CLIFFORD LAW OFFICES

CONTINUING LEGAL EDUCATION PROGRAM

PRESENTS

"The Changing Ethical Landscape of Litigation"

FEBRUARY 15, 2018

CLIFFORD LAW OFFICES

2018 Continuing Legal Education (CLE) Speakers

Robert A. Clifford, Founder and Senior Partner at Clifford Law Offices

Bob Clifford and Clifford Law Offices are significantly involved in complex mass tort and class action cases on behalf of thousands of plaintiffs in actions that have been national front page news. Indeed, Bob and his firm enjoy a reputation of being viewed as a leader of consumer advocacy, to whom people come when a problem of significant magnitude arises. Bob was named as the top attorney in the Chicago metropolitan area in Plaintiffs' Mass Tort Litigation Class Action work in 2016. The firm represents more than 2,000 consumers in the Volkswagen emissions scandal litigation. Bob also serves as lead counsel on behalf of over 2,000 patients in a data breach case filed in state court against Advocate Medical Group, Illinois' largest healthcare system, involving more than four million patients and is reportedly the largest healthcare date breach in the nation's history. In addition, Bob was recently selected as co-lead counsel in a class action filed against Pella Windows Corporation, a nationwide window manufacturer and distributor, which has been hotly contested litigation since 2006. U.S. District Court Judge James B. Zagel of the Northern District of Illinois appointed Clifford "as class counsel for his demonstrated skills in the field." Bob is also co-lead counsel in the Herbal Supplements class action, which claims certain store-brand brand supplements contain contaminants instead of herbal ingredients. More recently, the lead plaintiff in the NCAA concussion litigation retained Clifford Law Offices to represent him and to advocate on his behalf for those similarly situated.

Bob is particularly proud that his firm is consistently able to handle complex cases and has totaled more than $2 billion in verdicts and settlements in its near 30-year history. This is particularly impressive given that Clifford Law Offices has always been a small-to-mid-sized firm, having 13 partners and seven associates. Some of Bob's most notable cases include that involving the deaths and injuries of those trapped in a smoky stairwell during the fire of the Cook County Administration Building in 2003. Changes were made in the 911 response system in high rises as a result of that tragedy and the ensuing investigation. Bob and the firm also took the lead in the $70 million global settlement on behalf of those who were injured or killed in the collapse of scaffolding negligently hung at the John Hancock Center. The victims included two young women who were killed in the front seat of their car with their mothers, who were severely injured and who witnessed their horrific deaths from the back seat. Probably Bob's most notable case is the $29.6 million verdict he received for Rachel Barton, an internationally acclaimed violinist, whose legs were amputated, when she was caught in the door of a Metra train as she was trying to board.

In 2014, Bob was the lead negotiator in the $1.2 billion dollar settlement of numerous 9/11 property damage claims following the collapse of the Twin Towers in New York. Perhaps the most significant outcome of this litigation is that Clifford Law Offices, through Bob's efforts, was able to change the law regarding the limits of subpoena power in federal cases. Congress required all 9/11-related cases to go to trial in Manhattan, which meant subpoena power extended only 100 miles from the courthouse. A key witness on a ticket agent lived about 300 miles away. Clifford spearheaded a change with congressional leaders and a national law was passed that extended that judge's national subpoena power in that case, a significant accomplishment that allowed key testimony to be heard. Most recently, in March of 2015, he was lead counsel in a trial against Yellow Cab that resulted in a $25.9 million verdict on behalf of a lawyer who was injured in the back seat when the van crashed into a concrete barrier. Perhaps his greatest successes, have been in the field of aviation. Bob has represented those injured or killed in every major domestic airline crash over the past three decades.

He has consistently garnered multi-million dollar settlements and verdicts in aviation litigation. To name but a few, Bob has represented the families of loved ones aboard the Comair runway crash in Lexington, Kentucky of 2006, as well as families of victims of the Colgan Air Crash in Buffalo, New York in 2009, the Southwest Airlines crash at Chicago Midway Airport in 2005, and the families of victims aboard the Alaska Air crash in San Francisco of 2000.

Bob is constantly giving back to the profession through his frequent lecturing and continuing education programs. In the last year, he spoke at several high-profile programs, including a program on closing arguments at the ABA's Annual meeting, a mock trial with Chicago attorney Dan Webb involving the criminal "re-trial" based on the sinking of the S.S. Eastland (a pleasure ship that sank in the Chicago River 100 years ago and that killed 844), as well as a program in England entitled "Where Would You Try a Case? A Live Action Primer on Trial Skills in the U.S. and the U.K." to mark the 800th anniversary of the signing of the Magna Carta. In April of 2016, Bob donned his fedora in a portrayal of Al "Scarface" Capone during the mock trial of the famed Chicago gangster, as part of the ABA's Chicago meeting. The firm also sponsors an annual continuing legal education program that offers two hours of free professional responsibility/ethics credit to lawyers across the state. Now in its 11th year, registration for the program approaches 4,000 and is believed to be the largest single CLE program in the state. In last year's program, Bob Clifford moderated a three-member panel on "The Ethics of Pre-Trial and Trial Work."

Bob is also incredibly active in the American Bar Association and Chicago Bar Association, having been President of ABA's Section of Litigation as well as president of the CBA. He has also served as President of the Illinois Trial Lawyers Association and the Chicago Inn of court. Bob has been inducted into the International Academy of Trial Lawyers, American College of Trial Lawyers. He is a member of the American Association for Justice, the International Society of Barristers and the Inner Circle of Advocates. Additionally, Bob has been selected to be a member of the National Judicial College, a select assembly of legal and corporate leaders from across the country who are dedicated to furthering the education and training of judges. Bob was also appointed a member of the Illinois Supreme Court Committee on Civility, which was established to discover and promote appropriate ways to promote civility among Illinois lawyers. He also was elected to be a trustee of the Supreme Court Historical Society, a non-profit organization supporting historical research and publications of the Supreme Court of the United States. Currently, he serves on the Board of Overseers of the Rand Institute for Civil Justice, a California-based think tank, as well as on the American Bar Foundation, as Chair of the ABA's Fund for Justice and Education. He is also on the Board at SUNY Buffalo Law School's Advocacy Institute.

Bob has received many accolades in recognition of his excellence. Bob received the 2014 American Inns of Court Foundation Professionalism Award from the Seventh Circuit Judicial Conference. He was also named one of Chicago Magazine's Top 100 Most Powerful Chicagoans in 2013, 2014, 2015, and 2016, alongside the Mayor of Chicago and the Governor of Illinois. Martindale-Hubbell has given Bob and five of his law partners a perfect "5" rating. The firm was named to the National Law Journal's "Hot List" as one of the 10 Top Litigation Boutiques in the country in 2013, an honor that is most humbling. Best Lawyers has given the firm a Tier 1 ranking from the oldest legal peer review organization. Bob was again named in 2016 as the top Leading Lawyer in Illinois as well as one of the top Super Lawyers in the state.

Bob believes in giving back to the community, and to that end, has endowed the first Chair on Tort Law and Social Policy to his alma mater, DePaul University College of Law. This generous gift provides for an annual symposium where academicians, lawyers, and judges from across the country gather to speak on a timely topic dealing with the relationship between tort law and societal needs. He also sits on the Board of Directors of WTTW, Chicago's public television station, where he sponsors its closed captioning and is immediate past Chair of the Naples Children and Education Fund, a nonprofit dedicated to helping underserved and at-risk youth in Collier County, Florida.

Robert Burns, Professor of Ethics, Northwestern University School of Law

Robert Burns is the William W. Gurley Memorial Professor of Law at Northwestern University School of Law. He eaches evidence and professional responsibility in the Bartlit Center for Trial Advocacy and courses in civil, criminal, and administrative procedure.

He received the Dean's Teaching Award in 2009 and 2006 and was voted the Robert Childres Memorial Award for Teaching Excellence in 2002, 1998, and 1996. He is author of A Theory of the Trial (Princeton) and The Death of the American Trial (Chicago). The latter received a Choice Outstanding Academic Title Award in the Social and Behavioral Sciences for 2009.

He is also author of student texts and workbooks in Evidence, Professional Responsibility, and Trial Advocacy and many articles and book chapters.

Judge Deborah Mary Dooling (ret.), Cook County Circuit Court

Judge Deborah Mary Dooling (ret.) is assigned to the Law Division of the Circuit Court of Cook County. She presides over a jury room and hears pretrial conferences, dispositive motions, jury and bench trials and post-trial matters. Pursuant to orders entered by the Illinois Supreme Court, all mass tort litigation in the In Re Actos, In Re DePuy, and In Re Plavix Litigation in the State of Illinois has been assigned to Judge Dooling. From June of 1997, to April of 2003 and then from February 2004 to present, the numerous jury trials over which Judge Dooling has presided include multi-party actions for medical and legal malpractice, personal injury, breach of contract, product liability, and Structural Work Act. A number of these were lengthy, highly publicized, and complex; additionally, several of the cases involved third-party actions for contribution and indemnity. One such trial in a contribution case Willis v. Guzman, et al. No. 98L 3127 involved the invocation of the 5th Amendment by parties and witnesses in a civil trial. This case played a significant part in the federal investigation into the Secretary of State's Office under George Ryan.

In addition to her regular trial assignment, Judge Dooling is Supervising Judge of the Surety Section of the Circuit Court of Cook County. In 2003, Chief Judge Timothy C. Evans entrusted Judge Dooling with the responsibility of overseeing the authorization of all civil sureties and bond certificates in the Circuit Court. Judge Dooling was also additionally assigned to the Chancery Division. In Chancery, Judge Dooling was responsible for an individual calendar that included actions for equitable remedies such as injunctions, declaratory actions, specific performance, administrative hearings and many class actions including the City of Chicago v. Korshak, 01CH 4962 (Cir. Ct. of Cook Co. July 30, 2003), involving the pension benefits of the Chicago Police, Fire and Municipal employees.

Prior to her Law Division assignment, Judge Dooling presided over criminal matters, including a night narcotics and felony trial room. The trial room was an individual calendar, which involved all aspects of criminal practice, including pretrial discovery motions, felony jury and bench trials, fitness and restoration hearings, habeas corpus and post-conviction petitions involving constitutional issues. Many of the criminal cases also involved highly publicized matters as well as issues of first impression. One such case, People v. Earl Hawkins, 181 Ill.2d 41 (1998), presented the unique issue of post-conviction rights following an ancillary determination that the trial judge had been bribed. The Illinois Supreme Court unanimously affirmed Judge Dooling's decision in a published opinion.

In addition to her courtroom duties, Judge Dooling is a frequent participant in continuing legal education programs for law students, lawyers and fellow judges. As an adjunct professor of law at The John Marshall Law School, Judge Dooling has taught trial advocacy since 1992. Similarly, she has been invited annually to lecture about discovery issues in the context of medical malpractice actions at Loyola University Law School. As an appointed member of the faculty for the Illinois Judicial Conference, Judge Dooling taught a seminar on Professional Negligence in April 2001. In July of 2001, the Illinois Supreme Court appointed Judge Dooling a member of the Judicial Conference and a member of the Committee on Discovery procedures.

Additionally, Judge Dooling is a frequent moderator and speaker at Chicago Bar Association seminars, speaking on such topics as effective cross-examination and motion practice in a trial court in the Law Division. Judge Dooling also moderated a ICLE seminar on jury selection. Judge Dooling was an invited speaker to a seminar sponsored by the Southwest Bar Association on Supreme Court Rule 213. Judge Dooling has received recognition from DuSable High School and Harlan Community Academy for her work in Moot Court competitions for high school students sponsored by the Chicago Bar Association. She has also taught paralegal students at South Suburban Junior College.

Before her election to the bench, Judge Dooling worked in the legal department of two international corporations and obtained extensive trial practice in both the State and Federal Court system. As an assistant state's attorney in Cook County, Judge Dooling's experience included practice in the criminal, civil and appellate divisions of the office, rising to a supervisory position. She ultimately assumed a position as the legislative liaison for the State's Attorney's Office in Springfield.

Judge Dooling was admitted to the Illinois Bar in 1978 following her graduation from Chicago Kent College of Law, and then admitted to the Florida Bar in 1981. Judge Dooling is a 1975 graduate of the University of Illinois, Champaign-Urbana, and a 1971 graduate of Sacred Heart High School.

Jayne Reardon, Executive Director, Illinois Supreme Court Commission on Professionalism

Jayne Reardon is the Executive Director of the Illinois Supreme Court Commission on Professionalism. A tireless advocate for professionalism, Jayne oversees programs and initiatives to increase the civility and professionalism of attorneys and judges, create inclusiveness in the profession, and promote increased service to the public.

Jayne developed the Commission's successful statewide Lawyer-to-Lawyer Mentoring Program which focuses on activities designed to explore ethics, professionalism, civility, diversity, and wellness in practice settings. She spearheaded development of an interactive digital and social media platform that connects constituencies through blogs, social networking sites and discussion groups.

A frequent writer and speaker on topics involving the changing practice of law, Jayne asserts that embracing inclusiveness and innovation will ensure that the profession remains relevant and impactful in the future.

Jayne's prior experience includes many successful years of practice as a trial lawyer, committee work on diversity and recruiting issues, and handling attorney discipline cases as counsel to the Illinois Attorney Registration and Disciplinary Commission Review Board.

Jayne graduated from the University of Notre Dame and the University of Michigan Law School. She is active in numerous bar and civic organizations. She serves as Chair of the American Bar Association's Standing Committee on Professionalism and is a Steering Committee member of the National Lawyer Mentoring Consortium. Jayne also is active in the ABA Consortium of Professionalism Initiatives, Phi Alpha Delta Legal Fraternity, Illinois State Bar Association, Women's Bar Association of Illinois, and the Chicago Bar Association.

CHICAGO LAWYER

JANUARY 2018

CLIFFORD'S NOTES

WATERGATE A WATERSHED

The future of legal ethics, 45 years after the break-in

By BOB CLIFFORD

As I write this column for deadline, I realize there is perhaps no greater watershed for lawyers' ethics than Watergate. 2017 marked the 45th anniversary of the break-in at that Washington, D.C., hotel/office complex that would ultimately bring down the presidency of Richard M. Nixon.

It also was a sad era for lawyers who once had enjoyed great respect and prestige in the American way of life. So many lawyers were involved in that cover-up. So many lawyers never stopped to properly think of the ethical issues involved with the result being that law licenses were lost and some even went to prison.

Although only some readers are old enough to remember those daily front-page headlines in 1972, but what happened 45 years ago impacted all lawyers, young and old, for their entire professional lives. These events nearly a half century ago led to professional ethics becoming a required class in law schools and passage of a professional responsibility test that is part of every bar examination.

Specific rules may have changed over the years, but that deep down feeling of doing what is right has not. Technology certainly has introduced a whole new set of ethical issues for lawyers young and old, including the requirement in Illinois that all lawyers must have a familiarity with pertinent technology in order to properly serve their clients, by requiring lawyers to keep abreast of the benefits and risks of relevant technology. Illinois Rules of Professional Conduct Rule 1.1, Comment 8.

Another issue of concern involves lead generation companies that market heavily to lawyers without clarity on issues such as safeguarding client funds, fee-splitting and referral of cases. The Virginia State Bar Association's Standing Committee on Legal Ethics petitioned the Virginia Supreme Court in November to adopt a rule that prohibits online legal referral services due to problems involving paying for referrals, concerns about the attorney's duty to safeguard client funds and improper fee sharing with non-lawyers. The link to the Standing Committee's Petition to the Virginia Supreme Court on Proposed Legal Ethics Op. 1885 can be found at vsb.org/docs/LEO1885_SCV_petition111717.pdf

Virginia's proposed rule comes after similar opinions in New York, New Jersey, Ohio, Pennsylvania and South Carolina. They are all struggling with the activities of companies such as Avvo Legal Services that directly charges the client a flat rate for a defined legal service and holds the fee until the potential client selects a lawyer from a list of participating lawyers in a certain geographical area.

Avvo then passes the fee along to the attorney after the legal work is completed, charging what it calls a "marketing fee" in a separate transaction that some states have characterized as inappropriate client fee-splitting.

At its December midyear meeting, the Illinois Bar Association Assembly adopted changes to the comments regarding Illinois Rules of Professional Conduct Rules 1.5(b), 1.18 and 504(a). Although the Illinois rules do not expressly prohibit a lead generator from holding a client fee, the comments to the rules preserve the traditional limitations on fee-sharing with non-lawyers and identify a number of lawyer obligations with respect to holding fees that must be considered before a lawyer participates in any lead generation service.

The comments also highlight clarifying potential conflicts and the need for proper fee disclosures.

Questions involving confidentiality, privilege and work product, conflicts of interest, contacting non-clients, dealing with experts, disclosure obligations, social media and electronic discovery have left lawyers today in a state of flux because of the new technologies and sometimes even new players in the equation.

All lawyers could use a refresher on these important issues. Therefore, Clifford Law Offices will examine "The Changing Ethical Landscape of Litigation" in a free webinar Feb. 19. I will moderate a discussion with a respected panel using hypotheticals" Lawrence Fox, ethics professor at Yale Law School; Jayne Reardon, executive director of the Illinois Commission on Civility; and retired judge Deborah Dooling who served on the bench of the Cook County Circuit Court for decades.

For two hours, we will explore those difficult situations in which you want to do the right thing while also ensuring you are zealously advocating the rights of your client.

To find out more information or to register for this free program, go to cliffordlaw.com/CLE2018.

What has led to the need to teach ethics? The extreme demands of the profession? The economics of it? The stiff competition? Over-zealousness? The desire to win? Perhaps, a combination of these factors.

"Fighting fair" is imperative in today's courtroom, and it is up to each lawyer to ensure that the rules are followed and standards are met because once one fully grasps legal ethical issues, the focus can remain on the challenges of the litigation itself. CL

Bob Clifford is the founder of Clifford Law Offices. He practices personal injury and regularly handles complex damage cases.
rclifford@cliffordlaw.com

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Hypo #1 – The Beauty Contest

You received a call to defend a major accounting firm in a 10b-5 class action involving a dot-com company whose stock has precipitously dropped. The accounting firm sent you the pleadings and you met with them for three hours yesterday, explaining the firm's approach and the possible lines of defense the accounting firm might use. The accounting firm promised to get back to you next week. Today your partner circulated a conflicts memo asking whether the firm could take on the representation of the defendant underwriter in the same matter. What do you advise?

A) **No, your meeting with the accounting firm means you have a *per se* conflict with the underwriter employee of the firm.**

B) **Yes, the firm could represent the defendant underwriter because no attorney-client relationship was formed with the accounting firm yet.**

C) **No, even though not retained, the firm received the pleadings and confidential information in the three-hour meeting that could be significantly harmful to the underwriter.**

N.Y. Rule 1.18 – Duties to Prospective Clients

Two main duties on a lawyer who has had discussions with a prospective client about a matter:

1) **Lawyer is restricted from using or revealing information learned in the consultation to the same extent that a lawyer would be restricted with regard to information of former client;**
2) **Lawyer may not represent a client with materially adverse interests in the same or a substantially related matter if the information received from the prospective client could be a significantly harmful to the prospective client in that matter.**

See also **N.Y. Formal Opinion 2013-1**

Hypo #2 – Match Made in Heaven?

Savvy Sally decided she needed a quick divorce and did much of the research and drafting herself. She wanted some limited expert advice and accessed the website of an online attorney-matching service, Bravo. From Bravo's website, Sally selected the advertised legal service and chose Larry Lawyer as her preferred attorney. Sally pays the full amount of the advertised legal fee to Bravo. Thereafter, Bravo notified Larry of this action, and Larry called Sally within a specified period as directed by Bravo. After speaking to Sally and performing a conflicts check, Larry accepted representation of Sally. After completing the divorce, Larry advised Bravo. Bravo sent Larry his legal fee, which was the amount Sally had previously paid Bravo minus a "marketing fee."

Has Larry committed any ethical violations?

A) **Yes, Larry is impermissibly sharing legal fees with a non-lawyer.**

B) **Yes, for other reasons in addition to impermissible fee-splitting.**

C) **No.**

Hypo #2 - Match Made in Heaven cont'd

At least 5 states have considered this issue:

- **Virginia State Bar – Legal Ethics Opinion 1885**
- **New York State Bar Association – Ethics Opinion 1132**
- **New Jersey - Advisory Committee on Professional Ethics Joint Opinion 732**
- **Supreme Court of Ohio – Board of Professional Conduct 2016-3**
- **South Carolina – Ethics Advisory Opinion 16-06**
- **Pennsylvania Bar Association – Formal Opinion 2016-200**

Hypo #3 – Let Me Practice My Way, Please

Attorney Adam defends Client in litigation brought by Client's chief competitor in a judicial district that addresses e-discovery in its formal case management. Opposing Counsel drafts an e-discovery agreement, offering the use of her vendor, jointly agreed upon search terms, and a clawback provision that would permit Client to claw back any inadvertently produced ESI that was otherwise "protected by law" ("protected ESI"). Adam thinks the clawback provision will allow him to pull back anything, not just protected ESI, so long as he asserts it was "inadvertently" produced. Adam agrees to the proposal and subsequently receives the data from the vendor but shoves it in a drawer without reviewing it. Sometime later, opposing counsel sends Adam an angry letter accusing him of spoliation of evidence. Adam hires an e-discovery expert to conduct a forensic review of the data and Client's practices. The Expert advises that Client routinely deleted ESI from its computers, resulting in gaps in production. He also advises that due to the breadth of the agreed upon search terms, privileged information as well as propriety information about Client's new products was provided to Plaintiff even though proprietary information was not relevant to issues in the lawsuit. What ethical issues for Adam?

In re: A&M Florida Properties II, LLC 2010 WL 1418861 (Bankr. SDNY Apr 7, 2010)

The court imposed monetary sanctions on plaintiff's counsel and its client, GFI Acquisition LLC, based on its finding that discovery delays and costs were caused because counsel was "uninformed on the detailed workings of GFI's computer system and email retention policies" and "did not understand the technical depths to which electronic discovery can sometimes go." Significantly, the court awarded sanctions despite the fact that no spoliation or bad faith were found.

See also **California Formal Opinion Interim No. 11-0004 (2014)**

Hypo #4 – The Investigation

Your new executive is concerned whether your pharmacies are abiding by the applicable regulations governing filling prescriptions. One of the in-house lawyers suggests that you do a study, "And, if I run it, then the results will be privileged." The FDA has called and suggested it is doing a preliminary re-review of the pharmacy procedures. You decide an investigation would be in order. "Let's have one of us do it, rather than hire expensive outside counsel. That will save us loads of money." The investigation proceeds and it becomes necessary to interview a number of employees. Are there any special precautions that you have to take?

- During one of the interviews a pharmacist states, "I am quite uncomfortable. Do you think I need my own lawyer?"
- During another interview, a different pharmacist says, "I know you won't tell anyone, but I have been having lots of trouble with my back recently-and, yes, I have become addicted to these painkillers."
- You complete the investigation, and the results are mixed. You know the report is quite critical of CEO. CEO says, "I can take care of all of these problems. No reason to bother the board about this."
- Finally, the FDA completes its investigation and announces that it will institute litigation unless the company turns over the investigation and all other privileged information related to this matter.

Hypo #4 – The Investigation cont'd

United States v. Upjohn, 449 U.S. 383 (1981)

In Re: Vioxx Products Liability Litigation, 501 F. Supp. 2d 789 (E.D. La. 2007)

Hypo #5 – Make 'im Go Away!

Acme Corporation is constantly being sued by Caldwell & Moore. The client insists it will settle this latest case but wants to stop the frivolous litigation. Acme proposes three options to put an end once and for all to this madness:

A) **Get opposing counsel to agree to this language: "Plaintiff's counsel further agrees to not, at any time in the future, accept cash compensation or other consideration from a law firm, or any other entity or individual, in connection with the advancement of a complaint, claim or suit against one or more Releasees that relies on a theory of liability identical to, or substantially similar to, a theory advanced by him in the Legal Action."**

B) **We pay either plaintiff or his lawyer an extra $100,000 if lawyer agrees to stop suing Acme.**

C) **Insist that any settlement with the plaintiff be conditioned on the plaintiff's lawyer never disclosing that he brought a case against our client or the result of the case.**

Hypo #5 – Make 'im Go Away! cont'd

San Francisco Bar Opinion 2012-1

Hypo #6 – Advice of Counsel

Excelsior Corporation comes up with a great plan to save on taxes, an approach recommended by Martyn of Martyn & Fox. The CEO, CFO and GC sit down with Martyn to go over the proposed idea. CFO is skeptical, but Martyn assures him that the idea will fly. The company pursues the plan and three years later the IRS comes to investigate. They tell CFO he is a target of their investigation, as is the company. CFO goes to GC and says he should not have any liability because they were advised by Martyn of Martyn & Fox. GC reminds CFO that he cannot tell the IRS about the Martyn opinion because that is attorney-client privileged. CFO stutters, "But we never would have done it without Martyn." To which GC replies, "But the company has not waived the privilege and, therefore, you are barred from disclosing anything."

Is GC correct?

Hypo #6 – Advice of Counsel cont'd

***United States v. Well Fargo Bank, N.A.*, 2015 WL 5582120 (S.D.N.Y. Sept. 22, 2015)**

Hypo #7 – Attorney Work Product

Lawyers are hired to defend Colossus in an investigation of its compliance with auto safety standards. In connection with that investigation conducted by outside counsel a calculation is prepared of possible damages the company might suffer if it turns out that its ignition switches are defective. The Bureau of Consumer Affairs institutes litigation and the company puts the damage calculation on its privilege log as work product. The Bureau files a motion to compel the production of the investigation work product.

Should the Judge grant the motion to compel?

Hypo #8 – Attorney Work Product cont'd

***Boehringer Ingelheim Pharmaceuticals v. FTC*, U.S. Supreme Court No. 15-560, Brief of Amicus, American Bar Association**

Hypo #8 – Takeover Heartburn

Fox is worried that he is going to be put out to pasture as an unproductive partner when he receives a call from Lord Silversmith, the British takeover tycoon. The good Lord asks Fox if Martyn & Fox will help his company, Silversmith Limited, take over Target, that famous conglomerate. Fox is thrilled that his career may be resurrected when he receives a call from a lawyer he does not know in the Martyn & Fox Miami office. This lawyer introduces himself, tells Fox how excited he is about his possible new engagement, and tells Fox he is doing work for Music Unlimited, which is a third tier subsidiary of Target. "I hope this does not affect your ability to take on this new matter."

Does it?

A) **Yes**

B) **No**

C) **It depends on whether the Music Unlimited representation is adverse to Target.**

Hypo #9 – False Economy

Colossus is fed up with the high cost of hiring Caldwell & Moore to handle their serious but similar litigation involving power tools. Colossus informs Caldwell & Moore that it will continue to use the law firm for the trial of these cases as well as any pretrial mediations or settlement discussions. But because Caldwell & Moore has started paying its young associates $180,000 a year, Colossus has decided to outsource all proceedings before that time to a Philippine law firm which charges significantly less per hour for what Colossus describes as, "routine pretrial work." "You will be local counsel for the Philippine firm, but they have agreed to accept responsibility for everything up until settlement discussions or trial."

Does Caldwell have any ethical issues in accepting this arrangement?

A) **Yes, Caldwell may be held as ratifying the pre-trial work and unauthorized practice of law by the Philippine firm.**

B) **No, the client may assign portions of a matter to whatever legal counsel it chooses.**

Hypo #10 – Expert at What?

The victory was so sweet. The jury came back in less than an hour. Verdict for your client. Big bucks. The jury especially liked your charming expert witness on the key damages question in the matter. You are just putting the finishing touches on your appellee brief attacking the loser's frivolous attempts to overturn the verdict, when you receive a call from the consulting firm that provided the expert witness. The CEO of that firm tells you that the firm has just discovered, much to its surprise, that your expert witness never earned a Ph.D. in economics as her resume indicated. "I am sure with your strong case that won't make a difference, but we thought you should know. It is a little embarrassing."

What should you do?

A) **Nothing, because you agree with the CEO that the expert's credential would not have affected the outcome of the trial.**

B) **File a motion in the trial court to correct the record.**

C) **Drop a corrective note into the appellate brief and file it.**

Hypo #11 – Invading the Privilege

Plaintiff's attorney Raj represents Siri in a wrongful termination case against her employer, Bystander Bank. The CEO of Bystander is also named Siri. One day Raj receives an email from Bystander's counsel and the subject line reads "Preparation for the deposition of CEO Siri."

What should he do?

A) **Open the email and read the information – it will help him nail the bank's witness at deposition.**

B) **Forward the email back unopened and tell Bank's counsel of the misdirected email.**

C) **Call opposing counsel and tell her about having received the email.**

Hypo #12 – Truthful Client

You are in a mediation and meeting ex parte with the mediator appointed by the Court. The mediator opines that if you are going to succeed you are going to need a really outstanding expert. At that point, your client interrupts saying, "We have hired Dr. Mendelson from Marquette University, the leading expert in the field."

You know that no one has ever talked to Dr. Mendelson. What do you do?

A) **Nothing because you and the client agreed that you would contact Dr. Mendelson if needed down the road.**

B) **Call your client out of the room and persuade him to go back in and admit that he lied.**

C) **Correct the facts right then and there in front of your client and the mediator.**

Hypo #13 – Clearing the Record

Glasgow Investments is being investigated by the Securities & Exchange Commission. The focus of the investigation seems to be a particular employee, one of Glasgow Investment's most productive brokers. In-house counsel for Glasgow is handling the investigation, and she gets the idea that she will check this employee's Facebook page. Much to her surprise she sees some pictures that give her pause. Glasgow's straight-laced employee is not so straight-laced after all. General Counsel immediately calls employee and tells her to take down those pictures before the SEC gets to see them.

Any ethical problems?

Hypo #14 – It's Our Computer

Apex Company is sued for age discrimination by one of its long-time employees. In a meeting between outside counsel and in-house counsel for Apex, the idea is offered that the employee's computer and cell phone (company issued) should be searched for any helpful information. After hours, one of the computer geeks downloads all of that information, which in-house counsel reviews the next day. He is so happy to find that the disgruntled employee has been communicating with his lawyer, using the company equipment. "Wait until we embarrass that old guy with his candid conversations with his lawyer," General Counsel exclaims.

Any ethical problems?

Hypo #15 – Client Direction?

Mr. Smith was driving his son's friend to a school dance when he was involved in a serious automobile accident. The friend's family sues both Mr. Smith and the other driver for back injuries that the friend suffered as a result of the collision. The insurance company enters a defense for Dad and hires Caldwell & Moore to represent Dad in the proceedings. At the insurance company's direction, Mr. Caldwell seeks a physical examination of the plaintiff by an insurance company physician. That physician reports back that, while the friend's injuries are not serious, the physician did discover an aneurism in a very dangerous spot. Mr. Caldwell calls the insurance company to ask them what they would wish him to do with this medical report. The insurance company agent replies that the aneurism should remain undisclosed. "Otherwise, this two-bit case will become a major liability."

Hypo #16 – Facebook Friends

You are preparing discovery requests regarding an employment discrimination claim brought against your Fortune 500 client by a disgruntled whistleblower who alleges a hoist of misdeeds in your client's public relations department. One of your junior associates reviews the boilerplate in the form you have used in these cases for years. "If you really want to get some good stuff," she proclaims, "you will forget sending these requests. Just friend her on Facebook and you'll find out who you are really dealing with."

Any problem?

A) **No, as long as you either have your investigator make the request or disclose you are an attorney.**

B) **Yes, you may not access the Facebook page of an adverse party.**

C) **Not sure.**

Hypo #17 – Deleted Emails

You are conducting electronic discovery. Both sides have agreed on the key words to be searched. That production was made two weeks ago. Today one of your client's key employees darkened your door and announced that he accidentally deleted a large group of emails from his hard drive before production was made. But after a careful review of what happened it turns out that in your view, the emails were not relevant.

Any ethical problems here?

Hypo #18 – Loyal Law Firms

Our corporate client, Apex, wants Caldwell & Moore to represent the corporation and three of its officers but wants to make sure if a conflict develops that Caldwell & Moore will continue to represent the corporation.

You assure Apex that the firm will take on the representation of both the corporation and all three officers, provided the parties consent and sign a waiver agreeing that if a conflict later develops, Caldwell & Moore will withdraw from representing the individuals but will continue representing Apex.

Is there an ethical problem here?

Hypo #19 – The Conscientious GC

Colossus Corporation is being investigated for possible SEC violations. The SEC starts administrative proceedings against the CEO and the Director of Research. Each is subpoenaed for deposition, and General Counsel tells the two individuals, "I will go with you." Those depositions are taken, and thereafter the company decides to waive the privilege and permit the deposition of General Counsel. Asked about her conversations with the CEO and the Director of Research prior to their testimony, General Counsel testifies to all, explaining to the SEC that Colossus has decided to waive the privilege and that she always suspected those two employees were "up to no good."

Any ethical issues for GC?

A) **Yes, GC should not have volunteered to represent the CEO and Research Director at deposition.**

B) **Yes, since GC represented the CEO and Research Director at deposition, Colossus could not waive their privileges and GC should not have testified against them to the SEC.**

C) **No, GC represents Colossus and merely attending a deposition of the two individuals does not make them her clients.**

ABA Model Rule 1.1 - Competence

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

Comment [8]: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

ABA Model Rule 1.2 – Scope of Representation & Allocation of Authority Between Client & Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of their client as is impliedly authorized to carry out the representation.

(d) A lawyer shall not counsel a client to engage, or assist a client, 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 and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

ABA Model Rule 1.4 – Communications

(a) A lawyer shall:

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

ABA Model Rule 1.6 – Confidentiality of Information

(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 the disclosure is permitted by paragraph (b).

ABA Model Rule 1.6 – Confidentiality of Information cont'd

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

ABA Model Rule 1.7 – Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1) **the representation of one client will be directly adverse to another client**
2) **there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

ABA Model Rule 1.7 – Conflict of Interest: Current Clients cont'd

Comment [7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

ABA Model Rule 1.7 – Conflict of Interest: Current Clients cont'd

Comment [22]: Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

ABA Model Rule 1.7 – Conflicts of Interest: Current Clients cont'd

Comment [29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

ABA Model Rule 1.7 – Conflict of Interest: Current Clients cont'd

Comment [34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

ABA Model Rule 1.10 – Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm…

ABA Model Rule 1.13 – Organization as Client

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

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other 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 those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

ABA Model Rule 1.13 – Organization as Client cont'd

Comment [10]: There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

ABA Model Rule 3.3 – Candor toward the Tribunal

(a) A lawyer shall not knowingly:

1) **Make a false statement of fact of law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**
2) **Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or**
3) **Offer evidence that the lawyer knows to be false...**

ABA Model Rule 3.4 – Fairness to Opposing Party & 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;

ABA Model Rule 4.1 – 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; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

ABA Model Rule 4.4 – Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

ABA Model Rule 5.4 – Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
2) A lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
3) A lawyer or law firm may included nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
4) A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

ABA Model Rule 5.6 – Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) A partnership, shareholders, operating, employment or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

ABA Model Rule 7.2 - Advertising

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

1) **Pay the reasonable costs of advertisements or communications permitted by this Rule;**
2) **Pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;**
3) **Pay for a law practice in accordance with Rule 1.17; and**
4) **Refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules…**

IRPC 1.2 – Scope of Representation and Allocation of Authority Between Lawyer and Client

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such 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. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client,

(2) counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and

(3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

IRPC 1.6 – Confidentiality of Information

(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 the disclosure is permitted by paragraph (b) or required by paragraph (c).

IRPC 1.6 – Confidentiality of Information cont'd

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);

(2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

IRPC 1.7 – Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1) the representation of one client will be directly adverse to another client; or
2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2) the representation is not prohibited by law;
3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4) each affected client gives informed consent.

IRPC 1.7 – Conflict of Interest: Current Clients cont'd

Comment [22]: Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, *e.g.*, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

IRPC 1.7 – Conflict of Interest: Current Clients cont'd

Comment [34]: A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

IRPC 1.13: Organization as Client

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

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other 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 those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

IRPC 3.3: 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;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

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

IRPC 4.1: 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; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

IRPC 4.4: Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

IRPC 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

1) **the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**
2) **the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

IRPC 5.6 – Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

a) **A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or**

b) **An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.**