Ethics Jeopardy

Notes:

- Many of the following questions – and their answers – are intentionally vague, uncertain and subjective. Many of them do not have a clearly correct answer. For these, the "best" answer is the one that has the greatest likelihood of being completely ethical that also avoids an unreasonable sacrifice by – or undue burden on – the lawyer.
- In this survey the term "**CCI**" means "Confidential Client Information", including both
  - *privileged* CCI (information that is *both* confidential and privileged) and
  - *unprivileged* CCI (information that is confidential but *not* privileged)

A.
Preliminary Communications

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Scenario: Tim & Sue at a party

You’re at a party when you let slip to Tim that you’re a probate lawyer and in a loud, half-drunk, voice he begins quizzing you about testamentary capacity. When you meet eyes with a woman listening in, Tim introduces her as Sue, his “annoying kid sister”. He shoos her away but she remains. Then Tim pulls you close as if to whisper in your ear but he's still speaking very loudly: “The deal is, I got our mom to do a new Will right before she died. She had no idea what she was signing. Sue is clueless. Next Tuesday the Will’s getting probated and I’ll inherit everything!” Tim winks & pats you on the back, and heads to the bar.

Sue says: “My God! I heard every word Tim just said to you. I’ve already filed a contest of our mom’s Will and you have got to tell my lawyer everything Tim just said”.

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Q 1. What do you tell Sue & her lawyer?

A. Tell them everything; Tim's statements are not CCI.
B. Tell them nothing under any circumstances; Tim's statements are privileged CCI.
C. Tell them nothing unless you are subpoenaed to testify, then tell everything to the court; Tim's statements might be CCI but they're definitely not privileged.

Scenario: Tim & Sue at a party #2

Same facts as above except the conversation with Tim takes place in the quiet backyard away from the other guests; and Tim begins by saying "I need a lawyer; my mother has died and I'm really worried the Will she signed shortly before her death is invalid."

After Tim leaves Sue steps out from behind the oleander and says: "I'm Sue, Tim's sister. I heard every word Tim just said to you. I'm going to contest our mom's Will and you have got to tell my lawyer everything Tim just said."

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