

ETHICS QUESTION OF THE MONTH

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Question

Lawyer A represents Client Z in a difficult, contentious divorce case. When the case settles, Lawyer A closes the file. Lawyer A later discovers that Client Z has posted the following on a review website:

"Lawyer A is awful and I cannot recommend her. She told me my ex would not get visitation rights but my terrible ex (who everyone knows should not be around children) still gets the kids every other weekend. She forced me to settle my case even though she previously told me we would win at trial. She did so because she knew I was running out of money. Lawyer A doesn't care about her clients or their children; she just wants to make money off the misery of others."

Lawyer A considers posting one of the following responses:

1. "I am sorry that you are unhappy with the outcome of your case but I am more than willing to discuss any issues you have with my representation privately."
2. "Because our ethics rules prevent me from revealing any client confidences publicly, I am not comfortable discussing these matters in this forum. But for the record, I do not believe that your post presents a fair and accurate picture of the events you describe."
3. "I never said that your ex would not get visitation rights, or that we would win at trial. Under the circumstances, I got you the best possible outcome you could have expected. You told me you chose to settle because you were worried about the cost of going to trial. You are now dealing with the consequences of your own choice, not any poor performance by me."
4. "Everything you said here is false. You were uncooperative throughout and changed your story and your mind frequently. You complained about my bills constantly, and even though I got a great result for you, you attack me online hoping that you won't have to pay me the money you still owe me. Well, it won't work."

Which of these is most accurate?

- A. None of the responses above is permitted; lawyers should not discuss anything about their clients' cases or even acknowledge online comments and criticisms.
- B. Option 1 is acceptable, but the rest are not.
- C. Options 1 and 2 are acceptable because the lawyer didn't reveal any confidential information in the responses.
- D. Options 1, 2, and 3 are acceptable because the attorney limited her online discussion to items the client raised first.
- E. All are acceptable because the ethics rules permit lawyers to disclose client confidences when defending themselves against a client's accusations of wrongdoing.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

Answer

The correct answer is C. For the reasoning behind the answer, go to legalethictexas.com.