

Ethics in the FLFO

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Training Conference
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Format for this Class

- Hypotheticals
- Turning Point
- Discussion
- Rules

References

- Rules of Professional Conduct
- Code of Ethics for Court Employees of California
- Guidelines for the Operation of Self-Help Centers in California Trial Courts
- California Code of Judicial Ethics

Hypothetical 1

You are assisting a litigant with her Income and Expense Declaration. She says her occupation is cocktail waitress, and gives her salary from a paystub. She asks you to help calculate her monthly average income from a tax return that she says reported her salary before an hourly raise she recently received. You ask her for the average amount of tips she earns, and she replies that she has no tips to report. When she turns to the next page, she asks why it needs her to name who lives with her and his income. She asks "what does it mean, does he pay some of the household expenses? He's not paying for my kids!" She glances nervously at a man in the waiting area who is watching her intently. She lowers her voice and says to you "he won't pay for anything any more if I put his name in this case." What do you do?

Hypothetical 1

- A. Tell her you are an officer of the court and cannot continue to assist her if she intends to withhold financial information to defraud the court.
- B. Tell her to include the tips she must earn because the commissioner will not believe that she does not get any tips as a cocktail waitress.
- C. Repeat your explanation of the requirement to sign the form under penalty of perjury, and encourage her to be fully truthful about her total income and whatever her boyfriend pays for their household expenses.
- D. All of the above.

Integrity

- Code of Ethics, Tenets 2, 3, 4,
- Guidelines 2, 4
- Family Code 10014
- Code of Judicial Ethics, Canon 3

Hypothetical 2

A litigant comes to your office inquiring about a service that is only provided in a workshop. You tell him when the next workshop will be offered (the next day) and begin to describe the things he should bring with him to the workshop. He interrupts you, stating that you are being racist and are also discriminating against him because he is a man. When you try to explain that all litigants who need the help he is seeking are directed to the workshop, he grows louder and more belligerent and demands to speak to your supervisor. You call your supervisor out to speak to him, standing away from his sight, but where you can still hear the conversation between him and your supervisor. He is very calm and polite to your supervisor, claiming that you were rude and short with him without provocation the minute you saw him and that he had a similar problem with you the last time he came to your office. You have never seen the man before. What do you do?

Hypothetical 2

- A. Say nothing, but move into the man's line of sight so he knows that you can hear the lies he is telling.
- B. Interrupt him and set the record straight.
- C. Wait for your supervisor to finish, then ask if you can clarify the things that were misstated
- D. Leave the area if the litigant's words are too upsetting to hear

Professionalism

- Code of Ethics, Tenet 3

Hypothetical 3

During your lunch hour, you and a co-worker are eating at a small but busy café near the courthouse. All of the tables are full and you cannot avoid overhearing the conversation between two women at the table next to you. They are discussing their boyfriends and their children and you and your co-worker are having a hard time containing your disapproval of the opinions they are expressing. You decide to finish your lunch back at the courthouse. After lunch, the first litigant waiting for assistance is one of the two women who were sitting next to you at lunch. Your co-worker does not want to assist her and asks if you would mind doing it. What do you do?

Hypothetical 3

- A. Agree with your co-worker to flip a coin to decide who has to assist the woman.
- B. Put your personal feelings aside and assist the woman.
- C. Tell your supervisor that your co-worker is refusing to help the woman in the hopes that she will be forced to assist the woman instead of you.
- D. Ask your supervisor to assist the litigant because both you and your co-worker have a conflict of interest and cannot assist her.

Bias

- California Code of Judicial Ethics, Canon 3 C (3)
- Code of Ethics, Tenet 10
- Guidelines 10, 44 (E)

Hypothetical 4

A courtroom clerk calls you one morning looking for a file that is on calendar. You had helped one of the parties a few days before and the file was inadvertently left in your office. When you take the file to the courtroom, the judge has not yet taken the bench, but the courtroom is full. The litigant you assisted a few days before is there and greets you warmly, thanks you for your help, then adds, "wish me luck!" You smile and wave, but do not engage with the litigant. You deliver the file to the courtroom clerk and return to your office. A few days later, you learn that the other party to that case has filed a complaint against you for providing preferential treatment to the litigant who greeted you in the courtroom. How could this situation have been avoided?

Hypothetical 4

- A. By making it clear up front that you are not the party's attorney and that the services you provide are available to both sides in each case.
- B. By having someone other than you deliver the file to the courtroom.
- C. By pretending not to recognize the litigant in court and ignoring his greeting.
- D. It could not have been avoided because everything you did was proper.

Appearance of Impropriety

- California Code of Judicial Ethics, Canon 2 A
- Code of Ethics, Tenet 6
- Family Code 10014
- Guidelines 4, 44 (B) & (I)

Hypothetical 5

You are conducting a full workshop and one of the litigants is asking many questions. She prefaces each question with a recitation of her personal facts and challenges each answer you give as conflicting with information she received elsewhere. The other litigants in the workshop are growing impatient with both you and the talkative woman. What do you do?

Hypothetical 5

- A. Ask the woman to hold all of her questions to the end so you can get through the workshop, but continue to take question from the other litigants.
- B. Ask all of the participants to hold their questions to the end so you can cover all of the material.
- C. Remind everyone not to share their personal stories as the information you are providing is based upon the legal requirements and not upon the facts of each situation.
- D. Speak to the woman privately and ask her not to share personal details or to contradict the information you are providing to the group.

Respect

- California Code of Judicial Ethics, Canon 3 B (4)
- Code of Ethics, Tenet 3
- Guideline 44 (D)

Hypothetical 6

After assisting a litigant with a Responsive Declaration to a motion, the litigant asks if there is anything he should know about the particular judge before the hearing. You know that the judge assigned to the department where the hearing is scheduled has a bad reputation for holding obligors to a higher standard than other litigants. How do you respond?

Hypothetical 6

- A. Warn him about the judge's reputation, but caution him not to mention that he heard it from you.
- B. Spend extra time preparing him for court, even though this is not something you do for all litigants, but do not share anything specific about the assigned judge.
- C. Provide the same information you would provide to anyone with an upcoming hearing.
- D. Refer him to a private attorney, who may be able to share with him strategies for dealing with the assigned judge's preferences.

Equal Access

- Code of Ethics, Tenet 1
- Code of Ethics, Tenet 10
- Family Code 10006
- Guidelines 18, 41

Hypothetical 7

A litigant comes to your office for direction on how to proceed in his case. The things he is trying to accomplish can be done in a variety of ways. After you have explained the available options, the litigant asks which of the options you described would be faster. How do you respond?

Hypothetical 7

- A. Explain how long it takes the average person to complete each option.
- B. Explain that there are too many variables to predict which method will take him longer or shorter to complete, but that you can provide detailed instructions for each option and he can determine the fastest route for himself.
- C. Explain that speed is only one of the factors that should be considered in deciding how to proceed, and enumerate the other factors that he should consider in weighing his options.
- D. Refer him to an attorney for advice on how to choose the best option for him.

Impartiality

- Code of Ethics: Tenets 1, 3, 5, 6, 7, 10
- Guideline 44 (C)

Hypothetical 8

Mr. Manager, a court manager employed in your district courthouse, drops by your open office and waits for you to finish assisting one litigant, then gets your attention before you greet the next litigant in line. Mr. M quietly asks if you can discretely help him do the paperwork for his divorce, explaining that although his spouse and he are working out a friendly agreement on all issues, he does not want other court employees to know that he is going through a divorce. You say you are happy to be of assistance, and agree to schedule a private appointment in your office at a time when Mr. M says he can take a late lunch break.

Hypothetical 8, cont.

When you meet with Mr. M at the scheduled time, he brings a long list of personal property, real estate, and debts to be listed as community and separate property. To expedite things you create a profile and start typing the forms using Martin Dean Essential forms on your office computer, but it is still taking longer than an hour. Mr. M is becoming distracted by messages on his phone, and you can tell that there are litigants waiting to see you with Judicial Referral forms from the courtrooms, so you offer to finish Mr. M's forms later and then meet again the next day.

Hypothetical 8, cont.

By the time you finish assisting all of the litigants referred by the courtroom, it is time for you to close the office and go home. You lock the door, but stay and finish Mr. M's documents because you will be too busy in the morning.

As you begin answering phone calls the next morning, you email Mr. M to tell him his documents are ready. Mr. M uses his master key to let himself into your office, bringing you a vente Latte from Starbucks. You put the phone on hold so you can show Mr. M where to sign the documents and make copies for him, and enjoy the latte while it is hot.

Have there been any ethical violations?

Hypothetical 8

- A. Yes, you have given Mr. M a different level of service than other litigants who are assisted to start their dissolution cases in a weekly workshop; you have favored Mr. M, while making others wait in line or on the phone; and you have accepted a gift.
- B. Yes, Mr. M has used his position in the court to benefit himself.
- C. No, not if you did not turn away any other litigant seeking assistance that day so that no one received less service than they needed.
- D. A and B

Conflicts of Interest

- Rules of Professional Conduct, 3-310
- Code of Ethics, Tenet 5
- Guideline 44 (B) & (L) 2.

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