

Scenario 4

Respondent's attorney learns from her client that Petitioner is taking "side jobs" despite claiming disability after a work accident. Petitioner claimed to hurt his shoulder and have a "traumatic brain injury" after a heavy board fell from a makeshift scaffold and struck Petitioner. Wanting to determine whether Petitioner is truly hurt or taking side jobs, Respondent hires an investigator to conduct video surveillance of the Petitioner. After four days of surveillance, the investigator sees nothing but Petitioner exiting his home with his right arm in a sling, being picked up and driven to medical appointments. Convinced the Petitioner is hiding something, the investigator approaches the Petitioner's home while Petitioner is out to a medical appointment. The investigator looks into the windows of Petitioner's home and observes drug paraphernalia and hydroponic equipment in the kitchen. He reports his observations to the attorney who hired him.

The next day the investigator again performs surveillance outside the Petitioner's home, but by noon he sees no activity. He decides to knock on Petitioner's door. He hears loud noises inside the home. The Petitioner abruptly yanks open the door with his right hand and says "You're not the pizza delivery man. Who are you?" The investigator hears "Fast Times at Ridgemont High" on the television, and he tells Petitioner he is concerned about the smell of marijuana and illegal drug use. Petitioner responds by saying "It's like, totally medicinal, dude. Wanna party?" The investigator sees no evidence that Petitioner is performing side jobs but is convinced that Petitioner is making a sizable income growing and selling marijuana. He reports his findings to the attorney.

Questions

1. What, if any, ethical lines did the Respondent's attorney cross?
 - a. What are the responsibilities of the Respondent's attorney upon receiving the investigator's report detailing the events and interaction with the Petitioner?
 - b. What limitations or instruction is an attorney obligated to give to an investigator?
2. Assume Petitioner's attorney knew the Petitioner had a lucrative business growing and selling marijuana. What responsibilities would the attorney have to disclose this information to the Respondent?
 - a. Would your analysis be different if Petitioner's attorney knew of his client's lucrative business venture because he was one of Petitioner's customers?
 - b. Assume the side business Petitioner was running was legal- what responsibilities would Petitioner's attorney have in terms of disclosure to the Respondent?

Assume the investigator followed Petitioner to a medical appointment. Immediately after Petitioner leaves the doctor's office the investigator enters, waiving his hand in front of his face as if to dissipate an unpleasant odor. He says to the woman at the check-in desk "What was that guy smoking? I didn't know you guys handed out medicinal marijuana here." The woman responds, "We don't, and we don't prescribe it, either."

Questions

1. Has the investigator crossed any lines that could subject the attorney to discipline?
 - a. What are the responsibilities of the attorney who hired the investigator upon receiving the report detailing the exchange at the doctor's office?