**VBBA GENERAL ETHICS 2024**

**Hypotheticals and Questions - Rules 1.1, 1.3, 1.4, 1.15**

**FACT PATTERN – COMPETENCE, DILIGENCE, COMMUNICATION (1.1, 1.3, 1.4)**

You are a new associate at a mid-sized firm in Virginia Beach. You are contacted by the husband/father in a custody case involving one child, age three (3). You have been licensed about a year, have a child of your own, and are aware of the general principles and the applicable statutes. You have not tried a case and have not seen a case through from beginning to end yet, but you have been involved as co-counsel and have argued various Motions. Your potential client and his Wife have been separated over a year, but nothing has been filed in Court yet. The parties signed an agreement about six months ago. The Agreement deals with all of the parties’ property issues and grants primary custody of the child to the mother. The agreement awards parenting time to the father by agreement and gives mother decision-making authority in the event of a material dispute. The client tells you he has a new girlfriend who thinks the agreement is unfair. The client no longer wants to abide by the agreement.

Your potential client is adamant that he now wants 50/50 custody. Without discussing it with your more seasoned colleagues, you decide to take the case. You tell the client know that you agree with him that the agreement is not good for him and that he should have shared custody.

When you see the paperwork, you see that wife/mother’s attorney has been practicing for 25 years and is well known as a tough litigator. You inform Counsel of your client’s objection to the ratification of the Agreement and you make an appearance by letter. You meet with your client and decide that the best way for him to let his dissatisfaction be known is to start taking the child from school without the mother’s agreement. He does so, and opposing counsel writes you a letter demanding that you advise your client to stop taking the child without agreement of the mother. The letter from opposing counsel also states that the mother is offering to settle by agreeing to father having every other weekend and split holidays, and that the remainder of the agreement will be ratified. You decide to ignore the letter because your client is adamant that he wants 50/50 and he has made that clear to you.

**QUESTIONS:**

1. What ethical violations may be lurking in the decision to take the case?
2. What should you have done before telling the client how to proceed?
3. Are there any issues with your decision regarding the letter?
4. What are the ethical implications of your advising the client to take the child from school?
5. What ethical rules are implicated when you advised the client?

**FACT PATTERN PART 2 (1.1, 1.3, 1.4,1.15)**

Despite the Husband’s protests, Wife/Mother’s counsel files an uncontested divorce complaint asking the Court to ratify the Agreement. You (you are still father’s counsel in this hypo) file an answer claiming that the agreement should be disregarded because it is too ambiguous and denies Husband/Father substantial visitation. You author a counterclaim on behalf of Husband seeking joint legal and shared physical custody of the child. You and opposing counsel decide to set a *Pendente Lite* hearing in short order because father wants his visitation in an order and because mother wants the chaos with father picking up the child and keeping him at odd intervals to end. You prepare a motion and notice it for a random Friday at 9:30 a.m.\*\*

In opposing counsel’s PL Motion, which is noticed for 11:00 a.m. (you find this odd), Wife asks for a psychological evaluation of the father due to his recent erratic behavior with respect to using self-help to take visitation outside of an agreement. Father has also recently been calling the child’s doctor and dentist to cancel appointments that the mother has made. He tells you that he doesn’t think mother should have all of the power to choose providers and schedule medical appointments.

Opposing counsel issues discovery and Requests for Admission including several requests for your client to admit that he agreed to the terms of the Agreement, that he thought at the time he signed it that it was best for the child, that he has been taking the child without agreement, that he has been unilaterally cancelling medical appointments, and that for several months, Mother and father agreed to reasonable weekend visitation.

Wife has also issued interrogatories and requests for production largely centering on the client’s reasons for disregarding the agreement and the facts and circumstances that changed between the signing of the agreement and the filing of the counterclaim. These requests concern you, because whatever he writes in responses is not going to be good for his case.

You know that he signed the agreement and that it was his girlfriend who talked him into trying to overturn it. You decide to wait on answering the discovery until after the pendente lite hearing. You are aware that if the court ratifies the agreement, there will be no need for discovery. You have not disclosed opposing counsel’s offer to settle the matter on an every other weekend basis because you know that your client wants 50/50 custody.

On a non-custody related note, pursuant to the terms of the agreement that your client still likes, the marital residence has been sold. The real estate agent writes a check payable to your law firm and you are super excited because your client has already said you can pay his monthly invoices from the home proceeds.

**QUESTIONS:**

1. What new issues of competence and diligence are implicated with these additional facts (some of these are VB SPECIFIC!)?
2. Do the new facts change the issues related to the settlement offer?
3. What rules are implicated with the discovery being issued?
4. Are there any issues with your decision to wait until after the hearing to respond to the discovery?
5. Are there any ethical implications with the course of action you have undertaken with respect to advising your client?
6. Does your answer change if you have consulted with a senior partner at the firm and the partner agrees with you? What if the partner does not agree with you?

**FACT PATTERN PART 3**

You and your client arrive in Court at 9:30 a.m. on the Friday. Opposing counsel and her client arrive at 10:45 a.m. to the *Pendente Lite* hearing, which is heard at 11, which you find odd.

You didn’t formally prepare your client prior to the hearing, but you did tell him just to tell the truth and that everything would be fine since he loves his son and that the court will see that mother is controlling and that his parental rights have been violated by the agreement.

Your client performs poorly on the witness stand. On cross examination, he admits that he signed the agreement of his own free will, that he thought it was best at the time, and that it was his new girlfriend who told him to discard it.” He also admits to taking the child out of school on a random schedule that the mother objected to, and, frustrated with opposing counsel, yells “WHY the F\*\*K SHOULD SHE GET TO MAKE ALL OF F\*\*KING THE DECISIONS FOR MY SON, WHO IS A MALE, LIKE ME?? I SHOULD BE EQUAL IN THIS!”

After opposing counsel riles your client into this froth, you see that maybe you should have warned him that opposing counsel is a very skilled litigator and may be able to rattle him on the stand. During cross, after he stops screaming, your client flounders to explain why he agreed to the terms a few months ago and is now upending the entire situation. Your client cannot explain why it is good for the child that the child is being picked up on a random schedule and why it is best to cancel the medical appointments the mother has made. It is clear from the evidence presented that this is all about control for the father, which was wife’s attorney’s argument all along.

The Court does not ratify the agreement as is, however, agreeing that due to father’s behavior, there needs to be a strict visitation schedule. Concerned about his judgment, the court also orders the psychological evaluation that wife asked for in her motion. Your client is glad the agreement was not ratified, but he is confused about the implications of the evaluation and concerned that the judge seemed very unhappy with him. You reassure your client that this ruling is all GREAT news, because you don’t want your client to get mad and replace you.

Your client tells you that he has some problematic issues in his history including struggling with substance abuse in his 20’s, a sexual offense in college that did not result in criminal charges but was investigated by campus police and resulted in university discipline, and past mental health problems that were never officially diagnosed. He has never had treatment for any of these issues and believes that his wife is unaware of this problematic history.

Because of all of the above, you again postpone responding to the discovery because you figure you can deny the mental health and other issues if the evaluation does not reveal them. After all, many other lawyers have told you that “nobody really ever responds to discovery on time.”

You decide at this point, however, that it is time to tell your client about the settlement offer. You let him know that if he wants to be sure that his mental health and other issues are not unearthed, he might want to take the deal for now, get the court ordered visits, and petition in juvenile court later for more custodial time. He agrees with you and says, ok, take the deal. You call opposing counsel. Opposing counsel says, “Sorry, since it has been a few weeks, the deal is off the table. My client wants the psychological evaluation and is really worried about the way your client has been acting since he hired you. She is uncomfortable with him having joint legal and overnight visitation due to his bizarre behavior in the last few weeks since we made the offer.” You tell your client that the settlement offer has been rescinded. He is confused, but shrugs it off and says, ok, well I really wanted 50/50 now anyway, so I guess it is fine.

At the end of the month, the bill is quite high because you and your client correspond every day and the hearing took several hours, including the wait time between 9:30 and 11 am in Court. You are thrilled that you have the client’s money in trust from the sale of the home, and you apply the proceeds to your invoice, paying it off in full.

**QUESTIONS:**

1. What are the 1.1 components of the way this hearing happened and your preparation of your client?
2. What are the 1.3 components of the discovery issues here?
3. Are there 1.1 and 1.3 issues regarding the settlement offer despite your client saying that it was fine that it was rescinded?
4. Are there 1.4 issues regarding the settlement offer?
5. What ethical issues are possible problems for you regarding the course of action you have advised your client to take at this point?
6. What are the ethical issues facing you with respect to the mental health implications and the evaluation?
7. What are the 1.15 implications of the invoice and paying the funds in trust?
8. If your representation agreement says that your client agrees that you can apply trust funds to any outstanding bill, does that change your answer?
9. What if the opposing party was supposed to get some of the home proceeds?
10. Does it matter that the Agreement has not yet been made into a Court Order, so there is really no final decision on who gets what from the house?

END OF PROGRAM MATERIALS