

American Bar Association
Law Student Division

2018–2019 National
Client Counseling Competition
Preliminary Round

Profile #1

Judges and Clients' Version

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Information

Not to be shown to Competitors

**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Preliminary Round
Problem 1**

MEMORANDUM

TO: Attorneys
FROM: Secretary
RE: Chris/Christine Callahan

Mr./Mrs. Chris/Christine Callahan is a local lawyer concerned about deposits into the firm's trust account.

**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
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Preliminary Round
Profile 1**

CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES

(Not to be shown to Attorneys)

You are Chris/Christine Callahan, and you are an attorney practicing primarily in the field of real property transactions. You are here to see these lawyers about a lawsuit pending against your spouse and a possible complaint that will be filed against you with the state bar.

The whole issue arose when your spouse's business was sued. Your spouse, Sam, owns a boot camp and wellness training center, PowerFit. Even though the business is set up as a limited liability company, the real property and other tangible assets of the business are owned in Sam's individual name. After operating for a few years, you thought it would be a good idea to further protect the assets in Sam's name, so you filed promissory notes in favor of yourself and your law firm against Sam and Sam's training facilities and business, secured by a deed of trust on Sam's professional building and UCC filings against Sam's tangible assets and accounts receivables. The secured debt totaled about \$245,000. These notes and deeds of trust were executed and filed two years ago.

About 18 months ago, one of Sam's clients got hurt during a routine training session. There have been ongoing negotiations between Sam and the injured client to resolve the claims about the client's injuries, but the negotiations have, to-date, been unsuccessful. About a year ago, to protect more of Sam's assets and Sam's share of your joint assets, you transferred Sam's cash accounts, totaling around \$80,000, into your trust account as well as Sam's share of your joint accounts into your trust account (about another \$35,000). After these transfers and the original promissory note and deed of trust, Sam has few assets left in Sam's name alone. You currently hold \$115,000 of Sam's cash assets protected within your firm's trust account and the real estate and hard assets of the business are subject to your security interest.

Although you originally represented Sam in the negotiations of a settlement with Sam's injured client, you asked another lawyer with whom you have an office sharing arrangement (but you are not in the same firm), Felix Branson, to take over the representation when a lawsuit looked imminent. The client filed a torts action against Sam and PowerFit about 9 months ago. In the course of pre-trial discovery, the opposing counsel asked for copies of Sam's financial records, the financial records of PowerFit, and your personal financial records. To date, no request has been made to discover your trust account information, but you are concerned.

In addition to the transfers *into* your trust account, you have paid Felix's legal bills on behalf of Sam from your trust account, as well as the taxes and insurance on Sam's professional building. You don't know whether the opposing counsel in the lawsuit will put all this together, but you need to get on top of the situation sooner rather than later.

You were very careful to make sure your ledger kept Sam's deposits into your trust account and the disbursements on Sam's behalf separate from those of other clients, which is your common practice. You basically treated Sam as a client for purposes of using your trust account to hold some of Sam's assets. So, you don't think there is really a problem, but you want to make sure before you have to produce any more documents. Opposing counsel can't really subpoena your trust account records anyway, can they? Aren't the trust account ledgers subject to attorney/client privilege? Can you be forced to produce them?

If you *do* have to produce some of your trust account ledgers, can they be limited to just Sam's transactions or can they look at all of it? And, if so, for how long back? You had a tough spot about 3 years ago when you had a lot of outstanding receivables. To cover your firm's operating expenses for a couple of months, you "borrowed" some money from your trust account, about \$42,000 over three months and transferred it to the firm's operating account. You immediately repaid it when you had a windfall from another case, and no one was really the wiser, nor was anyone negatively impacted by the short term "bridge loan" the firm took against the trust account.

Even if this information becomes relevant in the lawsuit pending against Sam, would the opposing counsel turn anything over to the state bar if you have an issue with your trust account? You need these lawyers to answer all these questions.



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American Bar Association
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2018–2019 National Client
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Preliminary Round

Profile #2

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**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Preliminary Round
Profile 2**

MEMORANDUM

TO: Attorneys
FROM: Secretary
RE: Terri/Terry Ardmore

Mr./Ms. Ardmore has an appointment with you to talk about two problems that s/he is facing. S/he is facing a grievance filed by Veronica Thurston alleging breach of fiduciary duty.

**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
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Preliminary Round
Profile 2**

CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES

(Not to be shown to Attorneys)

Your name is Terri/Terry Ardmore. You are a solo practitioner, having opened your own law practice just two years out of law school. Things had been going well with your practice, but now you find yourself in a jam because, as the saying goes, no good deed goes unpunished.

Your problem started when you hired a law student to do some research and writing for you. Things were busy, and you needed some help to keep up. Law students provide cheap labor, and a smart law student is almost as good as hiring a licensed lawyer—maybe better. Anyway, you hired Olivia Bastrop on a project basis. Her grades were only average, which is why you could afford to hire her, but her work was stellar. Her research was thorough, and her drafts of pleadings, briefs, or other documents were outstanding. Plus, she was fast, and you found Olivia pleasant to work with. While she often worked remotely, when she was in the office, she often brought in cookies or other treats that she had baked. Your part-time secretary, Florence, adored Olivia.

Three or four months ago, Olivia called you one afternoon and started the conversation by noting that she knew that she was asking you a big favor, but a friend of hers really needed your help. She described Sunny as her best friend, who had just been assaulted by her long-time boyfriend. She explained that Sunny wasn't sure whether she would press charges, but she did want to see about getting an order of protection. Olivia was asking if you would just walk Sunny through the steps to obtain an order of protection and explain to her what such an order would mean. Olivia admitted that Sunny could not afford to hire an attorney but said that she needed just a few minutes of your time. As it turns out, you had just finished up a brief and were taking a bit of a break, and given how much you like and appreciate Olivia, you agreed to speak with her friend.

Sunny called you a few minutes later. She thanked you profusely for your help, stating that she knew she couldn't afford to pay you, but she appreciated your help. She proceeded to describe the tumultuous relationship she had with her boyfriend, Will. He had threatened her multiple times, but always regretted it later. They had followed the same pattern for nearly two years, a pattern of arguments that escalated to insults that escalated to throwing things towards each other (with no intent to really hit each other) leading to expressions of regret and reconciliation, before the pattern restarted. However, the last incident had broken the mold, Sunny explained. Sunny says she didn't mean to hit Will with the television remote control, but apparently, she connected with his head. That set Will off. He pushed Sunny; she pushed back, and then he began to pummel her. He hit her with his fist, before pushing her out of their shared apartment and threatening to burn her belongings. You listened patiently to Sunny's very emotional recount before giving her a basic primer on the law of orders of protection. You

explained what was necessary to obtain one, what the court could restrain Will from doing, and the consequences if he violated the order. You further explained that in light of the facts that Sunny shared with you about her own behavior, Will might also be able to obtain an order of protection that applied to her. The entire conversation lasted about 45 minutes. When the call was done, Sunny thanked you, again profusely. Olivia called a few minutes later to express her thanks as well.

You never spoke with Sunny again or communicated with her in any other way. When you asked Olivia about what had happened, she explained that Sunny had, true to form, reconciled with Will. You shrugged your shoulders and went on about your business, not giving it another thought.

Nothing more happened until quite recently. A month or so ago, a new client, William Dinkins, retained your services to defend him against criminal charges of assault and battery against his girlfriend. You obtained Dinkins' side of the story, which sounded like he might have a viable case of self-defense. You filed your notice of appearance and created a file for Dinkins' matter. It was at the first court appearance that you realized there might be a problem. It turns out the alleged victim is Sunny. She attended the hearing, and it turns out that her real name is Veronica Thurston, but she goes by the nickname, Sunny. Nothing about the charging papers or even Will's initial interview raised any concern. The charging documents identify the victim as Veronica Thurston. When you asked Will the name of the alleged victim, he also gave her legal name, neglecting to advise you of her nickname. There was nothing about your meeting with Will to suggest that Veronica might be also known as Sunny.

Sunny was surprised to see you at the hearing, representing Will. You saw her whispering to the prosecuting attorney about it. The prosecutor must have advised her to contact the State Bar because a few days ago, you received a notice from the State Bar of a grievance, claiming that you had violated the ethical rules about maintaining client confidences and conflicts of interests. *After you scheduled an appointment with these attorneys*, you were contacted by an attorney, Amy Filer, who advised you that she was planning to sue you on behalf of Sunny/Veronica for breach of fiduciary duty. **Note: the attorneys will not have advance notice of the possible lawsuit.**

How could this have gone so wrong? You are not now, nor were you ever, Sunny's lawyer. You just walked her through the kind of information that anyone with half a brain could have found on the internet. You're sure that she understood that you would not be seeking an order of protection on her behalf and you didn't even discuss a fee or the scope of your representation. You had not discussed confidentiality or conflicts of interest or any of the other topics that you generally address with clients. Certainly, Olivia understood that you would not be representing Sunny—indeed, you believe that Olivia suggested that Sunny was *not* looking for an attorney, but just someone who could explain the law to her. When you spoke with Olivia after your call with Sunny, you mentioned that if Sunny turned out to need an attorney, you could refer her to some lawyers whose fee might be more affordable for her or maybe work out something for a reduced fee if you represented her.

You have withdrawn from representing Will Dinkins, and you're hoping that this might improve matters. Either way, you need these attorneys help to get you out of this jam.



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American Bar Association
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*2018–2019 National Client
Counseling Competition*

Preliminary Round

Profile #3

Judges and Clients' Version

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**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Preliminary Round
Profile 3**

MEMORANDUM

TO: Attorneys
FROM: Secretary
RE: Larry/Laura Nichols

Larry/Laura Nichols scheduled an appointment with you. Nichols is looking for a new attorney to replace his current attorney who has committed ethical violations.

**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Preliminary Round
Profile 3**

CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES

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Your name is Laura/Larry Nichols. You scheduled your visit with these attorneys to handle two things for you. First, you are planning to fire your current attorney, and you want these attorneys to replace that attorney in representing you in a lawsuit in which you are the defendant, but that is secondary to your main purpose. More importantly is the second reason you're here: you want these attorneys to file a grievance against your former attorney for poor client service. Getting the grievance filed is foremost in your mind at this point.

This whole mess started about a year ago when a former friend sued you for breach of contract. The two of you had agreed to open a restaurant together. Your friend, Janice McIntyre, is a fantastic cook, and she was to be chef of the restaurant you planned to open. You were both going to invest money in this little venture, and Janice would operate the restaurant. Janice was to invest \$100,000 and you were to invest \$200,000. The two of you signed a written agreement to this effect and formed a corporation. Things were going well until you decided to pull out of the venture out of concern that Janice knew nothing about operating a restaurant or even managing a kitchen. By this time, Janice had expended, according to her, \$35,000, and signed a five-year lease on behalf of your company. She claims you breached the contract and sued.

When you retained Roger Ryan to represent you in this litigation, you expected to have a “tough as nails,” junkyard dog of a lawyer. At first, Roger seemed to be exactly the kind of lawyer you wanted, aggressively defending you in this silly lawsuit. However, you started to question whether Roger was the right lawyer when you saw him interacting with Janice's attorney, an attorney by the name of Terry Shelton, in what appeared to be a friendly manner. When you questioned Roger about this, he explained that he and Terry had done battle many times before in representing other clients. They had developed a mutual respect for each other as friendly competitors who represented their clients zealously but did not feel the need to hold personal animosity or to be disagreeable to each other. You didn't like this idea at all; you believe that litigation is war, and your lawyer should understand that too. General Douglas MacArthur would have *never* sat down to tea with any of the Nazi generals!

Nonetheless, because Roger was otherwise doing an excellent job, you let it slide, that is, until the most recent incident last week. Your case was set to go to trial next week, when Shelton asked Roger to agree to postpone the trial. Shelton “claimed” that his spouse had just been diagnosed with an aggressive cancer, and he would need to take some time off to attend to her needs. No one else could take on the case so close to the trial date given that Shelton works with only one other attorney, a relatively recent graduate who is not experienced enough to try the case on her own. Your stupid attorney, Roger, agreed to submit a joint motion to the judge to postpone the trial. You hit the roof when Roger explained all of

this to you and indicated that he agreed to this nonsense. You didn't believe Roger when he claimed that the trial judge was almost certain to grant the postponement whether he joined in the motion or not, and that it would only hurt his reputation and credibility in front of the judge if he opposed it. Roger had the audacity to say that it was important to him to extend professional courtesy in situations like this to members of the profession because in the long run, it benefitted not only him, but his clients as well. If you'd fully comprehended what a pansy Roger was, you would never have retained his services.

So, long story short, you are planning to fire Roger as soon as you retain new counsel. The trial judge indeed postponed the trial for three months. You now you want these attorneys to take on your defense in the case involving Janice—they've got three months to prepare for it. But again, more importantly, you want them to file a grievance against Roger. Aren't attorneys supposed to do what you want them to do? Wasn't it wrong for Roger to agree to a postponement. **[Note: you should press these attorneys to agree with you that Roger acted wrongly in agreeing to a postponement of the trial.]** These wimpy attorneys need to be drummed out of the profession, and a grievance against Roger will be the first step. You might even decide at a later date to sue Roger for malpractice, but right now, you want these attorneys to help you file a grievance and to ensure that it is taken seriously.



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American Bar Association
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*2018–2019 National Client
Counseling Competition*
Semifinal Round Profile

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**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Semifinal Round Profile**

MEMORANDUM

TO: Attorneys
FROM: Secretary
RE: Avery Brown

You are scheduled to meet with Avery Brown today. Brown is planning on leaving his current firm and has questions about what s/he needs to do to avoid conflicts of interest.

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Professional Responsibility of Legal Professionals
2018–2019 National Competition
Semifinal Round Profile**

CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES

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You are Avery Brown. You have worked as an associate in a small criminal defense firm for five years. Your firm mostly handles defendants charged with white collar and non-violent crimes: embezzlement, identity theft, fraud, bribery, shoplifting, insider trading, forgery, illegal drugs, driving under the influence, etc. You are good at your job and have a large case load, handling thirty or forty clients at any given time. Additionally, you have discussed many cases handled by other attorneys in your office at the weekly firm meeting. You like the people you work with and you like your job, but you are always looking for ways to move your career forward and this firm doesn't have a traditional partner track system.

Recently, the state prosecutor's office in your county announced they were hiring two assistant prosecutors to replace attorneys in their office who had retired. The opportunity to work in a government office appealed to you. The retirement system is far superior to the one at your firm. Even though you are fairly young, you know it is never too early to start planning for your future. Also, the health insurance is one of the best available in the state. Finally, you were excited about the working environment at the prosecutor's office. Unless they are in trial, the attorneys work a 40–45 hour week. At your current job, you work 50–60 hours a week. You also know the office is closed during all major holidays and offers three weeks of vacation. There is also room for advancement—something that you don't have at your current firm.

You applied for one of the assistant prosecutor positions and were granted an interview. During the interview two days ago, you were asked if you could provide a list of all your current clients so the prosecutor's office could do a conflicts check. They told you the opening was in the misdemeanor and domestic violence units. You said you would get them a list by the end of next week.

You have come to these attorneys because you have some questions about providing such a list. You haven't told your current firm that you applied to the prosecutor's office and you know they are going to be disappointed and probably a little angry. You are afraid they are going to call you traitor for switching sides, so you want to make sure this is going to work before you say anything to anyone at the defense firm.

You know this is a conflict of interest minefield. Here are some of your questions for these attorneys:

1. Can you turn over a list of clients handled by your firm?
2. Do you need to inform your clients or your firm that you are turning over this list?
3. Do you need to include clients that are handled by other attorneys, but whose cases you might

- have heard about during the weekly meeting?
4. Do you need to put people on the list who consulted your firm if you know the basic facts of their case, but for whatever reason, they chose a different firm to represent them?
 5. Do you need to include clients who are charged by a different prosecutor's office?



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Final Round Profile

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**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Final Round Profile**

MEMORANDUM

TO: Attorneys
FROM: Secretary
RE: Shane Tanaka

Shane Tanaka wants to meet with you to discuss a family case and a problem s/he is having with the former mediator in his/her divorce.

**American Bar Association
Law Student Division
Client Counseling Competition
Professional Responsibility of Legal Professionals
2018–2019 National Competition
Final Round Profile**

CONFIDENTIAL INFORMATION FOR CLIENTS AND JUDGES

(Not to be shown to Attorneys)

You are a 40-year-old divorced parent, coming to talk to a lawyer for help with a post judgment motion that you filed on your own, for modification of a parenting plan. You have had a reasonably amicable arrangement with your ex-spouse, Alex, since your divorce four years ago. You and Alex have two kids, Luke, now age 14, and Molly, now age 10, and have a plan for shared parenting time, with pretty close to a 50-50 time allocation. However, a few months ago, Luke told you he wants to live with you full time because he is tired of fighting all the time with his other parent, Alex, about homework. For some reason, you and Luke do not seem to get into a power struggle about homework—you set expectations, and Luke does what he has to do, without much hassle. You have tried to help Alex reduce the conflict between Luke and Alex, to no avail, and then recently, tried to get Alex to agree to a different schedule for Luke, in which he spends more time with you when school is in session. However, Alex refuses and says it is not right to split up the kids, and Molly is quite happy with the current parenting plan. Alex also has accused you of undermining his/her authority with Luke. When Alex would not agree to make any changes with Luke's schedule, and with Luke's grades plummeting fast, you felt had no choice but to file a Motion to Modify the parenting plan for Luke.

You went to your first court date without a lawyer, thinking Alex would also come without a lawyer and that you two would agree to go to a mediator; you were hoping and expecting that you would be able to work it out with Alex quickly and without litigation. After all, you two had successfully mediated your divorce judgment four years ago, when both of your emotions were much rawer. You both had lawyers but they did not have to do much more than discuss the agreement with each of you and help you get it written in "legalese" and made into a court order. You were so relieved when it was not adversarial at all. In fact, at the time, you and Alex had said that neither of you had really needed a lawyer, and you were sorry that each of you had spent the money on the lawyers. Therefore, you were very surprised that Alex showed up at the recent court date with a lawyer, and furthermore, you discovered that the lawyer is now a partner with your former mediator, Deborah Noone.

Deborah Noone had been in solo practice at the time of the mediation, four years ago, offering both litigation and mediation services. You had both agreed to hire her as your mediator because she was recommended by friends of yours. When you and Alex had your divorce mediation sessions, the issues were only about your property and support financial settlement; you and Alex had already agreed to your parenting plan yourselves at the time, and it was not part of the mediation, except to the extent it affected the support orders between you. You and Alex had both been pleased with Deborah's services.

Since the time that she served as your mediator, Deborah had apparently joined the firm that had represented Alex at the divorce, and Deborah is currently the only other lawyer handling family law cases at the firm other than her partner, Phil Tepper, who represented Alex previously. Phil was the lawyer

who came to court with Alex this time, too, but Deborah was also at the courthouse at the same time representing other clients. In fact, you saw Deborah at the court talking with Alex and Phil, and you assumed they were talking about you and your case.

Nothing happened at court that day when your motion for modification was first on the court calendar, other than you all agreed to exchange information about Luke's grades and well-being, and to set a new date for a hearing.

After court that day, you spoke with Alex about Deborah's role to express your dismay and discomfort. When you told Alex that it seemed wrong that Deborah could now potentially represent Alex, Alex said that s/he had asked about that, and that Deborah had said that because the issue before the court is different than the issue she mediated for the two of you, either she or her partner Phil could now represent Alex. Apparently, because she does not have any of your confidential information from the mediation that would affect her representation of Alex, she claims that either she or Phil can represent Alex—or at least that is what Alex says that Deborah said. Frankly, you are thoroughly confused about it all.

The more you think about it, the more uncomfortable you are proceeding without a lawyer, because it really feels to you that time is of the essence for Luke, and if Alex has a lawyer, you're scared not to have a lawyer. Also, you have become very concerned that Deborah is now part of the firm that represents Alex. You really trusted and liked Deborah as your mediator, and felt she was completely neutral, doing what was best to help the two of you find an agreement that you both thought was fair. In fact, you had hoped to get Alex to agree to go back to Deborah as your mediator. That is definitely out of the question now, unfortunately.

Not only do you need to hire a lawyer to help you help Luke before he really gets in academic trouble in school, you also want to know what can be done about having Deborah on the other side of the case, because you are really unhappy and uneasy about the whole situation. Can she really become the lawyer "against" you now? Do you have to put up with it?



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