

# PRACTICE EXAM 25: MPRE SIMULATION

---

**Time Allotted: 2 hours**

**Format: Multiple choice — select the best answer**

1. A lawyer accidentally sends an email containing privileged client information to opposing counsel rather than to her client. Opposing counsel notices the error before reading the substantive content. Did the sending lawyer violate Rule 1.6?

A. The sending lawyer must immediately move to disqualify opposing counsel from the matter on the ground that opposing counsel has now been exposed to privileged information of the sending lawyer's client in the matter

B. The sending lawyer must promptly file a motion for sanctions against opposing counsel if opposing counsel reviews any portion of the email after recognizing the inadvertent disclosure of the privileged content of the email

C. The sending lawyer is subject to discipline for the inadvertent disclosure itself, even if she takes immediate steps to claw back the document under applicable rules of civil procedure governing privilege protection in litigation

D. The sending lawyer must take reasonable precautions when communicating client information; Rule 1.6(c) requires reasonable efforts to prevent inadvertent disclosure, but inadvertent disclosure that occurs despite reasonable precautions does not by itself violate the rule

2. A lawyer formerly represented a corporation in a single dispute with one of its suppliers. The matter concluded three years ago. The lawyer is now asked to represent a different client adverse to that same supplier in a similar contract dispute that does not involve her former client. May she proceed without conferring with the former client?

- A. Yes, because Rule 1.9 protects only the former client itself, not third parties whose relationships with the former client were adjacent to the original representation undertaken by the lawyer
- B. No, because Rule 1.9 categorically prohibits any representation adverse to a party connected to a former client regardless of whether that party was the lawyer's actual client at the time
- C. Yes, but only if the lawyer first obtains the supplier's written consent to the new representation in light of the prior connection through her former client's matter several years ago
- D. No, unless the lawyer first formally consults with the former client and obtains informed consent to undertake the new representation against the supplier in a separate matter at the present time

3. A lawyer admitted only in State X is asked by a State X client to provide arbitration representation in State Y. The arbitration is governed by federal law, and State Y does not require local admission for arbitration appearances. May the lawyer accept?

- A. No, because Rule 5.5 categorically prohibits an out-of-state lawyer from handling any proceeding in a jurisdiction where she is not admitted regardless of the type of proceeding involved at the time
- B. No, unless the lawyer first obtains pro hac vice admission in the State Y courts even though the arbitration is not a court proceeding subject to State Y judicial supervision in any formal capacity
- C. Yes, under Rule 5.5(c)(3), a lawyer may provide legal services on a temporary basis that are in or reasonably related to a pending or potential arbitration, mediation, or other ADR proceeding, where the services arise out of or are reasonably related to her home-jurisdiction practice
- D. Yes, because federal law preempts all state rules governing the unauthorized practice of law in any arbitration proceeding regardless of the lawyer's state of admission to the bar in any jurisdiction

4. A prosecutor receives an anonymous tip about possible criminal activity by a small business owner. The prosecutor finds the tip credible but has no corroborating evidence. May the prosecutor file charges based on this tip alone?

- A. Yes, because anonymous tips are routinely accepted by prosecutors as a basis for filing initial charges in cases involving small businesses operating in the relevant jurisdiction in which the prosecutor is admitted
- B. No, because Rule 3.8(a) provides that the prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause, and an uncorroborated anonymous tip generally does not establish probable cause

C. Yes, provided the prosecutor obtains the trial court's express permission to file charges based on the anonymous tip in light of the limited corroborating evidence available in the matter at the time of filing

D. No, but only after the prosecutor's supervisor approves the use of an anonymous tip as the sole basis for the charges being filed against the small business owner in the matter being prosecuted by the office

5. A lawyer is asked to represent a real estate developer in a project. The lawyer also represents the local zoning board on unrelated matters. The two engagements are in the same geographic area. May the lawyer accept the developer engagement?

A. Yes, because the two engagements involve different clients with no actual conflicting interests at issue between them in any current matter being handled by the lawyer's firm at the time of the engagement

B. Yes, provided the lawyer charges the developer a reduced fee to compensate for any indirect conflict that might arise during the term of the engagement on the project at issue in the matter being handled

C. No, because Rule 1.7 categorically prohibits a lawyer from representing any commercial entity that may interact with a governmental client of the lawyer regardless of the nature of the interaction at issue between them

D. The lawyer must analyze the matter under Rule 1.7's material-limitation test; if a significant risk of material limitation exists, the lawyer may proceed only with informed consent confirmed in writing from each affected client

6. A lawyer's parent wishes to make a substantial inter vivos gift to the lawyer. The parent asks the lawyer to draft the instrument transferring the property. Does Rule 1.8(c) prohibit the lawyer from preparing the document?

A. No, because Rule 1.8(c) contains an explicit exception for instruments giving the lawyer a substantial gift when the lawyer is related to the client; a parent is plainly within the family exception

B. Yes, because Rule 1.8(c) prohibits a lawyer from preparing any instrument giving the lawyer a substantial gift regardless of the family relationship between the lawyer and the donor of the gift in question

C. No, but only if the parent first independently consults with another attorney about the gift before the lawyer prepares the transfer documents on behalf of her parent in connection with the inter vivos transfer

D. Yes, unless the lawyer first obtains the express written consent of every other family member who might have inheritance rights to the property at issue in the inter vivos gift to her under applicable law

7. A lawyer who is currently representing a client makes a series of public statements containing severe insults toward the trial judge presiding over the matter, calling the judge a "fraud" and "judicial criminal" who should be removed from the bench. The judge filed no contempt finding. May the lawyer be subject to discipline?

A. No, because the lawyer's statements about the trial judge are protected speech under the First Amendment regardless of any potential impact on the administration of justice in the underlying matter

B. Yes, because Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice; public attacks on the integrity of a presiding judge may violate this provision

C. No, unless the trial judge formally requests that the bar disciplinary authority investigate the lawyer's statements about the judge made in the public forum during the pendency of the case

D. Yes, but only if the statements actually cause the trial judge to be removed from the matter on motion of opposing counsel or another interested party in the underlying litigation before the court

8. A judge's brother is the lawyer of record for one of the parties in a case before the judge. The brother filed the appearance one week ago. The judge had no advance knowledge of the brother's involvement until she reviewed the file. What does the Code of Judicial Conduct require?

A. The judge must immediately resign from the bench because Rule 2.11 categorically prohibits a judge from sitting on any case involving any close relative in any capacity at any time during her tenure

B. The judge may hear the case without disclosure because the brother only recently entered an appearance and the judge had no prior knowledge of his involvement in the underlying matter at the time of filing

C. The judge must disqualify herself because CJC 2.11(A)(2) requires disqualification when the judge knows that a person within the third degree of relationship to her is acting as a lawyer in the proceeding before her

D. The judge may hear the case provided her brother signs a written acknowledgment that he will not raise any partiality concerns based on the relationship during the trial of the matter being decided

9. A lawyer wishes to withdraw from a representation that does not constitute mandatory withdrawal under Rule 1.16(a). The trial court orders her to continue the representation. May she nonetheless withdraw?

A. Yes, because the lawyer's right to withdraw under Rule 1.16(b) is paramount over any court order directing continued representation in the matter being handled by the lawyer for the client at the time

B. Yes, provided she gives reasonable written notice to the client of her decision to withdraw before terminating the engagement regardless of the trial court's contrary direction in the matter being prosecuted in court

C. No, but only if the trial court provides a written explanation for its order directing continued representation in the underlying matter before the court at the time of the order being entered in the case

D. No, because Rule 1.16(c) provides that when ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation

10. A lawyer wishes to share a portion of a contingent fee with a non-lawyer marketing consultant who referred several personal injury clients to the lawyer's practice. May the lawyer share the fees?

A. Yes, because non-lawyer marketing consultants are paid as employees of the law firm and are not considered third parties for purposes of Rule 5.4 of the Model Rules of Professional Conduct as applied here

B. No, because Rule 5.4(a) generally prohibits fee sharing with non-lawyers, with narrow exceptions for death benefits to a deceased lawyer's estate, court-awarded fees in pro bono cases, and retirement plans

C. Yes, provided the marketing consultant is paid a flat fee for each referral rather than a percentage of the contingent fee earned by the lawyer in the matter handled for the referred client in the case

D. Yes, but only if the marketing consultant is admitted to a regulatory body that exercises authority over non-lawyer service providers in the jurisdiction where the lawyer maintains her active practice

11. A lawyer's website states: "I have won 9 out of every 10 cases I have tried." The lawyer's actual trial record is 4 wins out of 10 trials. Has the lawyer violated Rule 7.1?

A. Yes, because Rule 7.1 prohibits a lawyer from making a false or misleading communication about her services; a materially false statement of past results plainly violates the rule

B. No, because lawyer advertising is protected commercial speech and the lawyer's record is a private matter that need not be accurately reported on her website to the general public seeking representation

C. No, provided the lawyer's website includes a general disclaimer that past results do not guarantee future outcomes for new clients seeking representation in similar matters of the same type at issue

D. Yes, but only if a specific prospective client retains the lawyer based on the misrepresentation and is harmed in a quantifiable way during the underlying engagement with the firm at issue

12. A lawyer and her divorce client agree on a contingent fee under which the lawyer will receive 30% of any property awarded in the divorce decree. Is this arrangement permissible under the Model Rules?

A. Yes, because contingent fees are permissible whenever the client agrees in writing to the fee structure regardless of the type of matter being handled by the lawyer on behalf of the client under the engagement

B. Yes, provided the contingent percentage is no greater than what would be charged in a similar personal injury matter in the same jurisdiction at the time of the engagement being entered into by the parties

C. No, because Rule 1.5(d)(1) prohibits a lawyer from charging or collecting any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony, support, or property settlement in lieu thereof

D. No, but only if the divorcing spouse is also represented by counsel who can verify the reasonableness of the contingent fee arrangement at the time of the engagement between the parties to the matter

13. A lawyer is representing a client in a high-stakes commercial dispute. The lawyer arranges, through her spouse, for an anonymous donation to be made to the trial judge's favorite charity in the hope that the judge will look favorably on her client's case. Has the lawyer violated Rule 3.5?

A. No, because anonymous charitable donations are protected speech and cannot serve as the basis for disciplinary action against the lawyer who arranges them through a third party in the matter at issue

B. No, because the donation is to a charity rather than directly to the trial judge, and indirect financial support cannot influence judicial decision-making in the underlying matter at issue in the case being handled

C. Yes, but only if the trial judge actually rules in favor of the lawyer's client on a contested issue in the underlying matter being prosecuted before her on the merits at the time of the ruling

D. Yes, because Rule 3.5(a) prohibits a lawyer from seeking to influence a judge by means prohibited by law; using a third party to channel a donation to influence the judge is precisely the indirect improper means the rule reaches

14. A lawyer represents a corporation. She reports a serious legal violation up the corporate ladder to the highest authority of the company. The board refuses to take any action despite the clear violation. The lawyer reasonably believes the violation is certain to result in substantial injury to the organization. What does Rule 1.13(c) permit?

- A. The lawyer must immediately resign and remain silent because reporting outside the organization would violate Rule 1.6 of the Model Rules of Professional Conduct regardless of the seriousness of the violation
- B. The lawyer may reveal information relating to the representation, whether or not Rule 1.6 permits such disclosure, but only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization, under Rule 1.13(c)
- C. The lawyer must inform law enforcement of the violation regardless of the organization's wishes or any other consideration in the matter currently being handled by the lawyer on behalf of the company
- D. The lawyer may take no further action because the corporation's board of directors has the ultimate authority to determine what conduct constitutes a violation of the law on its own decision as the highest authority

15. A lawyer learns that another lawyer at a different firm has misappropriated client trust funds — a serious violation. The client whose funds were misappropriated is aware and has reported the matter to the bar. Must the first lawyer also report the violation?

- A. Yes, because Rule 8.3(a) requires a lawyer who knows that another lawyer has committed a violation that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects to inform the appropriate professional authority
- B. No, because the affected client has already reported the violation to the bar disciplinary authority and a duplicate report would serve no purpose under the Rules of Professional Conduct in the jurisdiction at issue
- C. Yes, but only if the first lawyer's reporting would result in formal disciplinary action being taken against the violating lawyer at the bar of the relevant jurisdiction in the matter being investigated by the bar
- D. No, because Rule 8.3 imposes a reporting obligation only on the supervising lawyer of the violator rather than on any lawyer who happens to have knowledge of the violation in question at issue

16. A former client sues her former lawyer for malpractice, alleging that the lawyer's negligent advice caused her significant losses. The lawyer wishes to introduce evidence of her communications with the former client to defend herself. May she disclose otherwise confidential information?

- A. No, because Rule 1.6 absolutely prohibits any disclosure of client information without the former client's express consent regardless of the lawyer's need to defend against the claim being asserted in court

B. Yes, but only after the lawyer obtains a court order compelling disclosure of the confidential communications in the malpractice litigation pending against the lawyer in court before the assigned trial judge

C. Yes, because Rule 1.6(b)(5) permits a lawyer to reveal information relating to the representation of a client to the extent reasonably necessary to establish a defense to a claim against the lawyer based on conduct in which the client was involved

D. Yes, but the lawyer must first formally withdraw as her own attorney in the malpractice case and engage independent counsel before any confidential information can be disclosed in defense of the claim

17. A prospective client met with a lawyer for a brief consultation and shared information that could be significantly harmful if used against her. The lawyer did not undertake the representation. The prospective client's adversary now wishes to retain the lawyer. The firm wishes to screen the original lawyer and proceed under Rule 1.18(d)(2). May the firm do so?

A. No, because Rule 1.18 categorically prohibits any representation adverse to a former prospective client in a substantially related matter regardless of any screening arrangement at the firm in the matter at issue

B. Yes, provided the disqualified lawyer took reasonable measures to avoid exposure to more disqualifying information than necessary, is timely screened from participation and apportioned no part of the fee, and written notice is promptly given to the prospective client

C. Yes, but only if the original prospective client gives express written consent to the firm's representation of the adverse party in the matter currently being undertaken by the firm in the substantially related case

D. No, because Rule 1.18 requires both the prospective client's and the new client's informed consent in writing to overcome the disqualification under any circumstance under the rules of professional conduct currently

18. A lawyer represents a sophisticated client in negotiating a complex commercial transaction. The lawyer believes the client may not fully appreciate the risks of one particular unusual contract term. What does Rule 1.4(b) require?

A. The lawyer need not explain anything beyond the basic terms of the proposed contract because Rule 1.4 does not require explanation of risks that a sophisticated client should reasonably understand on her own without further help

B. The lawyer must obtain the client's signature on a separate disclosure document acknowledging the unusual risk before any further negotiation may continue on the transaction at issue between the parties to the deal

C. The lawyer must withdraw from the representation rather than allow the client to proceed without fully understanding the risk of the unusual contract term being negotiated by the parties to the transaction at issue

D. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; unusual risks ordinarily warrant explanation regardless of the client's general sophistication

19. A lawyer suspects that a witness scheduled to testify against her client is having an extramarital affair. The lawyer threatens, during a deposition, to expose the affair publicly unless the witness recants her prior testimony. Has the lawyer violated the Model Rules?

A. Yes, because Rule 4.4(a) prohibits a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, and threats unrelated to the merits of the testimony fall within the prohibition

B. No, because the lawyer's conduct is protected as zealous advocacy under the duty of competence and diligence to her client in the matter being prosecuted on her behalf in court before the assigned trial judge

C. Yes, but only if the witness actually recants her prior testimony in response to the lawyer's threat to expose the extramarital affair to the public in the matter being litigated currently in court

D. No, because Rule 4.4 applies only to communications with represented parties and not to deposition examinations of witnesses called by opposing counsel to testify in the matter being prosecuted in litigation

20. A solo practitioner has been representing a client for two years in complex litigation set for trial in three months. The lawyer realizes she may be a necessary witness regarding a key fact. Disqualifying her now would force the client to obtain new counsel and significantly delay the trial. May she continue as advocate?

A. No, because Rule 3.7 disqualifies any necessary witness from continuing as trial advocate regardless of the substantial hardship the disqualification may impose on the client in the underlying matter being defended

B. Yes, but only if her testimony relates exclusively to legal fees rather than to any substantive fact bearing on the merits of the underlying dispute being prosecuted by counsel in the matter at the time

C. Yes, because Rule 3.7(a)(3) provides an exception when disqualification of the lawyer would work substantial hardship on the client; the long-pending and trial-ready posture of the matter typically supplies the hardship

D. No, unless the trial court formally waives the lawyer-witness rule in the matter on motion of the lawyer in advance of the trial date currently scheduled in the case being handled before the court

21. A lawyer moved from a prior firm to a new firm. At the prior firm, she personally and substantially worked on a matter substantially related to one her new firm now wishes to handle on the opposing side. May the new firm use a Rule 1.10(a)(2) screening cure?

A. Yes, because screening cures are available for any imputed conflict regardless of the disqualified lawyer's personal involvement in the prior matter at the lawyer's previous firm in the engagement at issue

B. No, because screening cures are never available under Rule 1.10(a)(2) when the disqualified lawyer personally and substantially worked on the prior matter at her previous firm at the time of the prior engagement

C. Yes, provided the lawyer agrees in writing to take no fee from the new firm's representation of any party in the matter being undertaken by the new firm in the conflict at hand currently being handled

D. Yes, under Rule 1.10(a)(2), if the disqualified lawyer is timely screened from any participation in the matter and apportioned no part of the fee, written notice is promptly given to any affected former client, and required certifications of compliance are provided

22. A criminal defense lawyer has been told by her client that he intends to testify at trial in his own defense. The lawyer believes the client will offer false testimony but cannot persuade him to refrain. What course of action does ABA-approved practice generally permit?

A. The lawyer must inform the trial judge of the client's intent to commit perjury before the client takes the witness stand in the matter being defended on behalf of the client at issue in the criminal trial

B. The lawyer must withdraw immediately from the representation without any further explanation to the trial court regardless of the procedural prejudice to the client in the matter being handled before the court

C. The lawyer may, in many jurisdictions and consistent with constitutional limits, allow the client to testify in a "narrative" format without direct examination of the false content, after first attempting to dissuade and considering withdrawal

D. The lawyer must refuse to call the client to testify even if the client insists on exercising his constitutional right to testify in his own defense at the trial of the matter being prosecuted in court

23. A senior partner is leaving a firm. As a condition of receiving severance pay (not retirement benefits), the firm asks her to sign an agreement that she will not represent any of the firm's current clients for two years. May she sign the agreement?

A. Yes, because the firm has a legitimate business interest in protecting its client base, and contractual restrictions on lawyer mobility are routinely enforced under the Rules of Professional Conduct in this area

B. No, because Rule 5.6(a) prohibits a lawyer from making a partnership or other agreement that restricts the right of a lawyer to practice after termination of the relationship, except for an agreement concerning benefits upon retirement

C. Yes, provided the two-year restriction is reasonable in scope and the firm pays the departing partner adequate consideration for the restriction during the period of the agreement between the parties to the contract

D. No, unless the affected clients also consent in writing to the restriction during the term of the departing partner's separation from the firm in the matter at hand currently being negotiated

24. A lawyer admitted in State X represents a multinational client. The client wishes the lawyer to handle a matter that will require advice on both State X and State Y law. Both states permit cross-border practice in these circumstances, but the engagement creates a conflict with the lawyer's separate State Y representation of a different client. May the lawyer proceed?

A. The lawyer must analyze any conflict under Rule 1.7; cross-border representation does not eliminate the concurrent-conflict analysis, and informed consent confirmed in writing is required if there is a significant risk of material limitation in the representation

B. Yes, because cross-border representations are subject to a streamlined consent process that does not require the same conflict analysis applicable to single-jurisdiction matters under the Rules of Professional Conduct

C. No, because Rule 1.7 categorically prohibits cross-border representations whenever any of the lawyer's clients reside in different states regardless of any conflict of interest analysis being conducted by the lawyer

D. Yes, because the State X bar's authorization of the lawyer's cross-border practice automatically supersedes any State Y conflict-of-interest considerations that might otherwise apply in the matter at issue

25. A lawyer is convicted of misdemeanor tax evasion. The conviction does not arise from her practice of law. Is she subject to discipline?

A. No, because Rule 8.4(b) applies only to criminal acts committed in the course of the lawyer's practice of law and not to private financial matters of the lawyer in her personal capacity as a citizen

B. No, unless the conviction is for a felony rather than a misdemeanor, because Rule 8.4(b) is generally interpreted to reach only serious crimes resulting in felony convictions of the lawyer at issue in the proceedings

C. Yes, because any criminal conviction automatically results in discipline regardless of the substantive nature of the crime or its relationship to the lawyer's fitness to practice law in any capacity at any time

D. Yes, because Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; tax evasion bears directly on honesty

26. A lawyer receives a settlement check on behalf of her client. The lawyer plans to deposit the check that afternoon in the client trust account but, on the way to the bank, briefly deposits the check in her personal operating account by mistake. She moves the funds to the trust account the next morning. Has she violated Rule 1.15?

A. Yes, because Rule 1.15(a) requires a lawyer to hold client property separate from the lawyer's own property; even a brief deposit in the operating account constitutes commingling that may subject the lawyer to discipline

B. No, because brief and inadvertent deposits to a personal account are routinely excused under Rule 1.15 when corrected promptly without any harm to the client in connection with the funds at issue in the matter

C. Yes, but only if the deposit results in the lawyer's personal use of the client's funds during the period the funds are in the wrong account regardless of how quickly the error is corrected by the lawyer

D. No, because Rule 1.15 applies only to deliberate misuse of client funds rather than to inadvertent deposits that are promptly corrected by the lawyer upon discovery of the error in the matter at issue

27. A lawyer formerly served as a mediator in a commercial dispute between two parties. The mediation was unsuccessful and the dispute went to litigation. One of the parties now wishes to retain her as litigation counsel in the matter. May she accept the engagement?

A. Yes, because the lawyer's role as mediator does not create any ongoing duties or restrictions on her practice in the substantive litigation that follows the unsuccessful mediation between the parties in the matter

B. Yes, provided the lawyer first obtains a court order authorizing the new representation in light of her prior involvement as mediator in the underlying commercial dispute being now litigated between the parties

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 third-party neutral

D. No, but only if the mediation produced any specific written work product that has been preserved in the records of the parties or of the lawyer who conducted the mediation between them in the matter

28. A lawyer is staffing a free legal-services clinic at a community center. She gives advice to a walk-in client whom she will never see again. Does Rule 1.7 require a full conflict check before each consultation?

A. Yes, because Rule 1.7 applies to every lawyer-client interaction regardless of the duration or scope of the consultation between the lawyer and the client in any setting at any time during the engagement

B. No, because Rule 6.5 contains a special rule for limited legal services programs: Rules 1.7 and 1.9(a) apply only if the lawyer knows the representation involves a conflict, and Rule 1.10 imputation applies only when the lawyer knows another lawyer in the firm has a disqualifying interest

C. Yes, but only with respect to clients who are seeking actual representation rather than walk-in consultations on legal questions of any kind at the limited legal services program at issue in the matter

D. No, because Rule 1.7 applies only to current paying clients of the lawyer and not to walk-in clients receiving free legal advice at a community-based legal services program in any setting at any time

29. A lawyer is admitted in States X and Y. She is representing a client in a matter pending in State Z, where she has been admitted pro hac vice. A disciplinary question arises about her conduct at a deposition in State Z. Under Rule 8.5(b), which jurisdiction's rules govern?

A. For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits apply, unless the rules of the tribunal provide otherwise — so State Z rules govern her deposition conduct

B. The rules of State X apply because that is where the lawyer originally obtained her bar admission as a primary jurisdiction of practice for her firm at the time of the deposition being conducted in State Z

C. The rules of both States X and Y apply concurrently because the lawyer is admitted in both jurisdictions and her conduct could be subject to discipline in either at any time during her career as a lawyer

D. The rules of the lawyer's principal jurisdiction of residence apply rather than the rules of the jurisdiction in which the tribunal sits or the jurisdiction in which she is primarily admitted to practice law

30. A lawyer's client gives knowingly false testimony during a deposition in a pending civil action. The lawyer learns of the falsity after the deposition concludes. The case is still pending. What does the duty of candor require?

A. The lawyer has no duty to take any remedial measures because depositions are pretrial discovery and the duty of candor under Rule 3.3 applies only to live testimony at trial in court before the assigned trial judge

B. The lawyer must immediately move to withdraw from the representation without taking any other action regarding the false deposition testimony given by her client in the case at hand currently pending in court

C. The lawyer must wait until the deposition is read into the record at trial before any remedial measures are required under the duty of candor in the underlying matter being litigated by the parties to the dispute

D. The lawyer must take reasonable remedial measures, including, if necessary, disclosure to the tribunal; Rule 3.3 applies to depositions because the duty of candor extends to "tribunal" proceedings, and the duty continues to the conclusion of the proceeding

31. A lawyer represents an indigent client on a pro bono basis after the client has been seriously injured in an accident. The client faces eviction because she cannot afford rent during her recovery. The lawyer wishes to make a modest gift of money to help the client pay rent. May the lawyer do so?

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

B. Yes, because Rule 1.8(e)(3) permits a lawyer representing an indigent client on a pro bono basis to provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses

C. Yes, provided the lawyer first obtains the trial court's approval for the modest gift in light of the client's serious financial circumstances during the pendency of the underlying litigation matter being prosecuted

D. Yes, but only after the lawyer documents the gift in writing and reports it to the bar disciplinary authority within thirty days of the transfer of funds to the client in the matter being handled by the lawyer

32. A lawyer in a civil case learns that her client has shredded documents that the client knew were subject to a discovery request. The lawyer is about to file a discovery response. May the lawyer file a response stating that no responsive documents exist without disclosing the shredding?

A. Yes, because client confidentiality under Rule 1.6 prohibits the lawyer from disclosing the client's destruction of documents in the underlying litigation matter being prosecuted by the parties before the trial court

B. Yes, provided the lawyer informs the client in writing that the destruction was improper and counsels the client not to engage in similar conduct during the remainder of the engagement on the matter being handled by counsel

C. Yes, but only if the destruction occurred before the discovery request was formally served upon the client by opposing counsel in the underlying litigation matter at issue between the parties to the dispute

D. No, because Rule 3.4(a) prohibits a lawyer from unlawfully obstructing another party's access to evidence or assisting another to do so, and Rule 4.1 prohibits knowingly making false statements; the lawyer cannot file a response concealing the destruction

33. A judge is presiding over a contested motion. Counsel for one party telephones the judge's chambers ex parte to discuss scheduling. During the call, the lawyer also mentions the merits of the pending motion. What does the Code of Judicial Conduct require?

A. The judge must immediately terminate the conversation and report the lawyer to the bar disciplinary authority for the improper substantive ex parte contact regardless of the lawyer's intent in raising the issue

B. The judge may continue the conversation provided the lawyer agrees to repeat any substantive points raised in open court at a later date during a hearing on the underlying motion before the court at issue

C. CJC 2.9 generally prohibits ex parte communications about substantive matters in pending proceedings except as authorized by law or court rule; limited scheduling and administrative contacts are permitted, but substantive ex parte contacts must be promptly disclosed or otherwise addressed

D. The judge may consider the substantive points raised by counsel in deciding the motion provided she eventually discloses the conversation to opposing counsel before issuing any final ruling on the pending motion at issue

34. A lawyer attends the funeral of a recent accident victim. While at the funeral, the lawyer approaches the grieving family members and offers to represent them in any potential wrongful death claim. May the lawyer do so?

A. Yes, because grieving family members may benefit from immediate legal representation and the lawyer's offer is a routine professional service offered at no obligation to retain the lawyer in the matter at issue

B. Yes, provided the lawyer makes clear that family members are under no obligation to retain her services and may freely choose any other counsel they prefer for the matter in due course of normal practice

C. No, but only if any family member specifically expresses to the lawyer a desire not to discuss legal matters at the funeral location regardless of the lawyer's offer of free initial consultation in connection

D. No, because Rule 7.3(b)(1) generally prohibits live person-to-person solicitation for pecuniary gain, particularly from persons known to be in a significantly vulnerable physical, emotional, or mental state — such as grieving family members at a funeral

35. A lawyer is moving from one firm to a new firm. Before joining, the new firm conducts a conflict check that requires the moving lawyer to disclose limited information about her prior representations. May the lawyer disclose this information without former-client consent?

A. Yes, under Rule 1.6(b)(7), a lawyer may reveal information relating to the representation of a client to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment, provided the disclosure does not compromise privilege or prejudice the client

B. No, because Rule 1.6 absolutely prohibits any disclosure of client information without express former-client consent regardless of the purpose of the disclosure or the reasonableness of the limited information needed by the firm

C. Yes, but only if every affected former client gives express written consent to the disclosure of the information needed for the conflict check at the new firm prior to the lawyer's start date with the firm

D. No, unless the lawyer's moving from one firm to another is required by the dissolution of her current firm rather than by any voluntary decision on her part to seek alternative employment with a different firm

36. A lawyer's longtime client asks the lawyer for advice on a course of conduct the client is contemplating. The lawyer believes the conduct may be criminal. May the lawyer discuss the legal implications of the proposed conduct?

A. No, because Rule 1.2(d) prohibits any discussion with a client about contemplated criminal conduct regardless of the client's purpose in seeking the advice from her lawyer in the matter currently being considered

B. No, unless the lawyer first obtains the trial court's approval for the proposed consultation with the client about the contemplated conduct under consideration at the time of the request for advice in the matter

C. Yes, because Rule 1.2(d) prohibits counseling or assisting a client to engage in conduct the lawyer knows is criminal or fraudulent but expressly permits discussion of the legal consequences of any proposed course of conduct

D. Yes, but only if the lawyer charges a reduced fee for the consultation in light of the criminal nature of the conduct being contemplated by the client at the time of the consultation with counsel in the matter

37. A lawyer represents a corporation. A former corporate employee is now a key witness in the litigation. The lawyer's client wishes the former employee to refrain from voluntarily discussing the matter with opposing counsel. May the lawyer request that the former employee refrain?

A. Yes, because Rule 3.4(f) permits a lawyer to make such a request without restriction when the witness is associated with the client in any capacity at any point in time during the engagement on the matter

B. No, because Rule 3.4(f) limits the lawyer's request to a relative, employee, or other agent of the client; a former employee with no continuing agency relationship is not within the rule's exception, and the request is therefore impermissible

C. Yes, provided the lawyer first obtains the trial court's approval for the request to the former employee in light of her prior employment relationship with the represented corporation in the matter at issue

D. Yes, but only if the former employee separated from the corporation under amicable circumstances that suggest continuing loyalty to the lawyer's client during the underlying matter being litigated currently in court

38. A lawyer wishes to pay a fee to a lawyer-referral service that generates client leads for her practice. May the lawyer pay the fee?

A. Yes, because lawyers may freely pay any third party for client referrals provided the third party does not directly receive any portion of the legal fees earned by the lawyer in the matter at hand currently in progress

B. Yes, provided the referral service guarantees in writing that all referred clients have been pre-screened for legal merit before being directed to the lawyer's practice for representation in the matter at hand

C. No, because Rule 7.2 categorically prohibits payment of any kind to any third party for referring clients to a lawyer regardless of the nature of the referral arrangement at issue in the engagement at the time

D. Yes, because Rule 7.2(b) permits a lawyer to pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer-referral service approved by an appropriate regulatory authority in the relevant jurisdiction

39. A lawyer is being sued by a former client for malpractice. The lawyer wishes the former client to sign a release of all malpractice claims in exchange for forgiving outstanding legal fees the former client still owes. The former client is unrepresented. May the lawyer obtain the release?

A. Yes, but only if the lawyer first advises the former client in writing of the desirability of seeking the advice of independent legal counsel and gives the former client a reasonable opportunity to seek that advice, as Rule 1.8(h)(2) requires

B. Yes, because Rule 1.8(h) does not apply to former clients with whom the lawyer is negotiating after the conclusion of the engagement regardless of the substance of the release being negotiated by the parties

C. No, because Rule 1.8(h) categorically prohibits any settlement of a malpractice claim between a lawyer and a former client regardless of the procedural safeguards employed by the parties to the negotiation

D. Yes, provided the release explicitly recites that the former client is entering it voluntarily and with full understanding of the legal consequences of releasing the malpractice claim against the lawyer in the matter

40. A lawyer represents a client with significantly diminished capacity who is in immediate physical danger. The client has not specifically authorized the lawyer to take action. Under Rule 1.14, what implied authority does the lawyer have?

A. None — the lawyer must defer entirely to the client's instructions regardless of the apparent risk of substantial harm to the client during the engagement on the underlying matter being handled by the lawyer

B. The lawyer may take any action she pleases without restriction because the client's diminished capacity terminates the normal limits of the lawyer-client relationship under the Model Rules of Professional Conduct currently

C. Rule 1.14(c) implicitly authorizes the lawyer to reveal information about the client to the extent reasonably necessary to protect the client's interests when she takes protective action under Rule 1.14(b); the rule reflects an implied authority to act protectively in genuine emergencies

D. The lawyer must obtain a court order before taking any unilateral action to protect the client regardless of the urgency of the danger facing the client at the time of the lawyer's awareness of the situation

41. A bar applicant submits her bar application. She intentionally fails to disclose a misdemeanor conviction from college that occurred ten years ago. Has the applicant violated Rule 8.1?

A. Yes, because Rule 8.1(a) prohibits an applicant for admission to the bar from knowingly making a false statement of material fact in connection with a bar admission application; intentional omission of a criminal conviction violates the rule

B. No, because the misdemeanor occurred more than five years before the application and therefore need not be disclosed under the Rules of Professional Conduct in the relevant jurisdiction where the applicant is seeking admission

C. Yes, but only if the conviction is for a crime of moral turpitude rather than a minor offense that does not bear on the applicant's character and fitness to practice law in any meaningful way during the application

D. No, because Rule 8.1 applies only to currently licensed lawyers and not to bar applicants seeking initial admission to the practice of law in their first jurisdiction of admission to the bar of any state

42. A lawyer is litigating a case set for a bench trial — no jury will be involved. The lawyer makes a public statement to the press about her client's case. Does Rule 3.6 apply?

A. No, because Rule 3.6 applies only to jury trials where extrajudicial statements could influence prospective jurors during the trial of the matter being prosecuted in court at the time of the public comments

B. Yes, but the lawyer's permissible scope of comment is greatly expanded in bench trials because there is no risk of influencing a lay jury through public statements about the underlying matter being decided by a judge

C. Yes, and the lawyer must be silent on all substantive aspects of the case because bench trials require even greater restraint on public comments than jury trials under the Rules of Professional Conduct currently in effect

D. Yes; Rule 3.6 applies to any adjudicative proceeding, but the substantial-likelihood-of-prejudice analysis takes account of the type of proceeding — bench trials present a much lower risk of prejudice than jury trials

43. A lawyer who formerly worked as a federal prosecutor is now in private practice. While in the U.S. Attorney's Office, she signed off on broad investigative authorizations for a particular case but did not personally and substantively participate in any investigatory step. May she now represent a target of that investigation?

A. Yes, because Rule 1.11(a) requires personal and substantial participation, not merely supervisory sign-off on broad authorizations, to trigger the former-government-lawyer conflict in the matter at issue in the engagement

B. Whether the lawyer participated "personally and substantially" turns on the substance of her involvement; under Rule 1.11(a) and its comments, mere administrative or supervisory authorization without personal substantive engagement generally does not constitute personal and substantial participation

C. No, because any sign-off on investigative authorizations is automatically deemed personal and substantial participation triggering the Rule 1.11(a) restriction regardless of the depth of involvement of the lawyer

D. Yes, but only if she discloses her prior signature on the authorizations to the federal court before any further representation of any target in the underlying federal investigation may continue in the matter

44. A lawyer has been representing a client for a year on a commercial dispute. The client has fallen behind on legal fees. The continued representation has now imposed substantial financial hardship on the lawyer's practice. The matter is not pending before a tribunal. May the lawyer withdraw?

A. No, because Rule 1.16(b) requires the lawyer to continue the representation regardless of the financial burden on the lawyer or her practice during the term of the engagement on the matter being handled by counsel

B. No, unless the client first agrees in writing to the proposed withdrawal in light of the financial burden that has accumulated during the underlying representation of the client by the lawyer in the matter at hand

C. Yes, because Rule 1.16(b)(5) permits withdrawal when the client fails substantially to fulfill an obligation (such as paying fees) after reasonable warning; Rule 1.16(b)(6) permits withdrawal where representation will result in an unreasonable financial burden on the lawyer

D. Yes, but only after the lawyer obtains a court order authorizing the withdrawal in light of the substantial financial burden caused by the representation of the client on the matter being handled by counsel currently

45. A law firm outsources its document review to a third-party service that employs contract lawyers and non-lawyer reviewers. The firm shares confidential client documents with the service for review. What does Rule 5.3 require?

A. The firm must obtain a separate signed engagement letter from each individual contract lawyer and non-lawyer reviewer at the outsourcing service before any documents may be shared with the service at any time

B. The firm need not take any specific steps because outsourced services are independent contractors and the firm therefore has no supervisory obligations regarding their conduct or access to client information currently

C. The firm must require the outsourcing service to be admitted to a regulatory body that exercises authority over non-lawyer service providers in the jurisdiction where the firm maintains its primary practice locations

D. Under Rule 5.3, the firm has supervisory duties with respect to non-lawyer service providers and must make reasonable efforts to ensure the service's conduct is compatible with the lawyer's professional obligations, including confidentiality and competence

46. A practicing lawyer accepts an unpaid position teaching part-time at a law school clinic that provides legal services to underserved clients. The lawyer supervises law student work on actual client matters. Does this work count toward the lawyer's pro bono aspirations under Rule 6.1?

A. Yes, because Rule 6.1(b) recognizes activities that fulfill the professional responsibility, including delivering legal services at no fee or substantially reduced rate, and participating in activities for improving the law, the legal system, or the legal profession

B. No, because Rule 6.1 counts only direct representation of clients by the lawyer herself and not supervisory or teaching work involving law students at a law school clinic regardless of the underserved status of the clients

C. Yes, but only if the law school clinic is formally affiliated with a bar association that has designated the teaching role as a recognized pro bono activity for purposes of the rule applicable to the lawyer at issue

D. No, unless the lawyer also provides at least 25 hours of direct pro bono representation to indigent clients of her own to satisfy the threshold for any pro bono service under the Model Rules currently in effect

47. A lawyer is at a deposition. She becomes frustrated with the opposing party (not the witness) and makes a series of slurs about the opposing party's national origin. The opposing party is present at the deposition. May the lawyer be subject to discipline?

A. No, because the lawyer's frustration is a normal human reaction in litigation and Rule 8.4 does not address discriminatory remarks made outside formal courtroom proceedings before a judge or jury in the matter

B. Yes, because Rule 8.4(g) prohibits a lawyer from engaging in conduct the lawyer knows or reasonably should know is harassment or discrimination based on protected characteristics including national origin, in conduct related to the practice of law

C. Yes, but only if the opposing party files a formal grievance with the bar disciplinary authority within thirty days of the deposition during which the slurs were directed at her by opposing counsel in the matter

D. No, because conduct at depositions is governed exclusively by the rules of civil procedure and is not subject to disciplinary review under the Rules of Professional Conduct in most jurisdictions of the United States today

48. A prospective client met with a lawyer for a single brief consultation. The lawyer did not undertake the representation. Two years later, the prospective client's adversary in that matter asks the lawyer to represent her in the same matter. The lawyer received no information from the original consultation that could be significantly harmful to the original prospective client. May the lawyer accept the new engagement?

A. Yes, because the lapse of time has erased any potential for use of information from the original consultation to the disadvantage of the original prospective client in the new matter at hand currently being undertaken

B. Yes, provided the lawyer first formally consults with the original prospective client and obtains her informed consent to the new representation in light of the prior consultation between them in the matter

C. Under Rule 1.18(b), the lawyer's duty is to refrain from using or revealing information learned in the consultation; Rule 1.18(c) bars adverse representation only when the lawyer received information that could be significantly harmful

D. No, because Rule 1.18 categorically prohibits adverse representation in the same matter regardless of whether the lawyer actually received any significantly harmful information during the original consultation in the case

49. A client has died. The lawyer has confidential information about the deceased client's prior representation. The deceased client's estranged business partner — now in litigation with the estate — asks the lawyer to reveal the information. May the lawyer disclose?

A. No, because the duty of confidentiality under Rule 1.6 generally survives the client's death; the lawyer must protect the deceased client's confidences absent informed consent from the personal representative, court order, or other authorized exception

B. Yes, because the deceased client cannot be harmed by disclosure of confidential information and the duty of confidentiality therefore terminates upon the client's death under the Rules of Professional Conduct in this area

C. Yes, provided the estranged business partner has a documented legitimate interest in the information requested from the lawyer in connection with the underlying litigation pending against the estate in the matter

D. No, unless the business partner first obtains a court order requiring the lawyer to disclose the information in connection with the underlying litigation matter being pursued against the estate of the deceased client

50. A lawyer is preparing a written evaluation of a corporate client's compliance with environmental regulations for a third-party investor. The lawyer's evaluation will likely cause the investor to reduce her investment, materially harming the client. What does Rule 2.3 require?

A. The lawyer must decline the engagement because Rule 2.3 prohibits a lawyer from preparing any evaluation that will materially harm her own client regardless of the third party's reliance on the document being prepared

B. The lawyer may proceed without any special consent because preparing evaluations for use by third parties is a routine legal service and the client's potential financial loss is not the lawyer's concern in the matter

C. Under Rule 2.3(b), 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 must obtain a court order authorizing the evaluation in light of the material adverse impact it is likely to have on her own client's financial interests in the matter at hand currently being negotiated

51. A lawyer represents a plaintiff in litigation against a large corporation. The corporation is represented by counsel. The plaintiff's lawyer wishes to interview a current high-level officer of the corporation with authority to bind the corporation in the matter. May the plaintiff's lawyer contact the officer directly?

A. Yes, because Rule 4.2 protects only the corporate entity itself and not individual officers or employees of the represented corporation in the matter being prosecuted by the plaintiff against the company at issue

B. No, because Rule 4.2 prohibits direct communication with a person represented by another lawyer; high-level officers with authority to bind the corporation are within the protected category, and the lawyer must obtain consent of the corporation's counsel

C. Yes, provided the plaintiff's lawyer first warns the officer at the outset that he has the right to refuse the interview and to consult with the corporation's counsel before agreeing to speak with opposing counsel in the matter

D. No, unless the plaintiff's lawyer first obtains a court order authorizing the direct contact with the high-level corporate officer in light of his authority to bind the corporation in the underlying matter being litigated

52. A lawyer is in a longtime mutually beneficial referral relationship with a financial planner. They each refer clients to one another based on professional need. May the lawyer participate in this arrangement?

A. No, because Rule 7.2 categorically prohibits any reciprocal referral arrangement between a lawyer and a non-lawyer professional regardless of the substance of the underlying arrangement at issue between the parties

B. Yes, because reciprocal referrals between professionals are presumptively beneficial to clients and do not implicate any provision of the Rules of Professional Conduct as currently interpreted in the jurisdiction of practice

C. Yes, provided the lawyer first obtains a court order authorizing the reciprocal referral relationship with the financial planner in light of the mutual nature of the underlying arrangement at issue in the case

D. Yes, because Rule 7.2(b)(4) permits a lawyer to refer clients to a non-lawyer professional pursuant to a reciprocal-referral agreement, if the agreement is not exclusive and the client is informed of the existence and nature of the agreement

53. A lawyer maintains an IOLTA account for client funds that are nominal in amount or held for a short period. Interest from the account is automatically remitted to a legal services foundation. Is this arrangement permissible?

A. Yes, IOLTA programs are expressly authorized in most U.S. jurisdictions and reflect the principle in Rule 1.15 that funds held for clients that cannot earn meaningful interest for them individually are pooled, with the interest dedicated to qualified legal services purposes

B. No, because Rule 1.15(a) requires all interest earned on client funds to be paid directly to the individual clients whose funds generated the interest regardless of the amount of the interest involved at the time

C. Yes, provided each individual client gives express written consent to the diversion of interest from the IOLTA account at the outset of every engagement involving deposits to the trust account at any time

D. No, because IOLTA arrangements were ruled unconstitutional under the Takings Clause and have been universally abandoned by U.S. jurisdictions in the wake of that constitutional ruling on the question at issue

54. A lawyer is asked to advise a client on the legal implications of a new artificial-intelligence-based product the client is developing. The lawyer has no prior experience with AI law. Must the lawyer become familiar with the technology to provide competent advice?

A. No, because Rule 1.1 requires only general legal competence and does not extend to specialized technical knowledge of the products and services that clients develop or sell in their businesses in any industry

B. No, unless the lawyer first obtains the client's express written consent that she will need to study the relevant technology before providing competent advice on the legal implications of the underlying product being developed

C. Yes, Rule 1.1 Comment [8] provides that to maintain competence, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology; competence on AI-related legal questions presupposes a working understanding of the technology

D. Yes, but only after the lawyer obtains a court order authorizing the additional time required to study the technology in light of the specialized nature of the legal advice being requested by the corporate client

55. A junior associate at a firm is uncertain whether a particular tactical decision in a client matter is permissible under the Rules. She asks her supervising partner for guidance. The partner gives a reasoned analysis concluding the tactic is permissible. The associate follows the guidance. The tactic later turns out to be impermissible. Is the associate subject to discipline?

A. Yes, because Rule 5.2(a) provides that an associate is bound by the Rules regardless of supervisory instruction, and the associate must independently verify the supervisor's analysis before relying upon it in any matter

B. Generally no, because Rule 5.2(b) provides a safe harbor: a subordinate lawyer does not violate the Rules if she acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty

C. Yes, but only if the associate's reliance on the partner's guidance results in actual harm to the underlying client whose matter was affected by the impermissible tactic taken by the firm in the matter

D. No, because Rule 5.2 categorically immunizes subordinate lawyers from any disciplinary consequences for conduct undertaken at the direction of any supervisor at the firm in any matter at any time during practice

56. A prosecutor learns of new evidence creating a reasonable likelihood that a defendant convicted in a different jurisdiction (not the prosecutor's own) did not commit the offense. Under Rule 3.8(g), what is the prosecutor's duty?

A. The prosecutor has no duty regarding convictions obtained in other jurisdictions because Rule 3.8(g) applies only to convictions in the prosecutor's own jurisdiction of admission to the bar of the state

B. The prosecutor must immediately move to vacate the conviction in the other jurisdiction without further investigation of the underlying claim of innocence in the matter regardless of any other consideration

C. The prosecutor must disclose the new evidence to her supervising prosecutor only without taking any further action regarding the conviction in the other jurisdiction at the time of the discovery of the evidence

D. Under Rule 3.8(g), the prosecutor shall promptly disclose the evidence to an appropriate court or authority; the disclosure obligation reaches convictions in any jurisdiction, though additional investigation duties under 3.8(g)(2) apply specifically to convictions in the prosecutor's own jurisdiction

57. A lawyer is asked to serve on the board of directors of a small nonprofit organization. The lawyer's firm represents the nonprofit in some matters. Is there a conflict of interest?

A. The lawyer must analyze the situation under both Rule 1.7 and Rule 1.13; dual service as lawyer and board member may create a material limitation on the lawyer's professional judgment, and where significant risk of such limitation arises, informed consent confirmed in writing is required

B. No, because nonprofit board service is exempt from all conflict-of-interest analysis under the Model Rules of Professional Conduct as currently interpreted in this area of practice for the lawyer at issue

C. Yes, because Rule 1.13 categorically prohibits any lawyer for a corporation from also serving on the board of directors of the corporation regardless of the size or nature of the organization being represented

D. Yes, but only if the lawyer is paid by the nonprofit for her board service; unpaid board members are exempt from conflict analysis under the Rules of Professional Conduct as currently interpreted in this area of law

58. A judge is running for re-election. A lawyer who regularly appears before the judge wishes to contribute \$5,000 to the judge's campaign. The lawyer also wishes the judge to participate at a fundraising event by personally soliciting contributions from supporters. Are these activities permitted under the Code of Judicial Conduct?

A. Yes, judicial campaign donations and direct fundraising are unrestricted activities under the Code of Judicial Conduct regardless of the financial threshold or the lawyer's appearance before the judge in any matter

B. No, because all judicial campaign activity is categorically prohibited under the Code of Judicial Conduct in every U.S. jurisdiction regardless of the size or source of the contribution or any other circumstance

C. The lawyer's contribution generally may be made consistent with the Code, but CJC 4.1(A)(8) prohibits a judge or judicial candidate from personally soliciting or accepting campaign contributions other than through a campaign committee; the judge's direct solicitation would violate the rule

D. Yes, both the contribution and the judge's personal solicitation are permitted provided the judge does not later rule unfavorably on any matter involving the contributing lawyer during the term of her re-election

59. A lawyer is convicted of insurance fraud unrelated to her practice of law. The fraud occurred after the lawyer was admitted to the bar. Is she subject to discipline under Rule 8.4(c)?

A. No, because Rule 8.4(c) applies only to dishonesty committed by the lawyer in her professional capacity in connection with her practice of law and not to her private affairs of any nature during her career

B. No, unless the insurance fraud occurred in connection with the lawyer's professional practice or a matter being handled on behalf of a client of the lawyer during the engagement at the time of the conduct

C. Yes, but only if the lawyer is currently representing a client whose interests intersect with the insurance fraud at issue in the underlying conviction of the lawyer for her conduct outside of practice in the matter

D. Yes, because Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; the dishonesty need not relate to the lawyer's practice of law

60. A lawyer was retained to represent a client in an appeal. The retainer agreement provides for representation through final disposition of the appeal. The appellate court rules against the client. The client asks the lawyer for advice about the deadline for seeking discretionary review by a higher court. Does Rule 1.3 require the lawyer to continue acting diligently?

A. No, because Rule 1.3 applies only during the lawyer's active engagement on the merits of the appeal and not after the appellate court has issued a final ruling against the client in the matter being handled

B. The lawyer must continue acting diligently because Rule 1.3 (and Comment [4]) provides that a lawyer should carry through to conclusion all matters undertaken for a client; unless the relationship is clearly terminated, the duty of diligence continues, including counseling about post-decision options

C. No, unless the client first formally asks the lawyer to undertake the additional representation by signing a new retainer agreement specific to the discretionary review process going forward in the matter at issue

D. No, because Rule 1.3 imposes no continuing duty after an appellate court has ruled against the lawyer's client; the lawyer-client relationship terminates by operation of law upon the appellate decision in any matter

## PRACTICE EXAM 25: ANSWERS AND EXPLANATIONS

- 1. D** — Rule 1.6(c) requires a lawyer to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation. Inadvertent disclosure that occurs despite reasonable precautions does not by itself automatically violate Rule 1.6; the rule focuses on the precautions actually taken rather than imposing strict liability for accidents.
- 2. A** — Rule 1.9 protects the lawyer's former client from adverse representation in substantially related matters; it does not extend to third parties (such as the former client's supplier) who were merely counterparties to the prior representation. Without a prior attorney-client relationship with the supplier, no Rule 1.9 conflict arises.
- 3. C** — Rule 5.5(c)(3) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that are in or reasonably related to a pending or potential arbitration, mediation, or other ADR proceeding, provided the services arise out of or are reasonably related to her home-jurisdiction practice and pro hac vice admission is not required. The ADR safe harbor is one of the broadest pathways for temporary multi-jurisdictional practice.
- 4. B** — Rule 3.8(a) prohibits a prosecutor from prosecuting a charge that she knows is not supported by probable cause. An uncorroborated anonymous tip rarely supplies probable cause; the duty applies at the threshold of charging and constrains prosecutorial discretion accordingly.
- 5. D** — Rule 1.7(a)(2) and its comments require an analysis of whether there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to another current client. Where such risk exists, the lawyer may proceed only with informed consent confirmed in writing from each affected client and where she reasonably believes she can provide competent representation to each.
- 6. A** — Rule 1.8(c) prohibits a lawyer from preparing an instrument giving the lawyer any substantial gift unless the lawyer or other recipient is related to the client. A parent is plainly within the family relationship defined by the rule, so the lawyer may prepare the gift instrument without violating the rule.
- 7. B** — Rule 8.4(d) makes it professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice. Severe public attacks on the integrity of a presiding judge — calling her a "fraud" and "judicial criminal" — undermine confidence in the judicial system, and the rule's prohibition reaches such conduct independent of any contempt finding.
- 8. C** — CJC 2.11(A)(2) requires disqualification when the judge knows that a person within the third degree of relationship to her is acting as a lawyer in the proceeding. A sibling is within the third degree, and disqualification is mandatory once the judge becomes aware of the relative's involvement as counsel.

- 9. D** — Rule 1.16(c) provides that when ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. The court's authority to keep counsel in place overrides the lawyer's otherwise valid grounds for permissive withdrawal under Rule 1.16(b).
- 10. B** — Rule 5.4(a) generally prohibits a lawyer or law firm from sharing legal fees with a non-lawyer, with narrow exceptions limited to death benefits to a deceased lawyer's estate, payments under court-awarded fees in pro bono cases, retirement plans, and certain authorized fee divisions. A non-lawyer marketing consultant referring clients falls outside all of these exceptions.
- 11. A** — Rule 7.1 prohibits a lawyer from making a false or misleading communication about the lawyer or the lawyer's services. A statement claiming a 9-out-of-10 trial win record when the actual record is 4-out-of-10 is a materially false statement of past results and violates the rule on its face.
- 12. C** — Rule 1.5(d)(1) prohibits a lawyer from charging or collecting any fee in a domestic relations matter the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony, support, or property settlement in lieu thereof. The rule reflects concerns about lawyer incentives in family matters and is not waivable by client consent.
- 13. D** — Rule 3.5(a) prohibits a lawyer from seeking to influence a judge by means prohibited by law. Channeling a donation to the judge's favorite charity through a third party for the purpose of influencing the judge's decisions is precisely the type of indirect improper means the rule reaches.
- 14. B** — Rule 1.13(c) permits a lawyer who has reported up to the highest authority and seen no responsive action to reveal information to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization, notwithstanding the general confidentiality rule. The reporting-out option is a last-resort safeguard for the entity client itself.
- 15. A** — Rule 8.3(a) requires a lawyer who knows that another lawyer has committed a violation that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer to inform the appropriate professional authority. The duty is personal and is not satisfied by another person's report — including a report by the affected client.
- 16. C** — Rule 1.6(b)(5) permits a lawyer to reveal information relating to the representation to the extent reasonably necessary to establish a defense to a claim against the lawyer based on conduct in which the client was involved. The self-defense exception preserves the lawyer's ability to mount a defense to malpractice claims without prior court order.
- 17. B** — Rule 1.18(d)(2) provides a screening cure where the disqualified lawyer took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary, is timely screened from any participation and apportioned no part of the fee, and written notice is promptly given to the prospective client. The rule allows the firm to retain the engagement without prospective-client consent if the screening conditions are met.
- 18. D** — Rule 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Sophisticated clients are not relieved of

the rule's protection where the lawyer recognizes that the client may not appreciate an unusual or counterintuitive risk in a particular term.

**19. A** — Rule 4.4(a) prohibits a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person. Threatening to expose unrelated personal information to coerce a witness into recanting testimony falls squarely within the rule's prohibition.

**20. C** — Rule 3.7(a)(3) permits a lawyer to continue as advocate notwithstanding her likely status as a necessary witness when disqualification would work substantial hardship on the client. A two-year-old engagement on the eve of trial typically supplies the hardship needed to invoke the exception.

**21. D** — Rule 1.10(a)(2) permits a screening cure for imputed conflicts arising from a lawyer's association with a prior firm, provided the disqualified lawyer is timely screened from any participation, apportioned no part of the fee, written notice is promptly given to any affected former client, and the required certifications of compliance are provided. Personal and substantial prior involvement does not foreclose the cure under the current rule.

**22. C** — When a criminal defendant insists on testifying and the lawyer reasonably believes the testimony will be false, many jurisdictions (consistent with the ABA Defense Function Standards) permit the lawyer to allow narrative testimony rather than question-and-answer examination, after first attempting to dissuade the client and considering withdrawal. The approach balances the defendant's constitutional right to testify with the lawyer's duty of candor under Rule 3.3.

**23. B** — Rule 5.6(a) prohibits a lawyer from making a partnership or other agreement that restricts the right of a lawyer to practice after termination of the relationship, except for an agreement concerning benefits upon retirement. Tying the non-compete to severance pay rather than retirement benefits does not fit within the narrow exception, so the restriction is impermissible.

**24. A** — Rule 1.7 conflict analysis applies to multi-jurisdictional engagements just as it does to single-jurisdiction matters. A significant risk that the new engagement will materially limit the lawyer's responsibilities to the existing State Y client requires informed consent confirmed in writing from each affected client, and the lawyer must reasonably believe she can provide competent representation to each.

**25. D** — Rule 8.4(b) makes it professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Tax evasion bears directly on honesty and trustworthiness, and the rule does not turn on whether the crime is a felony or arose from the practice of law.

**26. A** — Rule 1.15(a) requires a lawyer to hold client property separate from her own property, typically in a trust account designated for client funds. Even a brief, inadvertent deposit into the operating account constitutes commingling under the strict-liability framework that courts and bar authorities generally apply to trust-account violations.

**27. C** — Rule 1.12(a) prohibits a lawyer from representing anyone in connection with a matter in which the lawyer participated personally and substantially as a third-party neutral, unless all parties to the

proceeding give informed consent confirmed in writing. The bar applies even where the mediation was unsuccessful and produced no formal settlement document between the parties.

**28. B** — Rule 6.5 contains a special rule for short-term limited legal services programs sponsored by qualifying organizations: Rules 1.7 and 1.9(a) apply only if the lawyer knows the representation involves a conflict, and Rule 1.10 imputation applies only when the lawyer knows another lawyer in the firm has a disqualifying interest. The rule facilitates pro bono walk-in service by relaxing pre-engagement conflict-check obligations.

**29. A** — Rule 8.5(b)(1) provides that for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits apply, unless the rules of the tribunal provide otherwise. Pro hac vice admission in State Z subjects the lawyer's deposition conduct in that matter to State Z's professional conduct rules.

**30. D** — Rule 3.3 applies to depositions because they fall within the "tribunal" framework under Rule 1.0(m), and Rule 3.3(c) extends the candor duties through the conclusion of the proceeding. Reasonable remedial measures — including, if necessary, disclosure to the tribunal — are required where the lawyer comes to know that her client offered false testimony in a deposition.

**31. B** — Rule 1.8(e)(3), adopted in the 2020 amendments, permits a lawyer representing an indigent client on a pro bono basis to provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses. The exception accommodates humanitarian assistance to pro bono clients without violating the general bar on financial assistance to clients.

**32. D** — Rule 3.4(a) prohibits a lawyer from unlawfully obstructing another party's access to evidence or counseling or assisting another to do so, and Rule 4.1 prohibits a lawyer from knowingly making false statements of material fact. Filing a discovery response that conceals the client's destruction of responsive documents implicates both rules and cannot be reconciled with the lawyer's duties.

**33. C** — CJC 2.9(A) generally prohibits ex parte communications about pending or impending matters, with limited exceptions for scheduling and administrative purposes. When counsel oversteps into substantive matters during a permitted scheduling call, the judge must take appropriate corrective steps — typically by ending the substantive portion and providing prompt notice to opposing counsel.

**34. D** — Rule 7.3(b) prohibits live person-to-person contact to solicit professional employment when a significant motive is the lawyer's pecuniary gain, with limited exceptions for lawyers, family or close personal contacts, prior clients, and persons who routinely use such services in business. Approaching grieving family members at a funeral fits no exception and is the paradigm of conduct the rule prohibits.

**35. A** — Rule 1.6(b)(7) permits a lawyer to reveal information relating to the representation of a client to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in firm composition or ownership. The disclosure must not compromise privilege or otherwise prejudice the client; limited information for conflict checks fits within these constraints.

**36. C** — Rule 1.2(d) prohibits a lawyer from counseling or assisting a client to engage in conduct she knows is criminal or fraudulent, but expressly permits a lawyer to discuss the legal consequences of any proposed course of conduct and to counsel or assist a client in good-faith efforts to determine the validity, scope, meaning, or application of the law. The rule preserves the client's right to candid legal advice without authorizing the lawyer's participation in unlawful conduct.

**37. B** — Rule 3.4(f) permits a lawyer to request that a person refrain from voluntarily giving relevant information to another party only when the person is a relative, employee, or other agent of a client, and the lawyer reasonably believes the person's interests will not be adversely affected. A former employee with no continuing agency relationship to the corporation falls outside the rule's exception.

**38. D** — Rule 7.2(b)(2) permits a lawyer to pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer-referral service. The "qualified" requirement generally means a referral service approved by an appropriate regulatory authority, which distinguishes permissible referral arrangements from impermissible pay-for-lead schemes.

**39. A** — Rule 1.8(h)(2) prohibits a lawyer from settling a claim or potential claim for malpractice 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 protects the unrepresented former client's ability to evaluate the proposed release.

**40. C** — Rule 1.14(c) provides that information relating to a client with diminished capacity is protected by Rule 1.6, but the lawyer is impliedly authorized to reveal information about the client to the extent reasonably necessary to protect the client's interests when taking protective action under Rule 1.14(b). The rule reflects the inherent need for implied authority in genuine emergencies involving vulnerable clients.

**41. A** — Rule 8.1(a) prohibits an applicant for admission to the bar from knowingly making a false statement of material fact in connection with a bar admission application. Intentional omission of a criminal conviction in response to a question requiring disclosure is the paradigm violation of the rule, regardless of how long ago the conviction occurred.

**42. D** — Rule 3.6 applies to any adjudicative proceeding, but the substantial-likelihood-of-prejudice standard takes account of the type of proceeding. Bench trials present a much lower risk of prejudice from public statements than jury trials, but the rule still applies and forbids statements that genuinely risk material prejudice to the proceeding.

**43. B** — Rule 1.11(a) imposes its restrictions only when the lawyer participated "personally and substantially" in the matter as a government employee — a fact-specific analysis described in the rule's comments. Mere supervisory sign-off on broad investigative authorizations, without substantive engagement, generally does not satisfy the "personal and substantial" threshold.

**44. C** — Rule 1.16(b)(5) permits a lawyer to withdraw when the client fails substantially to fulfill an obligation to the lawyer (such as paying fees) after reasonable warning of withdrawal; Rule 1.16(b)(6) permits withdrawal where representation will result in an unreasonable financial burden on the lawyer. Either ground supports withdrawal here without court approval, since the matter is not before a tribunal.

**45. D** — Rule 5.3 imposes supervisory duties on partners and managerial lawyers with respect to non-lawyer service providers, including outsourced document review services. The firm must make reasonable efforts to ensure that the service's conduct is compatible with the lawyer's professional obligations, including confidentiality, competence, and conflict-of-interest principles.

**46. A** — Rule 6.1(b) recognizes a range of activities that fulfill a lawyer's professional responsibility, including delivery of legal services at no fee or substantially reduced rate and participation in activities for improving the law, the legal system, or the legal profession. Supervised law-school clinical work serving underserved clients fits squarely within these recognized categories.

**47. B** — Rule 8.4(g) provides that it is professional misconduct for a lawyer to engage in conduct she knows or reasonably should know is harassment or discrimination based on protected characteristics, including national origin, in conduct related to the practice of law. Conduct at a deposition is "conduct related to the practice of law," and slurs directed at a participant fall within the rule's scope.

**48. C** — Rule 1.18(b) imposes a duty on the lawyer not to use or reveal information learned in the consultation; Rule 1.18(c) bars adverse representation in the same or a substantially related matter only when the lawyer received information that could be significantly harmful to the prospective client. Absent receipt of significantly harmful information, the categorical bar does not apply.

**49. A** — The duty of confidentiality under Rule 1.6 generally survives the client's death; absent informed consent from the personal representative, a court order, or another applicable exception, the lawyer must protect the deceased client's confidences. The estranged business partner's litigation interest does not, by itself, override the continuing duty of confidentiality.

**50. 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 allows the client to weigh the risks of the evaluation before the lawyer issues it to the third party.

**51. B** — Rule 4.2 prohibits direct communication with a person represented by counsel about the subject of the representation. Comment [7] explains that for organizations, the rule extends to constituents who supervise, direct, or regularly consult with counsel concerning the matter, or who have authority to obligate the organization, or whose acts or omissions could be imputed to the organization for liability — high-level officers with binding authority fall squarely within this protected category.

**52. D** — Rule 7.2(b)(4) permits a lawyer to enter a reciprocal referral arrangement with another lawyer or a non-lawyer professional, provided the agreement is not exclusive and the client is informed of the existence and nature of the agreement. The rule recognizes that mutually beneficial referral relationships can serve clients when disclosed and non-exclusive.

**53. A** — IOLTA programs are expressly authorized in nearly all U.S. jurisdictions and reflect the principle in Rule 1.15 that pooled, short-term, or nominal client funds that cannot practically earn meaningful interest for individual clients are aggregated, with the interest dedicated to qualified legal services purposes. The Supreme Court upheld IOLTA against Takings Clause challenges in *Brown v. Legal Foundation of Washington*.

**54. C** — Rule 1.1 Comment [8] provides that to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. Competent legal advice on an AI-based product presupposes a working understanding of how the technology functions; technical illiteracy does not excuse legal incompetence.

**55. B** — Rule 5.2(b) provides a narrow safe harbor: a subordinate lawyer does not violate the Rules if she acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. The associate's good-faith reliance on the partner's reasoned (if ultimately mistaken) analysis fits within the safe harbor.

**56. D** — Rule 3.8(g)(1) requires a prosecutor who knows of new credible and material evidence creating a reasonable likelihood that a defendant did not commit the offense to promptly disclose that evidence to an appropriate court or authority — regardless of the jurisdiction of conviction. The additional duties under 3.8(g)(2), including disclosure to the defendant and further investigation, apply specifically when the conviction was obtained in the prosecutor's own jurisdiction.

**57. A** — Comment [35] to Rule 1.7 cautions lawyers serving on the board of an organization that the firm represents to evaluate whether the dual role creates a material limitation on the lawyer's independent professional judgment, and Rule 1.13 addresses related entity-representation concerns. Dual service is not categorically prohibited but requires careful analysis and, where significant risk arises, informed consent confirmed in writing.

**58. C** — CJC 4.1(A)(8) generally prohibits a judge or judicial candidate from personally soliciting or accepting campaign contributions other than through a campaign committee. The committee mechanism insulates the judge from direct knowledge of contributors and from the appearance that contributions influence decisions; direct personal solicitation by the judge violates the rule.

**59. D** — Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The conduct need not relate to the lawyer's practice of law; private dishonest conduct, including a conviction for insurance fraud, bears directly on the lawyer's character and fitness and subjects her to discipline.

**60. B** — Rule 1.3 and Comment [4] provide that a lawyer should carry through to conclusion all matters undertaken for a client, and unless the lawyer-client relationship has been clearly terminated, the duty of diligence continues. The lawyer's diligence duty extends to counseling the client on post-decision options, including the deadline for seeking discretionary review, even where the retainer's express scope is winding down.