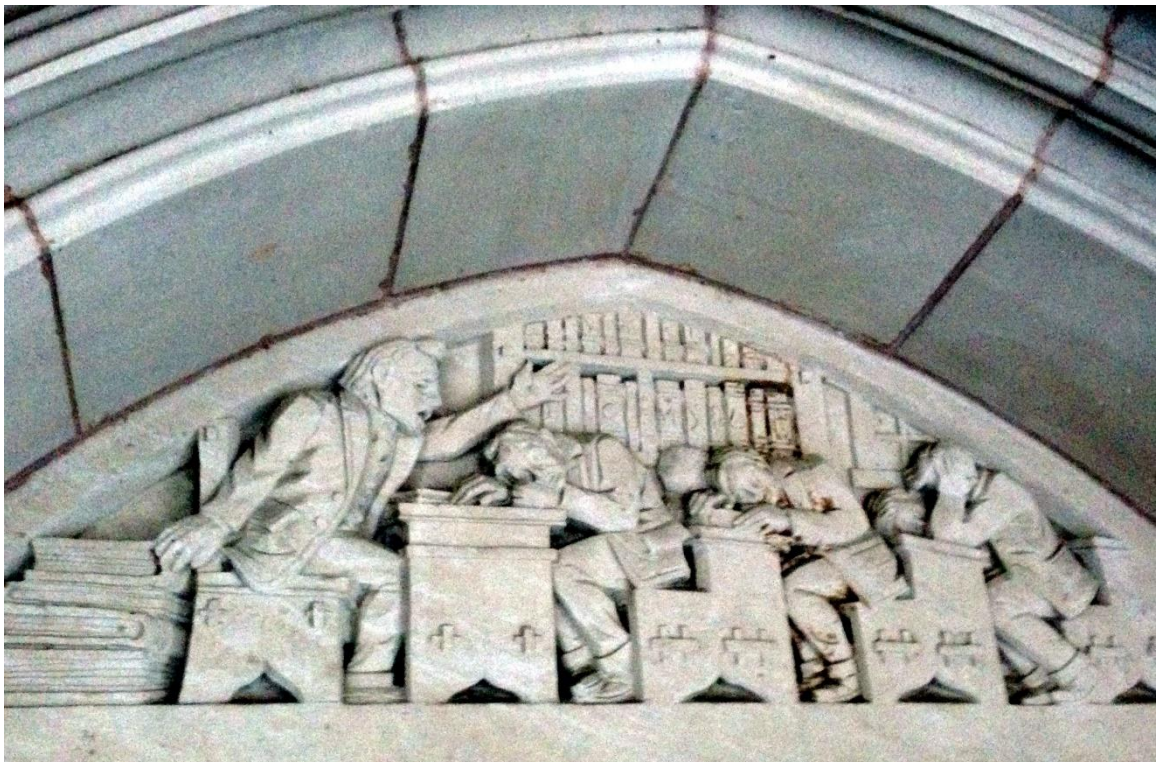

2018
PRACTICE QUESTIONS
FOR
PROFESSIONAL RESPONSIBILITY
COURSE SUPPLEMENT

Prof. Drury Stevenson

Cover photo: Stone frieze of law professor lecturing while his students sleep, from the main entrance of the Yale Law School. Photo © Rena Tobey, used by permission.

Note for students: These 235 questions have the same format and style as the questions on the current Multistate Professional Responsibility Exam (MPRE). The multiple-choice format also provides a useful way to test students' knowledge of each provision or clause in each of the Model Rules, as well as the drafters' official Comments (which the MPRE tests along with the Model Rules themselves).

This particular archive of questions is a supplement to the author's recently-published *Glannon Guide to Professional Responsibility*. The *Glannon Guide* provides detailed explanations for each of its questions (approximately 200 questions), as well as a helpful introduction to each topic. This book provides only an answer key, but has more questions. All the questions will be very useful in preparing for the exam in Professor Stevenson's course, as well as the MPRE itself.

Table of Contents

PART I:
MATERIAL COVERED BY MID-SEMESTER
(STCL MIDTERM)

CONFLICTS OF INTEREST: Rules 1.7-1.12

Rule 1.7 Conflict of Interest: Current Clients

1. Big Firm represents hundreds of corporate clients out of a dozen offices in different states. The firm has no formal procedures in place to check for clients at the outset of representation for new clients, but the managing partner of the firm has an incredible memory and has never failed to spot a potential conflict of interest in the past. Attorney agrees to represent a new corporate client that owns many subsidiaries, and checks with the managing partner, who assured Attorney there are no potential conflicts. After the new corporate client had disclosed a substantial amount of confidential information, it emerged that some of its subsidiaries were directly adverse to other clients of Big Firm. Attorney was completely unaware of the potential conflicts at the time he agreed to the representation, despite asking the corporate client a few questions about the opposing parties in pending litigation it might have. Will Attorney be subject to discipline for not declining representation in this case?
   a) Yes, because ignorance caused by a failure to institute reasonable procedures, appropriate for the size and type of firm and practice, will not excuse a lawyer's violation of the Rules regarding conflicts of interest.
   b) Yes, because there is a presumption that a company owning several subsidiaries will have at least one adverse interest to other clients of a Big Firm.
   c) No, as he was unaware of the conflict at the time, but now that the conflict is apparent, Attorney must withdraw from representation
   d) No, because Attorney reasonably relied upon the managing partner's prowess in identifying conflicts, given that the managing partner had never before made a mistake.

2. Attorney sued Company on behalf of Client in a personal injury matter. During the protracted litigation that ensued, Conglomerate bought Company. Attorney was already representing Conglomerate in a regulatory compliance matter before a federal administrative agency. Assuming this development was unforeseeable at the outset of representing Client against Company, will Attorney have the option to withdraw from one of the representations in order to avoid the conflict?
   a) Yes, because one matter is in state court and the other matter is a completely unrelated federal administrative proceeding.
   b) Yes, but Attorney must seek court approval where necessary and take steps to minimize harm to the clients, and must continue to protect the confidences of the client from whose representation the lawyer has withdrawn.
   c) No, if a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation of both clients, unless the lawyer has obtained the informed consent of each client at the outset of the representation.
   d) No, because the federal administrative matter would preempt state tort law under the Supremacy Clause.

3. Husband and wife decide to divorce and reach an agreement to share the same lawyer in order to save money. They hire Attorney to represent each of them in Family Court for the dissolution of marriage. Attorney explains that there is an obvious conflict of interest here, but Husband and Wife insist, and sign informed consent forms waiving the conflict and their rights to assert any future claims related to the conflict. Husband and Wife have no children, and have always kept separate bank accounts. Each purchased their own car from the money in their own bank account and each car's title is in only one name. They live in an apartment whose lease is expiring soon, so there is no real property to divide. Would it be proper for Attorney to represent both in the divorce?
   a) Yes, because it appears on these facts that there will be no assets in dispute at all, so the theoretical conflict of interest would have no bearing on their case.
   b) Yes, because both clients consented in writing, the dual representation does not violate law, and Attorney could reasonably believe that he will be able to provide competent and diligent representation to each affected client.
   c) No, because the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal
   d) No, because contingent fees are not permissible in divorce cases, and Husband and Wife's sole motivation in sharing a lawyer was to save money.

4. What is the most frequently occurring enforcement mechanism for the rules regarding conflicts of interest?
   a) Disqualification from representation at the request of the opposing party in litigation
   b) Disbarment or reprimand by the state bar disciplinary authority
   c) Legal malpractice action (civil suit) against the lawyer
   d) Court-imposed monetary sanctions or reprimand

5. Three individuals plan to form a joint venture and ask Attorney to represent them in drafting the necessary documents and making the necessary filings with government agencies. They have already agreed that each individual will contribute exactly one-third of the startup funds for the venture, each will own a one-third share, each will have equal control over the Board, and each agrees to indemnify the others for a one-third share of any personal liability related to the joint venture. They have also agreed that they will have no non-compete agreements. The joint venture will hire managers, marketers, and other employees to operate the business. The three individuals are co-owners of a patent that could potentially be very lucrative when they bring it to market, and have known each other and worked together for a long time. The attorney cannot find any current areas of conflict between them, though he knows that it is technically possible that some unforeseen conflict could arise in the future. The shared objectives and goals of the group lead Attorney to conclude that no conflicts of interest are present

and that it would be counterproductive to try to convince each member of the group to sign an informed consent form acknowledging that conflicts of interest exist and that Attorney may still represent everyone at once. May Attorney trust his professional judgment and proceed without obtaining separate consent forms from each person in the joint venture?

a) Yes, as long as Attorney reasonably believes that he will be able to provide competent and diligent representation to each client, because the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
b) Yes, because the mere possibility of subsequent harm does not itself require disclosure and consent.
c) No, the situation is likely to limit materially Attorney's ability to recommend or advocate all possible positions that each might take because of his duty of loyalty to the others; representing the group's overall interests in effect forecloses alternatives that would otherwise be available to the client.
d) No, because the fact that the individuals already decided to create a joint venture, and sought representation together from a single lawyer, constitutes implied consent to the common representation despite any potential conflicts of interest involved.

6. Which of the following is NOT one of the reasons that a conflict of interest might be "nonconsentable" under the Rules of Professional Conduct?
   a) The lawyer does not reasonably believe that the lawyer will be able to provide competent and diligent representation to each affected client;
   b) The representation is prohibited by law, as where state substantive law provides that the same lawyer may not represent more than one defendant in a capital case
   c) One or more clients pay the lawyer lower fees than the other(s)
   d) The representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal

7. Comment 16 to Rule 1.7(b)(2) describes three examples of "conflicts that are nonconsentable because the representation is prohibited by applicable state law." Which of the following is NOT one of the examples of conflicts that are nonconsentable because the representation is prohibited by applicable state law?
   a) State substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients
   b) Under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client.
   c) State hate crime statutes prohibit a lawyer who shares the same protected status as the victim from representing the defendant in the criminal proceeding.

d) Decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

8. Client owns a partnership share of a closely-held business, and the other partners vote to impose an involuntary buy-out of Client in order to remove him from the firm. Client is very upset about this, but the partnership agreement clearly permits involuntary buyouts by a majority vote of the other shareholders. Client hires Attorney to represent him in the buyout transaction, to review the necessary documents and provide legal counsel about it. No litigation is under consideration yet. Attorney's sister is also a lawyer in that city, at another firm, and the sister represents the other shareholders in the partnership. Attorney did not disclose that her sister represented the other partners, as she and her sister are not close and rarely speak, and the matter is unlikely to turn into litigation. Is Attorney, or the other lawyers in her firm, subject to disqualification in this matter?
   a) No, because Attorney and her sister are not close enough for there to be a substantial risk that they will share confidential information, and the matter seemed unlikely to turn into litigation.
   b) No, as long as both sisters give informed consent in writing, and each reasonably believes that she will be able to provide competent and diligent representation to her client
   c) Attorney would be subject to disqualification, but ordinarily the other lawyers in her firm would not be subject to disqualification.
   d) Both Attorney and her firm would be subject to disqualification, because the client did not give written informed consent.

9. Attorney has applied to make a lateral move from her firm to Big Firm, and has already gone through the first two of three rounds of interviews for the position. Attorney agrees to represent Client in filing a breach of contract claim against Construction Company over a commercial development project. Big Firm is representing Construction Company, and the firm's lawyers drafted the contract that forms the basis of Client's complaint. Client claims that Construction Company breached a particular provision of the contract that is arguably ambiguous; Construction Company is confident that its conduct falls within the contractual language in that provision. Is it proper for Attorney to undertake representation of Client in this case?
   a) Yes, as long as Client gives informed consent to the representation despite the conflict of interest here.
   b) Yes, because there is no clear conflict of interest here, because Attorney has not yet started working at Big Firm, and could not have been involved at all in drafting the contract provision that is now in dispute.
   c) No, as during the previous interviews, Attorney probably gleaned some confidential information about Construction Company from Big Firm.
   d) No, because when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client.

10. Which of the following is true about conflicts of interest, according to the Model Rules of Professional Conduct?
    a) Most conflicts are waivable by clients, but only if the clients provide informed consent in writing, and there are three types of conflicts that are nonconsentable
    b) All conflicts are waivable by clients, but only if the clients provide informed consent in writing
    c) All conflicts of interest subject the lawyer to disqualification, civil liability for legal malpractice, and sanctions by the state bar
    d) Most conflicts of interest are nonconsentable, but there are three types of conflicts that are waivable by clients, as long as the clients provide informed consent in writing.

11. A group of several individuals seeking to form a joint venture asked Attorney to represent them in drafting the necessary documents and making the necessary filings with government agencies. Two of the individuals were to provide most of the initial funds for the startup; two others were experienced inventors who were to provide new product designs; two others had expertise in business management and were to serve as managers; and two had proven records in high-end sales and marketing. They have not yet resolved the allocation of ownership shares, bonuses for managers, whether to have anti-compete agreements for each participant, whether patents will belong solely to the joint venture or partly to the inventors themselves, and whether sales reps will work on salary or commissions. Each individual says that she wants whatever terms would be best for the joint venture overall, rather than what would be most beneficial for each one individually. The shared objectives and goals of the group lead Attorney to conclude that no conflicts of interest are present and that it would be counterproductive to try to convince each member of the group to sign an informed consent form acknowledging that conflicts of interest exist and that Attorney may still represent everyone at once. May Attorney trust his professional judgment and proceed without obtaining separate consent forms from each person in the joint venture?
    a) Yes, because the mere possibility of subsequent harm does not itself require disclosure and consent.
    b) Yes, as long as Attorney reasonably believes that he will be able to provide competent and diligent representation to each client, because the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
    c) No, the situation is likely to limit materially Attorney's ability to recommend or advocate all possible positions that each might take because of his duty of loyalty to the others; representing the group's overall interests in effect forecloses alternatives that would otherwise be available to the client.
    d) No, because the fact that the individuals already decided to create a joint venture, and sought representation together from a single lawyer, constitutes implied

consent to the common representation despite any potential conflicts of interest involved.

12. The ABA Comment to Model Rule 1.7 (entitled "Conflict of Interest: Current Client") mentions a few reasons that, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. Which of the following, though probably true, is NOT one of the reasons identified in the Comment?
    a) The client as to whom the representation is directly adverse is likely to feel betrayed
    b) Any time that the lawyer bills for the matter would simultaneously go to both clients, meaning the lawyer inevitably will engage in double billing and receive double fees for every hour worked on the case.
    c) The resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively.
    d) The client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client.

13. Three individuals hire Attorney to represent them as co-defendants in a tort action. Attorney tells them that there could be a potential conflict of interest if he represents all three of them, and that they will need to sign informed consent forms, which they do. The three individuals have common goals and interests in the litigation, so they do not hesitate to sign the forms or inquire further about the implications of the potential conflicts. No further discussion occurs about the issue, and Attorney proceeds with the representation. Could Attorney be obligated to withdraw from representation later in the litigation, if the clients gave written consent to the shared representation at the outset?
    a) Yes, when representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved.
    b) Yes, if the liability insurers for the three co-defendants disagree on the terms of settlement, and were not included in the original written consent.
    c) No, because the Attorney dutifully obtained written consent from each client, as required by the Rules of Professional Conduct.
    d) No, as long as no situations arise where the lawyer obtains confidential information from one client that he could use to harm the interests of another client, and none of the clients files a cross-claim against another co-defendant.

14. Husband and Wife wanted to hire Attorney to prepare their wills. Before the formalities of representation were final, husband spoke with Attorney privately by

phone and disclosed that Husband had been having an affair, and that his mistress might be pregnant. Husband forbid Attorney to tell Wife about this. Attorney realizes there could be potential conflicts of interest between husband and wife about the wills, distribution of assets, potential challenges to the will by offspring from outside the marriage, and potential claims for child support against Husband's estate. Would it be proper for Attorney to proceed with representing Husband and Wife in preparing their wills?

a) Yes, as long as each provides written consent after being informed of the potential conflicts that generally emerge in dual representation
b) Yes, because this is a transactional matter, not litigation in which adverse claims could arise.
c) No, because Attorney cannot violate the duty of confidentiality to Husband, which would be necessary in order obtain informed consent from Wife.
d) No, because it would be improper to prepare a will for Husband under such circumstances.

15. Business Manager and Shift Supervisor, who worked at a customer service call-center, became co-defendants in a lawsuit by a disgruntled former employee. The plaintiff claimed to have been the victim of gender discrimination in the form of a hostile work environment, as well as intentional and negligent infliction of emotional distress related to the same factual allegations about her treatment at the workplace. Business Manager hired Attorney to represent both himself and the Shift Supervisor, who had been the plaintiff's direct superior. Based on Business Manager's initial investigation and review of the personnel files of the plaintiff and the Shift Manager, he believes the allegations are baseless and that the suit will end in a dismissal or summary judgment before trial. Shift Supervisor had a spotless work history, but the plaintiff had numerous interpersonal conflicts with her peers, was frequently late for work or missed work completely, and was the subject of several customer complaints. From his consultations with the defendants, Attorney understood that both Business Manager and Shift Supervisor were equally targets of the complaints. Business Manager and Shift Supervisor both gave Attorney written informed consent to the potential conflicts of interest in having Attorney represent both of them. Business Manager obtained tentative permission to have the business cover the legal fees for Attorney. Near the end of the discovery phase, however, plaintiff produced numerous inappropriate love letters to her from Shift Supervisor, many with explicit sexual overtures, and a few that sounded threatening based on her lack of response to previous letters. In addition, several co-workers of plaintiff gave depositions explaining that they had witnessed Shift Supervisor engaging in inappropriate and unwanted touching of plaintiff on many occasions. Several also testified that Shift Supervisor would often accost her for ten or fifteen minutes outside, before she could reach her workstation, and that this was the cause of her tardiness for work. Business Manager had never heard about any of these problems before. Moreover, during depositions the plaintiff explained that she always had very little contact with Business Manager and had no direct complaints about his treatment of her, and acknowledged that she had never complained to Business Manager about Shift Supervisor's harassment of her. She disclosed that Business Manager was a co-defendant only because her attorney believed

it was necessary to name someone from upper management in the lawsuit in order to trigger the legal protections of Title VII and other antidiscrimination laws. Business Manager then revoked his consent to the conflict of interest, explaining that he wanted separate representation from Shift Supervisor. Trial was due to begin two weeks later. Would it be proper for Attorney to continue representing either Shift Supervisor or Business Manager, but withdraw from representing the other?

a) Yes, Attorney can probably continue to represent Business Manager but not Shift Supervisor, because Shift Supervisor engaged in misconduct that was unknown to Business Manager, and Business Manager is the one who arranged for the payment of the legal fees.
b) Yes, Attorney can probably continue representing Shift Supervisor but not Business Manager, given the nature of the conflict, the fact that Business Manager revoked consent because of a material change in circumstances, the expectations of Shift Supervisor, and so on.
c) No, Attorney must petition the court to withdraw from representing both clients, as he has now obtained confidential information about each of them, and one is unwilling to consent to the continued common representation.
d) No, Attorney must continue to represent both clients, because it is the eve of trial and withdrawing would be prejudicial to them, and both consented in writing to the potential conflicts involved with using the same lawyer.

16. Attorney has a private practice in a large rural township, and she specializes in commercial real estate transactions, such as the sale and lease of farmland, stables, granaries, and mills. As the only lawyer in the township with expertise in this area, she has represented most of the parties who buy and sell commercial real estate there. As a result, most of her clientsf pose potential conflicts of interest with other current, former, or future clients, so Attorney has a standard "waiver of future conflicts" form that explains conflicts of interest that typically arise in commercial real estate transactions, and she asks every client to sign it at the commencement of representation. Client is a major landholder in the township, who inherited extensive tracts of farmland from his family, who in previous generations were some of the original settlers in the area. Over the years, Client has sold off dozens of small parcels of farmland to neighboring farmers or small businesses such as honey processors, taxidermists, a hardware store, and a veterinarian. Client has also bought properties at times that were adjacent to his existing landholdings. Client has always used other lawyers for these transactions in the past, and in each previous instance, the other party had separate counsel. Client now wants to hire Attorney to sell a parcel to a real estate developer. Buyer (the developer) is also a client of Attorney on unrelated matters, but the Buyer has hired another lawyer to handle this particular matter. Client and Buyer have had a good working relationship in the past and have consummated a few transactions that went smoothly. When Client meets with Attorney to review and sign a retainer for this representation, Attorney includes with the retainer her standard "waiver of future conflicts" form, without additional oral explanation except to mention that she represents Buyer in an unrelated matter. Client reads the form and signs it. As the negotiations for the sale to the developer proceed, an unforeseen conflict emerges

between Client's interests and the unrelated matters for which Attorney has represented the developer, as one will significantly affect the road traffic for the other. Is Attorney's standardized "waiver of future conflicts," signed by Client, likely to be effective in this situation?

a) Yes, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict.
b) Yes, because the conflict of interest was unforeseeable at the time the representation began, and Client was aware that Attorney represented the Buyer.
c) No, because it violates the Rules of Professional Conduct for a lawyer to ask a client to waive future claims such as a conflict of interest, unless the client has representation by outside counsel in deciding whether to sign the waiver.
d) No, because it violates the Rules of Professional Conduct for a lawyer to use a standard, one-size-fits-all consent form without additional oral explanation

17. Two separate clients hired Attorney, signing their retainer agreements one week apart, on unrelated matters, though both involve property owners' rights under the state's common law doctrine of public trust for beaches, which guarantees public access to beaches up to the vegetation line on the shore. In one case, erosion has moved the boundary back on the property owner's lot to the point where his house is now clearly on the public access portion, and he seeks a declaratory judgment that erosion cannot jeopardize the private ownership of a building and its curtilage. Current public trust doctrine in the state would suggest that the property owner has lost all the value in his property, so he needs to seek a change or exception to the current law. The other case involves a property owner whose lots had always been separated from the beach by a small public park, but erosion has eliminated the park and given him water access from his property, which has greatly increased the value of his land under current public trust doctrine. The state government, however, is seeking a declaratory judgment in his case, arguing for an exception or change to the current law that would rob the owner of the windfall he received due to the erosion. Does this situation present a conflict of interest that would require Attorney to obtain informed consent, in writing, from both clients in order to proceed with the representation?

a) No, the mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest.
b) No, given that both are declaratory judgment actions, it is not possible that one client's interests could be adverse to the other's.
c) Yes, a conflict of interest exists if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case, as when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client.
d) Yes, but this type of conflict involves a question of law so it is nonconsentable by the two clients.

18. Attorney represented Client in a residential real estate transaction. At the same time, Attorney agreed to represent the defendant in a large class-action lawsuit, an alcoholic beverage maker that understated the alcohol content of its products on its labels, leading to numerous cases of inadvertent intoxication, liver damage from continuous consumption, and a few deaths from overconsumption that led to alcohol poisoning. Client was an unnamed member of the plaintiff class in the class-action lawsuit against the alcohol producer. Attorney did not inform Client that he was representing the defendant in the class-action lawsuit or seek consent from Client or from the alcohol producer. Plaintiffs' counsel in the class action lawsuit discovered this situation, and asked the court to disqualify Attorney from representing the defendant. Should Attorney be subject to disqualification under such circumstances?

    a) Yes, because Attorney represents clients whose interests are directly adverse, and he did not seek or obtain written informed consent to the conflict of interest.
    b) Yes, because Client will obviously feel betrayed when she learns that Attorney is representing the defendant in the class action lawsuit, and Attorney might have confidential information from representing Client in the real estate transaction that would be prejudicial in the class action lawsuit.
    c) No, because a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.
    d) No, because the interests of Client and the alcohol producer are not adverse, as Client merely hired Attorney to handle a residential real estate matter.

19. Attorney handles claims against banks for many clients for issues regarding the failure of banks to investigate in a timely manner claims of fraud or unauthorized use of bankcards. Most of Attorney's work consists of sending demand letters, and most cases never actually result in the filing of a suit. Bank, a small local bank, retains Attorney to handle a particular claim against a customer for non-payment of a loan. Attorney has not represented any clients against Bank. Attorney includes in his contract for services a clause in which Bank waives any conflicts that may arise in the future - conflicts that involve Attorney representing clients against Bank for issues regarding failure to investigate claims of fraud or unauthorized use of bankcards. Is Attorney's conduct proper?

    a) Yes, attorneys may include waivers of future conflicts as long as clients are aware of the waiver.
    b) Yes, attorneys can include waiver clauses for future conflicts in their contracts if the clients are aware of the waiver and the types of future representations that may arise are limited and detailed in the contract.
    c) No, attorneys cannot ever include waivers of future conflicts in contracts.
    d) No, attorneys cannot include waivers of future conflicts in contracts if the types of claims expected to be waived are financial in nature.

20. The Workers' Union at a manufacturing plant is having annual collective bargaining negotiations with the Management. Wages and benefits are not in dispute this year, as the parties reached an agreement in the previous year's collective bargaining about a five-year schedule for wages and benefits that was acceptable to both the Union and Management. The sole issue in dispute this year is hiring: the Workers' Union wants the plant to hire five or six new assembly line workers so that there will be more efficiency and more flexibility for workers requesting days off or changes in their shifts. The Management wants to hire fewer new workers, perhaps two at most, in order to keep payroll costs down and their stock share prices high. The Union and Management agree to hire Attorney, an experienced labor lawyer at an outside firm, to facilitate the collective bargaining negotiations. Neither side is currently expecting a breakdown in bargaining that would lead to litigation. Would it be proper for Attorney to have both the Union and the Management as clients while facilitating the negotiations?

    a) Yes, as long as both clients provide written informed consent, common representation is permissible where the clients' interests generally align, even though there is some difference in interest among them, so a lawyer may seek an agreement between them on an amicable and mutually advantageous basis
    b) Yes, because conflicts of interest rules do not apply outside the litigation arena, and the parties here are not litigating and do not expect to litigate, but instead are merely hiring Attorney to facilitate negotiations of an issue where the two sides are not far apart.
    c) No, because the parties' interests as directly adverse, and a lawyer may not seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis.
    d) No, because conflicts of interest in a negotiation situation are nonconsentable, as no lawyer could reasonably believe that the conflict of interest would not materially limit his ability to represent both sides; this is especially true of collective bargaining in the employment context.

21. A producer of popular energy drinks and the owner of a popular chain of video-rental kiosks wanted to undertake a joint venture to distribute energy drinks and DVD rentals through the same kiosks. They approached Attorney to work out the details of the joint venture and draft the necessary legal documents. Attorney would provide common representation to both as clients in the matter. As part of obtaining informed consent from the clients regarding potential conflicts, Attorney explains that all information would be shared, even information that otherwise would have been confidential information in a normal representation with a single client. Attorney explains he will have to withdraw if one client decides that some matter material to the representation should be kept from the other. The energy drink maker, however, has a secret formula for the drinks, and the DVD kiosk owner has a trade-secret method of tracking the distribution and stocking of the DVDs in the kiosks minute-by-minute. Neither wanted the other to discover their trade secrets, but Attorney may eventually possess the secrets as part of his document review for the joint venture. Neither client actually needs to know the trade secrets of the other, however, in order to proceed with the joint venture.

Attorney concludes that failure to disclose one client's trade secrets to another client would not adversely affect the representation in this case, and agrees to keep that information confidential with the informed consent of both clients. Is Attorney's conduct proper?

a) Yes, in limited circumstances like this, it would be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential.
b) Yes, because no litigation is pending between the clients and the lawyer has not represented them before in other matters, and both are willing to provide written informed consent to the conflicts inherent in common representation.
c) No, continued common representation will certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation.
d) No, because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit.

22. Two brothers work together in a family landscaping business, and each is a named defendant in a lawsuit over a broken sewage pipe on a client's property where the brothers were digging holes to plant new trees. The two brothers hire their family's lawyer, Attorney, to represent them. Though the brothers get along reasonably well, there are a number of topics they avoid discussing, especially related to family matters and the inheritance, and who is to blame for some lost clients and damaged equipment in the recent past. Attorney explains the potential for conflicts of interest in the common representation and asks if they are willing to sign a waiver to the conflicts. One asks the lawyer privately about the issue of confidentiality and privileged information, because it is possible that litigation could emerge within the family later over various issues – the inheritance, control of the business, liability for business losses, and even a marital dispute. Does the common representation have implications for the attorney-client privilege?

a) Yes, with regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach, and lawyers should assume that if litigation eventuates between the clients, the privilege will not protect any such communications.
b) Yes, with regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, common representation provides extra protections for privileged information, and this is one of the main benefits of sharing the same lawyer.
c) No, with regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, attorney-client privilege still applies to all communications between each client and the lawyer, so clients sharing a lawyer should know that the lawyer may not disclose to them confidential information from the other clients.

d) No, with regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the lawyer may not have ex parte communications with any of the clients, but all communications must occur when all clients are present, in order to safeguard the privilege.

23. Attorney represents Conglomerate Corporation in a regulatory compliance matter, drafting documents for Conglomerate to file with the Securities and Exchange Commission and the Federal Trade Commission regarding executive salaries (for the SEC) and product market share (for the FTC's antitrust inquiry). Conglomerate Corporation owns or co-owns numerous subsidiaries and affiliates in unrelated industries. Attorney's retainer agreement limits his representation exclusively to the SEC and FTC regulatory matters. Victim hires Attorney to represent him in a personal injury suit against Subsidiary Corporation, partly owned by Conglomerate Corporation, over a slip and fall accident in Subsidiary's parking lot. Is it proper for Attorney to represent Victim in a tort action against an affiliate or subsidiary of his other client, Conglomerate Corporation?
   a) Yes, a lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary, and the lawyer for an organization may provide representation adverse to an affiliate in an unrelated matter.
   b) Yes, as long as Attorney obtains written informed consent from both Victim and the legal representative of Conglomerate Corporation, after explaining the conflict of interest fully to each client.
   c) No, unless Attorney obtains written informed consent from both Victim and the corporate director of Conglomerate.
   d) No, because the parties are directly adverse in litigation, and therefore the conflict of interest described here is nonconsentable under the Rules of Professional Conduct.

24. Attorney agrees to represent a group of three individuals in the same matter, a business transaction. Their interests are not directly adverse. Attorney has represented each of the clients in separate matters previously, and is already working under a retainer to do legal work for each under the same hourly rates. Two of the clients are currently traveling overseas, but everyone agrees to the representation by conference call. Attorney explains potential conflicts of interest that could arise in common representation, and all clients consent orally to the common representation despite the potential conflicts. Attorney proceeds with working on their matter for three weeks until all the clients are back from traveling and can sign written consent forms. By that time, Attorney has completed 50 hours of work, and has acquired significant confidential information by and about each of the three clients. Would Attorney be subject to discipline for performing this legal work before obtaining written consent to the conflict by each conflict?
   a) Yes, because common representation requires informed consent in writing from each client at the outset of representation.

b) Yes, because the fact that it was a transactional matter and not litigation means that Attorney could easily have waited three weeks until all clients could be present to sign written consent forms.
c) No, it was not feasible to obtain or transmit the writing at the time the client gives informed consent, so the lawyer could obtain or transmit it within a reasonable time thereafter.
d) No, because oral consent to a conflict of interest is sufficient when the parties are not directly adverse and each already has an established relationship with the attorney.

25. Attorney serves as the lawyer for a corporation and also is a member of its board of directors. Which of the following is true regarding this situation?
a) Attorney is subject to discipline, because the responsibilities of the two roles may conflict, as when Attorney must advise the corporation in matters involving actions of the directors, and there is always a material risk that the dual role will compromise the lawyer's independence of professional judgment
b) Attorney must limit his legal representation of the corporation to transactional and regulatory matters, and cannot represent the corporation in litigation against adverse parties, as there is always a material risk that the dual role will compromise the lawyer's independence of professional judgment
c) Attorney must have the final word on decisions of the board when he is present as a director, because Attorney bears responsibility for the decisions in the form of potential legal malpractice liability, which does not apply to the other directors who are not lawyers.
d) Attorney must advise the other board members that in some circumstances, matters they discuss at board meetings while Attorney is there as a fellow director would not be protected by the attorney-client privilege in later litigation; and that conflict of interest considerations might require Attorney's recusal as a director, or might require Attorney to decline representation of the corporation in a matter.

26. A municipal election for a seat on the city council was very close one year, resulting in a run-off election that was ever closer. Both candidates claimed victory and each accused the opposing candidate of voter fraud and violations of various election rules. There is potential for litigation if the two cannot agree as to a winner in the election, with one or the other conceding. Attorney is a prominent lawyer in the community and has previously represented each candidate in various legal matters. Both candidates would like to hire Attorney to represent them in negotiating a resolution to the election. Each candidate fully understands their adverse interests and the potential conflicts of interest for Attorney, but each is willing to provide written informed consent in order to have Attorney represent them both in facilitating the negotiations. May Attorney represent both candidates in this negotiation?
a) Yes, common representation is permissible where the clients' interests generally align, even though there is some difference in interest among them, so Attorney may pursue an agreement on an amicable and mutually advantageous basis.

b) Yes, because conflicts of interest rules do not apply outside the litigation arena, and the parties here are not litigating and no litigation is pending, but instead are merely hiring Attorney to facilitate negotiations of an issue where the two sides are not far apart.
c) No, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, even in a negotiation.
d) No, because the fact that Attorney has represented each of the parties in the past means that he would possess confidential information that would make mutual representation nonconsentable in this case.

27. Two sisters are co-tenants of a house that they inherited from their father. They want to sell the house and hire Attorney to handle the real estate transaction. Attorney explains the potential for conflicts of interest in detail, and each sister readily agrees to provide written informed consent in the form of a waiver of future conflicts of interest. After a long period, they finally find a buyer who is interested in the house, but the buyer wants to impose several onerous conditions on the purchase, and engages in unreasonably protracted negotiations over the purchase price. The sisters themselves cannot agree on whether to accept any of the buyer's proposals, further dooming the negotiations. Eventually, one sister becomes frustrated with Attorney over the prolonged, hitherto unsuccessful negotiations, and fires Attorney. The other sister wants Attorney to continue the representation. With regard to the sister who seeks to discharge Attorney, may she do so?
a) Yes, but only if discharging the lawyer will not be prejudicial to the interests of the buyer, who has already invested a lot of time and energy in the negotiations to purchase the property.
b) Yes, each client in the common representation has the right to discharge the lawyer as stated in Rules of Professional Conduct and the accompanying Comments.
c) No, because she signed a waiver of future conflicts of interest, which is binding and safeguards Attorney against premature discharge.
d) No, because by agreeing to common representation with her sister, she implicitly agreed that discharging Attorney would require assent of both sisters, as they are both clients.

28. Three co-owners of a successful startup business hire Attorney to help with working out the financial reorganization of their enterprise. Attorney seeks to resolve potentially adverse interests by developing the parties' mutual interests. In assenting to represent all the parties as clients simultaneously, Attorney agrees to adjust the relationship between clients on an amicable and mutually advantageous basis. The clients each provide written consent to the potential conflicts of interest. Is it proper for Attorney to represent three clients with potentially adverse interests in a negotiated transaction?
a) Yes, common representation is permissible where the clients' interests generally align, even though there is some difference in interest among them, so Attorney may pursue an agreement on an amicable and mutually advantageous basis.

b) Yes, because conflicts of interest rules do not apply outside the litigation arena, and the parties here are not litigating and do not expect to litigate, but instead are merely hiring Attorney to facilitate negotiations of an issue where the two sides are not far apart.
c) No, because the parties' interests as directly adverse, and a lawyer may not seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis.
d) No, because conflicts of interest in a negotiation situation are nonconsentable, as no lawyer could reasonably believe that the conflict of interest would not materially limit his ability to represent both sides; this is especially true of collective bargaining in the employment context.

Rule 1.8 Conflict of Interest - Current Clients: Specific Rules

29. Attorney represents Client in a civil suit. Client and Attorney often discuss their hunting trips and have gone hunting together on several occasions. Client tells Attorney he is purchasing a piece of property for hunting with five other people and asks Attorney if he would like to go in on the purchase. Attorney tells Client he would like to join in the purchase and he provides Client with a check for his portion of the purchase price. Is Attorney subject to discipline?
    a) Yes, attorneys shall not enter into transactions with clients that result in joint ownership of property.
    b) Yes, attorneys shall not engage in social activities with current clients or enter into transactions that result in joint ownership of property.
    c) No, attorneys are not restricted from entering into transactions with clients as long as the transactions are not related to the current representation of the client and the client gives informed consent.
    d) No, attorneys are allowed to enter into fair and reasonable business transactions with clients as long as the client is informed in writing of the benefit of seeking advice from independent counsel and gives informed consent, in writing and signed by the client, of the transaction details.

30. Client is represented by a lawyer in a law firm for a malpractice suit against a doctor. Client incurred significant medical bills and expenses after a surgery went unusually wrong. Attorney, who works in the same law firm as the lawyer representing Client, offered to give Client a set amount of money each month until the case ended. Client could then repay this attorney with his recovery from the lawsuit. Is Attorney subject to discipline?
    a) Yes, attorneys cannot provide financial assistance to their clients and this rule applies to other attorneys in the firm.
    b) Yes, attorneys can provide financial assistance to clients but not if the funds are subject to reimbursement.

c) No, attorneys not directly representing a client can provide financial assistance to clients of other attorneys.
d) No, attorneys can provide financial assistance to clients as long as the funds are subject to reimbursement.

31. An attorney was asked to prepare a will for one of her wealthy elderly clients. The client had no surviving family members – her spouse had passed away years before, as had her siblings, and she had no children. The client asked the attorney for suggestions about potential beneficiaries of the estate, besides her favorite charities. The attorney replied, "Well, I've represented you on various matters over the years, and have always looked out for your best interests, and I certainly would not object if you included me in the will. I've always admired your collection of antique furniture and books." The client was delighted by the idea and instructed the attorney to include a provision in the will bequeathing all the antique furniture and books in her large home to the attorney. The attorney prepared the will as instructed and the client executed it. Was the attorney's conduct proper?
    a) Yes, because the client asked her for suggestions about possible heirs and was excited about leaving something in the will to the attorney.
    b) Yes, because the attorney was not depriving any other potential heirs of the specific items she requested, as the client had no surviving relatives.
    c) No, because the way the attorney suggested the bequest was manipulative and the elderly client was vulnerable to coercion or exploitation.
    d) No, because the attorney should not have prepared the will if the document made a significant bequest to the attorney.

32. Attorney, a partner at a law firm, prepares a will for Sister. In the will, Sister directs Attorney to receive a substantial part of her estate. Attorney also recommends Sister appoint Attorney as the executor of the will because of his knowledge in this field. Attorney explains to Sister the role of the executor and the pay the executor of the estate will receive, and discussed alternative executor choices with her. Attorney recommends Sister seek independent legal counsel regarding the issue of the executor. Sister does so, and then she asks Attorney to list him as executor in the will. Is Attorney subject to discipline?
    a) Yes, attorneys cannot include substantial gifts to themselves in legal instruments such as wills prepared by the attorney for the client.
    b) Yes, attorneys cannot recommend that a client appoint the attorney as the executor unless the client obtains the advice of independent legal counsel and gives informed consent confirmed in writing.
    c) No, attorneys are not prohibited from including gifts to themselves in a will prepared by an attorney for a person related to the attorney, even if the gift is substantial.
    d) No, an attorney may recommend the client appoint the attorney as executor as long as the client receives advice from independent legal counsel regarding the appointment of the attorney as executor prior to signing the will.

33. Attorney obtained a successful outcome in Client's matter, and Client was grateful. Client sent Attorney a gift basket that year as a holiday gift, containing high-quality fresh fruit, sample-size jars of gourmet fruit preserves, and a few other delicacies. The gift basket cost Client $50. Is it proper for Attorney to accept this gift, or must Attorney refuse it?
    a) Yes, because as long as a lawyer does not solicit the gift, there is no restriction on lawyers accepting unsolicited gifts from clients.
    b) Yes, a lawyer may accept a simple gift such as a present given at a holiday or as a token of appreciation.
    c) No, a lawyer shall not accept any substantial gift from a client, unless the lawyer or other recipient of the gift is related to the client.
    d) No, because the lawyer's entire compensation for obtaining the favorable outcome should have been in the original retainer agreement and its schedule of fees, so any additional compensation or transfers from a client to a lawyer constitute an unwritten modification of the retainer agreement.

34. Client hires Attorney to represent her in business litigation. Another lawyer in the firm, unknown to Attorney, approaches Client with a proposal for an unrelated business transaction, the sale of a parcel of real estate adjacent to the lawyer's own land. Client agrees to sell the other lawyer in the firm the parcel of real estate for a reasonable price. The lawyer is not involved at all in the representation of client and works exclusively in the estate-planning department of the firm, rather than in litigation. Must the lawyer nevertheless advise the client in writing of the desirability of seeking the advice of independent legal counsel, and obtain written informed consent from the client before proceeding with the purchase?
    a) Yes, because a prohibition on conduct by an individual lawyer under the conflicts of interest rules would automatically apply to all lawyers associated in a firm with the personally prohibited lawyer, even if the first lawyer is not personally involved in the representation of the client.
    b) Yes, because the fact that the lawyer owns the adjacent real estate to the client's parcel of land means that he has a special conflict of interest with the client that would not necessarily apply to the other lawyers in the same firm.
    c) No, because the lawyer who is buying the real estate from Client is not involved in the representation of Client, and the Rules of Profession Conduct would not impute Attorney's potential conflicts of interest to the other lawyers in the firm.
    d) No, because the lawyer is willing to pay a fair and reasonable price for the parcel of land, so there is no risk that the transaction will be to the disadvantage of the client.

Rule 1.9 Duties to Former Clients

35. Businesswoman hired Attorney to represent her in a tax dispute with the government, in which the government accused her of hiding assets in overseas accounts and failing to report income from certain obscure investments. During this representation, Attorney learned extensive private financial information about Businesswoman, but the representation ended at the resolution of the tax case. Several years later, after the termination had ended, the husband of the Businesswoman filed for divorce. Attorney was the only lawyer the husband knew, so he retained Attorney to represent him in the divorce against Businesswoman. Businesswoman's lawyer moves to have Attorney disqualified from representing the husband, but Attorney claims that the matters were not substantially related enough to merit disqualification. Is Attorney correct?
    a) Yes, because resolving disputes with a government entity involves numerous procedural protections and administrative burdens of proof that are inapplicable in divorce proceedings in Family Court.
    b) Yes, because Attorney's representation of Businesswoman terminated at the resolution of the tax matter, so there is no potential for betraying a current client by representing Businesswoman's husband.
    c) No, matters are "substantially related" if there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter, such as personal financial information.
    d) No, because Businesswoman's troubles with the government over unpaid taxes are probably what led to the divorce from her husband, and the stress that the tax case put on the marriage is likely to be a major issue in the divorce proceeding.

Rule 1.9 Cmt. 3

36. Attorney worked at Big Firm, which was disqualified from representing Client in a case because one of the other lawyers at the firm had a conflict of interest regarding a former client, and this conflict was imputable to the entire firm. The firm was not timely in implementing screening measures and became subject to disqualification. Attorney was at the firm during this time, but was not involved in the matter and did not learn any confidential information about Client. Attorney left that firm and went to work at another firm. It turned out that Attorney's new firm is representing Client instead – Client hired the new firm after the previous firm was subject to disqualification. The new firm has no measures in place to screen Attorney from participation in the matter, though Attorney is not in fact participating in the representation. Will the new firm be subject to disqualification now, because Attorney joined the firm from another firm that was subject to disqualification?
    a) Yes, because the "taint" that Attorney brings from being part of a firm disqualified from the matter will now be imputable to the other lawyers in the new firm, without adequate screening measures in place.
    b) Yes, unless the opposing party gives informed consent, confirmed in writing, to the new firm's representation of Client despite Attorney's presence at the firm.
    c) No, there is no doctrine of double-imputation that would impute a purely imputed conflict from Attorney onto the other lawyers in the new firm.

d) No, as long as Attorney receives no part of the fees received for the representation.

Rule 1.10 Imputation of Conflicts of Interest: General Rule

37. A local abortion clinic hires the McCorvey Law Firm to represent it in an enforcement action brought by a state health agency. The action pertains to alleged health code violations at the clinic. The firm's principle partner, Norma McCorvey, has very strong, outspoken political beliefs against abortion, and cannot set aside her personal convictions to provide representation to the clinic in the matter. An associate at the firm, however, supports the clinic's mission, and offers to represent the clinic instead of Attorney McCorvey. If McCorvey agrees to let the associate represent the clinic, would it be proper for the associate to do so, despite the partner's strong convictions that the clinic should be shut down?
    a) No, because the named partner at the firm has a material limitation that creates a conflict of interest that would be imputed to the rest of the lawyers at the firm.
    b) No, because the lawyers at the firm hold opposing political beliefs on a matter that is material to the representation, and this disagreement creates a conflict of interest for the firm as an entity.
    c) Yes, because even though Attorney McCorvey could not effectively represent the client due to her political beliefs, this would not materially limit the representation by the associate at the firm.
    d) Yes, because Attorney McCorvey's political beliefs are not relevant in the decision about whether to provide representation, given that the opposing party is a state health agency enforcing the health code, and the underlying constitutional issues surrounding abortion will probably not affect the case.

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

38. The Comment to Rule 1.11, "Special Conflicts of Interest for Former & Current Government Officers & Employees" offers several policy interests that the rule seeks to balance. Which of the following is NOT one of the state policy interests?

a) “A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government.”
b) “Unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service.”
c) “If experience in government service makes lawyers excessively marketable thereafter in the private sector, or results in excessive financial rewards for lawyers with government experience once they enter the private sector, lawyers may enter government service for the wrong reasons or out of self-interest, rather than acting in the public interest.”
d) “The rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards.”

Rule 1.11 Cmt. 4

THE CLIENT-LAWYER RELATIONSHIP

(10–16%, 6-9 Questions of the 60 on MPRE)

- Scope, objective, and means of the representation – Rule 1.2
- Decision-making authority—actual and apparent – Rule 1.2
- Counsel and assistance within the bounds of the law – Rule 1.4
- Communications with the client – Rule 1.4, Rule 1.14
- Formation of client-lawyer relationship – Rule 1.4-1.5
- Client-lawyer contracts – Rule 1.5
- Fees – Rule 1.5
- Termination of the client-lawyer relationship – Rule 1.16

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

39. Client hired Attorney to represent her in a personal injury lawsuit in which Client is the plaintiff. After an initial consultation and two meetings to review the main evidence in case and to discuss the nature of the claims, Attorney drafted the initial pleadings, served the opposing party, and filed the pleadings in the appropriate court. Attorney did not allow Client to review the pleadings before filing them, and afterward, Client expresses disappointment that she did not have the opportunity to review the pleadings beforehand and make suggested edits, given that it is her case and that Attorney is working for her. Was it proper for Attorney to draft the pleadings based on conversations with the plaintiff and file the documents without first having the plaintiff review them?
    a) Yes, because a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
    b) Yes, unless Client is an English teacher or a professional editor, and might therefore have special expertise in proofreading texts for grammatical errors and stylistic problems.
    c) No, because a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued.
    d) No, because Attorney may have to spend time later revising the pleadings, which could affect the legal fees in the case, and such revisions may have been unnecessary if someone else had proofread Attorney's draft before filing it.

    Rule 1.2(a)

40. Client is the leader of a radical religious group that protests at the funerals of soldiers who died tragic combat deaths overseas. The protests are not against the war, however, but against society's increasing tolerance of homosexuality and gay marriage. Client and his followers stand outside the funerals as grieving family members arrive, and they hold large picket signs emblazoned with hateful sayings against homosexuals, some of which use shocking language. They also hold signs indicating they are happy that American soldiers die frequently, because they believe these deaths validate their point that the country is on the wrong course morally, and has become evil by being more tolerant. The group heckles those attending the funerals, but then disperses once the funeral ceremony starts. The group receives regular national media coverage because of the intentionally sensational and shocking nature of their protests. Client now faces a tort lawsuit by the father of a deceased soldier whose funeral the group picketed; the plaintiff claims intentional and negligent infliction of emotional distress. Client is certain that his First Amendment rights trump such subjective-harm tort claims, and has a recent Supreme Court case supporting his position. Client asks Attorney to represent him in the matter. Attorney reluctantly agrees to take the case and the trial court gives an unfavorable verdict against Client. After the case, reporters interview Attorney asking how he could represent such a client and Attorney states

during the interviews that he did not necessarily endorse the client's religious, social, moral, or political views, but was merely providing representation. Are Attorney's actions proper in this case?

a) Yes, because Attorney did not win the case on behalf of this client, so justice was served in the end, as this client advocates intolerance of others in our society.
b) No, because Attorney has a duty under the Rules of Professional Conduct to refuse representation of a client if he cannot endorse the client's political, social, or moral views, especially those who preach intolerance and hate.
c) No, because Attorney lost the case, and then tried to justify himself in the media by denying any endorsement of the client's political, social, and moral views.
d) Yes, because a lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

Rule 1.2(b)

41. Defendant was indigent and received court-appointed defense counsel, Attorney, in his felony larceny case. Defendant insisted that he was completely innocent and that he would not accept any plea bargains, because he wanted an opportunity to prove his innocence at trial. When Defendant told Attorney his expectations, Attorney explained that there is a special type of plea called an "Alford Plea," in which a defendant may agree to accept a conviction while still contesting his guilt or maintaining his innocence. Defendant refused, and told Attorney, "Do not even contact me with offers from the prosecutor for a guilty plea. I will not plead guilty, but will prove my innocence in a court of law!" The prosecutor indeed made several plea offers, and each time Attorney presented the offer to Defendant, who rejected it and reminded Attorney that he did not want to be bothered with any offers to "make a deal." Defendant's hard line proved effective as a negotiating strategy, and eventually the prosecutor called Attorney to say they would reduce the charges to a misdemeanor and the sentence to "time served" if Defendant would plead guilty. Attorney thought this was a ridiculously generous offer but simply rejected it without consulting his client. Client proceeded to trial and the jury convicted him, and he received the maximum possible sentence for the crimes charged. Was it proper for Attorney to reject the final plea bargain offer without informing the client?

a) Yes, because Clients have a right to dictate the overall objectives of the representation, but the lawyer has a right to decide the means of achieving that objective.
b) Yes, because the client has previously indicated that the proposal will be unacceptable and has authorized the lawyer to reject the offer.
c) No, because a lawyer who receives from opposing counsel a proffered plea bargain in a criminal case must promptly inform the client of its substance.
d) No, because the ultimate result was a conviction and a severe sentence for Defendant, which he could have avoided by accepting the final plea offer.

Rule 1.2 Cmt 3

42. Attorney represents Defendant in a murder case. At trial, the jury convicted Defendant and sentenced him to death, and the appellate courts upheld the conviction as well as the sentence. Attorney has now offered to file a habeas corpus petition in federal court in order to appeal the case to the United States Supreme Court, if necessary. Defendant, however, has developed terminal cancer, and does not expect to live another six months. Defendant tells Attorney to drop the appeals because even if they won, Defendant would not live long enough to enjoy his freedom. Defendant does not terminate the representation, however, because he wants Attorney to handle his estate planning matters while he is on death row, and he has some administrative complaints in progress against the prison where he is living. Attorney is passionately opposed to the death penalty and believes his client is innocent, so he files the habeas petition anyway. While the habeas petition is making its way through the federal appellate process, Defendant succumbs to his illness and dies in prison. Is Attorney subject to discipline for filing the habeas petition, despite the client's reservations?
    a) Yes, because the appeals are clearly a waste of public resources in a case where the defendant will die anyway before the appeals process would be complete.
    b) No, because filing appeals is merely a matter of strategy and methods, and lawyers do not have to defer to the client about strategy and methods.
    c) No, because the client died before the Attorney's actions produced any real results that could affect the client.
    d) Yes, because a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued.

43. An attorney represents criminal defendants. One day, a client appeared in the attorney's office and explained that he had been blackmailing his former employer for the last year. The client had hired a prostitute to seduce the former employer in a room with hidden cameras, then showed the embarrassing photographs to his former employer and demanded monthly payments of $500, which the employer paid, not wanting to destroy his marriage. The prostitute subsequently died of a drug overdose. The client's former employer eventually tired of making the monthly blackmail payments, and went to the police about the matter. The client is now worried that he will face charges for blackmail, which would violate his parole and result in a lengthy incarceration. Client retained the only copies of the photographs, as he merely showed them to the former employer a year ago in order to extort the payments. After the client explained all this to his attorney, he gave the attorney the documents and instructed the attorney to destroy them or hide them so that the police could not find them. Attorney put the photos in a folder marked ATTORNEY WORK PRODUCT - PRIVILEGED AND CONFIDENTIAL, and sent the folder to a secret overseas document storage service in the Caymans. The police obtained an arrest warrant for the client based on the former employer's affidavit, and at trial, the prosecutor obtained a conviction based on the employer's testimony and the bank records showing the monthly transfers. Is the attorney subject to discipline?

a) Yes, because the lawyer was clearly incompetent or negligent if he lost the trial even without the prosecutor having the photographs or the prostitute's testimony to admit as evidence.
b) Yes, because a lawyer shall not assist a client in conduct that the lawyer knows is criminal or fraudulent, such as destroying evidence when there is a pending criminal investigation.
c) No, because the court convicted the client anyway, so the lawyer's feeble attempt to help the client made no difference to the outcome.
d) No, because once the client told the lawyer about the matter privately and gave him the documents, they were covered by attorney-client privilege.

Rule 1.2(d)

44. Client hired Attorney to research the legality of a musical "mash-up," a sound recording that includes brief sound clips and samples from many other artists' commercial recordings. The client's particular approach puts it in the gray area around "fair use" and "composite works of art" under prevailing copyright law, and no court has yet ruled on the precise issue, though the question has been the subject of seventeen lengthy law review articles in the last two years, reaching a range of different conclusions. No litigation is pending and Client has not yet undertaken any activity that could constitute a copyright infringement; he is seeking reassurance before proceeding that he would not face liability for copyright infringement. Because Client primarily wants a memoranda of law answering his hypothetical legal question, he asks Attorney to limit his research and writing to two hours of billable time. Attorney agrees, spends an hour reading and an hour writing, and gives the Client a short memoranda. Given that the client's objective was limited to securing general information about the law the client needs, was it improper for Attorney to agree to this limitation on the scope of representation up front?
    a) Yes, because given the complexity of the subject and the uncertainty about this particular point of law, two hours was not a reasonable amount of time to yield advice upon which the client could rely.
    b) Yes, because the other artists have a right to receive compensation for their creative work, and Attorney is helping Client potentially infringe on other artists' copyrights.
    c) No, because the client's objective was limited to securing general information about the law the client needs, so the lawyer and client may agree that the lawyer's services will be limited to an hour of research and an hour of writing.
    d) No, because Client probably cannot afford to have Attorney read through seventeen tedious law review articles and try to formulate some kind of synthesis of the positions they advocate.

    Rule 1.2 Cmt. 7

45. Client calls Attorney to ask if it is possible to apply for an extension on filing his annual tax returns, if the deadline for filing returns is still two weeks in the future. Attorney offers to research the matter for a few hours and write a formal legal memoranda for

Client about filing extensions. Even so, off the top of his head, Attorney can assure the Client over the phone that it is indeed possible to apply for an extension and that the IRS routinely grants them if they receive the application for extension before the regular deadline. Attorney practices in the area of tax law and is familiar with the rules. Client thanks the Attorney and says that he is satisfied with the "short answer," and that he does not want Attorney to do any more research or writing about it, but rather to send a bill for the phone call. Attorney agrees and bills Client for the telephone conversation, and conducts no further research on the matter. Is it proper for Attorney to limit his representation to a single telephone call like this?

a) Yes, because Client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, so the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation.
b) Yes, because the lawyer should defer to the client about costs and the objectives of the representation, and should not assist a client in committing a crime or fraud, such as tax evasion.
c) No, because such a limitation on the representation does not allot sufficient time to yield advice upon which the client could rely, and the client could face devastating fines for being late with his tax returns.
d) No, because such an agreement ignores the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 Cmt. 7

46. Husband hired Attorney to represent him in a divorce; the husband and wife had three adult children. Husband was quite upset when he met with Attorney, because his wife had filed for divorce and he felt deeply betrayed. The couple had a prenuptial agreement that clearly delineated the division of assets in case of divorce, and child custody is not an issue as the children are in their twenties. As part of his routine consultation questions, Attorney asked if there had been any marital infidelity on the part of either the husband or wife. Husband admitted to Attorney that he once had an affair many years ago, that the wife never discovered, and that he wanted to keep secret, if possible. He then speculated that he had no idea if his wife had ever had an affair, then became very emotional as he considered the possibility. Within minutes, he had convinced himself that his wife had been having affairs with other men for years, though he never knew it, and that the three children were probably not even his offspring. Attorney had already looked at Husband's photograph of his children, and their resemblance to their father (Husband) was remarkable. Attorney finds repugnant the idea of subjecting the adult children to paternity tests, which would probably traumatize them unnecessarily, regardless of the result. Attorney also believes that accusing the wife of infidelity would be imprudent, as it will ensure that the family would discover Husband's previous affair, which otherwise might not happen. Without the accusations of infidelity, all the issues of the divorce would come under the prenuptial agreement and not be in dispute. Attorney insists on limiting his representation to the divorce, and wants to include in the retainer agreement that there will be no accusations of infidelity or paternity testing of the children, unless the other

side initiates in this regard. After Husband calms down, he agrees to Attorney's conditions of representation. Is it proper for Attorney to insist on such conditions of representation?

a) Yes, because it would be fraudulent for the husband to accuse the wife of marital infidelity, of which there is no evidence, while hiding the fact that he himself had an affair.
b) No, because there is always a chance that the other party in a divorce was guilty of marital infidelity, and the children should get to know with absolute certainty who is their real father.
c) Yes, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives, such as actions that the lawyer regards as repugnant or imprudent.
d) No, because the lawyer should always defer to the client about the objectives of the representation, while the client should defer to the lawyer about the means of achieving the goals of the representation.

Rule 1.2 Cmt. 6

47. Client explains to Attorney that he is operating an illegal website where users can anonymously upload and download pirated music and videos, in violation of copyright laws and other anti-piracy statutes. The website is very lucrative for its operator, and Client has become a multimillionaire by founding and operating the site. Client is concerned about potential criminal charges or civil lawsuits over the website. Attorney explains to Client how he could use a series of dummy limited liability corporations, mail forwarding addresses, and offshore bank accounts in order to avoid detection. Each of the steps of the process Attorney describes is technically legal – creating the corporate entities, purchasing real mail-forwarding services, and opening bank accounts in Belize. Attorney decides not to charge Client for this advice session, but bills Client for other transactional work performed. Is Attorney subject to discipline?

a) Yes, because Attorney did not bill Client for the consultation, apparently in violation of their regular retainer agreement.
b) No, because the individual steps that Attorney proposed would be legal in isolation, and merely gave an honest opinion about the actual consequences that appear likely to result from a client's conduct.
c) Yes, because a lawyer must avoid assisting a client in fraudulent or criminal activity, which includes suggesting how the wrongdoing might be concealed.
d) No, because Attorney did not bill the client for the advice, and therefore did not benefit personally from counseling the Client

Rule 1.2 Cmt 10

48. Attorney explains to Client that certain features of Client's business proposal would constitute money laundering under current federal statutes. Attorney explains the statute in detail, and explains why the course of action would meet the statutory definition of money laundering. Attorney explains the various monitoring and reporting mechanisms that federal enforcement agencies have in place to detect money

laundering, in an attempt to convince Client that he would not escape arrest and prosecution if he proceeds. Client absorbs the information and uses it to structure a more elaborate money-laundering scheme that exploits some ambiguity in the statute and the reporting requirements to make his enterprise much more difficult to detect, and complicates enforcement and prosecution efforts against him. Attorney's advice turned out to be incredibly useful to Client in avoiding detection and expanding his criminal enterprise. Is Attorney a party to Client's course of action?

a) No, because Attorney's subjective intentions were not wrong in the situation.
b) No, because the fact that a client uses advice in a course of action that is criminal or fraudulent of itself does not make a lawyer a party to the course of action.
c) Yes, because there is no distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.
d) Yes, because a lawyer may not discuss the legal consequences of any proposed criminal course of conduct with a client and or counsel a client to determine the validity, scope, meaning or application of the law.

Rule 1.2 Cmt. 10

49. Client is an inexperienced drug dealer and consults with Attorney about the legal ramifications of his business. Without explicitly endorsing or encouraging Client in his criminal enterprise, Attorney conducts research at Client's request about various drug laws and sentencing guidelines. Attorney writes a detailed memorandum of law explaining that certain threshold quantities of drugs, according to the relevant statutes, create a presumption of "intent to distribute" or trigger a significant sentencing enhancement. Similarly, Attorney explains that statutes and sentencing guidelines impose higher-grade charges and severe sentencing enhancements if a drug dealer brings a firearm to a transaction. Client mulls over the information and decides to change his business model from bulk sales of narcotics to selling smaller quantities in more individual transactions, such that each sale constitutes only the lowest-level misdemeanor. Client also instructs all his subordinates to avoid carrying firearms and instead to refill pepper spray devices with hydrochloric acid, which they spray in the face of their opponents in any altercation, causing severe disfigurement. Is it proper for Attorney to provide such legal advice to Client?

a) Yes, because a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
b) Yes, because the Rules of Professional Conduct confer upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.
c) No, because off attorney-client privilege and the duty of confidentiality.
d) No, because a lawyer is required to avoid assisting the client in criminal activity by suggesting how the wrongdoing might be concealed.

Rule 1.2(d)

50. Attorney represents Client in a drug trafficking case. Client asks Attorney to deliver a package to a friend of Client. Client tells Attorney that the package contains illegal drugs but assures Attorney he will not reveal that Attorney made the delivery if police discover that the transfer was made. Attorney advises that he will not participate in the transfer. Attorney does not advise the Court of Client's request and remains Client's attorney on the drug trafficking case. Are Attorney's actions improper?
    a) No, because an attorney is not required to decline or withdraw from cases unless the client demands that the attorney engage in illegal conduct.
    b) No, because attorney has no obligation to withdraw from a case as long as he does not engage in illegal activity with or for a client.
    c) Yes, because an attorney must decline or withdraw from representing a client if the client asks that the attorney engage in illegal conduct.
    d) Yes, because an attorney must notify the court if his client asks or demands that he engage in illegal activity.

Rule 1.4 Communications

51. Attorney represents Client in a transactional matter, a complex business merger. The parties have agreed in advance, by contract, to engage in good-faith negotiations, but that if an agreement does not emerge within six months, either party can abandon the deal and cease negotiations. Three months into the negotiations, the parties are very close to a final agreement. Attorney has been conducting the negotiations without Client present, checking in with Client from time to time. One day, the other party presents a detailed proposal that would resolve all remaining issues, and would give each side most of what it wants, but also requires a few concessions from each party. Attorney calls Client immediately and gives a brief overview of the new proposal, hitting most of the highlights and carefully explaining the bottom-line concerning the final buyout price to complete the merger. Client gives Attorney consent to consummate the agreement. Could Attorney be subject to discipline for how he handled the final agreement?
    a) Yes, because it is improper for a lawyer to make an agreement in advance to reach a settlement or other final agreement by a certain date, so that parties will abandon negotiations after that point.
    b) Yes, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement, and the facts suggest that Attorney did not necessarily explain all the concessions that Client would have to make.
    c) No, because Attorney was impliedly authorized by Client to work out all important provisions of the agreement, and Client does not need to know all the details.
    d) No, because Attorney obtained Client's consent about the bottom line before proceeding to a final agreement.

Rule 1.4 Cmt 5

52. Attorney represents Client in a litigation matter. Client was not present during the last pre-trial hearing at which the lawyers argued about whether certain experts on each side could testify at trial. The trial was to start the following week. At the end of the hearing, the opposing counsel asked the court to have the record sealed in the upcoming trial, and to have reporters banned from the courtroom. He explained that the testimony at trial would necessarily reveal some of his client's trade secrets, and it was important to the client to keep the trial records sealed. The judge was amenable to this suggestion and asked Attorney if he had any objections. Attorney tried to call Client, but Client did not answer his phone right then. Attorney could not think of a compelling reason for Client to oppose the motion, so he agreed, and the judge set the matter for a sealed-record trial. Three hours later, Client returned Attorney's call, and Attorney explained what had transpired. Client was dismayed because he had planned to use this litigation as a test case for subsequent litigation over the same type of issue, but Attorney explained that it would now be difficult to get the judge to reverse course on this point. Was it proper for Attorney to agree to the request without obtaining Client's prior consent?
    a) Yes, because the opposing party's request was reasonable, and even if Attorney had asked Client and Client disapproved, Attorney could not have ethically objected to the request.
    b) Yes, because during a trial, when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation, as long as the lawyer promptly informs the client of actions the lawyer has taken on the client's behalf.
    c) No, because the importance of the action under consideration and the feasibility of consulting with the client meant the lawyer's duty required consultation prior to taking action.
    d) No, because a lawyer must promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take.

    Rule 1.4 Cmt 3

53. Attorney represented client in a criminal matter. Client had a history of mental illness, and the court ordered a psychological examination to determine if Client would be competent to stand trial. The case did not involve an insanity defense or a defense of diminished capacity. The psychologist who evaluated Client spoke privately to Attorney, and explained that Client was indeed competent to stand trial, but that in his opinion, Client also suffered from delusional narcissism, paranoia, and oppositional-defiant syndrome. The psychologist pleaded with Attorney not to tell Client about this diagnosis, because the disclosure could harm the client, triggering an episode of paranoia in which the client would suspect that everyone around him was conspiring to institutionalize him, and he would become uncooperative at trial and mistrustful of his own lawyer. Attorney told Client that the psychologist had deemed him competent to

stand trial and did not disclose the rest of the psychologist's assessment. Was it proper for Attorney to conceal the psychologist's diagnosis from Client?

a) Yes, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication, including a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client.
b) Yes, because the psychologist's duty was only to evaluate for competence to stand trial, so his additional diagnosis was outside the scope of his assignment.
c) No, because the information to be provided is that appropriate for a client who is a comprehending and responsible adult, and if Client is competent to stand trial, he is competent to receive the rest of the psychologist's diagnosis.
d) No, because full communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Rule 1.4 Cmt 7

Rule 1.5 Fees

54. How does a contingent fee work, outside of plaintiff's personal injury cases?
    a) In contract litigation, sometimes the lawyer's fee depends on the amount saved, rather than the award; in some stock offerings, fees depend on capital generated
    b) No state allows contingent fees outside personal injury litigation
    c) The fees are all-or-nothing – the lawyer either keeps the entire jury award, or receives no payment whatsoever
    d) The fees are a flat hourly rate instead of the percentage of the verdict-award

55. What is wrong with charging a contingent fee in a criminal case, according to the ABA Model Rules of Professional Conduct?
    a) The Comments to the Model Rules do not articulate a clear rationale for this prohibition, but it is a longstanding tradition
    b) The Comments to the Model Rules explicitly base the prohibition on concerns that lawyers will have an incentive to suborn perjury
    c) The Comments to the Model Rules imply that the prohibition is related to concerns that no lawyers will represent defendants in close cases
    d) The Comments to the Model Rules state that the prohibition is meant to prevent money laundering by lawyers at the behest of criminal defendants.

56. A new federal Treasury Regulation provides that attorneys who prevail in tax cases on behalf of their clients against the Revenue Service are entitled to attorneys' fees at the fixed rate of $100 per hour, not to exceed $100,000. Attorney lives in a state that allows "reasonable" fees, and he makes a written fee agreement with Client for an additional $100 fee per hour, on top of whatever fees the Treasury Regulations allow in their case.

If the Client provides written informed consent, could Attorney be subject to discipline for this fee agreement?

a) Yes, because state rules about legal fees are subject to limitations by applicable law, such as government regulations regarding fees in certain tax matters.
b) Yes, because tax matters require a contingent fee agreement, not an hourly rate, lest attorneys have a temptation to drag out the case in order to drive up their collectable fees.
c) No, as long as the fee agreement incorporates the federal regulation by reference, it is permissible for clients and lawyers to make a private agreement for additional compensation to the lawyer.
d) No, as long as the total fees paid do not exceed $100,000.

Rule 1.5 Cmt 3

57. Can a contingent fee be unreasonably high?

a) No, because all contingent fees involve risk for the lawyer
b) No, many states allow lawyers to charge up to 90% contingent fees for routine personal injury cases
c) Yes, and reasonableness is measured at the time of making the contingent fee agreement, not after the fee is due.
d) Yes, and reasonableness is measured after the fee is due, depending on success, not at the time of making the contingent fee agreement.

Rule 1.5 Cmt 3

58. Suppose the lawyer knows at the outset that the case is a sure winner – is a contingent fee proper?

a) The validity of contingent fees has nothing to do with the assumption of risk by the lawyer, so the odds of winning should have no bearing on the appropriateness of a contingent fee
b) No, because the Model Rules require lawyers to take zero-risk cases on a pro bono basis.
c) In theory, a disciplinary board could conclude that a contingent fee is unreasonably high in a case involving zero risk for the lawyer, if such a case existed
d) It depends whether the client is a plaintiff or defendant.

Rule 1.5 Cmt 3

59. A state bar adopted a new ethical rule for lawyers that forbid contingent fees higher than 30%. Attorney agrees to represent Client in a tort case that is in federal court due to diversity jurisdiction. Attorney and Client form a written fee agreement that provides for a 33% contingent fee, which is still legal in most jurisdictions. Is Attorney subject to discipline for this contingent fee agreement?

a) No, because the case is entirely in the federal court system, which means that local laws or rules about contingent fees are inapplicable.
b) Yes, because contingent fees are not proper in diversity cases brought in federal court.

c) Yes, because applicable state law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee.
d) No, as long as client provided informed, written consent to the fee arrangement.

Rule 1.5 Cmt 3

60. Client sought to have Attorney represent her as the defendant in a litigation matter. Client had previously retained another lawyer in the same matter, but two weeks before trial was to begin, the opposing counsel had moved to have her lawyer disqualified due to her lawyer having a conflict of interest with the opposing party, who was the lawyer's former client. She needed a new lawyer immediately as the trial date was now only ten days away. Attorney agreed to represent her for a much higher fee than he would customarily charge, which was also much higher than the customary fee for legal services in that locality. Client was upset about the seemingly exorbitant fee, and she said that she felt that Attorney was exploiting her predicament. Attorney carefully explained that the fee agreement was hourly, and client would be responsible for all costs and expenses in addition to the hourly fees, and would even have to reimburse Attorney for in-house expenses such as photocopying. Attorney never memorialized the agreement in writing; it was merely an oral agreement for fees, and Attorney commenced his representation. Attorney did not prevail at trial and Client had to pay the plaintiff an enormous amount of damages. Was Attorney's conduct proper?
a) No, because Attorney did not put the agreement in writing, even though it was a fee related to litigation.
b) No, because Attorney did not prevail at trial, despite charging a high fee, so Client had to pay both the exorbitant fee and the damages awarded to the plaintiff.
c) Yes, because the reasonableness of a fee depends in part upon the time limitations imposed by the client or by the circumstances.
d) Yes, because it was another lawyer's fault for agreeing to represent the client previously despite having a conflict of interest, which risked a potential disqualification order on the eve of trial.

Rule 1.5(a)

61. What is the difference between a static contingent fee and a sliding contingent fee?
a) A static fee is the same for every case and every client, while a sliding fee adjusts the percentage based on the type of case or type of client
b) A static fee is one that parties establish at the outset of representation, while a sliding fee allows the percentage to fluctuate throughout the course of the representation depending on how well things seem to be going
c) A static fee has a fixed percentage rate regardless of the apparent merits of the case, while a sliding fee adjusts the percentage depending on the strength or weakness of the case, judged at the outset.
d) A static fee has a fixed percentage rate, while a sliding fee has the percentage increase with either how long the case takes or the amount of the recovery.

62. Which of the following is NOT one of the factors listed by the Rules of Professional Conduct that lawyers should use in determining the reasonableness of a fee?
    a) "the nature and length of the professional relationship with the client"
    b) "the novelty and difficulty of the questions involved"
    c) "the fee customarily charged in the locality for similar legal services"
    d) "the client's financial situation or ability to pay"

Rule 1.5(a)

63. Client hired Attorney to represent him in suing his employer for wrongful termination. Attorney proposed a fee arrangement that made the fees contingent on the outcome, and included in the fee agreement that Attorney would advance the costs of litigation. Attorney lost the case at trial, and Client then refused to pay back the costs that Attorney had advanced beforehand. Can Attorney force Client to repay the litigation costs that Attorney advanced to him?
    a) Yes, because even where the fee agreement stipulates that it is a contingent fee, this does not apply to litigation costs that a lawyer advances to a client.
    b) Yes, because losing the case nullified the contingent fee agreement and created a quantum meruit situation.
    c) No, because under the fee agreement, the client was only obligated to repay the attorney if they won the case.
    d) No, because the parties never made a legally binding fee agreement.

64. Client asked Attorney to defend him in a small litigation matter. Client explained that he had very limited funds available, and wondered if Attorney could handle the case for $2000. Attorney's usual hourly rate is $200. Attorney explained that he would handle the case for $2000, but would do a maximum of ten hours of work on the case. Attorney expected the case to settle before trial, so ten hours seemed like a reasonable amount of time to draft a demand letter, file the pleadings, and conduct some preliminary discovery, at which point the matter would probably resolve itself in a settlement. Client agreed and they formalized this agreement in writing. Unfortunately, the matter did not settle, and Attorney had already spent ten hours on the case three months before the trial date. Attorney explained that his representation in the matter had terminated and withdrew from the case. Would Attorney be subject to discipline in a situation like this?
    a) Yes, because a lawyer may not withdraw from representation three months before trial.
    b) Yes, because a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client.
    c) No, because the Client agreed to this arrangement in writing.
    d) No, because Attorney fulfilled the terms of the written agreement with Client, and Client had proposed buying limited representation due to his financial constraints.

Rule 1.5 Cmt 5

65. Which of the following is NOT one of the factors listed by the Rules of Professional Conduct that lawyers should use in determining the reasonableness of a fee?
    a) "the nature and length of the professional relationship with the client"
    b) "the experience, reputation, and ability of the lawyer or lawyers performing the services"
    c) "whether the fee is fixed or contingent"
    d) "when the fee will actually be due"

Rule 1.5(a)

66. Which of the following IS one of the factors listed by the Rules of Professional Conduct that lawyers should use in determining the reasonableness of a fee?
    a) "the financial situation of the client or the client's ability to pay fees in advance"
    b) "the current financial resources of the lawyer or the lawyer's usual fees"
    c) "the skill requisite to perform the legal service properly"
    d) "whether the payment of the fees will be due at the commencement of representation or at the resolution of the client's matter"

Rule 1.5(a)

67. Which of the following is NOT one of the factors listed by the Rules of Professional Conduct that lawyers should use in determining the reasonableness of a fee?
    a) "the amount involved and the results obtained"
    b) "the time limitations imposed by the client or by the circumstances"
    c) "that the acceptance of the particular employment will preclude other employment by the lawyer"
    d) "whether the fee will involve cash payments or the exchange of goods or services"

Rule 1.5(a)

68. Attorney specialized in aviation law and airline litigation. Client sought to have Attorney represent her smaller airline in a high-stakes antitrust action against the four largest national airlines. The matter was likely to go on for more than two years. Attorney explained that taking the case would present him with a conflict of interest against the largest airlines in the country, and possibly with their affiliates, suppliers, contractors, and subsidiaries as well, which would severely limit Attorney's ability to represent any other clients in his area of specialty for a long time. He would have to seek to withdraw from representing a few existing clients, which was feasible, and would have to decline numerous future cases and matters. Client insisted on having Attorney handle her case, however, due to his specialized knowledge of the field. Attorney then offered to represent Client for quadruple his usual fee, or five times the fees customarily charged in the locality for regular legal services. In addition, Attorney

explained that Client would have to pay a large retainer sum up front, against which Attorney would draw fees. Finally, Client would have to reimburse Attorney for every penny of expenses and costs incurred in-house, such as photocopies and telephone calls, plus any costs and expenses incurred from outside services providers such as court reporters or experts. Client was astonished at the exorbitant fees, which she realized would quickly run into hundreds of thousands or millions of dollars, but she reluctantly agreed because she felt she had no real choice. Attorney memorialized their agreement in writing, and obtained client's signature on it. Was the fee agreement reasonable, according to the Rules of Professional Conduct?

a) Yes, because it was apparent to the client that the acceptance of the particular employment will preclude other employment by the lawyer
b) Yes, because the client had no other real choice
c) No, because the fee is quadruple the lawyer's usual fee, and five times as high as regular legal fees in that locale
d) No, because the lawyer is forcing the client to reimburse him for routine operational overhead costs, such as photocopying and phone calls.

Rule 1.5(a)(2), Cmt 1

Rule 1.16: Declining or Terminating Representation

69. Attorney injured his back and leg badly in a car accident. In the aftermath, Attorney became chemically dependent on prescription pain medications. This addiction progressed until it began to affect Attorney's relationships and work habits. The partners in his firm eventually insisted that Attorney seek professional help, so he enrolled in an outpatient rehab program and a twelve-step support group for painkiller addicts. The supervising psychiatrist in the outpatient program expressed concern about Attorney's complete dependence on the painkillers and his diminished ability to function physically or mentally. He advised Attorney to take a leave of absence from work, because he did not believe Attorney could competently fulfill his obligations to his clients. This same concern had prompted Attorney's partners to insist that he seek professional help. Just before enrolling in the outpatient program, a new client had approached Attorney about representing her in a tax dispute with the Internal Revenue Service. Attorney had handled such cases before, but it was not his specialty. Client is so desperate that he tells Attorney privately that he is considering shredding documents to hide some of his tax fraud from the IRS, which Attorney says he should not do, but worries that Client might do it anyway. May Attorney undertake the representation?

a) Yes, as long as Attorney can acquire the necessary knowledge or expertise through additional research to handle the complexity of the matter on Client's behalf.
b) Yes, because Attorney is getting help for his addiction problem and should recover soon.

c) No, because the Client has proposed engaging in fraud or criminal activity.
d) No, because at the moment, physical or mental condition materially impairs the lawyer's ability to represent the client.

Rule 1.16(a)(2)

70. Attorney represents Client in a family law matter. A hearing is set for Monday. On the Wednesday prior to the scheduled hearing, Client calls Attorney and advises that Client no longer wants to be represented by Attorney and that Attorney's representation is considered terminated as of the date and time of the call. Client advises that she intends to retain another attorney prior to the hearing. After receiving the call from Client, Attorney schedules another matter for Monday, does not appear at the hearing, and does nothing further on the case. Is Attorney subject to discipline?
    a) Yes, if representation has begun, attorney is required to withdraw from the case and take reasonable steps to mitigate consequences to client if discharged by client.
    b) Yes, attorney is required to continue representation of client until attorney receives notice of discharge in writing and signed by client.
    c) No, if attorney receives notice of discharge directly from client, whether oral or in writing, attorney can cease work entirely on the case as long as client is aware of all hearings or other important dates that are scheduled as of the date of the discharge.
    d) No, if attorney reasonably believes client will be represented by other counsel in a reasonable time and that client will not have any consequences as a result of the immediate discharge, attorney may discontinue all work on case.

71. Attorney has represented Client on a number of matters. Most recently, Attorney has represented Client in a litigation matter against the city's largest manufacturer. The manufacturer, whom Attorney is suing on behalf of Client, is both the city's largest employer and the largest purchaser of goods and services from small businesses in the area. As the discovery phase winds to a close and the court sets a trial date, Attorney learns that Client misused Attorney's services in the past to perpetrate fraud by having Attorney submit falsified documents to government entities and to insurance companies. Attorney is furious and yells at Client, using profanity. Attorney then petitions the court to let him withdraw from the representation, stating the reasons in general terms that do not betray specific client confidences. Client strongly objects to Attorney withdrawing from the representation, because the trial is only two months away, and all the other litigation firms in the city have conflicts of interest that prevent them from taking a case against the large manufacturer. It is indisputable that the withdrawal is materially prejudicial to Client, who may have to proceed into the trial pro se or have to find a new lawyer from out of town. The court is willing to postpone the trial by three weeks to give Client time to find a new lawyer or prepare to represent himself. Is it proper for Attorney to withdraw from representation in this case, if the court has no objection?
    a) Yes, because if a court or tribunal has no objection to a lawyer withdrawing from a case, then the lawyer has no ethical duty to continue the representation.

b) Yes, because withdrawal is permissible if the client misused the lawyer's services in the past, even if the withdrawal would materially prejudice the client.
c) No, because a lawyer cannot withdraw from representation, if doing so would have a materially adverse impact on the client.
d) No, because the lawyer yelled at the client and used profanity, which is completely unprofessional.

Rule 1.16 Cmt. 7

72. A trial judge is going through a divorce, and he hired Attorney to represent him. Attorney's law firm partner is representing another client who is appearing before the same judge in his personal injury lawsuit. The judge and the litigation client both give written informed consent to the representation despite the potential conflicts of interest. Even so, the judge is trying to keep the divorce quiet until after the upcoming elections, because this occurs in a state with elected judges. The judge therefore refuses to disclose to the parties in the personal injury case that counsel for one side is from the same firm as the lawyer representing the judge in his pending divorce. Neither Attorney nor his partner can reveal to opposing counsel in the personal injury case that their firm represents the judge, due to their duty of confidentiality. The judge believes he will be unbiased in the personal injury case, despite the fact that he is the client of a partner of one of the lawyers in the case, so the judge does not need to disqualify himself from the case. The Code of Judicial Ethics does require, however, that the judge disclose the representation to the litigants appearing before him, which the judge has refused to do at this time. Can Attorney continue representing the judge in his divorce?
a) Yes, if the judge and the litigation client both provided written, informed consent, then Attorney can continue with the representation.
b) Yes, because in a case where the judge does not need to disqualify himself, the lawyers would not need to withdraw merely because the judge refuses to disclose the representation to the other litigants appearing before the judge in the tort case.
c) No, because the lawyer would need the judge's permission to withdraw from representing him in the divorce case, and the judge is unlikely to agree to that.
d) No, because the lawyer is obligated to withdraw from the representation of the judge under these circumstances.

ABA Formal Ethics Op. 07-449

73. Attorney agreed to represent plaintiff in a lawsuit. Attorney was in the middle of a three-week trial at the time, however, so he did not start working on the new client's case immediately. By the time Attorney began investigating the case and drafting the pleadings, he discovered to his horror that he had already missed the statute of limitations for filing the lawsuit. Attorney files the pleadings anyway, knowing that the other party will file a motion to dismiss the case based on the statute of limitations within a month or so. Must Attorney withdraw from representation at this point?
a) Yes, as long as the client agrees and the court approves the withdrawal of representation.

b) Yes, Attorney must terminate the representation and must notify the client promptly of his malpractice.
c) No, because there is a chance that the opposing party and the judge will not notice that the statute of limitations has passed.
d) No, because withdrawing from the representation would not help the client at this point, and is likely to be prejudicial to the client.

Tex. Ethics Op, 593 (2010)

Rules 3.1-3.9 - Litigation and other forms of advocacy

(10–16%, 6-9 MPRE Questions)

Rule 3.1 Meritorious Claims and Contentions
Rule 3.2 Expediting Litigation
Rule 3.3 Candor toward the Tribunal
Rule 3.4 Fairness to Opposing Party and Counsel
Rule 3.5 Impartiality and Decorum of the Tribunal
Rule 3.6 Trial Publicity
Rule 3.7 Lawyer as Witness
Rule 3.8 Special Responsibilities of a Prosecutor
Rule 3.9 Advocate in Nonadjudicative Proceedings

Rule 3.1 Meritorious Claims and Contentions

74. Client was an indigent defendant and received court-appointed counsel for his trial. The trial ended in a conviction. Attorney served as his appointed counsel in the case. Client wanted to appeal his conviction, but Attorney reasonably believes that there is no merit to an appeal. Client insisted that Attorney file an appeal before he missed the deadline, and agreed that Attorney could withdraw from the case without Client's objection if he would simply file the appeal and provide Client with the opportunity to pursue the appeal pro se or with another lawyer. Attorney presented a "no-merit" letter to the appellate court explaining that his client was appealing his conviction but that Attorney could see no merit in the appeal. Was Attorney's conduct proper, according to the United States Supreme Court?
    a) Yes, because a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.
    b) Yes, as long as the letter preserves the client's right to proceed with the appeal on his own, and client has agreed to terminate the representation after that.
    c) No, because if the lawyer reasonably believed there was no merit to the appeal, he had an ethical duty to refuse to file the appeal or do anything to facilitate the defendant's abuse of the court system.

d) No, because a lawyer must prepare a brief referring to anything in the record that might arguably support the appeal, and leave it to the appellate court to decide whether the appeal is truly frivolous.

Anders v. California, 386 U.S. 738 (1967)

75. Client hired Attorney to represent her federal court litigation, defending against antitrust enforcement actions by the Federal Trade Commission and the Department of Justice. Attorney adopts a "quagmire" strategy, burying the government lawyers in several dozen motions to limit or compel discovery, to compel admissions or stipulations, to limit the admissibility of certain evidence or witness testimony, and so on. On a few occasions, Attorney even re-filed a motion after the court ruled on the motion in the government's favor, merely to make the government lawyer spend the time filing objections or replies based on the court's previous ruling on the same issue. The government lawyers filed a complaint against Attorney with the state bar authorities, but the state disciplinary authority decided not to pursue the matter, in part because it was in federal court and involved exclusively federal issues. Could Attorney also face sanctions or penalties under federal law, if the state bar rejected the complaint?
    a) Yes, but only because some of the motions were redundant, and may have been re-filed after the state disciplinary authority rendered its no-action decision.
    b) Yes, a federal statute authorizes federal courts to require a lawyer to pay all the excess costs, expenses, and legal fees incurred because of the lawyer "unreasonably and vexatiously" multiplying the proceedings.
    c) No, because discipline of lawyers over frivolous or vexations litigation is exclusively a matter of state law, so the judge should simply refer the matter again to the state disciplinary authorities, who are more likely to take it seriously if it comes from a federal judge.
    d) No, because the Free Speech Clause of the constitution gives lawyers an absolute right to file motions on their clients' behalf in federal court.

28 U.S.C.A. § 1927

76. A billionaire business owner decided to run for high-level public office. The billionaire candidate's platform includes a strong commitment to use military force, if necessary, to protect international human rights in foreign nations, especially rights for women, children, and grown men. A college student who operated a radical political blog wrote a blog post saying that the billionaire is "the real face of international terrorism" because the student strongly disagreed with the candidate's foreign policy commitments involving military force. The blog post also called the candidate "another Hitler," who would probably bring "another Holocaust in the nation of Africa." The insults deeply hurt the billionaire candidate's feelings, so he filed a defamation suit against the student blogger, who had not even bothered to spell the billionaire's name

correctly. He also vowed that if he were to win the election, he would seek to revoke the citizenship of the blogger, who was born in the United States, and have him deported as an illegal alien to "some hostile nation, such as France." The student immediately filed a motion to dismiss under the state's anti-SLAPP statute, requested a stay of discovery, and asked that the billionaire should have to pay the student's legal costs and fees. Could the billionaire suffer all these adverse results for his defamation suit?

a) Yes, because anti-SLAPP ("strategic litigation against public participation") statutes are very common and often impose such penalties on public figures who file defamation suits.
b) Yes, because the billionaire's threats about revoking the citizenship of natural-born citizens and deporting them to France show that his political ideas are ridiculous.
c) No, because the anti-SLAPP statute is probably unconstitutional and violates the First Amendment.
d) No, because the blogger overstepped his legal rights by calling the candidate a terrorist, and undermined his credibility by referring to the 54 countries in Africa as a single nation.

Tex. Civ. Prac. & Rem. Code Ann. §§ 27.001-27.011 (West 2011)

Rule 3.2 Expediting Litigation

77. Client hired Attorney to represent Client in a litigation matter, but after he filed the notice of representation and the initial pleadings in the case, the opposing party hired Big Firm to represent it. Attorney has already completed three rounds of job interviews with Big Firm and is now simply waiting for their answer, which he hopes will be an offer of employment. Rather that notify the client that an unforeseen conflict of interest has possibly emerged, Attorney simply slows down his work on the case, because if the job offer comes through, he will have to transfer Client's case to another lawyer anyway, and if he does not receive an offer, the potential conflict disappears and he can proceed with the litigation. Attorney thus waits until the last possible day to respond to any filings or discovery requests, and frequently calls the opposing party asking for more time, which they always grant. Is it proper for Attorney to stall the progress of the case for a while, to allow time for the conflict either to disappear or for him to need to transfer the case to some other lawyer?

a) Yes, because the conflict of interest will disappear if Big Firm rejects Attorney's application for employment before the case proceeds any further.
b) Yes, because Attorney may need to transfer the case to another lawyer anyway, and addressing the potential conflicting of interest directly, instead of simply stalling, could create unnecessary expenses for the client.
c) No, because a lawyer has a duty to make reasonable efforts to expedite litigation consistent with the interests of the client.
d) No, because a lawyer has a duty to withdraw from the representation immediately if a potential conflict of interest emerges.

ABA Formal Op. 96-400

78. Client hired Attorney to represent him in litigation because of Attorney's reputation for being the meanest, most aggressive litigator in town. Client is the defendant and Attorney bills by the hour. The judge in the case orders the parties to participate in a "caucused mediation" to encourage a settlement before trial. Attorney begins the mediation by declaring that his client is unwilling to compromise at all, even though Client had told him that they might settle the case for a reasonable amount. Attorney overstates the strength of Clients case and grossly understates the strength of the opposing party's position in what everyone knows is a close case. Attorney is merely posturing or bluffing in an effort to obtain a more favorable settlement for his client. Due to Attorney's hardline approach, the mediation drags on for several sessions spanning several days, and ultimately proves to be futile, so the parties schedule a trial. Is Attorney potentially subject to discipline for this approach in court-ordered mediation?
    a) Yes, because overstating the strength of his case or downplaying his client's willingness to compromise are misstatements of material fact.
    b) Yes, because even if the statements were not material facts, lawyers must make reasonable efforts to expedite litigation consistent with the interests of the client.
    c) No, because a lawyer can advocate zealously in order to obtain the most favorable outcome possible for his client.
    d) No, because this is court-ordered mediation, meaning the parties did not willingly agree to it and therefore have no duty to negotiate in good faith.

ABA Formal Op. 06-439 fn. 18

Rule 3.3 Candor Toward the Tribunal

79. Client hired Attorney to represent him in litigation, and explained to Attorney his version of the incident that gave rise to the dispute with the other party. Attorney took notes on the account that Client provided, and drafted pleadings that alleged the facts as alleged by Client. Attorney did no investigation before filing the pleadings to provide independent verification of Client's version of the story, because he thought that discovery would bring to light the necessary facts to reveal the truth of the matter. Similarly, Attorney submitted as evidence the various documents client provided to him, without doing his own assessment of the authenticity of the evidence so that he could vouch for the evidence himself. It turned out, as the other side submitted its evidence, that Client's account of what happened was full of fabrications, and some of the evidence was invalid. Attorney did not know the Client was being untruthful, but he neglected to make any efforts to verify Client's story before presenting it in court. Could Attorney be subject to discipline for undermining the integrity of the adjudicative process?
    a) Yes, because the lawyer as an advocate is responsible for pleadings and other documents prepared for litigation, and therefore must have personal knowledge of matters asserted therein.

b) Yes, because a lawyer in an adversary proceeding has an ethical duty to vouch for the evidence submitted in a cause of action.
c) No, because the discovery phase and the trial will bring to light which side is telling the truth.
d) No, because a lawyer need not have personal knowledge of matters asserted in pleadings, for litigation documents ordinarily present assertions by the client, and not assertions by the lawyer.

Rule 3.3. Cmt. 3

80. Attorney represents Client in a civil litigation matter. As they prepare for trial, at which Client will testify as a witness on his own behalf, Attorney realizes that Client is probably not going to tell the truth, even though Client insists he will be completely truthful. Attorney believes there is some chance that Client is indeed telling the truth, but he is about 70% certain that Client is being untruthful, despite Client's protestations. Does Attorney have an ethical duty to try to prevent Client from presenting testimony that Attorney believes is probably false?
a) Yes, a lawyer cannot suborn perjury, or even risk that the testimony he is eliciting via direct examination is perjury.
b) Yes, a lawyer must disclose to the court that he does not believe Client's testimony and have the court give the client an opportunity to testify in a narrative mode.
c) No, because the prohibition against offering false evidence only applies if the lawyer knows that the evidence is false, and a lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact.
d) No, because the opposing party will have an opportunity to impeach the witness and the testimony during cross-examination.

Rule 3.3 Cmt. 8

81. Client is a defendant in a criminal prosecution, and Attorney is his court-appointed defense lawyer. Client wants to testify at his own trial, despite Attorney's recommendations that he not do so. As they are preparing for trial, Attorney asks Client what he plans to say on the stand. Client's story seems suspicious to Attorney – he has serious doubts about its veracity – but Client insists that he is telling the truth, and Attorney is not sure. Does Attorney have an ethical duty to allow Client to give this improbable testimony at trial?
a) Yes, because in a criminal case, a lawyer cannot refuse to offer the testimony of a client where the lawyer reasonably believes but does not know that the testimony will be false; unless the lawyer knows that the testimony will be false, the lawyer must honor the client's decision to testify.
b) Yes, because a lawyer cannot control what a client will say once the Client is on the stand under oath.
c) No, because a lawyer should refuse to offer testimony or other proof that the lawyer reasonably believes is false; offering such proof may reflect adversely on the

lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate.

d) No, because the lawyer has a duty of candor to the court and cannot allow a criminal defendant to abuse the legal process by testifying falsely in order to obtain a wrongful acquittal.

Rule 3.3. Cmt. 9

82. Attorney is a criminal defense lawyer, and he represents Client, who is facing charges for burglary of a private residence. Client has asserted an alibi – he claims that on the evening of the burglary, he was 100 miles away on a romantic getaway with his girlfriend. Attorney interviews Client's girlfriend, who recounts a similar story about being on a romantic getaway, but a few details do not match Client's account, such as what they ordered for dinner when they stopped at a restaurant, and whether they had to stop for gas along the way. Attorney suspects the girlfriend is lying to protect Client, and that they rehearsed an alibi story without working through the fine details together. Attorney lectures both Client and his girlfriend about the wrongfulness of perjury and the fact that they do not have to testify at all, as well as the hazard of having their stories crumble under rigorous cross-examination. Is it permissible, under the Rules of Professional Conduct, for Attorney to call Client and his girlfriend as witnesses during trial?

a) Yes, because Attorney does not know with certainty that they are lying, he must allow Client to testify, and it is permissible to call the girlfriend as a witness as well.

b) Yes, because a lawyer in a criminal case has no duty to screen witnesses based on whether they plan to tell the truth.

c) No, because Attorney may not call the girlfriend as a witness, but he has no choice about allowing Client to testify.

d) No, because it would be improper for Attorney to call either Client or the girlfriend to testify if he is not reasonably certain that each one will tell the truth.

Rule 3.3 Cmt. 9

Rule 3.4 Fairness to Opposing Party and Counsel

83. Client is on trial for a theft case. Witness was with Client at the time police state that Client committed the crime at a location far from the crime scene. Client chooses to take the case to trial. For Witness's attendance at trial, Attorney pays Witness a lump sum amount. Are Attorney's actions proper?

    a) Yes, because witnesses can be paid for their attendance and expenses incurred for attending and testifying at a hearing or trial.
    b) Yes, because contingency fees are the only kinds of fees not allowed to be paid to witnesses for their attendance and testimony at a hearing or trial; lump sum payments are allowed.
    c) No, because a witness cannot be paid to attend and testify at a hearing or trial.
    d) No, because an attorney cannot pay for witnesses' attendance at a trial or hearing; rather, the fees must be paid directly from the client to the witness.

84. Attorney responded to a distressed call from Client asking that he meet him immediately on the street behind Attorney's office. Attorney rushes downstairs to meet Client outside his building. Client is very distraught and has blood splattered on his clothes, hands, and face, and is holding a pistol. Client stammers, "You will not believe what just happened." Attorney takes the pistol and throws it down the closest storm gutter on the street, and they can hear the gun clanging against concrete as it tumbles deep down into the storm sewer. Attorney says, "It is late and you are too upset to talk. Go home and clean yourself up, and do your laundry – you are a mess. We can discuss this tomorrow morning when you are in a better frame of mind." Client goes home to shower and launder his clothes, and Attorney returns to his office and resumes his work on the brief he was writing. Was Attorney's conduct a violation of his ethical duties?

    a) Yes, because he had a duty to inquire about what had happened and to call the police or emergency services if someone had been hurt.
    b) Yes, because Attorney concealed or obstructed the police's access to potential evidence by discarding the gun, and he counseled Client to destroy the evidence on his clothes.
    c) No, because Attorney does not know if Client has perpetrated a crime or if he was the victim of a crime, so he has not destroyed evidence knowingly; perhaps Client just saved someone else from a violent attacker.
    d) No, because the gun is still retrievable from the storm sewer, and Attorney could still testify about his observations of Client's appearance when they met.

Rule 3.4(a)&(b)

85. During trial, the plaintiffs complained that Attorney's client had not fully complied with certain production requests during discovery. The judge ordered Attorney to produce the specific records. Attorney believed that his client had no legal obligation to produce the records in question, because they included important trade secrets and were not relevant or material to the current litigation in any way. Attorney openly refused to produce the records and explained his position to the judge. The judge disagreed and ordered Attorney to bring the records to the courtroom the next day. Attorney did not obey the judge's order. Apart from any potential contempt-of-court sanctions, could Attorney be subject to discipline for violating the Rules of Professional Conduct?
    a) Yes, because a lawyer must not knowingly disobey an obligation under the rules of a tribunal.
    b) Yes, because the proper response would be to produce the records and then object to their admissibility at trial.
    c) No, because a lawyer may disobey an order from a tribunal when the lawyer has made an open refusal based on an assertion that no valid obligation exists.
    d) No, because in an adversarial proceeding, the judge should rely on the evidence that the parties present, rather than meddling with discovery and production of evidence.

    Rule 3.4(c)

86. During the discovery phase of business litigation, Conglomerate Corporation receives a discovery request asking for "all documents, memoranda, emails, or other internal correspondence related to the transaction that is the subject of this dispute." Attorney represents Conglomerate Corporation. Thousands of documents stored in electronic format on Conglomerate's computers and servers would arguably fall under this request for production. Attorney proposes to opposing counsel that they produce the requested documents in electronic form on a set of compact discs, and the opposing counsel readily agrees. Long before the litigation began, Attorney began using software to scrub the metadata from documents – electronically embedded information about the name of the user whose computer created the document, the date and time of creation, redlined changes from each stage of editing, and comments that other readers added to the document before it took its final form. Proposed contracts, letters to business partners, and correspondence with opposing counsel are all free from embedded metadata. Was it proper for Attorney to scrub the metadata from electronic documents that could potentially be subject to a discovery or production request in future litigation?
    a) Yes, because the printed copies of the documents would not have had such information.
    b) Yes, because a lawyer may take measures to eliminate metadata from documents that could later fall into the hands of an opposing party.
    c) No, because the main reason for scrubbing metadata is to conceal information that might be useful to an opposing party or tribunal in the future.

d) No, because the metadata is often necessary for determining who created a document, when they created it, or how the document changed from its original draft to its final form.

ABA Formal Op. 06-442

87. During the discovery phase of business litigation, Conglomerate Corporation receives a discovery request asking for "all documents, memoranda, emails, or other internal correspondence related to the transaction that is the subject of this dispute." Attorney represents Conglomerate Corporation. Thousands of documents stored in electronic format on Conglomerate's computers and servers would arguably fall under this request for production. Attorney proposes to opposing counsel that they produce the requested documents in electronic form on a set of compact discs, and the opposing counsel readily agrees. After receiving the production request, Attorney began using software to scrub the metadata from documents – electronically embedded information about the name of the user whose computer created the document, the date and time of creation, redlined changes from each stage of editing, and comments that other readers added to the document before it took its final form. Proposed contracts, letters to business partners, and memoranda between managers all have their embedded metadata erased. Was it proper for Attorney to scrub the metadata from electronic documents before delivering them to the other party in response to a discovery request?
    a) Yes, because the printed copies of the documents would not have had such information.
    b) Yes, because a lawyer may take measures to eliminate metadata from documents that could later fall into the hands of an opposing party.
    c) No, because the main reason for scrubbing metadata is to conceal information that might be useful to an opposing party or tribunal in the present litigation.
    d) No, because the metadata is often necessary for determining who created a document, when they created it, or how the document changed from its original draft to its final form.

ABA Formal Op. 06-442

Rule 3.5 Impartiality and Decorum of the Tribunal

88. Police arrested several protestors who were advocating a cause that Attorney strongly supported. One of the protestors had a violent altercation with police, and she was facing criminal charges. Attorney practices corporate transactional law and not litigation. The news media reported that jury selection would begin the following Monday in the protestor's prosecution. Attorney waited outside the courthouse where prospective jurors were reporting for jury service, and a long line formed at the metal detectors for entering the courthouse. Attorney waited in line and started conversations with the prospective jurors in front of him and behind him in the line, during which he explained that he was a lawyer and that the case against the protestor was ridiculous

from a legal standpoint. He told them that he hoped the jury would follow the laws of the state and acquit the protestor. Once Attorney made it through the security line, he walked out of the courthouse and got back in the security line again, and had similar conversations with more prospective jurors. During voir dire, the prosecutor asked the prospective jurors if anyone had spoken to them directly about the case, and three people mentioned their conversations with a lawyer in the security line waiting to get into the building. None of the individuals with whom Attorney spoke ended up on the jury in the case. The prosecutor eventually determined Attorney's identity and filed a grievance with the state disciplinary authority. Could Attorney be subject to discipline?

a) Yes, because Attorney should have explained both sides of the case as fairly as possible to the prospective jurors.
b) Yes, because a lawyer shall not seek to influence a judge, juror, or even a prospective juror.
c) No, because he spoke to prospective jurors, and they did not end up serving on the case.
d) No, because he was not representing a party in the case, and was not even a litigator.

Rule 3.5(a)

89. A judge lost his temper with Attorney and spoke very abusively to him in open court, in front of a jury, using profanity and calling Attorney "an embarrassment to the profession and a menace to his own clients." Attorney shot back that the judge was completely out of line, that the judge should have retired years ago; Attorney also made a mildly obscene gesture at the judge. Eventually, both calmed down and apologized to each other profusely. Opposing counsel reported Attorney to the state bar disciplinary authority, but did not report the judge, before whom opposing counsel appears regularly. Could Attorney be subject to discipline?

a) Yes, because he escalated the fiery exchange by making an obscene gesture.
b) Yes, because a lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate.
c) No, because the opposing counsel who reported the matter did not report the judge, who instigated the exchange, and presumably reported Attorney merely to make trouble for his opponent in litigation.
d) No, because the Attorney apologized to the judge immediately, and a lawyer is not required to passively accept abuse or inappropriate attacks from a judge or other lawyer.

Rule 3.5 Cmt. 4

90. Attorney received a call from his cousin, who lives in another city, one evening after work. The cousin was serving on a jury in a misdemeanor criminal case, and deliberations were set to begin the following morning. The cousin explained that part of the jury instructions focused on whether the defendant committed the act "knowingly." She is confused about whether that means that the defendant knew that he was committing the act, or that the defendant knew he was doing something illegal

at the time. She called Attorney hoping for some clarification. Attorney practiced real estate law and had never handled a criminal case, but he vaguely remembered something about this from his first-year law school course in criminal law. Given that there was no time for him to research the subject, or to create an agreement for representation, and the fact that he had very limited information, Attorney offered the best explanation he could. Was it proper for Attorney to answer her question under these circumstances?

a) Yes, because he has no involvement with the case, and the juror is his relative.
b) Yes, because the Supreme Court has held that any restrictions in this area violate the First Amendment.
c) No, because he communicated with a juror about a pending case.
d) No, because there is a chance his cousin could repeat a garbled version of his informed opinion to the other jurors during deliberations.

Rule 3.5(b)

Rule 3.6 Trial Publicity

91. A lawyer is representing the defendant in a highly publicized civil trial between two celebrities. On his way into the courthouse on the day of jury selection, reporters gather around the lawyer hoping for comments. The lawyer explains that his client has agreed to take a polygraph test proving that he is telling the truth about the disputed matter, but that the opposing party has refused to take a polygraph test, which suggests that the other person is hiding something. The lawyer has his client's permission to talk to the media. Opposing counsel is standing nearby waiting for his turn to talk, and he expresses no objection to the first lawyer giving interviews like this, or to the lawyer's comments. Were the lawyer's statements proper?
    a) No, because there is a presumption of prejudicial effect on the proceedings when a lawyer comments publicly about the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test.
    b) Yes, because the other lawyer is present and did not object to the comments at the time.
    c) No, because it violates the rules to talk to crowds of reporters near a courthouse entrance on the day when potential jurors are entering the building for voir dire.
    d) Yes, because polygraph tests are inadmissible in court in almost every state, so commenting on these tests is irrelevant to the trial itself.

Rule 3.6 Cmt. 5(3)

92. A lawyer is representing the defendant in a highly publicized criminal trial. On his way into the courthouse on the day of jury selection, reporters gather around the lawyer hoping for comments. The lawyer explains that his client is still considering whether to enter a guilty plea to lesser charges, as the prosecutor's offer is still open, and that they are waiting to see how jury selection goes before deciding whether to plead guilty or proceed to trial. The lawyer also explains that his client has never actually confessed to the crime charged, despite several lengthy interviews with the police and the client's admitting that he was near the scene of the crime when it occurred. The lawyer has his client's permission to talk to the media, and the prosecution has expressed no objection to him giving interviews like this on the courthouse steps in previous cases. Were the lawyer's statements proper?
    a) No, because there is a presumption of prejudicial effect on the proceedings when a lawyer comments publicly about the possibility of a guilty plea, or a party's refusal to confess to a crime
    b) Yes, because the rules about trial publicity explicitly allow the lawyer to explain the offense or defense involved, and the prosecutor has not objected.
    c) No, because it violates the rules to talk to crowds of reporters near a courthouse entrance on the day when potential jurors are entering the building for voir dire.
    d) Yes, because the lawyer's statements clearly fall under the protection of his First Amendment rights, and he has his client's consent.

Rule 3.6 Cmt. 5(2)

93. A lawyer is representing the defendant in a highly publicized trial. On his way into the courthouse on the day of jury selection, reporters gather around the lawyer hoping for comments. The lawyer explains that his client has a perfectly clean criminal record, while the state's star witness is already serving time on a felony drug conviction. In his personal opinion, he says, the client is innocent and should receive an acquittal, but he does not explain the defense theory of the case. The lawyer declares that he has his client's permission to talk to the media, which is true, and that the prosecution expressed no objection to him giving interviews like this on the courthouse steps in previous cases. Were the lawyer's statements proper?
    a) No, because the official Comment to the Model Rules says that expressing an opinion about a party's guilt or innocence, or about the criminal record of a party or witness, is more likely than not to have a material prejudicial effect on a proceeding.
    b) Yes, because the rules about trial publicity explicitly allow the lawyer to explain the offense or defense involved, and the prosecutor has not objected.
    c) No, because it violates the rules to talk to crowds of reporters near a courthouse entrance on the day when potential jurors are entering the building for voir dire.
    d) Yes, because the lawyer's statements clearly fall under the protection of his First Amendment rights, and he has his client's consent.

Rule 3.6 Cmt. 5(4)

94. Attorney defended Client in a criminal proceeding that attracted low-level media attention on the local evening news and a few local-interest blogs. A semi-retired reporter for the local evening news called Attorney at his office and asked for a quote about Client's case. Attorney stated that Client had no prior criminal record and that they planned to put on a rigorous defense, and he hoped the prosecutor would drop all the charges before trial. Was it improper for Attorney to make these statements?
    a) Yes, because lawyers involved in a criminal proceeding may not make any statements to the media about the case or the parties involved.
    b) Yes, because a lawyer should not make extrajudicial comments about the criminal record of a party during a criminal matter.
    c) No, because a lawyer may state the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved.
    d) No, because the matter received only low-level media attention and the reporter was semi-retired.

Rule 3.6 Cmt. 5(1)

95. Attorney defended Client in a criminal proceeding that attracted low-level media attention on the local evening news and a few local-interest blogs. One of these bloggers called Attorney at his office and asked for a quote about Client's case. Attorney stated that a member of the local clergy, as well as the Principal of the local high school, would testify as to Client's good character and volunteer activities. Was it proper for Attorney to discuss such things with a blogger?
    a) Yes, because a local-interest blogger is not an official public communication and does not constitute dissemination by means of public communication.

b) Yes, because a lawyer may state the expected testimony of a party or witness in a criminal matter.
c) No, because in a criminal matter, it is presumptively prejudicial for a lawyer to make extrajudicial statements about the expected testimony of a party or witness.
d) No, because a criminal defense lawyer may not make any extrajudicial statements except to state the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved.

Rule 3.6 Cmt. 5(1)

96. At a press conference about the prosecution of an accused serial killer, the prosecutor stated that the police arrested the defendant at the scene of one of the crimes soon after the crime occurred, at 11 pm on Saturday. Was it proper for the prosecutor to disclose such information about the case to reporters?
a) Yes, because a lawyer in a criminal case may state the fact, time, and place of arrest.
b) Yes, because a prosecutor represents the people, and the public disclosures are necessary communications between a lawyer and his clients, the taxpayers.
c) No, because the defendant is on trial for murder, so special ethical duties automatically apply to the prosecutor's public statements.
d) No, because a lawyer in a criminal case may not disclose the time and place of arrest

Rule 3.6(b)(7)(i)

97. At a press conference about the prosecution of a notoriously vice-prone celebrity, the prosecutor stated that the District Attorney's office had filed charges against the celebrity for shoplifting and drug possession. The prosecutor then said he had no further comments and took no further questions. Was it proper for the prosecutor to disclose such information about the case to reporters?
a) Yes, because the prosecutor took no further questions and merely stated the nature of the case.
b) Yes, because in a criminal case, a prosecutor may state publicly that a defendant has been charged with a crime, as long as he does not include a statement that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
c) No, because a prosecutor should not make any public statement about a criminal case, unless the prosecutor has express authorization from a tribunal.
d) No, because in a criminal case, it is presumptively prejudicial for a prosecutor to state publicly that a defendant has been charged with a crime, unless he includes a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Rule 3.6 Cmt. 5(6)

Rule 3.7 Lawyer as Witness

98. Attorney normally represents Client in commercial litigation matters, but in one particular case, Attorney had to testify as a witness during the trial, so he arranged for another firm to represent Client during the trial at which Attorney testified. Client prevailed at trial, and the opposing party filed an appeal. Attorney's testimony from the trial is not an issue in the appeal; instead, the appeal focuses on the apportionment of fault and certain guarantees in a commercial contract. The firm that handled the trial did not do appellate work and ended their termination of Client after the trial ended in a favorable verdict. May Attorney represent Client in the appeal, even though Attorney testified at the trial?
    a) Yes, because the advocate-as-witness rule generally applies only to representation during the trial, unless the lawyer's testimony is an issue on appeal.
    b) Yes, because the opposing party brought the appeal after Attorney's client obtained a favorable verdict at trial using other trial counsel.
    c) No, because a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.
    d) No, because combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Rule 3.7

99. Attorney was a criminal defense lawyer and she represented Client, who was a defendant in a criminal prosecution. The prosecution called Attorney to the witness stand to authenticate a piece of evidence, which Attorney was willing to do because the authenticity of the evidence was not really in dispute; Attorney planned to use alibi evidence to defeat the charges against Client, which would make this piece of evidence relatively unimportant to the case. May Attorney testify in this manner in a case in which she represents the defendant?
    a) Yes, because the testimony relates to an uncontested issue.
    b) Yes, because testifying as a witness will give the lawyer a good opportunity to advocate on behalf of his client.
    c) No, because a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.
    d) No, because this is a criminal prosecution.

Rule 3.7(a)(1)

100. Client is an indigent criminal defendant and Attorney is his court-appointed counsel. The trial is taking place in a rural county where only a handful of lawyers practice law. Before appointing Attorney to represent Client, the court had tried to appoint five other local criminal defense lawyers, one after the other, but each was unable to provide

representation due either to a conflict of interest or because their current caseload would have precluded them from providing competent representation. In fact, Attorney was the last lawyer on the court appointments list. Unfortunately, Attorney also needed to serve as a witness during part of the trial, in order to authenticate a piece of evidence, and the authenticity of the evidence was a matter of dispute in the case. In addition, Attorney realized that his testimony would radically contradict the testimony of his own client, though Attorney still believed he could obtain an acquittal by impeaching the prosecution's star witness. May Attorney continue to represent Client and testify as a witness in this matter?

a) Yes, because the testimony relates to a contested issue, so the ambiguities in the dual role are purely theoretical.
b) Yes, because disqualification of the lawyer would work substantial hardship on the client.
c) No, because there is likely to be substantial conflict between the testimony of the client and that of the lawyer, so the representation involves a conflict of interest that requires compliance with the conflicts rules.
d) No, because a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness, and it may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

Rule 3.7 Cmt. 6

101. Attorney is representing himself in his divorce proceeding. Would it be proper, under the advocate-witness rule, for Attorney to testify as a witness on his own behalf in the proceeding in which he represents himself?

a) Yes, because disqualification of the lawyer either from representing himself or from testifying would work substantial hardship on the client.
b) Yes, because the advocate-witness prohibition does not apply to pro se litigants who are attorneys.
c) No, because a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.
d) No, because he will be unable to make objections to improper questions by opposing counsel during cross-examination.

See Ayres v. Canales, 790 S.W.2d 554 (Tex. 1990); Horen v. Bd. Of Educ., 882 N.E.2d 14 (Ohio Ct. Appl. 2007); Conn. Informal Ethics Op. 05-03 (2005)

102. A famous professional athlete faced charges for allegedly murdering his wife and her male companion one evening outside their Beverly Hills home. The defendant assembled a legal "dream team" of the five most famous criminal defense lawyers from around the country. One of the lawyers was in possession of a handwritten letter from one of the murder victims saying that a drug cartel had been making death threats against the victim for a few weeks. The evidence would have been somewhat exculpatory for the defendant, but the lawyer would have to take the witness stand briefly during the trial to authenticate the document or explain how he received it. The

document was a hotly contested piece of evidence in the case, but was not the only evidence pointing toward the defendant's innocence or guilt. The prosecutor wanted the court to disqualify the lawyer from representing the defendant if he testified about the letter. The defendant insisted that this would work a substantial hardship on him, because this particular lawyer was the only criminal defense lawyer in the county with an undefeated record – he had obtained acquittals in hundreds of criminal trials and had never lost a case. Should the court side with the defendant in this case and allow the lawyer to continue as part of his defense team?

a) Yes, because disqualification of the lawyer would work substantial hardship on the client.
b) Yes, because this is a criminal prosecution and the client has a Sixth Amendment right to counsel.
c) No, because disqualification of the lawyer would not work substantial hardship on the client.
d) No, because a lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness.

Rule 3.7(a)(3)

Competence, Legal Malpractice, & Other Civil Liability

(6–12%, 3-7 MPRE Questions)

- Maintaining competence – Rule 1.1
- Competence necessary to undertake representation – Rule 1.1
- Exercising diligence and care – Rule 1.3
- Civil liability to client, including malpractice – Rule 1.8
- Civil liability to nonclients – Rule 2.3
- Limiting liability for malpractice – Rule 1.8
- Malpractice insurance and risk prevention – Rule 7.2

Rule 1.3 Diligence

103. Attorney represents Client in patent infringement litigation. Client is a longtime business rival of the opposing party, and has successfully sued the opposing party before over an unrelated matter. The opposing party still loses his temper whenever someone brings up the previous lawsuit he lost, because he felt it was completely unfair and he nearly went bankrupt over it, and his marriage even failed due to the stress from the case and the burdensome verdict. On the eve of trial, Attorney mentions to Client that the opposing party will actually take the stand to testify in the case. Client instructs Attorney to bring up the time that Client won another lawsuit against the opposing party during cross-examination, merely to make the opposing party get upset. He assures Attorney that the opposing party will lose his temper on the stand, and will at least lose credibility before the jury, and may even slip and say something that would undermine his position in the case. Attorney simply refuses to bring up a matter merely to provoke an outburst from the opposing party during trial. Client believes Attorney has a duty to provide zealous advocacy and to pursue every advantage for Client's interests. Would it be proper for Attorney to refuse to bring up the prior unrelated lawsuit during his cross-examination, despite Client's instructions to do so?

a) No, because a lawyer has a duty to provide zealous advocacy and to pursue every advantage for Client's interests.
b) No, because provoking a hostile witness into an angry outburst on the stand violates the lawyer's strict duty to preserve the decorum of the proceedings.
c) Yes, because a lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.
d) Yes, as long as Attorney expects that opposing counsel would object to the line of questioning, and that the court would probably sustain the objection.

Rule 1.3 Cmt 1

LEGAL MALPRACTICE QUESTIONS FROM CLASS

104. As mentioned in class, what is currently the most frequently alleged malpractice error in Law Professional Liability claims?
   a) Missing Filing Deadlines/Statute of Limitations
   b) Conflicts of interest
   c) Breach of Confidentiality
   d) Failure to Communicate

105. Legal malpractice lawsuits require proving that the plaintiff would have prevailed but for the lawyer's negligence, and proving damages. As mentioned in class, which of the following is necessary to prove these elements of a typical malpractice action?
   a) A trial within a trial
   b) Reverse bifurcation of the trial
   c) Expert testimony by experienced judges
   d) A decision from the state bar disciplinary authority about whether the lawyer's conduct violated the Rules of Professional Conduct

PART II:

MATERIAL COVERED IN THE SECOND HALF OF THE SEMESTER

Rule 1.6 - Client confidentiality

(6–12% MPRE, 3-7 questions)

- Attorney-client privilege
- Work-product doctrine
- Professional obligation of confidentiality - general rule – Rule 1.6
- Disclosures expressly or impliedly authorized by client – Rule 1.6
- Other exceptions to the confidentiality rule – Rule 1.6

Rule 1.6 - Confidentiality

106. Attorney is a partner in a seven-lawyer firm. Client retained Attorney to handle his workers' compensation matter. Attorney did not discuss with Client that he would normally disclose to the other partners in the firm some of the details about his cases and clients. At the weekly meeting of the partners, as everyone discussed their pending cases, Attorney explained Client's case and solicited input from the partners. One partner had an ingenious suggestion that would have been very helpful to Client's case. Attorney mentioned to Client in their next phone call that one of his partners had made a brilliant suggestion that could turn the case in Client's favor. Client was upset that Attorney had discussed the case with anyone else. Is Client correct that Attorney should not have discussed the case with the others at the firm?
    a) Yes, because a lawyer has a duty to preserve the confidentiality of client information, even from other lawyers in his law firm, unless the client expressly authorizes disclosure.
    b) Yes, because the disclosure automatically created potential conflicts of interest for the other lawyers in the firm who might represent clients with adverse interests to this client.
    c) No, because lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.
    d) No, because in this case the disclosure yielded a brilliant suggestion from another lawyer that was very helpful to the case, which offsets any potential injury to the client from thme disclosure.

Rule 1.6 Cmt. 5

107. Client, a large auto dealer, retains Attorney to represent him in a bankruptcy case. Attorney's firm represents a bank, through which Client has several large loans that covered loans for the dealership. The loans are all contained in the bankruptcy. Attorney is concerned about whether there is a conflict, so he contacts a lawyer friend of his. While explaining his dilemma, Attorney tells Friend the name of the dealer. Is Attorney subject to discipline?
    a) Yes, because the attorney disclosed more than what details were necessary to accomplish his purpose.
    b) Yes, because attorneys shall not discuss client matters with other lawyers not also serving as counsel for their client.
    c) No, because attorneys may discuss their cases with other lawyers to ensure they are following the rules of professional conduct.
    d) No, because the restrictions regarding confidentiality only apply in criminal cases.

108. Ms. Mathis hired Attorney to represent her in a burglary charge. During a meeting with Attorney and with the understanding that any information would be confidential, Ms. Mathis advised Attorney about a murder she committed in which another person was on trial. Eventually, Attorney was able to negotiate a plea deal for Ms. Mathis on her burglary charge. Shortly after the plea deal was reached and Attorney's representation of Ms. Mathis concluded, Attorney discovered that the person who was on trial for the murder to which Ms. Mathis

admitted was found guilty by a jury and sentenced to life in prison without the possibility of parole. Attorney contacted the District Attorney's office that handled the murder trial and left an anonymous tip stating that Ms. Mathis confessed to committing the murder. Was Attorney's conduct proper?

a) Yes, because attorneys have a duty to reveal information, even if confidential, that relates to a crime or fraud committed by his client.
b) Yes, because attorneys no longer have a duty not to disclose information relating to the representation of a client once the attorney's representation of that client terminates.
c) No, because an attorney must not leave such tips anonymously, but must make themselves available to be questioned and for testifying if making any tip regarding a crime or fraud committed by one of his clients.
d) No, because attorneys cannot disclose client representation information and the death had already occurred, therefore, the disclosure would not prevent certain death or substantial bodily injury.

109. Attorney is representing a client who is a notorious celebrity-turned-criminal in a criminal case involving drug charges. Attorney is confused about whether he may publicly disclose information that he learned in confidence from his client if the information is already a matter of public record, and his research indicates there is a split of authority on this question. Attorney calls another lawyer who specializes in lawyer malpractice and lawyer disciplinary matters to seek advice about what course of action would comply with the Rules of Professional Conduct. The other lawyer, an expert in legal ethics, agrees to provide an opinion and to keep the conversation a secret. Attorney tries to use a hypothetical to explain the problem, but given the client's national reputation and celebrity status, the other lawyer knows immediately who the client is, and can easily surmise the nature of the confidential information. In addition, Attorney mentions that his client is secretly a bisexual and has been having an affair with both the male and female hosts of a nationally televised morning talk show, though neither of them is aware that the other is having an affair with the same person. Is Attorney subject to discipline for disclosing confidential information about his client?

a) Yes, because Attorney used a hypothetical that was obvious enough that the other lawyer immediately knew the identity of the client and the client's information that the Attorney was supposed to protect.
b) Yes, because the lawyer revealed more client information than was necessary to secure legal advice about the lawyer's compliance with the Rules
c) No, because a lawyer may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with the Rules, even when the lawyer lacks implied authorization to make the disclosure.
d) No, because a lawyer may generally disclose confidential information to another lawyer as long as the other lawyer promises to keep the conversation secret, and the other lawyer has a reputation for complying with the ethical rules.

Rule 1.6(b)(4) & Cmt 9

110. Attorney represents the family members of one of several people who died when a section of a sports arena collapsed. Attorney sent an investigator to talk to the property management

company that operated the arena, and that conversation led the investigator to a former employee of the management company, who explained that he had lost his job for insisting that the property managers address some structural problems and maintenance issues in the part of the arena that eventually collapsed. The disgruntled former employee gave the investigator copies of reports he had submitted to his employer, the property managers. Later, the lawyers representing the property management company and the sports arena owners learned that this investigator had talked to their former employee, and asked the court to disqualify Attorney from representing the plaintiffs in the case. They based their motion for disqualification on the ex parte communication with their former employee and taking receipt of a copy of the internal reports about the arena's maintenance problems. Under the Rules of Professional Conduct, should the court grant the motion to disqualify Attorney?

a) Yes, because the former employee appears to be unrepresented and could become a party to the litigation.
b) Yes, because the reports that the former employee had submitted to the property managers were privileged and confidential.
c) No, because the fact that there are co-defendants negates any claim of privilege and therefore nullifies the motion for disqualification.
d) No, because the former employee is no longer working for the property management company, and the reports are not privileged.

111. Small Firm is considering hiring Attorney, who currently works for Big Firm, in a lateral move. Attorney is a transactional lawyer, so none of the information he possesses is "privileged" in that it was not in anticipation of litigation. In order to check for conflicts of interest, Attorney discloses to Small Firm the clients he has represented while at Big Firm. This includes the names of persons and issues involved in the matters, as well as names and issues for matters handled by other lawyers in the firm about which Attorney had overheard or otherwise acquired some confidential information. Small Firm uses the information solely for checking about potential conflicts of interest before making an offer of employment to Attorney. Attorney did not ask any of the clients for authorization to disclose the representation or the nature of the issues involved in their matters. Was it proper for Attorney to disclose this confidential information without the consent of the clients?

a) Yes, as long as Attorney informs the clients subsequently that such disclosures have occurred.
b) Yes, because Attorney disclosed the information solely to detect and resolve conflicts of interest arising from the lawyer's change of employment.
c) No, because Attorney did not obtain consent or authorization from the clients before disclosing this information.
d) No, because Attorney disclosed not only the clients that he himself represented, but also clients of other lawyers in his firm.

Rule 1.6(b)(7); ABA Formal Op. 09-455

112. Attorney works for a state-operated legal aid clinic, which under a state statute counts as a social service agency. The state has a mandatory reporting law for child abuse, which statutorily requires employees of social service agencies to report any instances of child abuse

they discover among their clients or constituents. Attorney met with a prospective client and her child to discuss possibly representation at a welfare termination hearing. The prospective client did not meet the agency's guidelines to be eligible for free legal representation, however, so Attorney had to decline the case. Nevertheless, it was evident during the interview that the prospective client's child was the subject of serious physical abuse – a black eye, cigarette burns on her arms and neck, bruises on the backs of her legs, and a demeanor of cowering in fear around adults. Attorney wanted to talk to the mother about it, but has been unable to reach her since declining to represent her. Must Attorney report the prospective client for child abuse?

a) Yes, because the mother was only a prospective client who was ineligible for representation by Attorney, so Attorney owed her no duty of confidentiality.
b) Yes, because state law requires the disclosure, and a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law.
c) No, because the exceptions to the duty of confidentiality merely permit disclosure, so Attorney "may" report the incident, but there is no duty to do so.
d) No, because Attorney met the prospective client only once, and does not know if the abuse occurred at the hands of her mother, or if the child was the victim of a crime at the hands of someone else, and it is not the mother's fault.

Rule 1.6(b)(6)

Regulation of the legal profession

Rules 5.1-5.5, & 8.1-8.5

(6-12% of MPRE)

Rule 5.2-5.3 - Responsibilities of a Partner or Supervisory Lawyer

113. Attorney works for a mid-size law firm that employs two or three law students every year as summer associates. The manager of the student associates assigns one of them to work on Attorney's pending antitrust case, in addition to assignments for other lawyers at the firm. While researching an important issue in the case, the summer associate discovered an older Supreme Court decision that was unfavorable to their client. The summer associate decided not to tell anyone about the case, as the opposing party seemed to have overlooked it in their briefs. Attorney was not aware of any of this until they were on a break during their hearing. The hearing was going well for their side, and the associate boasted to Attorney about "burying" that Supreme Court case he had found. Attorney said, "Well, you should have told me about it at the time, but there is no point in bringing it up now, as it appears opposing counsel overlooked it and the hearing is going our way." The judge's clerks, however, found the case, and the judge queried the lawyers about how they could have missed it. Opposing counsel admitted he had been negligent in doing legal research on the matter, and Attorney recounted the story about the summer associate hiding the case from him. Is Attorney now subject to discipline for what the summer associate did?
    a) Yes, because lawyers are automatically liable for the misconduct of nonlawyer employees at their firm; the lawyer had an affirmative duty to find the case himself and disclose it.
    b) Yes, even though he was unaware of the violation at the time, Attorney ratified the summer associate's conduct after he learned about it.
    c) No, because Attorney did not know about the associate's conduct at the time it occurred, or while submitting briefs, or even when the hearing began.
    d) No, because opposing counsel was negligent in failing to research the issue, and if he had, he would probably have discovered the case on his own.

114. Attorney hired Receptionist because of her good looks and because her brother was in Attorney's college fraternity, but he did not check into her background at all or ask for references. Receptionist had access to all files, records, and accounts in the firm, and three months later, there arose a problem with funds missing from client trust accounts. Circumstantial evidence pointed to Receptionist as the culprit, and at this point Attorney learns that Receptionist has an arrest record for theft and embezzlement on several occasions in the past. Attorney lectures Receptionist about it but allows her to keep her job because nobody can prove her guilty - the firm does not keep the type of records that would enable anyone to prove where the missing funds went. When additional complaints arise over misappropriated client trust funds, would Attorney be subject to discipline?
    a) Yes, because lawyers face strict liability (automatic responsibility) for misappropriations of client trust funds.
    b) Yes, because he was negligent in the hiring and supervision of nonlawyer employees.

c) No, because Attorney could not reasonably have known about the arrest record of someone merely interviewing for a receptionist position, and there is still no way to prove that Receptionist actually stole the money.
d) No, because Receptionist is not a lawyer and therefore not subject to the Rules of Professional Conduct.

115. Attorney is a fifth-year associate at a large national law firm. As a senior associate, Attorney can attend business meetings of the firm, but cannot vote on any decisions. Attorney is aware that the firm has no measures in effect that would give reasonable assurance that the paralegals are observing the confidentiality and conflict of interest rules that are part of the professional obligations of lawyers. Attorney mistakenly believes, however, that the rules apply only to the lawyers in the firm, not to the clerical staff of paralegals. When a paralegal in a separate practice group from Attorney violates the rules and the state disciplinary authority investigates the firm's ethical compliance measures, will Attorney be subject to discipline?
a) Yes, because any attorney with enough seniority to attend firm business meetings with the partners has shared responsibility to ensure that measures are in effect to keep the paralegals in compliance with the rules.
b) No, because Attorney is not a partner nor in a comparable managerial position to implement such measures, nor does it appear that the paralegal was under Attorney's direct supervision
c) Yes, because Attorney is aware that the firm has no measures in effect that would give reasonable assurance that the paralegals are observing the confidentiality and conflict of interest rules
d) No, because Attorney honestly believed that the Rules of Professional Conduct do not apply to the paralegals, and therefore falls under the good-faith exception to the rule.

116. Attorney employs an experienced legal assistant to manage administrative matters in the firm, including the client trust accounts. Attorney provided the legal assistant with detailed instructions about client trust accounts, including the specific kinds of records to keep, what funds to deposit there, and under what circumstances to withdraw funds. Attorney also sent the legal assistant to attend CLE courses and workshops on IOLTA accounts and managing firm records. Due to the legal assistant's thorough training, competence, and experience, Attorney reviewed the client account books cursorily once a year during the annual review of the employee. Eventually, an audit by the state disciplinary authority revealed numerous discrepancies in the bookkeeping regarding the IOLTA accounts and some prohibited commingling of client funds with the firm's funds. Attorney had no actual knowledge of the discrepancies or problems regarding the client trust accounts. Is Attorney subject to discipline?
a) Yes, because Attorney must manage all client trust accounts personally and cannot delegate such matters to support staff at the firm.
b) Yes, because Attorney did not make reasonable efforts to ensure that the legal assistant's conduct was compatible with the professional obligations of a lawyer.
c) No, because Attorney made reasonable efforts to ensure that the legal assistant's conduct was compatible with the professional obligations of a lawyer by providing extensive training and periodic reviews.
d) No, because Attorney lacked actual knowledge of the discrepancies, and the legal assistant is not subject to the Rules of Professional Conduct.

Rule 5.4 - Professional Independence of a Lawyer

117. Attorney was part of a partnership before he died. He left his nephew as his sole heir. The partnership agreement, as written, provides that the firm should pay the certain amounts to the nephew. Those amounts are $210,000, for Attorney's share of the firm's assets; a $500,000 death benefit, provided for all shareholders in the partnership; and $17,500 for fees that Attorney earned on recent cases, but had not yet received. Under the Model Rules, which of the following represents the most that the firm may properly pay to the decedent's nephew?
    a) Only the $210,000 for Attorney's share of the firm's assets.
    b) $727,500, for Attorney's share of the firm's assets, his of uncollected fees, and the death benefit
    c) Only $17,500 for Attorney's uncollected fees.
    d) Only $500,000 for the death benefit, as death benefits come under a special exception under the Rules of Professional Conduct.

118. The American Liberties Foundation, a tax-exempt 501(c)3 nonprofit corporation, hired Celebrity Attorney to represent a class of defendants who want to eliminate federal decency standards that prohibit frontal nudity and pornographic sex scenes on broadcast television, as promulgated and enforced by the Federal Communications Commission. Celebrity Attorney prevailed in the case, winning the class members the right to broadcast pornography to school-age children on broadcast television in the afternoon. The court also awarded substantial attorney fees to the prevailing party in the case. Celebrity Attorney shares the fees with the American Liberties Foundation, and gives 85% of the fees to the nonprofit. Which of the following is true about this action by Celebrity Attorney?
    a) The fee-sharing arrangement is improper because Celebrity Attorney gave most of the money to the nonprofit, rather than splitting it evenly as the Rules require.
    b) The fee-sharing arrangement with the nonprofit entity is proper.
    c) The fee-sharing arrangement is improper because the Foundation is not a law firm or owned by lawyers, so this action constitutes sharing legal fees with nonlawyers.
    d) The fee-sharing arrangement would have been proper only if the Foundation collected all the fees awarded by the court, and then paid Attorney a reasonable pro rata share based on the number of hours worked and the customary lodestar rate in that state.

119. Attorney could not find a full-time job after law school, so instead he works on a contract basis for other firms. Attorney also signs up with a legal temp-work agency, a company owned by nonlawyers that places lawyers in temporary assignments at law firms that need an extra associate on a short-term basis. Law firms contact the legal temp-work agency when they need lawyers for a special project or assignment, and the agency sends them several resumes from which to choose the temporary associates they want. Through this temp-work agency, Attorney receives a three-month assignment at Big Firm conducting document review as part of litigation discovery. The firm pays Attorney $75 per hour, and pays the temp-work agency a placement fee of 7% on whatever Attorney earns. Big Firm, in turn, passes the Attorney's $100/hour fees and the 7% placement fee through to its clients as an item on the client's bill. Is this arrangement proper?
    a) It is proper for Big Firm to hire Attorney on an hourly, short-term contract basis and to pass his fees through to the client, but it is improper for Big Firm to pay the temp-work agency a percentage, as this constitutes sharing legal fees with the nonlawyers who own the temp-work agency.
    b) It is proper for Big Firm to pay Attorney and the temp-work agency, but it is improper for Big Firm to pass the costs through to their clients.
    c) It is proper for Big Firm to pay the placement fee to the agency, to pass the fees through to the clients, and to pay Attorney's hourly rate out of the fees it receives from clients.

d) It is proper for Big Firm to pay a temp-work agency and to pass these costs through to the clients, but it is improper for Attorney to work on a case on an hourly-fee basis without becoming an associate at Big Firm.

[see ABA Formal Opinion 88-356]

120. After a long, distinguished career as a solo practitioner in a major city, an elderly attorney agrees to join a newer law firm on the condition that the firm would pay $1000 per month after the attorney's death to his sister, who is 74 years old, until her death. The attorney's sister is not a lawyer. The firm agrees to this arrangement, in addition to making the attorney a partner with a 15% share in the firm. Is this arrangement proper?
   a) No, because the sister is not a lawyer and therefore cannot share in the legal fees received by the firm.
   b) No, because payments that continue until the sister's death could go on indefinitely, and this goes beyond the Model Rules' stipulation of "a reasonable period of time."
   c) Yes, because it is the payment of money over a reasonable period of time after the lawyer's death to a specified person.
   d) Yes, because the Contracts Clause of the Constitution guarantees the freedom of contract, so lawyers and firms can make whatever compensation arrangements they want.

121. Attorney agrees to buy the successful law firm of a fellow attorney who recently succumbed to terminal cancer. The sale includes the office building, the library and furnishings, and the good will of the firm, and conforms to the provisions of Rule 1.7. The purchasing attorney pays $100,000, the agreed-upon purchase price, to the executor of the deceased attorney's estate, but the executor is not a lawyer. The funds for the purchase came from the contingent fees in a recent personal injury case won by the purchasing attorney. Was this transaction improper?
   a) Yes, because the lawyer is sharing legal fees with a nonlawyer, the executor.
   b) Yes, because the funds for the purchase came from a contingent-fee case.
   c) No, because a lawyer purchasing the firm of a deceased lawyer may pay the executor the agreed-upon purchase price.
   d) No, because even a nonlawyer executor of a firm functions temporarily in the role of a lawyer for purposes of the Model Rules.

122. Three law partners have decided to incorporate their firm instead of continuing as a partnership, as their malpractice insurer has offered them a lower rate on their premiums if their incorporate and thereby reduce some of their joint liability. They also want to make a clearer track for associates to become shareholders after reaching certain performance benchmarks. The articles of incorporation provide that when a shareholder dies, a fiduciary representative of the estate may hold stock in the corporation for a reasonable time during administration of the estate before transferring it to the heirs. Which of the following may the partners properly do as they incorporate?
   a) They may incorporate their law practice and convey an interest in the corporation to their heirs, such as spouses or children.
   b) They may stipulate that the corporation will hold all funds in a single operating account, and thereby avoid holding client funds in separate IOLTA accounts.
   c) They may provide, as stated, that when a shareholder dies, a fiduciary representative of the estate may hold stock in the corporation for a reasonable time during administration of the estate before cashing out the shares and transferring the funds to the heirs.

d) They may not have a plan whereby associates acquire shares merely by working at the firm for a certain number of years and bringing in a certain number of clients.

Rule 5.4(d)(1)

123. Holy Trinity Church retains Attorney to challenge a new zoning regulation that would prohibit the church from constructing a new, expanded sanctuary on its property, attached to the existing church. The church cannot afford to pay Attorney, and it is seeking only a declaratory judgment (that the regulation is invalid) rather than money damages. Attorney agrees to take the case and then split any court-awarded legal fees with the church if they prevail. They win a favorable judgment; the court declares the regulation unconstitutional and awards legal fees, which Attorney shares with the church. Is the fee sharing proper?

a) No, because a lawyer or law firm shall not share legal fees with a nonlawyer.
b) No, because the award of legal fees to a church violates the separation of church and state, and a lawyer is under oath to uphold the Constitution.
c) Yes, because a lawyer may share court-awarded legal fees with a nonprofit organization that retains the lawyer in a matter.
d) Yes, as long as the lawyer takes only 30% of the legal fees, and does not claim a tax deduction for the 70% shared with the church.

Rule 5.5 - Unauthorized Practice of Law; Multijurisdictional Practice of Law

124. Attorney is a licensed lawyer in a New England state, but has an office and represents clients exclusively in a southern state. Attorney confines her practice to immigration law, representing foreign-born clients in immigration hearings. A relevant federal statute permits nonlawyers to appear as representatives for immigrants when they appear before the immigration agency. Many of Attorney's clients have applied for a spousal visa after marrying an American citizen, and some clients had a Notary Public from their home country or an un-ordained lay minister from their home church conduct their wedding ceremony. In addition, some were previously married and divorced in their home country, where such transactions are informal and have no official documentation. There is often some question about whether the marriage is valid under local state law, which is a prerequisite for obtaining certain types of visas. Which of the following is correct?
    a) Attorney's conduct is proper, because she is merely providing services authorized by federal law, which preempts state licensing requirements.
    b) Attorney's conduct is proper because she has specialized in immigration law, which is entirely federal and involves no questions of state law.
    c) Attorney is probably subject to discipline for the unauthorized practice of law in this southern state.
    d) Attorney's conduct is improper if she does not file a pro hac vice appearance in each case.

125. A husband and wife are both attorneys in Puerto Rico, though they attended law school in Florida. They have practiced in Puerto Rico for ten years and are duly admitted to the bar there. Last year, they moved to Florida, where the wife took the state bar exam and gained admission to the Florida bar. They have now opened a law office in Florida with both of their names listed on the firm letterhead, followed by the phrase "Attorneys at Law." The husband confines his practice exclusively to Puerto Rican clients who are living in Florida or are visiting there; the wife handles all other legal matters. It is proper for them to use such letterhead?
    a) Yes, because Puerto Ricans are U.S. Citizens, and they both attended an American law school.
    b) Yes, because the husband confines his practice to Puerto Rican immigrants and visitors, whom he would be able to represent if they were back in Puerto Rico.
    c) No, because the letterhead reveals that the wife is aiding her husband in the unauthorized practice of law.
    d) No, because identifying themselves as law firm partners is misleading, and does not apprise readers to the fact that they are actually married.

126. A nonlawyer social worker contacts Attorney asking for advice about how to help poor tenants in the neighborhood in disputes with landlords over housing code violations and unreturned security deposits. The social worker also needs guidance about how to appeal an adverse decision from a welfare agency against one of her constituents. Attorney provides extensive advice on specific procedures the tenants can follow to have a court hold their rent in escrow until the landlords remedy the housing code violations, and explains how to file claims for unreturned security deposits plus treble damages. Attorney does none of the legal work, but explains to the social worker exactly what to do, and is available to answer follow-up questions by the social worker about how to complete the relevant legal forms and documents. Attorney coaches the social worker on how to represent her constituent at an administrative hearing as a nonlawyer representative. The landlord even meets with one of the social worker's constituents and explains how to proceed as a pro se defendant against a landlord in an eviction action. Several landlords trace the chain of excellent advice back to Attorney and file a grievance with the state bar, accusing Attorney of assisting others (especially the social worker) in practicing law without a license. Is Attorney subject to discipline?
    a) No, because none of the actions Attorney advised are sufficiently law-related.

b) Yes, because all the actions Attorney advised were essentially the practice of law by nonlawyers.
c) Attorney is not subject to discipline for advising the social worker, but he is subject to discipline for actually meeting with a pro se defendant and giving legal advice about how to handle her own case.
d) No, because lawyers may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, including social workers.

127. Attorney obtained a license to practice law in the state where she attended law school. After a few years, Attorney took a job in a neighboring state, moved there, and obtained a license to practice law in her new state. She kept her original license, in her former state, but went on inactive status there in order to avoid the burdensome annual bar membership fees in a state where she no longer practiced. Eventually, her new firm loses its anchor clients and recommends that Attorney drum up some new business among her former clients. Attorney sends letters to all of her former clients in her former state, offering to represent them in any new legal matters they have, or in updating wills or contracts that she previously did for them. She travels about once per week to her home state and meets with clients in a library study room at the law school she attended. A few of her former clients refer her to friends or relatives who become new clients, and Attorney's new employer is thrilled. Which of the following is true?
a) Attorney is subject to discipline for practicing law in her home state while on inactive status, but her supervising lawyer is not subject to discipline because she was admitted in that state at the time he hired her.
b) Neither Attorney nor her supervising lawyer would be subject to discipline, because she merely went on inactive status in the other state, but she still holds her license there.
c) Only the supervising lawyer is subject to discipline, because he encouraged his subordinate to solicit out-of-state clients in a state where he is unlicensed, but Attorney can still practice law there.
d) Both Attorney and her supervising lawyer are subject to discipline because she is on inactive status in her home state, but is soliciting clients and handling their matters there regularly.

128. Client retains Attorney, who has represented Client in the past, to represent him in litigation in another state, where Attorney is unlicensed. The matter requires some knowledge of the law of the state where the trial will occur. Attorney files a pro hac vice appearance in the matter, which the local court accepts, and begins preparing for trial there. Attorney and Client never discuss the particulars of filing a pro hac vice appearance; nor did they discuss why it would be necessary. Client never asked if Attorney could practice law in the other jurisdiction, and Attorney never explained the licensing requirement and that he would need permission from the court there in order to handle the case. Attorney prevailed in the matter on behalf of the client, kept his agreed-upon contingent fee, and gave the client the remaining proceeds and unused retainer funds. Which of the following is true?
a) Attorney is subject to discipline for accepting a contingent fee in a proceeding in another state where Attorney does not have a license to practice law.
b) Attorney's conduct was proper, as the court accepted the pro hac vice appearance, and it made no difference to the Client whether the Attorney had a license to practice there on an ongoing basis, or could appear only on a pro hac vice basis.
c) Attorney's conduct was proper, as long as Attorney can acquire the necessary knowledge of local laws with a reasonable amount of study.
d) It was improper for Attorney to fail to disclose to Client that he was unlicensed in the other state and would need to file a pro hac vice appearance, especially given that the matter required some knowledge of local laws.

129. Attorney is a joint-owner of a collection agency. Whenever the agency's initial efforts to collect prove unsuccessful, the staff at the agency sends the delinquent debtor a demand letter on Attorney's law firm letterhead, threatening to commence litigation if the matter is not resolved within 30 days. Attorney authorized the staff at the agency to send these demand letters, but Attorney is too busy to review all the letters himself. The collection agency staff signs the letters on behalf of Attorney's firm. Will Attorney be subject to discipline for authorizing these letters?
   a) Yes, because the letter contains a specific threat of litigation and the facts do not specify whether Attorney will actually follow through and file any claims in court.
   b) No, because the collection agency has other owners besides Attorney, so it is not necessarily his responsibility to supervise the employees there.
   c) No, because the staff at the collection agency are acting on Attorney's behalf with his explicit authorization
   d) Yes, because Attorney is essentially facilitating the collection agency in the unauthorized practice of law.

130. Attorney hired a second-year law student as a clerk. The law student is not licensed. Attorney has the law student perform a variety of tasks. Which of the following tasks, if performed by the law student, would mean that Attorney is subject to discipline?
   a) Conducting online legal research and writing research memoranda.
   b) Drafting a customized retainer agreement for Attorney to use with clients pursuing claims against a government agency
   c) Interviewing accident witnesses and potential character witnesses, and asking them to certify the accuracy of the student's written notes.
   d) Reaching settlement agreements with insurance companies before Attorney actually files any lawsuit in the matter.

Rule 5.5(b) & Cmt 2

Rule 5.6 - Restrictions on Rights to Practice

131. Attorney wants to retire from practice due to a chronic illness, and decides to sell his practice to another lawyer. The sale agreement complies with the Model Rules regarding the sale of a law practice. As part of the sale agreement, however, Attorney stipulates that he will not resume the practice of law in that jurisdiction, even if medical breakthroughs cure his chronic illness and restore him to perfect health. The purchaser of the firm is aware that research for a cure of Attorney's illness is well underway, and is concerned because it is foreseeable that Attorney would recover and want to return to the practice of law in a few years. Is it proper for Attorney and his buyer to include this provision of the sales agreement for the law firm?
    a) Yes, because the rule against restrictions on the right to practice does not apply to the sale of a law practice.
    b) No, because a lawyer shall not participate in offering or making an agreement that restricts the right of a lawyer to practice.
    c) No, because a lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement.
    d) Yes, because the Contracts Clause of the U.S. Constitution would prohibit a state from restricting the right for a lawyer to include certain contract provisions in a sale agreement.

132. Attorney is 60 years old and owns his own firm. He hires New Partner, a younger lawyer, to help manage the growing caseload. The partnership agreement provides that after Attorney retires, at age 65, the firm will pay him $5000 per month as a benefit as long as Attorney does not re-enter law practice anywhere. Which of the following is true regarding this partnership agreement?
    a) The agreement is unenforceable, according to the Rules of Professional Conduct.
    b) The agreement is proper, according to the Rules of Professional Conduct.
    c) Attorney is subject to discipline for creating this partnership agreement, in which he agrees never to practice law again as a condition of receiving a retirement benefit.
    d) New Partner is subject to discipline for entering into this type of partnership agreement, which restrains Attorney from practicing law.

133. Attorney agrees to join a new firm as one of its shareholders, and to merge his practice with that of the new firm. The shareholder agreement includes a provision that if Attorney retires from the firm and begins collecting the firm's retirement benefits, he cannot practice law with another firm, government entity, or as a solo practitioner. Otherwise, the agreement stipulates, Attorney will forfeit the retirement benefits. The firm is concerned that Attorney will want to represent clients occasionally in his retirement, and may steal some clients from the firm. Is this agreement proper?
    a) No, because prohibiting a lawyer from practicing after retiring from the firm is a restriction on the right of the lawyer to practice, in violation of the Model Rules.
    b) No, because it is motivated by a desire to keep Attorney from "poaching" clients, and thus limits the freedom of clients to choose a lawyer.
    c) Yes, because the Contracts Clause of the U.S. Constitution would prohibit a state from restricting the right for a lawyer to include certain contract provisions in a sale agreement.
    d) Yes, because the rule against restrictions on the right to practice have an exception for agreements concerning benefits upon retirement.

Rule 5.7 - Responsibilities Regarding Law-related Services

134. Attorney practices corporate securities law in a Wall Street firm. Attorney is also one of three owners of a financial forecasting consulting firm, Trends Tomorrow, which employs several well-known economists and financial analysts. Attorney refers clients to this firm when they need consultants to advise them about the timing of new stock offerings, projections for share price and profit forecasts, and so on. Attorney duly discloses to clients before referring them that she is a part owner of the consulting firm and that they are free to shop around and hire other consultants if they prefer; she also explains that the Trends Tomorrow is not a law firm and provides only financial forecasting services. Trends Tomorrow is located in the building next door to Attorney's Wall Street firm, and when clients go there, Trends Tomorrow explains as part of their service contract that they provide no legal services. Eventually, complaints emerge that Trends Tomorrow has been leaking confidential client information to the press, and that the consulting firm appears to have conflicts of interest, advising competing clients about strategies to encroach on each others' market share. Attorney faces disciplinary charges for these violations, but Attorney claims that the complaining clients need to show that the disclosures provided were inadequate to apprise them of the fact that the Rules of Professional Conduct for lawyers would not apply to Trends Tomorrow. Who has the burden of proof on this issue?
    a) Clients have the burden of proof to show that the lawyer failed to take reasonable measures to ensure that clients had adequate information about the inapplicability of the Rules of Professional Conduct.
    b) Attorney has the burden of proof to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding.
    c) The burden is on the disciplinary authority to show that the lawyer failed to take reasonable measures to ensure that clients had adequate information about the inapplicability of the Rules of Professional Conduct.
    d) The burden is on the press to show that the lawyer failed to take reasonable measures to ensure that clients had adequate information about the inapplicability of the Rules of Professional Conduct.

135. Which of the following is one of the listed "law-related services" found in the official Comment to Rule 5.7, related to lawyers providing such services?
    a) Photocopying the transcripts of depositions and hearings
    b) Preparing a client to testify before a government agency
    c) Environmental consulting
    d) Providing clients with a complete accounting of the use of retainer funds during the course of representation

136. Which of the following is NOT in the list of "law-related services" found in the official Comment to Rule 5.7, related to lawyers providing such services?
    a) Economic analysis
    b) Social work
    c) Psychological counseling
    d) Photocopying the transcripts of depositions and hearings

137. Attorney has expertise in launching new businesses. His undergraduate major was entrepreneurship, and he has numerous connections among investment bankers, and venture capitalists in the area. Entrepreneurs seek him out to incorporate their new businesses and help them find loans and equity investors for startup. Attorney drafts articles of incorporation and bylaws, handles name registration

with the Secretary of State, and arranges meetings with local commercial bankers and potential investors, and helps write business plans and market analysis in anticipation of these meetings. Which of the following is true regarding Attorney's activities?

a) Both the legal services (incorporating) and the law-related related services (writing business plans and arranging investor meetings) would be subject to the requirements of the Rules of Professional Conduct.
b) It is improper for Attorney to provide both the legal services and the law-related services.
c) The legal services (incorporating) would be subject to the requirements of the Rules of Professional Conduct, but the law-related related services (writing business plans and arranging investor meetings) are not subject to the Rules.
d) Only the law-related related services (writing business plans and arranging investor meetings would be subject to the requirements of the Rules of Professional Conduct, and not the legal services (incorporating).

138. Attorney practices commercial real estate law in the state capitol, but also provides legislative lobbying services for some clients, especially for firms seeking lucrative government contracts. For example, working on a retainer, Attorney successfully lobbied his state legislature to privatize most of its prison system, and to give his client the contract to operate the private prisons. His client continues to pay the retainer and Attorney continues to lobby for longer statutory minimum sentences for crimes, so that the private prisons remain full. Attorney uses a separate retainer agreement for lobbying work, which specifies that he is not representing the client as their lawyer, but only as a lobbyist, and is not providing legal advice or legal services under their agreement. Meanwhile, one of attorney's other clients faces charges of securities fraud and hires Attorney to handle his appeal, which includes arguing that the mandatory minimum sentences are unconstitutional. The criminal defendant signs a written waiver of the potential conflict of interest the Attorney has over the mandatory sentencing issue, but the Attorney fails to obtain a similar waiver from the private prison client on whose behalf he lobbied for the mandatory sentencing laws. If Attorney is successful in having mandatory sentencing laws declared unconstitutional on behalf of his criminal client, will he be subject to discipline for the conflict of interest with his lobbying client?

a) No, because lobbying is a law-related service that a nonlawyer could do, and is distinct from the lawyer's legal services, according to the retainer, so the conflict of interest rules do not apply.
b) Yes, because he lobbied for people to suffer longer periods of incarceration merely to help his corporate clients earn more profits, which is unconscionable.
c) Yes, because the fact that his legal client signed a waiver of the conflict of interest means that a reciprocal waiver was necessary from the lobbying client.
d) No, because lobbying the legislature receives special constitutional protection due to its integral part in a functioning democracy.

.

Regulation of the Profession, cont. …

Rules 8.1-8.5 - Maintaining the Integrity of the Profession

Rule 8.1 Bar Admission and Disciplinary Matters
Rule 8.2 Judicial and Legal Officials
Rule 8.3 Reporting Professional Misconduct
Rule 8.4 Misconduct
Rule 8.5 Disciplinary Authority; Choice of Law

Rule 8.1 Bar Admission and Disciplinary Matters

139. A recent law school graduate has applied for admission to the bar in her home jurisdiction. The application forms ask applicants to list all arrests and convictions for misdemeanors or felonies. The graduate had two minor convictions for underage drinking or possession of alcohol when she was in high school, eight years earlier, and her attorney told her at the time that the state would expunge her records when she turned 18, meaning she would never have to report the convictions. In addition, she had one arrest in college where a shop owner mistakenly thought she was a shoplifter who had visited the store the day before, but the district attorney had not pressed charges once it became obvious that this was a case of misidentification. On her bar application, the applicant did not report the convictions from high school or the arrest from college, because she thought the earlier convictions were no longer on her record, and she had cleared herself of all wrongdoing after the arrest, resulting in dropped charges. Nevertheless, the state bar discovered the convictions and arrest during its comprehensive criminal background check, which it conducts for all applicants. The state bar admissions board denied her application, and filed a grievance against the applicant for making a false statement on her application. Did the applicant violate the Model Rules of Professional Conduct in this case?
    a) Yes, because she knowingly made a false statement of material fact on her application for admission to the state bar.
    b) Yes, but only regarding the convictions from high school, as the arrest was clearly a case of misidentification that did not result in formal criminal charges.
    c) No, because the applicant is not yet a lawyer, and the ethical rules governing lawyers did not yet apply to her during the application stage.
    d) No, because the earlier convictions occurred when she was a minor, and the state promised to expunge her records, and the arrest during college did not result in formal criminal charges.

140. An attorney agreed to write a recommendation letter for admission to the bar on behalf of the law student who had worked for him part-time throughout law school. The student had behaved appropriately, and in compliance with the ethical rules for lawyers and law firms, at all times during her employment. On one occasion, the student intern had confided in the attorney that she had faced academic discipline for plagiarism on a law school seminar paper, and that she was very ashamed of herself about the incident and had accepted a failing grade in the class. She took an overload of courses the following semester to make up for the lost credits from the course she failed. The attorney did not mention this incident at all in his "character and fitness" recommendation to the state bar, because he felt it was out of character and did not represent the way the student normally behaved at the workplace. He also assumed the student would report it herself or that the bar would inquire about the failing grade on her law school transcript. The bar admissions board eventually learned about the incident only from the law school administration, which turned over the student's disciplinary records. Could the attorney who wrote the favorable recommendation be subject to discipline for filing to mention or address the incident?

a) Yes, because the attorney had a conflict of interest in the situation, as it would be in his best interest for his own employee to gain admission to the bar.
b) Yes, because he did not disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter in connection with an admission to the state bar.
c) No, because the attorney had no duty to report the incident, given that the bar could easily discover it from another source (as it did), and because the attorney reasonably believed the incident did not reflect the true character of the applicant.
d) No, because the student intern had told him about the incident in confidence, and it was not related to her work at the firm, so the attorney had a duty of confidentiality under Rule 1.6.

141. An attorney faced a grievance over a client complaint regarding his neglect of the client's matter. The attorney knew that he had never actually agreed to represent the client, but instead had met with the client once, determined that he had a conflict of interest, and he had refused to represent the potential client by both oral and written communication. The client failed to hire another lawyer, and mistakenly (unreasonably) believed that the attorney she had met with was, in fact, representing her. Because he knew the case was without merit, he did not respond to the state bar when the disciplinary authorities requested a formal response from him. Ultimately, the client withdrew her complaint and the disciplinary authorities dismissed the grievance as frivolous. The board then commenced disciplinary proceedings against the attorney for failing to respond to its requests in the case it had dismissed. Was the attorney's refusal to respond permissible in this case?
a) Yes, because he knew the case was without merit as he had never agreed to represent the complainant, and the board's determination vindicated him in this regard.
b) Yes, because it was improper for the board to commence new proceedings that it based on prior proceedings that it had dismissed for being without merit.
c) No, every lawyer has the right to refuse to answer, according to the Fifth Amendment.
d) No, because in connection with a disciplinary matter, a lawyer must not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.

Rule 8.1(b)

142. An attorney agreed to represent an applicant to the state bar – a recent law school graduate – in her hearing before the state bar admissions board, which had tentatively denied her application for making false statements on her bar application. The board formally requests the applicant and her attorney make full disclosures about the events in question to help resolve the matter. The client (bar applicant) explains the entire situation to her attorney, including some self-incriminatory information – it turned out that the applicant's misbehavior had been much more serious than the board was aware.

The attorney did not disclose this new information, which would have made it much clearer to the board that the applicant lacked the character and fitness to practice law. Could the attorney be subject to discipline for this action?

a) Yes, because a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.
b) Yes, because the lawyer knows that the applicant actually lacks the requisite integrity to be a lawyer.
c) No, because a lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including the duty of confidentiality.
d) No, because the state bar cannot ask other attorneys to disclose unfavorable information about third party applicants.

Rule 8.1 Cmt. 3

143. An attorney faced a disciplinary action over accusations that she had neglected a client matter and had failed to communicate adequately with the client. The state disciplinary authority requested a written account of her version of what happened, and asked her ten or twelve probing questions during the hearing. At the conclusion of the hearing, the disciplinary tribunal decided that the client complaint was without merit and cleared the attorney of all charges in that regard. At the same time, it also concluded that the attorney had answered one question during the hearing untruthfully, and had made a minor misrepresentation regarding dates in her written statement to the board. The tribunal therefore filed a separate grievance against the attorney for these misrepresentations. Could the attorney be subject to discipline for incidental misrepresentations to the grievance committee if the same committee had decided that the underlying case had no merit and issued a dismissal?

a) Yes, because it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct.
b) Yes, because her the dismissal of the original complaint may have been in reliance upon some of her false statements, making it seem that the original complaint was probably valid as well.
c) No, because the board lacks jurisdiction to commence disciplinary proceedings when there is not a client complaint pending.
d) No, because the misstatements were part of a proceeding that has ended in a complete dismissal.

Rule 8.1 Cmt. 1

144. An attorney faced disciplinary action over a client grievance. The disciplinary tribunal asked the attorney several probing questions about her handling of client funds.

The attorney actually used some client funds to pay off a gambling debt, so she is less worried about a temporary suspension of her law license than about potential criminal charges for embezzlement. The attorney, therefore, invokes her Fifth Amendment privilege against self-incrimination and refuses to answer the questions. The disciplinary tribunal then determines that it lacks substantial evidence that the attorney mishandled client funds, but commences disciplinary proceedings over the attorney's refusal to answer some of its questions. Could the attorney be subject to discipline for refusing to answer the questions in this scenario?

a) Yes, because a lawyer must not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.
b) Yes, because the board found no evidence that the attorney had mishandled client funds, and the attorney had an affirmative duty to clarify any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.
c) No, because the rules requiring attorney candor to disciplinary authorities are subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions.
d) No, because the committee did not read the attorney her Miranda rights, according to this fact scenario.

Rule 8.1 Cmt. 2

145. An attorney faced disciplinary action over a client grievance. The disciplinary tribunal asked the attorney several probing questions about her handling of client funds. The attorney actually used some client funds to pay off a gambling debt, so she is less worried about a temporary suspension of her law license than about potential criminal charges for embezzlement. The attorney, therefore, simply refuses to answer the questions, without offering any explanation. The disciplinary tribunal then determines that it lacks substantial evidence that the attorney mishandled client funds, but commences disciplinary proceedings over the attorney's refusal to answer some of its questions. The attorney now claims she was merely exercising her Fifth Amendment right to refrain from self-incriminating statements. Could the attorney be subject to discipline for refusing to answer the questions in this scenario?

a) Yes, because a lawyer can never refuse to respond to a lawful demand for information from an admissions or disciplinary authority.
b) Yes, a person relying on such constitution protections in response to a question must do so openly and not use the right of nondisclosure as a justification afterward for failure to comply with the rules requiring disclosures to the disciplinary authorities.
c) No, because the rules requiring attorney candor to disciplinary authorities are subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions.
d) No, because the committee did not read the attorney her Miranda rights, according to this fact scenario.

Rule 8.1 Cmt. 2

Rule 8.2 Judicial and Legal Officials

146. An attorney was upset when he lost a high-stakes bench trial. When friends and acquaintances asked him about it in the following weeks, he would bitterly complain that the judge must have received a bribe from the opposing party, because there was no way that a reasonable judge could have ruled against the attorney's own client, given the evidence in the case. The attorney has no reason to think that the judge accepted a bribe except that he was shocked when he lost the case. Could the attorney be subject to discipline for making such comments?
    a) Yes, because a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.
    b) Yes, but only if the attorney makes the statements in the public media, that is, to a reporter or in a press release.
    c) No, because the First Amendment protects the attorney's right to free speech, and these are merely complaints made to friends and acquaintances.
    d) No, because such comments implicate slander or libel doctrine in tort law, rather than disciplinary actions by a state bar.

Rule 8.2

147. In Texas, state trial judges are elected by popular vote. A well-known liberal-progressive judge is running for reelection. An attorney who is a staunch conservative is campaigning for the opposing candidate from the other party. At a campaign rally, the attorney declares that the liberal judge (seeking reelection) is completely unqualified and incompetent to serve in the judiciary, and that he is an activist judge who uses his court to push a particular political and social agenda. The judge graduated from a prestigious law school, was formerly a partner at a large law firm, and is active in the state bar. He does, however, give consistently lenient sentences to criminal defendants who are black or Hispanic, and has always ruled in favor of unions when he adjudicated cases involving collective bargaining agreements. The judge learns of these remarks by the attorney and files a grievance. Could the attorney be subject to discipline?
    a) Yes, because the judge is doing the right thing and conservatives like the attorney in this case are criticizing officials merely for upholding civil liberties and seeking justice and equality.
    b) Yes, because a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.
    c) No, because the comments occurred in the context of a political campaign, where speakers regularly resort to overstatement and soaring rhetoric.
    d) No, because the claims appear to be true.

Rule 8.2

148. A would-be judge asked his former law school classmate, a practicing lawyer, to write a recommendation letter for him as part of his application and vetting process for a judicial appointment. The attorney obliged and wrote a glowing recommendation, entirely favorable, even though he personally knew that his friend (the one seeking to be a judge) was an alcoholic. Was is proper for the attorney to write such a letter?
a) Yes, as long as the attorney believes his friend will be a fair judge.
b) Yes, because the attorney has no duty to disclose confidential information he knows about a friend.
c) No, because assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for appointment to judicial office, so expressing honest and candid opinions on such matters contributes to improving the administration of justice.
d) No, because an attorney should not write a recommendation letter for a prospective judge if there is any chance that the attorney will someday appear in that judge's court representing a client.

Rule 8.2 Cmt. 1

Rule 8.3 Reporting Professional Misconduct

149. An attorney discovers that a partner at his own firm has violated the Rules of Professional Conduct by failing to disclose adverse binding precedent to a tribunal, and by depositing client funds into his own bank account instead of a client trust account. Does the attorney have a duty to report the partner from his own firm to the state bar disciplinary authority?
a) Yes, but he must make an anonymous complaint to the state bar.
b) Yes, because a lawyer who knows of a violation of the Rules that raises serious questions about the other attorney's honesty must report it to the state disciplinary authority.
c) No, because lawyers do not have to report violations or misconduct by their own superiors, as this would put the reporting attorney in a difficult position at his workplace.
d) No, because a lawyer is not required to report violations, but instead is merely permitted to do so.

Rule 8.3

150. An attorney discovers that another lawyer has been stealing clients' funds, but he cannot prove it, as he learned about it from another party who was involved and who has since disappeared. He has some evidence, but not enough to prove that the other lawyer stole the clients' funds. When he confronted the other lawyer, the other lawyer admitted it privately but said he would deny it if there was any attempt to expose the matter. Does the attorney who knows about the violation, but could probably never prove it, have a duty to report the violation to the state disciplinary authority?
    a) Yes, because it does not matter how serious the misconduct is, it merely matters that there is some evidence of misconduct.
    b) Yes, because the duty to report misconduct depends upon the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.
    c) No, because if the lawyer cannot prove the misconduct with a preponderance of evidence, he does not have "knowledge" of the misconduct for purposes of the Rules of Professional Conduct.
    d) No, because the duty to report depends on the quantum of proof of which the lawyer is aware, not the seriousness of the possible offense.

Rule 8.3 Cmt. 3

Rule 8.4 Misconduct

151. A trial attorney agreed to represent a client in a high-profile criminal case, and asked at the outset for the client to give the attorney literary rights to write a book or screenplay about the case after its conclusion, in lieu of part of the attorney's normal fees. The client refused, so the attorney represented the client for his normal hourly rate. The evidence in the case was very unfavorable to the client, so the trial ended in a conviction and the client hired a different lawyer to represent him on appeal. At some point, the client told his appellate lawyer that the trial attorney had requested literary rights in the case at the outset of the representation. The appellate lawyer believed this was a violation of the Rules of Professional Conduct, and reported the trial attorney to the state disciplinary authority. When disciplinary proceedings commenced, the trial attorney maintained that he had not actually violated the Rules of Professional conduct, because the client had refused to grant him literary rights related to the case. He maintained that even if he had attempted to violate the Rules, he was unable to achieve his goals and therefore no actual violation occurred. Is the trial attorney correct?

a) Yes, because his request merely constituted an attempt to violate the Rules of Professional Conduct, and the Rules do not impose discipline for attempts or inchoate violations.
b) Yes, because the client refused to grant him literary rights, so the complaint is not ripe.
c) No, because the lawyer should not have requested literary rights at the outset of litigation, but could have waited until it was clear how the trial was going before asking for literary rights.
d) No, because under the Rules, even an attempt to violate the Rules of Professional Conduct independently constitutes professional misconduct.

Rule 8.4(a)

152. A trial attorney knew he cannot have ex parte communications with the judge in his case, but he wanted to explain a point about the case to the judge without opposing counsel present. The attorney happened to attend an alumni reception at his law school, and one of his former classmates mentioned to him that the she would be having lunch with the judge the next day. The attorney explained his case to his former classmate and asked her to explain a particular point to the judge privately during the lunch, and she agreed to do it as a favor. Could the attorney be subject to discipline in this case?
a) Yes, because it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct through the acts of another.
b) Yes, because the attorney knew that the classmate should not have lunch with a judge.
c) No, because the attorney did not personally have ex parte contact with the judge, so there was no risk of manipulation or coercion.
d) No, because the classmate consented to talk to the judge.

Rule 8.4(a)

153. A lawyer faced prosecution for failing to file tax returns over a five-year period. The attorney worked for a legal aid clinic and never charged clients any legal fees, as the clinic provided free representation to the indigent. The attorney received a modest salary from the legal aid clinic, the funds for which came from the state's IOLTA program and from a federal Legal Services Corporation (LSC) grant. Could the attorney face suspension of his license to practice law?
a) Yes, because the lawyer's salary comes from a commingling of state IOLTA funds and federal LSC funds.
b) Yes, because it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty.
c) No, because the lawyer's illegal conduct did not pertain to his representation of any of his clients.
d) No, because none of the lawyer's income derived from legal fees collected from clients.

Rule 8.4(b) & Cmt. 2

154. An attorney was an immigrant from a country that permits polygamy – men can have up to four wives. The attorney had two wives, which his religion permitted, as did the laws of his homeland. Nevertheless, his multiple marriages constituted bigamy in the American jurisdiction where he practiced law, and eventually a court convicted him of bigamy and imposed a fine. Could the attorney be subject to professional discipline for committing this illegal act?

a) Yes, because it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty.
b) Yes, because having multiple wives significantly increases the opportunities to have conflicts of interest with various clients.
c) No, because offenses concerning personal morality, such as bigamy and comparable offenses, have no specific connection to fitness for the practice of law.
d) No, because his bigamy does not reflect negatively on his character or morality if his religion permits it.

Rule 8.4 Cmt. 2

155. After practicing for two years, an attorney enrolled in an LL.M. program at a local law school, taking night classes. During his second semester, the attorney faced academic discipline for plagiarism in a seminar paper; the school permitted him to graduate, but he received a failing grade in the class and had to make up the credits with another course. As the attorney already has a license to practice law in the jurisdiction, could he be subject to discipline if the state disciplinary authorities learned of the plagiarism?

a) Yes, because it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty.
b) Yes, because it is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
c) No, because the attorney already obtained admission to the bar, so his courses now have no bearing on his application for admission to the bar.
d) No, because the incident does not pertain to his representation of a client, so the disciplinary rules do not apply.

Rule 8.4(c)

156. While cross-examining a Hispanic witness during a trial, a defense attorney grew frustrated at the witnesses' evasive answers, and finally asked the witness if "his people" or others "in his community" regularly lie under oath on the witness stand. The prosecutor immediately objected and the judge sustained the objection, so the attorney withdrew the question. The witness then stated that he did not feel offended by the question because he understood that the lawyer was simply ignorant and relying on stereotypes. Three of the jurors were also Hispanic. Could the attorney be subject to discipline for this question?

a) Yes, because it is professional misconduct for a lawyer in the course of representing a client to say things that manifest bias or prejudice based upon race or national origin.
b) Yes, because the judge sustained the objection and there were Hispanics serving on the jury.
c) No, because the witness claimed that he did not feel offended.
d) No, because the lawyer immediately withdrew the question.

Rule 8.4(d) Cmt. 3

157. Partly out of a desire to impress a potential client during an initial consultation, and partly to reassure a potential client who was visibly upset about her pending criminal charges, the attorney said that he knew the judge in the case. He explained that they were close friends, former law school classmates, and that he could talk to the judge privately and "take care of the problem." Is it permissible for a lawyer to make such a claim to a potential client?
a) Yes, as long as the claim is true and the lawyer is not misleading the client or create false expectations.
b) Yes, because there is not yet a lawyer-client relationship before the commencement of representation, and the situation here occurred during an initial consultation.
c) No, because it is a potential client, and the lawyer is using inappropriate manipulation to try to get business instead of allowing the client to make a fair decision about which lawyer to hire.
d) No, because it is professional misconduct for a lawyer to state or imply an ability to influence improperly a judge or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 8.4(e)

158. A judge asks the two lawyers in a case to help him conduct some first-hand investigation of the facts. At the judge's request, the plaintiff's lawyer and the defendant's lawyer together drive the judge to the location where the accident occurred that became the subject of the litigation, and allowed the judge to take measurements and photographs of the scene from different angles. They also accompanied the judge to interview several witnesses at their homes, off the record. Both lawyers felt awkward about this, but they were afraid to contradict or confront the judge, out of respect for the judicial office. Could the lawyers be subject to discipline for this conduct?
a) Yes, because it constitutes ex parte communication with the judge.
b) Yes, because it is professional misconduct for a lawyer to assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
c) No, because the lawyers did this activity at the judge's behest, and possible under orders from the judge.

d) No, because it furthers the ends of justice and accurate case outcomes for judges to have more complete understanding of the facts of a case.

Rule 8.4(f)

Rule 8.5 Disciplinary Authority; Choice of Law

159. An attorney had a license to practice law in two jurisdictions – his home state where he lived and had his main office, and a neighboring state where he represented several clients each year. The attorney committed serious professional misconduct in his home state, and received a public reprimand from the state disciplinary authorities. All of the conduct took place in his home state, the client resided in the state, and the representation took place entirely within his home state. The lawyer's conduct would have violated the rules in either of the jurisdictions where he had a license to practice law, because it involved commingling client funds with his own money, and the states had nearly identical rules concerning this activity. After the attorney received a public reprimand in his home state, where the misconduct occurred, the state bar disciplinary authority in the neighboring state (where he also practiced) then commenced disciplinary proceedings against him as well. Ultimately, the neighboring state bar suspended his license for six months in that state, a much more severe sanction than the public reprimand he received in his home state, where the misconduct actually occurred. The attorney claims that the neighboring state bar has no jurisdiction over conduct that occurred entirely outside of the state. He also objects that the second punishment raises double jeopardy concerns. Is the attorney correct?

a) Yes, because even in cases where a second state can administer discipline over the same conduct, double jeopardy rules prevent the second tribunal from imposing a more severe sanction than the first tribunal already imposed on the lawyer.
b) Yes, because a lawyer cannot be subject to the disciplinary authority of two jurisdictions for the same conduct if it occurred entirely within one state.
c) No, because a lawyer may be subject to the disciplinary authority of two jurisdictions for the same conduct, and may receive different sanctions in each state.
d) No, because choice of law rules require that each state impose the same sanction.

Rule 8.5(a)

160. An attorney practices law in two adjacent states, as he has a license to practice in each. He lives near the border and can easily serve clients in each jurisdiction. The two states have different rules about attorney disclosures of confidential client information - one state requires disclosures of client confidences whenever necessary to save a third party from death or serious bodily injury, while the other state forbids disclosures even under these circumstances. The attorney did indeed disclose confidential client information in order to save someone's life (the client was planning a murder and the attorney notified the authorities and warned the potential victim), but this occurred in the state that forbids such disclosures under these circumstances. The client files a grievance against the attorney in both states, and both state bars commence disciplinary

proceedings over the same incident. The state bar of the other state, which would have required disclosure in this situation under its own rules, nevertheless reprimands the attorney for making the disclosure in violation of the rules in the state where the incident occurred. The attorney objects that the state cannot impose a sanction on him for conduct that the state's rules would have required. Is the state bar correct?

a) Yes, the state bar should apply the rules of the jurisdiction in which the lawyer's conduct occurred.
b) Yes, because a state disciplinary authority does not have to consider the rules of professional conduct from its own state in making disciplinary determinations, regardless of where the misconduct occurs.
c) No, because each state bar should apply its own rules, otherwise we could have the absurd result of a state bar punishing a lawyer for an action that the rules of that state require.
d) No, because a lawyer can face discipline for professional misconduct only in the state where the misconduct occurred.

Rule 8.5(b)(2)

161. An attorney was representing a client in a probate matter. Nearly all of the representation occurred within the attorney's home state, where the client also lived. One asset of the probated estate, however, was an account receivable from a debtor in a neighboring state; the matter was already the subject of pending contract litigation in that state. The attorney filed a pro hac vice appearance in the neighboring state, and traveled there to represent his client in the contract matter, which was ancillary to the probate matter in his home state. During the proceedings, the lawyer committed an act that constituted a violation of the ethical rules in his home state, but not in the neighboring state where he was appearing in a proceeding; the states had different rules in this regard. Could the attorney be subject to discipline in his home state for violating its rules before a tribunal in the neighboring state?

a) Yes, because when an attorney takes an oath to uphold the rules of a jurisdiction in order to obtain admission to the bar, he or she does so without regard to the lawyer's future geographic location when a violation of the rules occur.
b) Yes, because otherwise, lawyers could simply drive across state lines and violate all the rules of professional conduct without repercussions from the state bar where the lawyer practices.
c) No, because whenever a lawyer's conduct relates to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits.
d) No, because a lawyer cannot be subject to discipline in more than one jurisdiction for the same act or incident.

Rule 8.5(b)(1)

Texas Disciplinary Process

162. In Texas, which entity determines what constitutes the unauthorized practice of law in this state?
   a) The State Bar of Texas (SBOT), subject to review by the Texas courts
   b) The Unauthorized Practice of Law Commission (UPC), subject to review by the Texas courts
   c) The Texas Committee on Profession Ethics (TCPE), which has sole statutory authority in Texas to issue Ethics Opinion Letters
   d) The Texas Office of the Chief Disciplinary Counsel (CDC), subject to review by the Board of Disciplinary Appeals.

163. Attorney has a license to practice law in New York, but she is living in Texas and is practicing law in Texas out of her own firm office in Huntsville. What is the position of state bar regarding this situation?
   a) The State Bar of Texas has jurisdiction to decide what constitutes the unauthorized practice of law in this state, and to take disciplinary action against individuals who engage in the unauthorized practice of law.
   b) The jurisdiction of the State Bar of Texas does not permit it to take disciplinary action for any violation of the Texas Disciplinary Rules against any person who is not licensed to practice law in Texas or who is not specially admitted by a Texas court for a particular proceeding.
   c) The State Bar of Texas refers unauthorized practice of law enforcement actions to the United States Department of Justice for enforcement proceedings under federal law in the federal courts, as this situation involves a dispute between a citizen of one state and the state government of another state.
   d) Texas has a special reciprocity agreement with the State Bar of New York, so attorneys admitted in New York can practice law in Texas, and vice-versa, as long as they file a notice with the local bar association.

164. What is the role of the Board of Disciplinary Appeals in Texas?
   a) The final judgment of the Board of Disciplinary Appeals may be appealed in the same way civil cases are generally appealed.
   b) If an attorney facing a grievance does not elect a trial in district court, the judgment of an evidentiary panel may be appealed to the Board of Disciplinary Appeals, and an appeal from the Board of Disciplinary Appeals may be taken to the Supreme Court of Texas.
   c) Grievances are filed directly with the Board of Disciplinary Appeals, which then makes a Just Cause Determination and offers the lawyer an opportunity to file a Response.
   d) The Board of Disciplinary Appeals evaluates the fitness to practice law of new law school graduates and determines whether they meet the good moral character requirements of the state bar.

165. In Texas, an attorney facing discipline can elect whether to have his complaint tried before an evidentiary panel or in district court. Which of the following best describes the attorney's tradeoff in making this election decision?
   a) The lowest form of sanction, a private reprimand, is available only if the complaint is in district court; but a jury is available only before an evidentiary panel, as are many of the evidentiary exclusions and procedural protections of court adjudications.
   b) The lowest form of sanction, a private reprimand, is available only if the complaint is before an evidentiary panel; but a jury is available only in district court, as are many of the evidentiary exclusions and procedural protections of court adjudications.
   c) The most severe sanction, disbarment, is available only if the complaint is before an evidentiary panel; but punitive damages are available only in district court, as are orders to make restitution and payment of attorneys' fees.
   d) The most severe sanction, disbarment, is available only in district court; but punitive damages are available only if the complaint is before an evidentiary panel, as are orders to make restitution and payment of attorneys' fees.

166. Which of the following best describes the first five steps, in order, of the Texas disciplinary process?
   a) Filing of grievance with the Board of Disciplinary Appeals, Just Cause Determination, Response, Election of Forum, Classification
   b) Filing of grievance with the Office of Chief Disciplinary Counsel, Classification, Response, Just Cause Determination, Election of Forum
   c) Filing a grievance with the Board of Disciplinary Appeals, Election of Forum, Evidentiary Panel, Sanctions, and Appeal
   d) Filing of grievance with the Office of Chief Disciplinary Counsel, Election of Forum, Evidentiary Panel, Sanctions, and Appeal

167. Which of the following is NOT one of the most common alleged violations among grievances filed against attorneys in Texas?
   a) Neglect of a client matter
   b) Conflict of interest
   c) Failure to communicate
   d) Improper behavior surrounding withdrawal or termination of representation

168. Of all the grievances filed against Texas attorneys each year, what are the most common alleged violations?
   a) Conflicts of interest, breach of confidentiality, and neglect of client matters
   b) Neglect, failure to communicate, and improper behavior surrounding withdrawal or termination of representation

c) Failure to communicate, advertising and solicitation violations, and violation of the duty of candor to a tribunal
d) Improper behavior surrounding withdrawal or termination of representation, failure to screen new attorneys from matters posing conflicts of interest, and failure to supervise or train support staff at the firm

Rules 7.1-7.6 - Communications about legal services

(4-10% of MPRE)

Rule 7.1 Communication Concerning a Lawyer's Services
Rule 7.2 Advertising
Rule 7.3 Solicitation of Clients
Rule 7.4 Communication of Fields of Practice and Specialization
Rule 7.5 Firm Names and Letterhead
Rule 7.6 Political Contributions to Obtain Legal Engagements or Appointments by Judges

RULE 7.1 Communication Concerning A Lawyer's Services

169. Attorney recently earned her Juris Doctor degree from a prestigious law school and easily passed the state bar exam, gaining admission to the bar in her home state. She worked for three years for a legal aid clinic that provided free legal services for indigent clients. At the end of her third year at the clinic, Attorney decided to start her own firm, representing primarily low-income clients who were ineligible for free services at the legal aid clinic, but who also rarely could afford the fees of most attorneys. She sent a certified letter to most of the lawyers in her geographic area describing her experience and explaining that she was starting her own firm and intended to specialize in low-dollar consumer protection cases, simple divorces, adoptions, name changes, and landlord-tenant disputes. The letter concluded by offering to handle such cases for other lawyers if the other lawyers did not want to invest their time on such low-dollar matters. She did not notify the legal aid clinic that she planned to leave or that she had sent this letter. Were Attorney's actions proper?

a) Yes, because Attorney's statements were not false or misleading and the letter was an appropriate announcement of the opening of her new firm and her intent to specialize in certain areas of law.

b) Yes, because Attorney sent the letter only to other lawyers, so there was little risk of manipulation or abuse of unsophisticated clients.

c) No, because Attorney failed to notify the legal aid clinic of her plans to open a new firm, or to send a letter to hundreds of lawyers that described her experience working at the clinic.

d) No, because Attorney has never handled such fee-generating cases before, if her only work experience is at a legal aid clinic that provides services without charge to indigent clients.

170. Attorney has advertisement placards on the sides of public transportation buses in his city. The signs read, "If your home suffered storm damage this year, you are entitled to full recovery! Call us now!" Attorney represents clients in claims against their homeowner insurance companies, who often deny claims for storm damage, at least initially. Attorney often wins at least a small settlement, if not full recovery costs, for his clients. Is this advertisement proper?

a) Yes, because Attorney does, in fact, represent clients who have suffered storm damage in claims against their insurers.
b) Yes, because this is not an in-person solicitation, so there is little risk of unsophisticated potential clients misunderstanding the claims in the advertisement.
c) No, because it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
d) No, because the advertisement was placed on a public transportation vehicle, which tacitly suggests an endorsement of the municipal government, as opposed to a privately-owned billboard on private property near a roadside.

171. Attorney grew up in a family that spoke the Maori language in the home. His law practice advertisements prominently state that he speaks Maori and can represent Maori-speaking clients. No Maori speakers live within 2000 miles of where Attorney practices. Is it improper for Attorney to include this language ability in his advertisements?

a) Yes, because it creates a misperception that Attorney is unusually intelligent.
b) Yes, because Maori speakers in far-away jurisdictions might misunderstand and believe that Attorney is admitted in their jurisdiction as well.
c) No, because the statement is true.
d) No, because Attorney has Free Speech rights to make any claim he wants in his public advertisements.

172. Attorney practices law in Texas, and he runs advertisements in local newspapers and journals that say, "HIRE THE BEST LAWYER!" The advertisement does not explicitly claim that Attorney is the best lawyer in the state, but it does include Attorney's website address, which is www.bestlawyerintexas.com. Is such an advertisement improper?

a) Yes, because the advertisement it misleading.
b) Yes, because it includes a website address.
c) No, because it merely exhorts readers to hire the best lawyer, without suggesting who is the best lawyer.
d) No, unless Attorney is, by all measures, the best lawyer in Texas.

RULE 7.2 Advertising

173. Attorney represented Client as the plaintiff in a personal injury lawsuit and won a large settlement for Client. Attorney had represented Client on a contingent fee basis, with an agreement at the outset of representation to charge 30% of the total winnings or settlement amount. Client was very good-looking, and Attorney offered at the end of representation to discount his fee by another 10% if Client would pose for a photograph with Attorney for use in printed advertisements, with a quote by Client that truthfully expressed gratitude to Attorney for providing excellent representation in the case. The advertisement did not include any disclaimer explaining that not all of Attorney's clients were as attractive as the client who appeared in the photo. The advertisement also included a promise from Attorney "to provide the same type of excellent legal representation to you [the reader] as well." Was this advertisement proper?
   a) Yes, because the client and the lawyer both made truthful statements.
   b) Yes, because the discount offered to the client was reasonable for such an endorsement, as long as the amount was comparable to hiring a model to pose for the photograph instead.
   c) No, because the lawyer promised implicitly to obtain similar results for other potential clients, without knowing their circumstances or the merits of their claims.
   d) No, because the lawyer effectively offered money to the client by giving a discount on the earned legal fees in exchange for appearing in the advertisement.

174. Attorney made an informal agreement with Physician that they would refer clients to each other when the situation seemed appropriate. They did not pay each other any money for referrals, but the relationship was explicitly reciprocal – Attorney referred patients who needed medical examinations to Physician, and when Physician had patients needing legal representation, he referred them to Attorney. The relationship was not explicitly exclusive – each was free to refer clients to others – but it happened that neither had similar reciprocal relationships with anyone else. They always inform their clients when making such referrals that they have a reciprocal relationship. Is such an arrangement proper?
   a) Yes, a lawyer may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer, as long as clients are aware and the relationship is not exclusive.
   b) Yes, because the agreement is informal, not a written contract.
   c) No, because a lawyer may not agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer.
   d) No, because the relationship described here is de facto exclusive, even if they have not agreed specifically to keep the relationship exclusive.

175. Attorney made and distributed bumper stickers advertising for his firm that simply provided a catchy phone number: 1-800-LAWYER-1. The phone number rolled over

to Attorney's office phone. The bumper stickers included no other information. Could Attorney be subject to discipline for such an advertisement?

a) Yes, because bumper sticker advertising undermines the dignity of the legal profession.
b) Yes, because it does not include the name and office address of at least one lawyer or law firm responsible for its content.
c) No, because bumper stickers do not constitute advertising under the Model Rules of Professional Conduct.
d) No, because the information on the bumper stickers was truthful and accurate.

176. Attorney made an informal agreement with Physician that they would refer clients to each other when the situation seemed appropriate. They did not pay each other any money for referrals, but the relationship was explicitly reciprocal – Attorney referred patients who needed medical examinations to Physician, and when Physician had patients needing legal representation, he referred them to Attorney. The relationship was explicitly exclusive – each agreed not to refer clients to others – but it happened that neither had similar reciprocal relationships with anyone else anyway. They always inform their clients when making such referrals that they have a reciprocal relationship. Is such an arrangement proper?

a) Yes, a lawyer may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer, as long as clients are aware of the existence and nature of the arrangement.
b) Yes, because the agreement is informal, not a written contract.
c) No, because a lawyer may not agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer, if the relationship is exclusive.
d) No, because the relationship described here is de facto exclusive, even if they have not agreed specifically to keep the relationship exclusive.

177. Attorney is a friend of Blogger, who operates a successful local blog about events, news, and gossip about their city. Blogger includes posts about local judges and well-known lawyers. Attorney and Blogger have a secret agreement. Attorney passes along tips to Blogger in the form of courthouse gossip regarding local lawyers and judges, or even about big cases. Blogger, in turn, covers Attorney's successful cases in glowing terms and recommends Attorney to his readers. Blogger's website is so successful that he earns approximately $50,000 in advertising revenue from the site. Attorney occasionally purchases a small, inexpensive advertisement on the site, which merely gives Attorney's name, address, phone number, and areas of practice. Could Attorney be subject to discipline?

a) Yes, because Attorney provides gossip that undermines the dignity of the profession
b) Yes, because Attorney provides something of value to Blogger in exchange for recommending his services.

c) No, because Attorney pays a reasonable sum for his advertisements on the blog
d) No, because it is impossible to quantify the value of the information that Attorney provides to Blogger in exchange for favorable reviews of Attorney's legal victories

RULE 7.3 Solicitation of Clients

178. Which of the following most accurately describes the Model Rules' treatment of in-person solicitations of prospective clients by lawyers and live telephone solicitations by lawyers?
   a) The Rules treat in-person solicitations as much more serious and likely to result in abuse than telephone solicitations.
   b) The Rules treat live telephone solicitations the same as in-person solicitations.
   c) The Rules treat live telephone solicitations the same as email solicitations.
   d) The Rules treat live telephone solicitations the same as a billboard, an Internet banner advertisement, a website, or a television commercial.

179. Attorney's brother is a physician. Attorney calls his brother and explains that his firm is not doing well, that he needs more cases, and asks his brother to use him as his lawyer for any medical malpractice actions he faces or any collection actions against patients who do not pay their bills. Attorney's brother finds this request annoying and makes no promises. Was it proper for Attorney to make such a telephone solicitation?
   a) Yes, because the recipient of the solicitation has a family relationship with the lawyer.
   b) Yes, because he merely asked his brother to use his services whenever a case should arise, without offering to represent him in a specific matter or for a specific fee.
   c) No, because the brother found the call annoying and the appropriateness of the solicitation is from the perspective of the recipient.
   d) No, because a lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

180. Attorney's brother is a physician. Attorney calls his brother and explains that his firm is not doing well, that he needs more cases, and asks his brother to use him as his lawyer for any medical malpractice actions he faces or any collection actions against patients who do not pay their bills. Attorney's brother finds this request annoying and reminds Attorney that he has asked him on several occasions not to pester him to use Attorney as his lawyer. Was it proper for Attorney to make such a telephone solicitation?
   a) Yes, because the recipient of the solicitation has a family relationship with the lawyer.
   b) Yes, because he merely asked his brother to use his services whenever a case should arise, without offering to represent him in a specific matter or for a specific fee.
   c) No, because the call involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer.
   d) No, because a lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

181. Attorney sends a solicitation letter to a prospective client, with the designation "Advertising Material" printed on the outside of the envelope. The recipient of the letter opens it and reads it, but does not respond. Lawyer then sends a follow-up letter to the prospective client, again with the designation "Advertising Material" printed on the outside of the envelope. Could Attorney be subject to discipline for sending the second letter?

a) Yes, because a lawyer may not solicit individual prospective clients with direct mail unless the prospective client has requested the information.
b) Yes, if after sending a letter or other communication as permitted by the Rules, the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rules.
c) No, because the lawyer clearly indicated that it was advertising material on the outside of the envelope.
d) No, because the lawyer had no way to know whether the prospective client received the first letter.

Rule 7.3 Cmt. 6

182. After a hurricane damaged hundreds of homes in a southeastern state, Attorney received requests for information about legal representation from several affected homeowners. Attorney wrote back, offering to represent them in their insurance claims arising out of the storm damage. Each letter was handwritten and personalized, and Attorney addressed each envelope by hand so that recipients would perceive it as a personal letter and would be more likely to open it and read it. At the top of the letter itself, Attorney wrote by hand the words "Advertising Material." Were Attorney's actions proper?

a) Yes, because Attorney clearly indicated at the top of the letter that it was advertising material.
b) Yes, because the requirement that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients.
c) No, because Attorney did not include the phrase "Advertising Material" on the outside of the envelope.
d) No, because a lawyer should not send a solicitation letter to those who have recently experienced a tragedy and are vulnerable to manipulation or coercion.

Rule 7.3 Cmt. 8

183. Attorney made a lateral move to another firm in the same city where he already practiced. Attorney sent letters to area residents and businesses, whom he knew to be in need of legal services, announcing that he had gone to work for a new firm and had a new office address. The letter stated that he was excited about the new opportunities he would have at this firm to provide excellent legal representation to new clients in the city. Nowhere on the letter or envelope did Attorney include the words "Advertising Material." Could Attorney be subject to discipline for sending these letters?

a) Yes, because every written communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope.
b) Yes, because Attorney was implicitly soliciting new clients through this general professional announcement.
c) No, general announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client.
d) No, because Attorney sent the letters only to area residents and businesses.

Rule 7.3 Cmt. 8

184. After a bizarre accident that received heavy media coverage, the victims took the unusual step of sending written notices to every plaintiff's firm in the area stating that the victims did not want to hear from any lawyers about the matter. Attorney received the notice and promptly forgot about it, because he had not yet seen any of the media coverage about the accident. Two weeks later, Attorney decided to catch up on the recent news, and read an article online about the bizarre incident. He sent a letter to the victims expressing condolences for their suffering and offering to provide legal services if they decided to file a claim over the incident. The victims read the letter, changed their minds, and agreed to have Attorney represent them. A lawyer at another plaintiff's firm, who had also received the notice from the victims, learned that Attorney was representing the victims. He made some inquiries and discovered how the Attorney had found his new clients. The lawyer filed a grievance against Attorney with the state disciplinary authorities. Should Attorney be subject to discipline for the way in which he offered to represent the victims?
a) Yes, because the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer.
b) Yes, because it was unfair for Attorney to have the opportunity to represent these clients when other lawyers had diligently avoided soliciting them.
c) No, because the victims decided that they wanted Attorney to represent them.
d) No, because the grievance came from a rival lawyer and the motivation was petty envy.

185. Attorney specializes in criminal defense work. His advertising, signage, and firm brochures offer a service that other lawyers in his city do not provide – Attorney promises to post bail or bond for any client who cannot afford the amount of his bail or bond. Could Attorney be subject to discipline for such an advertisement offer?
a) Yes, because the advertisement is inherently misleading.
b) Yes, given the coercion and duress inherent in the client's incarceration, using the promise of securing the client's release from custody as an inducement to engage the lawyer would be a violation of Rule 7.3(b)(2).
c) No, as long as he actually posts bail or bond for every client who claims to be unable to afford it themselves.

d) No, because lawyers can post bail for clients under certain circumstances, as long as it does not generate a conflict of interest that the client is unwilling to waive.

ABA Formal Op. 04-432

186. Attorney is representing a group of plaintiffs in a mass tort claim, and he hopes to obtain class certification so that it will become a class action lawsuit. Attorney sends letters to hundreds of potential class members inviting them to join the lawsuit and inquiring about whether they would be willing to join as a named party in the action. He does not designate the letters as "advertising material" on the outside because each recipient is a potential class member of a lawsuit that is already underway, but not yet certified as a class action. Could Attorney be subject to discipline for sending these letters?
   a) Yes, because if plaintiffs' counsel's goal is to seek to represent the putative class member directly as a named party to the action or otherwise, the provisions of Rule 7.3 apply.
   b) Yes, because it is always inappropriate for a lawyer to contact putative members of a class prior to class certification.
   c) No, because it is always permissible for lawyers to contact putative members of a class prior to class certification, and such contact does not constitute solicitation.
   d) No, because the lawyer and the class have a legitimate interest in finding the best possible named plaintiffs for the lawsuit.

ABA Formal Op. 07-445

187. Attorney is representing a group of plaintiffs in a mass tort claim, and he hopes to obtain class certification so that it will become a class action lawsuit. Attorney sends letters to hundreds of potential class members inviting them to testify as witnesses. All the statements in the letter are accurate and are not coercive. Even so, he does not designate the letters as "advertising material" on the outside because each recipient is a potential class member of a lawsuit that is already underway, but not yet certified as a class action. Could Attorney be subject to discipline for sending these letters?
   a) Yes, because if plaintiffs' counsel's goal is to seek to represent the putative class member directly as a named party to the action or otherwise, the provisions of Rule 7.3 apply.
   b) Yes, because it is always inappropriate for a lawyer to contact putative members of a class prior to class certification.
   c) No, because it is always permissible for lawyers to contact putative members of a class prior to class certification, and such contact does not constitute solicitation.
   d) No, because Rule 7.3's restrictions do not apply to contacting potential class members as witnesses, so long as those contacts are appropriate and comport with the Model Rules.

ABA Formal Op. 07-445

RULE 7.4 Communication Of Fields Of Practice And Specialization

188. Attorney specializes in tax law, and primarily represents individuals and entities defending themselves against enforcement claims by the IRS. Attorney has a successful practice, but she would like to attract even more clients. She identifies potential clients, those facing enforcement proceedings, from public records and filings. She sends each one the following email:

> "ADVERTISING MATERIAL: Do you have problems with the IRS? I specialize in defending individuals and entities against tax evasion and delinquency claims, and I have decades of experience. For free information, visit my website or reply to this email. Advertising material."

Is the tax lawyer subject to discipline for this email?

a) No, as a lawyer may identify potential clients from public records and contact them, even if they have indicated to the lawyer that they do not want such solicitations
b) No, because lawyers may represent that they specialize in particular fields of law
c) Yes, as a lawyer cannot misleadingly state or imply a certification as a specialist
d) Yes, as the lawyer cannot solicit clients using real-time electronic contact unless the person contacted the lawyer, or is a relative or close friend of the lawyer, or was a prior client of the lawyer

189. In his advertisements, Attorney, who practices in California, states, "CERTIFIED SPECIALIST IN CALIFORNIA LAW." Attorney is referring to the fact that he passed the California Bar Exam, not to any other official certification beyond admission to the California bar. According to the Model Rules of Professional Conduct, is such a statement proper in a lawyer's advertisement?

a) Yes, because a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
b) Yes, because passing a state's bar exam demonstrates sufficient expertise in the laws of that state to practice there as a lawyer.
c) No, because a lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law without being certified as a specialist by an official certifying organization in that state, and without including the name of the certifying organization in the advertisement.
d) No, because under the Model Rules, lawyers should not claim to be "certified specialists" in anything.

190. Attorney promotes himself on his website and through other advertisements as a "Patent Attorney." He is admitted to engage in patent practice before the United States Patent and Trademark Office, but he does not mention this on his website or in his advertisements – he simply states that he is a "Patent Attorney." Is it proper for him to use this designation without the name of the U.S. Patent and Trademark Office being clearly identified in the communication as the certifying organization?

a) Yes, because a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation without further clarification.
b) Yes, but only if he does not handle any other types of cases or matters for clients.
c) No, because a lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the name of the certifying organization is clearly identified in the communication.
d) No, because a lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority, and the states do not approve the U.S.P.T.O.

191. Attorney describes his areas of practice in his advertisements as "real estate" and "personal injury," but his state bar requires that lawyers use the less descriptive terms "property law" and "tort law" instead. Could Attorney be subject to discipline for using these more descriptive terms instead of the verbiage prescribed by the state bar?
a) Yes, because states have an absolute right to place reasonable requirements on lawyers pertaining to the verbiage used in their advertisements.
b) Yes, because "real estate" and "personal injury" are inherently misleading terms, whereas "property law" and "tort law" are very precise.
c) No, because states may not regulate lawyer advertising in any way.
d) No, because lawyers have a First Amendment right to use verbiage that is accurate and descriptive in their advertisements, as long as the statements are not misleading.

See In re R.M.J., 455 U.S. 191 (1982)

192. In his advertisements and firm brochures, Attorney describes his many years of experience litigating in a particular area of commercial real estate litigation, without claiming to be a specialist or an expert. He does not mention any official certification. Is it permissible for Attorney to boast of his years of experience practicing in a particular area, even though some readers might infer from this that he is an expert or a certified specialist?
a) Yes, the Supreme Court has held that state bars may not pass any rules that limit or sanction communications by lawyers to potential clients.
b) Yes, the Supreme Court has held that state bars cannot prohibit lawyers form describing their years of experience with certain types of cases, as long as the information is truthful.
c) No, the Supreme Court has held that describing one's years of experience is too misleading, because readers could incorrectly infer that the lawyer will obtain successful results in their case.
d) No, because the lawyer cannot predict what types of cases he will handle in the future, when new clients hire him.

See Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985)

193. Attorney identified himself on his letterhead as a "Certified Trial Specialist by the National Board of Trial Advocacy." Attorney's state has no lawyer certification program of its own, besides admission to the bar. Is it inherently misleading, and therefore improper, for Attorney to list a certification if it did not come from an organization that has been approved by an appropriate state authority?

a) Yes, because the traditional rule is that lawyers may state areas in which they practice, but may not claim to be certified specialists in anything.
b) Yes, because consumers are likely to think that the state bar actually certified Attorney as a Trial Specialist.
c) No, because the Supreme Court has held that such statements are merely "potentially misleading" and that it would violate the First Amendment for states to prohibit such statements completely.
d) No, because the Model Rules place no restrictions on lawyers making claims about certifications, expertise, or specialization.

See Peel v. Attorney Registration & Disciplinary Comm'n, 496 U.S. 91 (1990)

Rule 7.5 Firm Names And Letterhead

194. Attorney's law firm is simply "The Law Offices of [Attorney's name], Esq." Attorney specializes in courtroom litigation. His website address is www.mytrialattorney.com. Attorney selected this domain name and registered it so that he could use it for his law firm's website. Is this website address/domain name proper for Attorney's law firm?

a) Yes, because it is not misleading, and lawyer or law firm may also be designated by a distinctive website address or comparable professional designation.
b) Yes, because "internet neutrality" requires that anyone can use any domain name they want.
c) No, because the ABA Model Rules require that law firm domain names include the names of the partners.
d) No, because the ABA Model Rules forbid lawyers from designating themselves with a distinctive website address.

Rule 7.5 Cmt 1

195. Attorney's law firm is simply "The Law Offices of [Attorney's name], Esq." Attorney specializes in courtroom litigation. He sees himself as a savior to his clients, who really appreciate his help. His website address is www.mytrialattorney.org. Attorney selected this domain name and registered it so that he could use it for his law firm's website. Is this website address/domain name proper for Attorney's law firm?

a) Yes, because it is not misleading, and lawyer or law firm may also be designated by a distinctive website address or comparable professional designation.
b) Yes, because "internet neutrality" requires that anyone can use any domain name they want.

c) No, because the ABA Model Rules require that law firm domain names include the names of the partners.
d) No, because the use of ".org" as the ending of the domain name suggests that the firm is a charitable legal aid clinic, so it is misleading.

196. Attorney practices in a small town in a rural area. His law firm's sign reads, "HOME TOWN ATTORNEY." Attorney's entire practice consists of representing local townsfolk. Other lawyers and law firms in the town use more traditional designations, listing the named partners on their signage and advertising. Could Attorney be subject to discipline for using this designation for his law firm?
   a) Yes, because the name suggests that he is associated with the municipal government in that locale.
   b) Yes, because he is not the only lawyer in the town, so he should not have a sign suggesting that he is the only lawyer in town.
   c) No, because the sign is not misleading or untruthful, and a law firm may use a trade name instead rather than lawyers' personal names.
   d) No, because the rules pertaining to firm names and letterheads do not apply to sole practitioners.

197. Attorney left Big Firm to open his own practice. Not wanting to sound alone and isolated, he decided to call it "[Attorney's Name] & Associates," even though he had no lawyers working for him. Nevertheless, he did have a receptionist and a paralegal. Could Attorney be subject to discipline for using this name for his firm?
   a) Yes, because the name is misleading if there are no lawyer associates working for Attorney.
   b) Yes, because the Model Rules require sole practitioners to invert the order and call it "Associates & [Attorney Name]"
   c) No, because the name is not misleading or confusing to the public.
   d) No, because the name is his personal name, and "associates" could include his nonlawyer staff.

198. Attorney left Big Firm to open his own practice. He decided to give it a grandiose name, and called it "The Law Firm of America." He hopes someday to have offices in all fifty states. Could Attorney be subject to discipline for using this name for his firm?
   a) Yes, because he does not yet have offices in all fifty states.
   b) Yes, a trade name may be used by a lawyer in private practice only if it does not imply a connection with a government agency
   c) No, because he intends to have offices in all fifty states someday.
   d) No, because a trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency, and there is no agency named, "America."

199. Three lawyers open a new firm (a partnership) together and call it "The Houston Litigation Center," named after the city where they practice. Their advertising,

brochures, and signage contain no disclaimers disavowing any connection with the Houston municipal government or with the Houston City Attorney's Office, which is a department of the municipal government. Could they be subject to discipline for using this name?

a) Yes, because a trade name may be used by a lawyer in private practice only if it does not imply a connection with a government agency or subdivision of government.
b) Yes, because the firm name does not include the names of the three founding partners.
c) No, because a firm may use the name of the city where they have their office, but not the state or federal government.
d) No, because there is nothing untruthful or misleading about the name, as long as they have headquarters in Houston.

200. Attorney outsources complicated legal research to a firm that exclusively provides background legal research for lawyers. Client is a nationwide business with branches operating in all fifty states, so he needs information about his legal responsibilities regarding a particular issue in every state – a state-by-state survey. Attorney represents himself as a sole practitioner. Could Attorney be subject to discipline for failing to inform Client that he plans to outsource the 50-state survey to a research firm?

a) Yes, because the client may prefer to hire fifty separate research firms to investigate the issue in each state.
b) Yes, because lawyers must not misrepresent their partnership with others or other organizations.
c) No, because this is no different than delegating research tasks to an in-house associate attorney.
d) No, as long as the lawyer does not affirmatively deny that he will outsource the legal work.

ABA Formal Op. 08-451

Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges

201. Attorney solicits campaign contributions on behalf of an elected judge who is running for reelection. The judge wins reelection, and shows his gratitude to Attorney by frequently appointing him to represent indigent defendants at the state's expense. Attorney engaged in the solicitation of contributions for the judge's reelection campaign because he hoped to receive such appointments. The fees from the appointments are disappointing, though, and Attorney later realizes that the fees earned from these appointments were not equal to the time Attorney spent soliciting the contributions. Could Attorney be subject to discipline for accepting these appointments?
    a) Yes, because a lawyer shall not accept a government legal engagement or an appointment by a judge if the lawyer makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.
    b) Yes, because this type of quid-pro-quo arrangement constitutes a bribe.
    c) No, because the fees earned from the appointments did not match the time Attorney spent soliciting contributions, so at least some of the solicitation was merely volunteer activity.
    d) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.

202. Attorney solicits campaign contributions on behalf of an elected judge who is running for reelection. Attorney engaged in the solicitation of contributions for the judge's reelection campaign because he hoped to receive court appointments. The judge won reelection, but never rewarded Attorney by appointing him to represent indigent defendants at the state's expense. Could Attorney be subject to discipline for soliciting funds for a judge with such self-interested motives?
    a) Yes, because a lawyer shall not accept a government legal engagement or an appointment by a judge if the lawyer makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.
    b) Yes, because this type of quid-pro-quo arrangement constitutes a bribe.
    c) No, because the lawyer never received or accepted any appointments after soliciting the contributions.
    d) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.

203. Attorney made substantial financial contributions to the reelection campaign of an elected judge. The judge won reelection, and showed his gratitude to Attorney by frequently appointing him to represent indigent defendants at the state's expense. Attorney made the donations not because he hoped to receive such appointments, but because he honestly believed that the judge was the best candidate for the position. Attorney especially admired the fact that the judge had attended Harvard Law School and that the judge was an active member of the Federalist Society. Could Attorney be subject to discipline for accepting these appointments?
   a) Yes, because a lawyer shall not accept a government legal engagement or an appointment by a judge if the lawyer makes a political contribution or solicits political contributions.
   b) Yes, because attending Harvard Law School is not a valid reason to believe that a candidate would make a good judge.
   c) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.
   d) No, because the lawyer's motivation was a sincere political or personal support for the judge's candidacy, not a design to receive court appointments.

204. Attorney made substantial financial contributions to the reelection campaign of an elected judge. The judge won reelection, and showed his gratitude to Attorney by frequently appointing him to represent indigent defendants at the state's expense. Attorney claims that he made the donations not because he hoped to receive such appointments, but because he honestly believed that the judge was the best candidate for the position, though he could not explain why. In addition, it turned out that in the aggregate, Attorney gave more than every other lawyer or law firm in the judge's district. Could Attorney be subject to discipline for accepting these appointments?
   a) Yes, because a lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.
   b) Yes, because contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement
   c) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.
   d) No, because the lawyer's motivation was a sincere political or personal support for the judge's candidacy, not a design to receive court appointments.

Rule 7.6 Cmt 5

205. Attorney made substantial financial contributions to the reelection campaign of an elected judge. The judge won reelection, and showed his gratitude to Attorney by

frequently appointing him to serve as referee or mediator in situations where Attorney received no compensation except reimbursement for travel expenses. Attorney made the donations because he hoped to receive such appointments, but received no fees as a result. Could Attorney be subject to discipline for accepting these appointments?

a) Yes, because a lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment, regardless of the amount of the fees earned.
b) Yes, because this type of quid-pro-quo arrangement constitutes a bribe.
c) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.
d) No, because the term "government legal engagement" does not include substantially uncompensated services.

Rule 7.6 Cmt 3

206. Attorney made substantial financial contributions to the reelection campaign of an elected judge. The judge won reelection, and Attorney thereafter received court appointments to represent indigent defendants at the state's expense, and over time these appointments turned out to be lucrative in terms of generating high legal fees. All appointments were made on a rotational basis from a list compiled without regard to political contributions. Attorney made the donations because he hoped to receive such appointments, and became wealthy as a result. Could Attorney be subject to discipline for accepting these appointments?

a) Yes, because a lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment, regardless of the amount of the fees earned.
b) Yes, because this type of quid-pro-quo arrangement constitutes a bribe.
c) No, because all constituents who donate or solicit donations for election campaigns are hoping to receive some direct or indirect benefits as a result.
d) No, because the term "government legal engagement" does not include appointments made on a rotational basis from a list compiled without regard to political contributions.

Rule 7.6 Cmt 3

Rules 2.1-2.4, 3.8-3.9, & 1.13 Different Roles of the Lawyer (4-10% of MPRE)

- Lawyer as advisor – Rule 2.1
- Lawyer as evaluator – Rule 2.3
- Lawyer as negotiator – Rule 2.4
- Lawyer as arbitrator, mediator etc Rule 2.4
- Prosecutors and other government lawyers – Rule 3.8
- Lawyer appearing in nonadjudicative proceeding – Rule 3.9
- Lawyer representing an entity or other organization – Rule 1.13

Rule 2.1 Advisor

207. An insurance company retained Attorney to represent one of its policyholders (i.e., an insured) against a lawsuit. The insurance company that hired Attorney requires its retained counsel to follow its own litigation management guidelines, designed to monitor the fees and costs of the lawyers the insurer retains. The litigation management guidelines include the requirement of a third-party audit of legal bills. Although the guidelines usually serve the interests of both the insured and the insurer by keeping litigation costs low and expediting the resolution of the case, in this instance Attorney finds that the guidelines require tactical moves that are adverse to the insured's interests. The insurer claims that the insured impliedly consented to the guidelines by agreeing contractually in the insurance policy to "cooperate" during litigation. The insurance company hired Attorney for the case. Should Attorney comply with the insurer's litigation management guidelines?
    a) Yes, because the insured impliedly consented to the arrangement by accepting the insurance company's choice of legal counsel in defending the claim.
    b) Yes, because the insurer retained Attorney to handle the case.
    c) No, because a lawyer shall exercise independent professional judgment, and the insurer's litigation management guidelines in this instance materially impair the lawyer's professional judgment.
    d) No, because a lawyer hired by an insurance company to represent an insured should always represent the interests of the insured rather than the insurer.

Rule 2.1; ABA Formal Op. 01-421

Rule 3.8 Special Responsibilities of a Prosecutor

208. A prosecutor brought charges against a defendant for rape and murder, but only one witness could link the defendant to the crime, and that witness disappeared mysteriously while the defendant was out on bail awaiting trial. The prosecutor's case collapsed and the defendant won an easy acquittal, even though the defendant had confessed to the murder. The confessional turned out to be inadmissible because the police erred in failing to read the defendant all of his rights before taking his confession, which he later recanted. The prosecutor now has some evidence – less than probable cause but enough to be worth a try – that the defendant committed check fraud, so he brings charges in hopes that the attenuated charges will stick this time, and the dangerous murderer will be off the streets, regardless of the reason. Is the prosecutor in compliance with his ethical duties as a lawyer?
    a) Yes, because he is trying to protect the public from a dangerous criminal, and the defendant still has a fair chance to beat the charges in the new case, especially if the evidence is weak.
    b) Yes, because the "beyond a reasonable doubt" burden of proof in a criminal case provides protection for defendants when prosecutors bring unfounded charges.
    c) No, because the prosecutor is trying to use a lesser charge to incarcerate a murderer, which will result in the murderer receiving an unfairly short sentence.
    d) No, because the prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

Rule 3.8(a)

209. A prosecutor sees the backlog of prosecutions coming from his office and feels concern about whether all the cases will come to trial in time to comply with the Speedy Trial Act. In order to expedite some of the simpler cases, the prosecutor asks arrestees to waive their right to a pre-trial hearing, which saves up to a week due to scheduling complications, and allows the defendants' cases to come to trial sooner. Because most of the defendants in these cases are unrepresented by counsel, the prosecutor explains that they have a right to a preliminary hearing, but that defendants without a lawyer usually accomplish little or nothing at such hearings, and that the defendant will have a full trial at which to argue his innocence. He also explains that if the defendant believes he can win an acquittal, waiving a preliminary hearing might bring about the defendant's moment of freedom a bit sooner. Nearly all the defendants without representation agree to waive their preliminary hearings, which relieves some of the pressure on the local criminal docket and makes this more manageable for everyone. Is the prosecutor behaving properly in this regard?
    a) Yes, because he is making a good-faith effort to expedite the proceedings, which is good for the defendants who are innocent and want to get their trials done sooner rather than later.
    b) Yes, because he is apprising them of their rights before asking them to waive the right to a preliminary hearing.

c) No, because it is improper for a prosecutor to have any direct contact with an unrepresented defendant before trial.
d) No, because a prosecutor must not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.

Rule 3.8(c)

210. Attorney works as a prosecutor and brings charges against a defendant. Attorney clearly has probable cause for alleging that the defendant committed the crime, but he also doubts that a judge or jury will find that the evidence satisfies the standard of "beyond a reasonable doubt." Attorney brings the case anyway, and the defendant wins an acquittal. Has Attorney acted improperly, under the Rules of Professional Conduct?
a) Yes, because a prosecutor in a criminal case shall not seek a conviction unless the prosecutor believes in good faith that the defendant is guilty beyond a reasonable doubt.
b) Yes, because the prosecutor should have conducted more investigation before commencing the proceedings so that he could ensure a conviction, if he already has probable cause to believe the defendant is guilty.
c) No, because when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.
d) No, because a prosecutor may bring charges as long as the prosecutor knows the charges are supported by probable cause.

Rule 3.8(a)

211. What is the basic difference between a prosecutor's duties under Brady v. Maryland and the duties under MRPC 3.8?
a) Brady requires prosecutors to turn over all material exculpatory information, while the Model Rules require prosecutors to turn over any information that tends to negate guilt of the accused or mitigate the offense, which is more inclusive.
b) The Model Rules require prosecutors to turn over all material exculpatory information, while Brady requires prosecutors to turn over any information that tends to negate guilt of the accused or mitigate the offense, which is more inclusive.
c) The two standards are identical.
d) The Model Rules apply even before the filing of criminal charges, while Brady requirements apply only if a case goes to trial.

Rule 3.8(d)

212. Attorney is an Assistant U.S. Attorney (federal prosecutor) working for the Department of Justice, and he must prosecute the defendants arrested in a high-profile sting operation against a terrorist cell. Attorney faces tremendous political and media pressure to win convictions at any cost. Attorney argues with his supervisor that he is not subject to local ethics rules, as he is litigating exclusively in federal court in cases

involving federal law, and that he should therefore be immune from state bar disciplinary proceedings. Is Attorney correct?

a) Yes, because of federal preemption of state law, a federal prosecutor who litigates exclusively in federal court, under federal law, does not come under the jurisdiction of the local bar disciplinary authorities.
b) Yes, because under the USA Patriot Act, federal prosecutors are immune from disciplinary actions for their decisions in antiterrorism prosecutions.
c) No, because Attorney will inevitably have cases that involve questions of state law, or will have cases transferred to state court.
d) No, because federal statute, as well as Department of Justice regulations, subject federal prosecutors to the ethics rules of the state where such attorney engages in that attorney's duties.

28 U.S.C. § 530B; 28 C.F.R. §77.3

213. A prosecutor receives a call from a crime lab about some DNA samples that someone had misplaced years before in a freezer at the lab. The DNA related to one of the prosecutor's former cases. Someone at the crime lab had checked the files and realized that the defendant in the case had been convicted of rape and murder, and was serving a life sentence in prison, but that the DNA evidence absolutely exonerates the defendant and points instead to the victim's cousin as the perpetrator. Does the prosecutor have specific ethical duties about what to do regarding this information?

a) Yes, the prosecutor must notify the defense counsel of the man who was wrongfully convicted, and must investigate to see if there is corroboration for the new confession to the crime by the New York defendant.
b) Yes, the prosecutor shall seek to remedy the conviction.
c) No, as long as the prosecutor believes that the original defendant really did commit the crime.
d) No, unless other evidence turns up to corroborate the story that the crime lab just told the prosecutor, the prosecutor does not need to take any action.

Rule 3.8(g)

214. A prosecutor in New York is engaged in plea bargain negotiations with a defendant and defense counsel. The defendant offers to confess to a much more serious crime, committed several years ago in California, if the prosecutor will drop the current charges, which will put the defendant in danger of retaliation from his gang once he is in prison. The prosecutor agrees, and the defendant confesses to a notorious armored car robbery in California ten years earlier that made national news, and for which another man had been convicted and was serving his sentence. The defendant describes the crime with sufficient detail that the prosecutor doubts that he could be fabricating the story. Does the prosecutor have any ethical duties about what to do with this information?

a) Yes, the prosecutor must notify the defense counsel of the man who was wrongfully convicted, and must investigate to see if there is corroboration for the new confession to the crime by the New York defendant.
b) Yes, the prosecutor must promptly disclose that evidence to an appropriate court or authority.
c) No, the prosecutor does not have to take any action unless there is clear and convincing evidence that the wrong person was convicted of a crime and is in prison.
d) No, because the prosecutor cannot breach his duty of confidentiality, but he should urge the defendant to contact the authorities in California directly so that the wrongfully-convicted man can get out of prison.

Rule 3.8(g)

215. Three years after prosecuting a defendant and obtaining a conviction for murder, another individual comes to the police station and confesses to committing the very murder for which the defendant is already serving time. The defendant always maintained his innocence and the basis of his conviction was an identification (in a lineup) by a single eyewitness. The person now confessing to the crime also fits the description given by the eyewitness and had a plausible motive for committing the murder. Does the prosecutor have a duty report this to the convicted defendant's lawyer?

a) Yes, when a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant in his jurisdiction did not commit an offense of which the defendant was convicted, the prosecutor shall promptly disclose that evidence to the defendant unless a court authorizes delay, and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
b) Yes, the prosecutor shall seek to remedy the conviction.
c) No, as long as the defendant received a fair trial and had presentation by counsel, a judgment of the court is final and the new evidence is irrelevant.
d) No, the prosecutor should report it to the defendant himself and urge him to file a habeas corpus petition in federal court.

Rule 3.8(g)

Rule 3.9 Advocate in Nonadjudicative Proceedings

216. Attorney testified before a state legislative committee about the need for the state to privatize its dysfunctional prison system. Attorney said he was there to testify as a concerned citizen of the state and a taxpayer, and Attorney did in fact believe that prison privatization was smart public policy. Attorney did not disclose that he was representing Alcatraz Incorporated, the largest private prison company in the country,

which hoped to secure the lucrative contracts to operate the state's prisons after the legislature votes to privatize them. Was it improper for Attorney to neglect to disclose his representation of the private prison company?

a) Yes, because a lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity.
b) Yes, because the lawyer pretended that he was hoping to save on his taxes, but the privatization of prisons often turns out to be more expensive than having state-run prisons.
c) No, because what the lawyer told the committee was factually accurate – he is a concerned citizen, a taxpayer, and he truly believes in privatizing prisons.
d) No, because a lawyer's duty of candor pertains to tribunals, not to legislative subcommittees.

Rule 3.9

Rule 1.13 Organization as Client

217. An attorney worked for a corporation as in-house counsel. The attorney discovered that the Chief Financial Officer falsified the corporation's quarterly earnings report in order to prop up the firm's share price, as the CFO's compensation is partly in stock options. The attorney knows that these misrepresented earnings appeared in the filings to the Securities and Exchange Commission, and will eventually result in severe regulatory fines or civil liability for the corporation. The attorney thus reasonably believes that the violation is reasonably certain to result in substantial injury to the organization. The Chief Financial Officer hired the attorney, and he directly supervises the attorney in the organizational chain of command. The attorney confronted the Chief Financial Officer, but this proved unfruitful, and then the Chief Financial Officer discharged the attorney. What should the attorney do in this situation?
    a) The attorney should immediately report the matter to the relevant government regulatory authority.
    b) The attorney should keep the information confidential, because the person who hired him has not authorized him to disclose the information.
    c) The attorney should proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge.
    d) The attorney should notify the manager directly above the Chief Financial Officer in the corporation and then drop the matter.

    Rule 1.13(e)

218. A corporation consents to having the attorney who serves as its in-house counsel represent the corporation's officers and directors on matters related even tangentially to the company. The consent came by a vote of the shareholders. Can an attorney be subject to discipline for representing both a corporation and its officers or directors individually?
    a) Yes, because there is always a potential conflict of interest between the individual running a corporation and the shareholders.
    b) Yes, because shareholders of a corporation cannot consent or grant a waiver to a potential conflict of interest.
    c) No, because a lawyer representing an organization may also represent any of its directors or officers, if the shareholders give consent.
    d) No, because conflicts of interest apply only between natural persons, not between individuals and organizations.

    Rule 1.13(g)

219. An attorney served as general counsel for a municipal auditing and enforcement bureau, which monitored the internal affairs and expenditures of the municipal government. The attorney discovered that the head of the bureau engaged in selective enforcement and self-dealing, and suspected that bribery had occurred in a few instances. The attorney's confrontation of the bureau head proved futile, so the attorney then needed to proceed up the chain of command. Can the attorney serving as general counsel for a government bureau report wrongdoing to anyone higher within that municipality?

a) Yes, but only by testifying under subpoena at a city council hearing or the legislative equivalent for that municipality (town aldermen, board of county commissioners, etc.).
b) Yes, because if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of the Rules of Professional Conduct.
c) No, because the head of the bureau is the general counsel's client.
d) No, because governmental lawyers do not have a "client" organization in the same sense as attorneys in the private sector, because civil servants must act in the public interest.

Rule 1.13 Cmt. 9

220. According to the official Comment to Rule 1.13 of the Model Rules of Professional Conduct, when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, a lawyer must refer the matter to higher authority. This includes, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. Ordinarily (unless applicable law specifies otherwise), which of the following would be an organization's highest authority to whom a lawyer might refer the matter?
a) The Chief Executive Officer (CEO)
b) The board of directors or similar governing body
c) The annual meeting of the shareholders or the majority shareholder
d) The general counsel of the corporation

Rule 1.13 Cmt. 5

Rules 4.1-4.4 - Transactions and communications with persons other than clients (2-8% of MPRE)

Rule 4.1 Truthfulness in Statements to Others
Rule 4.2 Communication with Person Represented by Counsel
Rule 4.3 Dealing with Unrepresented Person
Rule 4.4 Respect for Rights of Third Persons

Rules 4.1-4.4

221. A lawyer knows that his opposing counsel has a reputation for refusing to settle cases and forcing lawsuits to go to trial, in order to impose the full costs of litigation on the opposing party. Cultivating this reputation serves as a deterrent to other would-be litigants against opposing counsel's clients. In order to avoid a rebuff by opposing counsel, the lawyer finds a close friend of the opposing party, and asks the close friend to communicate an informal settlement offer to the opposing party directly, bypassing the other lawyer. The opposing party is delighted to hear the offer and readily agrees to settle the case. Opposing counsel is furious and reports the lawyer for misconduct. The lawyer claims that he did not communicate with opposing counsels' client, but rather the friend did, so the prohibitions on contact with other parties would not apply. Is the lawyer correct?
    a) Yes, the friend's willingness to be an informal intermediary serves as an independent intervening actor that breaks the line of causation to the lawyer.
    b) Yes, the opposing party's eagerness to settle the case shows that the lawyer did what the other party wanted; such an endorsement after the fact negates any possible violation of the Rules.
    c) No, a lawyer may not make a communication prohibited by the Rules through the acts of another, such as the friend in this case.
    d) No, lawyers are never permitted to speak directly to an opposing party under any circumstances; even if the opposing counsel had consented to the communication, the lawyer would be subject to discipline.

222. In anticipation of trial over workplace discrimination, a plaintiff's lawyer contacts several current managers of the defendant corporation and interviews them about the day-to-day operations of the company and the chain of command for addressing

personnel complaints. These managers supervise employees, address interpersonal problems between workers, filed complaints, and consult with the firm's in-house counsel about personnel matters that seem serious. The lawyer does this without permission from the defendant's attorney. Was this proper?

a) Yes, given that these managers are likely to be witnesses at trial and subject to cross-examination anyway, it is reasonable for the lawyer to have a chance to speak with them informally before trial.
b) Yes, because 95% of such cases settle before trial, meaning most discrimination cases do not really constitute "litigation" for purposes of the ethical rules.
c) No, because even the identity of the managers at a defendant corporation is confidential information that should not be available to a lawyer in discrimination litigation.
d) No, consent of the company's lawyer is always required for communication with a present constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter.

223. A business owner hires a lawyer hoping to enforce a non-compete agreement against a former employee at their technology firm. According to the client, a rumor started going around just this past week that the former employee had either started his own business nearby or was working for a nearby competitor, either of which, if true, could violate the non-compete agreement. The employee left the client's company on bad terms about three weeks ago. The client provides a copy of the non-compete agreement, and speculates that the former employee may have forgotten about the agreement (which he signed fifteen years ago), and would probably be oblivious to the fact that he is violating it. The lawyer decides that the first step is to call the former employee and ask him whether he has found another job yet or has started his own business. The lawyer assumed that the former employee would not have retained counsel yet to challenge the non-compete agreement, given the client's comments about him, and how recently the events unfolded. The former employee answers the phone, explains that he has started his own rival company, and that he believes the non-compete agreement is invalid under state law. When the lawyer asks why it would be invalid, the former employee says that his own lawyer says that recent changes in state law make the previous agreement void, and that they plan to challenge the agreement in court. The lawyer asks him to have his own lawyer contact him so that they can discuss possible settlement for the dispute. Has the lawyer acted properly?

a) Yes, as the prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed, and this means that the lawyer has actual knowledge of the fact of the representation.
b) Yes, if the non-compete agreement has a binding arbitration clause, as matters covered under alternative dispute resolution (arbitration, mediation, or a non-judicial referee) do not implicate the prohibition on communication with opposing parties.

c) No, the prohibition on communications with a represented person applies regardless of the lawyer's knowledge, because the burden is on every lawyer to determine whether an opposing party has representation before making contact.
d) No, because one can easily infer from these facts and circumstances that the lawyer actually knew the former employee had representation.

224. A business owner hires a lawyer to enforce a non-compete agreement against a former executive at the client's technology firm. According to the client, a rumor started going around just this past week that the former executive had either started his own business nearby or was consulting for a nearby competitor; if true, either scenario could violate the non-compete agreement. The client explains that the former executive has already asserted that the non-compete agreement is invalid under a recent decision from the state Supreme Court, and is filing an action for a declaratory judgment to challenge the non-compete agreement preemptively, though the client is unsure whether his company received proper service yet about the lawsuit. The lawyer decides that the first step is to call the former employee and ask him whether he has found another job yet or has started his own business. The former employee answers the phone, explains that he has started his own rival company, and that he believes the non-compete agreement is invalid under state law. The lawyer asks him to have his own lawyer contact him so that they can discuss possible settlement for the dispute. Has the lawyer acted properly?
a) Yes, as the prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed, and this means that the lawyer has actual knowledge of the fact of the representation.
b) Yes, if the non-compete agreement has a binding arbitration clause, as matters covered under alternative dispute resolution (arbitration, mediation, or a non-judicial referee) do not implicate the prohibition on communication with opposing parties.
c) No, because one can easily infer from these facts and circumstances that the lawyer actually knew the former employee had representation.
d) No, because this is an action for declaratory judgment rather than money damages, so the usual exceptions to the prohibition on communication do not apply.

225. Attorney represents Plaintiff in a civil suit. Defendant is also represented, but contacts Attorney to negotiate a settlement agreement. Attorney advises Defendant that he cannot discuss the case with Defendant because Defendant is represented by counsel. Defendant faxes Attorney a letter stating that he waives the rule restricting Attorney from communicating with Defendant while Defendant is represented. Upon receipt of the fax, Attorney contacts Defendant and discusses a settlement agreement. Are Attorney's actions proper?
a) Yes, because an attorney may communicate with represented persons as long as the represented person provides a written waiver to that attorney.
b) Yes, because an attorney may communicate with represented persons as long as the represented person initiates the communication.

c) No, because attorneys may not communicate with represented persons at all unless the attorney representing that person is also present.
d) No, because attorneys may not communicate with represented persons unless the attorney representing that person permits the attorney to communicate with the represented person.

226. Attorney sees Friend at high school reunion. Friend asks Attorney for advice about a possible civil lawsuit Friend is considering hiring an attorney to file. Attorney gives Friend general information about the area of law and about the particular kind of lawsuit an attorney will most likely file for Friend. Friend lives too far away from Attorney for Attorney to handle the case, and Friend is planning to hire an attorney near his residence to handle the lawsuit. Attorney later talks to his own wife about Friend's lawsuit. Wife discusses the suit with her own friend. Friend discovers that several people know about his potential suit and is upset, as he believed that Attorney was not allowed to speak about his potential case to others. Is Attorney subject to discipline?
a) Yes, attorneys shall not disclose information about potential lawsuits they discuss with others unless authorized by that person, whether or not the person is or is not a potential or current client.
b) Yes, persons with whom an attorney discusses potential litigation, even if only in a general manner, are considered prospective clients and are afforded protection as if they were, in fact, clients themselves.
c) No, an attorney owes no duties or protections, including protections against disclosing information about potential lawsuits, to persons who communicate with attorneys without any expectation of forming a client-attorney relationship.
d) No, an attorney may discuss potential client cases with others as long as the potential client did not retain the attorney to handle the matter that potential client discussed with the attorney.

Rule 1.15 – Safekeeping Client Funds and Other Property (2-8% of MPRE)

227. An attorney represented a seller in a business transaction involving industrial equipment. When the deal was complete, the purchaser sent the attorney a check for $7,000, the agreed-upon purchase price, with a letter directing the attorney to forward the money to his client (the seller). The attorney notified his client immediately that the check had come in. The client was traveling at the time, and asked the attorney to hold the funds until he returned from his trip. The attorney had only recently opened his own firm and did not yet have a client trust account at any banks in the area, so he deposited the check in his own bank account temporarily. As soon as the check cleared, the attorney wrote a check to the client for the full amount, which the client picked up in person. Did the attorney act properly in this case?
    a) Yes, because the amount was less than $10,000, so it did not trigger the ethical rules pertaining to separate client accounts.
    b) Yes, because the client asked the attorney to hold the funds temporarily, and the attorney faithfully delivered the entire sum to the client with his own check.
    c) No, because a lawyer must hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
    d) No, because a lawyer should not have accepted the check at all, but should have instructed the purchaser to write the check out to the client himself, and deliver it directly to the client.

Rule 1.15(a)

228. An attorney has a busy transactional practice and frequently must handle client funds, either for making commercial purchases, sales, leases, dispute settlements, or other transfers. The attorney faithfully deposits client money in a separate trust account and does not commingle the funds with his own, except that he deposits enough of his own money in the account to cover the monthly bank service charges. The attorney keeps complete, accurate records of all deposits and withdrawals for a full year, after which he destroys the records to preserve client confidentiality. Is the attorney acting improperly?
    a) Yes, because the attorney did not keep records for a long enough period.
    b) Yes, because the attorney should not have deposited any of his own funds in the account together with client funds.
    c) No, because the lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account.
    d) No, because the attorney keeps property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's

own property, in a separate account maintained in the state where the lawyer's office is situated.

Rule 1.15(a)

229. A client hires an attorney to represent him in a divorce proceeding, and gives the attorney a $10,000 retainer to cover all legal fees and expenses in the case. The attorney deposited the money in his client trust account, to be withdrawn by the lawyer only as the fees were earned or expenses incurred. Was this arrangement proper?
   a) Yes, a lawyer may deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
   b) Yes, because $10,000 is a reasonable amount for the legal fees and expenses in a typical divorce case, and the lawyer did not charge a contingent fee.
   c) No, because the fees are for the lawyer, and therefore the lawyer has commingled his own legal fees in the client trust account, in violation of the Model Rules.
   d) No, because withdrawing the fees gradually throughout the course of the representation constitutes a contingent fee arrangement, which is impermissible in representation for a divorce proceeding.

Rule 1.15(c)

230. "IOLTA" is an acronym for which of the following?
   a) Interest Owed on Legal Transaction Accounts
   b) Interest On Lawyers' Trust Accounts
   c) In-house, Of Counsel, Litigation, and Transactional Attorneys
   d) Internal Oversight of Lawyer Trial Advocacy

231. Most funding for legal aid clinics in the United States comes from which of the following sources?
   a) LSC and IOLTA
   b) Private foundation grants and court filing fees
   c) Fundraiser events and grants from the state bar association
   d) The American Bar Association and the American Civil Liberties Union

232. What is the Legal Services Corporation?
   a) LSC is a nationwide network of affiliated legal aid clinics

b) LSC is a national for-profit corporation that provides law firms with many law-related services, including title insurance, liability insurance, archiving, document indexing and review, printing, and investigation/research
c) LSC is a quasi-government corporation that receives an annual budget apportionment from Congress, which it then distributes to other entities around the country.
d) LSC is an ABA-approved group legal services plan that refers members of the plan to participating law firms when the members need a lawyer.

233. What historical development necessitated the creation of IOLTA programs around the country?
a) Congress defunded the LSC
b) Congress imposed burdensome restrictions on the activities of entities receiving LSC funds
c) A Supreme Court decision forced the ABA to amend the Model Rules
d) The passage of the Civil Rights Act and its subsequent amendments

234. Do state IOLTA programs violate the Takings Clause of the United States Constitution?
a) Yes, but the Supreme Court held that the takings are nevertheless justified because of their important social purpose
b) Yes, but individual clients do not have standing to challenge IOLTA programs, because their losses are too small to constitute an injury-in-fact
c) No, because the Supreme Court held that the interest is not client "property" and therefore does not constitute a governmental taking.
d) No, because even though the programs constitute a governmental taking, the Supreme Court has held that the compensation owed to an individual client is zero.

235. How does enforcement of the rules pertaining to safeguarding client funds or property differ from enforcement of other professionalism or disciplinary rules?
a) The state bar rarely discovers mishandling of client funds because normally it goes unreported
b) Unlike its reactive enforcements of other rules, the state bar actively audits firms to catch violations of the rules about handling client funds.
c) Disqualification is the primary enforcement mechanism.
d) Legal malpractice actions are the primary enforcement mechanism, rather than disciplinary action by the bar.

ANSWER KEY

Rule 1.7 Conflict of Interest - Current Clients

1. a
2. b
3. c
4. a
5. b
6. c
7. c
8. c
9. d
10. a
11. c
12. b
13. a
14. c
15. b
16. a
17. c
18. c
19. b
20. a
21. a
22. a
23. a
24. c
25. d
26. c
27. b
28. a

Rule 1.8 Conflict of Interest Current Clients - Specific Rules

29. d
30. a

31. d
32. c
33. b
34. a

Rule 1.9 Duties to Former Clients

35. c
36. c

Rule 1.10 Imputation of Conflicts of Interest - General Rule

37. c

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

38. c

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

39. a
40. d
41. b
42. d
43. b
44. a
45. a
46. c
47. c
48. b
49. a
50. a

Rule 1.4 Communication

51. b
52. b
53. a

Rule 1.5 Fees

54. a
55. a
56. a
57. c
58. c
59. c
60. c
61. d
62. d
63. c
64. b
65. d
66. c
67. d
68. a

Declining or Terminating Representation

69. d
70. a
71. b
72. d
73. b

Rules 3.1-3.7

74. d
75. b
76. a
77. c
78. b
79. d

80. c
81. a
82. a
83. c
84. b
85. c
86. b
87. c
88. b
89. b
90. c
91. a
92. a
93. a
94. b
95. c
96. a
97. d
98. a
99. a
100. c
101. b
102. c

Rule 1.3 Diligence

103. c

Malpractice

104. b
105. a

Confidentiality

106. c
107. a
108. d
109. b

110. d
111. b
112. b

Rules 5.1-5.7

113. b
114. b
115. b
116. b
117. b
118. b
119. c
120. c
121. c
122. c
123. c
124. c
125. c
126. d
127. d
128. d
129. d
130. d
131. a
132. b
133. d
134. b
135. c
136. d
137. a
138. a

Rule 8.1

139. a
140. b

141. d
142. c
143. a
144. c
145. b

Rule 8.2

146. a
147. b
148. c

Rule 8.3

149. b
150. b

Rule 8.4

151. d
152. a
153. b
154. c
155. b
156. a
157. d
158. b

Rule 8.5

159. c
160. a
161. c

TEXAS DISCIPLINARY PROCESS

162. b
163. b
164. b

165. b
166. b
167. b
168. b

Communication about Legal Services

Rule 7.1

169. a
170. c
171. c
172. a

Rule 7.2

173. d
174. a
175. b
176. c
177. b

Rule 7.3

178. b
179. a
180. c
181. b
182. b
183. c
184. a
185. b
186. a
187. d

Rule 7.4

188. b
189. c

190. a
191. d
192. b
193. c

Rule 7.5

194. a
195. d
196. c
197. a
198. b
199. a
200. b

Rule 7.6

201. a
202. c
203. d
204. b
205. d
206. d

Rule 2.1

207. c

Rule 3.8-3.9

208. d
209. d
210. d
211. a
212. d
213. b
214. b
215. a
216. a

Rule 1.13

217. c
218. b
219. b
220. b

Rules 4.1-4.4

221. c
222. d
223. a
224. c
225. d
226. c

Rule 1.15

227. c
228. a
229. a
230. b
231. a
232. c
233. b
234. d
235. b