Larry, Curly, and Moe appear at your office door, asking you to represent them in the formation of a business entity. After a thorough analysis, you determine that an LLC is the appropriate form of entity and prepare an operating agreement. With Larry, Curly, and Moe's consent, you file Articles of Organization with the Illinois Secretary of State.

With the LLC now legally recognized, is the LLC your client?

Yes _____     No _____

You are competing for the representation of a major corporation in what will likely be a significant case. The prospective client's General Counsel is interviewing you in one of the firm's conference rooms and asks you to identify other clients for whom you have handled similar matters.

Can you identify the clients as the GC asks?

Yes _____     No _____
To Be, Or Not To Be

You are producing for deposition Hamlet, the employee of a corporate party.

Do you have an attorney-client relationship with Hamlet by virtue of your representation of the corporation?

Yes _____     No _____

The Gift

You represent a target company in a mid-market acquisition. Amazonia, the acquiring company, repeatedly requests certain indemnification language that your client is unwilling to give. At the 11th hour, with the requested indemnification as the only outstanding point, your client caves and you so advise Amazonia’s counsel. The final acquisition agreement, both marked and unmarked (for execution), arrives by messenger from Amazonia’s counsel the following morning. To your surprise, the proposed definitive documents do not reflect your client’s concession. You know that Amazonia’s counsel did not deliberately delete the term; this is a scrivener’s error.

Must you advise Amazonia’s counsel?

Yes _____     No _____

Must you advise your client?

Yes _____     No _____

Just The Two Of Us

You represent two partners in litigation against them and their general partnership. In the course of the representation, one of the partners, Archie, reveals to you very embarrassing information previously known only to him that he worries will somehow be revealed in the litigation.

Can Archie prevent you from sharing this information with the other partner/client, Barb, by invoking the attorney-client privilege?

Yes _____     No _____

Would the result be different if, instead of invoking the privilege, Archie told you that he considered you bound not to share the information with Barb by virtue of your ethical duty of confidentiality?

Yes _____     No _____
Oh, Hello Your Airness

Michael Jordan, a current client of your firm, is a key third-party witness on the other side of a case you are handling. You believe that to represent your client in the case, you must depose Michael and then cross-examine him at trial.

Is this a conflict of interest?
Yes _____ No _____

If it is a conflict, is it curable by consent?
Yes _____ No _____

Would your answer change if instead of deposing Michael, you simply subpoenaed documents from him?
Yes _____ No _____

The Prospect

The CFO of Goggle, which you do not represent, calls you. He wants to retain you in a hostile takeover offer. After a ten minute conversation in which he discloses both preliminary and overall strategy, he reveals the target’s identity. The target is a client of your firm. You decline the representation without disclosing why.

Can you alert your client to Goggle’s intentions?
Yes _____ No _____

Can you represent your client in Goggle’s ensuing takeover offer?
Yes _____ No _____

Can another lawyer in your firm represent the client in Goggle’s ensuing takeover battle?
Yes _____ No _____

The In-Laws

Jack Byrnes maintains an office in Nebraska where he is licensed, and his litigation practice includes some debt collection work. Jack’s in-laws, who are Minnesota residents, contact him for assistance because their condominium association has obtained a $3,000 judgment against them and the association’s Minnesota-based lawyer is harassing them with phone calls. Over a four-month period, Jack and the association’s lawyer exchange two dozen emails about the in-laws’ assets, their ability to pay the judgment, and settlement terms.

Is Jack engaged in UPL?
Yes _____ No _____
All In The Family

You have represented Ed Worthy for years. A hugely successful entrepreneur, you prepared his and his wife Dottie’s estate plan. You now represent his son, Ed Worthy II (“Deuce” to his friends), in his various business matters. One day, Ed informs you that he and Dottie have decided that they no longer wish to provide for Deuce in their revocable trust. Deuce’s business successes have made their support unnecessary, and they wish to allocate the money that once would have gone to Deuce to Deuc’s bumbling brother Todd, who will never be able to make it on his own. They instruct you to modify their trust documents accordingly.

Does this present a conflict of interest with your other client, Deuce?

Yes _____ No _____

Who You Gonna Call?

A young partner at Stantz, Venkman & Spengler LLP (SVS) represents Gozer in a commercial loan matter. Fearing that he has potentially committed malpractice after Gozer blamed him for not discovering an outstanding lien on the subject property, the partner calls Winston, the designated ethics and risk management partner at SVS, seeking advice as to whether he should withdraw from the representation. Gozer ultimately sues SVS for malpractice.

Is the partner’s call with Winston privileged?

Yes _____ No _____

Family Ties

You agree to represent Amalgamated Industries, Inc. in acquiring a local equipment manufacturer. Amalgamated’s outside counsel guidelines state that by agreeing to represent Amalgamated, you share an attorney-client relationship with its parents, subsidiaries, and affiliates. You don’t attempt to alter those terms. Later, while you are still representing Amalgamated, your partner is asked by one of the firm’s best clients to sue an Amalgamated subsidiary for breach of contract in a matter unrelated to the deal you are handling.

Can your partner accept the new matter without Amalgamated’s consent?

Yes _____ No _____
You represented Puffy's Steak and Ice House in an exclusive distribution agreement. A dispute subsequently develops between Puffy's and its counterparty about the obligations of the counterparty under the agreement. Puffy's asks for your advice. In reviewing the agreement, you notice two mistakes that you made in the agreement that may adversely impact the client's position in the dispute.

Do you have to reveal the mistakes to Puffy's?

Yes _____ No _____

Can your firm represent Puffy's in the ensuing litigation involving the dispute?

Yes _____ No _____

Miranda's corporate client, Hamilton Inc., asks her to close a transaction that will require the services of an escrow agent and further suggests that Miranda should fill that role. Hamilton believes it cumbersome and wasteful to engage a traditional escrow agent, and points out that the counterparty, Burr LLC, will readily consent to the arrangement. After Miranda reluctantly agrees to serve as the escrow agent, a dispute arises between the parties. Hamilton directs Miranda not to release the escrowed funds, but Burr demands that Hamilton release the escrowed funds pursuant to the terms of the escrow agreement.

Should Miranda follow Hamilton's instructions?

Yes _____ No _____

Can Miranda resign as escrow agent, and continue to represent Hamilton in the matter?

Yes _____ No _____

You represent the seller in the sale of a men's haircut chain store. The parties quickly agreed on the purchase price, but seem to be splitting hairs on several other terms in the draft sale agreement. Your client wants to call the buyer, his former business partner, to try and negotiate a quick resolution. He believes that "all you lawyers are the problem" and that he can finalize the deal "speaking businessman to businessman."

Will his call to his former partner with your knowledge violate the Rule 4.2 prohibition on ex parte communications with a represented party?

Yes _____ No _____

Can you coach your client on what to say, or on points to make, if he calls his former partner?

Yes _____ No _____
I Know Somebody

A financial advisor from a well-known company calls you. After some small talk, the advisor states that he would like you to refer clients to him for financial advice. For every client referral, the advisor will pay you a fee. The financial advisor’s proposal interests you, as you have several clients who would benefit from his services.

May you ethically accept the referral fee from the financial advisor?

Yes _____     No _____

Oops. Sorry.

One of your partners has just sued Crotalus Corp. in a major case. Your firm has never represented Crotalus. But now you receive a call from your enraged estate planning client, Nick Franca. “Do I have to remind you that I am the CFO of Crotalus?,” he asks sarcastically. “Might you remember that my ability to retire at age 60 and the entire worth of my trust depends on the value of Crotalus stock? Did you forget that I get half my bonus in stock and I have bought more through our employee savings plan?” You wince—you never thought of Nick when you saw your partner’s conflict notice. “Your firm needs to withdraw from the case against us now,” Nick snarls.

Does your firm have a conflict?

Yes _____     No _____

Is Nothing Sacred Anymore?

J.D., an employment lawyer at Cox & Kelso LLP, served as a board member at Sacred Heart Hospital for three years. About a year after J.D.’s board term ended, one of his partners, Elliott Reid, sues Sacred Heart and one of its doctors for medical malpractice. Sacred Heart’s CEO, Christopher Turk, immediately calls J.D. to express his displeasure and notify him that the hospital will move to disqualify the firm based on the “obvious” conflict of interest. “What are you talking about, Turk?,” replies J.D. “Neither I, nor any of my partners at Cox & Kelso, have ever represented Sacred Heart before.”

Is there a conflict of interest?

Yes _____     No _____
An associate comes into your office to tell you as the partner he regularly works with that he has lost a thumb drive (probably in LaGuardia, but he’s not sure). The data on the thumb drive was unencrypted, and the data included, among other things, a draft press release for a client’s as-yet-unannounced acquisition of a public company.

Has anyone violated a rule of professional conduct?

A. No. It’s all good.
B. The associate has violated at least one rule of professional conduct, but you are in the clear.
C. Unfortunately, you have violated at least one rule of professional conduct. The associate is in the clear.
D. Ouch. Both you and the associate have violated at least one rule of professional conduct.

Harry uses a tracking device, also known as a “web bug,” to track the use of an email and attached document that he sends to Jane, his opposing counsel in a civil lawsuit. In particular, the web bug informs Harry of the following: when Jane opened the email; how long Jane reviewed the email, how many times Jane opened the email; whether Jane opened the attachment to the email; how long Jane reviewed the attachment; and whether and when Jane forwarded the subject email or attachment.

Has Harry violated the rules of professional conduct?

Yes _____     No _____

You represented a wealthy rancher and his wife in preparing their estate plans. You finished all of your work in 2010, when the necessary documents were executed. You have not spoken with them since. Now, your partner has sued the rancher over certain property rights on behalf of an adjoining landowner. The rancher has moved to disqualify your firm on the basis that he is a current client and your firm’s representation of the adjoining landowner presents a concurrent conflict of interest under Rule 1.7(a). You contend that the rancher and his wife are former clients and there is no conflict under Rule 1.9(a) because the matters are unrelated.

Will the rancher succeed in disqualifying your firm?

Yes _____     No _____
Invoking the Privilege

The general counsel of a good client calls you. She says that the CEO of her company has organized a working group of senior managers to explore the desirability and feasibility of making a hostile offer for a competitor. She is concerned the much of the “discussion” will occur through “reply-to-all” emails and that the email strings will be discoverable if litigation ensues between her company and the target. You tell her that if she requires her colleagues to show her as a “cc” on all of the email traffic, the entire email string will be protected by the attorney-client privilege. Would most courts support your view?

Yes _____ No _____

With Friends Like These

You are defending a company in employment litigation and you would like to obtain some photos the plaintiff has on her Facebook page but you cannot because of her privacy settings. Another employee who is loyal to the company is one of the plaintiff’s “friends” and can obtain the photos. May you ask her to do so?

Yes _____ No _____

Assume instead that the employee volunteers that she knows about the photos and offers to obtain them for you. Should you accept her offer?

Yes _____ No _____

Keep Quiet, Keep Away

You represent a corporation in litigation. Several relatively low-level corporate employees are key witnesses. Can you ask them not to speak with opposing counsel outside your presence?

Yes _____ No _____

Can you instruct opposing counsel not to attempt to communicate with the employees because you represent them in the matter?

Yes _____ No _____
The Big Deal

Lawyer’s longtime client Hannah is forming a new software business in which she will be the majority shareholder. Hannah tasks Lawyer with drafting all of the necessary documents. During the transaction, Lawyer frequently meets with both Cole (the key salesman for the new business) and Sydney (the genius employee whose software will power the company). Cole and Sydney, who are not represented by counsel, will receive minority interests in the new business and otherwise benefit from the overall transaction.

Unfortunately, the business craters in the first six months when Hannah gets crosswise with everyone. Cole and Sydney call Lawyer. They are fuming because, as “lawyer for the deal,” Lawyer was supposed to protect their interests too.

Are Cole and Sydney correct?

Yes _____     No _____

Meta-What?

Thelma and Louise are negotiating a stock purchase agreement on behalf of their respective clients.

1. Before transmitting an electronic version of the stock purchase agreement to Louise, Thelma is ethically obligated to remove embedded metadata containing any confidential client information.

2. Louise is ethically obligated to refrain from searching for, extracting, or otherwise using metadata embedded in the stock purchase agreement received from Thelma.

Which of the above statements are followed by the majority of state ethics committees addressing metadata?

A. Statement number 1 only.
B. Statement number 2 only.
C. Both statements.

See Anything Familiar?

In January 2017, SplashData released its sixth annual “Worst Passwords List,” compiled from more than five million passwords leaked during the year. Which of the following passwords DID NOT crack the Top 10 Worst Passwords List?

A. princess
B. 123456
C. abc123
D. password
E. qwerty
Steelworks and Metal Mashers are in the same industry. Your firm has represented Steelworks generally for over 40 years and Metal Mashers on financings for about 5 years. Steelworks asks your firm to represent it in a hostile bid for Metal Mashers. Your firm decides to terminate its relationship with Metal Mashers and recommends competent successor counsel to Metal Mashers. When Metal Mashers asks why the firm is ending the relationship, your firm simply states that something has come up in which Metal Mashers’ interests may be adverse to those of another client.

Will a court will view Metal Mashers as a “former client” and permit your firm to represent Steelworks in the takeover?

Yes _____ No _____

You are participating in a settlement conference in federal court with a magistrate acting as mediator. Your client’s representative, who is in attendance, has $1 million in settlement authority. At some point the magistrate asks you what your “top dollar” is and you tell him $750,000. Frustrated, the magistrate then asks the client representative to justify his stinginess in light of the case facts. The representative reveals that your client’s top dollar is, in fact, $1 million.

Have you violated any ethics rules by virtue of your “top dollar” statement to the magistrate in the negotiations?

Yes _____ No _____

Junior associate Avery observes behavior by senior partner Chase indicating that he is not competent to represent clients. Avery reports to her supervising lawyer, Nuremberg, that she suspects Chase is mentally impaired. She describes in detail three instances of conduct that clearly violate Model Rules 1.1, 1.3 and 1.4. Nuremberg directs Avery to ignore the situation and not to say anything to anyone about her observations. Seeing no other alternatives, Avery concludes that the firm will not investigate Chase’s behavior. A month later, the State Bar initiates an investigation following the receipt of complaints by two of Chase’s clients.

Besides Chase, which lawyers have likely violated a rule of professional conduct?

A. Nuremberg.
B. Nuremberg and Avery.
C. Nuremberg and Firm Management.
D. Nuremberg, Avery, and Firm Management.
The Price Is Right . . . Maybe

Your client is sued in a business dispute. A former employee of your client who lives in another city could be a key witness for you. He agrees to testify at trial if you will agree to compensate him at a rate of $150 per hour for all time spent testifying, preparing to testify, and traveling to your city to testify.

If $150 per hour fairly approximates the income he will lose from his current job by taking time off to assist you, can you pay him as he requests?

Yes _____     No _____

Would your answer change if he were retired and thus will lose no income by assisting you?

Yes _____     No _____

Family Matters

After Martha is indicted by the government for securities fraud, she writes an e-mail to her lawyer describing in great detail the circumstances surrounding her purchase of Stewart Corp. stock. The next day, Martha forwards a copy of the email to her daughter. The government now seeks a judicial determination as to the privileged status of the forwarded e-mail.

The forwarded e-mail is protected by the attorney-client privilege.

Yes _____     No _____

The forwarded e-mail is protected by the work product doctrine.

Yes _____     No _____

Revealing Adverse Authority

You represent the appellant in a case before the Nebraska Supreme Court and there is no Nebraska case law on-point. There is, however, a California Supreme Court case with nearly identical facts that is directly adverse to your position. Must you reveal the California case in your brief?

Yes _____     No _____

What if there is a Nebraska Supreme Court case that goes against you, but you reasonably believe the directly adverse language to be dicta: must you reveal the case in your brief?

Yes _____     No _____
Client [Non]Disclosure, or Whose Schedules?

You represent the shareholders of a closely held business that is to be acquired by a private equity fund. The acquisition agreement is nearly complete and you are reviewing a draft of the proposed disclosure schedules with the principal shareholder. You have included on your draft of the appropriate schedule the fact – known to you and your clients, but not of public record – that a prior owner of the clients’ manufacturing facility had injected unknown amounts of TCE into the soil over 20 years ago. Your client insists that the disclosure be deleted because, if made, it will “kill the deal.” You respond that the disclosure is clearly responsive to the relevant representation, that the buyer may be able to cover its theoretical exposure with insurance, but that he and the other shareholders will have personal liability if the disclosure is deleted and the buyer is damaged. He says that he’ll take that chance and it will be “no worry of yours or your firm.”

Can you accede to the client’s demands without exposure to you or your firm?

Yes _____  No _____

Snitching or Self-regulation?

Your win summary judgment and your opposing counsel files a motion for reconsideration in which he refers to the trial judge as “a lying, incompetent ass-hole” and further writes that “any judge who graduated from the seventh grade” would have ruled for his client instead of yours.

Must you report the lawyer to disciplinary authorities under Model Rule 8.3(a), which requires you to report misconduct by another lawyer that “raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects”?

Yes_____  No _____

The Constituent

You specialize in high-end residential real estate transactions. The CFO of Great Lakes Securities, an important client of the firm, asks you to represent her in the purchase of a $12 million condo on Chicago’s Gold Coast.

Can you accept the representation?

Yes _____  No _____
Frivolous Litigation?

You have been asked by a good client to file suit on its behalf. Unfortunately, you have concluded that your client’s claims are barred by the statute of limitations. The client instructs you to file suit anyway in the hope that the other side’s lawyers won’t notice that the suit is time-barred. You remember that Model Rule 3.1 provides that a lawyer shall not bring a proceeding “unless there is a basis in law and fact for doing so that is not frivolous.”

May you file suit as the client requests?

Yes _____     No _____

Lawyer as Witness

Your opponent moves to disqualify you as trial counsel on the basis that you are likely to be a necessary witness at trial because a key witness recanted her allegations during a videotaped statement that you took in the presence of her employer.

Will the motion succeed?

Yes _____     No _____

Assume that the other lawyer argues that the employer is an unreliable witness thus requiring your testimony. Will that affect the court’s determination?

Yes _____     No _____

An Over the Transom Delivery

While representing a client in litigation, you receive in the mail an envelope bearing no return address that contains a thumb drive with a number of documents obviously belonging to your adversary. Your very cursory review reveals that the documents are critical to your case and, further, that some or all of them may be privileged.

Must you inform your adversary that you received the documents?

Yes _____     No _____

Must you return the documents to your adversary without keeping copies if your adversary so demands?

Yes _____     No _____
The Scrivener’s Tale

After suffering financial difficulties with Studio 54, Steve authorizes his lawyer, Margot, to contact potential buyers. Margot calls Ian, an experienced businessman and longtime client about the opportunity. Steve and Ian independently negotiate a purchase price for Studio 54. Ian then decides that Margot should represent both he and Steve in finalizing the transaction to save money.

Is there a conflict of interest?  
Yes _____  No _____

If so, is the conflict consentable?  
Yes _____  No _____

Both Kinds of “Party”

You represent a very successful young salesman who anticipates being sued by his former employer for violating his covenant not to compete. The salesman’s Facebook page includes a number of pictures of him smoking marijuana with friends. In other party pictures he is obviously intoxicated and making obscene gestures, and in yet another he has pulled down his pants to show off a skull and crossbones tattoo on his derriere.

Can you tell him to “clean up” his Facebook page before his former employer or its lawyers discover the unflattering photos?  
Yes _____  No _____

Doctor Who?

A medical malpractice action is filed against Dr. Rogers, and Insurance Co. retains Attorney Hunter to defend the action. During the lawsuit, Dr. Rogers informs Attorney Hunter that she will not consent to a settlement of the action because she wants vindication at trial. The applicable policy, however, expressly states that the insurer may settle any action without the insured’s consent. Prior to trial, Attorney Hunter settles the action for a nominal amount without the consent or knowledge of Dr. Rogers.

Does Dr. Rogers have a viable claim against Attorney Hunter?  
Yes _____  No _____
Yelp!

Client posts a scathing review of Lawyer’s legal services on the internet, writing that “Lawyer makes Bernie Madoff look like a saint. She took my money ($10,000) for a hearing that she knew I could not win.” Lawyer knows this accusation is false because Client lied to her when they met about the matter.

Would posting a reply with the “real facts” violate Lawyer’s duty of confidentiality?
Yes _____ No _____

Rock Chalk, Conflict?

Phog Allen Bank receives a notice and order of garnishment seeking information and funds from Billy Self. Phog Allen Bank immediately contacts its longtime outside counsel, Williams & Brown LLP, for advice on responding and complying with the garnishment. As it turns out, Billy Self is a current client of Williams & Brown LLP on an unrelated matter.

Can Williams & Brown LLP accept this work from Phog Allen Bank?
Yes _____ No _____

‘Til Death Do Us Part?

You make notes during an initial interview with your client. A week later, the client commits suicide. The government now seeks your notes for use in a criminal investigation.

Are the notes shielded from discovery by the attorney-client privilege?
Yes _____ No _____

Does the answer change if the client is instead a dissolved corporation?
Yes _____ No _____
ESPN hires Harry at Law Firm to obtain renewal of its broadcast license from the sole federal broadcast regulatory agency, the FCC. A week later, Harry receives a phone call from Jane, ESPN's General Counsel. Jane is outraged because she just read in the NY Times that Law Firm now represents Fox Sports in renewing its broadcast license from the FCC. She tells you that such representation always creates a concurrent conflict of interest, and that she plans to make that point clear to Law Firm’s managing partner.

Is there a conflict of interest?

Yes _____     No _____

A NASDAQ tech company that you do very little work for (but would like to more) asks you, on 24 hours notice, to render a legal opinion to a hedge fund that proposes to lend the company $300 million for 21 days. The opinion would address the enforceability of a guaranty of the debt by a controlling shareholder of the borrower. This is the third time you have been asked to give such an opinion, each time to a different lender. You say to your partner: “Bill, should I do this again? I am uncomfortable because I really don’t understand the deal. Mid-March, mid-June, and now mid-September. What’s going on?”

Bill says: “Don’t worry. You want more work from these guys and you won’t get it if you ask questions that suggest you don’t understand their business. Give them what they want when they want it. As long as you think the opinion is correct and that you have the basis to give it, just do it.”

Is Bill right?

Yes _____     No _____

Your specialize in negotiating and documenting commercial loans. You usually represent lenders. Your best client is Capital Bank. On occasion, you represent long-standing clients of the firm as borrowers. If Capital Bank is the lender in those deals, you do so pursuant to an evergreen consent from Capital Bank and the bank is represented in the loan by other counsel.

In representing a putative borrower from Capital Bank, can you disclose to your client the issues that are really important to Capital Bank and the bank’s bottom line position on each of them?

Yes _____     No _____
David Versus Goliath

Teddy at Law Firm files a federal lawsuit on behalf of Goliath, an aggressive corporation, arguing that the target company’s poison pill arrangement is illegal under Texas’s anti-takeover statute, and further, even if state law permitted the arrangement, the law violates the U.S. Constitution.

Down the hall, Mary at Law Firm strongly recommends to Bullseye’s board of directors that they should include a poison pill arrangement to repel hostile takeover attempts. Mary has advised past corporate clients to adopt similar poison pill arrangements. Bullseye’s CEO reads a news story about Goliath and calls Mary . . . .

Does Law Firm have a conflict of interest?
Yes _____     No _____

Looking Ahead

On behalf of Sea Chips, Law Firm files a multi-million dollar breach of contract action in Texas against Knock-Off Micro. In the prior three years, Law Firm has filed 10 patents for Knock-Off Micro. The engagement letters for those 10 patent matters each contain the following advance waiver clause:

“From time to time we may be asked to represent someone whose interests may differ from the interests of the Company. We are accepting this engagement with the Company’s understanding and express consent that our representation of the Company will not preclude us from accepting an engagement from a new or existing client, including litigation or other matters that may involve the Company. However, we will not accept an engagement that is directly adverse to the Company or any of its subsidiaries if either: (1) it would be substantially related to the subject matter of our representation of the Company; or (2) would impair the confidentiality of proprietary, sensitive or otherwise confidential communications made to us by the Company.”

Are the waivers enforceable against Knock-Off Micro?
Yes _____     No _____

A Second Opinion

You are called by a prospective client who is locked in aggravated and costly litigation and is beginning to doubt his current lawyer’s strategy, tactics, and settlement recommendations. He wants to meet with you to discuss his case and to obtain a second opinion on various aspects of his representation.

Can you meet with him without his current lawyer’s permission?
Yes _____     No _____
Lisa, a junior associate at Goode Hart LLP, is asked to draft a revocable living trust and pour-over will for a new client. She searches the firm’s document management system and finds an example of a revocable living trust and pour-over will that a partner prepared almost a decade earlier for another client. Upon reviewing the documents, Lisa notices some discrepancies between the language of the other client’s revocable living trust and pour-over will that could hinder the documents’ enforceability if ever challenged.

Are Lisa and her firm obligated to point out the discrepancies to the other client, if the client is a current client of the firm?

Yes _____ No _____

Are Lisa and her firm obligated to point out the discrepancies to the other client, if the client is a former client of the firm?

Yes _____ No _____

Opposing counsel in litigation believes that you are not communicating his settlement offers to your corporate client.

May your opponent communicate ex parte with your client’s in-house general counsel to explore settlement?

Yes _____ No _____

Does it matter whether you have previously instructed the other lawyer to deal only with you, i.e., not to attempt to communicate directly with anyone in your client’s law department?

Yes _____ No _____

You represent a closely-held business. A trusted employee, who the owner always considered to be part of the family, embezzled $400,000. The owner is deeply embarrassed by the theft and fears reputational harm if his customers learn of it. He also does not want to ruin the employee’s life. In an effort to recoup the loss while addressing the owner’s concerns, you write a demand letter to the employee in which you say that you will report him to the police unless he repays the money within one year.

Have you committed an ethical violation by threatening criminal prosecution to gain an advantage in a civil matter?

Yes _____ No _____
Wanna Get Away?

This morning, the head of your IT department tells you that the firm has suffered a cyber intrusion. She advises you that the target appears to be your major client, and specifically records containing the personally identifiable information of thousands of the client’s employees. Upon her review of the firm’s network, however, she cannot confirm that the hackers actually accessed, removed, or otherwise compromised the client’s records.

Are you ethically obligated to report the cyber intrusion to your client?

Yes _____ No _____

Beauty and the Beast

Belle sues Beast, Inc. for false imprisonment, seeking $10,000 in compensatory damages and $1,000,000 in punitive damages. Pursuant to Beast, Inc.’s CGL policy, Insurance Company retains your firm to defend the lawsuit. Insurance Company disclaims coverage for punitive damages in a reservation of rights letter.

Does a conflict exist between Insurance Company and Beast, Inc.?

Yes _____ No _____

Dealing With Peach Fuzz

Peach Fuzz invents a new hair growing technology, and then negotiates with Baxter Corp. to pursue patent protection for Peach in exchange for exclusive licensing rights. The parties agreement reserves for Baxter the obligation to pay for counsel, and the final decision on any prosecution matter. Baxter retains IP Firm to prosecute the patents, while Peach hires separate counsel. Baxter and IP Firm reference IP Firm in emails as “Baxter’s Counsel,” while Peach refers to IP Firm in some emails as “Baxter Outside Counsel.”

During the application process, IP Firm receives instructions from Peach about filing patent applications in foreign countries. IP Firm also provides draft responses to the US Patent Office for Baxter and Peach’s review and approval, while Peach asks IP Firm about the submission’s likely outcome.

The deal heads south, spawning litigation. During discovery, Peach seeks all documents between Baxter and IP Firm relating to the patent prosecutions. Baxter asserts the attorney-client privilege. Will Peach Fuzz prevail?

Yes _____ No _____
Stand Resolute

You are representing one of two defendants in a major case. Your co-defendant is insured by Resolute Casualty Co., which is defending it in the litigation. Resolute is a client of yours in unrelated matters. In this case, you determine that you need to cross-claim against your co-defendant. That cross-claim will clearly implicate Resolute’s coverage.

Does filing the cross-claim pose a conflict of interest for you?

Yes _____ No _____

A Small Favor . . .

Your friend Sam wants to sue a tree-trimming company that ruined her landscaping while it was trimming her neighbor’s trees. Sam can’t afford to hire you and she is representing herself. Sam has asked if you would help her behind the scenes by drafting the petition and other pleadings she will need to file.

Can you assist Sam without entering your appearance in the matter?

Yes_____ No _____

A Corporate Indemnitee

You are defending a corporate officer in litigation pursuant to an indemnification agreement between the officer and the company. The company’s general counsel calls you and wants to discuss your defense strategy.

Can you discuss your strategy with her?

Yes _____ No _____
You represent a REIT. The CFO of the REIT, who is your primary contact at the client, confides in you that a distressing number of retail tenants in the REIT’s shopping centers are behind on their rent and appear to be headed to defaults under their leases. You believe that he should disclose the problem to the audit committee and, thereafter, it likely should be disclosed, in some fashion, in the MD&A for the upcoming 10-Q. “Absolutely not,” he says. “The stock is under pressure already. We say anything about this problem and we’ll trade down for weeks. It will work its way through or it won’t. But that’s my problem. I’ll handle it. I told you about it in confidence. The very last thing we need right now is for me, or you, to surface this with the audit committee.”

Should you follow the direction of the CFO and button your lip?

Yes ____ No ____