Am I EthicAl? (AIEA?)

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Inspired by the popular AITA? message board on Reddit, this presentation talks through complicated scenarios and asks a simple question: is the lawyer in that scenario ethical? What rules of professional conduct apply to the situation? And what facts need to change to make the attorney ethical? This interactive presentation will focus on situations and rules that come up frequently for attorneys and provide guidance to assist in unpacking, understanding, and analyzing the ethics situations.

The following scenarios and rules will be discussed throughout this presentation.

Question 1:

I (71M) run a law firm specializing in personal injury defense for big companies that've allegedly been negligent. A lot of our cases require a ton of pretrial legwork: hiring medical experts, conducting depositions, hunting down additional witnesses to the initial accident. It's time consuming, sure, but worse: it's expensive!

To ensure that our firm's not left insolvent by any one case, our advance fee always includes a nonrefundable portion right up front. When I describe it to clients, I call it a "jumpstart"—it's money that I can put right into the firm's account and use to hire experts, investigators, whatever we need. The nonrefundable portion's usually around $5000, although I'd be lying if I said we've never charged more.

Recently, general counsel for one of our client companies questioned my billing practices. But why? I've always been upfront about our jumpstart fee, and it's not like these corporations miss the money! What do you say? Is this practice ethical?

Relevant Rules:

KRPC 1.5 Fees (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if

apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. (c) A lawyer's fee shall be reasonable but a court determination that a fee is not reasonable shall not be presumptive evidence of a violation that requires discipline of the attorney. (d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (f) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, and the litigation and other expenses to be deducted from the recovery. All such expenses shall be deducted before the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the client's share and amount and the method of its determination. The statement shall advise the client of the right to have the fee reviewed as provided in subsection (e). (e) Upon application by the client, all fee contracts shall be subject to review and approval by the appropriate court having jurisdiction of the matter and the court shall have the authority to determine whether the contract is reasonable. If the court finds the contract is not reasonable, it shall set and allow a reasonable fee. (f) A lawyer shall not enter into an arrangement for, charge, or collect: (1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony, support, or property settlement; or (2) a contingent fee for representing a defendant in a criminal case; or (3) a contingent fee in any other matter in which such a fee is precluded by statute. (g) A division of fee, which may include a portion designated for referral of a matter, between or among lawyers who are not in the same firm may be made if the total fee is reasonable and the client is advised of and does not object to the division. (h) This rule does not prohibit payments to former partners or associates or their estates pursuant to a separation or retirement agreement.

KRPC 1.15 Safekeeping Property (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state of Kansas. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation. (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. (d) Preserving identity of funds and property of a client. (1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the State of Kansas with a federal or state chartered or licensed financial institution and insured by an agency of the federal or state government, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows: (i) Funds reasonably sufficient to pay bank charges may be deposited therein. (ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. (2) The lawyer shall: (i) Promptly notify a client of the receipt of the client's funds, securities, or other properties. (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable. (iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them. (iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer

which the client is entitled to receive. (v) Produce all trust account records for examination by the Disciplinary Administrator upon request of the Disciplinary Administrator in compliance with Rule 236. (3) Except as provided in subsection (3)(iv), any lawyer or law firm that creates or maintains an account for funds of clients or third persons that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons shall comply with the following provisions: (i) Such an account shall be established and maintained with a federal or state chartered or licensed financial institution located in Kansas and insured by an agency of the federal or state government. Funds shall be subject to withdrawal upon request and without delay. (ii) If the account bears interest, the rate of interest payable shall not be less than the rate paid by the institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately. (iii) If the account bears interest, lawyers or law firms that deposit client funds in such an account shall direct the depository institution: (aa) to remit at least quarterly, to the Kansas Bar Foundation, Inc., interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice; and (bb) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of the interest applied; and (cc) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made. (iv) A lawyer or law firm that elects not to comply with Rule 1.15(d)(3)(iii): (aa) shall file a Notice of Declination with the Clerk of the Appellate Courts on or before the beginning of the next annual registration period under Supreme Court Rule 206; or (bb) notwithstanding the foregoing, may file a Notice of Declination with the Clerk of the Appellate Courts at such other time, after July 1, 1992, that a decision to decline is effected. (v) Every lawyer who has not previously registered or who is required to register under Supreme Court Rule 206 shall be provided the opportunity, at the time of initially registering, to elect or decline to comply with Rule 1.15(d)(3)(iii) (the IOLTA program) on such forms as the Clerk of the Appellate Courts may prescribe. (e) Every Kansas lawyer engaged in the private practice of law in Kansas shall, as a part of his or her annual registration, certify to the following:

"I am familiar with and have read Kansas Supreme Court Rule 240, KRPC 1.15, and I and/or my law firm comply/complies with KRPC 1.15 pertaining to preserving the identity of funds and property of a client." (f) (1) Every federal or state chartered or licensed financial institution referred to in KRPC 1.15(d)(1) shall be approved as a depository for lawyer trust accounts if it files with the Disciplinary Administrator an agreement, in a form provided by the Disciplinary Administrator, to report to the Disciplinary Administrator in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Disciplinary Administrator. The Disciplinary Administrator shall annually publish a list of approved financial institutions. (2) The overdraft notification agreement shall provide that all reports made by the financial institution shall contain the following information: (i) the identity of the financial institution; (ii) the identity of the lawyer or law firm; (iii) the account number; (iv) either (i) the amount of the overdraft and the date created; or (ii) the amount of returned instrument(s) and date returned. The information required by the notification agreement shall be provided within five (5) banking days of the date the item(s) were paid or returned unpaid. (3) Every lawyer admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule. (4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. The Disciplinary Administrator's Office shall reimburse the financial institution for the reasonable cost of producing the reports and records required by this rule should the lawyer or law firm fail to do so. (5) This rule shall not create any cause of action for any person or organization against the financial institution based upon the failure of the financial institution to provide the notices required by this rule.

Question 2:

I 43F am planning to leave my law firm and go out on my own. It seems that the other three attorneys have stopped trying to bring in business and all new clients are only coming in from me. Things have not been very cordial with the other attorneys in my office, and I can no longer work in this environment. I started letters to my clients letting them know that I am leaving, the location of my new law office, and that I will continue to be their attorney. One of the other attorneys

in the firm saw my letter on the printer and has called a firm meeting. They are claiming that my letter is unethical and infringes on my client's right to choose their own attorney. That makes no sense, I brought in these clients for the firm, they chose me to begin with so why would I expect them to do any different just because I am leaving the firm? Am I doing something wrong? Am I ethical to send my letters?

Relevant Rules:

KRPC 1.4 Communication (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

KRPC 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; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; (3) the lawyer is discharged; or (4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent. (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: (1) the client has used the lawyer's services to perpetrate a crime or fraud; (2) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; (3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (5) other good cause for withdrawal exists. (c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of

fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Question 3:

Hi 26F here. Kind of funny to be posting about this on this site, since a post is what may have me in trouble with the disciplinary administrator. I do not have a lot of mentors in my rural area of the state, so I utilize listservs to seek guidance and case strategy tips. I recently posted seeking guidance about an obscure legal doctrine that may apply in my case. I did not mention my client's name, but gave some facts about the case so that readers could understand what type of guidance I was looking for. What I didn't think about was that there was some media attention around the case when it first happened. Some of what I posted was not revealed in the media, and was something my client didn't want his family to know until necessary. My client got a call from a long distant attorney relative, asking if he knew I had posted on the listserv. He of course did not know, and is furious with me threatening to fire me and threatening to report me to the disciplinary administrator. Did I mess up?

Relevant Rule:

KRPC 1.6 Confidentiality of Information (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b). (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (1) To prevent the client from committing a crime; (2) to secure legal advice about the lawyer's compliance with these Rules; (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; (4) to comply with other law or a court order; or (5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client

Question 4:

Recently, a woman (42F) retained me to represent her in some post-divorce custody litigation with her ex-husband (45M). The problem? Her new husband (49M) is full of strong opinions about the case, the ex-husband, the children, their school . . . You name it, he's mad about it. I know he's not a party to the custody litigation, but he *is* paying for his wife's legal bills. Worse, he's constantly calling and demanding case updates and copies of documents. Am I ethical if I only communicate with his wife? After all, they're her kids!

Relevant Rules:

KRPC 1.8 Conflict of Interest: Current Clients: Specific Rules (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules. (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship. (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation. (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may

pay court costs and expenses of litigation on behalf of the client. (f) A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6. (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement. (h) A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith. (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and (2) contract with a client for a reasonable contingent fee in a civil case. (j) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship. (k) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client lawyer relationship commenced. (l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Question 5:

Help me out, here: I (34F) am the court-appointed attorney for a client (43M) charged with domestic battery and related offenses after a blow-up with his wife. Part of the fight concerns their adult child (20NB) who cut ties with their dad after graduating high school. The child no longer lives at home and isn't a party to the case at all; in fact, the reason why my client started arguing with his wife is

because he wants his child's phone number. (My understanding is that he didn't handle his kid's coming out all that well, and he's ready to make amends.)

My client knows that my office has a couple investigators who used to work for law enforcement. Last week, he asked if I could use our investigatory resources to locate his kid's address and phone number. To be clear, there's no court order or anything that would prevent him from contacting this young adult. At the same time, my client can be pretty pushy and persistent when he wants to be. I can't guarantee he'd handle his kid blocking his calls with grace.

Can I refuse to investigate his kid's whereabouts for him? Or am I stuck because he made the ask?

Relevant Rules:

KRPC 1.2 Scope of Representation (a) A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities. (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. (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 discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law. (e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

KRPC 2.1 Advisor In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as

moral, economic, social and political factors, that may be relevant to the client's situation.

Question 6:

65M here. First time poster, long time attorney. I have been a successful solo-practitioner for a long time. Haven't really thought much about bringing on an associate or slowing down my practice any time soon. My wife mentioned to me that I could register as retired this year, we could spend more time in our favorite European location, visit the grandkids more, etc. But my practice is so successful (and she enjoys the benefits of my success with our yearly European vacation already), so why would I stop now. Of course, she wanted to continue the debate and asked what my plan is if I dropped dead at my desk. She is a bit dramatic sometimes. I told her that I am in great health and do not need to worry about that. I plan to practice until I am 75, so maybe in 5 years I will start looking at a plan. Am I Ethical to not have a succession plan?

Relevant Rules:

KRPC 1.15 Safekeeping Property

KRPC 1.16 Declining or Terminating Representation

Rule 235 Appointment of Counsel to Protect Client Interests (a) Appointment of Counsel. (1) Circumstances. The chief judge of a judicial district may appoint counsel to protect the interests of an attorney's clients under the following circumstances: (A) the Supreme Court has transferred the attorney to disabled status under Rule 234; (B) the attorney has disappeared or died; (C) the Supreme Court has suspended or disbarred the attorney and the attorney has not complied with Rule 231; or (D) the attorney has neglected client affairs. (2) Action. The chief judge may take the following action: (A) authorize counsel appointed under subsection (a)(1) to do the following: (i) review and inventory the attorney's client files; (ii) access the attorney's trust account; and (iii) take any other action necessary to protect the interests of the attorney and the attorney's clients; (B) transfer any identifiable property not claimed by the owner to the Kansas State Treasurer's office under the Disposition of Unclaimed Property Act; and (C) after reasonable efforts to identify the owner, transfer any property that is unidentifiable to the Lawyers' Fund for Client Protection under Rule 241. (b) Confidentiality. Counsel appointed under subsection (a) to review and inventory client files or to access the attorney's trust account must not disclose any information unless necessary to carry out the chief judge's order. (c)

Chief Judge's Duty. No later than seven days after issuing an order under this rule, the chief judge must provide a copy of the order to the disciplinary administrator.

Question 7:

Exciting news! I (26M) just purchased my first-ever law practice! I've been a little rudderless since leaving law school, but my grandpa's best friend (83M) recently said he'd sell me his practice for a bargain-basement price. I just need to stay in our small town and keep practicing here, as the next-closest firm is like 45 minutes away. I'm excited to really start my career.

Here's the challenge, though: the firm's been named after him--Anderson Law, LLC--since 1975. I don't want to lose all of the name recognition and goodwill that comes with such a familiar name! I want to change the name to *Anderson & Associates*. Sure, I never practiced with him, and he won't be practicing in the firm with me, but we are *associated* in the sense that I bought the firm from him. What do you think? Is that an ethical name?

Relevant Rules:

KRPC 7.1 Communications Concerning a Lawyer's Services A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it: (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or (c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated

KRPC 7.2 Advertising (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used. (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertisements or communications permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization. (d) Any

communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

RULE 7.5 Firm Names and Letterheads (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. (b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Question 8:

Situation: Last week, I (27F) received a call about a potential divorce case. The caller (63F) had worked with our now-retired real estate partner on a bunch of property purchases over the years (and, from what I can tell, long before I worked at the firm!), and she really wants to keep working with us. She said that she and her husband have been married for almost 40 years, their kids are grown, and the only issue will be valuing and then divvying up their substantial real estate holdings. I ran her husband's name in our conflicts database, and I don't see that he's ever been a client. What worries me, though, is that the real estate deals we've handled for this client include a condominium in a popular Florida tourist town, a lake house in Colorado, a residence in Prairie Village, and the long-term lease of a high-rise apartment in New York City. Oh, and we fixed a title problem for her very fancy boat, too.

I'm a new attorney, and I really don't want to mess up so soon. Am I ethical to represent her?

Relevant Rules:

KRPC 1.7 Conflict of Interest: Current Clients (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there

is a substantial 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. (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

KRPC 1.9 Duties to Former Clients (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; Unless the former client gives informed consent, confirmed in writing. (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.