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Hypotheticals

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Hypothetical 1

You occasionally have lunch with your favorite law school professor, and enjoy a vigorous "give and take" on abstract legal issues that you never face in your everyday practice. Yesterday you spent the entire lunch discussing whether lawyers lose their First Amendment rights when they join the profession.

Should there be any limits on lawyers' public communications about matters they are handling (other than their duty of confidentiality to clients, duty to obey court orders, avoiding torts such as defamation, etc.)?

**(A)** YES

**(B)** NO

Hypothetical 2

Your state's chief justice just appointed you to a commission reviewing your state's ethics rules provision dealing with lawyers' public communications. You wrestle with some basic issues as you prepare for the commission's first meeting.

**(a)** Should limits on lawyers' public communications about their cases apply to all lawyers, (rather than just lawyers engaged in litigation)?

**(A)** YES

**(B)** NO

**(b)** Should limits on lawyers' public communications about their cases apply only to criminal cases?

**(A)** YES

**(B)** NO

**(c)** Should limits on lawyers' public communications about their cases apply only to jury cases?

**(A)** YES

**(B)** NO

**(d)** Should limits on lawyers' public communications about their cases apply only to pending cases?

**(A)** YES

**(B)** NO

**(e)** Even if it would otherwise violate the limit on lawyers' public communications, should lawyers be permitted to issue public statements defending their clients from anonymous news stories containing false facts or accusations about their clients?

**(A)** YES

**(B)** NO

Hypothetical 3

You and your best friend in law school took totally different career paths ‑‑ you became a criminal defense lawyer and she became a prosecutor. Over drinks after work one day, you debate whether any limits on lawyers' public communications about their cases should apply equally to you and your friend.

Should prosecutors' public communications about criminal cases be more severely restricted than criminal defense lawyers' statements?

**(A)** YES

**(B)** NO

Hypothetical 4

A state bar commission issuing recommendations about lawyers' public communications has now turned to lawyers' criticism of judges. You have been giving some thought to this issue before the commission's next meeting.

**(a)** Should lawyers be totally prohibited from criticizing judicial opinions?

**(A)** YES

**(B)** NO

**(b)** Should lawyers be totally prohibited from criticizing judges?

**(A)** YES

**(B)** NO

**(c)** Should any limitations on lawyers' criticism of judges apply to nonpublic criticism?

**(A)** YES

**(B)** NO

**(d)** Should any limit on lawyers' public communications about judges be based on the lawyers' subjective belief in the truth of what she says (as opposed to an objective standard)?

**(A)** YES

**(B)** NO

**(e)** Should any limit on lawyers' public communications about judges apply only to the wording used (as opposed to the substance of the statement)?

**(A)** YES

**(B)** NO

Hypothetical 5

One judge in your local state court has received national notoriety for issuing controversial and unpopular decisions. As your local bar's ethics "guru," you have received several calls from lawyers anxious to know what they can say about this judge's recent decisions.

May a lawyer say the following about a judge's decision:

**(a)** "We respectfully disagree with the judge's recent decision"?

**(A)** YES

**(B)** NO

**(b)** "We think the judge got it wrong"?

**(A)** YES

**(B)** NO

**(c)** "We think the judge totally missed both the facts and the law presented at the trial"?

**(A)** YES

**(B)** NO

**(d)** "We were astounded at the judge's lack of understanding of basic legal principles"?

**(A)** YES

**(B)** NO

**(e)** "We obviously disagree with the judge's stupid decision"?

**(A)** YES

**(B)** NO

Hypothetical 6

A lawyer on the other side of one of your largest cases has always relied on his assistant to send out his emails. He must just have hired a new assistant, because several "incidents" in the past few months have raised some ethics issues.

**(a)** A few weeks ago, you received a frantic call from the other lawyer saying that his assistant had accidently just sent you an email with an attachment that was intended for his client and not for you. He tells you that the attachment contains his litigation strategy, and warned you not to open and read it. You quickly find the email in your "in box," and wonder about your obligations.

May you open and read the attachment?

**(A)** YES

**(B)** NO

**(b)** Last week you opened an email from the other lawyer. It seems to be some kind of status report. About halfway through reading it, you realize that it is the other lawyer's status report to her client.

Must you refrain from reading the rest of the status report?

**(A)** YES

**(B)** NO

**(c)** You just opened an email from the other lawyer. After you read several paragraphs, you realize that the email was intended for a governmental agency. The email seems very helpful to your case, but would not have been responsive to any discovery requests because your adversary created it after the agreed‑upon cut‑off date for producing documents.

Must you refrain from reading the remainder of the email?

**(A)** YES

**(B)** NO

**(d)** Must you advise your client of these inadvertently transmitted communications from the other lawyer, and allow the client to decide how you should act?

**(A)** YES

**(B)** NO

**(e)** Must the other lawyer advise his client of the mistakes he has made?

**(A)** YES

**(B)** NO

Hypothetical 7

You just received an email with an attached settlement proposal from an adversary. Coincidentally, last evening you read an article about the "metadata" that accompanies many electronic documents, and which might allow you to see who made changes to the settlement proposal, when they made the changes, and even what changes they made (such as including a higher settlement demand in an earlier version of the proposal).

What do you do?

**(A)** You must check for any metadata (to diligently serve your client).

**(B)** You may check for any metadata, but you don't have to.

**(C)** You may not check for any metadata.

Hypothetical 8

One of your sorority sisters just lost her job, and wants to pursue a wrongful termination claim. Your firm would probably not want you to represent the plaintiff in a case like this, although you do not have any conflicts. You offer to help your sorority sister as much as you can.

Without disclosure to the court and the adversary, may you draft pleadings that your sorority sister can file pro se?

**(A)** YES

**(B)** NO

Hypothetical 9

As your firm's ethics "guru," you receive numerous calls every day from your partners who are trying cases. This morning you received two similar calls from partners who need your immediate input.

One of your partners represents an individual plaintiff in a lease case about to be tried. Your partner called you this morning to say that the defendant appears not to have discovered her client's earlier criminal conviction for fraud and perjury. Your partner wonders about her obligations at the upcoming trial.

**(a)** Must your partner disclose her client's criminal conviction for fraud and perjury?

**(A)** YES

**(B)** NO

Another partner called you from the courthouse during a break in an ex parte TRO hearing. That partner's client had earlier been found liable for engaging in fraudulent mortgage transactions ‑‑ which would be material in the matter. Your partner needs to know immediately whether to disclose that earlier judgment.

**(b)** Must your partner disclose the earlier judgment entered against your client?

**(A)** YES

**(B)** NO

Hypothetical 10

You are defending a bank in a lawsuit going to trial next month. One of your newest colleagues checks on a daily basis court decisions dealing with the issues involved in your litigation. Your colleague just reported on several new decisions, and you wonder whether you must bring them to the trial court's attention in your case.

Must you advise the trial court of the following decisions:

**(a)** A decision by your state's supreme court directly adverse to the statutory interpretation argument you are advancing on behalf of your bank client?

**(A)** YES

**(B)** NO

**(b)** A decision by another trial court elsewhere in your state, which does not control your trial court's decision, but which is directly adverse to your statutory interpretation argument?

**(A)** YES

**(B)** NO

**(c)** Unfavorable dicta in a decision from your state's supreme court?

**(A)** YES

**(B)** NO

**(d)** A decision from a neighboring state's appellate court involving exactly the same facts as your case, and which is directly adverse to your statutory interpretation argument?

**(A)** YES

**(B)** NO

Hypothetical 11

You and your law school roommate meet every month or so for lunch to discuss your careers. Yesterday your former roommate said that she was tempted to file a bar complaint against a lawyer on the other side of a case she is handling. That lawyer knew that your former roommate's box of trial exhibits had been accidentally delivered to the wrong floor in the courthouse. When your former roommate could not find the exhibits, she had to ask the court for a short delay in the trial -- which she had found embarrassing and which she feared had angered the judge who later ruled against her on some evidentiary matters.

When she later learned that the adversary's lawyer knew that the exhibits had been delivered to the wrong floor, she confronted him -- asking why he had not been courteous enough to let her know of the delivery person's mistake. The other lawyer replied that his knowledge was "information relating to the representation" of his client, and thus protected by Rule 1.6.

Your former roommate's experience prompted a lunch-time discussion between you and her about the intersection of ethics and professionalism.

Should the ethics rules prohibit unprofessional behavior?

**(A)** YES

**(B)** NO

Hypothetical 12

As the other side in a trial closes its case, you realize that the adversary's lawyer forgot to move into evidence a fairly important exhibit. You quickly huddle with your co-counsel to see what (if anything) you should do. From your experience, the judge handling the case would almost always allow a party to temporarily reopen its case to admit an exhibit like this.

What do you do?

**(A)** You must disclose the mistake to the adversary.

**(B)** You may disclose the mistake to the adversary, but you don't have to.

**(C)** You may not disclose the mistake to the adversary, unless your client consents.

Hypothetical 13

Your client asked you to check with the other side's lawyer (with whom you have a very friendly relationship) to see if the other side intends to appeal a trial victory that you won several weeks ago. When you call the other lawyer to ask about her intent, you learn that the other side intends to appeal ‑‑ but quickly realize that the other lawyer has miscalculated the appellate deadline. You do not say anything about it during the call, but reflect upon this issue immediately after hanging up.

What do you do?

**(A)** You must disclose the miscalculation to the adversary.

**(B)** You may disclose the miscalculation to the adversary, but you don't have to.

**(C)** You may not disclose the miscalculation to the adversary, unless your client consents.

Hypothetical 13

Your client asked you to check with the other side's lawyer (with whom you have a very friendly relationship) to see if the other side intends to appeal a trial victory that you won several weeks ago. When you call the other lawyer to ask about her intent, you learn that the other side intends to appeal ‑‑ but quickly realize that the other lawyer has miscalculated the appellate deadline. You do not say anything about it during the call, but reflect upon this issue immediately after hanging up.

What do you do?

**(A)** You must disclose the miscalculation to the adversary.

**(B)** You may disclose the miscalculation to the adversary, but you don't have to.

**(C)** You may not disclose the miscalculation to the adversary, unless your client consents.