



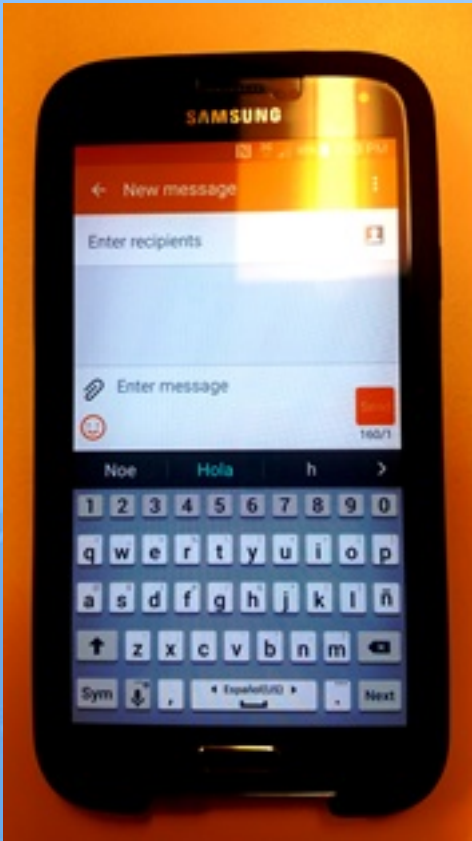
Who's on First, What's on Second, I Don't Know Who's on Third Dealing with Ethical Dilemmas

Ethics Questions for Insurance Professionals & Attorneys

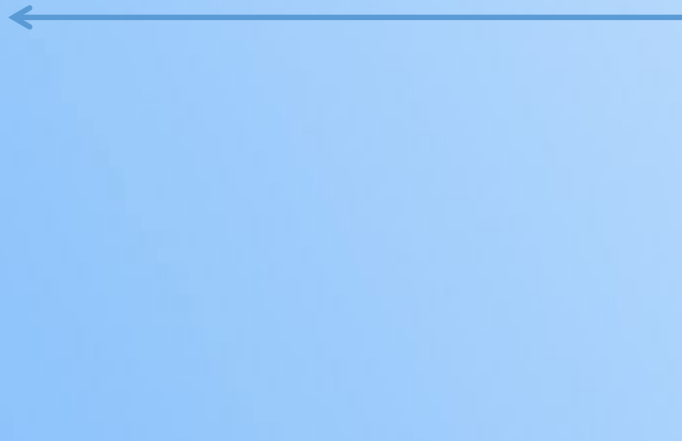
Ethics Challenge

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Texting Instructions



Text TRAYLEWIS758 to 22333 to join



<Type> in your answer, i.e. 1, 2, 3, etc.

Take the Ethics Challenge

Case Scenarios

- US Everything Corporation is a corporation created and operating through its Board of Directors. Several years ago American Miniatures Company merged with US Everything Corporation and each had in-house counsel departments.
- Cathy Counsel is General Counsel. She is head of the Legal Department.

Case Scenario # 1

- An employee of US Everything Corporation has filed a claim for hostile work environment based on a superior's inappropriate internal communications. Cathy Counsel directs the IT department to download the communications from both the supervisor and the employee's computer. During Cathy's review of the communications she discovers communications between the employee and the attorney representing her in the harassment lawsuit.

Question #1

Can Cathy Counsel ethically read the communications between the employee and her attorney?

1. Yes, because it might be beneficial to US Everything Corporation in its defense.
2. Yes, because the computer is the property of the company.
3. No, because the e-mails contained attorney-client privileged communications.
4. No, because the obtaining of the e-mails constitutes an inadvertent disclosure.

Question #2

If Cathy discovers non-relevant material in terms of the specific complaint but finds inappropriate materials that violate company policy on the supervisor's computer, what are Cathy's ethical obligations?

1. To disregard all documents and return them to the supervisor.
2. If the documents are not privileged there is no ethical obligation.

Question #3

Do the ethical obligations change if communications are uploaded to a "cloud?"

1. Yes, because the "cloud" is not a private enterprise.
2. No, because there is an ethical obligation to maintain the confidences of the client on the "cloud".
3. No, because everyone uses the "cloud".
4. No, because this involves technology which lawyers aren't savvy about.

Case Scenario #2

- US Everything Corporation decides that American Miniatures Company is not operating as profitably as anticipated, and therefore decides to divorce American Miniatures Company. Cathy Counsel had provided legal services to both US Everything Corporation and American Miniatures Company over the years during their relationship. American Miniatures Company was clearly not happy with the decision by US Everything Corporation and filed suit. During discovery proceedings, American Miniatures demanded the production of all communications with Cathy by both corporations.

Question #4

Can Cathy Counsel ethically produce all the corporate documents?

1. Yes, because they are not the property of American Miniatures Company.
2. No, except to the extent the documents were in the "common interest" of the companies.
3. No, because Cathy still represents US Everything Corporation and therefore they are protected by the attorney-client privilege.
4. No, because there is no ethical duty to produce the documents.

Case Scenario #3

- Outside counsel, Mr. Wireless, has been hired by US Everything to represent the Corporation in a products liability action which has the potential to expose US Everything to multiple lawsuits throughout the United States. Mr. Wireless has a laptop computer for use on client and firm matters which includes software necessary to his practice, as well as the new iPhone XR which are also provided to his associates.
- Mr. Wireless takes his laptop to Starbucks and accesses a public wireless Internet connection to conduct legal research for US Everything and emails US Everything. He also takes the laptop computer home to conduct the research and email clients from his personal wireless system.

Question #5

Does Mr. Wireless violate ethical duties to US Everything by using technology to transmit or store confidential client information when the technology may be susceptible to unauthorized access by third parties?

1. Yes, because by doing so he violates his duty of confidentiality and competence.
2. Yes, because the risk is great on a public wireless connection.
3. No, because he was only using the wireless connection for a short period of time.
4. No, because Mr. Wireless is computer savvy.

Case Scenario #4

- There has been a vacancy on the Board of Directors for US Everything Corporation and the President has asked Cathy Counsel to become a member of the Board in addition to her duties as legal counsel for US Everything.

Question #6

Can Cathy Counsel ethically hold both a position as General Counsel and as a member of the Board for US Everything Corporation?

1. Yes, because she can't say "no" to the President.
2. Maybe, if she makes the proper disclosures and avoids all conflicts.
3. Yes, because it is impossible to serve in this dual capacity.

Question #7

If Cathy becomes a Board member, does she violate ethical rules by advising US Everything as to matters which will be determined by the Board?

1. Yes, because by doing so she violates her duty of confidentiality and competence.
2. Yes, because she can't wear both hats.
3. Yes, because there is a material risk that Cathy's dual role will compromise her independence and professional judgment.
4. No, because she is good at multi-tasking.

Case Scenario #5

- Cathy Counsel is engaged in a deposition of an adverse witness and in the course of said deposition discovers that the witness has a Facebook account. Cathy needs to conduct some investigation of the adverse witness and decides that she will ask her paralegal to invite the witness to be her "friend" so Cathy can then gain access to the witness's account and see if any information beneficial to US Everything Corporation in the litigation will be of use.

Question #8

Has Cathy Counsel violated her ethical obligations?

1. Yes, because she asked her paralegal to get involved in the investigation.
2. Yes, because she was being deceitful.
3. No, because the information was on the internet so it was fair-game.

Question #9

One of the in-house counsel for US Everything Corporation discovers that she is "friends" with this adverse witness on Facebook and gives Cathy access to investigate the witness. Is this an ethical violation?

1. Yes, because Cathy is gaining access to private information of the witness.
2. Yes, because Cathy is being deceitful.
3. No, because the information was obtained without violating any Rule of Professional Conduct.

Case Scenario #6

- The President of US Everything Corporation and Cathy Counsel have been long-time friends. Over the years Cathy Counsel has represented both the President and the Corporation as named defendants in litigation. Unbeknownst to the President, the Board of Directors is investigating payments made to the President for the past 5 years by an independent contractor with whom the Corporation has been doing business for the same amount of time. Cathy becomes aware of the investigation. During dinner with the President it is disclosed that President has been receiving kickbacks from the independent contractor in exchange for using the contractor's business.

Question #10

Is Cathy Counsel ethically obligated to disclose her discussions with the President to the Board?

1. Yes, because Cathy Counsel has been an attorney for the corporation longer.
2. Yes, because the Corporation is the client and she is aware of a crime being committed.
3. No, because the communications between Cathy Counsel and President are protected by the attorney-client privilege.
4. No, because the President is a former client for whom Cathy Counsel owes a fiduciary duty.

Question #11

Is Cathy Counsel ethically obligated to disclose her knowledge of the investigation to the President?

1. Yes, because she has an attorney-client relationship with the President as well as US Everything.
2. Yes, because they have been friends for such a long time.
3. No, because she became aware of the investigation through her attorney-client relationship with US Everything.
4. No, because Cathy owes a duty to maintain the confidences of her client.

Case Scenario #7

- US Everything Corporation has been named as a defendant in a lawsuit by an organization alleging that US Everything had engaged in false advertising. Cathy Counsel assigned in-house counsel to handle the case and instructed him that under no circumstances was he to discuss or negotiate a settlement of the case. After conducting discovery and evaluating the issues raised in the case, in-house counsel is of the belief that the case has serious potential exposure for US Everything. After a hearing, opposing counsel approached in-house counsel and told him that the plaintiff would be interested in resolving the case and proposed the terms of a settlement offer.

Question #12

Does in-house counsel have a duty to report the statements by opposing counsel to anyone other than General Counsel?

1. Yes, because he knows that General Counsel is not thinking about the potential exposure to the Corporation.
2. Yes, because he wants to be promoted and take General Counsel's job.
3. No, because General Counsel is his boss and he doesn't want to get fired.
4. No, because General Counsel is his boss and he needs to follow company protocol as a first step.

Question #13

Does the answer in #1 above change if counsel handling the case is outside counsel?

1. Yes, because if counsel goes above General Counsel's head, he will no longer receive business from the Corporation.
2. No, because the same duties owed to the Corporation remain.

Question #14

If Attorney were outside counsel, must he/she withdraw as counsel?

1. Yes, because General Counsel refuses to act in the best interest of the company and attorney does not want to go above General Counsel's head.
2. Yes, because the attorney has a duty to avoid litigation.
3. No, because there is a defense which might be supported with some luck.
4. No, because the attorney must take instruction from the client who is acting through its General Counsel.

Case Scenario #8

- US Everything Corporation had the same outside counsel for a myriad of issues over a period of 15 years, providing a steady stream of income to outside counsel. While preparing for a meeting with new management, attorney discovered that a document she was preparing to be filed with a governmental entity on behalf of the corporation contained what she believed to be a material misstatement. Attorney advised the Board of Directors of her belief as to what was misstated and that by filing the document with the governmental agency, it could face criminal prosecution. The Board disagreed with Attorney's advice and directed Attorney to file the document.

Question #15

Does the attorney have the ethical obligation to abide by the direction of the Board in this instance?

1. Yes because an Attorney must abide by the decisions of the client.
2. Yes, because the attorney would lose his job if he didn't.
3. No, because the Attorney cannot assist a client in making false or fraudulent statements.
4. No, because he disagrees with the decision of the Board.

Question #16

May Attorney withdraw from the representation of US Everything Corporation?

1. Yes because an Attorney is permitted, but not required to withdraw, when a client insists on conduct which the lawyer reasonably believes would be criminal.
2. Yes, because an Attorney is required to withdraw when a client insists on conduct the attorney reasonably believes would be criminal.
3. No, because the Attorney would prejudice the interests of his client in completing the filing.
4. No, because the Attorney could have the Corporation file the document through its in-house counsel.

Case Scenario #9

- US Everything Corporation has been named as a defendant in a product liability lawsuit. Cathy Counsel was aware that its chief engineer was likely to be a key witness in the case and that he would not be a favorable witness for US Everything. The engineer had, on more than one occasion, warned US Everything that the product in question had not been adequately tested for safety. Engineer had reduced his concerns to writing and submitted it to the CEO and Board of Directors. While the case was pending engineer died from natural causes. US Everything was undergoing a computer system upgrade company-wide and knew that this could result in the engineer's memo being destroyed in the process. Cathy Counsel made no hard copy or duplicate of the memo before the computer upgrade and lo-and-behold during discovery the memo could not be found.

Question #17

Is Cathy Counsel subject to discipline?

1. Yes, because Cathy knowingly permitted the destruction of evidence.
2. No, because opposing counsel had failed to ask for any documents before the upgrade.

Question #18

- Assume that Cathy preserved the memo and that across the top of the memo the word "WARNING" appeared in bold red letters. Assume further that US Everything Corporation hired outside counsel to represent it in this lawsuit and that counsel had 20 attorneys in the firm working on the case who reported to Cathy. In responding to discovery Cathy had all the documents, including the Memo, downloaded and sent to counsel. When the documents were pulled up on the computer they appeared with the appropriate color coding. Outside counsel asked that he be provided with hard copies of the documents so Cathy had the documents printed out in black and white and sent them to counsel. One of the less senior attorneys then had the copies scanned into the firm's system, downloaded on a CD and sent to plaintiff's counsel.

Question #18: Continued

When plaintiff's counsel received the documents he didn't see the word "WARNING" in red on the memo because it had been obscured in the copying and scanning process. Through outside sources plaintiff's counsel saw the same document but in color, and then accused counsel of discovery abuses and requested the Court impose sanctions.

Question #18: Continued

Did outside counsel violate ethical rules by unlawfully altering the memo?

1. Yes, because the documents produced were in altered form.
2. Maybe yes, Maybe No. The law is developing.
3. No, because counsel did not intend to deceive opposing counsel.

Question #19

Is outside counsel subject to possible ethical violations if he produces the memo in its original color format but places it under a stack of over 40,000 documents?

1. Yes, because counsel is just playing games.
2. No, because counsel has not violated any ethical rules.

Question #20

- Assume that during the review of medical records by US Everything Corporation's retained physician/expert, it was discovered that plaintiff suffered from a serious condition unrelated to the basis of the lawsuit, and that plaintiff's doctors failed to identify.

Question #20: Continued

Does Cathy Counsel have an ethical duty to advise plaintiff's counsel of their findings?

1. Yes, because otherwise Cathy could be guilty of negligence.
2. Yes, because it is the right thing to do.
3. No, because Cathy has no duty to plaintiff.
4. No, because it is protected by her work product, but Cathy may feel a moral obligation.

Question #21

Does Cathy Counsel's ethical duty change if it is also disclosed that the serious condition which would become life-threatening, if left untreated, was related to the product that is the subject of the lawsuit and Cathy Counsel advised the doctor not to tell plaintiff's counsel?

1. Yes, because the doctor has an ethical responsibility to advise plaintiff.
2. Yes, because Cathy cannot tell the doctor not to volunteer information to another party.
3. No, because Cathy has no duty to plaintiff.
4. No, because the information remains the work-product of the company.



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