Question

Do you believe every scenario in the paper should be included in the PowerPoint?

A. Yes, because I never want to leave Portland.
B. Yes, because I want to get my learn on.
C. No, because Mt. Hood is not going to climb itself.
D. No, because I’ve got ethics on lock-down.

Go to http://polls.walshgallegos.com
The Electoral College Results

Fortunately, even if your popular vote said “yes,” the Electoral College said “no.”

Competence (Rule 1.1)

Scenario

- John is an inexperienced lawyer in a small town.
- His dad is a local doctor and former school board president.
- The superintendent asks John to represent the district in a False Claims Act case involving Medicare reimbursements.
- John’s primary legal experience is as a former prosecutor.
- John was a teaching assistant to a professor who wrote a False Claims Act treatise.
- John tells the superintendent he can represent the district.
Framework
Rule 1.1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Framework
Comments

• Competence sometimes only requires the proficiency of a general practitioner.

• Factors that affect competence determination:
  • Complexity and specialized nature of the matter;
  • General experience;
  • Training in the field in question;
  • Time for preparation; and
  • Ability to associate a lawyer with competence in the relevant field.

• Determining what kind of legal problems a situation may involve is the most fundamental legal skill that transcends any particular specialized knowledge.
Question

Has John violated Rule 1.1 governing competence?

A. Yes, because John’s experience is not adequate for the case.
B. Yes, because John’s dad may unduly influence his work on the case.
C. No, because he has probably tried a lot of cases.
D. No, because he has not made representations of competence to the school board.

Go to http://polls.walshgallegos.com

The Plot Thickens

• What if the only other lawyer in town practices oil and gas, family, and criminal law?

• Does it matter if the district served a dozen or 100 students with medical needs?

• Is there any significance to John’s relationship with his former professor?
Scope of Representation & Allocation of Authority (Rule 1.2)

Scenario

• Attorney O’Hare represents Trinity SD.
• She worries about the increasingly proselytizing and sectarian prayers before board meetings.
• Board President Fallwell received a letter from the Freedom from Religious Fervor organization decrying the prayers and threatening suit.
• Fallwell wants O’Hare to write a letter defending the prayers as legal.
• O’Hare is an atheist.

Framework

Rule 1.2

(a) Subject to (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and consult with the client concerning how they will be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. . . .

(b) A lawyer’s representation of a client does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client. . . .
Framework

Comments

- The ultimate authority to determine the purposes served by the representation belongs to the client.
- While clients tend to defer to the lawyer’s skill to accomplish objectives, the clients typically set those objectives.
- A client may authorize certain actions in advance; only a material change requires further consultation.
- Legal representation should not be denied to those whose cause is controversial.
- Representation does not constitute approval of a client’s views or activities.
- A lawyer should address issues at the outset if client objectives and the means to achieve them are inconsistent with the lawyer’s willingness to represent.

Question

Should O’Hare withdraw because her views differ from Fallwell’s?

A. Yes, because O’Hare’s personal views will taint her ability to defend the prayer practice.
B. Yes, because her legal opinion prevails over Fallwell’s goals as board president.
C. No, particularly if she limits the scope of representation to prevent her beliefs from hindering zealous representation.
D. No, because invocations represent a legitimate, solemnizing practice of a legislative body.

Go to http://polls.walshgallegos.com
The Plot Thickens

• What if Board Secretary Martin Modern wants advice on how to reign in Fallwell’s zealotry and negotiate with the FFRF?
• Does it matter if Fallwell is a preacher and Modern is a lawyer?
• What if an outside organization has offered to provide representation if litigation ensues?

Advisor (Rule 2.1)

Scenario
• President Fallwell launches a social media blitz of religious messages to rally support for the district’s practices and his position.
• Numerous citizens have commented favorably on his posts and argued for religion in pubic schools.
• The public comment portion of board meetings has mushroomed into a free-for-all of opinions on the decline of civilization due to gun control legislation, transgender accommodations, and illegal immigration.
• Board Secretary Modern wants to reign in Fallwell and negotiate with the FFRF.
• The district engaged O’Hare only for pre-suit negotiations with the FFRF.
• Discussions in closed session have become more heated.
Framework

Rule 2.1

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political factors, that may be relevant to the client’s situation.

Framework

Comments

• Legal work often involves providing unpleasant facts and unwelcome advice that must be delivered with candor, even if unpalatable to the client.
• If a client experienced in legal matters seeks only technical advice, a lawyer may take that at face value.
• An inexperienced client may require guidance on considerations other than strictly legal ones.
• A further duty to advise may arise if a client proposes a course of action, related to the representation, that is likely to result in substantial adverse legal consequences.
Question

Should O’Hare address the social media firestorm?

A. No, because O’Hare’s engagement is limited to negotiations.
B. No, because she understands that people don’t really mean what they say on social media.
C. Yes, because Fallwell’s conduct may jeopardize the district’s position in future litigation.
D. Maybe, but we need more facts about Fallwell’s level of sophistication, what’s going on in closed session, and whether the posts are likely to result in substantial adverse legal consequences.

Go to http://polls.walshgallegos.com

The Plot Thickens

• What if Fallwell is knowledgeable about legal proceedings and has asked for purely technical advice related to the prayer issue?
• What if Modern has specifically asked for advice on the possible implications of Fallwell’s social media campaign?
• Does it matter if O’Hare is present in closed session when Fallwell and Modern lock horns over the board prayer issue?
Confidentiality (Rule 1.6)

Scenario

- A coverage provider hired Stefan King to defend Salem’s Lot SD and Assistant Principal Leturno against deliberate indifference claims in a student’s lawsuit alleging inappropriate conduct by her algebra teacher, Al Frankenstein, that led to his arrest.
- Leturno told police she knew of no suspicious behavior by Al.
- The district has solid policies related to Title IX, reporting suspected abuse, and grieving harassing conduct.
- Leturno tells King “off the record” that she used to date Al, found him “creepy,” and later observed Al and the student in some very unusual situations.
- The superintendent is considering a RIF.
- Leturno is on the RIF list.

Framework

Rule 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or . . .

(b) . . . as the lawyer reasonably believes necessary to:

1. prevent reasonably certain death or substantial bodily harm;
2. prevent the client from committing a crime or fraud, through use of the lawyer’s services, that is reasonably certain to result in substantial injury to financial interests or property;
3. prevent or rectify substantial injury to financial interests or property, resulting from the client’s commission of a crime or fraud through use of the lawyer’s services;
4. secure legal advice about the lawyer’s compliance with these Rules;
5. establish the lawyer’s claim or defense against the client; or
6. comply with other law or a court order . . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of client information.
Framework

Comments

• A lawyer must not reveal confidential client information without informed consent.
• Confidentiality reinforces the bond of trust that is the hallmark of the client-lawyer relationship.
• Confidentiality applies to all information related to the representation, regardless of source.
• The crime or fraud exception only applies to reasonably certain harm involving substantial bodily harm or substantial property damage through use of the lawyer’s services.
• The duty of confidentiality survives the attorney-client relationship.

Question

Can King tell the district about the new information from Leturno?

A. Yes, because King has an obligation to tell the district when an employee is deliberately indifferent.
B. Yes, because of the joint representation of the parties.
C. No, because Leturno made comments “off the record.”
D. No, because, on these facts, no exception exists to King’s obligation of confidentiality.

Go to http://polls.walshgallegos.com
Question

Can King tell Leturno she may soon lose her job?

A. No, because the superintendent reasonably expects the information about the reduction in force to remain confidential.
B. No, because she deserves to lose her job for poor judgment.
C. Yes, because the superintendent is not the client.
D. Yes, because of the joint representation of Leturno and the district.

Go to http://polls.walshgallegos.com

Question

Does King have any other obligations?

A. Yes, because King must immediately report that Leturno has obstructed an investigation.
B. Yes, because King cannot obtain informed consent from the district to continue joint representation.
C. No, because King is touring the Tillamook cheese factory, and that covers a multitude of sins.
D. No, because King agreed to defend both the district and Leturno and both parties agreed to the representation.

Go to http://polls.walshgallegos.com
The Plot Thickens

• Assume Leturno also told King that the student once asked if she thought Al was a good kisser, adding, “I’d give him four stars.”
• Can King explain to the coverage provider exactly how much worse the defense prospects have become?
• Can he advise Leturno that her failure to report suspected abuse may take her outside of defense coverage?
• Can King run this scenario by anyone?

Organization As Client (Rule 1.13)

Scenario
• Sally Savvy represents Angel Falls School District, providing general legal advice to board members and administrators.
• Sally avoids being social media friends with clients, except for AFSD board member Cherie Chapman, an acquaintance from Sally’s gym who is also a cheerleader mom.
• Sally has noticed Cherie’s recent disparaging and taunting posts about a cheer rival, including statements that she is going to “get rid of that slutty head cheerleader.”
• The student’s mother, the middle school principal, has started posting requests that Cherie leave her child alone.
• The principal occasionally calls Sally for advice on campus matters.
• She has called Sally for help handling Cherie.
### Framework

#### Rule 1.13

(a) A lawyer employed by an organization represents the organization through its authorized constituents.

(b) If a lawyer for an organization knows that an officer or employee intends to act in a matter related to the representation that is a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury, the lawyer shall proceed as is reasonably necessary in the best interest of the organization and shall refer the matter to higher authority in the organization.

(f) In dealing with an organization’s constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization’s interests are adverse to the constituents’.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the conflicts rules. The organization’s consent to dual representation shall be given by an official other than the individual to be represented.

### Framework

#### Comments

- An organization can only act through its constituents.
- Not all constituents are clients of the lawyer.
- The lawyer may only disclose to constituents what is impliedly authorized by the organization.
- The lawyer must act as *reasonably necessary* in the *best interest* of a district when the district is likely to be *substantially injured* by the act of a constituent.
- A government lawyer may question conduct more extensively because the public interest may permit a different balance to be struck between confidentiality and preventing wrongful conduct.
Question

Does Sally have an obligation to do anything with regard to Cherie’s behavior?

A. Yes, because Cherie has threatened to commit a crime.
B. Probably not, because Cherie’s conduct is personal and not likely to result in substantial injury to the district.
C. Probably, because Cherie’s conduct will reflect negatively on the district.
D. No, because Cherie is Sally’s workout buddy.

Go to http://polls.walshgallegos.com

Question

Can Sally advise the middle school principal on this matter?

A. No, because her duty of loyalty can only lie with the board.
B. Yes, because they have previously established an attorney-client relationship.
C. No, because the principal is not acting as a constituent seeking advice on behalf of the district.
D. Yes, because the district has agreed to pay Sally for advising the board and administrators.

Go to http://polls.walshgallegos.com
The Plot Thickens

• What if the principal is calling for discipline advice because Cherie’s daughter has started harassing the rival on campus?
• What if Cherie is posting on her public “Cherie Chapman, Angel Falls SD Board Member” page?
• What if Cherie is instead posting flirtatious comments, sending texts, and taking small gifts to a male student at cheer practice?

Lawyers should never marry other lawyers. This is called in-breeding; from this comes idiot children... and other lawyers.

You gain strength, courage and confidence by every experience in which you really stop to look fear in the face. You are able to say to yourself, “I have lived through this horror. I can take the next thing that comes along.” You must do the thing you think you cannot do.
– Eleanor Roosevelt

… except when it violates Model Rule 1.1.

– Todd and Kristi Clark