



Illinois Supreme Court Commission on Professionalism

PROFESSIONALISM ORIENTATION PROGRAM DISCUSSION GUIDE

The Illinois Supreme Court Commission on Professionalism was established by the Supreme Court “in order to promote among the lawyers and judges of Illinois principles of integrity, professionalism, and civility; to foster commitment to the elimination of bias and divisiveness within the legal and judicial systems; and to ensure that those systems provide equitable, effective and efficient resolution of problems and disputes for the people of Illinois.” Illinois Supreme Court Rule 799(a). The Commission is counting on the promise of you, our next generation of lawyers, to be a beacon of professionalism. The Commission’s professionalism program during law school orientation, including discussion of the following materials, is the beginning of this process.

SCENARIO 1

Sneed & Smith represents Engulf & Destroy, an important client that has asked the firm to pursue legal action to close down a competitor, Startup.com. Engulf wants Sneed & Smith to file a lawsuit stopping Startup from infringing upon Engulf's "Eagle Express" trademark because Startup posted on its website some U.S. Government documents that have the bald eagle government seal. Sam Sneed is the partner, and Carmen Sanchez is a junior associate fresh out of law school, who has been working with Sneed on Engulf matters.

Carmen reports to Sneed that she has done the research and sees no basis for pursuing a preliminary injunction based on Engulf's claim because public records were being used. Sneed was not happy to receive this assessment from Carmen and told her that she didn't see the big picture and needed to learn the first rule of commercial litigation – achieving business goals is what matters. At Sneed's insistence, Carmen does her best to draft a pleading. She delivers the draft document to Sneed. He flips through it quickly. A portion of their conversation follows:

Sneed: This legal argument is terrible. You didn't even cite the *MGM* case.

Carmen: But the *MGM* case was overruled. And even if it wasn't, we just don't have the facts to support our position.

Sneed: Our very important client wants us to squash a pesky little competitor. A preliminary injunction is just the first round of tying these guys up in knots, and they probably don't have the resources to hang in for the full fight. Go redraft this. Keep the facts ambiguous and cite the *MGM* case. And let's talk about how to use this. [*Sneed points to a document on his desk.*] It's an internal Startup legal memorandum that has all their business plans and legal strategies. I got it from "this guy," and Startup doesn't even know we have it.

Carmen: But –

Sneed: Just do it. And tomorrow's Friday, right? We'll file this tomorrow, and that way it will get steered to Judge Wallace. He and I have a special "understanding" when it comes to these filings.

Carmen: I don't think –

Sneed: Good, don't think. And make sure you tell your secretary to use Eleventh Hour Couriers on this one.

Carmen: Why Eleventh Hour?

Sneed: We have a special arrangement with them for cases like this. They guarantee the package will not arrive before 11:58 p.m. on the day of service. By the way, you sign the pleading—you did the research, and if we're on thin ice here, because you're an associate, we won't get in any trouble. But when we go into court for the hearing, keep your mouth shut except to say "Yes, sir" if I ask you something. Our client expects only men on this case and won't want a woman saying anything. Got it?

Carmen: Yes, sir.

DISCUSSION QUESTION 1

Do you think there are or should be limits on what a lawyer can do on a client's behalf? If so, where would you draw the lines in this case?

DISCUSSION QUESTION 2

If you were Carmen, would you follow Sneed's directions to:

- Obscure the actual facts of the case?
- Cite an overruled case?
- Use an unauthorized privileged memorandum?
- Manipulate the filing to get the case heard by a particular judge?
- Manipulate the service to give the other side less time to prepare?

What consequences would you expect might flow from Carmen's decisions? Does Carmen have a duty to report Sneed's actions to the Illinois Attorney Registration & Disciplinary Commission (IARDC)?

DISCUSSION QUESTION 3

Should Engulf & Destroy be able to insist that only male lawyers appear on its behalf? Should Sneed have told the client a female lawyer was doing work on the case? Should he have tried to persuade the client to agree to her involvement? Should Carmen say or do something in response to Sneed's instruction?

SCENARIO 1 DISCUSSION GUIDE

DISCUSSION QUESTION 1

Do you think there are or should be limits on what a lawyer can do on a client's behalf? If so, where would you draw the lines in this case?

- This question allows students to consider the challenges of representing a client who expects a lawyer's assistance in pursuing a result that is not supported by legal precedent and of answering to a partner who prefers to allow business considerations to cloud his ethical judgment.
- In leading the students to consider why there might be limits on the claims a lawyer may pursue on behalf of a client, you might ask them to consider how it feels and what it costs to get sued, what it costs the taxpayers to support the impact upon litigants with meritorious claims. At the same time, it is worth having them consider the social cost of suppressing novel or unpopular causes.
- The Illinois Rules of Professional Conduct include several provisions relevant to these issues. The following are excerpts from particular rules which you should weave into the conversation as a participant touches upon the principle.

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND 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.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(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.

RULE 1.4 COMMUNICATION

(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.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law;

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: (4) the client insists upon taking action that the disagreement.

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law.

RULE 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 ...

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.

RULE 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.

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) 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 8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney-client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

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

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

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

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer.

DISCUSSION QUESTION 2

If you were Carmen, would you follow Sneed's directions to:

- **Obscure the actual facts of the case?**
- **Cite an overruled case?**
- **Use an unauthorized privileged memorandum?**
- **Manipulate the filing to get the case heard by a particular judge?**
- **Manipulate the service to give the other side less time to prepare?**

For this question, you could discuss with the students the impact of an attorney's actions and their reputation in the legal community. The strategy issues, particularly arranging last minute service, provide an opportunity to discuss options of pursuing more professional conduct, even when not absolutely required. It's not just what you do; it's how you practice that creates your identity as a lawyer.

Questions to consider:

- What does serving a legal filing on the opposing party at 11:59 p.m. do to your reputation in the legal community? Will your actions as a young lawyer follow you throughout your career? Even if your actions are not unethical, are you acting as a professional?
- What is it like to be on the other side of unprofessional conduct?
- What are the challenges of providing competent representation when you have virtually no time to prepare? What is the personal cost of dealing with every issue on an emergency basis?
- What is the cost in terms of the public's faith in the fairness of the court system when lawyers succeed by using legal maneuvers and tactics intended to keep the opposition from being heard in order to drive them out of business?

You could also discuss with the students the issues with the unauthorized use of privileged documents and information. What should you do when you have access to privileged documents from the other side that was not given to you by the other side and are not authorized to have? Should you look at it? Should you return it to the owner? Rule 4.4(b) states: "(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.” The Comment to the Rule explains that “document” includes e-mail or other electronic modes of transmission subject to being read or put into readable form. The Comment 2 to Rule 4.4 goes on to state: “If a lawyer knows that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived.” What is your prior relationship with counsel? What’s your future relationship with counsel? How will this impact the litigation? What would your client expect? Are these relevant considerations?

What consequences would you expect might flow from Carmen’s decisions? Does Carmen have a duty to report Sneed’s actions to the IARDC?

Should Carmen, a new associate, stand up to Sneed? Rule 8.3 requires a lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) to report that violation. This can be difficult for attorneys to do, especially newer attorneys when they are concerned about losing their job. But is it better to lose your job or your license?

DISCUSSION QUESTION 3

Should Engulf & Destroy be able to insist that only male lawyers appear on its behalf? Should Sneed have told the client a female lawyer was doing work on the case? Should he have tried to persuade the client to agree to her involvement? Should Carmen say or do something in response to Sneed’s instruction?

The case scenario is based on an amalgam of real life facts that occurred in recent years. Legal matters would be assigned based on the gender requests of a client rather than the skills and acumen of the professional involved. This presents a professionalism issue that is central to the purpose of the Illinois Supreme Court Commission on Professionalism.

For this question, you could discuss with the students the reasons why the client would want a male lawyer rather than a female lawyer, and whether a client should be allowed to make sure a request. Also discuss how the partner on the case should, and alternatively would, respond to such a client request. Consider that there may be legal ramifications for denying Carmen a place on the team on the basis of her gender. You can compare the situation to if the client was requesting attorneys based on their race or their sexual orientation.

SCENARIO 2

James represents Defendant in a criminal case. Defendant is charged with the offense of unlawful possession of a weapon. A police officer believed he saw Defendant walking in a public park carrying a handgun. The officer told Defendant to stop. Instead, Defendant ran, disappearing from the officer's view for several seconds. The officer then caught up to Defendant and arrested him; however, no weapon was found on Defendant or in the park. Defendant did not make a statement to the police.

DISCUSSION QUESTION 1

- (a) Defendant has pictures on his public Facebook page showing him holding a handgun. He also has posted comments about how he is always strapped and a picture of him holding a gun with the caption "Don't leave home without it." Can James tell his client to take the posts and comments down? Does it matter if Defendant was arrested but not yet formally charged?
- (b) Assume that Defendant's creative pictures and posts are on Defendant's private pages. Does this change the analysis?
- (c) Defendant tweeted from the park immediately prior to being chased by the police that he was "ready and waiting." These tweets are available to members of the public who follow Defendant's stream. Can James tell Defendant to delete his Twitter account immediately and deny at trial ever having tweeted anything?

DISCUSSION QUESTION 2

James wants to give his client legal advice but is having a hard time getting a hold of him. James decides that his best bet is to text his legal instructions to his client. Is James violating client confidentiality by putting that legal advice into the hands of the phone company, a third party, by sending text messages?

DISCUSSION QUESTION 3

Defendant comes into James's office and tells him that while he was running from the police, he was able to hide the gun in some bushes. Can James tell the client to go get the gun and dispose of it properly? How is this different from question 1(a)?

SCENARIO 2 DISCUSSION GUIDE

DISCUSSION QUESTION 1

- (a) Defendant has pictures on his public Facebook page showing him holding a handgun. He also has posted comments about how he is always strapped and a picture of him holding a gun with the caption "Don't leave home without it." Can James tell his client to take the posts and comments down? Does it matter if Defendant was arrested but not yet formally charged?**

Rule 3.4(a) states: "A lawyer shall not 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."

Comment [2]: "Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen."

Since the rule prohibits the destroying of material that could *potentially* have evidentiary value it may be unethical to specifically tell Defendant to take the posts down. However, an attorney can counsel a Defendant about consequences of those pictures and how they might negatively affect his case. If Defendant then, without any prompting from the attorney, deleted the posts the attorney would probably not be in violation of these rules. Defendant could potentially face new charges for destroying the evidence and an attorney should advise Defendant not to remove the posts. The arguments would likely be on whether removing the posts would be unlawful.

- (b) Assume that Defendant's creative pictures and posts are on Defendant's private pages. Does this change the analysis?**

No. The same rule would apply regardless of whether Defendant's Facebook page is public or private since private page material could still be obtained through the use of subpoena powers.

- (c) Defendant tweeted from the park immediately prior to being chased by the police that he was "ready and waiting." These tweets are available to members of the public who follow Defendant's stream. Can James tell**

Defendant to delete his Twitter account immediately and deny at trial ever having tweeted anything?

The same rationale in (a) would apply to James' ability to advise Defendant to delete tweets. James also cannot advise Defendant to deny having tweeted anything if James knows that is not true. A defendant has a Constitutional right not to incriminate themselves, but Rule 3.3(a)(3) states: "A lawyer shall not knowingly: offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

Comments 6-9 expand on this duty not to present false evidence. An attorney should attempt to persuade the client not to testify; however, if the client continues to insist to testify as to matters the attorneys knows are false, then the attorney must refuse to offer the evidence. If the client is only to testify to some matters that are false, the attorney may call the client and not ask questions relating to the false testimony so as not to elicit it. It should be noted that the attorney must know the evidence or testimony is false, not merely have a belief that it is false.

The attorney should also prevent Defendant from making a false statement to police officers, even if the statement will not be under oath. The better course of action would be to prevent client from making any statement at all.

DISCUSSION QUESTION 2

James wants to give his client legal advice but is having a hard time getting a hold of him. James decides that his best bet is to text his legal instructions to his client. Is James violating client confidentiality by putting that legal advice into the hands of the phone company, a third party, by sending text messages?

James is not violating his client's confidentiality by texting him legal advice or discussing privileged matters with the client as long as James has an agreement with the client that James will communicate with the client in this manner and the client consents to these communications being done via text message. Clients need to feel all communication is confidential so as long as the client is comfortable communicating in a specific way then the communication is okay.

DISCUSSION QUESTION 3

Defendant comes into James's office and tells him that while he was running from the police, he was able to hide the gun in some bushes. Can James tell the client

to go get the gun and dispose of it properly? How is this different from question 1(a)?

No, James may not tell the client to dispose of the gun. Rule 1.2(d) states: “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.” In addition, according to Comment [11], the lawyer is required to avoid assisting the client by suggesting how a wrongdoing might be concealed.

SCENARIO 3-A

ROBERT WILKINS & ASSOCIATES CASE SIMULATION

INFORMATION FOR ROBERT

- You are an older, white, male senior partner at a small, well-regarded suburban litigation firm of 15 attorneys – nine partners and six associates. You enjoy a robust reputation as a leader within the legal community.
- For the last several months, you have been handling an employment matter assisted by a junior associate, Sharon, who is black. Your client is pleased that you have a diverse team working on this matter and you wish to keep the client happy. You wonder if you should place a greater emphasis on diversity in future hiring.
- The personal relationships you’ve developed both with your clients and within your firm are important to you. One of the things you value most about the firm culture is its collegiality, a primary reason it attracts top attorneys. This has also been a driving factor in your decision to keep the firm small. Your firm has an “open door” policy: attorneys drop in and meet in person when they want to discuss cases. You and other senior attorneys find the in-person communications are more effective and efficient. In fact, you often use this as an “excuse” to host client-related outings.
- Because of this, you have been surprised by Sharon’s repeated emails to you regarding work assignment questions. (You think she may have even emailed the client, instead of calling him, which is not the way things are done at Robert Wilkins & Associates.) After the first time this happened, you mentioned that Sharon should feel free to stop by your office with any questions, but she has persisted in emailing you. Given the firm culture and your own strong preference to speak in person about client matters – especially since some of the issues over email have involved potentially sensitive issues – you want to make sure Sharon understands when emailing is appropriate for questions involving your case.
- Unlike some of your peers, you think it’s important to take an interest in the professional development of junior attorneys. You know you have benefitted from the mentoring relationships you have had, and you’re eager to give back in this way. You have been impressed with Sharon’s work so far and would like to get to know her better to see if you can be helpful in the same way. However, you have been frustrated by her inability to “read between the lines” and to conform to firm protocol and culture with respect to email versus in-person communications. You

also feel that since she does not seem to value in-person communications on the same level you do, she would not be interested in attending client-related outings.

- You've asked Sharon to stop by your office to discuss this issue. As a leader within the firm, you see great potential in Sharon and want her to have opportunities to develop and flourish at the firm.

PREPARE FOR YOUR MEETING WITH SHARON

1. What is important to you? How will you convey this information? What might be important to Sharon?
2. What do you know or assume about the situation that Sharon may not know? What role might this play in how Sharon views the situation?
3. What information would you like to learn from Sharon? How will you learn this information? What will you ask?
4. How might gender, race, age and seniority affect the way you see the situation? How Sharon sees the situation?
5. If there is no agreement or understanding of how things will proceed in the future, what are some of the possible consequences for you? For Sharon?

SCENARIO 3-B

ROBERT WILKINS & ASSOCIATES CASE SIMULATION

INFORMATION FOR SHARON

- You are a young, female, black junior associate at a small, well-regarded suburban litigation firm. With fewer than 10 attorneys, the firm has a truly collegial environment that you value. While you feel you “fit” with the firm culture, you’ve been disappointed that you haven’t been able to forge the types of professional relationships with the senior attorneys that you see some of your peers have developed.
- For instance, you have been working for the last several months on an employment matter with Robert, an older, white senior partner at the firm, and have hoped to develop more of a mentoring relationship with him. He is regarded as a leader in the legal community and many junior associates jockey to be assigned to his cases; in other words, he’s an ideal person from whom to get more advice about opportunities and activities for your own professional development.
- You see that he has these types of relationships with other junior associates – all of whom you’ve noticed are white males – some of these junior associates have been invited to client-related outings, civic events, and dinners with prospective clients. You can’t help but think you’re missing out on some important professional development opportunities by not participating in the same type of activities.
- You’re beginning to wonder whether your race and/or gender may be an issue. You are the only black attorney at the firm, and the only female junior associate. You have heard there have been black attorneys hired in the past but they did not stay at the firm long.
- You’re still hopeful that you will have the opportunity to develop a mentoring relationship with Robert. To this end, you have tried to be very conscientious regarding your work and communications with him.
- Because you know Robert’s schedule is extremely hectic, you have taken to emailing him with follow up questions about work on the case (you figure this way, you won’t ever be interrupting his work, but rather he can respond when he’s able). Although you have gotten the sense that the firm culture is one that favors more in-person communications, the couple of times you’ve tried to stop by his office to talk about the case, Robert was not there or his door was closed. As a result, emailing Robert your questions has seemed like the best approach given your desire to be respectful of his seniority and busy schedule. You gather that your work on the case has been well received based on the positive (though limited) feedback you’ve received from Robert.

- Because you thought things were going well, you were surprised when Robert asked you to stop by his office later today. He did not specify why, so you're not sure what he would like to discuss. You've been meaning to speak to Robert about having him supervise a pro bono project you're interested in, so you're hoping this will be a good opportunity to broach the subject.

PREPARE FOR YOUR MEETING WITH ROBERT

1. What is important to you? How will you convey this information? What might be important to Robert?
2. What do you know or assume about the situation that Robert may not know? What role might this play in how Robert views the situation?
3. What information would you like to learn from Robert? How will you learn this information? What will you ask?
4. How might gender, race, age, and/or seniority affect the way you see the situation? How Robert sees the situation?
5. If there is no agreement or understanding of how things will proceed in the future, what are some of the possible consequences for you? For Robert?

SCENARIO 3 DISCUSSION GUIDE

Scenario 3 is designed to be presented so that half of the participants read only part A – the information for Robert and half of the participants read only part B – the information for Sharon.

You should set the stage with the students by explaining that all of their interactions as a lawyer will present professionalism issues, and the unique culture of each of their work settings will require some navigation of appropriate approaches to take. It is also important to remember that while it is a niche area of customer service that we provide, our work centers on the ability to effectively communicate. We need to be aware that our reputation among lawyers and non-lawyers alike is affected by our “total package.”

You may direct one half of the room to read one part and the other half to read the second part. Students should then take about 5 minutes to turn to their neighbor (who read the same part) and talk through the questions. Then, ask the group to physically move: Those who read the Robert facts (3-A) should find a partner who read the Sharon facts (3-B) and have a productive conversation. Allow 5-10 minutes, or until most groups are done. Then reconvene the group and facilitate a debrief of the exercise. (Alternative ideas are to divide the groups by gender, ask volunteers to conduct their conversations in the front of the room, or to just facilitate a discussion of possible ways the conversation could go while everyone keeps their seats.)

When facilitating the debrief, allow the students to lead the discussion with you clarifying where necessary. Guide the students with the questions listed in the scenario. Also keep the following in mind: A common misstep of new lawyers, exacerbated by technology, is to fail to take personal initiative with senior lawyers who may provide invaluable insight and mentoring opportunities. Similarly, a common critique of more experienced attorneys is that they fail to understand the mindset of technologically savvy younger lawyers. A common mistake of many lawyers – shared by people who are not lawyers – is to fail to consider and plan in advance the best way to discuss sensitive issues so that the outcome of a sensitive discussion is productive.