

PART ONE: PROBLEMS OF BEING A LAW STUDENT

PROBLEM # 1*

Tom is a first year law student. One day while talking with a group of other students, Tom tells them that he was admitted to the Law College and received a scholarship because the Law College thought that he was African-American. He stated that he believed that his LSAT score and GPA would have either placed him on a waitlist for the Law College or maybe resulted in his even being denied admission, but as an African-American with his scores he would be admitted immediately and receive a scholarship. Tom falsely stated on his application that he was from an African-American community that had very few college-educated people and also that he was the first person in his family to go to college. Tom is Asian-American and both of his parents have college degrees.

Tom was mistaken in his belief because the Law College does not consider race in its admissions or scholarship awards. Thus, indicating that he was African-American did not benefit him in any way. Harry was in the group that heard Tom's story. He believes that what Tom did was wrong even though Harry knows that race is not a factor in admissions at the Law College.

SYNOPSIS: A law student admits providing false information on his Law College application.

QUESTIONS:

1. Should Tom confess this to the Dean of the law school? Why? What are the likely consequences if he does? If he does not?
2. Will Tom have to report this incident to the Bar Commission? What are the likely consequences if he does? If he does not?
3. Does Harry or any of the other members of the group have any obligation as a fellow law student to report Tom's conduct? To the Dean? To the Bar Commission?
4. How do you think the law school should respond when they learn about this situation? Should they dismiss Tom? Should they clarify the Law College's admission policies to the entire student body? Should there be an institutional response at all?

GUIDELINES:

1. Law College Application

The Law College application states:

Are you a first generation college student? A "first-generation college student" refers to an individual whose parents do not have college degrees. _____

Do you come from a community where it is unusual for people to attend college or law school? ____

If you respond yes to either of these questions, please be sure to attach a detailed explanation as to why you responded yes.

* * *

By transmitting this application electronically, I hereby certify that the information I have provided in this application and in any supporting documents is complete and correct to the best of my knowledge. I agree to promptly inform the College of Law of any changes in any matters covered herein, even if such changes occur after I have submitted my application or enrolled as a student. I understand that any false or misleading information in connection with this application may be the basis for revocation or denial of admission, or if admitted, dismissal from the College of Law.

2. Nebraska Rules of Professional Conduct (§§ 3-501.0 to 3-508.5)

§3-508.1 Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,

§ 3-508.4. Misconduct

It is professional misconduct for a lawyer to:

. . . .

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. . . .

3. Bar Commission Procedures

The Nebraska State Bar Commission requires a certification from the Dean that the bar applicant has a JD. The certification also notes relevant character and fitness information from the law school's files, including information that was disclosed on the law school application and that was reported during the student's time in law school. Other bar commissions may require the law school to provide a copy of the bar applicant's law school application.

PROBLEM # 2

Herbie is a first year law student. Soon after classes started in the fall, Herbie updated his LinkedIn and Facebook profiles to state "lawyer" in the fields indicating his profession.

SYNOPSIS: A law student holds himself out as a lawyer on social media.

QUESTIONS:

1. Is there a meaningful difference between Herbie holding himself out to be a lawyer in a professional profile versus a social network or dating site profile?

2. Would it make any difference if Herbie used the term “attorney” instead of “lawyer”?
3. Can Herbie hold himself out to be an “attorney” or a “lawyer” on social media after he graduates but before he passes the bar exam?

GUIDELINES:

Nebraska Supreme Court Rules--Chapter 3, Article 10 (§§ 3-1001 & 3-1003)

§ 3-1001 General definition.

The “practice of law,” or “to practice law,” is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

....

(E) Holding oneself out to another as being entitled to practice law as defined herein.

§ 3-1003 General prohibition.

No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.

PROBLEM # 3*

You are outside the Law College library and see a White student approach a group of Hispanic students. The White student asks them a question, but they don’t hear him. When the Hispanic students don’t respond right away, the White student says, “Don’t you speak English?” and walks away.

SYNOPSIS: You overhear a student make an insensitive remark to other law students.

QUESTIONS:

1. What can you do in this situation?
2. Who would you approach and what would you say?

GUIDELINES:

1. UNL Statement on Diversity

Diversity and inclusion are central to the University of Nebraska–Lincoln’s mission and its pursuit of excellence. The university is continually reviewing its efforts for enhancing diversity and inclusion.

2. Nebraska Rules of Professional Conduct

§ 3-508.4. Misconduct

It is professional misconduct for a lawyer to:

...

(d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

...

COMMENT

...

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

3. American Bar Association Model Rules of Professional Conduct

8.4 Misconduct

It is professional misconduct for a lawyer to:

...

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

PROBLEM # 4

Amber is a 1L student. She returns home to Idaho during winter break to attend a large family gathering. A cousin, May, tells Amber that another cousin named June is getting a divorce. June comes over to join the conversation, and together the three cousins discuss June's frustration with her husband. Amber learns that June's husband is unemployed but accumulating debt and refusing to spend his free days caring for their daughter, September. June asks Amber what she can do to help protect herself from her husband's debts and ensure that she gets custody of September during the divorce process.

SYNOPSIS: A relative asks a law student for legal advice.

QUESTIONS:

1. What should Amber tell June?
2. Would it make a difference if Amber was a 2L or 3L student who had taken Family Law? Or if she worked on divorce cases for a law firm or in the Family Law Practice course?

3. Would it make a difference if Amber graduated from law school and passed the bar in Nebraska?

GUIDELINES:

Nebraska Supreme Court Rules--Chapter 3, Article 10 (§§ 3-1001 - 3-1003)

§ 3-1001. General definition.

The “practice of law,” or “to practice law,” is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

(A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

(B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person. . . .

. . . .

(E) Holding oneself out to another as being entitled to practice law as defined herein.

§ 3-1002. Other definitions.

(A) Definition of “Nonlawyer”: The term “nonlawyer” means any person not duly licensed or otherwise authorized to practice law in the State of Nebraska. . . .

§ 3-1003 General prohibition.

No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.

PROBLEM #5

Matt and John are first year law students and roommates. During the fall semester, they attend the Student Bar Association’s Barristers Ball. Matt drives them both to the ball in his car. Over the course of the evening, both of them have a great deal of alcohol to drink.

After midnight, they decide to go home. John asks Matt if he is “OK” to drive. Matt assures him that he is fine. A short distance from the bar, Matt runs a red light. He is pulled over by a watchful police officer. The officer detects the odor of alcohol, conducts sobriety tests and arrests Matt for drunk driving.

Matt subsequently pleads nolo contendere to the charge. His license is suspended and he pays a substantial fine. Does Matt need to tell anyone about this incident? Does John?

SYNOPSIS: A law student is caught driving under the influence of alcohol.

QUESTIONS:

1. Should Matt confess this to the Dean of the law school? Why? What are the likely consequences if he does? If he does not?
2. Will Matt have to report this incident to the Bar Commission? What are the likely consequences if he does? If he does not?
3. Does John have any obligation as a fellow law student to report Matt's conduct? To the Dean? To the Bar Commission?
4. How do you think the law school should respond when a law student is arrested? Or when a student pleads nolo contendere to a crime? Should there be an institutional response at all?

GUIDELINES:

1. Law College Application

The Law College application states:

12. Answer the following questions "yes" or "no". If you answer any of the questions "yes," you must upload a separate document and provide the additional information requested.... Because of the high ethical standards to which lawyers are held, the failure to disclose an act or event such as the ones described below is often more significant, and leads to more serious consequences than the act or event itself. Failure to provide truthful answers, or failure to inform the College of Law of any changes to your answers, may result in revocation of your admission, or if admitted, dismissal from the College of Law or denial of permission to practice law by the state in which you seek admission. All states assess the character, fitness and other qualifications of applicants for admission to the bar. You should contact the appropriate bar officials of the state in which you intend to practice to determine the applicable character and fitness and other requirements.

1. Have you ever been ticketed, cited, charged with or arrested for a crime other than a minor traffic violation? Check "yes" even if the offense was expunged from your record, you went through a pre-trial diversion program, your record was sealed or you were told you did not need to disclose the matter. If "yes," please explain in detail the nature of the crime, the circumstances surrounding the ticket, citation, charges or arrest and the disposition. . . .

....

By transmitting this application electronically, I hereby certify that the information I have provided in this application and in any supporting documents is complete and correct to the best of my knowledge. I agree to promptly inform the College of Law of any changes in any matters covered herein, even if such changes occur after I have submitted my application or enrolled as a student. I understand that any false or misleading information in connection with this application may be the basis for revocation or denial of admission, or if admitted, dismissal from the College of Law.

2. Nebraska Rules of Professional Conduct (§§ 3-501.0 to 3-508.5)

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- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,

3. Bar Commission Procedures

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PROBLEM #6

Late one evening while you are drinking a cup of coffee at Starbucks you overhear Lance and Sybil, two of your classmates, talking about class. You learn that Lance helped Sybil with the answers to a take-home examination contrary to the professor's instructions. No one else has overheard this conversation. Should you do anything with the information you have overheard?

SYNOPSIS: A law student overhears a conversation about classmates cheating on an examination.

QUESTIONS:

1. Do you have a duty to report the cheating? Would you report it?
2. Would it matter to you if the students involved were in their last semester of law school?

GUIDELINES:

The College of Law Honor Code

The College of Law Honor Code states:

We, the students and faculty of the University of Nebraska College of Law, desiring to prepare graduates for a profession that requires high trust, honor, and irreproachable conduct, and affirming that any dishonest means used by law students in such preparation would be incompatible with such requirements, hereby adopt this Honor Code ("Code").

. . . For this Code to be effective, it is essential that all members of the law school community accept responsibility for reporting all possible violations.

....

1.020 Conduct Incompatible With Professional Standards

- (1) It is a violation of this Code for any student to engage in any conduct which, with respect to any academic matter,
 - (A) Is intended to gain for that student or any other student an unfair advantage; or
 - (B) Is intended to disadvantage unfairly any other student.

- (2) By way of enumeration but not by way of limitation, the following are examples of conduct that violates section 1.020(1).
 - (B) With respect to assignments, projects, examinations, papers, or competitions,
 - (i) Intentionally consulting or using any sources, animate or inanimate, specifically prohibited by the Instructor or by the rules of the competition.

PROBLEM #7

Ann, a first year law student, had a writing assignment with a due date of November 2. A draft of that assignment was due ten days before the final work product had to be submitted.

Ann started working on the research aspect of the assignment well before the due date. She spent a lot of time trying to find perfect cases to use but somehow never got around to writing the required draft. The day before the draft was due, she threw something together at the computer, using photocopies of the cases and articles and materials downloaded from the Internet as well as notes she took while doing her own research. By not revising her work at all and just dropping in a handful of citations before printing her paper, Ann managed to meet the draft deadline.

Ann's professor returned her draft with written comments, remarking very favorably on the writing and analysis in a few paragraphs within the draft. As she looked over the comments, Ann realized that the parts of the paper that her professor praised were those that she had taken from the notes she made when she downloaded a law review article from the Internet and to which she had made NO citation. While Ann had paraphrased the author's works rather than merely copying them, she had not given the article's author credit for the concepts used.

Ann decided not to add citations to those paragraphs because they were the only part of her paper that got positive comments. The "borrowed" parts of the paper constituted about one full page out of the 12 pages in the final version she submitted. Did Ann commit plagiarism?

SYNOPSIS: A student fails to attribute portions of her written work to the original authors.

QUESTIONS:

1. Should Ann admit what she did to her legal writing professor before she gets a grade on her paper? Should she wait to see what grade she gets and whether the grade seems to have been influenced by the "borrowed" portions of the paper?

2. Suppose Ann completely forgot the source of the ideas she used without attribution, and turned in her final paper without giving credit to the author of the law review article at all. Would that be plagiarism?
3. Suppose this paper was not for submission to Ann's legal writing professor. Suppose instead that this was a paper that Ann wrote on behalf of a client while a summer associate for a law firm. What should be the consequences if a lawyer commits plagiarism while in practice?

GUIDELINES:

1. The College of Law Honor Code

The Law College Honor Code states that “[i]ntentionally engaging in plagiarism” is a violation of the Code.

Consider the following guidance about plagiarism from Professor (emeritus) Craig Lawson:

Plagiarism: What it is, and how to avoid it

You plagiarize when you claim that you have conceived and written something that was actually conceived or written by another. You make an implicit claim that you have conceived and written something every time you sign your name to written work. If the ideas in any work that you sign, or the words and organization that you use to convey those ideas, came from another's work, you must properly attribute them to their author. If you do not, your name on the paper will make your reader think that the words and ideas are yours, and you will have plagiarized them.

How does a writer properly attribute another's work to its author? First, you must *always* cite ideas and expressions to the author and work where you found them, unless the ideas are so widespread that they are held as common knowledge, and your audience would acknowledge how commonly held they are. Second, you must use quotation marks around any words, expressions, and phrases that you did not write, but found in someone else's work. Third, you must rewrite in your own words any expressions that you do not put into quotation marks. It is not enough to monkey with a few words; you must express the thought in your own words. If an impartial reader were to compare your words to the original, she should feel that you wrote your own words; she should *not* feel that you merely edited or altered the original. (And . . . you must still attribute the thought to its author with a proper citation.)

2. Nebraska Rules of Professional Conduct

§3-508.4. Misconduct

It is professional misconduct for a lawyer to:

...(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation

§3-503. Candor toward the tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

PROBLEM #8

Jim signs up to participate in the moot court competition in the fall semester of his second year. He notes his participation on the resume that he gives to the law school's Career Development Office. The resume is forwarded to several law firms who will interviewing at the law school and two have set up interviews with Jim. After Jim files the required brief in the moot court competition, but before he participates in the oral argument, he pulls out of the competition. Should Jim do anything before interviews begin?

SYNOPSIS: You drop out of moot court competition after noting your participation on your resume.

QUESTIONS:

1. Should Jim correct his resume?
2. Should he inform firms who have contacted him for interviews that he is no longer participating in the moot court competition? What if moot court participation was one of the selection criteria listed by the firms?

GUIDELINES:

1. The College of Law Honor Code

The College of Law Honor Code states:

1.020 Conduct Incompatible With Professional Standards

- (3) Notwithstanding the "academic matter" requirement of section 1.020(1), it is a violation of this Code for any student:
- (A) Intentionally to misrepresent his/her academic record to any educational institution, potential employer, or actual employer

2. The National Association for Law Placement (NALP)

PART III. PRINCIPLES FOR CANDIDATES

B. Throughout the employment search process candidates should represent their qualifications and interests fully and accurately.

1. Candidates should be prepared to provide, at employers' request, copies of all academic transcripts. Under no circumstances should academic biographical data be falsified, misrepresented, or distorted either in writing or orally. Candidates who engage in such conduct may be subject to elimination from consideration for employment by the employer,

suspension or other academic discipline by the law school, and disqualification from admission to practice by bar admission authorities. . . .

PROBLEM #9

Alexa is a law student clerking for a local law firm. She is helping one of the attorneys in the firm with a personal injury case. The firm's client is the defendant and the plaintiff has sued the defendant for damages from a car accident. The plaintiff is claiming that her injuries are preventing her from engaging in her normal activities. The attorney in the firm handling the case asked Alexa to look at the plaintiff's Facebook page and look for pictures or posts which show that plaintiff is engaging in her normal activities. Should Alexa have any concerns about doing this?

SYNOPSIS: A law clerk has been asked to investigate an opposing party on social media.

QUESTION:

1. If there is no public access to the plaintiff's page, should Alexa seek to friend the plaintiff on Facebook?

Nebraska Rules of Professional Conduct

§3-504.1. Truthfulness in statements to others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person . . .

§3-504.2. Communication with person represented

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

§3-508.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct knowingly assist or induce another to do so or do so through the acts of another;
...
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation

PART TWO: PROBLEMS OF BEING A LAWYER

PROBLEM #10*

You are a new associate in a law firm. Your friend, another new associate, tells you that a senior partner just assigned a case to him for one of the firm's wealthiest clients. Your friend tells you he was selected for this work out-of-turn because, according to the partner, the associate who should have gotten the assignment is a woman and the client does not want women working on their cases. Your friend tells you he believes the partner.

SYNOPSIS: You are a new lawyer and your friend, another associate, believes a partner in the firm is engaging in discrimination against women to satisfy the wishes of a client.

QUESTIONS:

1. What would you tell your friend to do?
2. Would you report this conversation to anyone else in the firm?

GUIDELINES:

1. Nebraska Rules of Professional Conduct

§ 3-508.4. Misconduct

It is professional misconduct for a lawyer to:

...

(d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

COMMENT

...

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

2. The American Bar Association Model Rules of Professional Conduct

8.4 Misconduct

It is professional misconduct for a lawyer to:

...

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

PROBLEM #11

You are a new associate in a law firm. You have a matter assigned to you by a senior partner. It is a case for one of the firm's wealthiest clients in which the client claims her gardener negligently over-fertilized her roses and made them unfit for the flower show. She claims \$5000 in damages. The gardener is indigent and has been unable to obtain work since being "blacklisted" by your client. The gardener is being represented pro bono by a lawyer who is extremely busy and is unlikely to spend much time on the matter. You have just deposed the gardener, and you are convinced the case is petty and spiteful. If you win, you will never be able to collect a judgment. The gardener has no assets and appeared quite distraught about the whole matter. This is your first case and you are anxious to make a good impression on your employer. You are also anxious to take a case to trial. What should you do?

SYNOPSIS: You are a new lawyer who has been asked to take a petty and mean-spirited case to trial by a wealthy client of the firm.

QUESTIONS:

1. What would you tell the supervising partner about the case?
2. What would you tell the client about the case?
3. If you thought continuing with the case was wrong, but your boss said to continue anyway, what would you do?

GUIDELINES:

Nebraska Rules of Professional Conduct

Preamble: A lawyer's responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it

§3-501.2 Scope of representation and allocation of authority between client and lawyer

(a) . . . [A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued. . . .

§3-502.1 Advisor

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.

§3-503.1 Meritorious claims and contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous

§3-505.2 Responsibilities of a subordinate lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

PROBLEM #12

An old and dear friend, Arnie Becker, comes to you and asks you to represent him in some problems he's having with the Internal Revenue Service. Arnie is plainly a nervous wreck and says he needs both your friendship and professional expertise to support him through this difficult time. Arnie is strapped for cash and the IRS alleges that he has understated his income, underpaid his taxes and failed to report and withhold employee taxes for several years. You have put a lot of time and energy into formulating and negotiating a solution with the IRS. Meanwhile, Arnie has stopped paying your bills. The managing partner of your firm tells you to confront Arnie and require him to pay all past due amounts and a deposit for future billings. If Arnie will not do so, the Managing Partner has instructed you to withdraw from representing him. What do you do?

SYNOPSIS: The managing partner in your firm wants you to dump one of your clients who is not keeping current on his bills, but that client is an old and dear friend in deep trouble with the IRS.

QUESTIONS:

1. When can you stop representing a client?
2. When should you stop representing a client?
3. What should you tell the Managing Partner? What should you do if the Managing Partner insists that you no longer represent Arnie?

GUIDELINES:

Nebraska Rules of Professional Conduct

§3-501.16 Declining or terminating representation

(b) . . . [A] lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

. . . .

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled

PROBLEM #13

In January of this year, Ms. Nita Newlife filed for divorce against her husband, David, in Lancaster County. You represent David. In the divorce, Nita asked for no alimony, but she did ask for custody of her two minor children and child support for them. She was represented by an attorney in Lancaster County. In mid-February, you filed an answer and counterclaimed for custody of the children. In March, Nita moved away and her lawyer withdrew. She sent her new address and telephone number to you. Last week, you received word that the divorce case would be called to trial today. You noticed that the clerk's notice to Nita was sent to her old, local address. You appear at the trial call, and you see that Nita is not present. You know that if you proceed to put on evidence that David will be granted a divorce and custody of the children. Should you proceed to trial?

SYNOPSIS: Your unrepresented adversary does not appear for trial, probably because she did not receive notice.

QUESTIONS:

1. Should you notify the court or the clerk about the wife's new address?
2. Does it matter if your client forbids you to reveal the wife's address?
3. Does it matter to your answer whether the children are living with the mother?
4. Do you owe any special duties to an unrepresented party?
5. Is a lawyer obligated to take every possible procedural advantage of an opponent that is allowed by law?

GUIDELINES:

Nebraska Rules of Professional Conduct

§3-503.3 Candor toward the tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

....

(3) offer evidence that the lawyer knows to be false. . . .

....

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT TO RULE 3.3

. . . . A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. . . .

PROBLEM #14

You've just been hired as in-house counsel for Utility Vehicles, Inc., a custom manufacturer of four wheel drive vehicles. Although the media has been covering lawsuits about the safety of such vehicles very closely, no claims have yet been filed against your company. The President of Utility Vehicles, Inc. calls you into his office your first week, welcomes you on board and then instructs you to make a thorough search through every department of the company and destroy any documents, memos, correspondence or reports relating to tests conducted on their vehicles, including any customer complaint letters they may have received. What should you do?

SYNOPSIS: You've just been hired as in-house counsel and the president of the company wants you to destroy all the documents you can find about their vehicle's safety records and crash testing.

QUESTIONS:

1. What will happen to you if you go along with what the President is suggesting? Could you get into trouble for merely following orders?
2. Are your only options to either refuse to destroy the documents or quit your new job?
3. Can you get fired for refusing to go along? Do you have to report this as something fraudulent? Is it something fraudulent?

GUIDELINES:

Nebraska Rules of Professional Conduct

§3-503.4 Fairness to opposing party and counsel

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document

or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

....

§3-501.13 Organization as client

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

(b) If a lawyer for an organization knows that an officer . . . intends to act . . . in a matter that is related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

§3-508.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice. . . .

PROBLEM #15

Your clients Lester and Dorothy Witherspoon have sued Buddy Miller for back injuries Lester allegedly suffered when Miller's tractor trailer overturned on a snowy road and struck the Witherspoons' car. According to both Lester's and Dorothy's sworn testimony at their depositions, their car was stopped by the side of the road and Lester was standing in front of it when the Miller vehicle's impact from behind caused his own car to knock him down. Dorothy was inside a nearby Pancake House and saw all this happen through the window. After months of investigation, as you are about to go to trial, you stop by the Pancake House to interview some of the employees. Several employees remember the accident. To your surprise, one of them, Rhonda, seems to recall that Lester Witherspoon was in the restaurant with his wife when the accident happened, not out by the car at all. What should you do, particularly if you know your opponent hasn't bothered to talk to these people? What if you were Buddy Miller's attorney interviewing the Pancake House employees, on the eve of trial? What would you do then?

SYNOPSIS: On the eve of trial, you find out from eye witnesses that your client may be lying about the injuries he allegedly received in an auto accident.

QUESTIONS:

1. If your clients lie to you, can you just drop them?
2. Should you try to stop this from going to trial, since there may not be any case? If so, how?

GUIDELINES:

NEBRASKA RULES OF PROFESSIONAL CONDUCT

§3-503.3 Candor toward the tribunal

a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

.....

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

.....

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage . . . in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

END