

EXAMINERS' ANALYSIS OF QUESTION NO. 4

Issue 1:

Unless an exception to the duty of confidentiality applies, Attorney may not tell Craig's parents what he has learned from Craig or any other "secret" gained in Attorney's professional relationship with Craig. MRPC 1.6; MRPC 1.8(f)(3). Moreover, even if Craig were to consider consenting to disclosure of some information, Attorney must avoid disclosures that may waive the attorney-client privilege.

Further, Attorney's representation of Craig may not be influenced by Craig's father's view that it might be better for Craig to suffer the consequences of his actions. MRPC 1.8(f)(2) (and other rules referenced below). MRPC 1.8(f) provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (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.

Additionally, MRPC 5.4(c) states: "A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."

MRPC 2.1 also sets forth a lawyer's core duty to exercise independent professional judgment on behalf of a client and 1.2(a) requires a lawyer to "seek the lawful objectives of a client through reasonably available means permitted by law and these rules."

In light of the father's pecuniary and parental interest, it would be appropriate to analyze the situation under MRPC 1.7(b), which provides:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Any attempt by the father to condition payment upon control of the case or the receipt of information raises serious questions about whether Attorney may accept the representation, i.e., whether Attorney could reasonably believe that the representation would not be adversely affected, notwithstanding Craig's actual or purported consent to his father's terms. See Michigan Ethics Opinion RI-293 (June 2, 1997), citing the comment to MRPC 1.7 ("when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.") In light of the primary importance of providing independent professional judgment to one's client, ceding control of the case to the father would not be permissible.

Issue 2:

Under MRPC 7.1, Attorney may "use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive." One question here is whether the website's offer of a free initial consultation violates MRPC 7.1, which also states that, "A communication shall not . . . (a) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading." MRPC 7.1(a). The statement on the website is not inherently false or misleading, but a reasonable client could conclude that the initial consultation was not, in fact, free under the circumstances here. Further, the attorney's policy by which he charges for his time once he has been retained, while not in and of itself improper, was not communicated to the client before the time was expended. Thus, the representation on the website could be considered false, misleading, or deceptive, and the

failure to communicate the policy (on the website) arguably rendered it materially misleading.

MRPC 1.5(b) is also applicable. It provides: "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." Cindy is a new client. Arguably, Attorney should have explained that he would be charging her to continue the initial conference regarding her case before she incurred the charge. But, it might also be argued that once Cindy agreed to pay an hourly rate, she should have reasonably understood that her free consultation had ended. Perhaps some might contend that the explanation of the policy, even after the first (and only) bill came, was "within a reasonable time after commencing the representation." An answer which correctly identifies the issue regarding the need to communicate the basis or rate of the fee before or within a reasonable time after the representation has commenced, and cogently applies the rule, should receive credit for this aspect of the question.