

PRACTICE EXAM 28: MPRE SIMULATION

Time Allotted: 2 hours

Format: Multiple choice — select the best answer

1. A lawyer represents a client in litigation. The opposing party is represented by the lawyer's spouse, who is a partner at a different firm. The two firms are not affiliated. Does Rule 1.7 require disclosure to the lawyer's client?

A. Yes, because Rule 1.7(a)(2) and its comments treat a spousal relationship between opposing counsel as a personal-interest conflict that may materially limit the representation; the lawyer must obtain informed consent confirmed in writing from the client before continuing

B. No, because spousal relationships between opposing counsel at different firms create no conflict so long as the lawyers themselves are competent in their representation of their respective clients in the matter

C. Yes, but only if the spouse is the lead counsel of record on the matter rather than a supervising partner overseeing more junior counsel handling the substantive work of the matter at issue

D. No, but only if the lawyer and her spouse have signed a written agreement to refrain from discussing the matter between them at home during the pendency of the underlying litigation in court

2. A lawyer paid an expert witness \$5,000 in fees plus reimbursed her for travel expenses to testify at trial. The expert's testimony is non-contingent and reflects her usual hourly rate. Is the payment permissible under Rule 3.4(b)?

A. No, because Rule 3.4(b) prohibits any payment to a witness who is also expected to give expert testimony at trial in connection with the matter being prosecuted by the lawyer on behalf of her client in the case

B. Yes, but only if the lawyer obtains the trial court's express approval for the expert witness fee in advance of the deposition or trial testimony in the matter being handled before the court at the time of payment

C. Yes, Rule 3.4(b) permits reasonable payment to an expert witness in compensation for her professional services and time, in addition to reasonable expenses; the prohibition reaches inducements contingent on content or outcome, not standard expert fees

D. Yes, provided the expert's testimony is favorable to the lawyer's client because adverse expert testimony cannot be compensated under the Rules of Professional Conduct as currently interpreted in this area of practice

3. A lawyer formerly served as Deputy General Counsel of a federal agency. While there, she helped draft a regulation of general applicability — not directed at any specific party. She is now in private practice. Does Rule 1.11(a) restrict her from representing private clients affected by the regulation?

A. Yes, because all work performed during government service triggers the Rule 1.11(a) restriction regardless of whether the work involved a specific matter or general rulemaking under the agency's authority at the time of her service

B. No, because Rule 1.11(e) defines "matter" to exclude rulemaking of general applicability not involving specific parties; Rule 1.11(a) reaches only matters in which the lawyer participated personally and substantially as a government employee

C. No, but only if the lawyer first obtains the federal agency's express written consent to her representation of clients affected by the regulation she helped draft during her government service in the matter

D. Yes, unless five years have elapsed since her departure from federal service before she undertakes any representation of clients in matters affected by the regulation she helped draft as a government employee

4. A lawyer's client tells her that he is angry with his ex-spouse and intends to confront her tonight with a firearm. The lawyer reasonably believes the client may kill or seriously injure the ex-spouse. May the lawyer disclose to the ex-spouse?

A. No, because the lawyer's duty of confidentiality under Rule 1.6 absolutely prohibits any disclosure of client information without express client consent regardless of the threatened conduct involved in the matter at issue

B. Yes, provided the lawyer first obtains the trial court's express approval for the disclosure to the ex-spouse in advance of any communication with her about the threat received from her former husband at the time of the call

C. Yes, but only after the lawyer makes a formal report to law enforcement before any direct disclosure to the threatened ex-spouse regarding the threat received from her former husband at the time of the call to the lawyer

D. Yes, Rule 1.6(b)(1) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm

5. A lawyer wishes to give a \$50 gift card to a non-lawyer who has provided thoughtful, occasional referrals over the years. The non-lawyer did not refer in exchange for any agreement. May the lawyer give the gift card?

A. No, because Rule 7.2(b) categorically prohibits any payment or gift to a non-lawyer in exchange for referral of business regardless of the value or timing of the payment to the recipient of the gift at issue

B. No, unless the non-lawyer is also a member of a qualified lawyer-referral service that has been approved by an appropriate regulatory authority in the jurisdiction of practice for the lawyer at issue in the matter

C. Yes, Rule 7.2(b)(5) permits a lawyer to give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending the lawyer's services

D. Yes, provided the gift card is not given on a regular schedule and the lawyer keeps detailed records of all such gifts for inspection by the bar disciplinary authority upon request in the relevant jurisdiction

6. A lawyer represents a client. She learns that her continued representation will be used by the client to perpetrate a fraud on a third party. The lawyer cannot dissuade the client from the planned conduct. What does Rule 1.16(b) permit?

A. The lawyer may withdraw under Rule 1.16(b)(2), because the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, and under Rule 1.16(b)(3), because the client has used the lawyer's services to perpetrate a crime or fraud

B. The lawyer must continue the representation because withdrawal would harm the client's procedural position in the underlying matter being handled by the lawyer at the present time during the engagement at issue

C. The lawyer must immediately report the client to law enforcement before taking any further action with respect to the representation or the planned fraudulent conduct of the client in the matter being handled by counsel

D. The lawyer must complete the matter regardless of the client's planned conduct because Rule 1.16 does not provide for permissive withdrawal in connection with anticipated future client conduct under the Model Rules

7. A lawyer is being interviewed by a prospective client. The lawyer says: "I went to law school with the judge handling this matter, and I'm confident she'll be sympathetic to your position because of our friendship." Is the statement permitted by the Rules?

A. Yes, because lawyers may freely market their personal connections to judicial officers in client consultations regardless of the substance of any implied promise about judicial favor in the matter being negotiated at the time

B. Yes, provided the lawyer makes clear that the judge will rule based solely on the merits of the case and not based on any prior personal relationship between her and the lawyer outside of court during the engagement

C. No, but only if the lawyer's statement results in the prospective client's actual retention of the lawyer for the matter at issue in the consultation between the parties to the discussion at the time of the meeting

D. No, because Rule 8.4(e) provides that it is professional misconduct for a lawyer to state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate the Rules or other law

8. A lawyer takes on a new client for a personal injury matter. The lawyer has not previously represented the client. The lawyer agrees orally on the fee basis but does not communicate the basis or rate in writing. The matter is not a contingent fee. Does Rule 1.5(b) require a writing?

A. Yes, Rule 1.5(b) requires a writing signed by the client for all fee agreements regardless of the nature of the matter or the prior representation history between the lawyer and the client at the time of engagement

B. Rule 1.5(b) requires the basis or rate of the fee and expenses to be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate

C. No, because Rule 1.5(b) imposes no obligation to communicate fee terms unless the client first specifically requests written confirmation of the agreement during the engagement on the underlying matter at issue between them

D. Yes, because every initial engagement requires a written engagement letter signed by the client before any representation may begin under the Model Rules of Professional Conduct in the jurisdiction of practice for the lawyer at issue

9. A lawyer formerly represented a public figure in a divorce. The fact of the divorce is widely reported in the news media. The lawyer is now representing a different client in a matter where the fact of the public figure's divorce is relevant. May the lawyer use this information?

A. No, because Rule 1.9 prohibits the lawyer from using any information from the former representation to the disadvantage of the former client regardless of public knowledge or news coverage of the information at issue

B. No, unless the lawyer first obtains express written consent from the former public figure client before using the information in the new representation undertaken by the lawyer in the unrelated matter at the time

C. Yes, because Rule 1.9(c)(1) prohibits the use of information relating to the representation to the disadvantage of the former client, but expressly excepts information that has become generally known — including widely reported news of a public figure's divorce

D. Yes, provided the lawyer first obtains a court order authorizing the use of the publicly known information in light of the prior representation of the public figure in the divorce matter that has long since concluded

10. A lawyer receives settlement funds on behalf of her client. The funds include a portion owed to a healthcare lien holder. What does Rule 1.15(d) require?

A. Upon receiving funds in which a client or third person has an interest, a lawyer shall promptly notify the client or third person; the lawyer shall promptly deliver to the client or third person any funds that the person is entitled to receive and, upon request, render a full accounting

B. The lawyer must hold all settlement funds for at least 60 days before disbursing any portion to the client or any third-party lien holder regardless of the agreed payment schedule or other procedural deadlines in the matter

C. The lawyer may distribute the entire settlement to the client without notice to the third-party lien holder so long as the client agrees to handle the lien claim directly with the relevant healthcare provider after receipt of funds

D. The lawyer must file an interpleader action with the court to authorize the distribution of any portion of the settlement funds in the presence of any third-party lien claim against the underlying recovery in the matter

11. A lawyer involved in a high-profile criminal case wishes to issue a public statement clarifying that her client has pleaded not guilty. Is this statement permitted under Rule 3.6?

A. No, because Rule 3.6 categorically prohibits any public statement by counsel about a pending criminal case during the period before trial regardless of the content of the proposed statement being made by the lawyer

B. Yes, Rule 3.6(b) lists specific safe-harbor statements a lawyer may make, including a statement that the defendant has pleaded not guilty and that an investigation or matter is in progress

C. Yes, but only after the trial court issues an order authorizing the statement in light of the high-profile nature of the underlying criminal matter being prosecuted by the state in court before the trial judge

D. No, unless the lawyer's statement is necessary to mitigate substantial undue prejudicial publicity initiated by the prosecution or otherwise not initiated by the defense in the matter being prosecuted in court

12. A partner at a law firm orders an associate to engage in conduct the associate believes — and the partner knows — will violate the Rules of Professional Conduct. The associate complies. Is the partner subject to discipline?

A. No, because only the associate who actually engaged in the conduct can be subject to discipline under the Rules of Professional Conduct as currently interpreted in this area of practice at the firm

B. No, unless the partner directly participated in the substantive conduct that violates the Rules rather than merely instructing the associate to undertake the action on behalf of the firm in the matter at issue

C. Yes, but only if the associate files a formal grievance against the partner with the bar disciplinary authority before any disciplinary action may be taken in connection with the conduct of the associate

D. Yes, Rule 5.1(c)(1) provides that a lawyer is responsible for another lawyer's violation of the Rules if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved

13. A judge wishes to volunteer for a local charity that raises funds for cancer research. The charity is non-political and unrelated to the law. May the judge participate?

A. Yes, CJC 3.7 permits a judge to participate in activities sponsored by educational, religious, charitable, fraternal, or civic organizations not conducted for profit, subject to restrictions including limits on personal solicitation of funds and the lending of judicial prestige

B. No, because all extrajudicial activities by judges are categorically prohibited under the Code of Judicial Conduct regardless of the nature of the organization or the type of activity proposed during her tenure on the bench

C. Yes, but only if the judge first obtains permission from the state supreme court before participating in any activity sponsored by a non-profit charity outside of her judicial duties at the bench during her tenure

D. No, unless the judge first formally resigns her position on the bench to avoid the appearance of lending judicial prestige to the charity's fundraising efforts in connection with cancer research in the community

14. A lawyer represents a corporation. A constituent of the corporation requests that the lawyer act in a manner that benefits the constituent personally but harms the corporation. To whom does the lawyer owe her primary professional duty?

A. To the constituent who initiated the contact with the lawyer because she is the human person with whom the lawyer is actually communicating about the underlying business matter at issue in the engagement

B. To both the corporation and the constituent equally because Rule 1.13 treats corporate constituents as co-clients of the organization for purposes of the lawyer's professional duties under the Model Rules

C. Under Rule 1.13(a), a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents; the corporation, not any individual constituent, is the client to whom primary loyalty is owed

D. To whichever constituent has decision-making authority in the corporation under its governance documents, regardless of the lawyer's prior interactions with other constituents during the engagement on the matter

15. A lawyer represents three plaintiffs in a single mass-tort matter. The defendant offers a global settlement of \$750,000 to be divided among the plaintiffs. What does Rule 1.8(g) require?

A. The lawyer may allocate the global settlement among the three plaintiffs in her discretion provided each plaintiff agrees in advance to abide by her allocation decision in connection with the matter at issue

B. The lawyer must obtain the trial court's approval of the proposed global settlement allocation before any disbursement of the settlement proceeds to the three plaintiffs in the matter being handled by counsel

C. The lawyer may proceed with the settlement on a majority-vote basis among the three plaintiffs in light of the collective nature of the mass-tort engagement being handled by the lawyer at issue in the matter

D. Each client must give informed consent in a writing signed by the client to the aggregate settlement, including disclosure of the existence and nature of all the claims and of the participation of each person in the settlement

16. A lawyer mails letters to all individuals named in a recent newspaper article about a car accident, offering her services for any potential personal injury claims. None of the recipients are family members, prior clients, lawyers, or persons who routinely use such services. Is this conduct permitted under Rule 7.3?

A. Yes, because targeted direct-mail communications are not "solicitation" within the meaning of Rule 7.3 of the Model Rules of Professional Conduct as currently applied in the jurisdiction of practice for the lawyer

B. The general rule against live person-to-person solicitation in Rule 7.3(b) does not prohibit targeted written communications, but Rule 7.3(c) prohibits any solicitation if the target has made known a desire not to be solicited or if the solicitation involves coercion, duress, or harassment

C. Yes, but only if each recipient first responds affirmatively in writing to a preliminary inquiry from the lawyer before any substantive solicitation may be sent to the individuals listed in the article in question

D. No, because Rule 7.3 categorically prohibits all written solicitations to prospective clients regardless of the marking of the materials or any other procedural safeguard implemented by the lawyer in the matter

17. A lawyer receives a sealed envelope from opposing counsel that was clearly addressed to her firm. Inside is a document marked "ATTORNEY-CLIENT PRIVILEGED" that opposing counsel obviously sent by mistake. The lawyer recognizes the inadvertent transmission. What does Rule 4.4(b) require?

A. The lawyer must immediately destroy the document without reading further and refrain from disclosing its existence to opposing counsel in the matter being prosecuted by the parties in court at the time of receipt

B. The lawyer must move the trial court for guidance on whether to review the inadvertently sent document before taking any further action with respect to the communication received from opposing counsel in the matter

C. The lawyer must contact the bar disciplinary authority to report the inadvertent disclosure by opposing counsel within thirty days of receipt of the misdirected envelope from the opposing party's counsel in the matter

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

18. A lawyer is invited to serve as an arbitrator in a commercial dispute between two parties. Neither party is currently a client of the lawyer. What is the lawyer's status under Rule 2.4(a)?

A. The lawyer serves as a third-party neutral when she assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter between them; service as arbitrator, mediator, or in such other capacity all qualify

B. The lawyer becomes a client representative of both parties simultaneously and is therefore subject to the concurrent conflict rules under Rule 1.7 of the Model Rules of Professional Conduct as currently applied in this area

C. The lawyer must decline the engagement because Rule 2.4 prohibits a practicing lawyer from serving as a third-party neutral while maintaining a separate active law practice in any field of law in the jurisdiction

D. The lawyer is a fiduciary of the party who proposed her name for service as arbitrator regardless of whether that party is or has been a client of the lawyer in any prior matter being handled at the firm

19. A firm wishes to invoke a Rule 1.10(a)(2) screening cure for a moving lawyer's conflict. The firm purports to comply with the screening rule, but the lawyer who is screened continues to chat informally about the matter with colleagues at firm lunches. Is the screen effective?

A. Yes, because Rule 1.10(a)(2) requires only formal documentation of the screening rather than substantive prohibition on informal contact between the screened lawyer and her colleagues at the firm at issue

B. No, but only if the affected former client formally objects to the screening arrangement on grounds that it is not being maintained in accordance with the rule's formal requirements during the engagement at issue

C. No, an effective screen under Rule 1.10(a)(2) requires the disqualified lawyer to be timely screened from any participation in the matter; informal communications about the matter undermine the screen and may defeat the cure

D. Yes, provided the screened lawyer signs a written certification that she does not personally remember the substance of the prior representation that gives rise to the imputed conflict at issue in the matter

20. A lawyer is presenting an ex parte motion to a trial court for a temporary restraining order. The lawyer is aware that the proposed order will be issued without notice to the opposing party. What does Rule 3.3(d) require?

A. The lawyer may advance only her client's favorable facts because ex parte proceedings inherently involve a one-sided presentation by counsel to the tribunal on behalf of her client's interests in the matter at issue

B. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse

C. The lawyer must obtain the trial court's express approval of the proposed disclosure of any adverse facts before presenting the ex parte motion in connection with the proposed temporary restraining order at issue

D. The lawyer must arrange for opposing counsel to attend the ex parte hearing as a courtesy before any temporary restraining order may be issued by the trial court in connection with the underlying motion at issue

21. A lawyer takes a new matter and files an initial complaint. She then fails to take any meaningful action on the case for six months. The applicable statute of limitations has not yet run, but procedural deadlines are approaching. The client begins to worry. Has the lawyer violated Rule 1.3?

A. Yes, Rule 1.3 requires reasonable diligence and promptness; Comment [3] specifically warns that a lawyer should not allow procrastination to delay the matter, even when the client's substantive rights are not yet directly imperiled

B. No, because Rule 1.3 does not impose any specific timeline obligations on lawyers and procrastination is a matter of client preference rather than ethical regulation under the Model Rules of Professional Conduct in this area

C. No, but only if the lawyer's procrastination ultimately causes a deadline to be missed in the underlying matter being prosecuted on behalf of the client in court before the trial judge at the time of the missed deadline

D. Yes, but only if the client formally complains to the bar disciplinary authority about the procrastination during the period in which the matter is being handled by the lawyer for the client in the matter at issue

22. A lawyer represents a client who has used the lawyer's services to commit financial fraud against an investor. The fraud has already occurred. The lawyer reasonably believes she can mitigate substantial financial loss to the investor by revealing the fraud. May the lawyer disclose?

A. No, because the fraud has already been completed and the lawyer's disclosure cannot prevent the original financial injury to the investor in connection with the underlying transaction at issue in the matter

B. Yes, only if the investor first formally requests the information from the lawyer with specific reference to the suspected fraud committed by the client in the underlying transaction being investigated by the parties

C. Yes, but only after the lawyer first formally withdraws from the representation under Rule 1.16 and waits 60 days before any disclosure of the underlying fraud to the affected investor in the matter being handled

D. Yes, Rule 1.6(b)(3) permits a lawyer to reveal information to the extent reasonably necessary to prevent, mitigate, or rectify substantial financial injury to another that is reasonably certain to result or has resulted from the client's crime or fraud in furtherance of which the client has used the lawyer's services

23. A lawyer met briefly with a prospective client and learned information that could not be considered significantly harmful to that prospective client. The prospective client's adversary now wishes to retain the lawyer in the same matter. The lawyer wants to accept. May the lawyer proceed without screening?

A. No, because Rule 1.18 categorically requires screening of the original lawyer regardless of whether she received any information that could be considered significantly harmful in the consultation with the prospective client

B. Yes, because Rule 1.18(c) bars adverse representation in a substantially related matter only when the lawyer received information from the prospective client that could be significantly harmful — if no such information was acquired, the categorical bar does not apply

C. Yes, but only if the original prospective client gives express written consent to the new representation in light of the prior consultation between the parties to the original meeting before the lawyer in the matter

D. No, unless the firm conducts a formal Rule 1.18(d)(2) screening of the original lawyer regardless of the nature of the information received during the consultation with the prospective client at the time of the meeting

24. A non-lawyer paralegal at a firm communicates with a represented person about the subject of the representation without the lawyer's knowledge. The communication would violate Rule 4.2 if engaged in by the lawyer herself. Is the supervising lawyer subject to discipline?

A. Yes, because non-lawyer assistants are subject to the same Rules as licensed lawyers and the supervising lawyer is therefore strictly liable for any violation that occurs during the engagement on the matter

B. No, because non-lawyer assistants are not bound by the Rules of Professional Conduct and the supervising lawyer cannot be held responsible for their conduct in any matter at any time during the engagement

C. The supervising lawyer is responsible under Rule 5.3(c) for the non-lawyer assistant's conduct that would violate the Rules if engaged in by a lawyer, if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved

D. The supervising lawyer must immediately report the paralegal to the bar disciplinary authority before any further action may be taken in the matter regardless of the lawyer's knowledge of the contact at issue

25. A lawyer admitted in State X wishes to assist a client in handling a litigation matter in State Y. She has not been admitted pro hac vice. She wishes to associate with a State Y lawyer who will actively participate in the representation. May she proceed?

A. No, because Rule 5.5 categorically prohibits any practice in a jurisdiction where the lawyer is not admitted regardless of association with locally admitted counsel in the matter at issue at the time of the engagement

B. Yes, Rule 5.5(c)(1) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that are undertaken in association with a lawyer admitted to practice in the jurisdiction and who actively participates in the matter

C. Yes, but only if the State Y bar association separately approves the temporary practice in addition to the lawyer's home-jurisdiction admission and the State Y lawyer's active participation in the matter at issue

D. No, unless the lawyer also takes and passes the State Y bar examination within twelve months of beginning the joint engagement with the State Y lawyer in the matter being handled by the parties to the engagement

26. A lawyer wishes to file a report with the bar disciplinary authority about a colleague's serious misconduct. To prepare the report, the lawyer would need to disclose information protected by Rule 1.6 — confidential client information. What does Rule 8.3(c) provide?

A. Yes, because Rule 8.3 imposes a mandatory reporting duty that overrides any confidentiality concerns regardless of the client's wishes in the matter being handled by the lawyer for the client at issue in the matter

B. No, because the disclosure would violate Rule 1.6 regardless of the seriousness of the colleague's misconduct or the lawyer's reporting obligation under any other rule of professional conduct in the jurisdiction

C. Yes, but only if the lawyer first obtains the trial court's express approval for the disclosure in light of the confidentiality concerns implicated by the proposed report to the bar disciplinary authority in the matter

D. Rule 8.3(c) provides that the reporting duty does not require disclosure of information otherwise protected by Rule 1.6; the lawyer should seek the client's informed consent to make the report or otherwise determine whether disclosure is permitted under a Rule 1.6 exception

27. A criminal defense lawyer is representing a defendant who has been offered a plea deal. The defendant asks the lawyer to make the plea decision for her. May the lawyer do so?

A. No, because Rule 1.2(a) reserves certain decisions exclusively to the client, including the decision whether to plead guilty in a criminal case; the lawyer must abide by the client's decision and may not substitute her own judgment on plea matters

B. Yes, because plea decisions are tactical matters within the lawyer's discretion under the Model Rules of Professional Conduct as applied to criminal representation in most jurisdictions of the United States today

C. Yes, but only if the client first signs a written waiver of her decision-making authority regarding the plea offer being communicated to her by the prosecution in the matter currently pending against her

D. No, unless the lawyer obtains the trial court's express approval to make the plea decision on the defendant's behalf in light of the defendant's request that the lawyer assume that authority in the matter

28. A lawyer in a transactional setting makes the statement to opposing counsel: "My client would never accept anything less than \$1 million for this property." The lawyer's client has, in fact, authorized her to accept as little as \$750,000. Has the lawyer violated Rule 4.1?

A. Yes, because Rule 4.1 prohibits any false statement to a third party regardless of the context of the negotiation or the materiality of the statement to the underlying transaction being negotiated at the time of the statement

B. Yes, but only if opposing counsel subsequently shows that the misstatement caused her client to accept terms that were materially worse than what she would have accepted with accurate information in the matter

C. No, Rule 4.1's "material fact" requirement is interpreted in light of Comment [2], which recognizes that estimates of price or value placed on the subject of a transaction and a party's intentions as to acceptable settlement terms ordinarily are not taken as statements of material fact for purposes of the rule

D. No, because Rule 4.1 applies only to representations of legal fact and not to statements concerning the lawyer's client's negotiating positions or settlement preferences in commercial transactions in any matter

29. A lawyer represents a client in a contract dispute. The contract's formation date is uncontested between the parties. The lawyer needs to testify about that date because she personally witnessed the signing. Her testimony will be brief and limited to the uncontested formation date. May she continue as trial counsel?

A. Yes, because lawyers may freely testify about uncontested matters at trials in which they serve as advocate without any restriction under the Rules of Professional Conduct in the jurisdiction of practice for the lawyer

B. No, because Rule 3.7 categorically disqualifies any witness from continuing as trial advocate regardless of the substantive scope of the proposed testimony being given at trial in the matter at issue currently

C. Yes, but only if the trial court formally waives the lawyer-witness rule in the matter on motion of the lawyer in advance of any testimony given at trial in the underlying contract dispute between the parties

D. Yes, Rule 3.7(a)(1) provides an exception to the lawyer-witness disqualification rule when the testimony relates to an uncontested issue; brief testimony on an uncontested contract formation date fits squarely within this exception

30. A lawyer represents a client in a complex commercial matter. The client telephones the lawyer twice a month for updates. The lawyer does not return either call promptly, allowing two months to pass without communication. The lawyer's work on the matter has continued steadily during that period. Has the lawyer violated Rule 1.4?

A. No, because the lawyer's substantive work on the matter has continued steadily and Rule 1.4 does not impose specific communication obligations beyond the actual work performed by the lawyer in the matter

B. Yes, Rule 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the status of the matter; ignoring routine update calls for two months violates the duty independent of any showing that the client's substantive interests were prejudiced

C. No, but only if the client formally complains to the bar disciplinary authority about the communication delays during the period in which the matter is being handled by the lawyer for the client in the matter

D. Yes, but only if the lawyer's substantive work product is also delayed or otherwise inadequate during the period in which the client's communication requests went unanswered by the lawyer in the matter at issue

31. A lawyer is asked to represent two co-defendants in a civil tort case. The lawyer reasonably believes she can provide competent and diligent representation to each, and any conflict is consentable. What does Rule 1.7(b) require?

A. The lawyer must obtain the trial court's express approval of the joint representation before any work may be undertaken on behalf of either co-defendant in the underlying civil litigation matter at issue in the case

B. The lawyer may represent both clients without informed consent provided she reasonably believes she can provide competent representation to each in the matter being handled by counsel for the parties at issue

C. The lawyer must reasonably believe she can provide competent and diligent representation to each affected client; the representation must not be prohibited by law and must not involve assertion of a claim by one client against another represented by the lawyer in the same litigation; each affected client must give informed consent confirmed in writing

D. The lawyer must withdraw from the representation if any conflict of interest, however slight, could arise during the joint representation of the two co-defendants in the underlying civil tort matter being handled

32. A lawyer represents a client and earns a \$10,000 fee. The lawyer wishes to share half of the fee with a recognized non-profit legal services organization to support its work. May the lawyer do so?

A. Yes, Rule 5.4(a)(4) permits a lawyer to share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter; some jurisdictions also permit sharing of other fees with nonprofit organizations

B. No, because Rule 5.4(a) categorically prohibits any fee sharing with any non-lawyer entity, including non-profit legal services organizations regardless of their connection to the underlying engagement at the time

C. Yes, but only after the lawyer obtains the bar disciplinary authority's express approval for the fee sharing in light of the non-profit nature of the recipient organization at the time of the transfer of funds

D. No, unless the non-profit legal services organization is also admitted to a regulatory body that exercises authority over non-lawyer service providers in the jurisdiction where the lawyer maintains her active practice

33. A lawyer's marketing materials state: "Selected for inclusion in the Best Lawyers in America directory." The statement is technically accurate. However, the lawyer paid a fee to be considered for inclusion, and the directory's selection process is widely understood to be primarily based on payment rather than merit. Is the statement permitted under Rule 7.1?

A. Yes, because the statement is technically accurate and Rule 7.1 prohibits only outright false statements about a lawyer's services rather than statements that are accurate but potentially misleading to the public

B. No, Rule 7.1 prohibits not only false statements but also communications that are misleading; a truthful statement is misleading if it omits a fact necessary to make the statement, considered as a whole, not materially misleading

C. Yes, provided the lawyer also includes a general disclaimer noting that past selections do not guarantee future results in light of the standards applied by the directory in the relevant jurisdiction of practice for the lawyer

D. No, but only if a specific prospective client retains the lawyer in reliance on the directory listing and is harmed in a quantifiable way during the underlying engagement with the firm at issue in the matter

34. A bar disciplinary authority sends a lawyer a formal inquiry about her professional conduct in a particular matter. The lawyer refuses to respond, asserting that she has nothing to say. Has the lawyer violated the Rules?

A. No, because the lawyer's right to silence in disciplinary proceedings parallels her constitutional right against self-incrimination in any other governmental investigation involving her conduct at issue in the matter

B. No, unless the lawyer also fails to file a formal written response to the bar's inquiry within sixty days of receipt of the formal notification of the disciplinary investigation in the matter at issue currently pending

C. Yes, Rule 8.1(b) provides that a lawyer shall not, in connection with a disciplinary matter, knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that the rule does not require disclosure of information otherwise protected by Rule 1.6

D. Yes, but only if the bar disciplinary authority eventually obtains a court order compelling her to respond and she continues to refuse compliance in the matter then under investigation by the authority in the jurisdiction

35. A lawyer formerly worked at a federal agency where she had access to confidential information about a specific company under investigation. She is now in private practice and represents a competitor of that company in unrelated transactional matters. May she use the confidential information learned in government service to advise the competitor?

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

B. Yes, because the unrelated transactional matters do not involve the same "matter" she worked on while in government service and the Rule 1.11(a) restriction therefore does not apply to her current engagement at the firm

C. Yes, provided the lawyer first discloses to her current private client that she possesses confidential information about a competitor obtained during her prior government service before any advice is given in the matter

D. No, but only if the federal agency formally objects to the lawyer's representation of the competitor in light of her prior access to confidential information about the company at issue in the government investigation

36. A judge is presiding over a contested civil matter. During the case, the judge receives a personal phone call from an old college friend who urges her to rule favorably toward one of the parties. The judge ends the call without comment. What does the Code of Judicial Conduct require?

A. The judge may proceed with the case without further action because the call was unsolicited and the judge declined to discuss its substance with the caller in any meaningful way during the conversation in the matter

B. The judge must immediately resign from the bench because external influences from personal friends are categorically prohibited under the Code of Judicial Conduct regardless of the judge's response to such influences in any matter

C. The judge must permit the friend to file an amicus brief in the matter to formalize the friend's interest in the litigation now pending before the judge in the contested civil matter at issue in court

D. CJC 2.4(C) provides that a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge; the judge should disclose the contact and consider recusal if the appearance of partiality is created

37. A lawyer is representing a client on a contingent-fee basis in a personal injury case. The lawyer wishes to take a lien on the client's recovery to secure the lawyer's fee. May she do so under Rule 1.8(i)?

A. Yes, Rule 1.8(i)(1) provides an explicit exception to the general prohibition on proprietary interests in litigation: a lawyer may acquire a lien authorized by law to secure the lawyer's fee or expenses

B. No, because Rule 1.8(i) categorically prohibits any proprietary interest in litigation regardless of the nature of the underlying engagement being handled by the lawyer on behalf of her client at the time of the engagement

C. Yes, provided the lawyer first obtains a court order authorizing the lien in light of the contingent-fee nature of the underlying personal injury engagement between the parties to the representation at issue in the case

D. No, unless the client first signs a written waiver acknowledging the lien arrangement and any potential conflict between the lawyer's lien and the client's interest in the recovery in the matter being handled by counsel

38. A lawyer serves on a bar committee studying proposed legislation. The legislation, if enacted, would benefit one of her current clients. She participates in committee deliberations without identifying the client. What does Rule 6.4 require?

- A. The lawyer must immediately resign from the bar committee because Rule 6.4 prohibits participation in any law-reform activities that could affect the interests of any current client of the lawyer at issue in the matter
- B. The lawyer must obtain her client's informed consent before continuing her participation in the bar committee regardless of whether the client's identity is disclosed in the deliberations of the committee at issue in the matter
- C. The lawyer must terminate her relationship with the affected client before continuing her participation in the law-reform committee in connection with the proposed legislation pending before the body at issue in the matter
- D. A lawyer may serve in an organization involved in reform of the law notwithstanding that the reform may affect the interests of a client; when the lawyer knows that the interests of a client may be materially benefitted by a decision in which she participates, she shall disclose that fact but need not identify the client

39. A lawyer is in the middle of a contested motion hearing. She is permitted to approach the bench. While approaching, she begins a substantive conversation with the judge about the motion's merits without opposing counsel present. Has the lawyer violated Rule 3.5?

- A. No, because brief substantive conversations with the trial judge at the bench during a hearing are routine practice and do not violate the Rules of Professional Conduct under any circumstances in the matter at issue
- B. Yes, Rule 3.5(b) prohibits a lawyer from communicating ex parte with a judge or other adjudicative official during the proceeding unless authorized to do so by law or court order; substantive bench conversations without opposing counsel violate the rule
- C. Yes, but only if the trial judge sustains opposing counsel's objection to the conversation during the hearing on the motion currently pending before the court in the underlying litigation matter at issue currently
- D. No, because Rule 3.5 applies only to communications outside the courtroom and not to brief conferences at the bench during a hearing being conducted in the presence of opposing counsel at the time of the conversation

40. A lawyer wishes to withdraw from her representation of a client. The matter is pending before a tribunal. The trial court has set a procedural deadline for trial in three months. The lawyer's grounds for withdrawal are permissive — not mandatory. What does Rule 1.16 require procedurally?

A. The lawyer may simply withdraw by sending a letter to the client and opposing counsel; the trial court has no role in the procedural mechanics of permissive withdrawal under Rule 1.16 in any matter in any jurisdiction

B. The lawyer must file a motion for withdrawal with the trial court and obtain the court's approval before terminating the engagement; she must also take steps to protect the client's interests during the transition to new counsel

C. When the representation is in a matter pending before a tribunal, Rule 1.16 Comment [9] notes that the lawyer must comply with applicable law requiring notice to or permission of the tribunal when terminating a representation; she must continue when ordered to do so

D. The lawyer must withdraw from the matter without notice to the trial court because Rule 1.16 prohibits any procedural delay in the lawyer's exit from the engagement at the time of the decision to withdraw

41. A lawyer represents both a corporation and one of its officers in a related matter where their interests have diverged. May the lawyer continue the dual representation?

A. Under Rule 1.13(g), the lawyer may continue the dual representation if she obtains informed consent from each client and any conflict is properly waived under Rule 1.7; the corporation's consent must be given by an appropriate official other than the constituent who is to be represented

B. No, because Rule 1.13 categorically prohibits dual representation of an entity and a constituent in any matter where their interests may diverge regardless of the parties' wishes in the matter at issue in the case

C. Yes, because Rule 1.13 permits dual representation of an entity and a constituent without any specific consent procedure regardless of any divergence in their interests over time during the engagement at issue

D. Yes, but only if the lawyer first obtains the trial court's express approval of the dual representation in light of the divergence of interests between the entity and the individual constituent in the matter at hand

42. A lawyer receives a court order requiring her to produce confidential client information. The order does not specifically address Rule 1.6 concerns. May the lawyer comply with the court order?

A. No, because the duty of confidentiality under Rule 1.6 categorically overrides any court order requiring disclosure of confidential client information regardless of the substance of the order or its source in the matter

B. Yes, Rule 1.6(b)(6) permits a lawyer to reveal information relating to the representation to comply with other law or a court order; the lawyer must, however, consult with the client about the order and may, where appropriate, challenge it before disclosure

C. Yes, but only if the lawyer first obtains the express written consent of the affected client before complying with the court order requiring disclosure of the confidential client information in the matter at issue

D. No, unless the court order specifically references Rule 1.6 and expressly authorizes the disclosure of confidential client information in connection with the matter currently being handled by counsel for the client

43. A lawyer wishes to make a substantial political contribution to a sitting judge who will be running for re-election next year. The lawyer is currently being considered for appointment to a government legal position that the judge will help decide. May the lawyer make the contribution?

A. Yes, political contributions are protected speech and cannot be restricted by the Rules of Professional Conduct regardless of any pending appointment decisions being made by the judicial officer at issue in the matter

B. Yes, provided the lawyer's contribution does not exceed the maximum amount permitted by applicable election law for political contributions to judicial candidates in the relevant jurisdiction of the lawyer's practice

C. Yes, but only if the lawyer first formally withdraws her name from consideration for the government appointment before making the political contribution to the judge's campaign for re-election in the upcoming cycle

D. Rule 7.6 prohibits a lawyer or law firm from accepting a government legal engagement or appointment by a judge if the lawyer makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of engagement or appointment

44. A lawyer is giving her closing argument at trial. She tells the jury: "I personally know my client is innocent." Has the lawyer violated the Rules?

A. No, because closing arguments are an opportunity for the lawyer to express her professional opinion about her client's case to the jury during the trial of the underlying matter being prosecuted in court before the trial judge

B. Yes, but only if the trial court sustains opposing counsel's objection to the personal opinion expressed by the lawyer during her closing argument to the jury in the matter being tried at the time of the argument

C. Yes, Rule 3.4(e) prohibits a lawyer in trial from stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused

D. No, because Rule 3.4 does not address closing arguments and applies only to discovery and other pretrial conduct of counsel during litigation matters of the type at issue in court before the trial judge in the matter

45. A lawyer is admitted in State X. She handles a transaction that physically occurs in State Y and primarily affects a State Y party. She is also admitted in State Y. The transaction gives rise to a disciplinary issue. Under Rule 8.5(a), in which jurisdiction(s) may she be disciplined?

A. Only State X, because that is the lawyer's primary jurisdiction of admission and the rules of any other jurisdiction cannot govern her conduct in the matter she handled outside of her primary state of admission to the bar

B. Only State Y, because the transaction physically occurred there and primarily affected a State Y party in connection with the underlying transaction being handled by counsel in the relevant jurisdiction of practice

C. Only the jurisdiction in which the lawyer maintained her principal office of practice during the relevant period of her career as a licensed lawyer in the United States at the time of the conduct in question in the matter

D. Rule 8.5(a) provides that a lawyer admitted to practice in a jurisdiction is subject to the disciplinary authority of that jurisdiction regardless of where the conduct occurs; she may also be subject to discipline in a jurisdiction where she provides or offers to provide legal services

46. A lawyer agrees to undertake a new representation. She communicates the basis or rate of her fee orally to the client at the outset. She does not provide any written communication until two months later, when she sends an invoice reflecting the same terms. Has the lawyer complied with Rule 1.5(b)?

A. No, because Rule 1.5(b) requires a writing signed by the client for all fee agreements regardless of the nature of the matter or the timing of the communication between the parties to the engagement at issue

B. Yes, because oral fee communication at the outset is sufficient under Rule 1.5(b) regardless of any subsequent written confirmation of the fee terms provided to the client during the engagement on the matter

C. Rule 1.5(b) provides that the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation; whether a writing within two months satisfies "reasonable time" depends on the circumstances

D. No, because Rule 1.5(b) requires a written agreement signed by the client within thirty days of the initial communication regardless of the nature of the underlying engagement being handled by the lawyer at issue

47. A lawyer wishes to undertake limited-scope representation of a client for a single court hearing only. The client gives informed consent. Is the limited scope arrangement permissible?

A. Yes, Rule 1.2(c) permits a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent

B. No, because limited-scope representation in court matters is categorically prohibited under the Model Rules of Professional Conduct regardless of the client's consent to the limited scope arrangement in advance

C. Yes, provided the lawyer first obtains the trial court's express approval of the limited-scope arrangement before any work may be undertaken in the matter being handled by counsel for the client at issue

D. No, unless the lawyer also accepts a written undertaking from a co-counsel to handle the remaining portions of the representation that are outside the scope of the lawyer's limited engagement with the client

48. A lawyer learns that a judge has been engaging in serious misconduct — taking bribes from litigants. The lawyer wishes to assist a friend who is preparing a complaint about the judge but does not want to file the complaint herself. May the lawyer assist?

A. Yes, because Rule 8.4 does not address indirect involvement in reporting judicial misconduct and the lawyer's assistance to a friend is therefore outside the scope of any rule on the matter as currently interpreted

B. Rule 8.4(f) provides that it is professional misconduct for a lawyer to knowingly assist a judge in conduct that violates applicable rules of judicial conduct or other law; assisting a friend in reporting judicial misconduct does not itself violate the rule

C. Yes, but only if the lawyer first obtains the trial court's express approval to assist the friend in preparing the complaint about the judicial officer's conduct in connection with the alleged bribery in the matter

D. No, because Rule 8.4 prohibits any indirect involvement in matters relating to judicial misconduct regardless of the lawyer's specific role in the underlying matter being investigated by the relevant authority

49. A lawyer is negotiating with an unrepresented opposing party. The party seems eager to settle and asks the lawyer: "Should I take this deal? What would a reasonable lawyer advise me?" May the lawyer answer the question?

A. Yes, because the unrepresented party has explicitly invited the lawyer's advice and Rule 4.3 does not prohibit the lawyer from giving any advice that the unrepresented party requests during the negotiation in the matter

B. Yes, but only if the lawyer first formally enters into a separate engagement with the unrepresented party as her co-client in the matter being negotiated by the parties to the transaction at issue between them

C. No, Rule 4.3 prohibits a lawyer from giving legal advice to an unrepresented person whose interests are or have a reasonable possibility of being in conflict with the interests of the client, other than the advice to secure counsel

D. No, because Rule 4.3 categorically prohibits any communication with an unrepresented party regardless of the substance of the proposed communication or the party's own requests for advice during the negotiation

50. A prosecutor is interviewing a person who has been arrested for a serious felony. The accused is unrepresented but has not yet requested counsel. What constraints does Rule 3.8 place on the prosecutor?

A. The prosecutor may seek a waiver provided the accused understands the rights being waived in the underlying interview being conducted by the prosecutor in connection with the criminal matter being investigated

B. The prosecutor may proceed, but only if she first informs the accused of her right to remain silent before any substantive interview may be conducted by the prosecutor in connection with the felony arrest at issue

C. The prosecutor may proceed, provided she obtains a recorded waiver of the right to counsel from the accused before any substantive interview is conducted in connection with the underlying criminal matter at issue

D. Rule 3.8(b) requires the prosecutor to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel; Rule 3.8(c) also constrains pretrial waivers

51. A lawyer moves from a prior firm to a new firm. While at her prior firm, she did not personally work on a particular matter, but other lawyers there did. The new firm now wishes to represent the opposing side in a substantially related matter. May the moving lawyer participate?

A. No, because Rule 1.9(b) categorically disqualifies any lawyer who moves between firms from any matter substantially related to work done at her prior firm regardless of her personal involvement at the time

B. Rule 1.9(b) prohibits the moving lawyer from representing a person in a substantially related matter materially adverse to the former client only if the lawyer acquired confidential information about the former client material to the matter that is not generally known

C. Yes, because moving lawyers are categorically exempt from Rule 1.9 once they leave the prior firm regardless of any prior representations undertaken by the firm during her tenure there in the matter

D. No, unless the moving lawyer first obtains a court order authorizing the new representation in light of her prior firm's representation of the opposing party in the substantially related matter at issue

52. A lawyer is asked by her client for advice on a difficult personal decision: whether to forgive a longtime business partner who has betrayed her. The decision involves significant emotional, business, and ethical dimensions. May the lawyer offer non-legal advice?

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

B. No, because Rule 2.1 limits a lawyer's advice exclusively to legal matters and prohibits any reference to non-legal considerations during the engagement on behalf of the client in the matter being handled

C. No, unless the client first signs a written waiver authorizing the lawyer to provide non-legal advice in connection with the underlying personal matter being considered by the client during the consultation in the matter

D. Yes, but only after the lawyer first obtains a court order authorizing her to provide non-legal advice in light of the complex emotional and ethical dimensions of the underlying personal decision before the client

53. A lawyer is uncertain about whether a proposed course of action complies with the Rules of Professional Conduct. She wishes to consult an outside ethics counsel for guidance. The consultation will require her to disclose certain confidential client information. May she disclose without client consent?

A. No, because Rule 1.6 absolutely prohibits any disclosure of client information to a third party without express client consent regardless of the nature of the proposed consultation in the matter at issue currently

B. No, unless the lawyer first obtains the trial court's express approval for the proposed disclosure to outside ethics counsel in light of the confidentiality concerns implicated by the consultation in the matter at issue

C. Yes, but only if the affected client gives express written consent to the proposed disclosure to outside ethics counsel for the consultation regarding the lawyer's ethical obligations in the matter being handled at the time

D. Yes, Rule 1.6(b)(4) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to secure legal advice about her compliance with the Rules of Professional Conduct

54. A lawyer represents an elderly client whose cognitive abilities have declined significantly. The client now faces a risk of substantial financial harm from family members trying to manipulate her. The client has not specifically authorized the lawyer to take any action. May the lawyer take protective action under Rule 1.14(b)?

A. No, because the client has not specifically authorized the lawyer to act on her behalf and the lawyer must defer entirely to the client's instructions regardless of the apparent risk of harm to the client in the matter

B. No, unless the lawyer first obtains the trial court's express approval for any protective action regardless of the urgency of the financial harm facing the elderly client at the time of the proposed action by the lawyer

C. Yes, Rule 1.14(b) permits a lawyer to take reasonably necessary protective action when the lawyer reasonably believes the client has diminished capacity, is at risk of substantial physical or financial harm, and cannot adequately act in her own interest

D. Yes, but only if the family members agree in writing to discontinue the alleged manipulation of the client before any protective action may be taken by the lawyer on the client's behalf in the matter at issue

55. A lawyer represents a plaintiff in a civil case. The defendant offers a higher settlement amount in exchange for the lawyer's agreement to limit her future representation of other potential plaintiffs against the same defendant. May the lawyer agree?

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

B. Yes, because the higher settlement directly benefits the current client and any future restriction on the lawyer's practice is therefore in the current client's interest in the matter being negotiated by the parties to the case

C. Yes, provided the lawyer's current client gives informed consent in writing to the restriction in light of the higher settlement amount being offered by the opposing party in connection with the matter at issue in the case

D. Yes, but only if the lawyer first formally consults with potential future plaintiffs about the proposed restriction before agreeing to the settlement on behalf of her current client in the underlying matter being settled

56. A lawyer admitted in State X opens a law office in State X where she will practice. She wishes to maintain a single bank account at a State X bank for both client funds and her firm's operating funds, with detailed ledgers tracking each. Does Rule 1.15(a) permit this arrangement?

A. Yes, provided the lawyer's detailed ledgers accurately track each client's funds separately from her firm's operating funds in the combined bank account at all times during the engagement on the matter at issue currently

B. No, Rule 1.15(a) requires a lawyer to hold client property separate from her own property, typically in a trust account established in the state where the lawyer's office is situated, or elsewhere with client consent

C. Yes, because Rule 1.15(a) imposes no specific requirement on the physical separation of client and firm funds so long as accurate accounting records are maintained throughout the period of the engagement at issue

D. No, unless the lawyer obtains the bar disciplinary authority's express approval for the combined account in light of her business reasons for the arrangement in connection with the underlying practice at issue in the matter

57. A lawyer believes a new theory of tort liability may be successful in the next decade. Current law does not support the theory. The lawyer files a complaint on behalf of a client asserting the theory. Has the lawyer violated Rule 3.1?

A. Yes, because Rule 3.1 prohibits a lawyer from asserting any legal theory not supported by current law regardless of the lawyer's good-faith belief in the eventual development of the law in the area at issue in the matter

B. Yes, but only if the trial court formally dismisses the complaint on grounds that the asserted theory lacks any reasonable basis in current law under the Rules of Professional Conduct as applied in the matter at issue

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

D. No, but only if the lawyer first publishes a law-review article articulating her proposed change in the law before filing the complaint in the matter on behalf of her client in connection with the new theory at issue

58. A lawyer represents a client in litigation against a corporation. The corporation is represented by in-house counsel. A federal statute expressly authorizes ex parte interviews with certain corporate employees

in a particular type of investigation. May the lawyer interview those employees without consent of the corporation's counsel?

A. No, because Rule 4.2 prohibits all direct contact with employees of a represented corporation regardless of any contrary statutory authorization to conduct ex parte interviews in the matter being investigated by the parties

B. No, unless the corporation's in-house counsel first consents in writing to the proposed interviews regardless of any contrary federal statutory authorization for direct contact with corporate employees in the matter

C. Yes, but only if the lawyer first obtains the trial court's express approval for the ex parte interviews in light of the statutory authorization for direct contact with the corporate employees at issue in the matter currently

D. Yes, Rule 4.2 expressly permits direct communication with a represented person when the lawyer is authorized to do so by law or a court order; a federal statute authorizing such contact falls within this exception

59. A lawyer wishes a non-lawyer friend to engage in conduct that the lawyer is herself prohibited from undertaking under the Rules of Professional Conduct. The non-lawyer agrees to do so. Has the lawyer violated the Rules?

A. Yes, Rule 8.4(a) provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another

B. No, because non-lawyers are not bound by the Rules of Professional Conduct and the lawyer's friend's conduct is therefore outside the scope of the rules as currently interpreted in this area of practice

C. Yes, but only if the non-lawyer's conduct results in actual harm to a third party during the period in which the conduct is being undertaken at the lawyer's direction in connection with the matter at issue in the case

D. No, unless the lawyer's friend is also a member of the bar disciplinary authority's roster of registered service providers within the relevant jurisdiction of the lawyer's primary practice at the time of the conduct

60. A lawyer is selling her practice under Rule 1.17. The sale proceeds are to be paid in installments over three years. The selling lawyer wishes to retain control of certain client matters during this transition period to ensure orderly completion. May she do so?

A. Yes, because Rule 1.17 permits the selling lawyer to retain control of any client matters during the transition regardless of the formal sale of the practice to the purchasing lawyer at the time of the closing in the matter

B. Rule 1.17 generally contemplates that the buyer takes over the practice and the seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the relevant geographic area; Rule 1.17(d) also provides that fees shall not be increased by reason of the sale

C. Yes, but only if the purchasing lawyer agrees in writing to the selling lawyer's continued control of the client matters during the three-year installment period for the sale of the practice in the jurisdiction at issue

D. No, because Rule 1.17 categorically prohibits any continued participation by the selling lawyer in the practice after the formal sale closing regardless of the parties' agreement on the matter being negotiated at the time

PRACTICE EXAM 28: ANSWERS AND EXPLANATION

1. A — Rule 1.7(a)(2) treats a personal relationship between opposing counsel — including a spouse — as a personal-interest conflict that creates a significant risk of materially limiting the representation. Comment [11] expressly identifies marriage between lawyers as a conflict requiring informed consent confirmed in writing from each affected client.

2. C — Rule 3.4(b) prohibits payment to a witness that is contingent on the content of the testimony or the outcome of the case, but expressly permits reasonable compensation to an expert witness for her professional services and time, plus reasonable expenses. Standard expert fees at the expert's usual rate are categorically permitted.

3. B — Rule 1.11(e) defines "matter" to include specific judicial or other proceedings, applications, requests for rulings, and other particular determinations involving identifiable parties, but excludes general rulemaking and similar policy work. Without a specific "matter" of personal and substantial participation, Rule 1.11(a) does not restrict the lawyer's subsequent private practice.

4. D — Rule 1.6(b)(1) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm. The exception applies regardless of whether the threatened conduct constitutes a crime or whether the client has used the lawyer's services in furtherance of the threat.

5. C — Rule 7.2(b)(5) permits a lawyer to give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending the lawyer's services. A modest gift card for past unsolicited referrals fits squarely within this safe harbor.

6. A — Rule 1.16(b)(2) permits permissive withdrawal when the client persists in a course of action the lawyer reasonably believes is criminal or fraudulent, and Rule 1.16(b)(3) when the client has used the lawyer's services to perpetrate a crime or fraud. Both grounds apply when the lawyer's continued representation will be misused by the client.

7. D — Rule 8.4(e) provides that it is professional misconduct for a lawyer to state or imply an ability to influence improperly a government agency or official. A lawyer who tells a prospective client that a personal friendship with the assigned judge will produce favorable rulings is making precisely the sort of implied-influence statement the rule prohibits.

8. B — Rule 1.5(b) requires the scope of representation and the basis or rate of the fee and expenses to be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except where the lawyer will charge a regularly represented client on the same basis. A signed writing is not categorically required.

9. C — Rule 1.9(c)(1) prohibits a lawyer from using information relating to a prior representation to the disadvantage of the former client except when the information has become generally known. Widely reported news of a public figure's divorce falls within the generally known exception.

10. A — Rule 1.15(d) requires a lawyer to promptly notify the client or third person upon receiving funds in which they have an interest, promptly deliver any portion to which they are entitled, and, upon request, render a full accounting. The rule protects both the client and identified third-party claimants such as lien holders.

11. B — Rule 3.6(b) lists categorical safe-harbor statements a lawyer may make about a pending matter, including identification of persons involved, the offense and defense, and the fact of an investigation or proceeding in progress. A statement that the defendant has pleaded not guilty fits squarely within these enumerated permissible statements.

12. D — Rule 5.1(c)(1) provides that a lawyer is responsible for another lawyer's violation of the Rules if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved. A partner who orders an associate to engage in conduct that the partner knows violates the Rules is subject to discipline regardless of the associate's separate liability.

13. A — CJC 3.7 permits a judge to participate in activities sponsored by educational, religious, charitable, fraternal, or civic organizations not conducted for profit. The Code imposes specific limitations — including restrictions on personal solicitation of funds and on lending judicial prestige — but does not prohibit charitable participation per se.

14. C — Rule 1.13(a) provides that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. The entity itself is the client, and the lawyer's primary duty of loyalty runs to the organization rather than to any individual constituent.

15. D — Rule 1.8(g) requires each client in an aggregate settlement to give informed consent in a writing signed by the client. The consent must include disclosure of the existence and nature of all the claims involved and of the participation of each person in the settlement; lawyer-discretion allocation without these specific disclosures violates the rule.

16. B — Rule 7.3(b) prohibits live person-to-person solicitation for pecuniary gain with limited exceptions, but does not categorically prohibit targeted written communications such as direct mail. Rule

7.3(c) restricts any solicitation where the target has indicated a desire not to be solicited or where the solicitation involves coercion, duress, or harassment.

17. D — Rule 4.4(b) provides that a lawyer who receives a document or electronically stored information relating to representation of her client and knows or reasonably should know that it was inadvertently sent shall promptly notify the sender. The rule's only required step is prompt notification; destruction, court motion, or bar reporting are not required by the rule itself.

18. A — Rule 2.4(a) provides that a lawyer serves as a third-party neutral when she assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. The role includes service as arbitrator, mediator, or in such other capacity to assist the parties to resolve the matter.

19. C — Rule 1.10(a)(2) requires the disqualified lawyer to be timely screened from any participation in the matter. Informal communication about the matter — including casual lunch conversations — undermines the screen and may defeat the cure regardless of formal documentation of the screening procedure.

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

21. A — Rule 1.3 requires reasonable diligence and promptness in representing a client. Comment [3] specifically warns that a lawyer should not allow procrastination to delay the matter, even when the client's substantive rights have not yet been imperiled by the delay in the underlying engagement.

22. D — Rule 1.6(b)(3) permits a lawyer to reveal information to the extent reasonably necessary to prevent, mitigate, or rectify substantial financial injury to another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services. The exception extends to mitigation after the fraud has occurred.

23. B — Rule 1.18(c) bars adverse representation in a substantially related matter only when the lawyer received information from the prospective client that could be significantly harmful. Where no such information was received, the categorical bar does not apply and the lawyer may proceed without screening or consent.

24. C — Rule 5.3(c)(1) provides that a lawyer is responsible for conduct of a non-lawyer assistant that would violate the Rules if engaged in by a lawyer, if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct. Without knowledge or ratification, the supervising lawyer is not subject to discipline for the paralegal's contact.

25. B — Rule 5.5(c)(1) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that are undertaken in association with a lawyer who is admitted to practice in the jurisdiction and who actively participates in the matter. Active local-counsel participation is the operative requirement.

26. D — Rule 8.3(c) provides that the reporting duty in Rule 8.3 does not require disclosure of information otherwise protected by Rule 1.6 or by other applicable law. The lawyer should seek the client's informed consent to make the report or otherwise determine whether disclosure is permitted under a Rule 1.6 exception before proceeding.

27. A — Rule 1.2(a) reserves to the client the decision whether to plead guilty in a criminal case. Plea decisions are not tactical choices the lawyer may make for the client; the lawyer must abide by the client's decision regardless of the client's request to delegate the choice to counsel.

28. C — Rule 4.1's "material fact" requirement is interpreted in light of Comment [2], which recognizes that estimates of price or value placed on the subject of a transaction and a party's intentions as to acceptable settlement terms ordinarily are not taken as statements of material fact for purposes of the rule. Negotiation posture statements about acceptable terms fall within this puffery doctrine.

29. D — Rule 3.7(a)(1) provides an exception to the lawyer-witness disqualification rule when the testimony relates to an uncontested issue. Brief testimony on an uncontested fact such as a contract formation date fits squarely within the exception and permits the lawyer to continue as trial counsel.

30. B — Rule 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the status of the matter. Ignoring routine update calls over an extended period violates the duty independent of whether the lawyer's substantive work is also delayed or the client's interests are otherwise prejudiced.

31. C — Rule 1.7(b) sets out four conditions for representing clients despite a concurrent conflict: the lawyer's reasonable belief in competent and diligent representation of each client, no representation prohibited by law, no claim by one client against another represented by the lawyer in the same litigation, and informed consent confirmed in writing from each affected client.

32. A — Rule 5.4(a)(4) permits a lawyer to share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter. The exception accommodates pro bono partnerships between lawyers and legal-aid organizations within the otherwise strict bar on fee sharing with non-lawyers.

33. B — Rule 7.1 prohibits not only false statements but also communications about the lawyer's services that are misleading. Comment [3] explains that a truthful statement is misleading if it omits a fact necessary to make the statement, considered as a whole, not materially misleading — including reliance on pay-for-inclusion "selections" presented as merit-based.

34. C — Rule 8.1(b) provides that a lawyer (or bar applicant) shall not, in connection with a disciplinary matter, knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that the rule does not require disclosure of information otherwise protected by Rule 1.6. Silence in the face of a lawful disciplinary inquiry violates the rule.

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

36. D — CJC 2.4(C) provides that a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge. The judge should disclose the contact and consider recusal where the friend's intervention creates an appearance of partiality.

37. A — Rule 1.8(i)(1) provides an explicit exception to the general prohibition on proprietary interests in litigation: a lawyer may acquire a lien authorized by law to secure her fee or expenses. Lawyer's liens to secure contingent and other fees are the paradigmatic permitted proprietary interest under the rule.

38. D — Rule 6.4 permits a lawyer to serve in an organization involved in reform of the law notwithstanding that the reform may affect a client's interests. When the lawyer knows that a client's interests may be materially benefitted by a decision in which she participates, she shall disclose that fact but need not identify the client.

39. B — Rule 3.5(b) prohibits a lawyer from communicating ex parte with a judge or other adjudicative official during the proceeding unless authorized by law or court order. Substantive bench conversations about the merits of a pending motion outside opposing counsel's presence violate the rule regardless of the brevity of the contact.

40. C — Rule 1.16(c) and its Comments require a lawyer to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation, and to continue representation when ordered to do so by the tribunal. Procedural compliance is a structural prerequisite to withdrawal in matters pending before a tribunal.

41. A — Rule 1.13(g) permits a lawyer representing an organization also to represent any of its constituents subject to Rule 1.7. Where the organization's consent is required, it must be given by an appropriate official other than the constituent who is to be separately represented in the matter.

42. B — Rule 1.6(b)(6) permits a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law or a court order. The lawyer should consult with the client about the order and may, where appropriate, challenge it before disclosure.

43. D — Rule 7.6 prohibits a lawyer or law firm from accepting a government legal engagement or appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of engagement or appointment. The rule targets pay-to-play arrangements in judicial appointments.

44. C — Rule 3.4(e) prohibits a lawyer in trial from stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused. Statements of personal knowledge of innocence are categorically barred in closing argument.

45. D — Rule 8.5(a) provides that a lawyer admitted to practice in a jurisdiction is subject to the disciplinary authority of that jurisdiction regardless of where the lawyer's conduct occurs. The lawyer may also be subject to discipline in any jurisdiction in which she is admitted and additionally in a jurisdiction where she provides or offers to provide legal services.

46. C — Rule 1.5(b) requires the basis or rate of the fee and expenses to be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. Whether a writing produced two months into the representation satisfies "reasonable time" is fact-specific and depends on the matter's complexity and the parties' course of dealing.

47. A — Rule 1.2(c) permits a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The rule expressly authorizes unbundled or single-event representations such as appearance for a single hearing.

48. B — Rule 8.4(f) makes it professional misconduct for a lawyer to knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Assisting a friend in reporting judicial misconduct to the appropriate authority is the opposite of assisting the judge in misconduct and does not violate the rule.

49. C — Rule 4.3 prohibits a lawyer from giving legal advice to an unrepresented person whose interests are or have a reasonable possibility of being in conflict with the interests of the client, other than the advice to secure counsel. The unrepresented party's invitation to give advice does not override the prohibition.

50. D — Rule 3.8(b) requires a prosecutor to make reasonable efforts to assure that the accused has been advised of the right to and the procedure for obtaining counsel, and has been given reasonable opportunity to obtain counsel. Rule 3.8(c) separately prohibits the prosecutor from seeking to obtain from the unrepresented accused a waiver of important pretrial rights.

51. B — Rule 1.9(b) prohibits the moving lawyer from representing a person in a substantially related matter where her interests are materially adverse to the former client only if the lawyer acquired confidential information about the former client material to the matter that is not generally known. Without such information, the moving lawyer is not personally disqualified.

52. A — Rule 2.1 provides that a lawyer shall exercise independent professional judgment and render candid advice, and may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation. The rule expressly authorizes contextual non-legal advice when relevant to the client's decision.

53. D — Rule 1.6(b)(4) permits a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct. Ethics consultations with outside counsel fit squarely within this exception without client consent.

54. C — Rule 1.14(b) permits a lawyer to take reasonably necessary protective action when the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm, and cannot adequately act in her own interest. The rule provides implied authority to act even without specific client authorization in genuine cases of need.

55. A — Rule 5.6(b) prohibits a lawyer from participating in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy. The prohibition

is structural; the current client's consent cannot cure the restriction's effect on future clients seeking representation against the same defendant.

56. B — Rule 1.15(a) requires a lawyer to hold property of clients or third persons separate from the lawyer's own property, typically in a trust account established in the state where the lawyer's office is situated, or elsewhere with consent of the client or third person. Combined accounts are not permitted regardless of internal ledger accuracy.

57. C — Rule 3.1 expressly provides that a lawyer may bring or defend a proceeding, or assert or controvert an issue, where there is a basis in law and fact for doing so that is not frivolous, including a good-faith argument for an extension, modification, or reversal of existing law. The rule preserves the lawyer's role in developing legal theories through advocacy.

58. D — Rule 4.2 expressly permits direct communication with a represented person when the lawyer is authorized to do so by law or a court order. A federal statute that specifically authorizes ex parte employee interviews in a particular type of investigation falls within the "authorized by law" exception to the rule.

59. A — Rule 8.4(a) provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. A lawyer cannot circumvent the Rules by enlisting a non-lawyer to perform conduct she is herself prohibited from undertaking.

60. B — Rule 1.17 generally contemplates that the buyer takes over the seller's practice and that the seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the relevant geographic area. Rule 1.17(d) also provides that the fees charged clients shall not be increased by reason of the sale.