

# Lawyers from different firms

Scenario 1:

*Dunless leaves voicemail for Wynn week before:*

I have a very busy schedule the next three months, and I will be in Puerto Vallarta half that time, I need to depose Mother Mary next Tuesday, starting at 7:00. I expect you to cooperate in making Mother Mary available [assume that Wynn could make Mary available with some effort].

*Wynn knows that Dunless gets emails only through his secretary. She emails Dunless:*

Possible email responses by Wynn:

- A. Your schedule isn't my problem. I'm not available then. Take to the judge.
- B. Making her available then would be difficult for me. Please give me a call so that we figure out a solution that works for both of us.
- C. That time frame would not give me enough time to prepare my client for the deposition. I intend to set up a focus group.

Scenario 2:

*Wynn emails Dunless:*

About your document requests, all the documents are in boxes in Mother Mary's unfinished basement. We can arrange a time for you to go there to look through them with my associate. Oh, bring a flashlight. And a space heater.

Possible responses by Dunless:

- A. [Dunless emails Wynn through his secretary] Go to hell. I'm moving to compel *and* moving for sanctions.
- B. [Dunless calls Wynn] Suzanne, I don't think that's reasonable. I would like to work this out without involving the judge.
- C. [Dunless calls Wynn] How many documents are there? I would agree to pay for copying, if you would bring the boxes to my office.

Scenario 3:

[has to be acted out I think, not in a slide]

Wynn previously sent a discovery request for mirrors of the hard drives of "any company computer used by the principals of *Familysafenetworks.com*. She calls Renee Rainmaker to discuss getting a mirror of the hard drives of the office computers of the two principals of *Familysafenetworks.com*. The two reach general agreement on discovering the drives and on the terms of a protective order. Rainmaker knows

that the principals use desktops at the office, but she also knows that one principal has a personal laptop at home, the cost of which she has not treated as a business expense. She shares that laptop with her 15 year old, but the computer has substantial data pertaining to the company. Rainmaker does not know what the 15 year old keeps on the laptop drive. Rainmaker says to Wynn:

Possible Responses:

- A. Great! I'm glad we were able to work that out. I will prepare draft language for the protective order.
- B. Suzanne, you requested discovery regarding company computers. You should know that my client also has a personal laptop on which she keeps company data.
- C. That should cover all of the computer drives in my clients' possession, we can inform the judge that we are nearing the close of discovery at the next conference.

*Extras:*

*Wynn emails Dunless:* You didn't reply to my email last Thursday offering dates for Mother Mary's depositions. You have waived your right to depose my client. [bear in mind that Wynn relies on his secretary to get emails]

*[Dunless sends Wynn a letter]* Suzanne, I'm sorry. I did not get your email with the dates. I'm not used to communicating by email. Please give me a call each agreement how to communicate with each other. I still want to depose your client.

*[Dunless leaves Wynn a voicemail]* Nice try Tricky Sue, but no dice. You know as well as I do that there's no such thing as waiver of a right to a deposition just because I didn't respond to your email. You keep playing such games, and I'm going to crucify you with sanctions.

*[Dunless reaches Wynn on the phone]* I thought we should talk directly. The tone of your email caught me off guard. I still do want to depose your client.

Wynn and Dunless made arrangements on the phone for Wynn to depose one of the principals of *Familysafenetworks.com*, the did not discuss where the deposition would be held. Dunless assumed it would be in his office. Wynn sends Dunless a Notice of Deposition without a cover letter stating that the deposition will be at a court reporter's office. Dunless sends her a letter stating: "The deposition shall take place at my office, or it shall not take place at all. This is nonnegotiable." *Wynn sends a letter to Dunless:*

I received your letter. I will be at the court reporter's office on [date] ready to take your client's deposition. Should you not attend, I will move for sanctions, including fees and costs.

I received your letter. I have the right to take your client's deposition at a neutral location. Would you please reconsider your position and get back to me by [date]?

I received your letter. Would you please give me a call?

# Laywer to client

## Scenario 1

The parties are attempting to schedule a mediation. Myd, Size and Dunless – which has two clients, Familysafenetworks.com & its insurance carrier, Weneverpay, *see, e.g.*, Formal Ethics Opinion 2005-121 – is receiving conflicting instructions from both clients. Familysafenetworks wants to schedule the mediation as soon as possible in order to get this matter behind them and prevent further negative publicity. The adjuster for Weneverpay, on the other hand, just sent the following email to Renee Rainmaker at Myd, Size and Dunless:

Renee,

I'm available on all of the dates proposed by opposing counsel and Familysafenetworks. However, it is important that we push this mediation out farther, perhaps into summer or next fall. I hear Portland is nice around that time. Plus, the longer we delay this, the longer we get to hold the money and the more likely Mary Mother will cave and lower her demands. Tell opposing counsel and Familysafenetworks that my schedule is booked until July.

Give em hell,

Honest Abe

What should Renee do???

- A.** Follow Honest Abe's directions. He is the client after all.
- B.** Forward Honest Abe's message to Familysafenetworks and ask what they would like to do.
- C.** Tell Honest Abe she cannot follow his directions.

[Results:

- A: Ethics complaint and suspension from practice.
- B: Bad faith claim by Familysafenetworks against Weneverpay; Renee loses all work for Weneverpay.
- C: Awkward conversation with Honest Abe, but everything works out in the end. ]

## Scenario 2

Counsel for Mary Mother is requesting a copy of Familysafenetworks insurance policy as well as any Reservation of Rights letter. The reservation of rights letter sent by Weneverpay to Familysafenetworks includes Weneverpay's assertion that there is no coverage because, among other reasons which are

supported by some evidentiary and factual allegations in the letter, the insured had knowledge of a prior, similar incident yet failed to take any corrective action, the insured intended to post the pornographic materials, and the insured failed to provide timely notice of the potential claim. Renee is concerned that providing a copy of the letter to Mary Mother's counsel will prejudice Familysafenetworks and strengthen Mary Mother's claim for punitive damages. Renee expresses her concerns to Familysafenetworks and Weneverpay. Honest Abe writes back:

Renee,

Go ahead and give them the policy and reservation of rights letter. Mother Mary's attorneys will throw a fit when they realize how strong our coverage defenses are. No easy insurance money this time. Or ever! ☺ If they want to chase punitive damages, more power to them; those aren't covered anyhow.

Give em hell,

Honest Abe

What should Renee do???

- A. Follow Honest Abe's directions. He is the client after all.
- B. Forward Honest Abe's message to Familysafenetworks and ask what they would like to do.
- C. Do not produce the reservation of rights letter but provide Mary Mother's counsel with a list of the policy provisions discussed in the letter.

[Results:

- A: Ethics complaint and suspension from practice.
- B: Bad faith claim by Familysafenetworks against Weneverpay; Renee loses all work for Weneverpay.
- C: Everything works out in the end. See ORCP 36 B(2)(a)(ii) ]

### Scenario 3

Mother Mary has become impatient with the wheels of justice. She submitted a video to the Dr. Phil television show describing her story in great detail. A week later, an assistant producer contacted her about appearing on an upcoming program about web-based scam artists. The show will pay for Mother Mary's travel arrangements and accommodations in return for the rights to broadcast her story. With great excitement, Mother Mary sent the following e-mail to her attorney, Suanne Wynn:

Suanne,

We're going to get those bastards right where it hurts! Dr. Phil wants me to be on his show on May 2<sup>nd</sup> to tell the world about the conniving snakes at Familysafenetworks

and their despicable exploitation of nice people like me to rake in the almighty buck.  
Those morons are going to be sorry they every crossed paths with this Mother.  
I'm going to Hollywood Baby!  
Mother Mary

What should Suanne do?

- A. Allow Mother Mary to appear on the show because she has a legal right to speak.
- B. Advise Mother Mary not to appear on the show because she may say things that are harmful to her case.
- C. Clear her calendar on May 2<sup>nd</sup> and hire a publicist because there is no such thing as bad publicity.

Results:

- A: Mother Mary's action may increase settlement value.
- B: Mother Mary may lose her stature as the victim.
- C: Potential for professional discipline. See RPC 3.6 and Ethics Opinion 2007-179.

# Laywers at the same firm

## Scenario 1:

Partner sends email to associate:

I want a memo on all of the electronic discovery recovered from our client's computer by Friday.

- Partner

Possible responses:

A. Unfortunately I do not think that will be possible. I'll do the best I can and keep you updated on what progress we make.

B. Partner, While I understand how important it is to have this done, it will simply not be possible in that short a time frame. We need to send out the hard drive to be imaged, transfer the information to our servers for review, and then have our staff code the information so that it can be reviewed by the associates. The process could take weeks. I will send out the hard drive today, and keep you updated on our progress.

C. Dear client,  
Partner would like this information reviewed and coded by Friday, can you put this together for us so I can draft a memo for him? Thanks.

## Scenario 2:

Associate has received a notice to admit stating: "Admit your client \_\_\_\_ owned and controlled all content on the subject website during the relevant time period." Associate sends an email to partner stating: "I am concerned that we have to admit this, since our client did own and control the website. We have to submit this by tomorrow, so I think I will go ahead and state admit for this particular request."

Possible responses by Partner:

A. Associate,  
Do what you think is correct.

B. Associate,  
We discussed this before, you know what I think about it.

C. Associate,  
While I understand your concern, I also believe this notice may have more consequences. I think we need to look into what the word "control" really means and what that could mean for our defense. We should discuss this in my office before the deadline. Thank you for the heads up on the issue.

## Scenario 3:

Rainmaker at firm wants everyone to become familiar with electronic media, and has set up a training seminar regarding social networks and their mechanics.

Possible responses from Partner:

A. I've tried 100 cases, I don't need lessons on electronic media. This is grunt work our associates and staff should be doing.

B. I can't, I have a tee time that day with my college friends.

C. While I do not like this whole social networks thing, I think it is important for everyone in the firm to have expertise on the issues that are important to our cases. We have to assume our potential jurors are all users of these websites too. I'll be there and I expect everyone working on the case to be there with me.

Possible responses from Associate:

- A. I already know social networks, I'm on 8.
- B. I can't, I have to do that electronic imaging doc review by Friday.
- C. I'm on 8 social networks, so I think probably be a help in this situation. If there's any help I can give in preparing the seminar, let me know.  
(or, associate just shows up, because that's what associates do).