

# **2016 Mock Meeting of the Ethics Advisory Committee**

*Thursday, December 15, 2016*



**AGENDA**  
**MOCK MEETING ETHICS ADVISORY COMMITTEE**  
**STATE BAR OF NEW MEXICO**  
**DECEMBER 15, 2016**

**OVERVIEW OF COMMITTEE PURPOSE AND ACTIVITIES**

**OLD MATTERS.**

**None.**

**NEW MATTERS.**

**2016-A -- Request of Oscar Overseer**

**2016-B – Request of Mary Jane Potter**

**2016-C – Request of Vivian Vigilante**

**2016-D – Request of Romeo Montague**

**2016-E – Request of I. Lacque D’Scretion**

**2016-F – Request of Constance Concerned**

**2016-G – Request or Robert Cratchet**

**OTHER.**

**ADJOURN.**

## REQUEST 2016-A

Dear Ethics Advisory Committee,

I have several questions pertaining to my professional obligations with respect to paralegals.

1. I recently accepted a case against an individual. As my paralegal was opening the file, she reveals to me that she is Facebook friends with the defendant. The proposed defendant has privacy settings such that I cannot see anything he has posted. Can I ask my paralegal to review and/or print out anything from this guy's profile since she has access? Nothing is considered truly private on Facebook anyway, right?
2. I'm getting really busy and I need to hire more staff. There is a paralegal from an opposing counsel's office that I am really impressed with. Can I offer her a job even though she has worked on a case where I represent an opposing party? Would it make a difference if I assign her to work on other cases, and instruct her to not work on the case I have with her current employer?

Finally, in another case, my opposing counsel has cited to certain cases claiming that they support his position. In fact, I think he has misconstrued those cases. Of course, I pointed this out in my response brief, but do I have any additional duty to report him to the disciplinary board? If so, should I wait until the end of my case or must I do it immediately?

Thanks for your help!

Oscar Overseer

## **REQUEST 2016-B**

Dear Ethics Advisory Committee:

I have been approached by a prospective client about representing it (it is a corporate entity) with regard to a business that would be legal under state law, but that would constitute a felony at the federal level. I need some help thinking through some sticky ethical wickets. I have several questions as to which I'd appreciate advice:

1. Do the Rules of Professional Conduct allow me to advise a client on what is lawful or unlawful under either state or federal criminal law? If so, what are my duties under the Rules of Professional Conduct?
2. Do the Rules of Professional Conduct allow me to assist a client on conducting a business in ways that I know would violate either state law or federal felony criminal law?
3. Do the Rules of Professional Conduct allow me to take a managerial position in a business that I know is violating felony criminal laws?
4. Do the Rules of Professional Conduct allow me to have an ownership interest in a business that I know is violating felony criminal laws?

Thanks for your consideration of these questions!

Mary Jane Potter

## REQUEST 2016-C

Dear Ethics Advisory Committee:

I am in a case where my former legal assistant (I'll call him "Kyle") is a witness. Kyle is "former" because I caught him in several acts of dishonesty while employed by me. In my experience, Kyle will only tell the truth if he believes I have evidence of the truth. So, I wanted your thoughts on a proposed course of action and whether I need to be concerned about any of the ethics rules.

Kyle is being deposed about some telephone conversations he had with my current client (I'll call her "Kate"). These telephone conversations occurred after Kyle was fired. I'm certain Kyle will consider lying. I have a box of blank CDs in the office. I'm thinking marking about six of them, in big BOLD letters, "Telephone Conversations between Kyle and Kate, Volume \_\_\_\_" and pulling them out of my briefcase in clear sight of Kyle right before he starts to testify. I don't plan on saying a word about the CDs, though I may remind Kyle that his testimony could be impeached as I pat the CDs affectionately, but only if I think Kyle is going to lie.

This seems like a great way for me to protect the integrity of the legal system by making sure that liars like Kyle think twice about committing perjury. Any problems?

Thanks!!!

Vivian Vigilante

## **REQUEST 2016-D**

Dear Ethics People:

I have a real dilemma. When I started representing X, I had no attraction to X other than the case seemed like a very interesting one to me. As time went on, I noticed I was becoming more and more attracted to X, and got a strong sense that the feeling was mutual. I think that the relationship could easily evolve into a sexual relationship. Do I need to be concerned?

Thanks for your help!

Romeo Montague

## REQUEST 2016-E

▣ Dear Ethics Advisory Committee:

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▣ I am concerned about a little something I did the other day. I am very active on Facebook. I will easily make 100 posts per day - random thoughts, philosophical opinions, selfies from around the world. So, here's what's up. One of my friends on FB, I have 8,428, actually called me on my office land line yesterday morning. Once I figured out that the noise was the phone on my credenza, I answered. BTW, he's a lawyer, too. He said, "Bro, I just saw some of your recent posts and I think you need to be careful about what you're saying. Didn't you ever take the MPRE exam?" I told him I knew exactly what he meant and would take care of it. So, I lied. I looked over my posts and can't figure out why my friend was making such a big deal about my posts? In particular the following:

- ▣ 1. 8/15/14 Went to a hearing today. Judge Gomer Pyle (18th Judicial District) is so freggin stupid that he bought opposing counsel's (Jessica Simpleton's) argument. I can't believe someone that stupid is on the bench! This whole system is corrupt!
- ▣ 2. 11/12/14 Jury trial started today. Am hoping to ask juror number 5 out when this thing's over. Heck, why wait???
- ▣ 3. 11/13/14 Just friended every judge in the 18th Judicial District! Hope they keep track of my adventures!
- ▣ 4. 11/14/14 Friend request to Juror No.5 was accepted!!! Am I luck or what?! ?!
- ▣ 5. 11/15/14 So, this case I have going on, there are a lot of things I can't get into evidence because of the "rules". If I could only let the judge and jury know that there's proof that the opposing party stole money from my client, but I can't get it in. It's all so-called "hearsay" but that doesn't mean it isn't the truth

▣

▣ Thanks, and, if you want to friend me, just search for I. Lacque D'scretion, that's me!

## **REQUEST 2016-F**

Dear Ethics Advisory Committee:

I need your help in considering the application of the Rules of Professional Conduct to a situation I am facing. My client has memory issues. By this I don't mean that he intentionally changes facts to make the case go better for him, but he has a medical condition that affects his memory. As a result, his version of underlying facts will sometimes vary greatly from month to month and sometimes even day to day. In only a very few instances is there other evidence, physical or in the form of sworn testimony, of facts.

Can I continue to represent this client under these circumstances or must I withdraw?

The opposing party has made a settlement offer that is much lower than I had originally felt was appropriate in this case. Is it proper for me to consider the memory issues of my client in analyzing the offer and offering advice to my client?

What else should I be concerned about?

Thanks for any advice you can provide,

Constance Concerned



## **REQUEST 2016-G**

Dear Ethics Advisory Committee:

I'm an associate at Cadaver & Scrooge, P.C. I don't know what to do. I'm on a case where I'm working with a senior lawyer at the firm and in-house counsel for the client. We were responding to some discovery when I noticed a very incriminating letter from the client's president to one of its customers. It could be very harmful to our case. I showed it to in-house counsel who was going through the documents with me. To my amazement, in-house counsel took the letter, placed it in a large platter, drenched the letter with what appeared to be gasoline, lit it up with a match, and said, "I don't see a problem, do you?" I did not answer in-house counsel's question.

Later that day, I raised the issue with my supervising attorney, who said they would look into it. Eight weeks later, I asked if the issue had been resolved and my supervisor said, "What issue? If there's no document to produce, there is no document to produce."

What should I do?

Robert Cratchet

MOCK MEETING  
ETHICS ADVISORY COMMITTEE  
STATE BAR OF NEW MEXICO

Nat Chakeres	Hope Eckert
Ken Fladager	Feliz Rael
Jim Reist	Jo Ann Stringfield

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Ethics Resources for NM Lawyers

- Disciplinary Board
  - CANNOT provide advisory opinions
- New Mexico Ethics Helpline
  - 1-800-326-8155 for immediate assistance
- Ethics Advisory Committee
  - More deliberative assistance

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ETHICS ADVISORY COMMITTEE

- Volunteer lawyers
  - Around the State
  - Various practice areas
  - Various practice types (government, solo, small, medium and large)
  - Senior, mid and new lawyers
- Meet once a month, on a Saturday, for about 2 hours

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### TRIGGERING ADVICE

- Lawyers may submit written question(s)
  - Include as many pertinent facts as possible
- Requirements...
  - About the lawyer's own conduct or contemplated conduct (or that of the lawyer's firm)
    - Will not opine on conduct of another lawyer or law firm
  - Seeking advice on the application of the Rules of Professional Conduct to a specific fact pattern
    - Will not advise on the application of substantive law

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### Next...

- An initial determination of whether request meets criteria for opinion
- If yes, then distributed to members of the Committee for consideration
- Discussions ensue to determine if a consensus can be reached on the appropriate advice
- One member of the Committee assigned to draft a response, which is circulated to Committee for review/changes/approval
- Informal Opinion issued to requesting lawyer
- Not formally published, but (unless requesting lawyer objects) may be used to assist others, in CLEs, etc.

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### A select few...

- Formal Opinions
  - General interest or concern
  - Area of developing law
  - Changes in rules, law, etc.
  - Published in Bar Bulletin
  - Available online --- [www.nmbar.org](http://www.nmbar.org)

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### About the Opinions

- Based upon facts presented
- Based upon the Rules in effect at the time of the request
- Represent the opinion of the Committee through consensus
- NOT BINDING!!! On anyone!
- Strives to provide advice that avoids violation of the Rules

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### The Meeting

- Members appear in person or by telephone
- A meeting packet is distributed prior to the meeting
- Each request is considered through a very open discussion
- We keep working until the day's business is complete
- Here we go!

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### 7 New Matters

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