

Sample Skills Exam Question and Answer

Answer the following question. You will be graded on your ability to identify which facts are relevant and state them concisely and accurately; identify the threshold or main legal issue and any secondary issue(s); identify the relevant legal authority and apply it to the facts and draw persuasive logical conclusions. Do not rely on any other authority or your knowledge of the law; only use what is given in the question. Your answer should be in the form of a memorandum to the attorney including the following: Facts/Issue(s), Discussion/Analysis, and Conclusion. Pay attention to clarity, composition, conciseness, and organization.

MEMORANDUM

TO: Stanley Dorite, Legal Assistant

FROM: Wilma Wonka, Staff Attorney

DATE:

RE: Stewart Carr Disciplinary Proceeding

Stewart Carr is a sole practitioner and a long-time attorney in this City. One of this firm's senior partners, Edwin Tuttle, has been asked to work with the Counsel for Discipline of the Utopia State Bar Association as a special prosecutor in a matter regarding Mr. Carr. Mr. Tuttle promised the Counsel for Discipline that we would take a look at the case.

One of Carr's clients purchased a toy chest at an estate sale. Several years later, she found six series E United States savings bonds in the chest. The bonds had been issued to Hans and Louise Brinker as joint tenants. After attempting unsuccessfully to cash the bonds, the client employed Carr to find the owners and to obtain a reward or a finder's fee. The client told Carr that she wanted a reward of one third but would take less. She said that if she did not get a reward, she would light her fireplace with the bonds.

In December of last year, Carr located Dick Brinker, a grandson of the original owners, both of whom were deceased. Carr told Brinker that his client wanted a reward of one third and would kindle her fireplace with the bonds if she did not get a reward. Brinker contacted Earl Ludlow, a lawyer practicing in a nearby city. After negotiations between Carr and Ludlow, Dick Brinker agreed to pay a finder's fee to the client.

Approximately one month later, Dick Brinker contacted another attorney, Steve Guenzel and requested a second opinion about the arrangement he had made with Ludlow. Guenzel called Carr and, among other things, discussed Utopia Stat. 35-514 with him. That statute provides:

A person who comes into control of property of another that he knows to have been lost or mislaid commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to

have it. Any person violating the provisions of this section shall, upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost or mislaid pursuant to section 38-518.

Carr responded to this discussion by repeating his demand for a reward. Attorney Ludlow withdrew from the case.

Next, Guenzel called Carr and withdrew Brinker's previous agreement to pay a finder's fee.

Gladys Watson, Dick Brinker's sister, upon learning of the bonds' existence, filed a complaint against Carr with the counsel for Discipline of the Utopia State Bar Association. Later, a police officer suggested that Watson call Carr and record the conversation.

Watson took the officer's advice and recorded the conversation. Instead of Stewart Carr, however, she spoke with Carr's legal assistant, Jack Fehrman. Fehrman related that Mr. Carr was out of the office; that they were no longer involved with the Brinker bonds; and that they had closed their file on the matter. Rather than discontinuing the conversation, however, Fehrman continued to talk to Watson. During that conversation, Fehrman said, "So, our client would rather light her fireplace with them if she doesn't get some money out of this. . .and if she decides to light her fireplace with them, I'm gonna applaud her. You people are so greedy that nobody wants to pay her anything.

The entire matter, including the recorded telephone conversation, has been referred to the Counsel for Discipline and is now the subject of a pending hearing before the Committee on Inquiry. Carr is being charged with violating Canon 7-102(A)(7), which states, "A lawyer shall not assist a client in conduct the lawyer knows to be illegal and Canon 9, which states, "A lawyer must avoid the appearance of impropriety."

Upon his admission that he had the telephone conversation with Watson, Fehrman was fired by Carr. Carr believes he should not be held responsible for Fehrman's statements, which were made without his knowledge or consent.

Please prepare a memorandum that discusses this case in light of existing statutes, ethical rules, and case law.

Selected Case Law
State of Utopia Ex Rel. Utopia State Bar Association,
Relator, v. Alex M. Krist
232 Utop. 445
Filed June 9, 1989 No. 87-546

Original action. Judgment of Disbarment.

The facts are that on or about April 30, 1986, the counsel for Discipline received a written letter of complaint against the respondent by Mrs. Roy Butternut concerning respondent's handling of a bankruptcy matter. On May 1, 1986, the respondent received notice that he was the subject of a complaint made to the Counsel for Discipline, with an attached copy of Mrs. Butternut's complaint. He was further notified that he had fifteen (15) working days to respond. The letter from the Counsel for Discipline went on to state that if respondent failed to respond, the Rules provide that this failure alone shall be grounds for discipline."

On or about February 21, 1986, the Counsel for Discipline received a written letter of complaint against the respondent by Ms. Judy Scriven on behalf of Scriven, Quill, and Scriven, a freelance court reporting firm, asking for "help and/or advice" in collecting several unpaid deposition bills. The Counsel for Discipline forwarded the complaint to respondent and stated, "in my opinion, (Scriven's) letter does not set forth sufficient facts to file a complaint against you. I would appreciate, however, a written response from you addressing the issues raised." On April 24, 1986, May 20, 1986, and June 11, 1986, the Counsel for Discipline again notified the respondent by letter that he was the subject of a complaint by Ms. Scriven and requested an immediate response.

In his first amended answer to formal charges, respondent affirmatively alleged that he had timely responded to any notices of complaints he received from and after February 21, 1986, and stated:

1. For further defense, Respondent denies that violation of a duly imposed procedural rule of this Court states facts sufficient to constitute a cause of action for violation of a substantive Disciplinary Rule of the Canons of Ethics as adopted by the Court.
2. For further defense, Respondent alleges that the Committee on Inquiry found that the failure to pay a disputed deposition bill did not form the basis of a substantive complaint against a member.
3. That such substantive complaint should have been dismissed if received by the Counsel on Discipline since such conduct, if true, has never been understood to form the basis of a disciplinary violation.

Respondent testified as to his personal problems, overwork, and extensive travel in 1986 and that he was not in his office on a daily basis commencing in May or June of that year. He became aware that his secretary, Ruth Johnson, often neglected to do the work he gave her and did not perform her duties while he was out of town, but he did not fire her because he did not want to train another secretary. Respondent also testified that Johnson took some of his files from the office while he was out of town after she had difficulty cashing one of her paychecks. Respondent testified that after Johnson quit in August 1986, a new secretary discovered a bundle of documents belonging to respondent, including his responses to the Butternut and Scriven complaints.

At the hearing before the referee, Betsy Boop, an attorney who shared an office with respondent, testified as to Johnson's general incompetence. Boop stated that she would not allow Johnson to do work for her. She also testified that after the new secretary was hired, they discovered old mail and notes which had been placed between two books on a table. Boop did not read the mail but noted that many of the items belonged to Krist.

Respondent was required to respond to the complaints pursuant to Utop. Ct. R. of Discipline 9(E) (rev.1986). A reasonable attorney would understand that the type of conduct is prohibited and adversely reflects on his fitness to practice law. The record supports a finding that respondent violated the canon of ethics in this respect.

We note that respondent was not charged with failure to provide management, supervision, and control of his office staff and procedures as required by Canon 1-102(A)(6). Respondent's own testimony suggested, however, that his failure to respond to the Butternut and Scriven complaints is the fault of his secretary, who he knew to be incompetent.

Even though we conclude that the referee's finding that respondent violated Canon 1-102(A)(6) by failing to provide management, supervision, and control of his office staff and procedures was in error, respondent reliance on secretary's alleged incompetence as a defense is entirely misplaced. While respondent's failure to properly supervise his employee was not charged against the respondent, such conduct does not constitute a defense to the misconduct charged. A lawyer may not avoid responsibility for misconduct by hiding behind an employee's behavior and may not avoid a charge of unprofessional conduct by contending that his employees are incompetent.

The preliminary statement in the Canons of Ethics as adopted by this court states, "A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client." "A lawyer also has responsibility to be aware at least of the major areas of responsibility and the actual work habits of employees and to exercise effective supervision." C. Wolfram on Modern Legal Ethics 16.3.1. at 893 (West 1986).

In State ex rel. USBA v. Statmore, 218 Utop. 138,356 E.W. 2d 875 (1984), we said: "A lawyer's poor accounting procedures and sloppy office management are not excuses or mitigating circumstances in reference to commingled funds. (Citations omitted.) Similarly, "(a)n attorney may not escape responsibility to his clients by blithely saying that any shortcomings are solely the fault of his employee. He has a duty to supervise the conduct of his office." Attorney Grievance Comm=n v. Goldberg, 292 Md. 650, 441A.2d 338 (1982). We hold that a lawyer is ultimately responsible for the conduct of his employees and associates in the course of the professional representation of the client.

Respondent's testimony shows only that his failure to supervise his employee directly contributed to his failure to timely respond to the Butternut and Scriven complaints. He may not use his secretary's alleged incompetence to shield him from the consequences of his unprofessional conduct.

The record clearly demonstrates that respondent has violated his oath of office and the disciplinary rules cited by the referee. We have no confidence that a public reprimand, or even a suspension, would serve to modify respondent's attitude or to protect the public. We recognize that disbarment is a harsh penalty. We conclude that in the circumstance of this case, a judgment of disbarment is appropriate. JUDGMENT OF DISBARMENT.

Sample Answer

MEMORANDUM

TO: Wilma Wonka, Staff Attorney
FROM: Stanley Dorite, Legal Assistant
DATE:
RE: Stewart Carr Disciplinary Proceeding

You have asked me to review existing statutes, case law and ethical rules concerning the pending disciplinary proceedings involving Stewart Carr. Mr. Tuttle has been asked to serve as special prosecutor on behalf of the Utopia State Bar Association against Carr.

Facts

One of Carr's clients purchased a toy chest at an estate sale and later found six series E United States savings bonds in the chest. The bonds had been issued to Hans and Louise Brinker as joint tenants. After attempting unsuccessfully to cash the bonds, the client employed Carr to find the owners and to obtain a reward or a finder's fee. The client told Carr that she wanted a reward and that if she did not get a reward, she would light her fireplace with the bonds.

Carr located Dick Brinker, a grandson of the original owners, both of whom were deceased. Carr relayed his client's demand to Brinker who, in turn, retained an attorney. Carr negotiated a finder's fee for his client. Later, Brinker sought a second opinion from Steve Guenzel. Guenzel discussed the provisions of Utopia Stat. 35-514 with Carr who repeated his client's demand. Guenzel withdrew the offer of reward.

Gladys Watson, Dick Brinker's sister, learned about the bonds and filed a complaint with Counsel for Discipline of the Utopia State Bar Association. She called Carr's office and recorded her conversation with Carr's legal assistant, Jack Fehrman. Fehrman repeated the threat of Carr's client to use the bonds as kindling if she did not receive a reward for them.

Issues

- I. Must Stewart Carr bear professional responsibility for the wrongful statements made by his legal assistant?
2. Did Stewart Carr violate any ethical rules, independent of the statements made by his legal assistant?

Discussion/Analysis

Stewart Carr's demand on behalf of his client violated Utopia State Statute Section 38-514 which states that anyone who comes into control of property he knows to have been lost or mislaid commits theft if he fails to take reasonable steps to restore the property to its owner. Even if Carr did not know of the existence of this statute at the time the original demand was made, he repeated his demand for a reward after the statute was pointed out to him.

Canon 7-102(A)(7) provides that "[a] lawyer shall not assist a client in conduct the lawyer knows to be illegal." Carr knew the demand he made on behalf of his client was illegal. As such, he is subject to appropriate disciplinary action.

Although the statements made by Carr's legal assistant are superfluous given Carr's own conduct, the point should be made that he cannot absolve himself of the misconduct of his employees. Jack Fehrman's wrongful statements must be attributed to Carr. Canon 1-102(A)(6) requires that a lawyer must provide management, supervision, and control of his office staff. When faced with this issue in relation to a legal secretary, the Utopia supreme court stated:

such conduct does not constitute a defense to the misconduct charged. A lawyer may not avoid responsibility for misconduct by hiding behind an employee's misconduct and may not avoid a charge of unprofessional conduct by contending his employees are incompetent. *State ex rel. USBA v. Krist, 232 Utop. 445 (1989).*

Although the specific sanctions that may be imposed cannot be reviewed without more thorough background information concerning Mr. Carr, it seems clear that he has violated specific Canons of ethical conduct, based both upon the conduct of his employee, Jack Fehrman, and upon his own conduct, independent of his employee.

Conclusion

Stewart Carr is professionally accountable for the conduct of his employee, Jack Fehrman. Independent of Jack Fehrman's conduct, however, Carr personally violated Utopia State Statute Section 38-514, Canon 7-102 (A)(7) and Canon 9 when he made an illegal demand on behalf of his client.