

PRACTICE EXAM 19: MPRE SIMULATION

Time Allotted: 2 hours

Format: Multiple choice — select the best answer

1. A lawyer's engagement letter requires the client to consent to a particular conflict of interest. The lawyer hands the client a one-page document at the start of the meeting, asks her to sign it, and explains nothing about the conflict's nature or potential consequences. The client signs. Is the consent "informed" under the Rules?

A. Yes, because the client signed the document voluntarily after being given the opportunity to read it before signing the form presented to her by counsel

B. No, because Rule 1.0(e) defines "informed consent" as agreement after the lawyer has communicated adequate information about the material risks and reasonably available alternatives

C. Yes, provided the client is a sophisticated business person capable of understanding general legal documents that she is asked to sign in routine engagements

D. No, but only if the conflict subsequently materializes in a manner that causes actual harm to the client during the representation by the lawyer

2. A lawyer is approached at the courthouse by a friend whose son has just been arrested for an alcohol-related offense. The lawyer has handled only civil matters in her career but is being asked to make an emergency appearance at the arraignment that afternoon. May the lawyer accept the engagement?

A. Yes, in an emergency a lawyer may give advice or assistance in a matter in which she does not have the requisite skill, where referral to or consultation with another lawyer would be impractical; the assistance should be limited to what is reasonably necessary

B. No, because Rule 1.1 categorically prohibits a lawyer from providing any legal services in a practice area in which she does not have substantial prior experience and expertise

C. Yes, because friendship is an exception to ordinary competence requirements and permits emergency representation regardless of the lawyer's prior experience in that area of law

D. No, unless the lawyer first associates with criminal defense counsel as co-counsel of record before the arraignment commences before the trial court that afternoon

3. A lawyer is asked by a criminal defendant to represent her only for the limited purpose of negotiating a possible plea agreement before charges are formally filed. The lawyer believes this is a reasonable limited engagement. The client gives informed consent. May the lawyer proceed?

A. No, because Rule 1.2(c) categorically prohibits limited-scope representation in any criminal matter regardless of client consent or the procedural posture of the case at hand

B. No, unless the prosecutor formally consents in writing to the limited scope of the lawyer's anticipated involvement on behalf of the criminal defendant in the matter

C. Yes, but only after the lawyer files a formal limited-appearance form with the trial court that will eventually handle any resulting criminal charges in the matter going forward

D. Yes, because Rule 1.2(c) permits a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent, including in most criminal matters

4. A lawyer takes on a litigation matter and works on it diligently but more slowly than the client prefers. The pace is reasonable given the case's complexity, but the client repeatedly demands faster progress. The lawyer believes her pace is appropriate to ensure quality work. Is the lawyer subject to discipline?

A. Yes, because Rule 1.3 requires the lawyer to work at the pace the client specifies regardless of the underlying complexity of the work involved in the matter at hand

B. Yes, but only if the lawyer's pace causes any procedural deadline to be missed in the underlying litigation that adversely affects the client's substantive interests

C. No, because Rule 1.3 requires reasonable diligence, not maximum speed; a measured pace appropriate to the matter's complexity satisfies the rule even if slower than the client prefers

D. No, but only if the client signs a written waiver agreeing to the lawyer's chosen pace of work on the underlying litigation matter currently being prosecuted

5. A lawyer represents a client in commercial litigation. As the case progresses, the lawyer faces strategic choices about discovery scope, motion practice, and trial preparation. The lawyer makes all of these

decisions herself without consulting the client, believing they are technical matters. Is the lawyer subject to discipline?

A. No, because all tactical decisions in litigation are reserved to the lawyer under Rule 1.2 of the Model Rules of Professional Conduct in routine litigation matters

B. Yes, because Rule 1.4(a)(2) requires a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished

C. No, because the lawyer's professional judgment about tactical matters is generally entitled to deference under the Rules and need not be subjected to client review

D. Yes, but only if the strategic decisions actually result in adverse consequences for the client in the underlying litigation that could have been avoided with consultation

6. A lawyer agrees orally to represent a client on a personal injury claim for one-third of any recovery. The lawyer never reduces the agreement to writing. The case settles for \$90,000. Has the lawyer complied with Rule 1.5?

A. Yes, because oral fee agreements between a lawyer and a client are generally enforceable under the Rules of Professional Conduct in most jurisdictions of the United States

B. Yes, provided the client received clear oral disclosure of the fee percentage at the outset of the representation by the lawyer in advance of any substantive work

C. Yes, but only if the client expressly agreed in writing at settlement to the fee amount being calculated as one-third of the recovery in the underlying matter

D. No, because Rule 1.5(c) requires a contingent fee agreement to be in a writing signed by the client, stating the method by which the fee is to be determined

7. A lawyer is uncertain about her ethical obligations in a complex client matter. She would like to consult an experienced ethics lawyer at another firm for guidance. The consultation requires her to disclose certain confidential information about the underlying matter. May the lawyer make the disclosure?

A. Yes, because Rule 1.6(b)(4) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to secure legal advice about the lawyer's compliance with the Rules

B. No, because Rule 1.6 prohibits any disclosure of confidential information to a lawyer outside the firm without the client's prior express written consent to the consultation

C. Yes, but only if the client first agrees in writing to the ethics consultation and the scope of the information that will be shared with the outside ethics counsel

D. No, because the lawyer must consult only the bar association's ethics hotline anonymously rather than retaining outside ethics counsel for direct consultation in the matter

8. A lawyer represents a manufacturer in State X arguing that a state-law cap on punitive damages is constitutional. Simultaneously, she represents an injury plaintiff in State Y arguing that State Y's similar cap is unconstitutional. The cases are in different jurisdictions with different clients. Is there a Rule 1.7 issue?

A. Yes, because Rule 1.7 categorically prohibits a lawyer from advancing inconsistent legal positions on the same constitutional issue in different cases before different courts

B. No, because the cases are in different jurisdictions and involve entirely different clients in entirely separate matters before different courts with no overlap in the parties

C. There is a Rule 1.7 issue only if there is a significant risk that the lawyer's argument in one case will materially limit her effectiveness in the other; if so, informed consent confirmed in writing is required

D. Yes, but only if one of the cases is currently before a court in which a decision could create binding precedent affecting the other matter being handled by the same counsel

9. A lawyer represents a corporate client in confidential negotiations to acquire a smaller company. The lawyer learns in the course of the work that the target has substantial undisclosed environmental liabilities. The lawyer mentions the issue at a cocktail party to a friend who is a competitor of the corporate client. The friend uses the information to outbid the client. Has the lawyer violated Rule 1.8?

A. No, because the lawyer did not use the information directly in the representation and the disclosure was unrelated to any official work product or formal communication with the client

B. Yes, because Rule 1.8(b) prohibits a lawyer from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent

C. No, because mentioning the information at a social event does not constitute "use" within the meaning of Rule 1.8(b) as that rule is generally interpreted by courts and disciplinary authorities

D. Yes, but only if the corporate client suffered actual quantifiable financial damages from the disclosure of the information at the cocktail party with the lawyer's friend

10. A lawyer is preparing a will for an unrelated client. The client wishes to leave the lawyer a substantial monetary bequest in recognition of years of friendship and good legal work. May the lawyer prepare the will with this bequest included?

A. Yes, because the client has independent legal capacity to determine her testamentary disposition and may direct any bequest she wishes to leave to the lawyer in her will

B. Yes, provided the lawyer charges a discounted fee for preparing the will to offset the value of the bequest she will receive on the testator's death from the estate

C. Yes, but only if the lawyer separately discloses the bequest to the bar disciplinary authority within thirty days of executing the will containing the personal bequest to the lawyer

D. No, because Rule 1.8(c) prohibits a lawyer from preparing an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer is related to the client

11. A criminal defense lawyer represents a client charged with a notorious crime. The client offers to assign the lawyer all film and book rights to the lawyer's account of the case in lieu of paying cash fees. The case is ongoing. May the lawyer accept the arrangement?

A. Yes, because the client may freely compensate her lawyer in any form she chooses, including by assigning intellectual property rights to the lawyer at the outset of the engagement

B. Yes, provided the lawyer agrees in writing not to publish or release anything until after all available appeals have been concluded by the appellate courts in the matter

C. No, because Rule 1.8(d) prohibits a lawyer from making or negotiating an agreement giving the lawyer literary or media rights to an account based substantially on the representation, prior to the conclusion of the representation

D. No, but only if the lawyer would accept any portion of the proceeds from a third-party publication or production based on the trial proceedings of the underlying criminal case

12. A grandmother retains a lawyer to defend her grandson in a criminal matter. She agrees to pay the lawyer's full fee. The grandson is the client. May the lawyer accept the arrangement?

A. Yes, if the grandson gives informed consent, the grandmother does not interfere with the lawyer's independence or the lawyer-client relationship, and information relating to the representation is protected as required by Rule 1.6

B. No, because Rule 1.8 categorically prohibits payment by anyone other than the client in criminal matters where the client is not personally the payor of the legal fees being incurred

C. Yes, but only if the grandson and the grandmother enter into separate written engagement letters with the lawyer defining their respective rights regarding the underlying matter and the fee arrangement

D. No, because the grandmother's payment would automatically create a non-consentable conflict of interest between the lawyer and the grandson under Rule 1.7 of the Model Rules

13. A lawyer represents three plaintiffs jointly. The defendant offers a \$1 million global settlement. The lawyer believes the settlement is favorable. May the lawyer accept the settlement on behalf of all three clients with only oral agreement from each plaintiff?

A. Yes, because joint representation includes the lawyer's authority to settle on behalf of the clients within reasonable terms negotiated in good faith with opposing counsel

B. Yes, provided the lawyer's allocation among the three plaintiffs is objectively fair based on the relative strength of their respective claims under the applicable law in the matter

C. Yes, because the lawyer reasonably believes the settlement is in each plaintiff's interest and the clients have given general settlement authority to her at the outset

D. No, because Rule 1.8(g) requires each client to give informed consent in a writing signed by the client, including disclosure of the existence and nature of all claims and each client's participation in the settlement

14. A lawyer's standard engagement letter contains a clause stating: "Client agrees that the lawyer's total liability for malpractice arising from this engagement shall not exceed the total fees paid for the matter." The client signs without consulting independent counsel. Is the clause enforceable?

A. Yes, because clients have freedom of contract to define the scope of any potential malpractice liability they may pursue against the lawyer at any time during or after the engagement

B. No, because Rule 1.8(h)(1) prohibits a lawyer from making an agreement prospectively limiting the lawyer's liability for malpractice to a client unless the client is independently represented in making the agreement

C. Yes, provided the limitation is reasonable in light of the typical malpractice exposure in matters of similar complexity and value to the engagement being undertaken by the lawyer

D. No, but only if the client subsequently files a malpractice claim and challenges the enforceability of the clause in litigation against the lawyer in the underlying matter

15. A lawyer realizes she has made an error that may give rise to a malpractice claim. The lawyer's insurance carrier suggests she resolve the matter directly with the client by offering a payment in exchange for a release. The client is unrepresented. What must the lawyer do under Rule 1.8(h)(2)?

- A. Advise the client in writing of the desirability of seeking and giving her a reasonable opportunity to seek the advice of independent legal counsel in connection with the settlement
- B. Obtain the client's signature on a release that recites the lawyer's offer and the client's acceptance of the proposed terms in clear and complete language understandable to the client
- C. Offer to pay the client an amount the lawyer reasonably believes fairly reflects the magnitude of her error and any consequential damages flowing from the conduct in the matter
- D. Limit the proposed release to the specific error already identified and exclude any other potential claims the client may have against the lawyer for the underlying engagement

16. A lawyer represents a client on a contingency fee basis in a personal injury case. The lawyer offers to also acquire a 20% ownership interest in the cause of action itself in exchange for advancing certain expert witness fees. May the lawyer do so?

- A. Yes, because contingent fees and ownership interests in causes of action are both permitted forms of compensation under the Rules of Professional Conduct in personal injury matters
- B. Yes, provided the client gives written informed consent to both the contingent fee arrangement and the ownership interest at the outset of the engagement after consultation
- C. Yes, but only if the percentage ownership is no greater than the lawyer's contingent fee percentage in the underlying personal injury claim being pursued in the litigation
- D. No, because Rule 1.8(i) generally prohibits a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation, except for a lien to secure fees and a contingency fee in a civil case

17. A lawyer takes on a new family law client. After several weeks of representation, the lawyer and client develop mutual romantic feelings. They had no prior personal relationship before the representation began. May they begin a sexual relationship while the representation continues?

- A. Yes, provided the client gives written informed consent and the lawyer believes the relationship will not affect the competence of her representation in the underlying matter at hand

B. Yes, because consenting adults may freely choose to engage in personal relationships regardless of any professional engagement between them at the time the relationship begins

C. No, because Rule 1.8(j) prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced

D. No, but only if the family law matter involves contested child custody where the relationship could be raised against the client during the underlying litigation by the opposing party

18. A lawyer at a 20-lawyer firm has a personal sexual relationship with a current client that predates the lawyer-client relationship — therefore permitted under Rule 1.8(j) for this particular lawyer. The firm's other lawyers wish to represent the client in unrelated matters. May they do so?

A. Yes, because Rule 1.8(k) provides that the Rule 1.8(j) prohibition applies to the lawyer involved in the sexual relationship and is not imputed to other lawyers in the firm; other Rule 1.8 prohibitions, however, generally are imputed under 1.8(k)

B. No, because all Rule 1.8 conflicts, including the sexual relations rule, are imputed under Rule 1.8(k) to every lawyer in a multi-lawyer firm in all circumstances under the Model Rules

C. Yes, but only if each individual firm lawyer obtains the client's separate informed consent in writing for the unrelated representations before commencing work on any of the matters

D. No, unless the firm formally screens the lawyer in the sexual relationship from any contact with the client matters being handled by the other lawyers at the firm

19. A lawyer formerly represented a small business. The business sold its assets and ceased to exist two years ago. Now, the acquiring company seeks to retain the lawyer in a matter substantially related to her prior representation, with interests adverse to the former owners. The former owners are willing to consent. What does Rule 1.9(a) require?

A. The lawyer may proceed without any consent because the original business client no longer exists and its former owners have no continuing standing to object to the new representation

B. The lawyer must obtain informed consent from the former client (here, the former owners as successors to the former client's interests) confirmed in writing before undertaking the new representation

C. The lawyer may proceed if the new client gives informed consent in writing, regardless of the former client's position on the matter at issue between them in the underlying dispute

D. The lawyer may proceed only after obtaining a court order authorizing the new representation in the matter substantially related to the prior engagement involving the former business client

20. A lawyer moves to a new firm. While at her prior firm, she did not personally work on a particular former client's matter, but other lawyers there did. The new firm now has a matter substantially related to that former client's prior representation, with interests materially adverse to the former client. May the lawyer participate?

A. Yes, because the lawyer never personally represented the former client and therefore owes no duty of loyalty under Rule 1.9 of the Model Rules of Professional Conduct

B. No, because all lawyers at the prior firm are categorically disqualified from any subsequent representation adverse to former clients of the firm regardless of personal involvement in the underlying matter

C. Yes, provided the new firm formally screens the lawyer from any contact with the new matter for the duration of the engagement against the former client in the matter

D. No, if the lawyer acquired confidential information about the former client material to the matter that is not generally known, under Rule 1.9(b); otherwise, the lawyer may participate

21. A lawyer at a firm has a personal conflict that disqualifies her from representing a particular client. The conflict arises from her prior representation of an adverse party at a former firm. The current firm wishes to take on the new engagement using a different lawyer. May the firm do so?

A. Yes, because conflicts personal to a particular lawyer are never imputed to her firm under any circumstances under the Model Rules of Professional Conduct as applied in most jurisdictions

B. Yes, provided the firm requires every other lawyer to sign a written acknowledgment that she will not consult with the disqualified lawyer about the new matter during the engagement

C. Generally no — Rule 1.10(a) imputes one lawyer's conflict to the entire firm, though Rule 1.10(a)(2) provides a screening cure for some conflicts arising from a lawyer's prior association with another firm

D. Yes, because the disqualified lawyer's personal conflict has no connection to the new engagement being undertaken by colleagues at the current firm handling the new matter

22. A lawyer formerly worked at the U.S. Department of Justice and personally and substantially participated in an antitrust investigation of a particular company. She has now joined a private law firm. The firm wishes to represent the same company in a related private matter. Under Rule 1.11(b), what cures the imputation of her conflict?

- A. The disqualified lawyer must be timely screened from any participation in the matter and apportioned no part of the fee; written notice must be given to the appropriate government agency
- B. The firm must require the disqualified lawyer to leave the firm and join a different law practice before any work on the new matter may be undertaken at the firm she has just joined
- C. The firm must obtain the express written consent of the former government employer before undertaking the new representation of the affected private party in any related matter
- D. The firm cannot undertake the representation because Rule 1.11 imputation cannot be cured by screening in any government-to-private transition matters under the Model Rules

23. A lawyer currently working as an assistant district attorney is approached by a private criminal defense firm offering her a job. While considering the offer, she continues to handle cases in her DA role. Some of those cases involve the same defense firm she is considering joining. What does Rule 1.11(d) require?

- A. The lawyer may continue working on all cases as before, because Rule 1.11(d) applies only after a government lawyer leaves her position for private practice in the same field of law
- B. Rule 1.11(d) restricts a current government lawyer's negotiation for private employment with firms involved in matters in which she is personally and substantially participating; the lawyer must not negotiate such employment without consent
- C. The lawyer must immediately resign her government position and decline the offer, because dual-employment negotiations are categorically prohibited under the Model Rules regardless of any circumstances
- D. The lawyer must inform every defendant currently represented by the offering firm of the pending employment negotiations before continuing to handle any matter at the district attorney's office

24. A judge presided over a contested commercial dispute that settled before trial. The judge retired three years ago and is now in private practice. One of the parties to that dispute now seeks to retain her in a follow-on matter related to the same dispute. May she undertake the engagement?

- A. Yes, because the underlying dispute settled before any final decision by the judge was rendered in the matter while she was on the bench presiding over the case
- B. Yes, because retirement extinguishes any continuing professional obligations under Rule 1.12 of the Model Rules of Professional Conduct after a defined period following the departure from the bench

C. No, unless all parties to the proceeding give informed consent confirmed in writing, because Rule 1.12(a) generally prohibits a lawyer from representing anyone in a matter in which the lawyer participated personally and substantially as a judge

D. Yes, provided the retired judge does not directly reference any of her prior judicial work on the underlying dispute in the new matter being handled by her in her current private practice

25. A lawyer is retained by a corporation. The CEO is the principal contact, but the lawyer interacts regularly with multiple corporate officers and the board of directors. Who is the lawyer's client?

A. The CEO personally, because he is the principal contact and decisionmaker for the corporation in the engagement with the lawyer on behalf of the entity

B. Each individual officer and director who has substantive contact with the lawyer during the representation of the corporate entity in connection with the engagement

C. The corporation, the CEO, and any individual director or officer who interacts with the lawyer during the course of the engagement on behalf of the company

D. The corporation, because Rule 1.13(a) provides that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents

26. A lawyer represents a corporation. The CEO asks the lawyer also to represent her personally in a related matter where her individual interests may differ from the corporation's. May the lawyer undertake the dual representation?

A. Yes, if the lawyer obtains informed consent from each client and any conflict is properly waived, with the corporation's consent given by an appropriate official other than the constituent being represented

B. No, because a lawyer may never simultaneously represent both an entity and one of its constituents in any matter regardless of the willingness of both clients to consent in writing

C. Yes, because dual representation of a corporation and its CEO is automatic upon engagement and does not require any separate engagement letter or specific informed consent procedure

D. No, unless the corporation's board of directors formally votes to authorize the dual representation in a duly recorded resolution adopted by the full board at a regular meeting

27. A lawyer represents an elderly client with mild but progressing cognitive decline. The client is still able to express her wishes about most matters but sometimes seems confused. What does Rule 1.14(a) generally require?

- A. The lawyer must immediately move for the appointment of a guardian to make all decisions for the client during the representation going forward from the date of the noticed decline
- B. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client even when the client has diminished capacity
- C. The lawyer must obtain a court order before continuing the representation of any client with any cognitive decline regardless of severity or impact on her decision-making capacity
- D. The lawyer must withdraw from the representation immediately upon noticing any sign of cognitive impairment in the elderly client during the engagement on the underlying matter

28. A lawyer maintains a single bank account into which she deposits all incoming funds — her own earned fees, client retainers, settlement proceeds, and reimbursements. She maintains detailed ledgers tracking each client's interest. Does her arrangement comply with Rule 1.15?

- A. Yes, because the lawyer maintains careful detailed ledgers that accurately track each client's funds and her own funds within the same combined account at the bank during the period
- B. Yes, provided the lawyer can reconcile the account monthly and demonstrate that no client funds have been misappropriated during the period of the combined account arrangement
- C. No, because Rule 1.15(a) requires a lawyer to hold property of clients or third persons in the lawyer's possession separate from the lawyer's own property — typically in a separate trust account
- D. No, but only if the lawyer's commingling has resulted in actual misappropriation of client funds for the lawyer's personal use during the period of the combined account arrangement

29. A lawyer receives a \$10,000 advance payment of fees from a new client. The fees will be earned over time as the lawyer performs work. Where must the advance be deposited?

- A. In the lawyer's client trust account, because Rule 1.15(c) requires legal fees and expenses paid in advance to be deposited in a client trust account and withdrawn only as fees are earned or expenses incurred
- B. Half in the trust account and half in the operating account, reflecting the partial nature of advance fee arrangements between attorneys and clients at the start of representations under the rule
- C. In the operating account, because all advance retainers are considered earned upon receipt under the modern view of attorney fee arrangements between counsel and represented clients
- D. In any separately maintained interest-bearing account, with any interest paid to the client at the close of the representation when the engagement has concluded and the work is complete

30. A client telephones her lawyer and informs her that the client has decided to terminate the engagement. The client offers no reason. The lawyer believes the discharge is mistaken and that the client would be better served by continued representation. Must the lawyer comply?

A. No, because the lawyer may continue the representation if she reasonably believes continuation is in the client's best interest under the circumstances of the matter being handled by counsel

B. Yes, but only if the client provides a written statement of cause for the discharge to the lawyer and the bar disciplinary authority within thirty days of the original telephone call

C. No, because client discharge is effective only after a court approves the substitution of counsel in any pending matter before the trial court that is currently presiding over the case

D. Yes, because Rule 1.16(a)(3) requires a lawyer to withdraw when the lawyer is discharged by the client, and the client generally has an absolute right to discharge her lawyer

31. A lawyer has been representing a client in a routine matter for several months. The lawyer wishes to withdraw simply because she has lost interest in the work. The matter is not pending before a tribunal. Withdrawal would not materially harm the client. May the lawyer withdraw?

A. No, because Rule 1.16(b) requires specific enumerated grounds for permissive withdrawal, and lawyer's loss of interest is not among them under the Model Rules of Professional Conduct

B. No, because withdrawal without a material professional reason violates the duty of diligence under Rule 1.3 of the Model Rules and ordinary fiduciary duties owed to current clients

C. Yes, because Rule 1.16(b)(1) permits a lawyer to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client

D. Yes, provided the lawyer first identifies a competent successor lawyer willing to take over the client's matter at the same fee structure currently being charged by the lawyer

32. A lawyer wishes to sell only a portion of her practice — specifically her family law cases — while continuing to handle her other matters. May she do so under Rule 1.17?

A. No, because Rule 1.17 categorically prohibits any sale of a lawyer's practice during the lawyer's continued practice in any area of law within the geographic region where she practices

B. Yes, under Rule 1.17 the seller may sell the entire practice, or the entire area of practice (such as her family law practice), to one or more lawyers or law firms, provided the requirements of the rule are met

C. Yes, but only if the lawyer simultaneously sells the family law practice to multiple buyers to spread the engagement across more than one firm receiving the transferred files at closing

D. No, unless the lawyer also sells her remaining practice within twelve months of the partial sale at issue under the rule governing the disposition of law practices upon transfer

33. A prospective client meets briefly with a lawyer for a free initial consultation. The lawyer does not undertake the representation. Three months later, the prospective client's adversary in the matter approaches the lawyer to represent her instead. The lawyer wishes to share with the new client some of what she learned during the original consultation. May she do so?

A. No, because under Rule 1.18(b) a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to former-client information

B. Yes, because the prospective client never became a formal client and the lawyer therefore has no continuing duty to protect information shared during the initial consultation about the matter

C. Yes, provided the lawyer first notifies the original prospective client of her intent to share the information with the new adverse client at the outset of the new engagement

D. No, but only if the original prospective client subsequently engages other counsel and pursues the underlying matter against the lawyer's new client in active litigation

34. A prospective client met with a lawyer for an extended consultation, during which she shared information that could be significantly harmful if used against her. The lawyer did not undertake the representation. The adversary now wishes to retain the lawyer in the same matter. What does Rule 1.18(c) bar?

A. The lawyer is permanently disqualified from representing the prospective client in any future matter even unrelated to the original consultation between the lawyer and the prospective client at the outset

B. The lawyer is free to represent the adverse party because no formal lawyer-client relationship was ever established with the prospective client at the consultation between the parties

C. The lawyer shall not represent a client with interests materially adverse to a prospective client in the same or substantially related matter if she received information that could be significantly harmful, absent informed consent or proper screening under Rule 1.18(d)

D. The lawyer may represent the adverse party only if the original prospective client has formally retained other counsel in the same underlying matter being pursued by the adverse party

35. A lawyer is asked by a client for advice on whether to terminate a long-time but increasingly difficult business partnership. The client expects only a legal analysis of the buy-out provisions. The lawyer is aware of significant economic, moral, and reputational factors that bear on the wisdom of termination. May the lawyer raise them?

A. No, because Rule 2.1 limits the lawyer to providing only the specific legal advice the client requested at the outset of the consultation between the lawyer and her client on this matter

B. No, unless the client first expressly invites the lawyer to address non-legal factors affecting the decision to terminate the partnership in connection with the underlying legal question

C. Yes, but only if the lawyer obtains the client's prior written consent before incorporating any non-legal considerations into her formal written opinion delivered to the corporate client

D. Yes, because Rule 2.1 provides that in rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation

36. A lawyer is retained to prepare a written evaluation of a client's business for use by a third-party lender. In the course of the engagement, the lawyer learns information that the client treats as confidential. When the lawyer prepares her report for the lender, what is the lawyer's obligation regarding the client's other confidential information?

A. Under Rule 2.3(c), except as disclosure is authorized in connection with the report of the evaluation, information relating to the evaluation is otherwise protected by Rule 1.6 of the Model Rules

B. The lawyer must include all material confidential information in the evaluation report regardless of the client's preference for confidentiality on certain matters relating to the underlying business and its operations

C. The lawyer must obtain the lender's written consent to omit any confidential information from the evaluation report before delivering it to the lender at the conclusion of the engagement

D. The lawyer must include all information potentially relevant to the lender's credit decision regardless of whether the client treats it as confidential under her own internal corporate practice

37. A lawyer is invited to act as an arbitrator in a commercial dispute between two parties, neither of whom is currently her client. What does Rule 2.4(a) provide regarding her role?

- A. The lawyer cannot serve as arbitrator because Rule 2.4 prohibits practicing lawyers from serving in adjudicative-type roles outside their normal client practice in any forum or venue
- B. A lawyer serves as a third-party neutral when she assists two or more non-clients to reach a resolution of a dispute, including as arbitrator, mediator, or in other capacities under the rules
- C. A lawyer may serve as a third-party neutral only after obtaining advance written consent from the bar association of her state of admission to take on the role in a particular matter
- D. A lawyer must withdraw from all other ongoing engagements at her firm before serving as a third-party neutral on any matter going forward during the term of the neutral engagement

38. A criminal defendant's lawyer believes there is no factual or legal basis to contest the government's case. The defendant insists on going to trial and putting the government to its proof. May the lawyer continue to defend the case at trial?

- A. No, because Rule 3.1 prohibits a lawyer from defending a criminal case in which she has no reasonable belief in the merit of the defense or in the underlying factual innocence of her client
- B. No, unless the lawyer first obtains the trial court's express permission to defend a case the lawyer privately believes lacks merit on the substantive issues in the underlying criminal matter
- C. Yes, but only if the lawyer obtains a written waiver from the defendant acknowledging that the defense will not succeed at trial on the merits of the underlying charges being prosecuted
- D. Yes, because Rule 3.1 expressly provides that a lawyer for the defendant in a criminal proceeding may so defend the proceeding as to require that every element of the case be established

39. A lawyer routinely seeks delays in litigation, files motions for extensions of time without genuine cause, and uses other tactics to slow down cases as a matter of standard practice. The delays do not violate any specific procedural rule. Has the lawyer violated Rule 3.2?

- A. Yes, because Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; routine delay tactics lacking any substantial purpose violate the rule
- B. No, because procedural extensions and delay tactics are within the lawyer's discretion under Rule 1.2 of the Model Rules and are governed solely by the procedural rules of the trial court
- C. Yes, but only if the delays result in formal sanctions or other adverse court action against the lawyer in a particular matter being handled before the trial court in the underlying litigation
- D. No, because Rule 3.2 applies only to delays that violate specific procedural deadlines established by the trial court in the case rather than to general patterns of behavior in litigation

40. A lawyer makes a factual representation to the trial court that she believes is accurate. After leaving the courtroom, she discovers that the representation was actually false. The hearing has concluded for the day; the matter remains pending. What does Rule 3.3 require?

- A. The lawyer has no continuing obligation because her original representation was made in good faith based on her belief at the time the statement was made to the court during the hearing
- B. The lawyer must obtain the client's prior written consent before making any correction to the court regarding the earlier representation made in error during the hearing on the underlying motion
- C. The lawyer must correct the false statement of fact to the tribunal, because Rule 3.3(a)(1) prohibits knowingly making a false statement and requires the lawyer to correct any false statement of material fact or law previously made
- D. The lawyer must move to withdraw from the representation rather than correct the prior representation made to the court in error during the previous court hearing on the matter

41. A lawyer represents a client in a civil case. The client tells the lawyer in advance of trial that she intends to testify and offer specific testimony the lawyer reasonably believes to be false. The lawyer is unable to persuade the client otherwise. May the lawyer refuse to offer the testimony?

- A. No, because the lawyer must present whatever testimony the client wishes to give and may not screen the client's testimony before it is offered at trial in the matter before the court
- B. Yes, because Rule 3.3(a)(3) provides that a lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false
- C. Yes, but only after the lawyer first informs opposing counsel and the trial court of her belief that the testimony will be false in advance of trial during a pre-trial conference of the parties
- D. No, because the duty of zealous advocacy requires the lawyer to present all evidence the client wishes to offer regardless of the lawyer's personal beliefs about the truthfulness of the proposed testimony

42. A lawyer is representing a client before a state administrative agency hearing officer. The proceeding is adjudicative in nature though not in a court. During the proceeding, the client offers evidence that the lawyer comes to know is false. Does Rule 3.3 apply?

- A. No, because Rule 3.3 applies only to traditional court proceedings before judges presiding over courts of record under the laws and procedural rules of the jurisdiction in which the court sits

B. No, because state administrative proceedings are governed by their own ethical standards distinct from the Model Rules of Professional Conduct as adopted by the relevant state supreme court

C. Yes, but only if the hearing officer is a former judge or has direct judicial authority to sanction the lawyer's conduct in the matter being prosecuted before the administrative agency

D. Yes, because Rule 3.3(b) extends the candor duty to all "tribunal" proceedings, defined broadly to include adjudicative hearings before any body acting in an adjudicative capacity

43. A lawyer is seeking a temporary restraining order from a trial court in an ex parte proceeding. The opposing party will not be heard before the TRO is issued. What does Rule 3.3(d) require of the lawyer in such an ex parte proceeding?

A. The lawyer is free to advance only her own client's interests because ex parte proceedings inherently involve a one-sided presentation by counsel to the tribunal handling the application

B. The lawyer must seek to have opposing counsel notified of the ex parte hearing regardless of the procedural rules governing the TRO application in the matter currently being prosecuted in court

C. The lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse

D. The lawyer must obtain advance permission from the chief judge of the court before any ex parte application may be presented in the underlying matter to the court at the courthouse

44. A lawyer receives interrogatories from opposing counsel. The lawyer believes the interrogatories are overbroad. Rather than respond or object, the lawyer simply ignores them and provides no response by the deadline. Has the lawyer violated Rule 3.4?

A. Yes, because Rule 3.4(d) prohibits a lawyer from failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party; objections must be timely raised

B. No, because the lawyer's belief that the interrogatories were overbroad permits her to ignore them entirely under the rules of professional conduct as currently interpreted in most jurisdictions

C. Yes, but only if the trial court subsequently orders her to respond and she continues to refuse compliance with the court's order after motion practice in the underlying litigation matter

D. No, because Rule 3.4 governs only court orders and not the procedural rules governing routine discovery exchanges between parties in connection with ongoing pretrial litigation matters

45. A lawyer represents a corporation in litigation. The lawyer instructs a current corporate employee — a witness who is the lawyer's client's officer — not to voluntarily speak with opposing counsel about the litigation. Has the lawyer violated Rule 3.4?

A. Yes, because Rule 3.4 prohibits a lawyer from instructing any witness not to provide voluntarily relevant information to the opposing party regardless of the witness's status or employment relationship

B. No, because Rule 3.4(f) permits a lawyer to request a person to refrain from voluntarily giving relevant information to another party if the person is a relative, employee, or agent of a client, and the lawyer reasonably believes the person's interests will not be adversely affected

C. Yes, because Rule 3.4 applies categorically to all witnesses regardless of their employment relationship with any party in the underlying litigation now pending in court before the assigned trial judge

D. No, because the duty under Rule 3.4 applies only to court orders and formal discovery procedures rather than to informal pretrial information gathering by opposing counsel in connection with the case

46. A lawyer is involved in a contested administrative proceeding. The administrative law judge has discretion over the outcome. The lawyer's spouse is the judge's longtime golf partner. The lawyer asks her spouse to mention the case favorably during their next round of golf. Has the lawyer violated Rule 3.5?

A. No, because casual personal conversations between social acquaintances are outside the scope of Rule 3.5's prohibitions on contact with judicial officers in pending matters before any tribunal

B. No, provided the spouse does not directly request a favorable ruling on behalf of the lawyer's client during the personal conversation between them on the golf course or in any other social setting

C. Yes, because Rule 3.5(a) prohibits seeking to influence a judge by means prohibited by law; using a personal relationship to convey favorable information about a pending case violates this rule

D. Yes, but only if the administrative law judge ultimately rules in the lawyer's client's favor on a contested issue in the underlying administrative proceeding before her on the merits

47. A lawyer makes a public statement about a pending case. She believes the statement will not affect the proceeding, but a reasonable lawyer in her position would recognize that the statement has a substantial likelihood of materially prejudicing the adjudicative proceeding. Has the lawyer violated Rule 3.6?

A. Yes, because Rule 3.6(a) prohibits a lawyer who is participating in the investigation or litigation of a matter from making an extrajudicial statement that she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding

B. No, because Rule 3.6 requires actual knowledge that the statement will prejudice the proceeding, and the lawyer's subjective belief was that it would not affect the underlying matter at issue

C. Yes, but only if the statement actually causes documented prejudice in the underlying adjudicative proceeding rather than mere risk of prejudice to the parties or the tribunal handling the matter

D. No, because Rule 3.6's "reasonably should know" standard applies only to non-trial lawyers and not to active trial counsel making public statements in real time during the underlying case

48. A lawyer is representing a client in a fee dispute. The lawyer expects to testify about the nature and value of her own services to the client. Opposing counsel argues she must withdraw as trial counsel under Rule 3.7. May she continue as trial counsel?

A. No, because Rule 3.7 disqualifies any necessary witness from continuing as trial advocate without any exception applicable to fee disputes between lawyers and clients under the rules

B. Yes, only if her firm has no other competent lawyer available to handle the trial of the underlying fee dispute matter currently pending before the trial court at issue between the parties

C. No, unless the client signs a written waiver of the lawyer-witness rule and agrees in writing to her continued representation through trial in the underlying fee dispute matter

D. Yes, because Rule 3.7(a)(2) provides an exception permitting a lawyer-witness to continue as trial advocate when the testimony relates to the nature and value of legal services rendered in the case

49. A prosecutor learns, after a defendant has been convicted, of new credible and material evidence that creates a reasonable likelihood the defendant did not commit the offense. The defendant is currently incarcerated. Under Rule 3.8(g), what must the prosecutor do?

A. The prosecutor has no obligation because the conviction has become final, and the defendant must pursue post-conviction relief through her own counsel in the matter currently pending review

B. The prosecutor shall promptly disclose the evidence to an appropriate court or authority and, if the conviction was obtained by the prosecutor's office, to the defendant, and undertake further investigation or cause an investigation as appropriate

C. The prosecutor must disclose the evidence only to the defendant's post-conviction counsel, who must then decide whether to pursue any relief based on the new information uncovered after conviction

D. The prosecutor must immediately move the trial court to vacate the conviction without further investigation of the underlying claim of innocence by the defendant first being thoroughly examined

50. A prosecutor knows of clear and convincing evidence establishing that a defendant in her jurisdiction was convicted of an offense she did not commit. The defendant remains in prison. Under Rule 3.8(h), what must the prosecutor do?

- A. The prosecutor shall seek to remedy the conviction under Rule 3.8(h), which imposes that affirmative duty whenever the prosecutor knows of clear and convincing evidence of actual innocence
- B. The prosecutor must defer to the trial court's original judgment regardless of any subsequently discovered evidence of innocence in the matter long after the original conviction has been entered
- C. The prosecutor must disclose the evidence only to the defendant's post-conviction counsel and take no further independent action under the rule beyond communicating the underlying information
- D. The prosecutor's obligation is exhausted by notifying the bar disciplinary authority of the new evidence rather than taking any action in court or before the trial judge who originally heard the case

51. A lawyer represents a seller in a real estate transaction. During the transaction, the lawyer learns that her client has knowingly omitted material environmental information from the buyer's due diligence request — information the buyer has a legal right to receive. The omission would assist a fraudulent transaction. What does Rule 4.1(b) require?

- A. The lawyer has no disclosure duty because the omission was committed by the client and not by the lawyer personally during the underlying transaction with the buyer and her own counsel
- B. The lawyer must encourage the client to disclose but may continue the representation without further action by counsel even if the client refuses to provide the required information to the buyer
- C. The lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6
- D. The lawyer may continue the representation and rely on the buyer's own counsel to discover the omission during further due diligence on the property prior to the closing of the underlying transaction

52. A lawyer represents a corporation in litigation. The corporation is represented by its in-house counsel. May the lawyer contact a constituent of the corporation directly if authorized by law or court order to do so?

- A. No, because Rule 4.2 prohibits direct contact with represented persons under all circumstances regardless of any contrary court authorization or other legal authority under applicable law

B. No, unless the in-house counsel personally consents to the contact in writing before any communication takes place between the lawyer and the constituent of the represented corporation

C. Yes, but only if the constituent initiates the contact and waives the protections of Rule 4.2 of the Model Rules of Professional Conduct in a signed writing acknowledging the waiver

D. Yes, because Rule 4.2 expressly permits communication with a represented person when the lawyer is authorized to do so by law or a court order in connection with the underlying litigation

53. A lawyer receives a misdirected email from opposing counsel containing what appears to be opposing counsel's privileged work product. The lawyer recognizes the inadvertent disclosure. What does Rule 4.4(b) require?

A. The lawyer must destroy the email without reading further and may not retain any copy of the communication in the firm's electronic records under Rule 4.4(b) of the Model Rules

B. The lawyer who receives a document or electronically stored information relating to representation of the lawyer's client and knows or reasonably should know that it was inadvertently sent shall promptly notify the sender

C. The lawyer must contact the bar disciplinary authority to report the inadvertent disclosure within a reasonable time after receipt of the misdirected email from opposing counsel in the matter

D. The lawyer must move the trial court for guidance on whether to read the inadvertently received privileged work product of opposing counsel in the underlying litigation matter between the parties

54. A partner at a large law firm is responsible for the firm's overall management. The firm has no written policies or procedures regarding ethical compliance, conflict checking, or supervision of associate attorneys. The partner has not implemented any systematic oversight. Has the partner violated Rule 5.1?

A. Yes, because Rule 5.1(a) requires a partner in a law firm, and a lawyer with comparable managerial authority, to make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules

B. No, because Rule 5.1 imposes only individual supervisory duties for specific matters and not firm-wide management duties for policies and procedures of the firm to govern its lawyers

C. Yes, but only if the firm has actually experienced a specific instance of associate misconduct attributable to the lack of supervisory procedures in place during the relevant time period at the firm

D. No, because Rule 5.1 applies only to direct supervisors of the lawyer who actually commits the misconduct in a specific client matter rather than to general firm-wide managerial structures

55. An associate at a law firm is instructed by her supervising partner to engage in conduct that the associate believes violates the Rules of Professional Conduct. The associate complies with the instruction. Is the associate subject to discipline?

A. No, because Rule 5.2 categorically immunizes subordinate lawyers from any disciplinary consequences for conduct undertaken at the direction of a supervisor at the firm during her engagement

B. No, provided the associate's compliance was reasonable given her relative inexperience and the partner's seniority at the firm and the relative position of the partner in the firm's hierarchy

C. Yes, because Rule 5.2(a) provides that a lawyer is bound by the Rules notwithstanding that she acted at the direction of another person; the safe harbor in 5.2(b) applies only to a supervisor's reasonable resolution of an arguable question

D. Yes, but only if the conduct results in actual harm to the underlying client whose matter was affected by the conduct in question taken by the associate at the direction of the partner

56. A non-lawyer employee at a law firm engages in conduct that, if engaged in by a lawyer, would violate the Rules of Professional Conduct. The lawyer who supervises the employee knew of the specific conduct and ratified it. Is the supervising lawyer subject to discipline?

A. No, because non-lawyer assistants are not bound by the Rules of Professional Conduct and the supervising lawyer therefore cannot be derivatively liable for the conduct of the non-lawyer assistant

B. Yes, because Rule 5.3(c) provides that a lawyer is responsible for conduct of a non-lawyer assistant that would violate the Rules if engaged in by a lawyer if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct

C. No, because the supervising lawyer must directly engage in or order the misconduct herself for personal disciplinary liability to attach under the rules governing professional responsibility in this area

D. Yes, but only if the supervising lawyer has formal managerial authority over the firm's non-lawyer staff at the time of the relevant conduct and is also a partner at the firm where it occurred

57. A lawyer in a small firm dies unexpectedly. His estate is entitled to receive payments under his employment agreement. The agreement provides that the estate will receive a percentage of the firm's net legal fees for two years after his death. Is this arrangement permissible under Rule 5.4?

A. No, because Rule 5.4(a) prohibits any fee sharing with non-lawyers, including the deceased lawyer's estate, regardless of contractual entitlement under any pre-existing employment arrangement

B. No, unless the deceased lawyer's estate is administered by a probate attorney who is also licensed in the same jurisdiction as the firm continuing in practice after the lawyer's death

C. Yes, but only if the surviving partners separately approve the arrangement after the lawyer's death in a properly recorded firm vote conducted under the partnership agreement of the firm

D. Yes, because Rule 5.4(a)(1) permits a lawyer or law firm to pay money over a reasonable period of time after the lawyer's death to the lawyer's estate or to specified persons under the rule

58. A lawyer wishes to incorporate her solo practice as a professional corporation. She proposes to sell 30% of the equity to a non-lawyer business advisor in exchange for capital investment. The non-lawyer would not have voting rights or any direct involvement in legal matters. May the lawyer proceed under the Model Rules?

A. Yes, because non-voting equity ownership by a non-lawyer is exempt from Rule 5.4's restrictions on non-lawyer involvement in the practice of law in the standard professional corporation

B. Yes, provided the non-lawyer signs a written acknowledgment that she will not interfere with the lawyer's professional judgment in client matters during the term of the equity investment

C. Generally no, because Rule 5.4(d) prohibits a lawyer from practicing in the form of a professional corporation or association authorized to practice law for profit if a non-lawyer owns any interest therein, with limited exceptions

D. Yes, but only if the lawyer maintains majority ownership and complete voting control over the professional corporation's operations and decisions throughout the term of the equity arrangement

59. A lawyer is admitted in State X. She accepts an in-house counsel position at a corporation headquartered in State Y. She provides legal advice exclusively to her employer. Is the lawyer engaged in the unauthorized practice of law in State Y?

A. Yes, because she is providing legal services in State Y without being admitted to State Y's bar in any capacity through the standard admission process for licensed legal practice

B. No, because Rule 5.5(d)(1) permits a lawyer admitted in another U.S. jurisdiction to provide legal services through an office or other systematic and continuous presence in a jurisdiction where she is not admitted, when the services are provided to her employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission

C. No, because in-house counsel work is exempt from all state unauthorized-practice rules regardless of the lawyer's state of admission to the bar in any state under the laws governing legal practice

D. Yes, unless she also obtains pro hac vice admission for every individual matter she advises on for the corporate employer in State Y during the term of her employment with the company

60. A lawyer is leaving her firm. As part of the departure, the firm proposes a non-compete clause that restricts her ability to represent any of the firm's clients for two years. The clause is in connection with the firm's retirement benefits plan. The lawyer is a retiree under the plan. Is the clause permissible?

A. No, because Rule 5.6(a) categorically prohibits all post-departure restrictions on a lawyer's right to practice law without exception under the rule and the Model Rules of Professional Conduct

B. No, but only if the clause restricts the lawyer's ability to represent former clients for more than one year after her departure from the firm at the conclusion of her tenure with the firm

C. Yes, because all post-departure restrictions are enforceable under the Rules so long as the client has freedom to retain new counsel of her choice for any matter currently pending or contemplated

D. Yes, because Rule 5.6(a) prohibits agreements restricting a lawyer's right to practice after termination of the relationship, with an exception for agreements concerning benefits upon retirement

PRACTICE EXAM 19: ANSWERS AND EXPLANATION

1. B — Rule 1.0(e) defines "informed consent" as agreement after the lawyer has communicated adequate information and explanation about the material risks and reasonably available alternatives. A bare signature without explanation does not meet this standard, regardless of whether the client could have read the document independently.

2. A — Rule 1.1 Comment [3] provides that in an emergency a lawyer may give advice or assistance in a matter in which she does not have the requisite skill, where referral to or consultation with another lawyer would be impractical. Even so, the assistance should be limited to what is reasonably required by the emergency at hand.

3. D — Rule 1.2(c) permits a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The Model Rule contains no categorical exclusion of criminal matters, so limited-scope representations such as pre-charge plea negotiation are generally permissible.

4. C — Rule 1.3 requires reasonable diligence and promptness, not maximum speed. Pursuing complex work at a measured pace appropriate to the matter satisfies the rule; the client's subjective preference for faster progress does not redefine what reasonable diligence means.

5. B — Rule 1.4(a)(2) requires a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished. While Rule 1.2(a) allocates tactical discretion to the lawyer, the consultation obligation under 1.4(a)(2) remains; tactical autonomy is not a license for unilateral silence on significant strategic questions.

6. D — Rule 1.5(c) requires that a contingent fee agreement be in a writing signed by the client and state the method by which the fee is to be determined. Oral contingent fee agreements violate the rule independent of any later enforceability question between the lawyer and the client.

7. A — Rule 1.6(b)(4) expressly permits a lawyer to reveal information relating to the representation of a client to the extent reasonably necessary to secure legal advice about the lawyer's compliance with the Rules. Ethics consultations with outside counsel fit squarely within this confidentiality exception.

8. C — Comment [24] to Rule 1.7 addresses positional conflicts: ordinary inconsistent positions in unrelated cases are not impermissible, but a conflict arises when there is a significant risk that the lawyer's action in one case will materially limit her effectiveness in the other. If so, informed consent confirmed in writing is required.

9. B — Rule 1.8(b) prohibits a lawyer from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent. The rule reaches all disadvantageous use of confidential information, including casual disclosures that enable a competitor's interference with the client's interests.

10. D — Rule 1.8(c) prohibits a lawyer from preparing an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient is related to the client. The family exception does not extend to friends or longtime clients without a familial relationship.

11. C — Rule 1.8(d) prohibits a lawyer from making or negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based substantially on information relating to the representation, prior to the conclusion of the representation. The rule prevents the lawyer's interest in publication from influencing legal strategy.

12. A — Rule 1.8(f) permits a lawyer to accept compensation from a person other than the client if the client gives informed consent, there is no interference with the lawyer's independence or the lawyer-client relationship, and Rule 1.6 confidentiality is preserved. The grandmother-grandson arrangement is permissible when these three conditions are satisfied.

13. D — Rule 1.8(g) requires each client to give informed consent in a writing signed by the client to any aggregate settlement, with full disclosure of all the claims and each client's participation in the settlement. Oral general settlement authority is not sufficient to satisfy the rule.

14. B — Rule 1.8(h)(1) prohibits a lawyer from making an agreement prospectively limiting the lawyer's liability for malpractice to a client unless the client is independently represented in making the agreement. A signed engagement letter alone does not satisfy the independent-representation requirement.

15. A — Rule 1.8(h)(2) prohibits a lawyer from settling a claim or potential malpractice claim with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and given a reasonable opportunity to seek, the advice of independent legal counsel. The written advisement is mandatory.

16. D — Rule 1.8(i) prohibits a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation she is conducting, with limited exceptions for a lien to secure fees and a

reasonable contingent fee in a civil case. A direct ownership share in the cause of action falls outside these exceptions.

17. C — Rule 1.8(j) creates a bright-line rule prohibiting sexual relations between a lawyer and a current client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. Client consent during the representation does not cure a violation, and the rule applies across all practice areas.

18. A — Rule 1.8(k) provides that prohibitions in Rules 1.8(a) through (i) are imputed to all lawyers in the firm, but Rule 1.8(j) is conspicuously excluded from the imputation rule. The sexual-relations prohibition is treated as personal to the lawyer involved and does not extend by imputation to the firm.

19. B — Rule 1.9(a) requires informed consent confirmed in writing from the former client before a lawyer may represent a new client in a substantially related matter where interests are materially adverse. The former client's interest, including through successor representatives, must be respected through the writing requirement.

20. D — Rule 1.9(b) disqualifies a lawyer who has moved firms from representing a person in a substantially related matter where the lawyer acquired confidential information about the former client at the prior firm that is material to the matter and is not generally known. If she acquired no such information personally, she is not disqualified.

21. C — Rule 1.10(a) imputes one lawyer's conflict to the entire firm. Rule 1.10(a)(2) provides a narrow screening cure for conflicts arising from a lawyer's prior association with another firm, requiring timely screening, no fee apportionment, and notice to the affected former client.

22. A — Rule 1.11(b) provides a screening cure for former-government-lawyer conflicts that would otherwise be imputed to the new firm. The disqualified lawyer must be timely screened from any participation in the matter, apportioned no part of the fee, and written notice must be given to the appropriate government agency.

23. B — Rule 1.11(d) restricts a current government lawyer in two ways: she may not participate in a matter in which she participated personally and substantially in private practice (and may have related disqualifications), and she may not negotiate for private employment with any person involved as a party or attorney in a matter in which the lawyer is participating personally and substantially.

24. C — Rule 1.12(a) generally prohibits a lawyer from representing anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, unless all parties to the proceeding give informed consent confirmed in writing. Settlement of the underlying matter does not vitiate the disqualification.

25. D — Rule 1.13(a) provides that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. The entity, not the individual officers or directors, is the client; the lawyer owes her primary duty of loyalty to the entity itself.

26. A — Rule 1.13(g) permits a lawyer representing an organization also to represent any of its constituents subject to Rule 1.7. Where the consent of the organization is required, it must be given by an

appropriate official of the organization other than the individual constituent who is to be separately represented.

27. B — Rule 1.14(a) provides that when a client's capacity to make adequately considered decisions is diminished, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Diminished capacity does not automatically warrant guardianship, withdrawal, or substituted decision-making.

28. C — Rule 1.15(a) requires a lawyer to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Careful internal recordkeeping does not substitute for the actual separation of accounts that the rule requires.

29. A — Rule 1.15(c) requires a lawyer to 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. Advance retainers for future work are unearned at receipt and must be held in trust until earned.

30. D — Rule 1.16(a)(3) requires a lawyer to withdraw from representation when she is discharged by the client. The client's right to discharge counsel is broad, and the lawyer's contrary belief about the client's best interest does not override it.

31. C — Rule 1.16(b)(1) permits a lawyer to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client. No specific cause is required when the withdrawal will not harm the client's interests in the matter.

32. B — Rule 1.17 permits a lawyer or law firm to sell or purchase a law practice, including the sale of an entire area of practice (such as the seller's family law practice), provided the rule's other requirements are met. Partial sales by practice area are expressly authorized under the rule.

33. A — Rule 1.18(b) provides that even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client. The prospective-client duty mirrors the former-client duty.

34. C — Rule 1.18(c) prohibits a lawyer from representing a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful. Rule 1.18(d) provides limited paths forward via informed consent or proper screening.

35. D — Rule 2.1 provides that in representing a client, a lawyer shall exercise independent professional judgment and render candid advice, and may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation. The rule expressly authorizes contextual advice within the lawyer-client relationship.

36. A — Rule 2.3(c) provides that, except as disclosure is authorized in connection with the report of the evaluation, information relating to the evaluation is otherwise protected by Rule 1.6. Disclosure of confidential information is limited to what is necessary for the evaluation; other confidential information remains protected.

37. B — Rule 2.4(a) provides that a lawyer serves as a third-party neutral when she assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute, including service as an arbitrator, mediator, or in such other capacity. The rule recognizes the third-party neutral role as a distinct professional function.

38. D — Rule 3.1 expressly provides that a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established. The constitutional right to put the prosecution to its proof overrides the general frivolousness standard.

39. A — Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Comment [1] makes clear that delay incurred merely for the convenience of advocates or to frustrate an opposing party's attempt to obtain rightful redress violates the rule.

40. C — Rule 3.3(a)(1) prohibits a lawyer from knowingly making a false statement of fact or law to a tribunal and from failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Once the lawyer learns her earlier statement was false, continued silence converts the unintentional misstatement into a knowing violation.

41. B — Rule 3.3(a)(3) provides that a lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false. The exception for criminal defendants flows from constitutional protections; in civil cases, the lawyer may decline to present suspect testimony.

42. D — Rule 3.3(b) and the definition of "tribunal" in Rule 1.0(m) extend the candor duties to adjudicative proceedings outside of court, including administrative hearings and other forums in which a neutral official renders binding decisions on legal claims. Administrative hearings before adjudicative officers fall within the rule.

43. C — Rule 3.3(d) provides that in an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse. The heightened duty exists because opposing counsel is unavailable to test the lawyer's presentation.

44. A — Rule 3.4(d) prohibits a lawyer from making a frivolous discovery request or failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party. Privilege or scope objections must be timely raised; silent disregard violates the rule independent of whether a motion to compel is filed.

45. B — Rule 3.4(f) provides an exception permitting a lawyer to request that a person refrain from voluntarily giving relevant information to another party if the person is a relative or an employee or other agent of a client, and the lawyer reasonably believes the person's interests will not be adversely affected. The exception applies precisely to current employees of a corporate client.

46. C — Rule 3.5(a) prohibits a lawyer from seeking to influence a judge, juror, prospective juror, or other official by means prohibited by law. Using a personal relationship as a back-channel to convey favorable information about a pending matter is precisely the type of improper means the rule targets.

47. A — Rule 3.6(a) prohibits a lawyer participating in a matter from making an extrajudicial statement that she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. The objective "reasonably should know" standard governs even where the lawyer subjectively believed otherwise.

48. D — Rule 3.7(a)(2) expressly excepts from the lawyer-witness disqualification rule testimony that relates to the nature and value of legal services rendered in the case. Fee disputes are the paradigmatic application of this exception.

49. B — Rule 3.8(g) requires a prosecutor who knows of new credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit the offense to promptly disclose the evidence to an appropriate court or authority, disclose to the defendant if the conviction was obtained in the prosecutor's jurisdiction (unless a court authorizes delay), and undertake or cause further investigation.

50. A — Rule 3.8(h) imposes an affirmative duty on a prosecutor who knows of clear and convincing evidence establishing that a defendant in her jurisdiction was convicted of an offense she did not commit to seek to remedy the conviction. The standard escalates from disclosure under (g) to active remediation under (h) once the evidence reaches the clear-and-convincing threshold.

51. C — Rule 4.1(b) provides that in the course of representation, a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6. Passive complicity in client fraud against an opposing party triggers the disclosure duty.

52. D — Rule 4.2 prohibits direct contact with a represented person about the subject of the representation unless the lawyer has the consent of the represented person's lawyer, or is authorized to do so by law or a court order. The "authorized by law or court order" exception is an express carve-out within the rule itself.

53. B — Rule 4.4(b) requires only that a lawyer who receives a document or electronically stored information relating to representation of her client and knows or reasonably should know that it was inadvertently sent shall promptly notify the sender. The rule does not require return or destruction; those issues are governed by other law and the sender's protective steps.

54. A — Rule 5.1(a) requires a partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority, to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules. The duty is structural and firm-wide.

55. C — Rule 5.2(a) provides that a lawyer is bound by the Rules of Professional Conduct notwithstanding that she acted at the direction of another person. The safe harbor in Rule 5.2(b) applies only where the subordinate acts in accordance with the supervisor's reasonable resolution of an arguable question of professional duty; where the subordinate herself believes the conduct is impermissible, the safe harbor is unavailable.

56. B — Rule 5.3(c)(1) provides that a lawyer is responsible for conduct of a non-lawyer assistant that would violate the Rules if engaged in by a lawyer if the lawyer orders or, with the knowledge of the

specific conduct, ratifies the conduct involved. Knowing ratification is sufficient to attribute the conduct to the lawyer.

57. D — Rule 5.4(a)(1) provides an explicit exception to the general fee-sharing prohibition: a lawyer or law firm may include payment to the estate or other representative of a deceased lawyer over a reasonable period of time after the lawyer's death. Continuation payments to a deceased lawyer's estate fit within this narrow carve-out.

58. C — Rule 5.4(d) prohibits a lawyer from practicing with or in the form of a professional corporation or association authorized to practice law for a profit if a non-lawyer owns any interest therein, with only limited exceptions (such as a deceased lawyer's estate during administration). Non-lawyer equity investment for capital purposes is not permitted under the Model Rule.

59. B — Rule 5.5(d)(1) permits a lawyer admitted in another U.S. jurisdiction to provide legal services through an office or other systematic and continuous presence in a jurisdiction where she is not admitted, when the services are provided to her employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission. In-house counsel work fits squarely within this exception.

60. D — Rule 5.6(a) prohibits agreements that restrict the rights of a lawyer to practice after termination of the relationship, except for an agreement concerning benefits upon retirement. Restrictions tied to a bona fide retirement benefits plan fall within the express exception to the rule.