



PRACTICE

This exercise gives you an opportunity to practice what you have learned in the online course. We'll use our last character from our online course, Envision's litigation counsel, Jennifer Williams.

1. JENNIFER & THE DISCOVERY REQUEST

A year before the employment discrimination suit, Envision's HR Manager received a letter from then-employee Catherine, detailing what she described as unfair treatment on the basis of her status of being pregnant and then becoming a mother. When Catherine resigned, she said it was because she wanted to stay at home with her baby. Catherine's letter made no specific legal demand of Envision, and she stated that she was sending it with the hope that Envision would examine its policies as well as the conduct of Catherine's former manager, Douglas.

Envision's HR manager showed the letter to Jennifer, and noted that she felt Envision's policies complied with the law and that Catherine had never complained to HR about Douglas. Because Jennifer knew that a constructive discharge claim wouldn't succeed if the employer was never notified about the alleged discrimination, Jennifer gave the issue no further thought.

A month after Jennifer reviewed the letter, Douglas left the company. Under company policy, any files not saved to a permanent archive or preserved under a litigation hold are deleted from Douglas's laptop 60 days after his date of departure.

Now Catherine has sued Envision for employment discrimination. Jennifer issues a litigation hold on any files relating to Catherine's employment at Envision. Discovery begins, but because all of the relevant players left Envision months ago, most potentially relevant documents have been deleted. When Bell Law serves Envision with the first document production request, only a small volume of responsive documents still exist in Envision's file archives.

Did Jennifer obstruct Catherine and Bell Law from accessing relevant evidence? Review [Illinois Rule of Professional Conduct 3.4](#) and the comments to the Rule. Consider whether Envision reasonably anticipated litigation; whether Envision should have suspended its routine document retention policies, and whether Jennifer should have been more conservative in her interpretation of Catherine's letter. Discuss Jennifer's decisions from both an ethical and a professionalism standpoint.

2. JENNIFER & THE SETTLEMENT OFFER

Envision is involved in a contract dispute with OverHere Inc. for its failure to timely deliver supplies for an Envision vendor booth at the largest annual software expo in the region. Envision has claimed that OverHere's failure to deliver was a breach of contract and that OverHere owes Envision compensatory damages for the sales that Envision lost from not having its full exhibit display.

The major point of contention between the parties has been the amount of damages that Envision actually suffered. Jennifer and Envision's general counsel, Mike Chen, have been negotiating with Bridget, OverHere's general counsel. Jennifer and Mike have authorization from the CEO to settle with OverHere for any amount over \$25,000.

Mike informs Bridget that there is "no way" Envision will agree to settle the case for less than \$50,000. When Bridget asks what the basis for that amount is, Mike says that \$50,000 is the difference in sales made at last year's expo and this year's expo. He produces a document showing last year's sales figures and says that this year's figures are still being worked on. In fact, as Jennifer knows, this year's figures have been produced and show only a \$25,000 difference between last year's sales figures and this year's.

Do Mike's negotiation tactics violate the Rules of Professional Conduct? Review [Illinois Rule of Professional Conduct 4.1](#) and the comments to the Rule. Consider the limits on an attorney's zealous advocacy and when statements of "negotiation puffery" become misrepresentations of fact. Consider also whether should Jennifer say anything to Mike, to Bridget, or to Envision's CEO. Discuss Jennifer's decisions from both an ethical and a professionalism standpoint.

3. JENNIFER & THE FINANCIAL TRANSACTION

Jennifer is very good friends with Claude, the deputy CFO of Envision. Envision has been struggling to meet its earnings target for the quarter and one day Claude stops by with a question for Jennifer.

Claude: "Jennifer, you know how we've been trying to improve our earnings for the quarter? I was just at a meeting where they think they've found a solution, but I'm not sure how I feel about it."

Jennifer: "Tell me about it."

Claude then explains how the CFO has proposed a transaction where Envision will purchase \$12 million of equipment from Cutting Edge Inc. and at the same time enter into a contract to provide \$12 million worth of data processing services to Cutting Edge. Envision will capitalize the expense of the equipment over its useful life, but book the revenue from the services contract this quarter.

Claude: "I feel like it may be manipulating our finances just to meet the earnings target for the quarter. But don't tell anyone – I just want to get your opinion about the transaction."

Jennifer is not the attorney who would be responsible for working on such a transaction for the company. Although it sounds suspicious, Jennifer does not possess enough factual information or legal expertise to reach a conclusion based on what Claude has shared. But she does believe that Claude has good instincts about identifying problems in transactions.

Does Jennifer have an obligation to report this potential violation of the law? Review [Illinois Rule of Professional Conduct 1.13](#) and the comments to the Rule. Consider how certain either Claude or Jennifer is that this is an illegal transaction, and whether your answer would change if Jennifer were general counsel of Envision. Discuss Jennifer's decisions from both an ethical and a professionalism standpoint.