

Professionalism in the Practice of Law



Scenario I: Default Dilemma



After three grueling years in law school, you obtain a plum position at a local law firm. Your supervising attorney, Mr. Bigg, assigns you to work on a case involving a real estate transaction “gone bad.” Your firm represents Homer Homebuyer in the transaction, who is an old friend of Mr. Bigg.

Scenario I: Default Dilemma



Homer is furious with Sam Seller because Sam sold his home to another individual after agreeing that he would sell it to Homer. In fact, Homer claims that he has already paid for the property and performed various improvements to the home.

Scenario I: Default Dilemma



On June 1, 2002, you file on behalf of Homer an action against Sam for breach of contract and unjust enrichment. On July 1, 2002, Sam, through his attorney, files a motion for extension of time to file an answer to the petition. The court grants the motion, and Sam receives thirty days in which to respond.

Scenario I: Default Dilemma



Homer calls you on August 1, 2002, demanding that a motion for default judgment be filed against Sam. Seeing this as a “slam dunk” case (and anxious to please the client and Mr. Bigg), you file the motion, without first contacting Sam’s attorney.

Scenario I: Default Dilemma



On August 6, 2002, you enter a default against Sam. You confirm the default on August 11, 2002, and a judgment is rendered by the court this same date. The judgment requires Sam to pay Homer \$50,000. On August 12, 2002, Sam’s attorney files Sam’s answer to Homer’s petition. Later learning that a default judgment has been rendered, Sam’s attorney appeals the court’s judgment.

**Scenario I:
Default Dilemma**



Was your conduct professional?

1) Yes. An attorney has an obligation to zealously represent his client and quickly pursuing the default judgment was appropriate.

**Scenario I:
Default Dilemma**



Was your conduct professional?

2) Yes. The Code of Civil Procedure does not require that counsel attempt to notify opposing counsel of his intent to confirm a default against opposing counsel's client.

Scenario I: Default Dilemma



Was your conduct professional?

3) No. The courts have ruled that an attorney's failure to notify opposing counsel of his intent to confirm a default against an opposing counsel's client in an on-going action is an "ill practice" under La.C.C.P. art. 2004.

Scenario II "Courthouse Communication"



After practicing law for three years, you are retained by a client to handle a promising and potentially lucrative personal injury matter. One morning on the way to the courthouse, you see the judge who is assigned to your case entering the courthouse along with his law clerk. You approach the judge and his law clerk and ask the law clerk to leave you and the judge alone for a few minutes.

Scenario II

“Courthouse Communication”



At the judge’s direction, the law clerk leaves and goes into the courthouse.

Once alone with the judge, you ask him about the procedure for giving a “gift” to him. The judge advises you that judges are barred from accepting gifts. You then state that you want to give a monetary contribution to a judge. The judge informs you of the monetary limitations

Scenario II

“Courthouse Communication”



and procedural requirements for giving a campaign contribution.

You then make a reference to the case in the judge’s division in which you are counsel for the plaintiff. You ask the judge how soon the case could be set on the docket, stating that your client is “badly hurt.” You also comment that the defendant in the case has “deep pockets.”

Scenario II “Courthouse Communication”



You then shift position closer to the judge and ask the judge “What if I wanted to give you \$5,000.00?” You then trace a box in the air with your hands and tell the judge, “This conversation is just between me and you.”

Scenario II “Courthouse Communication”



At that point, the judge abruptly terminates the conversation and enters the courthouse.

Was your conduct proper?

- a. Yes, such a communication with a judge is proper.

Scenario II “Courthouse Communication”



- b. No, such a conversation constitutes an ex parte communication with a judge in violation of Rule 3.5(a) and (b).
- c. No, such a communication creates an appearance of impropriety and has the potential to cause actual harm to the administration of justice in violation of the Rules of Professional Conduct 8.4(a) and 8.4(d).
- d. b and c

Scenario II “Courthouse Communication”

Rule 3.5(a) and (b) provide:

A lawyer shall not:

- (a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) Communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

Scenario II

“Courthouse Communication”



Rule 8.4(a) and (d) provide:

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce to do so, or do so through the acts of another;

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(d) Engage in conduct that is prejudicial to the administration of justice.

Scenario III

Suspicious Minds

- Run A. Muck represented Battered Betty in a suit against her neighbors for an assault that occurred in her home. Shortly before the start of trial, Muck gave opposing counsel, Al Seeit, some exhibits which included a medical report from Dr. Fix All. The report contained the following language:

Scenario III Suspicious Minds

- Upon reviewing my chart of January 18, 2001, I saw Ms. Betty in the office on that day. **The patient came in having alleged that she was accosted.** She suffered some trauma to her rib cage and right shoulder, per history. . . .

Scenario III Suspicious Minds

- Seeit noticed a suspicious gap after the word “accosted” and that the period appeared to have been inserted in ink. At trial, Muck attempted to introduce Dr. Fix All’s medical report but Seeit objected to the authenticity of the document. At Muck’s suggestion, the court left the record open until a full copy of Dr. All’s report could be filed.

Scenario III

Suspicious Minds

- Shortly thereafter, the judge received a copy of Ms. Betty's report from Dr. All's office. The second sentence read: "**The patient came in having alleged that she was accosted at work.**" See it filed a complaint against Muck with the Office of Disciplinary Counsel.
- Did Muck run afoul of the Code of Professionalism?

Scenario III

Suspicious Minds

- Answer: Yes. The Code of Professionalism, which is aspirational in nature, provides, "I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue."

Scenario III Suspicious Minds

- 2. Did Muck violate the Rules of Professional Conduct, which set forth the minimum level of acceptable conduct for attorneys?
- Answer: Yes.

Scenario III Suspicious Minds

- 3. What Rule or Rules did he violate?:
 - a. 3.3(a)(3) (offering evidence the lawyer knows to be false).
 - b. 3.4(a) (unlawfully altering a document having potential evidentiary value).
 - c. 3.4(b) (falsifying evidence).
 - d. 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).
 - e. 8.4(d) (engaging in conduct prejudicial to the administration of justice).
 - f. All of the above.

Scenario III

Suspicious Minds

- Answer: He was suspended from the practice of law for violating “f”.
- Did Al Seeit, opposing counsel, act properly when he reported Run A. Muck to the Office of Disciplinary Counsel?

Scenario III

Suspicious Minds

- Answer: Yes. Rule 8.3 requires an “lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects,” to inform the Office of Disciplinary Counsel of the violation.

Scenario III

Suspicious Minds

On the other hand:

- While we are obligated to report misconduct, the Code of Professionalism and the Rules of Professional Conduct prohibit attorneys from falsely reporting another attorney.

Scenario III

Suspicious Minds

- The Code prohibits attorneys from making “unfounded allegations of unethical conduct about other counsel”.
- The Rules of Professional Conduct prohibit us from “engaging in conduct involving dishonesty, fraud, deceit or misrepresentation”.

Scenario IV

Suspicious Minds

- Run A. Muck's client, Iam Upthecreek, was faced with an exception of prescription, which was set for hearing on Friday, April 23, 1993, in the Louisiana district court of Judge Sorry Charlie. On April 17, 1993, Muck moved to continue the hearing on the grounds that he could not be present because he was scheduled for a 3 to 5 day trial in a Mississippi personal injury case.

Scenario IV

Suspicious Minds

- Judge Charlie learned the Mississippi trial had been completed in February 1993, two months prior to the prescription hearing and that the only matter remaining on the Mississippi docket was a motion for a new trial scheduled for Monday, April 19, 1993, four days prior to the prescription hearing. Judge Charlie denied Muck's motion for a continuance.

Scenario IV

Suspicious Minds

- On Tuesday, April 20, 1993, Muck called Judge Charlie's chambers and learned that the motion to continue was denied.
- Muck continued to insist that he could not be present at the prescription hearing because of the Mississippi trial.

Scenario IV

Suspicious Minds

- Judge Charlie held the prescription hearing but Muck did not appear and Mr. Upthecreek was unrepresented. In a subsequent show-cause hearing, Judge Charlie sanctioned Muck for misrepresenting facts to the court and reported him to the Office of Disciplinary Counsel.

Scenario IV

Suspicious Minds

- Did Muck run afoul of the Code of Professionalism?

Scenario IV

Suspicious Minds

- Answer: Yes. The Code of Professionalism, which is aspirational in nature, provides, "I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue."

Scenario IV

Suspicious Minds

- 2. Did Muck violate the Rules of Professional Conduct, which set forth the minimum level of acceptable conduct for attorneys?
- Answer: Yes.

Scenario IV

Suspicious Minds

- What Rule or Rules did he violate:
 - A. 3.3(a)(1) (making a false statement of material fact or law to a tribunal).
 - B. 8. 4(a) (violating or attempting to violate the Rules of Professional Conduct).
 - C. 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).
 - D. 8.4(d) (engaging in conduct prejudicial to the administration of justice).
 - E. All of the above.

Scenario IV

Suspicious Minds

- Answer: He was suspended from the practice of law for violating “e”.

Scenario IV

Suspicious Minds

- Did Judge Charlie act properly when he reported Run A. Muck to the Office of Disciplinary Counsel?

Scenario IV

Suspicious Minds

- Answer: Yes. Like attorneys, judges are required by the Judicial Canons to report attorney misconduct.

Scenario V:

You Can't Handle the Truth

In a criminal case, defense counsel, during the cross examination of a witness before a jury, drew four objections from the prosecutor. Here is what happened after the fourth objection was sustained:

- COURT: Let's stick to the issues.

Scenario V:
You Can't Handle the Truth

- DEFENSE: Well, you hadn't seen your daughter in three years. You don't know what kind of girl she was, right?
PROSECUTOR: Objection, Your Honor. That's highly improper.
- COURT: Objection sustained.

Scenario V:
You Can't Handle the Truth

- DEFENSE: Well, let me ask you, do you go to church? Maybe that's not objectionable. Let me ask you, do you go to church?
- PROSECUTOR: I'm going to object to that. What's the relevancy to that?
- COURT: Objection sustained. What's the relevancy?

Scenario V:
You Can't Handle the Truth

- DEFENSE: It has absolutely none, Your Honor. I just thought I'd ask it cause everything else nobody seems to want to get to the truth here.
- COURT: Are you accusing this Court of suppressing the truth, sir?
- DEFENSE: I may just have to do that later.
- COURT: I find you guilty of contempt of court.

Scenario V:
You Can't Handle the Truth

- DEFENSE: Then you find me so guilty.
- COURT: And, I will take care of that later. Now, proceed according to law.

Scenario V: You Can't Handle the Truth

- While the judge found defense counsel in contempt for the comment regarding the suppression of the truth and sentenced him to twelve hours in jail, the Louisiana Supreme Court reversed the conviction for contempt and vacated the sentence.
- Did defense counsel violate the Rules of Professional Conduct?

Scenario V: You Can't Handle the Truth

- Answer: No. The conviction for contempt was reversed.
- If the Supreme Court had affirmed the conviction, the Office of Disciplinary Counsel could have charged defense counsel with violating the Rules of Professional Conduct.
- Did defense counsel violate the Code of Professionalism?

Scenario V: You Can't Handle the Truth

- Answer: Yes. The Code of Professionalism requires us to conduct ourselves “with dignity, civility, courtesy and a sense of fair play.” Attorneys are not to “engage in personal attacks on other counsel or the court.”

Scenario V: You Can't Handle the Truth



- The Supreme Court recognized “[t]he trial of cases is a difficult and emotional task for both judge and lawyer. . . . The nature of the exercise requires discrimination and restraint. The absence of intelligent self-control, to say the least, creates an atmosphere not conducive to the search for truth.”

Scenario VI:
Go Directly to Jail – Do Not Pass Go

During a murder trial, defense counsel, Persistent Pete, had already been found in contempt three times by the trial judge. During defense counsel's closing argument, Pete was found in contempt a fourth time.

Scenario VI:
Go Directly to Jail – Do Not Pass Go

- PROSECUTOR: Our objections have been sustained three times or two times and he just did it again directly in violation of your order.

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- DEFENSE: That's not true at all, I didn't make personal attacks. I said the State's case doesn't correspond to the truth. I said you hid the truth. That's not--that is what I am saying, I have got a right to say it, I want to finish.

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- COURT: Mr. Pete, you can finish your closing argument within the guidelines that this Court sets forth. . . . I have stopped you about this personal opinion about the case and this personalizing to the prosecutors about them not being interested in the truth.
- DEFENSE: Come on, they are sitting there calling my guy a liar and I am calling their witness a liar.

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- COURT: You can argue the evidence in the case, not the prosecutors, nothing more. All of this outside of the record business about your personal opinions has no place--
- DEFENSE: Okay, I object to my closing.
- COURT: To the argument?

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- DEFENSE: I object to my argument being disrupted and by the State. Can we finish?
- COURT: You will finish with your tone lower.
- DEFENSE: Lower, sure.

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- PROSECUTOR: We want something done, I am sick of this.
- COURT: You will finish your closing argument.
- DEFENSE: And then I will go to jail, that's fine.

Scenario VI:

Go Directly to Jail – Do Not Pass Go

- COURT: You will finish your closing argument, Mr. Pete. I have warned you about this before we started. You are in direct disobedience to the orders that I gave you about proper conduct. This is highly and extremely improper.
- DEFENSE: Would you please hold me in contempt and let me finish.

Scenario VI:
Go Directly to Jail – Do Not Pass Go

- The judge found Persistent Pete in contempt and sentenced him to twenty-four hours in jail. Although the Louisiana Supreme Court reversed the three prior contempt convictions, the Court affirmed the trial judge's finding of contempt on the fourth count.

Scenario VI:
Go Directly to Jail – Do Not Pass Go

- The Court found “[r]elator's behavior far exceeded the limits of zealous advocacy. The argument itself was highly improper . . . but also because realtor leveled a vicious attack on the integrity of the prosecutor and the judge which is not in any manner suggested by the record.”

Persistent Pete spent twenty-four hours in jail.

- Did Persistent Pete violate the Code of Professionalism?

Scenario VI: Go Directly to Jail – Do Not Pass Go

- Answer:
Yes. The Code of Professionalism requires us to conduct ourselves “with dignity, civility, courtesy and a sense of fair play.” Attorneys “will not abuse or misuse the law, its procedures or the participants in the judicial process.” Attorneys are not to “engage in personal attacks on other counsel or the court.”

For More Information



- Call (504) 834-1488 or (800) 489-8411
- Visit our Website at:
<http://www.ladb.org>