

PRACTICE EXAM 31: MPRE SIMULATION

Time Allotted: 2 hours

Format: Multiple choice — select the best answer

1. A criminal defense lawyer is approached by her client, who has just been arrested for a high-profile crime. The client offers to assign the lawyer media rights to a book about the case as a fee. The trial has not yet begun. May the lawyer accept the arrangement?

A. Yes, because the lawyer's fee may be paid in any non-cash form the client wishes to offer, including assignment of intellectual property rights related to the underlying matter being defended in court before the trial judge at issue

B. No, because Rule 1.8(d) prohibits a lawyer from making or negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation, prior to the conclusion of the representation

C. No, but only if the lawyer would also accept a percentage of any third-party royalties earned from the book published in connection with the underlying criminal trial of the client at issue in the case currently

D. Yes, provided the lawyer agrees in writing not to publish or distribute the book until after all available appeals have been exhausted by the parties in connection with the underlying criminal matter being defended in court

2. A lawyer admitted only in State X accepts an in-house counsel position with a corporation headquartered in State Y. She provides legal services exclusively to her employer and its affiliates. Does Rule 5.5 permit her ongoing practice in State Y?

A. No, because Rule 5.5(b) prohibits a lawyer not admitted in a jurisdiction from establishing an office or systematic and continuous presence for the practice of law in that jurisdiction regardless of the lawyer's employer in the matter

B. No, unless the lawyer also obtains pro hac vice admission for every individual matter she advises on for the corporate employer in State Y during the term of her employment in the state at issue currently

C. Yes, but only if the State Y bar association separately approves the in-house practice in addition to the lawyer's State X admission and her employer's continuous presence in the state at the time of employment currently

D. Yes, Rule 5.5(d)(1) permits a lawyer admitted in another U.S. jurisdiction to provide legal services through an office or other systematic and continuous presence in a jurisdiction where she is not admitted, when the services are provided to her employer or its organizational affiliates and are not services for which pro hac vice is required

3. A lawyer learns that her client is about to use the lawyer's services to engage in financial fraud that will cause substantial financial loss to several investors. The fraud has not yet occurred. The lawyer reasonably believes she can prevent the fraud by disclosing the client's plan to the prospective victims. May the lawyer disclose?

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

B. No, because Rule 1.6 absolutely prohibits any disclosure of client information without express client consent regardless of the planned financial fraud being contemplated by the client at the time of the consultation in the matter

C. Yes, but only after the lawyer first formally withdraws from the representation under Rule 1.16 and waits 30 days before any disclosure to the prospective victims of the planned fraud in connection with the matter at issue

D. Yes, provided the lawyer first obtains the trial court's express approval for the proposed disclosure before any communication with the prospective victims of the planned fraud at issue in the matter being handled by the lawyer

4. A lawyer in a deposition is instructed by opposing counsel that her client must answer a question to which the lawyer believes a valid privilege objection applies. The deposition is being conducted under a court's discovery order. What should the lawyer do?

A. The lawyer should instruct her client to refuse to answer the question and silently disregard the court's discovery order without further explanation to the opposing party or the court at the time of the deposition currently

B. The lawyer should comply with the question as posed and address the privilege concern only at a later hearing on a motion to compel or in post-deposition briefing before the trial court in the matter at issue

C. The lawyer should openly state her objection on the record, instruct the client not to answer, and pursue appropriate motion practice; Rule 3.4(c) permits an open refusal based on an assertion that no valid obligation exists

D. The lawyer should immediately withdraw from the representation rather than face a conflict between her ethical duties and the discovery order entered by the trial court in connection with the underlying litigation at issue

5. A lawyer wishes to pay the standard membership fee of a state bar-affiliated lawyer-referral service that channels prospective clients to participating attorneys. The service is a not-for-profit organization. May the lawyer pay the fee?

A. Yes, Rule 7.2(b)(3) permits a lawyer to pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer-referral service; the bar-affiliated service is the paradigmatic permitted arrangement under the rule

B. No, because Rule 7.2 prohibits any payment to a third party for referrals of business regardless of the nature of the third party or the structure of the referral arrangement at the time of the payment in the matter

C. Yes, but only if the lawyer first obtains the bar disciplinary authority's express approval of the referral relationship before paying any fee in connection with the lawyer-referral service for the firm in the matter

D. Yes, provided the lawyer agrees to refer 25% of any earned fees back to the bar-affiliated service in compensation for the referred clients received through the program of the organization at issue

6. A lawyer represents a parent corporation. The parent's wholly owned subsidiary is involved in a separate matter, and the lawyer is asked by an unrelated party to oppose the subsidiary in that separate matter. Does Rule 1.7 treat the subsidiary as a current client of the lawyer?

A. Yes, because all corporate affiliates are automatically treated as a single client under the Rules of Professional Conduct regardless of the formal corporate structure or the substantive matters at issue currently in the case

B. No, because the parent and subsidiary are separate legal entities and Rule 1.7 applies only to the specific legal entity that has retained the lawyer regardless of any corporate affiliation between them in any circumstance

C. Yes, but only if the lawyer also serves on the board of directors of the subsidiary or otherwise has a direct fiduciary relationship with the affiliated entity in addition to the parent corporation she represents in the matter

D. Comment [34] to Rule 1.7 provides that a lawyer who represents a corporation does not, by virtue of that representation, necessarily represent any affiliated organization; whether the affiliate is treated as a client depends on the circumstances, including operational integration or representations to that effect

7. A lawyer is offered a \$2 million settlement by opposing counsel for her client. The lawyer believes the offer is too low and recommends rejection. The lawyer does not communicate the offer to the client because she believes the client will accept it and rejection is in the client's best interest. Has the lawyer violated the Rules?

A. No, because Rule 1.4 permits a lawyer to exercise independent judgment about which settlement offers warrant client attention in the matter being negotiated by the parties to the underlying dispute at the time of the offer

B. No, but only if the lawyer's recommendation to reject the offer reflects her genuine professional judgment about the matter being negotiated currently by the parties to the underlying litigation in court at the time of the offer

C. Yes, Rule 1.4(a)(1) requires a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; settlement offers fall within this category and the client has the ultimate decision-making authority

D. Yes, but only if the client later learns of the offer and complains to the bar disciplinary authority about the lawyer's failure to communicate the substance of the settlement proposal during the negotiation in the matter

8. A lawyer at a firm has a disqualifying conflict that arises from her prior representation of an opposing party at another firm. The firm wishes to invoke a Rule 1.10(a)(2) screening cure. The matter does not involve any personal-interest conflict. Is the cure available?

A. No, because Rule 1.10(a)(2) screening cures are unavailable for all conflicts arising from a lawyer's prior representation at another firm regardless of the type of underlying conflict involved in the matter at issue

B. Yes, Rule 1.10(a)(2) permits a screening cure for conflicts arising from a lawyer's association with a prior firm, provided the disqualified lawyer is timely screened, apportioned no part of the fee, and written notice is promptly given to the affected former client

C. Yes, but only if the disqualified lawyer first obtains a court order authorizing the screening cure in light of her prior representation of the opposing party at her former firm during the engagement at the time of the move

D. No, unless the affected former client gives express written consent to the screening cure before the firm undertakes any work on the matter that is substantially related to her prior representation by the firm at issue

9. A lawyer represents a juvenile defendant in a criminal case. The case has attracted significant media attention. The lawyer wishes to make a public statement about the juvenile's identity to clarify a factual confusion in news reports. May the lawyer disclose the juvenile's identity?

A. Yes, because public statements about a client's case are protected speech and Rule 3.6 does not specifically address the identity of juvenile defendants in any criminal matter being prosecuted by the state at the time

B. Yes, provided the lawyer first obtains the trial court's express approval for the proposed public statement in light of the juvenile's age and the media attention surrounding the underlying criminal matter at issue currently

C. Yes, because Rule 3.6 permits a lawyer to state the identity of persons involved in a matter unless prohibited by law in any criminal matter regardless of the age of the defendant being prosecuted at the time of the statement

D. No, because Rule 3.6(b) and other applicable law generally restrict disclosure of the identity of a juvenile accused of a crime; the rule's safe harbor for identifying persons involved is expressly qualified by "except when prohibited from doing so by law"

10. A lawyer operates a title insurance agency through a separate entity from her law firm. Clients of the title agency receive insurance services, not legal services. Some of those clients are also clients of her law firm. What does Rule 5.7 require?

A. A lawyer is subject to the Rules with respect to law-related services if the services are not distinct from the lawyer's provision of legal services, or if they are distinct but the lawyer fails to take reasonable measures to ensure the person knows the services are not legal services and that protections of the client-lawyer relationship do not exist

B. No specific disclosure is required because law-related services performed by a separate entity are not subject to the Rules of Professional Conduct under any circumstances regardless of the lawyer's involvement with that separate entity in the matter at issue currently

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

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

11. A prospective client met with a lawyer for a substantial consultation. The lawyer received information that could be significantly harmful to the prospective client. The prospective client's adversary in the matter now wishes to retain the lawyer's firm. May the firm proceed without screening?

A. No, because Rule 1.18(d)(2) requires screening as the only path forward when the original lawyer received significantly harmful information regardless of any consent given by the affected client in the matter at issue

B. Yes, because the prospective client never became a formal client and the firm has no continuing duty under Rule 1.18 once the consultation concluded without any formal engagement of the lawyer by the prospective client at the time

C. Yes, Rule 1.18(d)(1) provides an alternative path: the firm may proceed with informed consent confirmed in writing from both the affected client (the original prospective client) and the new client, without need for screening

D. No, because Rule 1.18 categorically prohibits any representation adverse to a former prospective client in a substantially related matter regardless of any procedural safeguards employed by the firm at issue in the matter

12. A lawyer is serving as a mediator in a dispute between two unrepresented parties. During mediation, one party appears confused about the lawyer's role and seems to believe the lawyer represents her individual interests. What does Rule 2.4(b) require?

A. The lawyer may continue the mediation without any further explanation because Rule 2.4 does not address the lawyer's obligations when an unrepresented party misunderstands her role during the proceedings being conducted at the time of the misunderstanding

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

C. The lawyer must immediately terminate the mediation and refer both parties to outside counsel before any further substantive discussions take place between them in the matter being mediated by the parties currently in progress

D. The lawyer must contact the unrepresented party's family members to encourage them to retain counsel before the mediation may continue between the disputing parties before her at the time of the proceeding currently underway

13. A lawyer files numerous frivolous motions in a civil case for the express purpose of harassing opposing counsel and delaying the proceedings. The motions are not designed to advance her client's substantive interests. Has the lawyer violated the Rules?

A. Yes, Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice; routine harassment-driven motion practice falls within this prohibition

B. No, because Rule 3.1's frivolousness standard governs only the merits of substantive claims and not the procedural motions practice undertaken by the lawyer in the matter being prosecuted in court at the time of the motions

C. Yes, but only if the trial court sustains opposing counsel's objection to the motion practice and imposes formal sanctions against the lawyer in connection with the matter currently being prosecuted in court at the time of the motions

D. No, because zealous advocacy permits a lawyer to employ any procedural tactic that may benefit her client regardless of the underlying motive for the motion practice in the matter being handled by the lawyer at issue

14. A judge presiding over a contested trial wishes to make a public statement to the press about the strength of the prosecution's case before the jury renders its verdict. May the judge do so?

A. Yes, judges have full First Amendment rights to comment publicly on cases pending before them regardless of the procedural posture of the trial in the matter being decided by the jury at the time of the comments being made

B. No, CJC 2.10(B) prohibits a judge from making any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, with limited exceptions for explanations of court procedures

C. No, but only if the public statement is published in a national news outlet rather than a local newspaper or other limited-circulation publication in the relevant jurisdiction during the period of the trial at issue currently

D. Yes, provided the judge first formally recuses herself from the matter before making any public statement about the strength of the evidence presented during the trial of the underlying matter at issue currently in progress

15. A lawyer and her client agree on a fee structure that includes both a fixed retainer of \$5,000 and a contingent percentage of any recovery. The matter is a routine personal injury case. Does Rule 1.5(a) treat this hybrid fee as automatically unreasonable?

A. Yes, because Rule 1.5(a) prohibits any hybrid fee arrangements regardless of the underlying nature of the matter being handled by the lawyer for the client at issue in the engagement currently being undertaken in the case

B. Yes, but only if the contingent percentage exceeds the customary rate for similar personal injury matters in the same jurisdiction at the time of the engagement between the lawyer and the client in the matter at issue

C. No, because Rule 1.5(a) permits any fee arrangement the client signs in writing regardless of the underlying nature of the matter being handled by the lawyer at the time of the engagement currently undertaken in the matter

D. No, Rule 1.5(a)(8) lists "whether the fee is fixed or contingent" as one of several factors bearing on reasonableness; hybrid fee structures are not categorically prohibited, though the total fee must still be reasonable under all the factors

16. A lawyer is in the middle of representing a client when she suffers a serious mental health crisis that materially impairs her ability to continue. The matter is pending before a trial court. What does Rule 1.16(a) require?

A. The lawyer must wait until the client formally complains about her impairment before any withdrawal may be considered in connection with the underlying matter being prosecuted in court at the time of the impairment at issue

B. The lawyer must continue the representation despite the impairment because Rule 1.16 does not address mental health concerns in the context of an ongoing engagement on behalf of the client in any matter being handled by counsel

C. Rule 1.16(a)(2) requires a lawyer to withdraw from a representation when her physical or mental condition materially impairs her ability to represent the client; the impairment makes withdrawal mandatory, subject to compliance with Rule 1.16(c)

D. The lawyer may continue the representation provided she informs the client of the impairment and obtains the client's written consent to continued representation regardless of the lawyer's diminished capacity in the matter at issue

17. A lawyer represents a corporation. The lawyer becomes aware that the CFO has been engaging in serious accounting fraud that is likely to substantially injure the organization. What does Rule 1.13(b) require?

A. The lawyer shall proceed as is reasonably necessary in the best interest of the organization; unless the lawyer reasonably believes it is not necessary, she shall refer the matter to higher authority in the organization, including, if warranted, the highest authority that can act on behalf of the organization

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

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

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

18. A lawyer is leaving her firm to join a competing firm. The new firm needs to conduct a conflict check that requires the lawyer to disclose limited information about her prior representations. May she disclose without former-client consent?

A. No, because Rule 1.6 absolutely prohibits any disclosure of former-client information without express consent regardless of the purpose of the disclosure or the reasonableness of the limited information at issue in the matter

B. No, unless the lawyer first obtains a court order authorizing the proposed disclosure for the new firm's conflict check in light of the confidentiality concerns implicated by the lateral move being undertaken by the lawyer

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 at issue

D. Yes, Rule 1.6(b)(7) permits a lawyer to reveal information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment, provided the revealed information would not compromise privilege or otherwise prejudice the client

19. A prosecutor learns of evidence that significantly undermines the credibility of the prosecution's key witness. Trial is in three weeks. What does Rule 3.8(d) require?

A. The prosecutor may withhold the evidence as part of trial strategy because Rule 3.8 imposes no obligation to disclose information that may be developed through cross-examination by the defense in court before the assigned trial judge at the time

B. A prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to her that tends to negate the guilt of the accused or mitigates the offense; impeachment evidence going to a key prosecution witness typically falls within this duty

C. The prosecutor must obtain the trial court's approval before disclosing any evidence that undermines the credibility of the prosecution's witnesses in any matter being prosecuted before a court of competent jurisdiction at the time of the disclosure

D. The prosecutor's disclosure duty is satisfied entirely by complying with constitutional requirements under *Brady v. Maryland* and need not extend beyond the formal Brady obligation in any criminal matter being handled by the office at issue

20. A lawyer wishes to lease her office space from her current client. The client is the owner of the building. The transaction is at fair market value. May the lawyer enter the lease?

A. Yes, because business transactions between lawyers and clients are permitted without restriction provided the terms are at fair market value regardless of the substantive nature of the underlying transaction at issue in the matter

B. No, because Rule 1.8(a) categorically prohibits all business transactions between lawyers and current clients regardless of the substantive nature of the underlying transaction or the parties' wishes in the matter at issue currently

C. Rule 1.8(a) imposes safeguards: the terms must be fair and reasonable and fully disclosed in writing; the client must be advised in writing of the desirability of seeking independent counsel and given reasonable opportunity to do so; and the client must give informed consent in a signed writing

D. Yes, provided the lawyer first obtains the trial court's express approval of the proposed lease arrangement in light of the client's status as the building owner and the lawyer's status as the prospective tenant in the matter

21. A lawyer concluded a client matter five years ago and stored client files in compliance with then-current rules. The client now requests a copy of files from that long-concluded engagement. What do the Rules generally require regarding file retention?

A. The lawyer must store all client files for at least ten years from the conclusion of every engagement regardless of the substantive nature of the matter being handled by the lawyer for the client at issue in the matter

B. The lawyer must store all client files indefinitely from the conclusion of every engagement regardless of the substantive nature of the matter being handled by the lawyer for the client at issue in the matter at hand

C. The lawyer's retention obligations are governed solely by her own reasonable judgment without any specific rule-based requirement under the Model Rules of Professional Conduct in the jurisdiction of practice for the lawyer at issue

D. Rule 1.15(a) and many jurisdictions' rules require a lawyer to maintain complete records of trust account funds and other property of clients or third persons for a period of at least five years after termination of the representation

22. A lawyer admitted in State X provides legal services to a client physically located in State Y for a matter that does not involve any tribunal in any jurisdiction. The lawyer's conduct gives rise to a potential disciplinary issue. Under Rule 8.5(b)(2), which jurisdiction's rules govern?

A. For conduct not before a tribunal, the rules of the jurisdiction in which the lawyer's conduct occurred apply, or if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction apply; the lawyer is not subject to discipline if her conduct conforms to the rules of the jurisdiction where she reasonably believed the predominant effect would occur

B. The rules of the lawyer's state of admission apply automatically regardless of where the substantive conduct occurred or where the predominant effect of the conduct manifested itself in the matter at issue currently in the case

C. The rules of both States X and Y apply concurrently because the lawyer's conduct in any matter could be subject to discipline in any jurisdiction where she has personal contact during the engagement at the time of the conduct at issue

D. The rules of the lawyer's principal jurisdiction of residence apply rather than the rules of the jurisdiction in which she is admitted or where the conduct's predominant effect occurred in the matter at hand currently in dispute

23. A lawyer wishes to contact a represented person by sending a message through that person's secretary. The lawyer knows the message will reach the represented person. Opposing counsel has not consented to the contact. Has the lawyer violated Rule 4.2?

A. No, because Rule 4.2 prohibits only direct communications between the lawyer and the represented person; communications through intermediaries such as a secretary fall outside the rule's scope in any matter at issue in the case

B. Yes, Comment [4] to Rule 4.2 specifies that the rule prohibits direct or indirect communications, including communications through intermediaries when the lawyer knows the message will reach the represented person; the lawyer cannot circumvent the rule through indirect channels

C. No, because Rule 4.2 applies only to in-person communications between counsel and the represented person regardless of any indirect transmission of substantive messages between the parties at the time of the communication

D. Yes, but only if the lawyer's message contains specific legal advice rather than general substantive content delivered through the secretary of the represented person in the matter at issue between them at the time of the contact

24. A lawyer is representing a client in a contested fee dispute with a former client. The lawyer expects to testify about the nature and value of her own legal services in the underlying matter. May the lawyer continue as trial counsel?

A. No, because Rule 3.7 disqualifies all witness-lawyers from continuing as trial advocates regardless of the substantive scope of the proposed testimony being given at trial in the matter being adjudicated currently in court

B. No, unless the lawyer's firm has no other competent counsel available to handle the trial of the underlying fee dispute matter currently pending before the trial court between the parties to the litigation at issue currently

C. Yes, but only if the client signs a written waiver of the lawyer-witness rule and agrees to the lawyer's continued representation through trial in the underlying fee dispute matter being handled by counsel at issue

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

25. A lawyer is volunteering at a legal advice clinic at a community center. She gives advice to a walk-in client whom she will never see again. The clinic is sponsored by a non-profit legal aid organization. Does Rule 1.7 require a complete conflict check before the consultation?

A. Yes, because all lawyer-client interactions are governed by Rule 1.7 regardless of the duration or scope of the consultation between the lawyer and the client in any setting at any time during the engagement on the matter

B. 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 being handled currently

C. No, Rule 6.5 creates 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

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 at any setting at any time during the engagement

26. A lawyer moved from a prior firm to a new firm. While at the prior firm, she personally and substantially worked on a matter that is substantially related to one her new firm now wishes to handle on the opposing side. May the new firm represent the opposing side without a screening cure?

A. No, Rule 1.9(b) prohibits the moving lawyer from representing a person in a substantially related matter materially adverse to the former client if she acquired confidential information about the former client material to the matter that is not generally known; Rule 1.10 then imputes the conflict absent a proper screening cure

B. Yes, because the moving lawyer's prior firm representation creates no conflict at the new firm regardless of the substantive nature of the prior representation she personally undertook in the matter at issue currently in dispute

C. Yes, provided the moving 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 at the new firm

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 currently in litigation

27. A lawyer is asked to represent two co-defendants in a civil tort case arising from the same incident. The two defendants have potentially divergent defenses, but informed consent is possible. May the lawyer accept the dual representation?

A. No, because Rule 1.7 categorically prohibits joint representation of co-defendants in any civil tort case regardless of the parties' consent to the dual representation in the matter being defended by the firm at issue currently

B. Rule 1.7(b) permits the dual representation if the lawyer reasonably believes she can provide competent and diligent representation to each, the representation is not prohibited by law and does not involve assertion of a claim by one client against another in the same litigation, and each client gives informed consent confirmed in writing

C. Yes, because Rule 1.7 permits joint representation of co-defendants without any specific consent procedure regardless of the divergent defenses available to each defendant in the underlying tort matter at issue between the parties

D. Yes, but only if the lawyer first obtains the trial court's express approval of the joint representation in light of the divergent defenses available to each co-defendant in the underlying civil tort matter being defended in court

28. A lawyer's law firm publishes a marketing brochure featuring a quoted client testimonial: "This firm saved my business and gave me my life back!" The testimonial is genuine. Is the testimonial permitted under Rule 7.1?

A. Yes, because Rule 7.1 permits any genuine statement by a client about her experience with a lawyer regardless of the implications about likely outcomes in unrelated matters being handled by the firm at issue currently

B. Yes, provided the brochure includes a separate certification from the bar disciplinary authority that the testimonial is not misleading to prospective clients seeking representation in the relevant jurisdiction of the firm at issue

C. Yes, but only if the brochure includes a notarized affidavit from the client attesting to the truth of the testimonial in connection with the underlying matter that gave rise to the comment for the firm at issue

D. Testimonials are not categorically prohibited, but Rule 7.1 prohibits false or misleading communications; Comment [3] explains that testimonials may be misleading if they create unjustified expectations or include unsubstantiated comparisons — an appropriate disclaimer is often necessary

29. A lawyer is representing a client in litigation. The lawyer is moving the case forward at a reasonable pace given its complexity. The client demands the lawyer "drop everything else and focus exclusively on my case." The lawyer refuses, citing other client obligations. Is the lawyer's pace consistent with Rule 1.3?

A. Yes, Rule 1.3 requires reasonable diligence and zeal; Comment [1] explains that a lawyer should pursue a matter on behalf of a client despite opposition, but is not bound to press for every advantage and may manage workload reasonably across multiple client matters

B. No, because Rule 1.3 requires a lawyer to work at the pace the client specifies regardless of the lawyer's other professional obligations to other clients of the firm during the engagement on the matter at issue currently

C. No, but only if the lawyer's pace ultimately causes a procedural 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 currently

D. Yes, but only if the lawyer formally documents her workload management with the client in writing before the matter being handled commences with the engagement on behalf of the client in the matter at issue

30. A non-lawyer paralegal at a firm engages in conduct that, if engaged in by a lawyer, would violate the Rules of Professional Conduct. A supervising lawyer at the firm knows of the conduct and explicitly approves it. Is the supervising lawyer subject to discipline?

A. No, because the paralegal is not a lawyer and the Rules of Professional Conduct apply only to licensed members of the bar in any matter being handled by the firm at issue in the engagement at the time of the conduct

B. No, unless the conduct directly affects the lawyer's own client in the matter currently being handled by the firm rather than a third party or another lawyer in connection with the matter being handled at issue currently

C. Yes, Rule 5.3(c) provides that a lawyer is responsible for conduct of a non-lawyer assistant that would violate the Rules if engaged in by a lawyer if the lawyer is a partner with managerial authority and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action

D. Yes, but only if the supervising lawyer also directly engages in the conduct herself rather than merely approving the paralegal's conduct in the matter being handled by the firm in the engagement at issue currently

31. A lawyer represents an elderly client whose cognitive abilities have declined but who is still able to express her wishes about most matters. The client sometimes seems confused. What does Rule 1.14 generally require?

A. The lawyer must immediately move for the appointment of a guardian to make all decisions for the elderly client during the representation going forward regardless of the client's continued capacity to express her wishes in the matter

B. Rule 1.14(a) provides that when a client's capacity to make adequately considered decisions is diminished, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client; representation can ordinarily continue with appropriate accommodations

C. The lawyer must obtain a court order before continuing the representation of any client with any cognitive decline regardless of the severity or impact on her decision-making capacity in the matter being handled by counsel

D. The lawyer must withdraw from the representation immediately upon noticing any sign of cognitive impairment in the elderly client during the engagement on the underlying matter being handled by the firm currently in the matter

32. A lawyer is asked to represent both spouses in a contested divorce action. The lawyer believes she can amicably mediate between them. The lawyer is not serving as a mediator; she has been asked to act as advocate for both. May she accept the dual representation?

A. Yes, because both spouses have consented and Rule 1.7 permits all dual representations where the affected clients give informed consent in writing to the joint engagement at the outset of the matter being handled

B. Yes, provided the lawyer first obtains the trial court's express approval of the joint representation in light of the contested nature of the underlying divorce proceeding before the trial court at the time of the engagement

C. No, but only if the lawyer also serves as the formal financial advisor to either spouse in connection with the underlying divorce proceeding currently pending between the parties to the matter at issue currently in court

D. No, Rule 1.7(b)(3) prohibits the representation of opposing parties in the same litigation as a non-consentable conflict; the contested divorce is the same litigation, and the structural conflict cannot be cured by informed consent

33. A lawyer inadvertently receives a privileged document from opposing counsel. The lawyer recognizes the inadvertent transmission and promptly notifies the sender per Rule 4.4(b). After notification, may the lawyer read the document's contents?

A. No, because Rule 4.4(b) prohibits a lawyer from reading any inadvertently received privileged document regardless of the lawyer's notification of the sender at the time of receipt in the matter being handled by counsel

B. Yes, because Rule 4.4(b) requires only notification; the lawyer has no further obligation under the rule regardless of the substantive content of the inadvertently transmitted privileged document received from opposing counsel

C. Rule 4.4(b)'s only required step is prompt notification; Comment [2] makes clear that whether the receiving lawyer may continue to read the document, must return it, or must follow other procedures is governed by other law and outside the scope of the Model Rules

D. No, unless the sender expressly waives the privilege in writing after receipt of the lawyer's notification of the inadvertent disclosure of the privileged document in the matter being handled by counsel currently

34. A lawyer hears a vague rumor that another lawyer in town has been mismanaging client funds. The lawyer has no firsthand knowledge of the alleged misconduct. Must she report the rumor to the bar disciplinary authority?

A. No, 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; mere rumor or suspicion does not constitute "knowing" within the meaning of the rule

B. Yes, because Rule 8.3 imposes a strict reporting duty for any information suggesting another lawyer's misconduct regardless of the lawyer's actual knowledge of the underlying conduct at issue in the matter being reported

C. Yes, but only if the lawyer's rumor is corroborated by at least one other independent source before any formal report to the bar disciplinary authority may be considered by the reporting lawyer in the matter being discussed

D. No, unless the rumor specifically identifies the affected client whose funds were allegedly mismanaged by the subject lawyer in the matter being discussed within the local legal community in the area at the time

35. A lawyer's former client refuses to pay an outstanding legal fee. The lawyer sues the former client to collect. The former client raises various defenses. The lawyer needs to disclose confidential information to defend her work and prove the value of her services. May the lawyer disclose?

A. No, because the duty of confidentiality under Rule 1.6 absolutely prohibits any disclosure of former-client information without express consent regardless of the fee dispute being pursued by the lawyer in the matter being prosecuted

B. Yes, 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 claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, including a fee dispute

C. Yes, but only if the lawyer first obtains the trial court's express approval for the proposed disclosure in light of the former client's defenses raised in connection with the underlying fee dispute at issue in the matter being prosecuted

D. No, unless the former client first formally waives the duty of confidentiality before the lawyer may disclose any information in connection with the underlying fee dispute being prosecuted in court at the time of the litigation

36. A lawyer is researching a legal question for a motion. She finds a recent appellate decision from her jurisdiction that is directly adverse to her client's position. Opposing counsel has not yet cited the decision. Must the lawyer disclose the decision to the trial court?

A. No, because the lawyer's duty of zealous advocacy requires her to present only favorable authority in her client's submissions to the trial court regardless of any adverse authority she may have found in her research

B. No, unless opposing counsel formally requests the lawyer's research on the legal issue currently before the court in the matter being prosecuted by the parties to the underlying litigation at issue currently in court

C. Yes, Rule 3.3(a)(2) prohibits a lawyer from knowingly failing to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel

D. Yes, but only if the appellate decision is from the U.S. Supreme Court or another binding authority on the jurisdiction in which the trial court sits in connection with the underlying matter being prosecuted by the parties

37. A lawyer met briefly with a prospective client for a fifteen-minute initial consultation. The prospective client shared no information that would harm her if revealed. The lawyer did not undertake the representation. The prospective client's adversary now seeks to retain the lawyer. May the lawyer accept the new engagement?

A. No, because Rule 1.18 categorically prohibits adverse representation in the same matter regardless of whether the lawyer received any information that could be significantly harmful in the original consultation at issue in the matter

B. No, unless the original prospective client first formally consents to the new representation in light of the prior consultation between her and the lawyer at the time of the initial meeting between the parties to the consultation

C. Yes, but only after the firm formally screens the original lawyer from any participation in the matter and notifies the prospective client of the screening procedure in advance of the new engagement at issue in the matter

D. Yes, 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

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

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

B. No, because Rule 5.1 imposes only individual supervisory duties for specific matters and not firm-wide management duties for policies and procedures at the firm at issue currently in the practice of law in the matter

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

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

39. A lawyer's client asks for advice on whether to terminate a longtime business partnership. The client expects only legal analysis. The lawyer is aware of significant business, ethical, and reputational factors that bear on the wisdom of termination. May the lawyer raise these factors in her advice?

A. No, because Rule 2.1 limits the lawyer to providing only the specific legal advice the client requested at the outset of the consultation between the parties to the discussion in the matter at issue currently in the case

B. No, unless the client first expressly invites the lawyer to address non-legal factors affecting the decision being made in connection with the underlying business partnership being considered for termination at the time of the consultation

C. 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

D. Yes, but only if the lawyer obtains the client's prior written consent before incorporating any non-legal considerations into her formal written opinion delivered to the client in connection with the matter at issue currently

40. A lawyer is appointed by a court as an arbitrator in a commercial dispute. After the arbitration concludes, one of the parties wishes to retain her as litigation counsel in a related new matter. The lawyer's prior arbitrator role was as a partisan arbitrator selected by that party. May she accept the new engagement?

A. No, because Rule 1.12(a) generally prohibits a lawyer from representing anyone in connection with a matter in which she participated personally and substantially as an arbitrator regardless of any partisan role at the time of the prior engagement

B. Yes, Rule 1.12(d) creates an exception to the general arbitrator-disqualification rule: an arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party in the same matter or a substantially related one

C. Yes, but only if the lawyer first obtains a court order authorizing the new representation in light of her prior partisan arbitrator role in connection with the underlying commercial dispute being now litigated by the party in the matter

D. No, unless the other party to the prior arbitration gives informed consent confirmed in writing to the new representation in the related matter being undertaken by the lawyer for the partisan party at issue currently

41. A lawyer is discharged by her client. The lawyer has documents, work product, and unearned fees in her possession. What does Rule 1.16(d) require?

A. The lawyer may retain all documents and unearned fees until the client formally requests their return in writing during the period after termination of the engagement on the matter being handled by the lawyer at issue currently

B. The lawyer must obtain the client's written acknowledgment that the engagement has been terminated before delivering any documents or returning any unearned fees in connection with the underlying matter at issue currently being concluded

C. The lawyer must wait at least thirty days after discharge before delivering documents or refunding unearned fees in connection with the underlying matter being concluded between the lawyer and the client at issue currently

D. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice, allowing time for new counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment not earned or incurred

42. A lawyer is convicted of a misdemeanor involving fraud unrelated to her practice of law. Is the lawyer subject to discipline under Rule 8.4(b)?

A. Yes, 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 in other respects; a fraud conviction bears directly on honesty and trustworthiness

B. No, because Rule 8.4(b) applies only to felony convictions and not to misdemeanor convictions regardless of the nature of the underlying conduct involved in the criminal matter at issue at the time of the conviction

C. No, because Rule 8.4(b) applies only to criminal conduct that occurs in the course of the lawyer's practice of law and not to private fraud unrelated to her professional engagement on behalf of any client at issue

D. Yes, but only if the conviction results in incarceration rather than a fine or other non-custodial sentence imposed by the trial court in connection with the underlying criminal matter at issue at the time of the sentencing

43. A judge's son works as an associate at a large law firm. A case comes before the judge in which a different lawyer at that firm — not the judge's son — represents one of the parties. The judge's son is not involved in the case. What does CJC 2.11 require?

A. The judge must immediately resign from the bench because CJC 2.11 categorically prohibits a judge from sitting on cases involving any firm in which a close family member is employed in any capacity at any time during her tenure

B. CJC 2.11(A)(2) requires disqualification when the judge knows a person within the third degree of relationship is acting as a lawyer in the proceeding; if the son is not acting as a lawyer in the proceeding,

the judge should still consider whether her impartiality might reasonably be questioned under CJC 2.11(A) generally

C. The judge may hear the case without disclosure because her son is not personally involved in the matter and the rule does not address indirect family connections to corporate law firms regardless of the connections at issue

D. The judge may hear the case provided her son signs a written acknowledgment that he will not discuss the matter with the judge in any way during the pendency of the case in court at the time of the matter at issue

44. A lawyer agrees orally with a client to handle a personal injury case on a contingent fee basis. The lawyer never reduces the agreement to writing. The case settles for \$100,000. Has the lawyer complied with Rule 1.5?

A. Yes, because oral contingent fee agreements are enforceable under the Rules of Professional Conduct in most jurisdictions of the United States today regardless of any subsequent written confirmation in the matter

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

C. No, because Rule 1.5(c) requires a contingent fee agreement to be in a writing signed by the client, stating the method by which the fee is to be determined; the failure to reduce the agreement to writing violates the rule regardless of fee enforceability

D. No, but only if the client subsequently challenges the fee in litigation against the lawyer in connection with the underlying engagement that was the subject of the oral agreement at issue in the matter at the time

45. A lawyer wishes to form a partnership with a financial advisor. The partnership would offer financial planning and legal services to mutual clients. May the lawyer form the partnership?

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

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

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

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

46. A lawyer receives a valid court order requiring her to produce confidential client information in connection with a third-party subpoena. The order is not stayed. May the lawyer comply?

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 source or basis of the order at issue in the matter

B. 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 currently

C. 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 at issue

D. 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 should consult with the client about the order and may, where appropriate, challenge it before disclosure

47. A lawyer is involved in a contested trial. She learns that the jury foreperson is the spouse of a longtime business associate. The lawyer's spouse is also a close personal friend of the foreperson's spouse. The lawyer asks her spouse to mention the case favorably to the foreperson's spouse during a casual dinner. Has the lawyer violated Rule 3.5?

A. No, because casual personal conversations between spouses are outside the scope of Rule 3.5's prohibitions on contact with judicial officers and jurors in any matter being prosecuted in court at the time of the contact at issue

B. No, provided the spouse does not directly request a favorable verdict on behalf of the lawyer's client during the personal conversation between the spouses at the dinner during the trial in progress at the time of the contact

C. Yes, Rule 3.5(a) prohibits a lawyer from seeking to influence a judge, juror, prospective juror, or other official by means prohibited by law; using a personal relationship as a back-channel to influence a juror is precisely the improper means the rule reaches

D. Yes, but only if the trial judge formally finds that the contact has prejudiced the jury during the trial of the underlying matter being prosecuted in court before the trial judge at the time of the contact at issue currently

48. A lawyer admitted in State X wishes to provide ongoing legal advice to a corporate client whose principal place of business is in State Y. The advice does not involve any pending or potential tribunal proceeding. May the lawyer do so on a temporary basis?

A. No, because Rule 5.5 categorically prohibits any practice in a jurisdiction where the lawyer is not admitted regardless of the temporary nature of the proposed services at the time of the engagement on the matter at issue currently

B. Yes, Rule 5.5(c)(4) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which she is admitted, even where the services do not involve any pending tribunal proceeding

C. Yes, but only if the State Y bar association separately approves the temporary practice in addition to the lawyer's home-jurisdiction admission at the time of the proposed temporary engagement on behalf of the corporate client in the matter

D. No, unless the lawyer also takes and passes the State Y bar examination within twelve months of beginning the temporary engagement with the corporate client in connection with the underlying matter being handled at issue

49. A lawyer represents a client in a contract dispute. The client wants to pursue a particular litigation strategy that the lawyer believes is unwise but not prohibited. The lawyer prefers a different strategy. Whose preference governs the strategic decision?

A. Rule 1.2(a) provides that the client decides the objectives of the representation and shall consult with the lawyer about means; certain decisions (such as settlement, plea, and waiver of jury trial) belong to the client, while ordinary tactical decisions about means are typically the lawyer's, subject to consultation under Rule 1.4(a)(2)

B. The lawyer's professional judgment controls all strategic decisions in the matter regardless of the client's contrary preferences in the underlying litigation being handled by counsel in connection with the matter at issue

C. The client's preferences control all strategic decisions in the matter regardless of the lawyer's professional judgment about the most effective approach to take in the underlying litigation at issue between the parties currently

D. The trial court must approve any strategic decision in the matter where the lawyer and client disagree about the appropriate course of action in connection with the underlying contract dispute being prosecuted in court currently

50. A lawyer is asked by a longtime client to draft her will, in which the client wishes to leave a substantial monetary bequest to the lawyer. The lawyer suggests that the client should leave her the bequest. Has the lawyer acted appropriately under Rule 1.8(c)?

A. Yes, because the lawyer's suggestion is permissible under Rule 1.8(c) provided the client ultimately makes her own independent decision about the bequest in connection with the underlying will being drafted for her execution

B. Yes, provided the lawyer first obtains the bar disciplinary authority's express approval for the proposed solicitation of the bequest before drafting the will containing the personal bequest from the client to her in the matter

C. Yes, but only if the lawyer charges a discounted fee for the will to offset the value of the proposed bequest she has suggested the client leave to her in connection with the testamentary disposition at issue in the matter

D. No, Rule 1.8(c) prohibits a lawyer from soliciting any substantial gift from a client, including a testamentary gift; the rule also prohibits the lawyer from preparing an instrument giving the lawyer such a gift unless the lawyer is related to the client

51. A lawyer is representing an indigent client on a pro bono basis in a civil litigation matter. The client cannot afford court filing fees. May the lawyer advance the filing fees?

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 the indigent status of the client in the matter at issue currently

B. Yes, Rule 1.8(e)(2) permits a lawyer representing an indigent client to pay court costs and expenses of litigation on behalf of the client; no repayment is required from the indigent client at the conclusion of the matter

C. Yes, but only if the indigent client signs a personal promissory note for the filing fees secured by collateral acceptable to the lawyer at the outset of the engagement on the matter being handled by counsel at issue

D. No, unless the lawyer first obtains the trial court's approval for advancing the filing fees in light of the client's indigent status during the pendency of the underlying litigation matter being handled by counsel at issue

52. A lawyer signs a real estate closing document on behalf of her client. The document contains a representation about the title that the lawyer knows is false. The lawyer signs to facilitate the closing. Has the lawyer violated the Rules?

A. No, because the lawyer is signing only on behalf of her client and any inaccuracy in the document is attributable to the client rather than to the lawyer who signed in a representative capacity in the matter at issue

B. No, unless the false representation actually causes the closing to be voided or otherwise harms the buyer in a quantifiable way during the underlying real estate transaction being negotiated by the parties at the time of the closing

C. Yes, Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; knowingly signing a closing document with a false representation falls within this prohibition

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

53. A lawyer represents a corporation. A current corporate employee — a witness who will support the lawyer's client's position at trial — is being asked by opposing counsel to volunteer additional information. The lawyer asks the employee to refrain from voluntarily providing information to opposing counsel. Has the lawyer violated Rule 3.4?

A. Yes, because Rule 3.4 prohibits any lawyer from instructing any witness to withhold information from opposing counsel regardless of the witness's employment relationship with the lawyer's client in the matter at issue currently

B. Yes, but only if the employee actually refuses to provide the information to opposing counsel and is later compelled to do so by formal discovery process in the underlying litigation matter at issue between the parties currently

C. No, because Rule 3.4 governs only court orders and formal discovery rather than informal interactions between counsel and witnesses in connection with the underlying matter being prosecuted by the parties in court at the time

D. No, Rule 3.4(f) permits a lawyer to request that a person refrain from voluntarily giving relevant information to another party if 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

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

A. No, Rule 1.15(a) requires a lawyer to hold property of clients or third persons that is in her possession in connection with a representation separate from her own property; client funds must typically be held in a separate trust account designated for client funds

B. Yes, because the lawyer maintains careful detailed ledgers that accurately track each client's funds and her own funds within the same combined account at the bank during the period of the engagement at issue currently

C. Yes, provided the lawyer can reconcile the account monthly and demonstrate that no client funds have been misappropriated during the period of the combined account arrangement at issue in the matter currently in dispute

D. No, but only if the lawyer's commingling has resulted in actual misappropriation of client funds for the lawyer's personal use during the period of the combined account arrangement at issue currently in the matter

55. A lawyer wishes to call a longtime friend who is also a former client of the lawyer. The lawyer recently learned of a legal matter that the friend may be facing, and the lawyer wants to offer her services. May the lawyer make the call?

A. No, because Rule 7.3 categorically prohibits any solicitation by live person-to-person contact regardless of the prior relationship between the lawyer and the prospective client at the time of the contact at issue in the matter

B. No, unless the friend first initiates the contact with the lawyer about the legal matter she may be facing in connection with the situation at issue in her life at the time of the proposed call to the lawyer in the matter

C. Yes, Rule 7.3(b)(2) permits live person-to-person contact for the purpose of obtaining professional employment when the contact is with a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm

D. Yes, but only if the lawyer first formally enters into a new engagement with the friend before making any substantive recommendation about the legal matter she may be facing in connection with her current situation at issue

56. A lawyer is currently serving as a federal prosecutor. She is approached by a private law firm offering her a position. While considering the offer, she continues to handle cases at the U.S. Attorney's Office. Some of those cases involve the offering firm. What does Rule 1.11(d) require?

A. The lawyer may continue working on all cases as before because Rule 1.11(d) applies only after a government lawyer leaves her position for private practice in the same field of law as her current government work at the time

B. Rule 1.11(d) restricts a current government lawyer in two ways: she is subject to general conflicts rules in matters in which she participated personally and substantially, and she shall not negotiate for private employment with any person involved as a party or lawyer in such a matter

C. The lawyer must immediately resign her government position and decline the offer because dual-employment negotiations are categorically prohibited under the Rules of Professional Conduct as currently interpreted in this area of practice in the matter

D. The lawyer must inform every defendant currently represented by the offering firm of the pending employment negotiations before continuing to handle any matter at the office in connection with the underlying criminal cases at issue currently

57. A lawyer who has practiced exclusively in commercial litigation for ten years is asked to take on a complex tax matter. She has no prior experience in tax law but believes she can become competent through study and consultation with an experienced tax lawyer at another firm. May she accept?

A. Yes, Rule 1.1 Comment [2] expressly recognizes that a lawyer can attain the requisite competence in a new field through necessary study and through association with a lawyer of established competence in the relevant area of practice

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

C. Yes, but only if she first obtains a court order authorizing the representation in light of her lack of prior tax law experience and her current status as a litigator without any substantive tax expertise in the practice area at issue

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

58. A lawyer represents a client in a civil case. The client lost at trial and on direct appeal. The client now insists on filing a petition for certiorari to the U.S. Supreme Court, even though there is no basis for further review. May the lawyer file the petition?

A. Yes, because Rule 3.1 permits a lawyer to assert any claim the client requests regardless of the substantive merit of the claim being asserted in the matter being prosecuted by counsel for the client at issue currently in court

B. Yes, provided the lawyer informs the client that the petition will likely be denied by the Supreme Court before any further proceedings are undertaken in connection with the underlying litigation matter being prosecuted in court at the time currently

C. No, but only if the trial court formally dismisses the petition on grounds that it lacks any reasonable basis for review by the Supreme Court in connection with the underlying matter being prosecuted by counsel for the client at the time

D. No, Rule 3.1 prohibits a lawyer from bringing or asserting an issue unless 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; filing a meritless certiorari petition with no basis for review violates the rule

59. A lawyer in a high-profile criminal case wishes to make a public statement identifying the accused by name and describing the offense charged. Is the statement permitted under Rule 3.6?

A. No, because Rule 3.6 prohibits any public statement about a defendant in a pending criminal case regardless of the substance of the statement being made by the lawyer in the matter at issue currently in court at the time

B. Yes, Rule 3.6(b) lists categorical safe-harbor statements a lawyer may make about a pending matter, including the identity of persons involved (except when prohibited by law) and information about the offense and defense; identifying the accused by name and describing the offense fits this safe harbor

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 at the time

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 handled by counsel for the defendant currently

60. A lawyer is selling her entire practice and retiring. As part of the sale, the buyer wishes to continue representing the seller's existing clients. The seller wishes to remain available for occasional consultation with the buyer on transferred matters during the transition period. May the seller continue to consult?

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. 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 of the sale

C. Rule 1.17 contemplates that the seller ceases to engage in the private practice of law (or in the area of practice sold) in the relevant geographic area; occasional consultation with the buyer on transitional matters may be permissible, but the seller cannot continue active representation of transferred clients

D. Yes, provided the buyer agrees in writing to the selling lawyer's continued participation in the practice during the transition period for the sale of the practice in the jurisdiction at issue in the matter currently being negotiated

PRACTICE EXAM 31: ANSWERS AND EXPLANATIONS

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

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

3. A — Rule 1.6(b)(2) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to prevent the client from committing a crime or fraud reasonably certain to result in substantial financial injury to another, in furtherance of which the client has used or is using the lawyer's services. The exception is permissive but squarely available on these facts.

4. C — Rule 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. A privilege objection asserted on the record with proper motion practice is precisely the open refusal the rule contemplates.

5. A — Rule 7.2(b)(3) permits a lawyer to pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer-referral service. A state bar-affiliated, not-for-profit referral service is the paradigm of a permitted arrangement under the rule.

6. D — Rule 1.7 Comment [34] provides that a lawyer representing a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization. Whether the affiliate is treated as a current client depends on the circumstances, including operational integration or representations to that effect.

7. C — Rule 1.4(a)(1) requires a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required. Settlement offers fall within this category because the decision to accept or reject settlement belongs to the client under Rule 1.2(a); the lawyer cannot substitute her judgment for the client's on this fundamental choice.

8. B — Rule 1.10(a)(2) provides a screening cure for conflicts arising from a lawyer's prior association with another firm, requiring timely screening, no fee apportionment, and prompt written notice to the affected former client. The cure is available except in narrow circumstances expressly identified in the rule.

9. D — Rule 3.6(b) lists categorical safe-harbor statements a lawyer may make about a pending matter, but the safe harbor for identifying persons involved is expressly qualified by "except when prohibited from doing so by law." Statutes generally restrict disclosure of juvenile defendants' identities, bringing the case within this qualification.

10. A — Rule 5.7 subjects a lawyer to the Rules of Professional Conduct with respect to law-related services if the services are not distinct from the lawyer's provision of legal services, or if they are distinct but the lawyer fails to take reasonable measures to ensure the recipient knows the services are not legal services and that client-lawyer protections do not exist. Clear disclosure is the operative safeguard.

11. C — Rule 1.18(d)(1) provides an alternative path to representation adverse to a former prospective client: informed consent confirmed in writing from both the affected (prospective) client and the new client. Screening under Rule 1.18(d)(2) is an alternative, not the only path, even where significantly harmful information was received.

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

13. A — Rule 8.4(d) makes it professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Routinely filing frivolous motions to harass opposing counsel and delay proceedings falls squarely within this prohibition independent of any specific Rule 3.1 frivolousness analysis.

14. B — CJC 2.10(B) prohibits a judge from making any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, with

limited exceptions such as explanations of court procedures. Public comments by the presiding judge about evidence strength before verdict squarely violate the rule.

15. D — Rule 1.5(a)(8) lists "whether the fee is fixed or contingent" as one of several factors bearing on the reasonableness of a fee. Hybrid fee structures combining fixed and contingent elements are not categorically prohibited; the total fee must still be reasonable considering all the factors enumerated in the rule.

16. C — Rule 1.16(a)(2) requires a lawyer to withdraw from a representation when the lawyer's physical or mental condition materially impairs her ability to represent the client. The ground is mandatory, not permissive; the lawyer must comply with the procedural requirements of Rule 1.16(c) where the matter is before a tribunal.

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

18. D — 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 conflict-check information typically fits within these constraints.

19. B — Rule 3.8(d) requires a prosecutor to make timely disclosure to the defense of all evidence or information known to her that tends to negate the guilt of the accused or mitigates the offense. Impeachment evidence going to the credibility of a key prosecution witness typically falls within this obligation, which is broader than the constitutional Brady standard.

20. C — Rule 1.8(a) imposes three concurrent safeguards on business transactions with a current client: fair and reasonable terms fully disclosed in writing, written advice to seek independent counsel with reasonable opportunity to do so, and the client's informed consent in a signed writing to the essential terms and the lawyer's role. Fair market value alone does not satisfy the rule.

21. D — Rule 1.15(a) and many jurisdictions' rules require a lawyer to maintain complete records of trust account funds and other property of clients or third persons for a period of at least five years after termination of the representation. State-specific requirements may extend or modify the baseline retention period for trust and related records.

22. A — Rule 8.5(b)(2) provides that for conduct not in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the lawyer's conduct occurred apply, or if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction apply. A lawyer is not subject to discipline if her conduct conforms to the rules of the jurisdiction where she reasonably believed the predominant effect would occur.

23. B — Rule 4.2 and its comments prohibit a lawyer from causing another to do indirectly what the rule forbids her to do directly. Comment [4] specifically warns that the rule covers communications through intermediaries when the lawyer knows the message will reach the represented person; indirect channels cannot be used to circumvent the rule.

24. D — Rule 3.7(a)(2) expressly excepts from the lawyer-witness disqualification rule testimony that relates to the nature and value of legal services rendered in the case. Fee disputes are the paradigmatic application of this exception, which permits the lawyer to continue serving as trial advocate.

25. C — Rule 6.5 creates 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.

26. A — Rule 1.9(b) prohibits a moving lawyer from representing a person in a substantially related matter materially adverse to the former client where she acquired confidential information about the former client material to the matter that is not generally known. Rule 1.10 then imputes the conflict to the new firm absent a proper screening cure under Rule 1.10(a)(2).

27. B — Rule 1.7(b) sets out the 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.

28. D — Rule 7.1 prohibits not only false statements but also communications that are misleading. Comment [3] explains that testimonials may be misleading if they create unjustified expectations about results or include unsubstantiated comparisons; an appropriate disclaimer is often necessary to make such testimonials permissible.

29. A — Rule 1.3 requires reasonable diligence and zeal, and Comment [1] explains that a lawyer should pursue a matter on behalf of a client despite opposition. The Comment also clarifies that a lawyer is not bound to press for every advantage that might be realized and may reasonably manage workload across multiple client matters.

30. C — Rule 5.3(c) provides that a lawyer is responsible for the conduct of a non-lawyer assistant that would violate the Rules if engaged in by a lawyer when the lawyer is a partner or has comparable managerial authority and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Knowing approval of impermissible conduct attributes the conduct to the supervisor.

31. B — Rule 1.14(a) provides that when a client's capacity to make adequately considered decisions is diminished, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Comment [5] elaborates that representation can ordinarily continue with appropriate accommodations rather than withdrawal or guardianship.

32. D — Rule 1.7(b)(3) makes the representation of opposing parties in the same litigation a non-consentable conflict. Contested divorce litigation places the spouses in direct opposition, and informed consent cannot cure the structural conflict between the parties to the same proceeding.

33. C — Rule 4.4(b)'s only required step is prompt notification of the sender. Comment [2] expressly makes clear that whether the receiving lawyer may continue to read the document, must return it, or must follow other procedures is governed by other law and is outside the scope of the Model Rules.

34. 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 "knows" standard requires actual knowledge — mere rumor or unverified suspicion does not trigger the reporting duty.

35. B — 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 claim or defense on behalf of the lawyer in a controversy between the lawyer and the client. Fee disputes are expressly within the self-defense exception to the confidentiality duty.

36. C — Rule 3.3(a)(2) prohibits a lawyer from knowingly failing to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. The duty of candor requires affirmative disclosure of directly adverse controlling authority even when opposing counsel has overlooked it.

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

38. A — Rule 5.1(a) requires a partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority, to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules. The duty is structural and firm-wide, not contingent on a specific incident.

39. C — 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. The rule expressly authorizes contextual non-legal advice without need for client invitation or consent.

40. B — Rule 1.12(d) creates an exception to the general arbitrator-disqualification rule: an arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party. The exception recognizes that partisan arbitrators serve a fundamentally different role from neutral arbitrators.

41. D — Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice, allowing

time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

42. A — 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 in other respects. A fraud conviction bears directly on honesty and trustworthiness; the rule does not turn on whether the crime is a felony or arose from the lawyer's practice.

43. B — CJC 2.11(A)(2) requires disqualification when the judge knows that a person within the third degree of relationship is acting as a lawyer in the proceeding. Where the relative is at the firm but not personally acting as a lawyer in the proceeding, the specific provision may not strictly apply, but the judge should still evaluate whether her impartiality might reasonably be questioned under the CJC 2.11(A) general principle.

44. C — Rule 1.5(c) requires that a contingent fee agreement be in a writing signed by the client, stating the method by which the fee is to be determined. Oral contingent fee agreements violate the rule independent of any subsequent ability to enforce the fee against the client.

45. A — Rule 5.4(b) prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. Multi-disciplinary partnerships combining legal services with non-legal professional services remain barred under the Model Rule.

46. D — 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.

47. C — Rule 3.5(a) prohibits a lawyer from seeking to influence a judge, juror, prospective juror, or other official by means prohibited by law. Using a personal relationship as a back-channel to convey favorable comments to a sitting juror's spouse is exactly the type of indirect improper means the rule reaches.

48. B — Rule 5.5(c)(4) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which she is admitted, even where the services do not involve any pending or potential tribunal proceeding. The "arise out of or are reasonably related to" requirement is the operative tether to the home jurisdiction.

49. A — Rule 1.2(a) allocates decisional authority: the client decides the objectives of the representation and shall consult with the lawyer about the means, with certain decisions (such as settlement, plea, and waiver of jury trial) belonging to the client. Ordinary tactical decisions about means are typically the lawyer's province, subject to the consultation requirements of Rule 1.4(a)(2).

50. D — Rule 1.8(c) prohibits a lawyer from soliciting any substantial gift from a client, including a testamentary gift, and from preparing on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient is related to the client. Solicitation by the lawyer of her own bequest is squarely barred.

51. B — Rule 1.8(e)(2) permits a lawyer representing an indigent client to pay court costs and expenses of litigation on behalf of the client without any requirement of repayment. The exception facilitates access to justice for clients who cannot otherwise pursue meritorious claims.

52. C — Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Knowingly signing a closing document containing a false representation about title is the paradigm violation regardless of whether the lawyer signs in a representative capacity.

53. D — Rule 3.4(f) permits a lawyer to request that a person refrain from voluntarily giving relevant information to another party if 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 by refraining. The exception applies precisely to current employees of a corporate client.

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

55. C — Rule 7.3(b)(2) permits live person-to-person contact for the purpose of obtaining professional employment when the contact is with a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm. A longtime friend who is also a former client fits both the close personal and prior professional relationship categories.

56. B — Rule 1.11(d) restricts a current government lawyer in two ways: she is subject to general conflicts rules in matters in which she participated personally and substantially while in government, and she shall not negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially.

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

58. D — Rule 3.1 prohibits a lawyer from bringing or defending a proceeding, or asserting an issue in it, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law. Filing a meritless certiorari petition without any basis for review violates the rule even at the client's insistence.

59. B — Rule 3.6(b) lists categorical safe-harbor statements a lawyer may make about a pending matter, including the identity of persons involved (except when prohibited by law) and information about the offense and defense. Identifying the accused by name and describing the offense charged fits squarely within these enumerated permissible statements.

60. C — Rule 1.17 contemplates that the seller of a law practice ceases to engage in the private practice of law, or in the area of practice that has been sold, in the relevant geographic area. Occasional transitional

consultation with the buyer may be permissible if the seller is otherwise complying with the rule, but the seller cannot continue active representation of the transferred clients.