Lee Burgess: Welcome back to the Law School Toolbox podcast. Today we'll be discussing rapid-fire legal ethics scenarios, and asking "What would you do?", as part of our "Quick Tips" series. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. If you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Welcome back! Today we will be discussing some rapid-fire legal ethics scenarios and asking you, the listener, "What would you do?" And I, your host, will then provide you with the answers based on the ABA Model Rules of Professional Conduct.

Lee Burgess: So, let's begin with our first legal ethics scenario – this one deals with conflicts of interest: You are representing a client in a divorce case. Midway through, you realize that the opposing party is a childhood friend you haven't seen in years. So, what do you do? Do you, A) immediately withdraw from representing the client due to the conflict; B) notify the client of the conflict and seek the client's informed consent to continue the representation; or C) continue with the representation, but notify the client of the prior relationship? What do you think?

Lee Burgess: The answer is likely C. ABA Model Rule 1.7 provides that, "A lawyer shall not represent a client if the representation involves a concurrent conflict of interest." A "concurrent conflict of interest" is defined as, (1) where the representation of one client will be directly adverse to another client; or (2) where there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

Lee Burgess: Because the childhood friend is not one of your clients, the first situation set forth in Rule 1.7 clearly does not apply. And because the childhood friend is someone you haven't seen in many years, the second situation set forth in Rule 1.7 likely also doesn't apply. Under Rule 1.7, an attorney's relationship with a third party, such as a childhood friend, only rises to the level of a concurrent conflict of interest if there is a significant risk that the relationship will materially limit the lawyer's representation of the client. Because this is a

childhood friend that you haven't seen in many years and don't have a current friendship with, you likely would be able to represent your client in the divorce proceedings without the representation being affected by the prior childhood friendship. Nevertheless, ABA Model Rule 1.4 places on attorneys a duty to communicate with their clients. So, it would be wise to still inform your client of your prior relationship with the childhood friend, even if the relationship does not constitute a conflict of interest.

Lee Burgess: So, let's move on to our next legal ethics scenario: During trial prep for a civil case, your client reveals to you that they plan to lie on the stand. What should you do? Should you, A) immediately withdraw from the representation; B) attempt to persuade the client not to commit perjury; or C) refuse to call the client to the stand to testify about any matters?

Lee Burgess: Well, the answer is B. ABA Model Rule 3.3(a) provides that, "A lawyer shall not knowingly offer evidence that the lawyer knows to be false." Comment 6 to Rule 3.3 deals with this exact scenario and provides, "If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered."

Lee Burgess: So, in this scenario, the first action you should take is to attempt to persuade your client not to present false testimony. But what if the client doesn't listen to you and insists on lying in court? Comment 6 goes on to explain, "If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify, but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false."

Lee Burgess: Alright, let's discuss our final scenario for today: You're approached to take a pro bono case, but you're already overworked. Do you have an ethical obligation to accept – yes or no? Well, the answer is likely "no". ABA Model Rule 6.1 provides that, "Every lawyer has a professional responsibility to provide legal services to those unable to pay." In addition, it states, "A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year." But Comment 9 to Rule 6.1 acknowledges that, "There may be times when it is not feasible for a lawyer to engage in pro bono services." Because in this scenario you are already overworked, the correct decision would likely be to decline the assignment. ABA Model Rule 1.1 provides that an attorney owes a client a duty of competence, and explains that, "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

If you were to accept the pro bono case while already being overworked, there is a good chance that you would violate your duty of competence under Rule 1.1, because your workload would likely affect your ability to competently represent your new pro bono client.

Lee Burgess: It should be noted that Comment 11 to ABA Model Rule 6.1 provides that, "Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule." So, another option in this scenario would be to discuss your workload with your supervisors and see if it can be adjusted so you have the bandwidth needed to take on the pro bono case.

Lee Burgess: And that wraps up this episode. Thanks so much for joining us today! We hope this episode has been a fun way to explore and review legal ethics and gain a better understanding of the various ABA Model Rules of Professional Conduct. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form on LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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