

## The Compliance & Ethics Forum for Life Insurers

### Business Ethics, Conflicts and Communications under the ABA Rules of Professional Conduct

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#### Problems

1. You, as in-house legal counsel, are sitting in your office one day, and an employee and friend walks into your office, shuts the door, and starts to tell you in confidence about a situation where she believes that two employees, one of whom is her superior, plan to set up a dummy corporation to send invoices to the company for non-existent services. She asks for your advice as to whether she should say anything because she is fearful that if she does, she will lose her job.

Can you advise her?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

2. What are you obligated to tell or report to the employee and the company?

Answer: \_\_\_\_\_

3. You engage in an investigation of this possible fraud. You interview people and prepare reports of the interviews for your file. You make a report to the Board. Are the interviews and the report protected by the attorney-client privilege or as work product?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

4. You hire XYZ law firm to conduct an investigation of the possible fraud. The firm interviews witnesses and prepares a report to the Board. Are the witness interviews and the report protected by the attorney-client or work product privileges?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**5.** At the Board meeting at which the report is presented, there is an attorney for the employees present. Does this affect the privilege?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**6.** A former employee has brought a wrongful discharge case against your company. During the suit, you learn that the employee might have posted derogatory comments about the company on Facebook. You instruct your lawyer to send the former employee “friend” requests to see what she could learn. She finds information on the Facebook page that is material to the litigation. Can your lawyer do this?

a. No, she has violated ABA Model Rule 4.2. A lawyer may not communicate with a party known to be represented by counsel. \_\_\_\_\_

b. Yes, she did not violate ABA Model Rule 4.2, which requires that the communication be “about the subject of the representation.” A Facebook “friend” request is not that. \_\_\_\_\_

**7.** XYZ law firm, a firm that represents your company, also represents a party in an unrelated litigation. You receive a subpoena from the XYZ law firm for documents that are important to the unrelated litigation. Is this a conflict under Rule 1.7 for the XYZ law firm to issue a subpoena to your company?

a. Yes. It is a conflict to serve a discovery request on your company, a current client. \_\_\_\_\_

b. It depends on whether the discovery would entail a concrete disadvantage to your company or would otherwise create a “material limitation” conflict. \_\_\_\_\_

c. No, your company is not a party to the litigation, so there is no adversity. \_\_\_\_\_

**8.** Your company wants to negotiate a joint venture with Smith Insurance Group. Your company and Smith want to be thrifty on legal fees and use the same lawyer. Can it do so?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**9.** What happens after the joint venture is created? Can the same law firm negotiate a loan for the joint venture?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**10.** Your company sends an audit request to XYZ law firm. Is the response to the auditors privileged?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**11.** You receive a document from opposing outside counsel in connection with an acquisition that your company is making, and you are able to access the metadata behind the document that contains comments from the seller's CEO about their strategy on the deal. Can you look at it?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**12.** You are representing your company in the sale of a subsidiary. You know that the company will agree to contribute \$2 million to help fix a problem, but you tell the buyer that the company will only agree to contribute \$1 million. Have you breached any ethical duty?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_

**13.** In the same deal, the VP Finance who is the business person negotiating the deal tells you that the subsidiary has just been told it has a major environmental problem at one of its plants, but that "it should not go in the schedules because the buyer will walk away." Are you required to put this on the schedules?

a. Yes, if it is material to the transaction, but otherwise, no. \_\_\_\_\_

b. No, you cannot disclose confidential information. \_\_\_\_\_

**14.** You work as an in-house lawyer for a California corporation with its principal office in California but with subsidiaries in other states, including New York and Massachusetts. You are asked to perform legal work for the New York subsidiary. Can you perform the legal work without creating a conflict of issue?

a. Yes \_\_\_\_\_

b. No \_\_\_\_\_