him that she could not represent him without a fee arrangement. Meanwhile, the associate called the insurance company, who agreed to add an amount to the settlement equal to the full medical bills.

#7 What obligations (if any) does the partner have?

#8 What obligations (if any) does the associate have?

IP SCENARIO #1

My mom's best friend is an inventor. She needs a patent on a party plate that hooks onto glasses. My mom wants me to represent her. I am not familiar with patent law issues, but my mom and her friend insist that I represent her. I don't want to make my mom and her friend upset with me.

#1 What can I do for them? What should I do?

I agree, reluctantly to take the case and my mom insists that I do it for free. I like my mom's friend—she used to babysit for me and even now babysits for my kids.

#2 Can I take the case for free?

I take the case and it soon becomes apparent that I am in over my head. I get some help from a friend who does IP work, but for a fee. I explain the situation to my mom's friend, who becomes upset and tells my mom that I am now trying to charge her and at the same time get out of taking her case. She doesn't want my friend involved because of the cost.

#3 Is it too late to charge her for the help? What are my obligations in the case?

I agree to pay out of my pocket for the help I desperately need from my friend. He does a beautiful job, however, my mom's friend refuses to accept his work, becomes very angry about the fact that he is still involved in the case and demands that my friend be removed from the case immediately.

#4 What obligations do I have to my mom's friend? What obligations do I have to my IP friend? What obligations do I have to complete this competently—how do I ensure that it happens?

After finishing the patent application, I succeed in getting the patent, thanks to my IP friend's prior work. My mom's friend says that I cost her a lot of money because I took so long and says I should pay her \$1,000 for the delay.

#5 Do I have to pay her? What can she do to me?

SPORTS LAW SCENARIO #1

I am helping a baseball player's agent with a difficult case over advertising when the agent signed a deal that wasn't so great and now wants out of it. This agent has made numerous complaints about me at social events and has caused some of my own clients to question me. I have confronted this agent, but he denies everything. I do not want to jeopardize the case, but I also do not want this conduct to continue.

#1 What are my options?

I decide to keep quiet for the time being, but then I receive a phone call from the ballplayer the morning before trial in this case in which he informs me that he does not want to pay my invoices because the agent has indicated that I have not done any work and I have lied to the ballplayer—both of which are patently untrue.

#2 What are my options?

As tactfully as I can, I tell the ballplayer that we can discuss this matter after trial and continue to prepare. I have a meeting with the agent for that evening with respect to a key witness, but he fails to show up. Cross-examining this witness is my responsibility and the agent has relevant information on the matter.

#3 What are my responsibilities? What are my options?

BUSINESS/COMMERCIAL CASES

February 12, 2014

Joseph Smith, Esq.
123 Any Street
Any City, OH 44666

Re: *Any Plaintiff vs. Any Defendants, et al.*
Case No. CV-13-000000
Cuyahoga County Court of Common Pleas

Dear Mr. Smith:

I am writing to follow up our telephone conversation of February 10, 2014. The purpose of your call was to alert us to our incompetence and to offer to explain how to properly pursue a civil action against the co-defendants, but only if we first dismiss all claims against James Defendant. I declined your proposal.

You responded that you expect to seek attorney fees against me, and presumably my co-counsel and client as well. As detailed more fully in our prior briefing, the claims we are pursuing against your client are well recognized under Ohio law. *Any Plaintiff v. Any Bank*, 000 Ohio App. 3d 000, 0000 Ohio 000, 000 N.E. 2d 000 (8th Dist. 0000); *In re Estate of Any Deceased Person*, 00 Ohio St. 3d 000, 000 N.E. 2d 000 (8th Dist. 0000). Your empty threats do not concern us.

Finally, I repeated my request for an opportunity to review the transaction records of the account at issue and, if necessary, to depose Any Defendant representative who can explain how the remaining funds were released. Of particular interest to us is the final disbursement. I assured you again that we will promptly abandon all claims against your client if we are able to confirm that legal responsibilities were dutifully followed.

As in the past, you flatly rejected this seemingly unobjectionable proposal. You indicated that your intention is instead to continue to file procedural motions. You have therefore left us with no choice but to proceed with our action against Any Defendants so that we may investigate the circumstances surrounding the troubling misappropriation of settlement funds to the full extent permitted by the Ohio Rules of Civil Procedure.

Very truly yours,

Any Attorney-at-Law

1. Does it matter what was said during the preceding telephone call?
2. What does the author want to get from Mr. Smith? Is this an effective way to achieve this goal?
3. In what other ways could the author pursue his/her objectives?

Eric Rommer represents Bob Builder. Bob is employed at the local lumber yard and does home improvement work on the side. Bob agreed to remodel the kitchen of a lumber yard customer. Bob did a horrible job and he was sued along with the lumber yard for the damages. Eric contacts the customer's attorney as well as Ed Jasper, the attorney for the lumber yard, and indicates that Bob is going to file bankruptcy. Ed calls Eric and tells him that if Bob files bankruptcy and leaves the lumber yard in the law suit alone that the lumber yard owner might, "discover some theft by Bob that would need to be reported". Eric should,

- a. Ignore Ed because everyone knows he is a bully
- b. Immediately report Ed to the local Disciplinary Counsel
- c. Write Ed a letter informing him that his conduct may be a violation of the ethics rules and warn him that if he persists, Eric would have no choice but to report him
- d. Report Ed's conduct to the Bankruptcy judge.

PROBATE SCENARIO #1

You represent Sally Smith, the Executrix of the Estate of Harold Smith. The Decedent, Harold Smith, had 4 surviving children: Sally Smith, Susan Jones, Bill Smith and John Smith. Harold's wife had predeceased him.

In preparing the Inventory and the First Accounting, you discover that the Estate of Harold Smith is insolvent. The insolvency is due to the fact that Harold had a mortgage on the real property (a tri-plex), a home equity line of credit against which he had borrowed monies; multiple credit card debts, a car loan and other debts.

You and Sally have begun negotiations with the attorneys representing the creditors because there does not appear to be sufficient funds in the Estate to pay the secured creditors 100% of the owed debts.

Sally, the Executrix, rented the real property and is using the rent monies to pay the property taxes, the utilities and to "fix-up" the real property for sale.

John Smith, one of Harold's heirs has filed two pleadings: Exceptions to the Inventory alleging that Sally has not accounted for all of the Estate assets and a Motion to Remove the Executrix alleging that Sally is not appropriately fulfilling her duties as Executrix of the Estate of Harold Smith.

A Hearing on the Motions is set before Probate Magistrate. You, Sally, Susan, Bill and John all attend the Hearing on the Motions. Also in attendance at the Hearing are the attorneys representing each of the creditors.

As the Hearing progresses, it becomes apparent that the allegations that Sally has not accounted for all of the Estate assets revolves around John's misunderstanding that the life insurance policy for which Sally was the ONLY named beneficiary is NOT part of the Estate. John believes that Sally should be "sharing that money with the rest of us."

Also, John and Susan are both upset that Sally is spending money to "fix-up" the real property for sale. They believe that the rental income should be split between Harold's heirs and the property sold "as is". If the creditors get pennies on the dollar, that is the creditor's problem.

During the Hearing, the exchange between John, Susan and Sally gets heated. The bickering is do intense that Sally throws her hands in the air and tells the Probate Magistrate "That's it, I am done. I cannot take this fighting anymore. I tried to do what Dad wanted, but I will resign as Executrix and you can appoint one of my siblings. I cannot take this anymore!!"

QUESTIONS

1. As the attorney for the Executrix, do you wait for the Probate Magistrate to handle the fight between the siblings?

2. Do you advise Sally that she can resign as Executrix and encourage her to do so, since this Estate is just too much work for too little money?
3. Do you try to explain again, why Sally is required to "fix-up" the real property for sale so that the creditors maximize the return on their debt?
4. Do you wait for the creditors' attorneys to put John and Susan in their place?
5. Do all of the above?
6. Do none of the above?