



Illinois Supreme Court Commission on Professionalism

PROFESSIONALISM ORIENTATION PROGRAM DISCUSSION SCENARIOS

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 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 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?