

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Phil, an attorney in a Michigan law firm, recently met attorney Sam when Sam filed an implied warranty lawsuit on behalf of his client against Phil's client, DEF Corporation.

After Phil filed DEF's answer in circuit court, Sam, unbeknownst to Phil, telephoned DEF's engineering manager, Walter, who was certain to be a key witness for DEF in the case. Sam used an alias and did not advise Walter that he was an attorney, or that he represented a party who was suing DEF. Rather, Sam posed as a buyer of DEF's products and asked questions about the engineering of the product that was the subject of the complaint Sam had filed.

Sam then issued a deposition subpoena and notice for Walter. Sam had Walter served but did not serve a copy of the subpoena or notice on Phil. Taking the deposition, Sam represented that he had advised Phil of the deposition (even though he had not) and that Phil apparently had decided not to attend. While Walter sensed Sam sounded familiar, he did not make the connection until Sam started yelling, screaming and accusing Walter of perjury every time Walter gave an answer in any way unfavorable to Sam's client. Walter, realizing what was happening, walked out of the deposition with Sam grabbing him and physically trying to prevent him from leaving. Walter escaped, went straight to Phil, explained what had just happened, and asked why Phil had not been there to represent him.

Phil made a few inquiries and identified three other attorneys who had similar experiences with Sam.

What, if any, ethical duties has Sam violated, and how? What, if any, responsibility does Phil have under the Michigan Rules of Professional Conduct? Explain your answers.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*******