

# **2017 Mock Meeting of the Ethics Advisory Committee**

*Dec. 18, 2017*





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# **2017 Mock Meeting of the Ethics Advisory Committee**

Presented by:

*Hope Eckert, Hope Eckert Attorney at Law LLC;*

*Feliz Rael, Esq.;*

*Elizabeth Travis, NM Department of  
Transportation;*

*Kenneth E. Fladager, Esq.; and*

*James T. Reist, Smidt Reist & Keleher PC*

**ETHICS ADVISORY COMMITTEE**

**STATE BAR OF NEW MEXICO**

**DECEMBER 18, 2017**

**MOCK MEETING AGENDA**

**CALL TO ORDER**

**REVIEW OF MINUTES**

**FINALIZED MATTERS (CONFIRM DISTRIBUTION)**

**Request of Garcia (2016-Z)** – Informal Opinion issued in October. The requesting lawyer has not asked that the opinion not be distributed. **MATTER IS COMPLETE.**

**PENDING MATTERS**

**None**

**NEW MATTERS**

**Request of Thistlewhite (2017-A)**

**Request of Miranda (2017-B)**

**Request of Friend (2017 C)**

**Request of Squirrel (2017- D)**

**Request of Short (2017 – E)**

**Request of Concerned (2017 – F-1 and F-2)**

**Request of Kravitz (2017- G)**

**Request of Deepwater (2017 – H)**

**Request of Nofatte (2017 -I)**

**OTHER MATTERS**

**New Members**

**ADJOURN**

**STATE BAR OF NEW MEXICO  
ETHICS ADVISORY COMMITTEE  
INFORMAL ETHICS ADVISORY OPINION**

**INFORMAL OPINION:** 2017-\_\_\_\_

**DATE:** \_\_\_\_\_, 2017

**TOPIC:**

**RULES IMPLICATED:** 16-\_\_\_\_; 16-\_\_\_\_, ... NMRA (2017)

**DISCLAIMER:** The Ethics Advisory Committee of the State Bar of New Mexico ("Committee") is constituted for the purpose of advising inquiring lawyers on the application of the New Mexico Rules of Professional Conduct in effect at the time the opinion is issued ("Rules") to the specific facts as supplied by the inquiring lawyer. The Committee does not investigate the facts supplied by the lawyer and they are assumed to be accurate and complete. The Committee does not render opinions on matters of substantive law. Lawyers are cautioned that should the Rules subsequently be revised, or different facts be presented, a different conclusion may be appropriate. The Committee's opinions are advisory only, and are not binding on the inquiring lawyer, the disciplinary board, or any tribunal. The statements expressed in this opinion are the consensus of the Committee members who considered the request.

**QUESTIONS PRESENTED:<sup>1</sup>**

- 1.
- 2.

**SHORT ANSWERS:**

1. Yes/No/Maybe.
2. Yes/No/Maybe.

**FACTS PRESENTED:** \_\_\_\_\_

**ANALYSIS:** \_\_\_\_\_

**CONCLUSION:**

\_\_\_\_\_

The Committee has provided its opinion on the application of the Rules of Professional Conduct to the questions presented. However, the Committee does not opine on the application of other rules of the Supreme Court of New Mexico or substantive law, which should be considered and may have significant impact on the matters raised.

\_\_\_\_\_

2017-A

Dear Ethics Advisory Committee:

I'm in a bit of a quandary and it has been weighing heavily on me the past 8 days and nights. A friend of mine suggested that I run this by you.

As background, I represent the plaintiff in a civil suit; my client (I'll call him Nick) is a kind, jolly, elderly gentleman who does not have a malicious bone in his body. His suit is, of course, entirely justified.

The other party is represented by Scrooge, Antiochus and Grinch. They have filed numerous completely unfounded counterclaims against my client. They should know better. That firm has been around since 1966. In my view, it is beyond debate that the counterclaims are baseless and are an unethical attempt to scare or embarrass my client with the idea of forcing him to drop the suit.

My questions are:

1. Has Scrooge committed a violation of Rule 11?
2. Has Scrooge violated the Rules of Professional Conduct?
3. Do I have an ethical obligation to report them to the disciplinary board?

Your assistance is greatly appreciated.

Yours truly,

Ignatius Thistlewhite

2017-B

Dear Ethics Advisory Committee:

I am an assistant district attorney. In a case I'm handling, we have come across inculpatory evidence that is not needed to prosecute a claim against a criminal defendant, but is inculpatory nonetheless. We have shared all exculpatory evidence with the defendant's counsel. I am concerned about protecting the witnesses who provided this additional information. Am I obligated under the Rules of Professional Conduct to provide this additional, but unnecessary, inculpatory evidence?

Thanks for your assistance,

Brady Miranda



2017-C

Dear Ethics People:

I have been a government attorney for the past ten years and want to open my own criminal defense practice here. I know all of the judges and consider many of them to be friendly acquaintances, if not friends. I have formed a professional corporation. For the foreseeable future, I plan to practice solo, but someday I hope to have other lawyers working with me. My question is, which of the following law firm names are acceptable under the Rules of Professional Conduct under this current plan?

- a. The Amigo Law Firm
- b. Mike's Law Firm
- c. The Friend Law Firm
- d. Friend & Associates
- e. Friend of the Court Law Firm

Thanks!

Michael A. Friend

2017-D

Dear Ethics Committee:

I am very concerned about a situation that involves my trust account. Last week, I met with a new client, Boris Badenov, who wanted me to file a suit against a former business partner, Natasha Fatale, for conversion of rights to a time machine prototype. I required a \$10,000 retainer, which Boris promptly provided by check on his account with the Central Bank of Pottsylvania. I promptly deposited the check in my trust account late on Friday afternoon. Early (like at the crack of dawn) on Monday, Boris showed up at the office and proudly announced that he and Natasha had resolved the issue and that he needed his money back pronto (by noon) so that he could invest in a once in a lifetime opportunity (a feature length movie on interactions between moose and flying squirrels in Minnesota). I authorized a wire transfer to Boris' bank account in Lagos immediately.

Unfortunately, a few days later I received notice from my trust account bank that the original check from Boris bounced. What do I do? By the way, I had \$11,000 in my trust account before I deposited Boris' check, so thankfully my check to Boris did not result in a NSF notice to the Disciplinary Board!

Help!

Rocket J. Squirrel

2017-E

Dear Ethics Committee:

I need help. Last month, two close friends of mine (Steve and Chevy) approached me about helping them with a large real estate transaction. They assured me that they had agreed to all important terms, and that if they had overlooked anything, they could certainly work it out. But, they wanted me to draft a sales agreement just to keep everything legal. Everything was going fine until a little issue arose over environmental liability. Steve, the current owner, had operated a laundry and oil change business on the property. Chevy wanted some assurance that Steve would step in if any environmental issues related to that crept up. There was no agreement between them. Now, they each want me to represent them in negotiating the issue, because we're all friends and if anyone can help them resolve this, I am the one who could. What should I do?

Martine Short

2017-F  
1+2

Dear Ethics Advisory Committee:

I have been a lawyer, and with my firm, for the past twelve months. My supervising lawyer is a well respected attorney, with years of practice. I have learned a lot about practicing law, collegiality, relations with clients and the courts. I idolize her in a lot of ways. However, ....

Fact Pattern 1: recently, her son died unexpectedly. I've noticed that she has a strong smell of alcohol present since he died. She has been late for several hearings, depositions and client meetings. Last week, I was at court for a hearing that she and I were going to handle together. 10 minutes after the scheduled start time, the judge asked me where my supervising lawyer was and excused me to give her a call. I called her, she told me, "Tell the judge I got caught behind a really bad accident, I'm on my way and am very sorry." I passed that on to the judge, even though I was pretty certain there was no accident on the highway. The judge was willing to move on to other hearings until my supervising lawyer arrived. What should I do?

Fact Pattern 2: on Monday, I went into her office to talk about the upcoming week, which is our modus operandi. This time, it was different. She did not remember any of the cases we were working on together, status, upcoming depositions, discovery, nothing. What should I do?

Thank you, and please keep this very confidential,

I.B. Concerned

2017-G

Hi Ethics Folks,

IDK where to start, but here goes. A guy texted me last week about possible representation. We exchanged about a 1000 text messages, and then talked on the phone. He started talking about being stalked by people from Jupiter, wearing aluminum hats, and other craziness. I eventually told him that I was not a good fit for him which he seemed to accept. That night, I got on a practice area listserv I belong to and warned my colleagues about this guy, basically telling them about all the stuff he told me (clearly crazy stuff) and warning them that if they accepted a call from him, they would likely be on the line for at least an hour. One of the other lawyers on the listserv contacted me and suggested that making that post wasn't such a good idea. Is he right?

Gladys Kravitz

2017-H

Dear Committee People:

I am the subject of a disciplinary complaint involving a former client, Kevin Klient. In the course of conducting my own defense of the complaint, I properly noticed the deposition of an adverse witness, Magnum Piyi, who used to work for me as an assistant. Over the course of his former employment with me and through the disciplinary process, I became convinced that Magnum is a compulsive liar.

Magnum was going to testify about my activities associated with the complaint I filed for Klient. I decided that Magnum would probably only testify truthfully if forced to do so. I found several blank CDs, and marked them as "Recorded Conversations between Barrister and Magnum regarding Klient" and placed the CDs in clear sight of Magnum.

In the course of the deposition, I took the liberty to...

- Caution Magnum that failure to testify truthfully would expose him to penalties of perjury
- Imply that the CDs could be used to impeach Tort's testimony and might be embarrassing

I was able to obtain truthful testimony through this tactic. At the end of the deposition, one of the lawyers present asked if he could obtain a copy of the CDs. I explained to him that the CDs were blank. He indicated that he felt he needed to file a complaint with the Disciplinary Board because of my use of this tactic, but as I explained to him, "My bluff worked!"

So, do I need to be concerned? If so, can I just apologize to Magnum or is there something else I should do?

Respectfully,

Barbara N. Deepwater

2017-I

Hello,

I am an associate at Tweedledee & Associates. I was present when my supervising attorney, Jack Sprat, was conducting a pre-deposition interview of our firm's client, Mike Mayhem, with regard to an accident in which Mike's unoccupied parked car rolled into a bus stop injuring five people. In the course of the discussion, Mike stated that his mechanic had warned him about the ineffective parking brake and faulty gear box. Jack stated, first to me, "Ignore that, junior, that is if you want to keep your job," and then to Mike, "Hmm, you may want to think really hard about that, because if that's true, it could be harmful to your defense. Mike replied, "Oh, no! You know what, I'm mistaken, my mechanic never mentioned those things." The next week, I was sent by Jack to defend Mike's deposition. At his deposition, when asked whether he had ever been advised as to safety issues involving his car, Mike answered, "Never, not even once." I didn't know what to do, so I didn't do anything. Do I need to do anything now?

Help me,

Jason Nofatte

## This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.