

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each step took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

Recommended Physical Setup and Special Equipment:

i.e., VCR and TV, black board with chalk, easel for diagrams, etc. When submitting video, please indicate the length of all videos. *i.e.*, 30 or 60 min.

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on the response from the Inn members regarding the demonstration.

Questions:

Please contact Andrew Young at (703) 684-3590 ext 106 or by e-mail at ayoung@innsofcourt.org.

The Craig S. Barnard Chapter of the American Inns of Court LIV Presents:
SHADES OF GRAY: WHEN THE GLARE OF THE BRIGHT LINE FADES
LINCOLN INN PRESENTATION

- **EVERY ROSE HAS ITS THORN – THE THORNY CLIENT**

OVERVIEW

This course explores the various ethics issues in dealing with difficulty as to one's clients. This includes matters of lawyer authority, ethical conflicts with clients; ethical conflicts with supervising attorneys on client matters, candor with the court while maintaining attorney-client privilege, and acting ethically or withdrawing from representation.

DESCRIPTION

6:00 p.m. to 6:05 p.m.

Opening Remarks/Introduction

6:05 p.m. to 6:20 p.m.

The Senior Partners Review Associates at the Law Firm of Black, White, & Grey, P.A.

6:20-6:55

The Junior Partner Reviews Associates at the Law Firm of Payne & Dread, LLP.

6:55 p.m. to 7:00 p.m.

Conclusion/Adjournment

Scenario 1

LAWYER X is representing THORNY CLIENT in a divorce proceeding. THORNY CLIENT provides LAWYER X with a USB drive that contains documents and copies of e-mail messages that look like they were sent to MRS. CLIENT from her attorney. LAWYER asks THORNY CLIENT where he got the drive. He responds, "I stole it from her car. I saw it parked in front of her office, and I still have the key. I want you to use this information to win my case." Does LAWYER X have to return the USB drive to opposing counsel?

- A. No, the wife had no expectation of privacy for documents in the car because the car was a marital asset.
- B. Yes, a lawyer who inadvertently obtains privileged documents must notify opposing counsel and return documents immediately.
- C. Yes, an attorney must zealously represent his client and abide by his client's decisions regarding the objectives of representation.
- D. No, but the lawyer must withdraw immediately or he will be disciplined for assisting a client in criminal conduct.

The correct answer is D. As an initial matter, lawyer must discuss the potential that client may need criminal law representation for breaking into his wife's car.

- A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. [Rule 4-1.2(d)].
- Lawyer who knowingly uses documents improperly obtained by client will face suspension. The Florida Bar v. Hmielewski, 702 So. 2d 218 (Fla. 1997).

B is incorrect.

- A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender. [Rule 4-4.b]
- According to the Florida Bar Bounds of Advocacy, an attorney who receives materials that appear to be confidential should refrain from reviewing the materials and return to sender. [Rule 1.6].

Scenario 2

LAWYER X is gathering THORNY CLIENT'S documents to produce during discovery. LAWYER X examines the documents prior to producing them and notices that areas of the documents have been altered and whiteout has been used. LAWYER X asks THORNY CLIENT about the alterations who responds, "don't worry about it." Should LAWYER X submit the documents?

- A. Yes, if the lawyer tells opposing counsel before producing the documents.
- B. No, producing documents that are known to be altered would be a misrepresentation.
- C. No, the lawyer should correct the alterations and then submit the documents.
- D. Yes, if the lawyer removes the altered documents.

The correct answer is B.

- **If the lawyer knowingly produces altered documents, she will be engaging in dishonest fraudulent misrepresentation.**
- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation and shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice. [Rule 4-8.4(c)(d)].
- A lawyer may withdraw if the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud. [Rule 4-1.16(a)(5)].

Scenario 3

THORNY CLIENT approaches LAWYER X with a proposal to provide services to clients for loan modifications and foreclosure. He suggests they call the business Mortgage Modification Legal Services Referral, LLP. THORNY CLIENT tells LAWYER X that he gets lists of potential clients who may need loan modification. He will screen the potential clients, collect \$1500 for each case up front, negotiate with the bank, and then LAWYER X will advise the client of the outcome of his case and represent the client in court if needed. All LAWYER X has to do is let THORNY CLIENT call the lawyer the company's in-house counsel. THORNY CLIENT will get \$500 and LAWYER X will get \$1000 for each client they sign up. Should LAWYER X agree to go into business with the client?

- A. No, a lawyer cannot pay a referral fee to a non-lawyer.
- B. Yes, if necessary services were performed under the lawyer's supervision.
- C. Yes, if the terms are fair and reasonable and LAWYER has advised client to seek advice of independent legal counsel
- D. No, because he will be assisting a non-lawyer in the unauthorized practice of law.
- E. A and D.

The correct answer is E.

The Florida Bar has issued an Ethics Alert that addresses this issue.

Florida Bar members:

- Cannot pay a referral fee or give anything of value to a non-lawyer for referring distressed homeowners to the lawyer. [Rule 4-7.2(c)(14)] .
- Cannot directly or indirectly divide fees with a non-lawyer. [Rule 4-5.4(a)]
- Cannot assist in the unauthorized practice of law by:
 - providing legal services for a distressed homeowner while employed as in-house counsel for a non-lawyer company;
 - forming a company with a non-lawyer to perform foreclosure related services if any of the services are the practice of law; or
 - assisting a non-lawyer individual or company in providing services that the individual or company is not authorized to provide or are otherwise illegal. [Rule 4-5.5(a)]
- Cannot directly contact distressed homeowners to offer representation (including by telephone or facsimile) and cannot allow someone else to directly contact distressed homeowners on the lawyer's behalf. [Rules 4-7.4(a) and 4-8.4(a)]
- Cannot accept referrals from non-lawyers acting in the guise of a "lawyer referral service" (legitimate lawyer referral services must comply with a rule which requires all advertisements and contact with prospective clients to be in compliance with the attorney advertising rules, in addition to other requirements). [Rule 4-7.10].

Scenario 4

LAWYER X is working alone late one night when the phone rings. She sees that the call is coming from her new client, so she picks it up. CLIENT sounds very strange. He accuses her of betraying him. He thinks she has been colluding with opposing counsel and the judge to put him in jail. CLIENT says he just bought a gun, and he is on his way to her office to shoot her in the head. Then, he's going to find that judge and do the same to him. LAWYER hangs up not sure what to do. Her client is usually a quiet man, and he has always been kind to her. She thinks that he may be mentally ill, and she fears for her life. She needs help. Can LAWYER X disclose this conversation?

- A. No, unless she has the client's informed consent.

- B. Yes, lawyer must disclose confidential client information to prevent death or substantial bodily harm to another.
- C. Yes, only if the lawyer has petitioned to appoint a guardian who can act in client's best interest.
- D. No, a lawyer must maintain normal client-lawyer relationship when representing someone who is mentally impaired.

The correct answer is B.

- **Lawyer must first remove herself from premises, call the police, and warn those who may be in danger.**
- A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime or to prevent a death or substantial bodily harm to another. [Rule 4-1.6 (b)].
- A lawyer whose client becomes mentally ill during the course of representation has a duty to safeguard the client's interests and may seek appointment of a guardian if the lawyer believes the client cannot adequately act in her own interest. [Florida Bar Ethics opinion 85-4, Rule 4-1.14(b)].

Black, White, and Grey, P.A.



Does the lawyer have to return the USB drive to opposing counsel?

- A. No, the wife had no expectation of privacy for documents in the car because the car was a marital asset.
- B. Yes, a lawyer who inadvertently obtains privileged documents must notify opposing counsel and return documents immediately.
- C. Yes, a lawyer must zealously represent her client and abide by her client's decisions regarding the objectives of representation.
- D. No, but the lawyer must withdraw immediately or she will be disciplined for assisting a client in criminal conduct.

The correct answer is D.

No, but the lawyer must withdraw immediately or she will be disciplined for assisting a client in criminal conduct.

- As an initial matter, the lawyer must tell the client that he may need criminal law representation for breaking into his wife's car.
- A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. [Rule 4-1.2(d)].
- Lawyer who knowingly uses documents improperly obtained by client will face suspension. *The Florida Bar v. Hmielewski*, 702 So. 2d 218 (Fla. 1997).

B is incorrect.

- Under the Florida rules, there is no express duty to return misdirected documents.
- A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender. [Rule 4-4.b]
- According to the Florida Bar Bounds of Advocacy, an attorney who receives materials that appear to be confidential should refrain from reviewing the materials and return them to the sender. [Rule 1.6].

Should the lawyer submit the documents?

- A. Yes, if the lawyer tells opposing counsel before producing the documents.
- B. No, producing documents that are known to be altered is a misrepresentation.
- C. No, the lawyer should correct the alterations and then submit the documents.
- D. Yes, if the lawyer removes the altered documents.

The correct answer is B.

No, producing documents that are known to be altered is a misrepresentation.

- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation and shall not engage in conduct that is prejudicial to the administration of justice. [Rule 4-8.4(c)(d)].
- A lawyer may withdraw if the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud. [Rule 4-1.16(a)(5)].

Should the lawyer agree to go into business with the client?

- A. No, a lawyer cannot pay a referral fee to a non-lawyer.
- B. Yes, if the necessary services are performed under the lawyer's supervision.
- C. Yes, if the terms are fair and reasonable and the lawyer has advised client to seek advice of independent legal counsel.
- D. No, a lawyer cannot assist a non-lawyer in the unauthorized practice of law.
- E. A and D.

The correct answer is E.

No, a lawyer cannot pay a referral fee to a non-lawyer. No, a lawyer cannot assist a non-lawyer in the unauthorized practice of law.

The Florida Bar has issued an Ethics Alert that addresses this issue.

Florida Bar members:

- Cannot pay a referral fee or give anything of value to a non-lawyer for referring distressed homeowners to the lawyer. [Rule 4-7.2(c)(14)].
- Cannot directly or indirectly divide fees with a non-lawyer. [Rule 4-5.4(a)]

Florida Bar members cannot assist in the unauthorized practice of law by:

- providing legal services for a distressed homeowner while employed as in-house counsel for a non-lawyer company;
- forming a company with a non-lawyer to perform foreclosure related services if any of the services are the practice of law; or
- assisting a non-lawyer individual or company in providing services that the individual or company is not authorized to provide or are otherwise illegal. [Rule 4-5.5(a)].

Florida Bar members:

- Cannot directly contact distressed homeowners to offer representation (including by telephone or facsimile) and cannot allow someone else to directly contact distressed homeowners on the lawyer's behalf. [Rules 4-7.4(a) and 4-8.4(a)].
- Cannot accept referrals from non-lawyers acting in the guise of a "lawyer referral service." [Rule 4-7.10].

Can the lawyer disclose this conversation?

- A. No, unless she has the client's informed consent.
- B. Yes, a lawyer must disclose confidential client information to prevent death or substantial bodily harm to another.
- C. Yes, only if the lawyer has petitioned to appoint a guardian who can act in the client's best interest.
- D. No, a lawyer must maintain normal client-lawyer relationship when representing someone who is mentally impaired.

The correct answer is B.

Yes, lawyer must disclose confidential client information to prevent death or substantial bodily harm to another.

- The lawyer must first remove herself from premises, call the police, and warn those who may be in danger.
- A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime or to prevent a death or substantial bodily harm to another. [Rule 4-1.6 (b)].
- A lawyer whose client becomes mentally ill during the course of representation has a duty to safeguard the client's interests and may seek appointment of a guardian if the lawyer believes the client cannot adequately act in her own interest. [Florida Bar Ethics opinion 85-4, Rule 4-1.14(b)].

2011-2012

**The Craig S. Barnard Chapter of the American Inns of Court LIV Presents:
SHADES OF GRAY: WHEN THE GLARE OF THE BRIGHT LINE FADES
LINCOLN INN PRESENTATION**

- **EVERY ROSE HAS ITS THORN – THE THORNY CLIENT**

Associate Review by the Junior Partner-Skit #2

I. CAST OF CHARACTERS

Rina Kundalkar: Narrator

Timothy Powers O’Neill: Junior Partner at the law firm of Payne &Dread, LLP. O’Neill assigns derogatory nick names to the associates and serves as their reviewer.

Daniel Madden: (a.k.a “Kojack”) An associate attorney Payne &Dread LLP, who is subject to review for his dealings with a difficult client.

Barry Carothers: (a.k.a. “Bilbo”) An associate attorney Payne &Dread LLP, who is subject to review for his dealings with a difficult client.

Remainder of the Associate class (a.k.a. ”John Does 1-5”) Played by members of the pupillage group not otherwise assigned.

Christopher Bruce: THORNY Client X (aka “Mr. Iama Pita”): Involved in two separate situations in this skit as described by the questions.

Technical and Power point: Janice Rusten

I. SCRIPT AND INTRODUCTION

Script Notes: Anything in 12pt, bold, and/or italicized are just script notes and are not to be read.

On Screen should be SLIDE # 1. (Perhaps the firm name or the American Flag)

Associate group should be seated

TIMOTHY O' NEILL starts speaking.

ADLIB: ONEILL greets the associates, informs them of their nicknames and explains why they are there. He then calls on KOJACK to tell him about his situation with Mr. Pita and take the hot seat for questioning.

While the John Does and O'Neill freeze Kojack leaves the hot seat for skit with Mr. Pita.

Adlib: Kojack and Mr. Pita:

Mr. Pita advises the Kojack that he has a key piece of evidence that has been requested by the opposing party in a request for production, or a record of his cell phone texts. When Kojack tells Pita that he or she has to turn the item over, the client slyly says: "I hear you – we never had this conversation. I'll take care of it."

Narrator: Kojack responds to the request for production by saying the item is "not in this defendant's possession." Has the attorney violated an ethical rule? (*Narrator's choice on what group to call on.*)

On Screen should be SLIDE # 2. (Question Number 1.)

- a) Yes, but only because she was not careful in her choice of words in the response to request for production.
- b) Yes, the attorney knew about the evidence, and cannot obstruct another party's access to evidence.

- c) No, the attorney-client privilege protects the attorney from an ethical violation in this context.
- d) No – the doctrines of “res ipsa loquitor” and “prima nocta” protect the attorney in this context.

On Screen should be SLIDE # 3. (Answer Question Number 1.)

ANSWER: (B) Fla. Bar. V. Miller, 863 So. 2d 231 (Fla. 2003).

Rules Regulating The Florida Bar: 4-3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); **4-3.4(a)** (a lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending proceeding, or counsel or assist a witness to testify falsely); and **4-8.4(c)** (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

On Screen should be SLIDE # 4. (Question Number 2.)

Narrator: Mr Pita has just lost his case at trial in large part to his own discovery violations. Now he wants the matter appealed, despite the fact that there is a complete lack of merit it doing so. What should the attorney do?

- a) File the appeal – a good attorney can always find grounds to do so.
- b) Tell the client they are out of options and do not file the appeal.
- c) Counsel the client on the risk of sanctions if the appeal is filed. If the client persists, then counsel can go ahead and file the appeal.
- d) Counsel the client on the risk of sanctions if the appeal is filed. If the client persists, then the attorney should withdraw.

On Screen should be SLIDE # 5. (Answer Question Number 2.)

ANSWER: (d) – *Visoly v. Security Pac. Credit Corp.*, 768 So. 2d 482 (Fla. 3rd DCA 2000):

When an attorney is solicited to pursue an appeal that is devoid of merit, he or she has a duty to advise the client of the potential for sanctions, and that it would be unethical for the attorney to go forward with frivolous appellate proceedings. As officers of the court and members of the bar, attorneys have an ethical and professional responsibility to withdraw from representation rather than to pursue a frivolous appeal

Kojack returns to the hot seat.

O’Neill: The tribe has spoken it is time for you to go. Wait I am dating myself. You have just fired your last shot, Take off your jacket and leave Hell's Kitchen, You're the low man on the totem pole, any last words? You've been evicted from the Payne and Dread Big Brother house! Love that show.

Kojack leaves the room.

O’Neill: Bilbo upstage center if you please. I can’t wait for November to see your unexpected journey with Gandalf. It seems that Mr. Pita was not only handled by our civil division, but our white collar criminal defense, corporate, and real property divisions as well. Why don’t you tell us about the corporate bond hearing you had with Mr. Pita and subsequent property lien negotioation?

Adlib: Bilbo and Mr. Pita:

Bilbo had testified for his corporate client, “Pita Inc.” at a federal criminal bond hearing in front of a Magistrate Judge. Bilbo’s testimony at the hearing is that bond should be issued because Mr. Pita is not a flight risk. He calls Pita to inform him of this.

Bilbo speaks with Mr. Pita and finds out that his client is a flight risk. Mr. Pita tells him he is boarding a plane to Brazil and will be destroying his phone and going incognito.

On Screen should be SLIDE # 6. (Question Number 3.)

Narrator: Following that conversation, and knowing that the District Court Judge would rule on the bond hearing the next day, the Bilbo attorney sends a letter to the Assistant U.S. attorney on the case stating that “he is withdrawing his testimony” from the bond hearing without saying what portion of his testimony is being withdrawn. Did the corporate lawyer violate the Rules of Professional Responsibility by sending the letter withdrawing his testimony to the Assistant U.S. Attorney?

On Screen should be SLIDE # 7. (Answer Question Number 3.)

Answer: No.

See Florida Bar v. Peter Ticktin, 14 So. 3d 928 (2009). The referee found that Ticktin neither revealed any of his communications his client in the letter nor indicated which portion of his previous testimony he no longer believed. **The referee concluded that because Ticktin changed his opinion, had he not withdrawn his testimony, he would have violated rule 4-3.3(a)(4), providing that if a lawyer "has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures."** The referee reasoned that because rule 4-1.6(c)(5) provided that an attorney "may reveal such information to the **[**13]** extent the lawyer reasonably believes necessary ... to comply with the Rules of Professional Conduct," Ticktin took the appropriate steps, under the rules governing professional conduct, to withdraw his testimony.

On Screen should be SLIDE # 8. (Question Number 4.)

Narrator: Mr. Pita, who is now incognito, had retained Payne & Dread, LLP to handle his affairs. Assume Bilbo compromised a lien and settled the property lien for less than full value because the funds would be dispersed and lost, and therefore creating an emergency situation. The client was incognito and unavailable for communication. Was this settlement proper?

- A. Yes since the client retained the firm it gives the attorney implied or apparent authority to compromise.
- B. Yes because this was an emergency situation, and it required immediate action and the client was unavailable.
- C. Maybe. Because the courts recognize an exception for emergencies, but no court has actually applied the exception and it is only mentioned in dicta.
- D. None of the above.

On Screen should be SLIDE # 8. (Answer to Question Number 4.)

ANSWER: C Maybe.

The courts have given credence to the emergency exception but no appellate court has actually relied upon it to make a decision. *Johnson v. Skarvan*, 992 So.2d 873, 875 (Fla. 5th DCA 2008)

An exception to this general rule is said to exist “when an attorney is confronted with an emergency which requires immediate action to protect the client's interests and consultation with the client is impossible.” Id. (*citing Nehleber*, 345 So.2d at 823). **Although several courts, including our own, have acknowledged this exception, Appellee concedes, and our research confirms, that no Florida appellate court has ever found the exception to be applicable.**

Johnson v. Skarvan, 992 So.2d 873, 875 (Fla. 5th DCA 2008).

Bilbo: It is easy to blame us. How about that whistleblower mess you got us into O’Neill? Perhaps you would like to explain that Bar Complaint filed against me based upon your advice?

O’Neill: I have no recollection of that event. But if I did recall giving you bad advice why ever did you follow it?

Bilbo: You called me in and told me to contact Wiss L. Blower, based upon our client's instructions. I questioned the instruction because Blower still works for the insurance company we are suing and the company is represented by counsel. You told me that since insurance company is hiding relevant information, I was entitled to contact Wiss L. Blower. Further, you told me our client insisted we do so.

On Screen should be SLIDE # 9. (Question Number 5.)

Narrator:

Bilbo contacts Blower. Insurance company counsel, learns of the contact between Bilbo and Blower and files a bar complaint. Did Bilbo commit an ethics violation?

- A. Bilbo did not violate the rule if she thought O'Neill's instructions were accurate and contact Blower;
- B. Bilbo should have refused the instruction to contact Blower because "it just didn't feel right."
- C. Bilbo should contact Blower because the insurance company is hiding information relevant to the case.
- D. Bilbo is independently responsible for the ethical violation regardless of who told him. If O'Neill had told him to jump off a bridge, would he do it?

On Screen should be SLIDE # 10. (Answer Question Number 5.)

Answer: Answer is A –

RULE 4-5.2(b) RESPONSIBILITIES OF A SUBORDINATE LAWYER -
Reliance on Supervisor's Opinion. 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.

Narrator: If Bilbo believes that O'Neill's interpretation of the rules regarding contact with the witness is reasonable, then will not be held responsible for the violative conduct. If Bilbo has no such belief, then he will be held independently responsible for the conduct.

On Screen should be SLIDE # 11. (Question Number 6.)(Time permitting)

Narrator: After the whistleblower incident the Insurance company decided it was better to settle than it was to try the case. As a condition of the settlement, Insurance company demanded that the law firm employing O'Neill and Bilbo not actively advertise for any new cases against the insurance company. O'Neill agrees based upon client demands. Bilbo tells O'Neill he thinks it is unethical.

- A. The agreement is proper and Bilbo should be happy he doesn't get fired.
- B. The agreement is improper and Bilbo has an obligation to report the firm and O'Neill to The Florida Bar.
- C. Bilbo should leave the firm and tell the insurance company he left.
- D. O'Neill should call The Florida Bar and report his own unethical conduct.

On Screen should be SLIDE # 12. (Answer Question Number 6.)

Answer: A.

RULE 4-5.6(b) RESTRICTIONS ON RIGHT TO PRACTICE - "A lawyer shall not participate in offering or making: an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."

In this case, the agreement is not to restrict the right to practice. The restriction is on advertising, not representing clients, in matters against BBIC. As advertising is not a part of the practice of law, agreeing not to advertise for such cases does not violate the rule.

O'Neill Adlib: Thank you for coming I hope you found this review instructive. I can't wait for next quarter's hot seat participant! Oh and Bilbo you are not fired...yet.

Law Offices of Payne & Dread



Has the attorney violated an ethical rule?

- A. Yes, but only because she was not careful in her choice of words in the response to request for production.
- B. Yes, the attorney knew about the evidence, and cannot obstruct another party's access to evidence.
- C. No, the attorney-client privilege protects the attorney from an ethical violation in this context.
- D. No – the doctrines of “res ipsa loquitor” and “prima nocta” protect the attorney in this context.

The correct answer is B.

Yes, the attorney knew about the evidence, and cannot obstruct another party's access to evidence.

- *Fla. Bar v. Miller*, 863 So. 2d 231 (Fla. 2003).
- A lawyer shall not knowingly make a false statement of material fact or law to a tribunal. [Rule 4-3.3(a)(1)].
- A lawyer shall not unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending proceeding, or counsel or assist a witness to testify falsely. [Rule 4-3.4(a)].
- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. [Rule 4-8.4(c)].

What should the attorney do?

- A. File the appeal – a good attorney can always find grounds to do so.
- B. Tell the client they are out of options and do not file the appeal.
- C. Counsel the client on the risk of sanctions if the appeal is filed. If the client persists, then counsel can go ahead and file the appeal.
- D. Counsel the client on the risk of sanctions if the appeal is filed. If the client persists, then the attorney should withdraw.

The correct answer is D.

Counsel the client on the risk of sanctions if the appeal is filed. If the client persists, then the attorney should withdraw.

Visoly v. Security Pac. Credit Corp., 768 So. 2d 482 (Fla. 3rd DCA 2000):

- When an attorney is solicited to pursue an appeal that is devoid of merit, he or she has a duty to advise the client of the potential for sanctions, and that it would be unethical for the attorney to go forward with frivolous appellate proceedings.
- As officers of the court and members of the bar, attorneys have an ethical and professional responsibility to withdraw from representation rather than to pursue a frivolous appeal.

Did the corporate lawyer violate the Rules of Professional Responsibility by sending the letter withdrawing his testimony to the Assistant U.S. Attorney?

The correct answer is no.

Florida Bar v. Peter Ticktin, 14 So. 3d 928 (2009):

- The referee found that Ticktin neither revealed any of his communications his client in the letter nor indicated which portion of his previous testimony he no longer believed.
- The referee concluded that because Ticktin changed his opinion, had he not withdrawn his testimony, he would have violated rule 4-3.3(a)(4), providing that if a lawyer "has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures."

- The referee reasoned that because rule 4-1.6(c)(5) provided that an attorney "may reveal such information to the extent the lawyer reasonably believes necessary ... to comply with the Rules of Professional Conduct," Ticktin took the appropriate steps, under the rules governing professional conduct, to withdraw his testimony.

Was this settlement proper?

- Yes since the client retained the firm it gives the attorney implied or apparent authority to compromise.
- Yes because this was an emergency situation, and it required immediate action and the client was unavailable.
- Maybe. Because the courts recognize an exception for emergencies, but no court has actually applied the exception and it is only mentioned in dicta.
- None of the above.

The correct answer is C.

Maybe. Because the courts recognize an exception for emergencies, but no court has actually applied the exception and it is only mentioned in dicta.

Johnson v. Skarvan, 992 So.2d 873, 875 (Fla. 5th DCA 2008):

- The courts have given credence to the emergency exception but no appellate court has actually relied upon it to make a decision.
- An exception to this general rule is said to exist "when an attorney is confronted with an emergency which requires immediate action to protect the client's interests and consultation with the client is impossible." (citing *Nehleber*, 345 So.2d at 823).
- Although several courts, including our own, have acknowledged this exception, Appellee concedes, and our research confirms, that no Florida appellate court has ever found the exception to be applicable.

Did Bilbo commit an ethics violation?

- Bilbo did not violate the rule if she thought O'Neill's instructions were accurate and contact Blower.
- Bilbo should have refused the instruction to contact Blower because "it just didn't feel right."
- Bilbo should contact Blower because the insurance company is hiding information relevant to the case.
- Bilbo is independently responsible for the ethical violation regardless of who told him. If O'Neill had told him to jump off a bridge, would he do it?

The correct answer is A.

Bilbo did not violate the rule if she thought O'Neill's instructions were accurate and contact Blower.

- 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. [Rule 4-5.2(b)].

Is the settlement unethical?

- A. The agreement is proper and Bilbo should be happy he doesn't get fired.
- B. The agreement is improper and Bilbo has an obligation to report the firm and O'Neill to The Florida Bar.
- C. Bilbo should leave the firm and tell the insurance company he left.
- D. O'Neill should call The Florida Bar and report his own unethical conduct.

The correct answer is A.

The agreement is proper and Bilbo should be happy he doesn't get fired.

- A lawyer shall not participate in offering or making; an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy. [Rule 4-5.6(b)].
- In this case, the agreement is not to restrict the right to practice. The restriction is on advertising, not representing clients, in matters against BBIC. As advertising is not a part of the practice of law, agreeing not to advertise for such cases does not violate the rule.