

PRACTICE EXAM 22: MPRE SIMULATION

Time Allotted: 2 hours

Format: Multiple choice — select the best answer

1. A lawyer wishes to obtain her client's "informed consent, confirmed in writing" to a specific conflict of interest. The client gives oral informed consent during a meeting. What additional step satisfies the "confirmed in writing" requirement under Rule 1.0(b)?

A. The lawyer must obtain the client's signature on a separate notarized document recording the consent within five business days of the original oral conversation between the lawyer and the client

B. The lawyer must obtain a court order endorsing the client's oral consent before relying on it as confirmation in writing under the rule and the Model Rules of Professional Conduct

C. A writing transmitted by the lawyer to the client confirming the client's oral informed consent is sufficient under Rule 1.0(b), so long as it is transmitted within a reasonable time

D. The lawyer must have the client appear in person before a disciplinary authority to swear to her oral consent for the consent to qualify as confirmed in writing under the rule

2. A lawyer who has practiced only commercial litigation for fifteen years is asked to take on a securities fraud case in federal court. She has no prior experience in securities law but believes she can become competent through substantial preparation, including association with experienced securities counsel as co-counsel. May she accept the engagement?

A. Yes, a lawyer may provide competent representation in a new area through necessary preparation and study, including association with experienced counsel, consistent with Rule 1.1

B. No, because Rule 1.1 categorically prohibits a lawyer from undertaking representation in a new practice area regardless of preparation or her stated willingness to associate with experienced counsel

C. Yes, but only if she first obtains a court order authorizing the representation in light of her lack of prior securities law experience or substantive expertise in the field in question

D. No, unless the client expressly waives any malpractice claim arising from the lawyer's lack of prior securities law experience by signing a written engagement-letter clause to that effect

3. A lawyer represents a client in civil litigation. The defendant offers a settlement that the lawyer believes is favorable. The client rejects the offer. The lawyer believes she knows better than the client what is in the client's interest. May the lawyer accept the settlement against the client's wishes?

A. Yes, if the lawyer reasonably believes acceptance is in the client's best interest and the rejection appears motivated by emotion rather than reasoned judgment by the client in connection with the offer

B. No, because Rule 1.2(a) provides that a lawyer shall abide by a client's decision whether to settle a matter; the decision to accept or reject settlement belongs to the client alone

C. Yes, but only after the lawyer first obtains the trial court's permission to override the client's rejection of the settlement offer in the underlying matter being litigated in court

D. No, unless the lawyer first associates with senior counsel who concurs in the lawyer's judgment that settlement acceptance serves the client's best interest in the underlying litigation matter

4. A client telephones his lawyer asking about the status of his case. The lawyer recognizes the request but is busy with another matter and does not return the call. A week passes. The client calls again. Has the lawyer complied with the Rules?

A. Yes, because the lawyer was busy with other matters and her general workload is a permissible justification for delayed communication with any individual client under the Rules of Professional Conduct

B. Yes, provided the lawyer eventually responds to the client's inquiries before any specific procedural deadline expires in the matter being handled by the lawyer on behalf of the client

C. No, but only if the case is one in which the client's interests would be materially harmed by delayed communication with the lawyer about the status of the underlying matter at issue

D. No, because Rule 1.4(a)(4) requires a lawyer to promptly comply with reasonable requests for information; ignoring routine status inquiries for a week falls short of that duty

5. A lawyer charges her client a flat fee of \$25,000 for what she anticipates will be a routine real estate closing. The matter turns out to involve only six hours of work due to its simplicity. The client complains that the fee is unreasonable. Under Rule 1.5(a), what factors govern reasonableness?

A. The reasonableness of the fee is judged against multiple factors in Rule 1.5(a), including the time and labor required, the novelty and difficulty of the questions, the fee customarily charged, the experience of the lawyer, and the result obtained

B. Reasonableness is determined solely by the actual hours of work the lawyer expended on the matter divided by an objectively reasonable hourly rate for matters of this kind in the same jurisdiction

C. Flat fees are categorically presumed reasonable under Rule 1.5 if the client agreed to them in advance, regardless of any disparity between the fee and the work actually performed by the lawyer in the matter

D. The lawyer must refund the difference between the flat fee and the value of work actually performed at her standard hourly rate, regardless of any contrary agreement with the client in advance of the work

6. Lawyers from two different firms agree to handle a matter together. They wish to split the fee. What does Rule 1.5(e) require?

A. The lawyers must obtain a court order approving the fee split before any fee may be collected on the underlying matter from the client at the conclusion of the engagement between the parties

B. The lawyers may split the fee in any proportion they agree upon without restrictions or specific client involvement, so long as the fee itself does not exceed a reasonable total amount in the matter

C. The division must be in proportion to the services performed or, by written agreement, each lawyer assumes joint responsibility; the client must agree in writing to the share each lawyer will receive; and the total fee must be reasonable

D. The lawyers must form a temporary law firm for the duration of the matter to satisfy Rule 1.5(e), and each must take on equal supervisory authority over the other during the entirety of the engagement

7. A lawyer represents a client in a commercial dispute. To investigate the matter, the lawyer must share certain confidential client information with an outside expert witness and a litigation consultant retained by the firm. Must the lawyer obtain express client consent before each such disclosure?

A. Yes, because Rule 1.6 requires express client consent before any disclosure of confidential information to any third party regardless of the purpose of the disclosure or the relationship of the third party to the firm

B. No, because outside experts and consultants are agents of the lawyer and the confidentiality duty does not apply to communications with them in the course of preparing the case for trial in the underlying matter

C. Yes, but only as to the litigation consultant; outside experts retained as testifying witnesses are exempt from the consent requirement under the Rules of Professional Conduct as applied in most jurisdictions

D. No, because Rule 1.6(a) recognizes implied authorization to disclose information when disclosure is impliedly authorized in order to carry out the representation; consultation with experts and consultants typically falls within this implied authority

8. A lawyer represents a client. The client tells the lawyer that he is about to use the lawyer's services to make false representations in a financial transaction that will defraud the buyer of substantial money. The lawyer reasonably believes she can prevent the fraud by disclosing the client's intent to the buyer. May she disclose?

A. No, because Rule 1.6 absolutely prohibits disclosure of any client information without express client consent regardless of the financial fraud the client may be planning to perpetrate against the buyer in the matter

B. Yes, because Rule 1.6(b)(2) permits a lawyer to reveal information to the extent reasonably necessary to prevent the client from committing a crime or fraud reasonably certain to result in substantial financial injury to another, in furtherance of which the client has used or is using the lawyer's services

C. No, unless the buyer first formally requests the information from the lawyer with sufficient particularity to justify disclosure under the Rules of Professional Conduct in the jurisdiction governing the matter

D. Yes, but only after the lawyer formally withdraws from the representation under Rule 1.16 and gives the client a 30-day notice period before any disclosure to the prospective buyer in the matter

9. A lawyer represents Client A in a contested divorce. Client A's spouse asks the same lawyer to represent her in the same divorce, on the theory that both spouses want an amicable resolution. May the lawyer represent both spouses?

A. No, because Rule 1.7(b)(3) prohibits the representation of one client against another represented by the lawyer in the same litigation — a non-consentable conflict that informed consent cannot cure

B. Yes, provided both spouses give informed consent in writing and acknowledge the lawyer's joint representation in advance of the lawyer's filing any pleading on behalf of either spouse in the matter

C. Yes, but only if the lawyer first obtains a court order authorizing the joint representation in light of the contested nature of the underlying divorce proceeding before the trial court hearing the case

D. No, but the lawyer may serve as a mediator under Rule 2.4 if both spouses give informed consent to her role as a neutral third party rather than as advocate in the contested matter at hand

10. A lawyer wishes to buy a piece of real estate from her longtime corporate client. The lawyer has been the client's general counsel for years. What does Rule 1.8(a) require for the transaction?

A. The lawyer may proceed without further requirements because longtime client relationships permit ordinary business transactions between the lawyer and the client during the term of the engagement between them

B. The lawyer must obtain prior approval from the bar disciplinary authority before consummating any business transaction with a current client of the lawyer or her firm in connection with the matter at issue

C. The lawyer must arrange for the corporation's board of directors to vote unanimously in favor of the transaction at a duly noticed meeting of the board with all directors in attendance for the vote

D. The terms must be fair and reasonable and fully disclosed in writing; the client must be advised in writing of the desirability of seeking independent counsel and given a reasonable opportunity to do so; and the client must give informed consent in a signed writing to the essential terms and the lawyer's role

11. A lawyer represents an indigent plaintiff in a personal injury case on a contingency basis. The case requires expert medical testimony costing several thousand dollars. The plaintiff cannot afford the expert. May the lawyer advance the expert's fee?

A. No, because Rule 1.8(e) prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation in any circumstances regardless of financial need

B. Yes, because Rule 1.8(e)(1) permits a lawyer to advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter

C. Yes, but only if the lawyer requires the plaintiff to sign a personal promissory note for the expert's fee secured by collateral acceptable to the lawyer and the firm at the outset of the engagement

D. No, unless the lawyer first obtains the trial court's approval for advancing the expert witness fees in light of the plaintiff's indigent financial status during the matter being litigated in court

12. A lawyer formerly represented a client in negotiating a long-term commercial supply contract. The client and the lawyer terminated their relationship five years ago. The lawyer is now asked by a competitor of the former client to challenge that same contract on antitrust grounds. Are the two matters "substantially related" under Rule 1.9?

A. No, because five years have passed since the original representation, and the temporal gap defeats any claim that the two matters are substantially related to one another in any meaningful way under Rule 1.9

B. No, because the second matter involves an antitrust theory and the first involved contract negotiation; different legal theories cannot give rise to a substantial relationship under Rule 1.9 of the Model Rules

C. Yes, because under Rule 1.9 and its comments, two matters are substantially related when they involve the same transaction or legal dispute or when there is a substantial risk that confidential factual information obtained in the prior representation would materially advance the new client's position

D. Yes, but only if the lawyer expressly recalls specific confidential information from the prior engagement that would be useful in the new antitrust challenge to the supply contract she formerly negotiated for the client

13. A lawyer at a firm has a personal financial interest in a particular real estate development that would be adverse to a prospective client's interests. The lawyer cannot represent the client because of her own personal interest. May the firm's other lawyers represent the prospective client?

A. Yes, because Rule 1.10(a)(1) provides that imputation does not apply if the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation by the remaining lawyers in the firm

B. No, because Rule 1.10 imputes all individual lawyer conflicts to every other lawyer in the firm without exception, including personal-interest conflicts arising outside the lawyer-client relationship under the Model Rules

C. Yes, but only if the firm formally screens the lawyer with the personal financial interest from any participation in the matter and notifies the affected client in writing of the screening procedure in advance

D. No, unless the lawyer with the personal interest divests her interest in the real estate development before the firm undertakes the representation of the prospective client on the matter at hand

14. A firm is prevented from accepting an engagement because of a conflict imputed to it under Rule 1.10. The affected client whose interests give rise to the imputation is willing to waive the conflict so the firm may take on the new matter. May the firm proceed?

A. No, because imputed conflicts under Rule 1.10 may never be waived by the affected client regardless of the client's willingness to consent and the absence of any actual prejudice arising from the conflict

B. Yes, because under Rule 1.10(c), the disqualification of lawyers associated in a firm with former or current clients may be waived by the affected client under the conditions stated in Rule 1.7

C. Yes, but only after the firm obtains a court order approving the waiver and the new representation in the matter where the imputed conflict otherwise prevents the engagement from being undertaken

D. No, unless the affected client provides an in-person attestation of waiver before a duly authorized officer of the state bar before the firm undertakes the new engagement in the matter at hand

15. A lawyer formerly worked as a senior attorney in the antitrust division of the U.S. Department of Justice. She personally and substantially worked on the government's investigation of a particular merger. She has now moved to private practice. May she represent the same company in defending an FTC inquiry into the same merger?

A. Yes, because her departure from government service extinguishes any continuing conflict obligations under the Model Rules of Professional Conduct as applied in most jurisdictions of the United States

B. Yes, provided she discloses her prior government work to the FTC in writing before commencing the representation of the company in the new private engagement on the same merger transaction at issue

C. No, but only if the FTC inquiry would result in formal civil enforcement action with substantial penalties against the company at issue in the engagement she is being asked to undertake in private practice

D. No, because Rule 1.11(a) prohibits a lawyer who formerly served as a public officer from representing a client in a matter in which the lawyer participated personally and substantially as a public officer, unless the appropriate government agency gives informed consent

16. A lawyer learned, while serving as a government attorney, of confidential information about an individual. The lawyer has now entered private practice. A new client wishes to engage the lawyer in a matter adverse to that individual. May the lawyer take on the matter?

A. Yes, because confidential information learned in prior government service does not restrict the lawyer's subsequent private practice under the Model Rules of Professional Conduct as currently interpreted in the relevant jurisdictions

B. Yes, provided the lawyer first obtains the individual's express written consent to the new representation before commencing any work on the underlying matter against the individual whose information she learned

C. No, because Rule 1.11(c) prohibits a lawyer with confidential government information about a person from representing a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person

D. No, unless the lawyer first associates with co-counsel who had no prior government service and lacks any access to confidential information about the affected individual whose interests are now adverse to the new client

17. A judicial law clerk is finishing her clerkship and is negotiating employment with various law firms. The clerk is currently working on a case in which one of the firms represents a party. What does Rule 1.12(b) provide?

A. The clerk may proceed with all negotiations as long as the clerk's judge does not personally object to the negotiations during the term of the law clerk's appointment with the chambers at the court

B. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which she is personally and substantially participating, but only after notifying the judge or other adjudicative officer

C. The clerk must immediately resign her clerkship to negotiate with any firm involved in a pending matter regardless of the level of the clerk's actual involvement in that matter at the chambers of her judge

D. The clerk may not negotiate with any firm under any circumstances during the clerkship; all employment negotiation must be deferred until the clerkship ends and the clerk is no longer in chambers with the assigned judge

18. A lawyer represents a corporation. She learns that the company's CFO is engaged in a serious accounting fraud that is likely to result in substantial injury to the organization. What does Rule 1.13(b) require?

A. The lawyer shall proceed as is reasonably necessary in the best interest of the organization, generally referring the matter to higher authority in the organization, including, if warranted, the highest authority that can act on behalf of the organization

B. The lawyer must immediately disclose the fraud to law enforcement authorities and the relevant securities regulators to protect the public interest from harm to investors and other constituents of the company at issue in the matter

C. The lawyer must immediately resign her representation of the corporation and disclose the fraud to the corporation's shareholders directly without going through any intermediate corporate channels at all in the matter

D. The lawyer must give the CFO a reasonable opportunity to correct the fraud before reporting the matter to anyone within the corporate hierarchy regardless of the urgency of the matter or the magnitude of the injury

19. A lawyer represents a corporation. During an internal investigation, the lawyer interviews the company's controller about possible accounting irregularities. The controller appears to think the lawyer is acting as her personal counsel. What does Rule 1.13(f) require?

A. The lawyer should provide the controller with a separate engagement letter in which the lawyer agrees to represent the controller in the matter alongside the corporate client engagement currently under way at the firm

B. The lawyer may continue the conversation without any clarification because Rule 1.13 does not address the lawyer's obligations to non-client constituents during internal corporate investigations of the type at issue

C. The lawyer must immediately terminate the interview and refer the controller to outside counsel chosen by the corporation's board to assist with the investigation underway at the company in connection with the matter

D. In dealing with an organization's directors, officers, employees, or other constituents, a lawyer shall explain the identity of the client when she knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom she is dealing

20. A lawyer represents a client with significantly diminished capacity. The lawyer reasonably believes the client cannot adequately act in her own interest and faces a substantial risk of physical or financial harm. What action may the lawyer take under Rule 1.14(b)?

A. The lawyer must immediately move for the appointment of a permanent guardian without further consultation with the client regardless of the client's current preferences in the matter being handled by the lawyer

B. The lawyer must refer the client to a different attorney specializing in elder-law matters and withdraw from the engagement without taking any further action on behalf of the client in connection with the matter

C. The lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian

D. The lawyer is barred from taking any unilateral action and must continue to defer entirely to the client's instructions regardless of the lawyer's concerns about the client's capacity to act in her own interest in the matter

21. A lawyer maintains a client trust account at her bank. The bank charges monthly service fees that must be paid from funds in the account. What does Rule 1.15(b) provide about the lawyer's own funds in the trust account?

A. The lawyer may not deposit any of her own funds into the client trust account under any circumstances; all bank fees must be paid from the lawyer's general operating account at all times during the term of the account

B. A lawyer may deposit her own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose under Rule 1.15(b) of the Model Rules

C. The lawyer may deposit unlimited personal funds into the trust account so long as detailed accounting records track the lawyer's deposits separately from client funds in the firm's records throughout the period of the account

D. The lawyer must close the trust account and move all client funds to a no-fee account to avoid any deposit of the lawyer's own funds into a client trust account at any time during the maintenance of the account

22. A lawyer holds settlement proceeds in trust on behalf of her client. A third party has a documented medical lien on the recovery. The client disputes the validity of the lien. What does Rule 1.15(e) require?

A. The lawyer must immediately disburse all of the proceeds to the client because Rule 1.15 prioritizes the client's interest in the funds over any disputed third-party claim against the recovery at issue in the matter

B. The lawyer must disburse the disputed portion of the proceeds to the third-party claimant because Rule 1.15 prohibits the lawyer from withholding funds from any party with a documented claim to the proceeds at issue

C. The lawyer must file an interpleader action in court to deposit the disputed funds with the court before any further action by the lawyer in connection with the disposition of the settlement in the matter

D. The disputed property shall be kept separate by the lawyer until the dispute is resolved; the lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute

23. A lawyer is representing a client. The client insists on a course of action that, if pursued, would require the lawyer to violate the Rules of Professional Conduct or other law. The lawyer cannot persuade the client to change course. What does Rule 1.16(a)(1) require?

A. The lawyer must withdraw from the representation because Rule 1.16(a)(1) requires withdrawal when the representation will result in violation of the Rules of Professional Conduct or other law

B. The lawyer must continue the representation because client autonomy under Rule 1.2(a) overrides any concern about the lawyer's compliance with the Rules of Professional Conduct in the matter being handled by counsel

C. The lawyer must seek a court order resolving the conflict between the client's instructions and the lawyer's ethical obligations before taking any further action in the matter she is currently handling for the client

D. The lawyer may continue the representation provided the client signs a written acknowledgment that the lawyer's conduct will not violate the Rules even if the client believes otherwise about her own conduct in the matter

24. A lawyer accepts a \$15,000 retainer for an engagement. After completing approximately one-third of the work, the lawyer is discharged by the client. What does Rule 1.16(d) require concerning the unearned portion of the fee?

A. The lawyer is entitled to retain the full \$15,000 fee because discharge by the client is treated as a material breach by the client that forfeits her right to any refund under the Rules of Professional Conduct

B. The lawyer must refund only the portion of the fee that exceeds the value of the work actually performed, less a deduction for the inconvenience of the unexpected discharge by the client during the engagement period

C. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including refunding any advance payment of fee or expense that has not been earned or incurred

D. The lawyer may set off the unearned portion against any anticipated future claims by the client for malpractice arising from the work completed prior to the discharge by the client during the underlying engagement

25. A solo practitioner wishes to sell her entire law practice as she enters retirement. What notice must she give her clients under Rule 1.17?

A. Written notice to each client of the proposed sale, the client's right to retain other counsel or take possession of her file, and the fact that the client's consent to the transfer of her file will be presumed if she does not take any action within 90 days of the notice

B. Personal notice in face-to-face meetings with every client to obtain express written consent for the transfer of each client's matter to the purchasing lawyer or law firm before any sale may be completed at the closing

C. Notice by publication in a general-circulation newspaper for two consecutive weeks to inform all current and former clients of the proposed sale and the lawyer's anticipated retirement from law practice in the jurisdiction

D. Notice only to the bar association of the seller's jurisdiction and the state supreme court without any individual notification to the lawyer's clients about the sale and pending transfer of files to the purchasing lawyer or firm

26. A prospective client met with a lawyer for a substantial consultation. The lawyer received information from the prospective client that could be significantly harmful if used against her. The lawyer did not undertake the representation. Now the prospective client's adversary in that matter wishes to retain the lawyer in the same matter. May the lawyer proceed?

A. Yes, because the prospective client never became an actual client and the lawyer therefore has no ongoing duties under the Rules of Professional Conduct as applied in most jurisdictions in the United States

B. Yes, only if both the affected client (the original prospective client) and the new client give informed consent confirmed in writing, under Rule 1.18(d)(1)

C. Yes, but only if the lawyer first obtains a court order authorizing the new representation despite the prior consultation with the original prospective client about the same matter now being pursued

D. No, because the lawyer is permanently disqualified from representing any party with interests adverse to the original prospective client in any matter, related or unrelated, under Rule 1.18 of the Model Rules

27. A client asks her lawyer for advice on whether to sue her business partner of twenty years. The client wants only a legal analysis. The lawyer is aware of significant business, personal, and reputational considerations that bear on the wisdom of the suit. What does Rule 2.1 provide?

A. The lawyer must restrict her advice to the specific legal question the client posed and may not raise considerations the client did not specifically request to discuss in the consultation with the lawyer in the matter

B. The lawyer must obtain the client's prior written consent before incorporating any business, personal, or reputational considerations into her advice on the underlying decision to sue the business partner in the matter

C. The lawyer may volunteer her opinion on whether the lawsuit is morally justified, but may not address business or reputational considerations because those are outside the scope of legal practice under Rule 2.1 of the Model Rules

D. 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, exercising independent professional judgment and giving candid advice

28. A lawyer is asked by a client to prepare a written evaluation of the client's business for use by a third-party investor. The lawyer recognizes that the evaluation may materially and adversely affect the client's interests. What does Rule 2.3 require?

A. The lawyer must decline the engagement because Rule 2.3 prohibits a lawyer from preparing an evaluation that has any potential to materially or adversely affect the interests of the client whose business is being evaluated

B. The lawyer must obtain a court order approving the scope of the evaluation before delivering it to any third-party investor seeking to rely on the document in connection with any business decision being made by the investor

C. When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent

D. The lawyer may proceed with the evaluation without any client consent because Rule 2.3 permits material limitations to be disclosed only in the body of the report rather than discussed with the client in advance of the engagement

29. A lawyer is serving as a mediator in a dispute. One of the parties to the mediation is unrepresented. During the mediation, the unrepresented party appears to misunderstand the lawyer's role and seems to assume the lawyer represents her individual interests. What does Rule 2.4(b) require?

A. The lawyer must terminate the mediation immediately because Rule 2.4 prohibits a lawyer from serving as a mediator when any party to the mediation is unrepresented during the proceedings before the neutral

B. A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them; when the lawyer knows or reasonably should know that a party does not understand her role, she shall explain the difference between the neutral role and that of one who represents a client

C. The lawyer must contact the unrepresented party's family members to encourage them to retain counsel for the unrepresented party before the mediation may continue between the disputing parties before her in the matter

D. The lawyer may continue the mediation without any further explanation because the unrepresented party's misunderstanding of the lawyer's role is outside the scope of Rule 2.4 as currently interpreted under the Model Rules

30. A lawyer files a complaint advancing a legal theory that is not supported by current law. The lawyer believes a good-faith argument can be made for changing the existing law. Has the lawyer violated Rule 3.1?

A. No, because Rule 3.1 expressly provides that a lawyer may bring or defend a proceeding where there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law

B. Yes, because Rule 3.1 prohibits a lawyer from advancing any legal theory not supported by binding precedent in the jurisdiction in which the action is filed regardless of any argument for change in the existing legal framework

C. No, but only if the lawyer first obtains the trial court's express permission to advance an argument for changing existing law before filing the complaint asserting the unsupported legal theory in the matter at hand

D. Yes, unless the lawyer first publishes a law-review article articulating her proposed change in the law before relying on the argument in pleadings filed in litigation on behalf of any client in the matter being prosecuted

31. A lawyer prevailed in a trial. The judgment is on appeal. The lawyer learns post-trial that her client offered testimony during the trial that was knowingly false. The proceeding is not yet concluded. What does Rule 3.3 require?

A. Rule 3.3 imposes no continuing duty after the trial concludes; the lawyer has no obligation regarding the false testimony at this point in the appellate process of the matter currently pending on appeal in the matter

B. The lawyer must notify only the appellate court of the false testimony without disclosing the falsity to the trial court or to opposing counsel during the pending appeal currently before the reviewing court in the matter

C. The lawyer must withdraw from the appeal and substitute new counsel before any disclosure may be made regarding the false testimony given by the client at the trial below in the matter currently being pursued on appeal

D. The duties stated in Rule 3.3(a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6; the lawyer must take reasonable remedial measures

32. A lawyer is preparing for trial in a civil case. A fact witness has agreed to testify but is concerned about lost wages from missing work to attend trial. May the lawyer pay the witness for her time?

A. Yes, the lawyer may pay the witness whatever the witness reasonably demands for testifying truthfully at trial in connection with the underlying matter being litigated in court before the assigned trial judge in the case

B. No, because Rule 3.4(b) categorically prohibits any payment to a fact witness regardless of the nature of the payment offered by the lawyer in the matter being prosecuted in litigation between the parties at issue

C. The lawyer may pay reasonable compensation for the loss of time in attending the proceeding, as well as reasonable expenses, but may not pay an amount contingent on the content or outcome of the testimony — that would be an inducement prohibited by Rule 3.4(b)

D. The lawyer may pay any amount necessary to secure the witness's testimony provided the witness agrees in writing to testify truthfully regardless of the financial inducement offered for her attendance at the trial of the matter

33. A lawyer is representing a client in a deposition. The trial court has issued a protective order limiting certain inquiries. The lawyer believes the order is wrong on the law and instructs her client to disregard the order during the deposition. Has the lawyer violated Rule 3.4?

A. Yes, because Rule 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; instructing a client to silently disregard a protective order violates the rule

B. No, because the lawyer's good-faith belief that the protective order is incorrect justifies any instruction to her client to disregard it during the deposition in the underlying litigation matter being prosecuted by the parties

C. Yes, but only if the lawyer's conduct results in formal sanctions imposed by the trial court against the lawyer in connection with the deposition during which she instructed her client to disregard the protective order at issue

D. No, because Rule 3.4(c) applies only to court orders and the protective order in question was issued in connection with a deposition and is therefore outside the scope of the rule under the Model Rules

34. A lawyer is delivering her closing argument at trial. She refers to evidence that was excluded by the trial court before the trial began. Opposing counsel objects. Has the lawyer violated Rule 3.4?

A. No, because closing argument is an opportunity for the lawyer to summarize her client's case and may include references to any matter the lawyer believes is relevant to the dispute being decided by the jury at trial

B. Yes, but only if the trial court sustains the objection and the jury is instructed to disregard the lawyer's reference to the excluded evidence during the closing argument she has delivered to the jury at trial

C. No, because Rule 3.4 does not address the content of closing arguments and applies only to discovery and other pretrial conduct of counsel during litigation matters of the type at issue in the proceeding

D. Yes, because Rule 3.4(e) prohibits a lawyer in trial from alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence

35. A lawyer wishes to contact a juror after the jury has been discharged at the end of a trial to learn about the jury's reasoning. Under Rule 3.5(c), may she do so?

A. Yes, the lawyer may contact discharged jurors without any restrictions because post-discharge juror communication is outside the scope of Rule 3.5 of the Model Rules of Professional Conduct in this area

B. Communication with discharged jurors is permitted, except when prohibited by law or court order, when the juror has made known a desire not to communicate, or when the communication involves misrepresentation, coercion, duress, or harassment

C. No, the lawyer is categorically prohibited from contacting any discharged juror under Rule 3.5 regardless of the purpose of the contact or the juror's willingness to discuss the matter with the lawyer in the case

D. Yes, but only if the trial court issues an order specifically authorizing post-discharge juror contact in the matter just concluded before the lawyer makes any such communication with a former juror in the case

36. A lawyer is in trial. She becomes increasingly frustrated with the trial judge's rulings and begins making sarcastic comments to the judge and rolling her eyes during the judge's instructions. Has the lawyer violated Rule 3.5?

A. Yes, because Rule 3.5(d) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal; sarcastic remarks and dismissive body language toward the trial judge fall within this prohibition

B. No, because the lawyer's frustration is a normal human reaction to adverse rulings and does not rise to the level of misconduct under Rule 3.5 of the Model Rules of Professional Conduct in this area

C. Yes, but only if the trial judge cites the lawyer for contempt of court in response to the conduct during the trial that the judge is presiding over with respect to the underlying matter being adjudicated

D. No, unless the lawyer's conduct actually causes the jury to lose focus on the substantive evidence being presented during the trial of the underlying civil or criminal action at issue in court before the bench

37. A lawyer is involved in a high-profile criminal case. The lawyer wishes to make public statements about the case. Which of the following is permitted under Rule 3.6(b)?

- A. The lawyer may state her personal opinion about the credibility of the key prosecution witness in advance of the witness's testimony at the upcoming trial of the criminal defendant before the assigned trial judge
- B. The lawyer may publicly disclose the substance of inculpatory statements the criminal defendant has made to law enforcement during the police investigation that preceded the formal charges being brought in the matter
- C. The lawyer may state the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved; the information contained in a public record; and that an investigation of the matter is in progress, among other safe-harbor categories listed in Rule 3.6(b)
- D. The lawyer may freely characterize the strength of the evidence in the case as long as the characterization is honest in the lawyer's view in light of the evidence she has personally reviewed in the matter being defended in court

38. A lawyer represents a criminal defendant in a high-profile case. The prosecution has made extensive public statements adverse to the defendant. What does Rule 3.6(c) permit?

- A. The defense lawyer may respond by making any public statement she chooses without restriction, since the prosecution's statements have already saturated the public discourse with adverse coverage of the defendant in the matter
- B. The defense lawyer may sue the prosecution for defamation in addition to defending the underlying criminal case in court before the trial judge presiding over the matter being prosecuted by the state in the case
- C. The defense lawyer must remain silent and wait for trial to address the prosecution's public statements through evidence presented before the jury in court at the conclusion of the case in chief presented by the parties
- D. Notwithstanding the general restrictions in Rule 3.6(a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client, limited to information necessary to mitigate the recent adverse publicity

39. A lawyer is representing her client in a civil case. The lawyer is the only person who can testify about a key fact regarding the formation of a contract she personally witnessed five years ago. The lawyer's

testimony is necessary at trial and does not concern any uncontested issue or the value of services. May she continue as trial counsel?

A. Generally no — under Rule 3.7(a), a lawyer shall not act as advocate at a trial in which she is likely to be a necessary witness, unless her testimony relates to an uncontested issue, the nature and value of legal services, or disqualification would work substantial hardship on the client

B. Yes, the lawyer may always testify and continue as trial advocate because the dual role does not create any conflict under the Rules of Professional Conduct as currently interpreted in this area of practice at the trial level

C. No, the lawyer must withdraw without any exception because Rule 3.7 categorically prohibits a lawyer from being both witness and advocate at the same trial regardless of any countervailing circumstance in the matter

D. Yes, the lawyer may continue as trial counsel provided she discloses to opposing counsel in writing that she anticipates being a necessary witness during the trial of the underlying matter being prosecuted in court

40. A lawyer at a firm is likely to be a necessary witness at trial. Her firm's other lawyers wish to serve as trial advocates in the matter. Are they disqualified under Rule 3.7?

A. Yes, the entire firm is automatically disqualified whenever any one lawyer at the firm is likely to be a necessary witness at the trial of any client matter being handled by the firm in any active litigation matter

B. 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 unless precluded from doing so by Rule 1.7 or Rule 1.9 — that is, only if a conflict of interest is present

C. No, the disqualification under Rule 3.7 applies only to the individual lawyer who is the necessary witness and never extends to her firm regardless of the conflict-of-interest implications of dual roles being undertaken

D. The other lawyers at the firm may serve as trial advocates only if the necessary-witness lawyer signs a written waiver of her own appearance as advocate at the trial in the underlying matter being prosecuted by the firm

41. A prosecutor is presented with a criminal case to charge. The investigating officers have provided her with witness statements and physical evidence. What standard does Rule 3.8(a) impose?

- A. The prosecutor must obtain unanimous approval from her supervising prosecutor and the bar disciplinary authority before filing any criminal charges based on the witness statements and physical evidence at issue in the case
- B. The prosecutor may file any charge supported by even a scintilla of evidence and may rely on the trial court to dismiss any charges that lack the necessary factual basis after motion practice in the underlying criminal matter being prosecuted
- C. The prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause
- D. The prosecutor must wait until the case has been formally indicted by a grand jury before evaluating the strength of the evidence supporting the charges that have been brought in the underlying criminal matter at issue

42. A prosecutor is dealing with an unrepresented suspect who has been arrested. The suspect wishes to plead guilty quickly. The prosecutor sees an opportunity to obtain a waiver of important pretrial rights from the suspect. May the prosecutor do so under Rule 3.8(c)?

- A. Yes, because Rule 3.8 does not restrict a prosecutor's interactions with an unrepresented defendant who chooses to plead guilty without the assistance of counsel in the criminal matter at issue before the trial court
- B. Yes, provided the prosecutor obtains the trial court's approval of the waiver before the defendant formally pleads guilty in open court to the underlying charge being prosecuted by the office of the district attorney
- C. No, but only if the suspect has previously requested counsel and that request has not yet been honored by law enforcement during the period prior to the proposed entry of the guilty plea in the matter
- D. No, because Rule 3.8(c) prohibits a prosecutor from seeking to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing

43. A prosecutor learns of evidence that tends to negate the guilt of the accused. The defendant is currently scheduled for trial. What does Rule 3.8(d) require?

- A. The prosecutor may withhold the evidence until trial as part of her trial strategy, since pretrial disclosure could disadvantage the prosecution in the underlying criminal matter being tried before the court at the assigned date

B. A prosecutor in a criminal case shall make timely disclosure to the defense of all evidence known to her that tends to negate the guilt of the accused or mitigates the offense, and at sentencing shall disclose all unprivileged mitigating information, except as relieved by a protective order

C. The prosecutor must obtain a court order before disclosing any evidence that tends to negate the guilt of the accused in the criminal matter to opposing counsel for the defendant being prosecuted by the office at issue

D. The prosecutor's disclosure duty is satisfied entirely by complying with constitutional requirements under *Brady v. Maryland* and need not extend beyond what the constitution requires in the matter being prosecuted by the state

44. A prosecutor wishes to make a public statement about a pending criminal case. The case has generated significant media attention. What does Rule 3.8(f) require?

A. Except for statements necessary to inform the public of the nature and extent of the prosecutor's action that serve a legitimate law enforcement purpose, the prosecutor shall refrain from extrajudicial comments having a substantial likelihood of heightening public condemnation of the accused, and shall exercise reasonable care to prevent law enforcement personnel from making such statements

B. The prosecutor may make any public statement she chooses without restriction because prosecutors are not subject to the same extrajudicial-statement restrictions that apply to defense counsel under Rule 3.6 of the Model Rules of Professional Conduct

C. The prosecutor must obtain the trial court's approval before making any public statement about the case, regardless of the content of the statement or the law enforcement purpose served by the proposed comments being made publicly

D. The prosecutor must consult with the criminal defense bar in her jurisdiction before making any public statement about a pending case to ensure that her statement does not violate the Rules of Professional Conduct as currently applied

45. A lawyer represents a corporate client before a state legislature considering proposed environmental legislation. The lawyer addresses a legislative committee on the client's behalf. What does Rule 3.9 require?

A. The lawyer must comply with all rules of the legislative committee but is not bound by any provision of the Model Rules of Professional Conduct in connection with her appearance before the committee on behalf of the client she represents in the matter

B. The lawyer must obtain the trial court's prior approval before appearing on behalf of any client in a non-adjudicative legislative or administrative proceeding regardless of the substantive nature of the proposed legislation being considered by the body

C. A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5

D. The lawyer must register as a lobbyist in the relevant jurisdiction and file all advocacy materials with the secretary of state before appearing on behalf of the client before any legislative body considering proposed legislation in the area of practice

46. A lawyer is negotiating a real estate transaction on behalf of her client. The lawyer represents to the buyer that her client has clear title to the property when the lawyer knows this is false. Has the lawyer violated Rule 4.1?

A. No, because Rule 4.1 governs only statements made in court and does not address representations made in business negotiations or commercial transactions between counsel and opposing parties in the matter being negotiated

B. Yes, because Rule 4.1(a) provides that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person

C. No, because the buyer's own counsel has a duty to verify title through independent due diligence and the lawyer therefore has no obligation to correct her own client's title representations in the underlying transaction

D. Yes, but only if the misrepresentation materially affects the closing price of the transaction or otherwise harms the buyer in a quantifiable way during the underlying real estate matter being negotiated by the parties

47. A lawyer represents a client in litigation against a corporation. The corporation is represented by counsel. The lawyer wishes to speak with a former employee of the corporation about the underlying events of the case. The former employee no longer works for the corporation. May the lawyer contact her directly?

A. No, because Rule 4.2 prohibits direct contact with any current or former employee of a represented corporate entity regardless of the employee's status at the time of the proposed communication in the matter

B. Yes, but only if the lawyer first obtains a court order authorizing the contact with the former employee of the corporation in light of her prior employment relationship with the represented party in the matter at hand

C. Yes, but only if the corporation's counsel first consents to the contact in writing, and the consent expressly addresses the former employee's status at the time of the proposed communication regarding the matter at issue

D. Yes, because Rule 4.2 protects only current constituents of a represented organization who have authority to bind it or whose acts or omissions are imputed to it; former employees are generally not covered by the rule

48. A lawyer is negotiating with an unrepresented party. The lawyer reasonably believes the unrepresented person misunderstands the lawyer's role and thinks the lawyer is acting in her interest. What does Rule 4.3 require?

A. The lawyer must immediately terminate the negotiation and refer the unrepresented party to outside counsel before any further substantive discussions take place between them in the matter being negotiated by the parties at issue

B. The lawyer may proceed with the negotiation but should not provide legal advice to the unrepresented person other than to obtain counsel of her own to advise her in connection with the matter currently being negotiated by the parties

C. Under Rule 4.3, a lawyer shall not state or imply that she is disinterested, shall correct any misunderstanding of her role, and shall not give legal advice to an unrepresented person whose interests may conflict with the client's — other than the advice to secure counsel

D. The lawyer must obtain a court order authorizing the continued negotiation with the unrepresented party in light of the apparent misunderstanding about the lawyer's role in the matter before her in the underlying negotiation

49. A lawyer at a firm has direct supervisory authority over a junior associate. The associate is handling a matter in which she is about to make a tactical decision that the supervising lawyer believes will violate the Rules of Professional Conduct. What does Rule 5.1(b) require?

A. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct

B. The supervising lawyer must immediately report the associate to the bar disciplinary authority before taking any further action with respect to the associate's tactical decision in the matter she is currently handling

C. The supervising lawyer must terminate the associate's employment if the associate persists in making any tactical decision that the supervising lawyer believes will violate the Rules of Professional Conduct in any matter

D. The supervising lawyer has no obligation under the Rules because Rule 5.1 applies only to firm-wide management structures rather than to direct supervisory relationships within the firm at any time during the engagement

50. A firm employs an investigator to work on litigation matters. The investigator is a non-lawyer. The firm wishes to provide the investigator with access to confidential client information. What does Rule 5.3 require?

A. The firm need not take any specific steps because non-lawyer assistants are not bound by the Rules of Professional Conduct and the firm therefore has no obligations regarding their access to client information in connection with the matter

B. The firm must obtain the express written consent of every affected client before granting the investigator access to any confidential client information during any litigation matter being handled by the firm in active litigation

C. The firm must require the investigator to be admitted to the bar before allowing any access to confidential client information regardless of the nature of the investigative work being performed for the firm in the matter

D. Under Rule 5.3, partners and managerial lawyers shall make reasonable efforts to ensure the firm has measures giving reasonable assurance that a non-lawyer's conduct is compatible with the professional obligations of the lawyer

51. A lawyer wishes to form a partnership with a certified public accountant. The partnership would provide both legal and accounting services to clients. May the lawyer form the partnership?

A. Yes, because multi-disciplinary professional partnerships are permitted under the Rules of Professional Conduct provided each professional adheres to the standards of her own profession at all times during the engagement

B. No, because Rule 5.4(b) prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law

C. Yes, but only if the lawyer maintains majority ownership and complete voting control over all aspects of the partnership's legal practice and decisions at all times during its existence in the jurisdiction

D. Yes, provided the CPA does not personally provide any legal advice and refers all legal questions to the lawyer for resolution within the multi-disciplinary partnership formed by the parties for the joint engagement

52. A lawyer is being paid by an insurance company to defend its insured. The insurance company instructs the lawyer to settle the matter on terms the lawyer believes are not in the best interest of the insured client. What does Rule 5.4(c) require?

A. The lawyer must follow the insurance company's instructions because the insurance company is paying the legal fees and therefore exercises authority over the engagement under the Rules of Professional Conduct as applied to insurance defense

B. The lawyer must immediately withdraw from the representation rather than disregard either the insurance company's instructions or the client's interest in the matter being defended on her behalf in the underlying case

C. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services

D. The lawyer must seek the trial court's approval before disregarding the insurance company's instructions regarding the proposed settlement of the underlying matter being defended on behalf of the insured in the case

53. A lawyer is admitted in State X. She wishes to open a regular law office in State Y where she is not admitted. May she do so?

A. No, because Rule 5.5(b) provides that a lawyer who is not admitted to practice in a jurisdiction shall not establish an office or other systematic and continuous presence in that jurisdiction for the practice of law, except as authorized by other rules

B. Yes, because a lawyer admitted in any U.S. jurisdiction may open a law office in any other jurisdiction without restriction under the Rules of Professional Conduct as currently interpreted in this area of practice

C. Yes, but only if the lawyer affiliates with co-counsel admitted in State Y who oversees all of her law practice activities in the new office she has opened in the second jurisdiction during the period of practice

D. Yes, provided the lawyer notifies the State Y bar association of her plan to open a law office and pays an annual registration fee for each year that her new office remains open in State Y during her practice

54. A lawyer admitted in State X wishes to handle a single, specific litigation matter in State Y. She has been admitted pro hac vice in the matter by the State Y trial court. Has she complied with Rule 5.5?

A. No, because Rule 5.5 categorically prohibits practice in a jurisdiction in which the lawyer is not admitted, regardless of any pro hac vice admission by the trial court in any specific matter being handled before the court

B. Yes, because Rule 5.5(c)(2) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that are reasonably related to a pending proceeding before a tribunal, if she or someone she is assisting is authorized to appear or reasonably expects to be so authorized

C. Yes, but only if the State Y bar association separately approves the pro hac vice admission in addition to the trial court's order admitting the lawyer for the limited purpose of handling the litigation matter at issue

D. No, unless the lawyer also takes and passes the State Y bar examination within twelve months of the trial court's pro hac vice admission in the underlying matter being prosecuted before the trial court in State Y

55. A lawyer is negotiating a settlement of a civil case. The opposing party offers a higher settlement amount in exchange for the lawyer's agreement not to represent any other potential plaintiffs against the same defendant in the future. May the lawyer agree?

A. Yes, because the higher settlement directly benefits the lawyer's current client and the agreement is therefore in the client's interest under the Rules of Professional Conduct as currently interpreted in the jurisdiction

B. Yes, provided the lawyer first discloses the proposed restriction to the bar disciplinary authority before agreeing to the higher settlement in connection with the underlying case being settled in court before the trial judge

C. Yes, but only if the lawyer's current client gives informed consent in writing to the restriction in light of the higher settlement amount being offered by the opposing party in the matter being negotiated by the parties

D. No, because Rule 5.6(b) prohibits a lawyer from participating in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy

56. A lawyer provides law-related services through a separate entity from her law firm. Clients of the law-related services do not realize the entity is connected to the lawyer's law firm. What does Rule 5.7 require?

A. A lawyer is subject to the Rules with respect to law-related services if the services are provided in circumstances not distinct from her provision of legal services, or if they are distinct but she fails to take reasonable measures to ensure the recipient knows the services are not legal services and the protections of the client-lawyer relationship do not exist

B. The lawyer must dissolve the separate entity providing law-related services because Rule 5.7 prohibits any law-related services performed outside of a traditional law firm structure regardless of the disclosures provided to the clients of the services

C. The lawyer need not make any disclosures because law-related services performed by a separate entity are not subject to the Rules of Professional Conduct under any circumstances regardless of the lawyer's involvement with that separate entity

D. The lawyer must obtain a court order before continuing to provide law-related services through any separate entity that is connected in any way to her primary law firm or to her individual law practice in the jurisdiction

57. A lawyer is asked by her senior partner about her pro bono activities for the year. She has provided five hours of free legal advice to a single low-income client. What does Rule 6.1 provide?

A. Rule 6.1 imposes no aspirations or specific targets regarding pro bono service and the lawyer's hours are entirely her own business under the Model Rules of Professional Conduct in this area of practice

B. Rule 6.1 requires a minimum of fifty hours of pro bono service per year, the failure of which subjects the lawyer to formal discipline by the bar disciplinary authority in her jurisdiction of admission

C. Every lawyer has a professional responsibility to provide legal services to those unable to pay; a lawyer should aspire to render at least 50 hours of pro bono publico legal services per year, with a substantial majority of those hours devoted to free or reduced-fee services to persons of limited means or to organizations serving them

D. Rule 6.1 imposes mandatory pro bono hours equal to 10% of the lawyer's total billable hours, with failure to comply resulting in suspension from the bar of the jurisdiction in which the lawyer is admitted to practice

58. A trial court appoints a lawyer to represent an indigent criminal defendant. The lawyer believes the defendant's case is hopeless and that defending it would damage her reputation. May the lawyer decline the appointment?

A. Yes, because the lawyer's professional reputation is a legitimate concern that justifies declining any court appointment regardless of the indigent defendant's need for representation in the criminal matter before the court

B. A lawyer shall not seek to avoid appointment by a tribunal except for good cause, such as: the representation is likely to result in violation of the Rules or other law; the representation would impose unreasonable financial burden; or the client or cause is so repugnant as to impair the relationship

C. Yes, because Rule 6.2 permits a lawyer to decline any court appointment for any reason the lawyer personally finds compelling, including her concern about her professional reputation in connection with the matter being appointed

D. No, because Rule 6.2 categorically requires every lawyer to accept every court appointment regardless of the circumstances or her ability to provide competent representation in the underlying criminal matter being handled by the lawyer

59. A lawyer serves as a director of a non-profit legal services organization that provides representation to indigent clients. The organization represents a client whose interests may be adverse to those of the lawyer's private firm client. What does Rule 6.3 provide?

A. The lawyer must immediately resign her position with the legal services organization to avoid any potential conflict of interest with her private firm's representations of clients with adverse interests in the matter

B. The lawyer must withdraw from her private firm's representation of the conflicting client to maintain her position with the legal services organization regardless of the wishes of her firm client in the matter being handled

C. The lawyer must obtain a court order resolving the apparent conflict between her role with the legal services organization and her firm's representation of a client with adverse interests in the underlying matter

D. A lawyer may serve as a director or member of a legal services organization notwithstanding that the organization serves persons whose interests are adverse to a client of the lawyer; the lawyer must not knowingly participate in any decision incompatible with her duties to that client under Rule 1.7

60. A lawyer participates in a bar association committee that is drafting proposed legislation. The proposed legislation, if enacted, would affect the legal interests of one of the lawyer's clients. What does Rule 6.4 require?

A. The lawyer must withdraw from the committee immediately because Rule 6.4 prohibits participation in any law-reform activities that could affect the interests of any client of the lawyer in the matter being addressed

B. The lawyer must obtain her client's informed consent before continuing her participation in the law-reform committee regardless of whether the client is identified to the committee in the matter being discussed by the body

C. A lawyer may serve in an organization involved in reform of the law notwithstanding that the reform may affect the interests of a client; when the lawyer knows that the interests of a client may be materially benefitted by a decision in which she participates, she shall disclose that fact but need not identify the client

D. The lawyer must terminate her relationship with the affected client to continue her participation in the law-reform committee without violating any rule under the Model Rules of Professional Conduct in connection with the matter

PRACTICE EXAM 22: ANSWERS AND EXPLANATION

1. C — Rule 1.0(b) defines "confirmed in writing" to include a writing transmitted by the lawyer to the client confirming an oral informed consent. A signed document is not required; a transmittal from the lawyer memorializing the oral consent suffices so long as it is sent within a reasonable time after the oral consent is given.

2. A — Rule 1.1 Comment [2] expressly recognizes that a lawyer can attain the requisite competence in a new field through necessary study and through association with a lawyer of established competence. Inexperience alone does not disqualify a lawyer from taking on a new matter when adequate preparation is feasible and undertaken.

3. B — Rule 1.2(a) reserves to the client the decision whether to settle a civil matter. Settlement authority is one of the few decisions the rule allocates explicitly to the client, regardless of the lawyer's view about the wisdom of the offer being made by the opposing party.

4. D — Rule 1.4(a)(4) requires a lawyer to promptly comply with reasonable requests for information from a client. Routine status inquiries are exactly the kind of communication the rule contemplates; a week of silence violates the duty independent of any showing of procedural prejudice to the client.

5. A — Rule 1.5(a) lists multiple non-exclusive factors bearing on reasonableness, including time and labor required, novelty and difficulty, the customary fee, the lawyer's experience, and the result obtained. No single factor controls; reasonableness is evaluated against the full mix of factors in context.

6. C — Rule 1.5(e) requires three elements for a fee division between lawyers in different firms: division in proportion to services performed (or written assumption of joint responsibility), client agreement in a writing identifying each lawyer's share, and a reasonable total fee. All three are mandatory.

7. D — Rule 1.6(a) recognizes that a lawyer is impliedly authorized to make disclosures necessary to carry out the representation. Consultations with retained experts and litigation consultants in the ordinary course of preparing a case fall within this implied authorization without the need for per-disclosure consent.

8. B — Rule 1.6(b)(2) permits a lawyer to reveal information to the extent reasonably necessary to prevent a client crime or fraud reasonably certain to cause substantial financial injury to another, where the client has used or is using the lawyer's services in furtherance of the conduct. The exception is permissive but squarely available on these facts.

9. A — Rule 1.7(b)(3) makes representation of opposing parties in the same litigation a non-consentable conflict. The shared desire for amicability does not change the structural conflict; informed consent cannot cure direct opposition between clients in the same proceeding.

10. D — Rule 1.8(a) imposes three concurrent safeguards on a business transaction with a client: fair and reasonable terms fully disclosed in writing, written advice to seek independent counsel with reasonable opportunity to do so, and the client's informed consent in a signed writing to the essential terms and the lawyer's role.

11. B — Rule 1.8(e)(1) permits a lawyer to advance court costs and litigation expenses, including expert witness fees, with repayment contingent on the outcome of the matter. The general financial-assistance prohibition contains this explicit exception precisely so that indigent plaintiffs are not blocked from pursuing meritorious claims.

12. C — The "substantial relationship" test under Rule 1.9 and Comment [3] turns on whether the matters involve the same transaction or legal dispute, or whether there is a substantial risk that confidential factual information from the prior representation would materially advance the new client's position. Mere passage of time or differing legal theories do not defeat the test.

13. A — Rule 1.10(a)(1) carves out an exception to imputation for prohibitions based on a personal interest of the disqualified lawyer, provided the conflict does not present a significant risk of materially limiting the representation by the firm's other lawyers. Personal financial interests of one lawyer do not automatically disqualify the entire firm.

14. B — Rule 1.10(c) provides that the disqualification of lawyers associated in a firm with former or current clients may be waived by the affected client under the conditions stated in Rule 1.7 — informed consent confirmed in writing. The rule preserves the affected client's authority to waive an imputed conflict on the same terms as any other concurrent conflict.

15. D — Rule 1.11(a) prohibits a former government lawyer from representing a client in connection with a matter in which she participated personally and substantially as a public officer or employee, unless the appropriate government agency gives informed consent confirmed in writing. The same-merger context is the classic "matter" subject to this restriction.

16. C — Rule 1.11(c) prohibits a lawyer with confidential government information about a person from representing a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The restriction reaches information acquired during government service even beyond particular "matters" worked on.

17. B — Rule 1.12(b) sets a special rule for law clerks: a clerk may negotiate for employment with a party or lawyer involved in a matter in which she is participating personally and substantially, but only after

notifying the judge or other adjudicative officer. The advance notification requirement is the operative safeguard.

18. A — Rule 1.13(b) directs a lawyer who knows of legal violations or actions likely to injure the organization to proceed as reasonably necessary in the best interest of the organization, generally referring the matter up the corporate ladder, including to the highest authority that can act on the organization's behalf. The duty operates internally before any external action becomes appropriate.

19. D — Rule 1.13(f) requires a lawyer dealing with an organization's constituents to explain the identity of her client when she knows or reasonably should know that the organization's interests are adverse to those of the constituent. The corporate Miranda-style warning prevents inadvertent confusion about whose interests the lawyer is protecting.

20. C — Rule 1.14(b) permits a lawyer to take reasonably necessary protective action when the client has diminished capacity, is at risk of substantial harm, and cannot adequately act in her own interest. Permitted actions include consulting persons or entities able to protect the client and, in appropriate cases, seeking a guardian ad litem, conservator, or guardian.

21. B — Rule 1.15(b) provides a narrow exception to the prohibition on commingling: a lawyer may deposit her own funds in a client trust account solely to pay bank service charges on that account, but only in an amount necessary for that purpose. The exception accommodates banking realities without authorizing general commingling.

22. D — Rule 1.15(e) requires the lawyer to keep disputed property separate until the dispute is resolved and to promptly distribute portions as to which interests are not in dispute. The rule protects all claimants by preserving the disputed portion while undisputed amounts are released promptly.

23. A — Rule 1.16(a)(1) mandates withdrawal when continued representation will result in violation of the Rules of Professional Conduct or other law. The mandatory-withdrawal grounds in Rule 1.16(a) are not optional; persuading the client otherwise is the first step, but withdrawal follows if persuasion fails.

24. C — Rule 1.16(d) requires a lawyer on termination to take steps to the extent reasonably practicable to protect the client's interests, including refunding any advance payment of fee that has not been earned. The refund duty does not depend on the manner of termination; it tracks what was actually earned at the time of discharge.

25. A — Rule 1.17 requires the seller of a law practice to give written notice to each client describing the proposed sale, the client's right to retain other counsel or take possession of her file, and a presumption of consent to transfer if the client takes no action within 90 days. The notice protects client choice while permitting orderly transfer of the practice.

26. B — Rule 1.18(d)(1) provides a consent path for representation adverse to a former prospective client in a substantially related matter: informed consent confirmed in writing from both the affected (prospective) client and the new client. Rule 1.18(d)(2) provides an alternative screening path; the conflict is not categorical.

27. D — Rule 2.1 instructs a lawyer to exercise independent professional judgment and render candid advice, and provides that the lawyer may refer not only to law but to moral, economic, social, and political factors relevant to the client's situation. Candid advice is not confined to the narrow legal question the client formally asks.

28. C — Rule 2.3(b) provides that when the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent. The consent requirement protects the client against unanticipated reliance and harm flowing from the evaluation.

29. B — Rule 2.4(b) requires a third-party neutral to inform unrepresented parties that the lawyer is not representing them and, when the lawyer knows or reasonably should know that a party does not understand the lawyer's role, to explain the difference between the neutral role and that of one who represents a client. Clarification is mandatory once misunderstanding becomes apparent.

30. A — Rule 3.1 expressly permits a lawyer to assert or controvert an issue, even where current law does not support the position, when there is a good-faith argument for an extension, modification, or reversal of existing law. The rule preserves the lawyer's role in developing the law through legitimate advocacy.

31. D — Rule 3.3(c) provides that the candor duties in Rule 3.3(a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. Reasonable remedial measures — including disclosure to the tribunal if necessary — are required when the lawyer learns of false testimony before the proceeding ends.

32. C — Rule 3.4(b) permits payment to a fact witness for reasonable compensation for lost time in attending or testifying, and for reasonable expenses, but bars any payment contingent on the content or outcome of the testimony. The line is between legitimate reimbursement and impermissible inducement to shape the testimony.

33. A — Rule 3.4(c) prohibits knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. Silently instructing a client to disregard a protective order — without an open challenge through proper channels — violates the rule even if the lawyer believes the order is legally wrong.

34. D — Rule 3.4(e) prohibits a lawyer in trial from alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. Referencing previously excluded evidence during closing argument violates the rule independent of whether opposing counsel's objection is ultimately sustained.

35. B — Rule 3.5(c) lifts the categorical ban on juror communication after the jury is discharged, but retains three limits: communications prohibited by law or court order, communications with a juror who has indicated a desire not to communicate, and communications involving misrepresentation, coercion, duress, or harassment. Within those limits, post-discharge contact is permitted.

36. A — Rule 3.5(d) prohibits conduct intended to disrupt a tribunal. Sarcastic remarks and dismissive body language directed at a trial judge during proceedings fall within the prohibition; the rule does not require a contempt citation from the bench to support disciplinary liability.

37. C — Rule 3.6(b) lists categories of statements a lawyer may make about a pending matter, including the claim, offense, or defense involved; the identity of persons involved (except when prohibited by law); information contained in a public record; and that an investigation is in progress. The safe harbor channels publicity toward neutral factual content.

38. D — Rule 3.6(c) provides a right-of-reply exception: a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the client. The reply is limited to information necessary to mitigate the recent adverse publicity.

39. A — Rule 3.7(a) prohibits a lawyer from acting as advocate at a trial in which she is likely to be a necessary witness, with three exceptions: testimony about an uncontested issue, testimony about the nature and value of legal services, or disqualification that would work substantial hardship on the client. None of those exceptions fit a contested contract-formation fact witnessed years earlier.

40. B — Rule 3.7(b) provides that a lawyer may serve as advocate in a trial in which another lawyer at her firm is likely to be called as a witness unless precluded by Rule 1.7 or Rule 1.9. The witness disqualification under 3.7(a) is personal; firm-wide disqualification arises only where a separate conflict-of-interest rule independently applies.

41. C — Rule 3.8(a) requires a prosecutor to refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. The threshold mirrors that required for arrest and indictment; absence of probable cause makes prosecution itself a disciplinary violation.

42. D — Rule 3.8(c) prohibits a prosecutor from seeking to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing. The rule protects unrepresented defendants from being maneuvered into surrendering protections they may not fully understand at the time of the proposed waiver.

43. B — Rule 3.8(d) requires a prosecutor to make timely disclosure of all evidence or information known that tends to negate the guilt of the accused or mitigates the offense, and at sentencing to disclose all unprivileged mitigating information, except as relieved by a protective order. The disciplinary duty is broader than the constitutional Brady standard.

44. A — Rule 3.8(f) requires a prosecutor, except for statements necessary to inform the public of the nature and extent of action that serve a legitimate law enforcement purpose, to refrain from extrajudicial comments having a substantial likelihood of heightening public condemnation of the accused, and to exercise reasonable care to prevent law enforcement personnel from making such statements. The duty includes supervision of investigators.

45. C — Rule 3.9 requires a lawyer representing a client in a non-adjudicative proceeding before a legislative body or administrative agency to disclose that the appearance is in a representative capacity

and to conform to the candor, fairness, and impartiality provisions of Rules 3.3(a)–(c), 3.4(a)–(c), and 3.5. Legislative advocacy carries ethical obligations specifically tailored to the non-adjudicative setting.

46. B — Rule 4.1(a) prohibits a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person. The duty of truthfulness extends beyond tribunals to transactional and negotiation settings such as real estate closings.

47. D — Rule 4.2 and its comments limit the "represented person" prohibition to current constituents who have authority to bind the organization, who supervise the matter, or whose acts or omissions could be imputed to the organization for liability. Former employees generally fall outside this protected category and may be contacted directly.

48. C — Rule 4.3 imposes three obligations when dealing with an unrepresented person: refrain from stating or implying that the lawyer is disinterested, correct any misunderstanding of the lawyer's role, and refrain from giving legal advice other than the advice to secure counsel when the unrepresented person's interests may conflict with the client's. The duties are protective of the unrepresented party.

49. A — Rule 5.1(b) requires a lawyer with direct supervisory authority over another lawyer to make reasonable efforts to ensure the other lawyer's conformity to the Rules of Professional Conduct. The supervisor's duty is preventive and active, not merely reactive after a violation has occurred.

50. D — Rule 5.3 requires partners and managerial lawyers to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a non-lawyer's conduct is compatible with the professional obligations of the lawyer. Supervisory responsibility extends fully to non-lawyer assistants who handle confidential client information.

51. B — Rule 5.4(b) prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. Multi-disciplinary practice arrangements that include legal services and non-lawyer ownership remain barred under the Model Rule, irrespective of operational firewalls.

52. C — Rule 5.4(c) prohibits a lawyer from permitting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment. The insured remains the client; the carrier's instructions cannot override the lawyer's independent judgment on behalf of the insured.

53. A — Rule 5.5(b) prohibits a lawyer not admitted in a jurisdiction from establishing an office or other systematic and continuous presence in that jurisdiction for the practice of law, except as authorized by other rules. A permanent office for general law practice in an unadmitted jurisdiction is the paradigmatic violation of this provision.

54. B — Rule 5.5(c)(2) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that are reasonably related to a pending or potential proceeding before a tribunal, if the lawyer or a person she is assisting is authorized to appear or reasonably expects to be so authorized. Pro hac vice admission in a specific litigation matter fits squarely within this safe harbor.

55. D — Rule 5.6(b) prohibits a lawyer from participating in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy. The rule protects future clients' access to counsel of their choice against trade-off settlements between lawyer and adversary.

56. A — Rule 5.7 subjects a lawyer to the Rules of Professional Conduct for law-related services provided either in circumstances not distinct from her legal services, or in distinct circumstances where she fails to take reasonable measures to ensure the recipient knows the services are not legal services and that client-lawyer protections do not exist. Disclosure is the operative safeguard.

57. C — Rule 6.1 establishes pro bono service as a professional responsibility of every lawyer and articulates the aspirational target of at least 50 hours per year, with a substantial majority devoted to persons of limited means or organizations serving them. The rule is aspirational rather than mandatory under the Model Rule.

58. B — Rule 6.2 provides that a lawyer shall not seek to avoid appointment except for good cause, illustrated by representations that would violate the Rules or other law, would impose unreasonable financial burden, or in which the client or cause is so repugnant as to impair the lawyer's ability to represent the client. Generalized reputational concerns do not fit within the enumerated grounds.

59. D — Rule 6.3 permits a lawyer to serve as a director or member of a legal services organization notwithstanding that the organization serves persons whose interests are adverse to a client of the lawyer, with the restriction that the lawyer shall not knowingly participate in any decision incompatible with her duties to a client under Rule 1.7. Service is permitted; specific decision-making is constrained.

60. C — Rule 6.4 permits service in an organization involved in reform of the law notwithstanding that the reform may affect a client's interests; when the lawyer knows that the interests of a client may be materially benefitted by a decision in which she participates, she shall disclose that fact but need not identify the client. The rule balances civic engagement with appropriate transparency.