

# PRACTICE EXAM 33: MPRE SIMULATION

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**Time Allotted: 2 hours**

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

1. A lawyer represents a client in a slip-and-fall personal injury case. The lawyer agrees to file a complaint but then takes no substantive action on the case for ten months. The statute of limitations is not yet running, but the lawyer's inaction has resulted in deteriorating witness memories and missing physical evidence at the accident site that would have supported the client's claim.

A. Under Rule 1.3, the lawyer's conduct violates the rule because the rule requires a lawyer to act with reasonable diligence and promptness in representing a client throughout the representation

B. The lawyer is not subject to discipline because the statute of limitations has not yet expired in the case being handled by counsel for the client in the matter

C. The lawyer is not subject to discipline because no specific court deadline has passed during the period of the inaction by the firm in the case

D. The lawyer is not subject to discipline because the client has not formally complained about the pace of the representation to the disciplinary authority

2. A lawyer represents a client in a difficult divorce. During a meeting, the client tells the lawyer in graphic detail that he intends to commit suicide that evening by a specific method. The client is in a deeply depressed state and the lawyer reasonably believes the threat is credible. The client has refused all suggestions to seek mental health support.

A. The lawyer must maintain absolute confidentiality under Rule 1.6 because the client's intended self-harm involves only the client himself in the matter being addressed at the time

B. The lawyer may disclose only after first attempting extensive persuasion of the client to reconsider the planned act of self-harm being threatened by the client

C. The lawyer must withdraw from the representation immediately and let mental health professionals address the situation without any disclosure being made to anyone

D. Under Rule 1.6(b)(1), the lawyer may reveal information relating to the representation to the extent reasonably necessary to prevent reasonably certain death or substantial bodily harm, including self-inflicted harm

3. A lawyer admitted only in State A is assisting a State B-admitted lawyer in preparing for an arbitration that will be conducted in State B. The State A lawyer travels to State B to assist with depositions and witness interviews. The State B lawyer is the lead counsel authorized to appear in the arbitration proceeding.

A. The State A lawyer's activities constitute unauthorized practice of law because she is providing legal services in State B without being admitted to the bar of that jurisdiction

B. Under Rule 5.5(c)(2), the lawyer may provide legal services on a temporary basis in another jurisdiction when the services are in or reasonably related to a pending or potential proceeding before a tribunal, if the lawyer or a person the lawyer is assisting is authorized to appear in the proceeding

C. The State A lawyer's activities are permissible only if she obtains pro hac vice admission in State B for the arbitration proceedings being prepared by the team in the matter

D. The State A lawyer's activities are permissible only if she limits herself to office work and does not travel to State B for any part of the matter being prepared by the firm

4. A lawyer is convicted of a felony involving embezzlement from a non-legal organization where she served as a board member. The embezzlement involved sustained deception and theft of organizational funds over several years. The conviction occurred entirely outside the lawyer's professional practice.

A. The lawyer is not subject to discipline because the embezzlement occurred outside her professional practice and involved no clients in the matter being addressed by the disciplinary authority

B. The lawyer is not subject to discipline if she has fully repaid the embezzled amounts to the affected organization through restitution proceedings in the criminal court

C. Under Rule 8.4(b), the lawyer is subject to discipline because the rule makes it professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects

D. The lawyer is subject to discipline only if the criminal court imposes additional professional consequences as part of the sentence in the matter being adjudicated

5. A lawyer is asked by a long-time client to represent her in pursuing a substantial business opportunity. The lawyer has a personal financial interest in a competing venture that would be directly affected if the client's pursuit of the opportunity succeeds. The lawyer has not disclosed the personal financial interest to the client.

A. The lawyer may continue the representation if she believes her professional judgment will not be affected by the personal financial interest in the matter being handled by counsel at the firm

B. The lawyer may continue the representation if she limits her personal financial interest to less than 10% of the competing venture during the engagement on the matter

C. The lawyer may continue the representation if her personal financial interest is disclosed orally to the client during the next regular meeting between counsel and client

D. Under Rule 1.7(a)(2), a concurrent conflict exists if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer, requiring disclosure and informed consent confirmed in writing if proceeding

6. A lawyer is arguing a motion before the trial court. The lawyer presents her best interpretation of the applicable case law, including a creative reading of a key precedent that supports her client's position. The lawyer does not misrepresent the holdings of the cases, but her interpretation involves a debatable reading that opposing counsel later disputes.

A. The lawyer's conduct does not violate Rule 3.3(a)(1) because creative legal argument and interpretation are permitted under the rule, which prohibits only knowingly false statements of fact or law to the tribunal

B. The lawyer's conduct violates Rule 3.3(a)(1) because any debatable interpretation of legal authority constitutes a false statement to the tribunal under the rule being applied in the matter

C. The lawyer's conduct violates Rule 3.3(a)(1) because lawyers must present only undisputed interpretations of the law to courts in all proceedings being conducted before the tribunal

D. The lawyer's conduct violates Rule 3.3(a)(1) because creative legal arguments require advance court approval before being presented at any hearing in the matter being handled

7. A lawyer receives an electronic document from opposing counsel as part of formal discovery. The document contains metadata that reveals confidential drafting history and editorial comments that opposing counsel did not intend to share. The lawyer recognizes the metadata appears to have been inadvertently included.

- A. The lawyer may freely review and use the metadata because opposing counsel's failure to scrub the document waives any protection that may have applied to the embedded metadata in the matter
- B. The lawyer may freely review the metadata because the document was provided in formal discovery rather than through an inadvertent transmission outside discovery procedures
- C. Under Rule 4.4(b) and related authority including ABA Formal Opinion 06-442, the lawyer should promptly notify opposing counsel about the inadvertently included metadata so that the sender can take protective measures regarding the embedded information
- D. The lawyer must immediately destroy the document without reviewing any of its contents because metadata exposure is per se prohibited under the rules of practice in the jurisdiction

8. A lawyer is handling a personal injury settlement on behalf of her client. The settlement funds are received and the lawyer is required to disburse a portion to the medical lien holder before the client receives her share. The lawyer holds the settlement funds in her client trust account but commingles them with her firm's operating account.

- A. The arrangement is permissible because the trust funds are temporarily held during the brief disbursement period only and will be properly distributed to the parties entitled to them
- B. Under Rule 1.15(a), the lawyer must hold property of clients or third persons separately from the lawyer's own property, including by keeping funds in a separate account designated as a client trust account
- C. The arrangement is permissible because the medical lien holder is a third party not entitled to the same protections as the lawyer's own client under the rules of conduct in the jurisdiction
- D. The arrangement is permissible if the lawyer carefully tracks the disposition of all funds through internal accounting records during the brief commingling period for the matter

9. A lawyer regularly contacts persons known to have substantial wealth and offers her services in estate planning. The lawyer's contacts often occur at country clubs and high-end social events where she identifies potentially wealthy individuals through personal observation. The contacts are not preceded by any expression of interest from the recipients in legal services.

- A. The lawyer's contacts are permissible because high-net-worth individuals are sophisticated and not subject to the vulnerable-person protections of Rule 7.3 in the jurisdiction
- B. The lawyer's contacts are permissible because country clubs and social events are public venues where lawyers commonly network with potential clients for legal services

C. The lawyer's contacts are permissible if she does not pressure the recipients to engage her services and respects any decline of the offer being made by counsel

D. Under Rule 7.3(b), a lawyer shall not solicit professional employment by live person-to-person contact when a significant motive is the lawyer's pecuniary gain, unless the contact is with another lawyer or a person with whom the lawyer has a family, close personal, or prior professional relationship

10. A lawyer has a brief consultation with a prospective client about a potential matter. The lawyer asks only the questions reasonably necessary to determine whether a conflict of interest would prevent the representation. The lawyer learned only limited information necessary for the conflict assessment, not detailed strategic information about the matter.

A. The lawyer is permanently disqualified from representing any party adverse to the prospective client because Rule 1.18 creates a categorical bar regardless of the limited consultation in the matter

B. Under Rule 1.18 Comment [4], the lawyer may limit the consultation to obtain only the information reasonably necessary to determine whether to undertake the representation, with limited information potentially supporting later representation under Rule 1.18(d)(2)'s screening pathway

C. The lawyer must obtain the prospective client's informed consent in writing before representing any other party in any future matter related to the consultation in any way at all

D. The lawyer must avoid the limited consultation entirely because any communication with prospective clients triggers full Rule 1.18(c) restrictions on later representation by counsel

11. A lawyer is representing two clients in unrelated matters that arose at different times. Through circumstances beyond the lawyer's control, the clients become adversaries in a new third matter that arises during the existing representations. The lawyer was not aware of any potential adversity between the clients when she undertook the original representations.

A. Under Rule 1.7 Comments [4]–[5], when an unforeseeable conflict arises after representations have begun, the lawyer must take steps to address the conflict, which may include withdrawal from one or both matters, with allocation considering factors such as the timing of the conflict's emergence and the prejudice to each client

B. The lawyer must withdraw from both representations because thrust-upon conflicts always require dual withdrawal under the rules of conduct in the jurisdiction at the time

C. The lawyer may continue both representations without further analysis because the conflict arose through no fault of her own and Rule 1.7 applies only to conflicts the lawyer knowingly created in the matter

D. The lawyer may continue both representations if she immediately implements internal screens between the two matters within her practice during the conflict situation at the firm

12. A junior associate at a firm is directed by a senior partner to file a motion the associate believes is frivolous and would violate Rule 3.1. The associate's belief is well-founded and the underlying legal positions are clearly without basis. The partner's direction is not a reasonable resolution of an arguable ethical question but a clear violation of the rules.

A. The associate is not subject to discipline because the senior partner's direction overrides individual responsibility for the associate's conduct in the matter being filed with the court

B. The associate is not subject to discipline because junior associates have no independent responsibility for compliance with rules of conduct until they become partners or senior lawyers at the firm

C. Under Rule 5.2(a), a lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person, and Rule 5.2(b)'s safe harbor applies only to arguable ethical questions with reasonable supervisory resolution

D. The associate is not subject to discipline if she raised her concerns with the partner before filing the motion regardless of the partner's response to those concerns being voiced

13. A lawyer admitted in States A, B, and C is appearing in a federal court located in State D. The lawyer is admitted pro hac vice for the matter. During the federal court proceeding, the lawyer engages in conduct that may violate the rules of professional conduct. The federal court applies the State D rules of professional conduct for matters in that court.

A. Only State A's rules apply because that is the lawyer's primary state of admission for legal practice in the field of litigation she conducts

B. Under Rule 8.5(b)(1), for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits shall apply, unless the rules of the tribunal provide otherwise

C. State A, B, and C rules all apply because the lawyer is admitted in those three jurisdictions and engaged in conduct subject to all three at the time

D. Only State D rules apply because that is where the conduct occurred during the litigation in the federal court being heard by the judge in the matter

14. A lawyer represents a client in a complex medical malpractice case that takes two years to resolve and requires consultation with multiple expert witnesses. The lawyer's total fee, billed at her standard hourly

rate, is \$800,000 — substantial in absolute terms but reflecting the complexity, hours required, and successful outcome of the matter for the client.

- A. The fee is per se unreasonable because legal fees should not exceed \$500,000 in any single matter regardless of complexity or hours expended in the case being handled
- B. The fee is unreasonable because it represents an unusually high amount that disproportionately rewards the lawyer for services in the case being handled by counsel
- C. Under Rule 1.5(a), reasonableness is evaluated against multiple factors including time and labor required, novelty and difficulty of questions, customary fees in the locality, amount involved and results obtained, time limitations imposed, experience and ability of the lawyer, and the nature of the fee arrangement
- D. The fee is per se reasonable because the client signed an engagement letter agreeing to the lawyer's hourly rate at the outset of the representation at the time

15. A lawyer's services were used by a former client to perpetrate a fraud against investors. The fraud has been completed and substantial financial harm has been inflicted on the investors. The former client has now moved on to other matters and is not currently engaged in any active fraud.

- A. Under Rule 1.6(b)(3), the lawyer may reveal information relating to the representation to the extent reasonably necessary to prevent, mitigate, or rectify substantial injury to the financial interests of another that has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services
- B. The lawyer cannot disclose any information about the past fraud because Rule 1.6 confidentiality protections continue after the representation has ended without exception in any matter
- C. The lawyer must report the past fraud to law enforcement authorities because Rule 1.6 creates a mandatory reporting duty for completed client fraud schemes in any practice
- D. The lawyer must obtain a court order before making any disclosure about the past fraud because Rule 1.6 confidentiality cannot be overridden without judicial authorization

16. A lawyer is litigating a complex case in federal district court. The court has issued multiple standing orders regarding discovery practices, pretrial filing deadlines, and conduct during trial. The lawyer disagrees with several of the orders and instructs her associates to ignore them whenever the standing orders are inconvenient for the firm's strategy.

- A. The lawyer's conduct is permissible because lawyers retain professional discretion to disregard standing orders they believe are improperly issued in any matter being handled
- B. The lawyer's conduct is permissible because standing orders are general guidance rather than binding court directives requiring compliance by counsel in the matter
- C. The lawyer's conduct is permissible if the standing orders are inconvenient for her client's strategic interests in the litigation being handled by the firm at the time
- D. Under Rule 3.4(c), the lawyer's conduct violates the rule, which 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

17. A lawyer is representing a client in a non-litigation matter. The client has demanded that the lawyer take a position that, while not clearly illegal, is one the lawyer believes is deeply imprudent and likely to cause significant harm to third parties. The lawyer has explained her concerns but the client insists on the position.

- A. The lawyer cannot withdraw because Rule 1.16(b) permits withdrawal only when the client engages in clearly illegal conduct in the matter being handled by the firm at the time
- B. The lawyer cannot withdraw because Rule 1.16 requires the client to formally release the lawyer from the representation before any withdrawal can occur in the matter
- C. Under Rule 1.16(b)(4), the lawyer may withdraw if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement
- D. The lawyer cannot withdraw because the matter is non-litigation in nature and Rule 1.16 applies only to court proceedings being handled by the firm at the time

18. A lawyer represents a client in negotiations for the sale of a business. The lawyer learns that her client has made false statements to the buyer about the business's revenue. The buyer is relying on the false statements in evaluating the purchase. The client refuses the lawyer's request to correct the misrepresentations to the buyer.

- A. Under Rule 4.1(b), the lawyer has a duty to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless prohibited by Rule 1.6
- B. The lawyer has no obligation to correct the client's misrepresentations because Rule 4.1 applies only to the lawyer's own statements rather than to the client's statements in negotiations

C. The lawyer must continue the representation regardless of the misrepresentations because withdrawal would harm the client's interests in the underlying transaction being negotiated

D. The lawyer must report the misrepresentations to the disciplinary authority but has no obligation to disclose them to the buyer in the transaction being negotiated by the parties

19. A lawyer engages in a sustained pattern of personal attacks against opposing counsel in court filings, including accusations of dishonesty, racism, and incompetence. The accusations are unsupported by any factual basis and disrupt orderly proceedings. The court has admonished the lawyer multiple times but the conduct continues.

A. The lawyer's conduct is permissible because vigorous advocacy includes confrontational treatment of opposing counsel in adversarial proceedings being conducted by counsel

B. The lawyer's conduct is permissible because personal attacks are recognized as a legitimate aspect of zealous representation in difficult litigation matters generally in the field

C. The lawyer's conduct is permissible if the underlying substantive positions she is advocating are legally meritorious and support her client's case being handled by the firm

D. Under Rule 8.4(d), the lawyer's conduct may be professional misconduct because the rule defines conduct prejudicial to the administration of justice as misconduct, and unsupported personal attacks disrupting orderly proceedings meet that standard

20. A lawyer has terminated her association with a firm. The firm continues to operate without her. The firm is now considering accepting a new matter that would be adverse to a former firm client of the departed lawyer. The matter is not substantially related to any work the departed lawyer performed for the former client, and no remaining lawyer at the firm has confidential information about the former client.

A. The firm is permanently disqualified from any matter adverse to former clients of the departed lawyer regardless of any other circumstances applying in the matter being considered

B. Under Rule 1.10(b), when a lawyer has terminated an association with a firm, the firm is not prohibited from representing a person with interests materially adverse to those of a former client of the departed lawyer unless the matter is substantially related and any remaining lawyer has confidential information material to the matter

C. The firm may proceed without restriction because the departed lawyer is no longer associated with the firm in any capacity following her departure from the practice at the firm

D. The firm may proceed only if the former client gives oral consent to the firm's continued representation despite the departed lawyer's involvement in the prior matter at the firm

21. A lawyer's case has concluded with a jury verdict. The jury has been formally discharged. The lawyer wishes to contact several jurors to learn how they reached their verdict. One juror has previously expressed a desire not to be contacted about the case. The lawyer is unsure whether to honor that juror's expressed wish.

A. The lawyer may freely contact all jurors after their discharge because they no longer have any special status as jurors after the trial has concluded in the matter

B. The lawyer may freely contact all jurors because court permission is not required for any post-trial juror communication after the proceeding has ended in the matter being handled

C. Under Rule 3.5(c), a lawyer shall not communicate with a juror or prospective juror after discharge of the jury if the communication is prohibited by law or court order, the juror has made known a desire not to communicate, or the communication involves misrepresentation, coercion, duress, or harassment

D. The lawyer may freely contact all jurors because the verdict has been entered and the matter is fully concluded with the jury discharged by the court at the time

22. A lawyer is retained by a corporation to defend its officers in an internal investigation of alleged misconduct. During the representation, the lawyer learns of additional unrelated misconduct by other officers that is potentially significant for the corporation's interests. The lawyer is uncertain whether her Rule 1.13(c) reporting-up duty applies to this newly discovered misconduct.

A. Under Rule 1.13(d), the requirements of paragraph (c) regarding reporting up do not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law or to defend the organization or an officer, employee, or other constituent against a claim arising out of an alleged violation

B. The lawyer must immediately report the additional misconduct to the corporation's board of directors regardless of the scope of her retention for the matter being defended by counsel

C. The lawyer must immediately report the additional misconduct to outside regulators because internal corporate management has not been notified of the discovery in the matter

D. The lawyer has no obligation regarding the additional misconduct because she did not personally observe the underlying conduct described in the corporate communications received by counsel

23. A lawyer has a productive working relationship with a paralegal who handles substantial document review for the firm. The paralegal asks to be paid a percentage of fees collected from clients whose matters she works on, rather than her current salary. The lawyer is considering whether to enter into this fee-sharing arrangement.

- A. The arrangement is permissible because paralegals provide substantial value to clients and may be compensated through percentage arrangements that reflect their contributions to the work
- B. Under Rule 5.4(a), the lawyer cannot enter into the arrangement because the rule prohibits a lawyer from sharing legal fees with a nonlawyer, with limited exceptions not applicable here
- C. The arrangement is permissible if the percentage paid to the paralegal does not exceed 25% of fees collected on the relevant matters being handled by the firm during the year
- D. The arrangement is permissible if the paralegal is also covered by the firm's professional liability insurance during the period of her involvement in the firm at the time

24. A lawyer regularly makes substantial political contributions to elected officials who control appointments to government legal positions. After making contributions, the lawyer's firm is awarded several government legal engagements. The contributions and engagements have a clear temporal relationship suggesting the contributions are made for the purpose of obtaining the engagements.

- A. The conduct is permissible because political contributions are constitutionally protected speech under the First Amendment as applied in the jurisdiction at the time
- B. The conduct is permissible because the lawyer's expectations regarding engagements are her personal expectations rather than formal quid pro quo arrangements with officials
- C. The conduct is permissible if the political contributions comply with applicable campaign finance laws for the specific candidates receiving the contributions in the matter
- D. Under Rule 7.6, a lawyer or law firm shall not accept a government legal engagement or appointment by a judge if the lawyer or firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment

25. A lawyer has been accused by a former client of providing inadequate representation in a previous matter. The former client has filed a disciplinary complaint and is also threatening to sue the lawyer for malpractice. To defend herself, the lawyer needs to disclose certain information from the previous representation that explains her conduct.

- A. The lawyer cannot disclose any information about the prior representation because Rule 1.6 confidentiality protections apply indefinitely after termination of the matter being handled
- B. The lawyer may disclose all information from the prior representation freely because the former client's accusations terminate Rule 1.6 protections for the case file generally during the proceeding

C. Under Rule 1.6(b)(5), the lawyer may reveal information relating to the representation 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, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client

D. The lawyer must obtain a court order before disclosing any information about the prior representation in connection with the defense to the allegations being made against her by the former client

26. A lawyer represents a client in a contract dispute and is likely to be called as a necessary witness on a contested factual issue relating to the disputed contract. The matter does not involve uncontested issues, the value of legal services rendered, or substantial hardship to the client. The lawyer wishes to continue serving as advocate at trial.

A. The lawyer may continue as advocate because lawyers have inherent discretion to manage their roles as advocates and witnesses simultaneously in any matter being conducted

B. The lawyer may continue as advocate if she obtains formal court permission for the dual role after disclosure to opposing counsel of the planned testimony in the matter being prepared

C. The lawyer may continue as advocate if her client signs a written waiver of any conflict resulting from the dual role in advance of trial in the matter being prepared by the firm

D. Under Rule 3.7(a), the lawyer cannot continue as advocate at trial because the rule prohibits a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness, subject only to limited exceptions not applicable here

27. A lawyer formerly worked as in-house counsel for a corporation. While at the corporation, she handled the corporation's regulatory compliance program and acquired confidential information about its business operations. The lawyer has now left the corporation to join a federal agency that investigates corporations for regulatory violations. The agency has assigned her to investigate her former corporate employer.

A. Under Rule 1.9 and Rule 1.11(d), the lawyer's prior corporate representation may create a conflict where she would use confidential information about the former corporate client to its disadvantage in the new government role, requiring careful conflict analysis

B. The lawyer is permanently disqualified from working in any government position involving the corporation regardless of the substantive relationship between her work and the new role at the agency

C. The lawyer may freely work on the government investigation because her prior employment was in a corporate rather than government capacity at the time of the original representation she handled

D. The lawyer may work on the government investigation only after a five-year waiting period from her departure from the corporation by the federal agency in the matter being investigated

28. A lawyer learns reliably that a judge presiding over an active case has been engaging in repeated ex parte communications with one of the parties about the substance of the case. The misconduct involves clear violations of the Code of Judicial Conduct and raises substantial questions about the judge's fitness for office. The lawyer is not personally involved in the matter.

A. The lawyer has no obligation to report because Rule 8.3 imposes reporting obligations only with respect to other lawyers, not judges, in the jurisdiction at this time and place

B. Under Rule 8.3(b), the lawyer must inform the appropriate authority of the judge's misconduct because the conduct raises a substantial question as to the judge's fitness for office

C. The lawyer must conduct her own investigation of the misconduct before any reporting obligation can be triggered in the matter being considered for action by counsel

D. The lawyer must wait for affected parties to formally complain before any reporting obligation is triggered under the rule of conduct in the jurisdiction at this time

29. A lawyer enters into a contingent fee arrangement with a client. The arrangement is reduced to writing and signed by the client. The written agreement states the contingency percentage clearly but does not specify the litigation expenses to be deducted from the recovery or whether expenses are deducted before or after the contingent fee calculation.

A. The fee agreement is sufficient because Rule 1.5(c) requires only the basic contingency percentage to be specified in writing at the outset of the matter being handled by counsel

B. The fee agreement is sufficient because the client signed the agreement with knowledge of standard contingent fee practices in the local market for legal services in the jurisdiction

C. The fee agreement is sufficient because litigation expense details can be addressed in a subsequent written communication after the initial contingency agreement is signed

D. Under Rule 1.5(c), the agreement is deficient because the rule requires the writing to state the method by which the fee is to be determined, including litigation and other expenses to be deducted from the recovery and whether such expenses are to be deducted before or after the contingent fee is calculated

30. A lawyer at a large firm volunteers with a court-annexed nonprofit program providing brief legal advice to indigent clients on a one-time basis through short consultations. During one consultation, the

lawyer provides advice to a client whose interests are arguably adverse to a current firm client in an unrelated matter. The lawyer was not aware of the firm conflict.

- A. The lawyer's conduct constitutes a Rule 1.7 violation that imputes to all firm lawyers regardless of the short-term nature of the consultation in the matter being addressed by counsel
- B. The lawyer's conduct is permissible because court-annexed programs are exempt from all conflict-of-interest rules under Rule 6.5 of the rules being applied in the jurisdiction at the time
- C. Under Rule 6.5(a), the lawyer is subject to Rules 1.7 and 1.9(a) only if she knows the representation involves a conflict, and the conflict is not imputed to other firm lawyers under Rule 6.5(b)
- D. The lawyer must immediately disqualify her firm from the related firm client representation as a result of the brief volunteer consultation in the matter being addressed by counsel

31. A lawyer represents a client who is contemplating an aggressive business strategy that is legal but ethically questionable and likely to damage long-term business relationships. The lawyer's view is that the legal-only analysis the client has requested fails to address important practical considerations that the client should consider in making her decision.

- A. The lawyer must limit her advice strictly to legal questions because clients are entitled to legal-only advice when that is what they request from counsel in the matter being addressed
- B. Under Rule 2.1, 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
- C. The lawyer must refuse to advise the client at all because she finds the contemplated strategy ethically questionable based on her own values regarding the matter being considered
- D. The lawyer must report the contemplated strategy to relevant authorities because it may harm third parties even though it is legally permissible at the time it is being considered

32. A lawyer wants to represent two clients in a transaction. Both clients are willing to give informed consent in writing to the dual representation. A state statute, however, specifically prohibits a single lawyer from representing both parties in the type of transaction the clients are pursuing.

- A. Under Rule 1.7(b)(2), the lawyer cannot proceed because the rule prohibits representation that is prohibited by law, and statutory prohibitions are not subject to client consent override
- B. The lawyer may proceed because both clients have given informed consent in writing as required for waivable conflicts under the rules of conduct in the jurisdiction at the time

C. The lawyer may proceed if she discloses the statutory restriction to both clients before they sign their consent forms in the engagement letter for the matter being addressed by counsel

D. The lawyer may proceed if she can demonstrate compliance with the substantive requirements of the state statute through alternative procedures in the matter at hand being negotiated

33. A lawyer represents a plaintiff against a corporation that is represented by outside litigation counsel. The corporation's general counsel supervises and regularly consults with the outside litigation counsel about the matter. The plaintiff's lawyer wishes to communicate directly with the general counsel about the case without going through the outside counsel.

A. The plaintiff's lawyer may freely communicate with the general counsel because in-house counsel are presumed to be sophisticated and able to handle direct communications in any matter

B. Under Rule 4.2 Comment [7], consent of outside counsel is required for communications with constituents who supervise, direct, or regularly consult with the organization's lawyer concerning the matter, which includes the supervising general counsel

C. The plaintiff's lawyer may communicate with the general counsel if she first informs the general counsel that she represents the adverse plaintiff in the matter being handled by counsel

D. The plaintiff's lawyer may communicate with the general counsel only if she sends a copy of any correspondence to outside counsel immediately afterward in the matter being addressed

34. A lawyer's firm uses an old, unsupported version of email software that lacks current security patches. The firm has not updated its security practices for several years. Cybercriminals exploit the outdated software to access confidential client emails, and substantial client information is compromised as a result of the security failure.

A. The firm is not subject to discipline because the cybercriminals, not the firm, conducted the unauthorized access to client information through external means in the matter

B. The firm is not subject to discipline because lawyers are not technology experts and cannot be expected to maintain current cybersecurity standards in their practices at the time

C. The firm is not subject to discipline if it promptly notifies affected clients of the data breach after discovery of the unauthorized access by the criminals in the matter being addressed

D. Under Rule 1.6(c), the firm's failure to make reasonable efforts to prevent the unauthorized disclosure of client information through outdated security practices may itself be a violation of the rule

35. A lawyer is representing a client in a personal injury matter. During the representation, the lawyer and client begin a mutual romantic relationship that becomes sexual. They had no prior personal relationship before the representation began on the matter. The relationship is consensual but began only after the representation commenced.

A. Under Rule 1.8(j), the lawyer's conduct violates the rule because the rule prohibits sexual relations between lawyer and client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced

B. The lawyer's conduct is permissible because both parties are competent adults who have consented to the relationship voluntarily during the engagement in the matter being addressed

C. The lawyer's conduct is permissible because the personal injury matter is not directly affected by the developing personal relationship between attorney and client in the case being handled

D. The lawyer's conduct is permissible if the client signs an acknowledgment that she understands the personal relationship and the ongoing legal representation being provided by counsel

36. A lawyer represents a criminal defendant. The lawyer makes a public statement to the press identifying the defendant by name, stating the date and time of the next scheduled hearing, and confirming that the defendant denies the charges and intends to plead not guilty at trial.

A. The statement violates Rule 3.6 because identifying the defendant by name in extrajudicial statements is per se prohibited under the rule of conduct in the jurisdiction at this time

B. The statement violates Rule 3.6 because the defendant's denial of guilt before any trial has occurred constitutes prejudicial commentary about the matter being prosecuted by counsel

C. Under Rule 3.6(b)(7), in a criminal case, certain statements are within the safe harbor including the identity of the accused, scheduling information, and certain statements regarding the lawyer's and defendant's intentions

D. The statement violates Rule 3.6 because all extrajudicial commentary by criminal defense lawyers is prohibited during ongoing criminal proceedings in the case being prepared for trial

37. A lawyer represents a client in a complex commercial matter. The client has repeatedly requested updates on the status of the case over a two-month period. The lawyer has not responded to any of the client's communications during this time despite the client's requests being reasonable in scope and timing.

- A. Under Rule 1.4(a)(3)–(4), the lawyer must keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information from the client
- B. The lawyer's conduct is permissible because lawyers have professional discretion to manage client communications based on their caseload demands at the firm during the year being handled
- C. The lawyer's conduct is permissible if she will provide a comprehensive update to the client at the next significant case milestone in the matter being handled by counsel at the firm
- D. The lawyer's conduct is permissible if her work on the client's matter has been progressing well even without the regular communication being requested by the client at the time

38. A managing partner at a small firm has not implemented any written policies regarding conflict-checking, client confidentiality protections, or supervision of associates. Several compliance problems have emerged at the firm as a result of the absence of these structural safeguards.

- A. The managing partner has no specific obligation regarding firm-wide policies because individual lawyers are responsible for their own compliance with the rules of conduct in all matters being handled by the firm
- B. Under Rule 5.1(a), partners and lawyers with comparable managerial authority shall 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 of Professional Conduct
- C. The managing partner's obligation extends only to direct supervisory relationships rather than to broader firm-wide policy implementation under the rules of conduct of the jurisdiction at this time
- D. The managing partner is not subject to discipline because compliance problems must be specifically attributable to her personal conduct rather than to absent management structures at the firm being managed

39. A lawyer represents a client in a civil matter. The client demands that the lawyer prepare documents containing material misrepresentations to be filed with the court. The lawyer has counseled against the misrepresentations but the client insists on the strategy and refuses to proceed without the false statements being included in the filings.

- A. The lawyer may continue the representation if she limits the false statements to immaterial aspects of the filings being prepared by counsel at the firm in the matter being handled
- B. The lawyer may continue the representation if she discloses the false nature of the statements to the court in a separate filing during the proceedings being conducted in the matter

C. The lawyer may continue the representation if she withdraws specific false statements from the filings being prepared while continuing the representation in the matter being handled

D. Under Rule 1.16(a)(1), the lawyer must withdraw from the representation because continuing the representation would result in violation of the rules of professional conduct or other law

40. A lawyer is involved in a personal real estate transaction unrelated to her legal practice. During the transaction, the lawyer makes material misrepresentations to the seller about her financial qualifications for the purchase. The misrepresentations are intended to obtain favorable terms from the seller and do not involve the lawyer's legal practice in any capacity.

A. The lawyer is not subject to discipline because the misrepresentations occurred in her personal life rather than during her professional practice as an attorney at the firm during the year

B. The lawyer is not subject to discipline because the conduct involved a personal real estate transaction rather than any client matter being handled by the firm at the time

C. Under Rule 8.4(c), the lawyer is subject to discipline because the rule prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation regardless of practice context

D. The lawyer is subject to discipline only if the misrepresentations caused identifiable financial harm to the seller in the real estate transaction at the time being concluded by the parties

41. A lawyer represents a plaintiff in a civil case. The lawyer pays a fact witness \$200 to compensate the witness for time spent in pretrial preparation meetings with the lawyer. The payment is reasonable and not contingent on the substance or favorability of the witness's eventual testimony at trial.

A. The lawyer's payment violates Rule 3.4(b) because all payments to witnesses are prohibited regardless of purpose under the rules of conduct in the jurisdiction at this time

B. Under Rule 3.4(b), reasonable compensation for a witness's time and expenses is generally permitted, while payment contingent on the content or favorability of testimony is prohibited

C. The lawyer's payment violates Rule 3.4(b) because witness compensation must be limited to statutory witness fees specified by court rules in the matter being handled by counsel

D. The lawyer's payment violates Rule 3.4(b) because witness expenses must be paid by the court rather than by parties to the litigation being conducted by counsel at the firm

42. A lawyer at Firm A refers a complex specialized matter to a lawyer at Firm B. The lawyers agree to divide the fee, with the Firm A lawyer receiving 40% of the fee and the Firm B lawyer performing all

substantive work. The Firm A lawyer agrees to assume joint responsibility for the matter. They do not communicate the fee-sharing arrangement to the client.

- A. The arrangement is permissible because fee-sharing among lawyers is common practice in complex matters requiring specialized expertise across firms at the time being addressed
- B. The arrangement is permissible because the Firm A lawyer's assumption of joint responsibility satisfies all Rule 1.5(e) requirements regardless of client knowledge of the arrangement at the time
- C. The arrangement is permissible because the client receives the full benefit of the combined expertise of both firms in the matter being handled by them together at the time
- D. Under Rule 1.5(e), a division of fee between lawyers who are not in the same firm requires that the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility, the client agrees to the arrangement in writing, and the total fee is reasonable

43. A lawyer's advertisement features the phrase "Don't Settle for Less — Get the Maximum Recovery Every Time!" The lawyer's actual case results show a range of outcomes including some unfavorable results and some clients who received less than maximum recoveries. The advertisement's claim is therefore not accurate as a general description of the lawyer's actual outcomes.

- A. The advertisement is permissible because marketing claims are recognized as different from formal representations about specific case outcomes for clients in the matter being handled
- B. The advertisement is permissible because the lawyer's general aim is to obtain maximum recoveries for her clients even when specific outcomes vary in particular cases being handled
- C. Under Rule 7.1, the advertisement likely violates the rule because it makes a false or misleading communication about the lawyer or the lawyer's services that cannot be factually substantiated
- D. The advertisement is permissible if the lawyer includes a small disclaimer noting that "individual results may vary" at the bottom of the advertising materials being distributed at the firm

44. A lawyer at a law firm represents Manufacturer A in ongoing trademark licensing matters. A new client, Manufacturer B, approaches the firm seeking representation in litigation directly against Manufacturer A involving contract disputes unrelated to the trademark work the firm currently handles for Manufacturer A.

A. Under Rule 1.7(a)(1), the firm must decline the new representation absent informed consent confirmed in writing from both clients because representation of Manufacturer B would be directly adverse to a current client

B. The firm may accept the new representation because the contract dispute is unrelated to the trademark licensing work being handled for the existing client in the matter being negotiated

C. The firm may accept the new representation if it screens the lawyers working on the Manufacturer A trademark matters from any involvement with the Manufacturer B contract dispute being filed

D. The firm may accept the new representation provided that the original trademark licensing work is in a phase that does not require active attention from counsel at this time being addressed

45. A lawyer represents a defendant in a criminal trial. After the lawyer's client has testified and the jury has begun deliberations, the client confides to the lawyer that key parts of his testimony were false. The proceeding is still ongoing because the jury has not yet reached a verdict. The client refuses to allow disclosure of the perjury.

A. The lawyer must remain silent because the client's instruction not to disclose is binding under Rule 1.6 confidentiality requirements regardless of other considerations in the matter being addressed

B. The lawyer must immediately withdraw all of her client's testimony from the trial by formal motion to strike the testimony being considered by the jury in the matter being addressed

C. The lawyer must continue without disclosure and report the perjury to the disciplinary authority after the verdict is rendered by the jury in the trial being conducted by the parties

D. Under Rule 3.3(a)(3) and (c), if a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity before the proceeding concludes, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal

46. A lawyer leaves the Department of Justice and joins a private firm. While at the Department, she personally and substantially participated in an investigation of a particular pharmaceutical company. The firm wants to represent the pharmaceutical company in matters substantially related to her prior work. The firm timely screens her, apports no part of the fee, and provides written notice to the relevant agency.

A. Under Rule 1.11(b), the firm may continue the representation because the disqualified lawyer is timely screened from any participation in the matter, apportioned no part of the fee, and written notice is promptly given to the appropriate government agency

B. The firm is permanently disqualified from the representation regardless of the screening procedures because Rule 1.11 creates an absolute bar to representation in matters substantially related to former government work

C. The firm may continue the representation only if the lawyer formally terminates her employment with the firm before any work begins on the matter being handled by counsel at the time

D. The firm may continue the representation only if the relevant government agency formally consents in writing to the firm's representation despite the screening procedures being implemented

47. A lawyer offers business consulting services in addition to legal services through her firm. The consulting services are not legal services but the lawyer holds herself out as offering these services in connection with her legal practice. The lawyer does not clearly distinguish the consulting services from her legal services.

A. The law-related services are not subject to the Rules of Professional Conduct because they are not legal services in nature being provided by counsel to clients of the firm

B. The law-related services are not subject to the Rules of Professional Conduct because the consulting work is independent of the legal practice in the firm being conducted by counsel

C. Under Rule 5.7, the Rules of Professional Conduct apply to law-related services if the services are provided in circumstances that are not distinct from the lawyer's provision of legal services, or if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the lawyer-client relationship do not apply

D. The law-related services are not subject to the Rules of Professional Conduct because Rule 5.7 has been deleted from the Model Rules in most jurisdictions across the country at this time

48. A lawyer is preparing a will for an elderly client. The client wants to include a substantial bequest to the lawyer's spouse, who has been the client's longtime caregiver. The lawyer and the spouse are not related to the client in any way. The lawyer would be the drafting attorney for the testamentary document.

A. The lawyer may prepare the will because the spouse's longtime caregiver relationship with the client justifies the bequest based on services rendered to the testator during her lifetime

B. Under Rule 1.8(c), the lawyer shall not prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or recipient is related to the client

C. The lawyer may prepare the will if she discloses the relationship between the lawyer and her spouse to the client at the time the will is being prepared for execution by the testator

D. The lawyer may prepare the will if she obtains a written acknowledgment from the client confirming the client's understanding of the relationship between the lawyer and her spouse

49. A lawyer is taking the deposition of a non-party fact witness who is appearing unrepresented. During the deposition, the unrepresented witness becomes confused about certain legal questions and asks the lawyer for guidance about her legal rights in the proceeding. The witness's interests may conflict with the lawyer's client's interests in the underlying matter.

A. The lawyer may freely advise the unrepresented witness because the witness has voluntarily appeared at the deposition without retaining counsel of her own at the time being addressed

B. The lawyer may advise the unrepresented witness if she discloses that the lawyer represents the deposing party in the underlying matter being prepared by the firm during the year

C. The lawyer may advise the unrepresented witness if she limits her advice to procedural matters rather than substantive legal positions in the deposition being conducted by counsel for the firm

D. Under Rule 4.3, the lawyer shall not give legal advice to the unrepresented witness, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the witness are or have a reasonable possibility of being in conflict with the interests of the client

50. A lawyer's services have been used by her client to set up a complex investment vehicle. The lawyer learns that her client is currently using the investment vehicle to perpetrate a fraud against investors that is reasonably certain to result in substantial financial injury. The lawyer is uncertain whether disclosure is permitted under the confidentiality rules.

A. The lawyer cannot disclose any information about the fraud because Rule 1.6 confidentiality protections are absolute during ongoing representation of any client in the matter being addressed

B. The lawyer must report the fraud to law enforcement authorities immediately because Rule 1.6 creates a mandatory reporting duty for ongoing client fraud schemes in the practice of law

C. Under Rule 1.6(b)(2), a lawyer may reveal information relating to the representation to the extent reasonably necessary to prevent the client from committing a crime or fraud reasonably certain to result in substantial injury to financial interests of another in furtherance of which the client has used the lawyer's services

D. The lawyer must obtain a court order before disclosing any information about the fraud because Rule 1.6 protections cannot be overridden without judicial authorization in any matter at all

51. A lawyer enters into a reciprocal referral arrangement with a financial planner. Under the arrangement, the lawyer refers her clients to the financial planner for financial advice, and the financial planner refers his clients to the lawyer for legal services. No money is exchanged between the lawyer and the financial planner, and the arrangement is non-exclusive between them.

- A. Under Rule 7.2(b)(4), a reciprocal referral agreement with a nonlawyer professional is permissible if the agreement is not exclusive and the client is informed of the existence and nature of the agreement
- B. The arrangement is impermissible because Rule 7.2 categorically prohibits all referral arrangements between lawyers and other professionals regardless of compensation arrangements in the matter
- C. The arrangement is impermissible because the financial planner profits from the referrals from the lawyer regardless of whether money is exchanged between them in the matter being addressed
- D. The arrangement is permissible only if the lawyer and financial planner share office space and maintain a formal joint business operation between them in the same location at the time

52. A lawyer is asked to bring a novel constitutional challenge to a state regulation. Current case law is uniformly against the client's position, but the lawyer identifies colorable arguments for changing the law based on developments in related areas. The lawyer has not previously brought similar challenges.

- A. The lawyer cannot bring the challenge because all current case law is uniformly against the client's position in the matter being considered for litigation by counsel at the firm
- B. Under Rule 3.1, the lawyer may pursue the challenge because the rule permits advocacy that includes a good faith argument for an extension, modification, or reversal of existing law
- C. The lawyer may bring the challenge only if she identifies at least one trial court decision favorable to her client's position from any jurisdiction in the country at the time
- D. The lawyer may bring the challenge only if she obtains advance approval from her state bar's professional responsibility committee for the novel legal theory being advanced in the matter

53. A trial judge is presiding over a busy docket with many cases. In a particular case, the judge abruptly cuts off a party's argument before counsel has finished presenting the position, citing the need to move on to other matters on the calendar. The party has not finished presenting her substantive arguments at the time of the abrupt termination.

- A. Under Rule 2.6(A) of the Code of Judicial Conduct, a judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law

- B. The judge's conduct is permissible because judges have docket-management discretion that includes terminating arguments to maintain calendar control during proceedings being conducted at the time
- C. The judge's conduct is permissible because the party can submit additional written arguments in supplemental briefing after the abrupt termination of oral argument in the matter being addressed
- D. The judge's conduct is permissible if the substantive merits of the party's eventual ruling are not affected by the truncated argument in the matter being decided by the judge

54. A lawyer holds funds in her client trust account that are subject to a dispute between her client and a third party who has provided notice of a claim to a portion of the funds. Both parties claim entitlement to the disputed portion. The undisputed portion clearly belongs to the lawyer's client and is ready for disbursement.

- A. The lawyer must release all funds to her client because she is required to advocate for her client's interests in any dispute with third parties to the matter at hand being addressed
- B. Under Rule 1.15(e), when a lawyer is in possession of property in which two or more persons claim interests, the property shall be kept separate by the lawyer until the dispute is resolved, and the lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute
- C. The lawyer must release all funds to the third party to avoid any appearance of conflict between the lawyer's client and the competing claimant in the matter being addressed by counsel
- D. The lawyer must immediately file an interpleader action in court to resolve the dispute about the funds being held in the client trust account by her firm at the time

55. A lawyer is participating in pretrial proceedings. During the proceedings, the lawyer repeatedly makes disparaging comments about opposing counsel's national origin, mocking her accent and making derogatory remarks about her ethnic background. The conduct continues throughout the proceedings despite objections from opposing counsel.

- A. The lawyer's conduct is permissible because advocacy includes vigorous engagement with opposing counsel about all aspects of the matter being litigated by the firm at the time
- B. The lawyer's conduct is permissible if the substantive aspects of the proceedings are properly addressed despite the personal comments made during the matter being addressed
- C. The lawyer's conduct is permissible if the trial judge has not formally sanctioned her for the comments during the proceedings being conducted in the matter being addressed by counsel

D. Under Rule 8.4(g), the lawyer's conduct may be professional misconduct because the rule defines as misconduct engaging in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, or other protected characteristics in conduct related to the practice of law

56. A lawyer's representation of a client has ended. The client requests the return of her case file, including documents the lawyer received from third parties, the lawyer's notes, and certain attorney work-product materials. The lawyer has been fully paid for all services rendered during the engagement.

A. The lawyer may retain all materials in the file because they belong to the lawyer as her professional work product in the matter being addressed by counsel for the firm

B. The lawyer must retain the original documents until any potential malpractice claim period has expired under the applicable statute of limitations in the jurisdiction being addressed

C. Under Rule 1.16(d), upon termination of representation, a lawyer shall surrender papers and property to which the client is entitled, with the scope of "client file" varying by jurisdiction

D. The lawyer may keep all materials until the client signs a release of any potential malpractice claims arising from the prior representation in the matter being addressed at the time

57. A lawyer is litigating against another lawyer who is her sister. Both lawyers represent opposing parties in a contested civil dispute. The familial relationship between the lawyers is not generally known to the clients on either side. The two sisters have not discussed the case between themselves but the relationship continues.

A. The relationship creates no conflict because the sisters do not work at the same firm and have not discussed the case between themselves during the matter being handled by counsel

B. Under Rule 1.7 Comment [11], the close familial relationship may create a personal-interest conflict for each lawyer that requires disclosure to and informed consent of each lawyer's own client

C. The relationship requires the lawyers to withdraw from their representations because familial relationships create per se non-consentable conflicts under the rules of conduct in the jurisdiction

D. The relationship requires disclosure to opposing counsel but not to the lawyer's own client because the client benefits from the familial connection between counsel in the matter

58. A trial judge appoints a lawyer to represent an unpopular criminal defendant in a controversial case. The lawyer has no scheduling conflict and no conflict of interest with the defendant. The lawyer wants to

decline the appointment solely because she fears the case will damage her firm's reputation in the community.

A. The lawyer may decline the appointment because lawyers retain professional autonomy over their client list regardless of court appointments in any matter being addressed by the court

B. The lawyer may decline the appointment by providing the court with a brief written explanation of her reputational concerns at the time of the original appointment by the judge

C. Under Rule 6.2, a lawyer shall not seek to avoid appointment by a tribunal except for good cause, such as a violation of the Rules of Professional Conduct that would result, an unreasonable financial burden, or a client or cause so repugnant to the lawyer as to impair the client-lawyer relationship — reputational concerns alone are insufficient grounds

D. The lawyer may decline the appointment because Rule 6.2 permits declining whenever a lawyer believes representation will harm her professional reputation in any way at all

59. A lawyer begins representing a new client in a complex matter. She charges her standard hourly rate of \$400. She does not provide the client with any written communication about the fee structure at the outset of the representation. Three months into the representation, the lawyer sends the client her first detailed invoice showing the fee structure for the work being performed.

A. Under Rule 1.5(b), the lawyer's practice may violate the rule because the basis or rate of the fee should be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation

B. The lawyer's practice is permissible because Rule 1.5(b) does not impose any specific timing requirements for fee communications to clients about the structure of fees in any matter at all

C. The lawyer's practice is permissible because three months falls within the "reasonable time" that Rule 1.5(b) recognizes for fee communications generally in the practice of law at the time

D. The lawyer's practice is permissible because the invoice provides the actual fee details that are most important to the client during the engagement at the firm at the time being addressed

60. A trial judge is approached by a personal friend who needs informal legal advice about a complex business dispute. The judge has not been assigned the friend's case and the friend's matter is not pending before her court. The friend is asking for the judge's legal advice but not formal representation in the matter.

- A. The judge may provide informal legal advice to her personal friend because the matter is not pending before her court and the assistance is informal in nature at the time being requested
- B. The judge may provide informal legal advice if she does not charge any fee for the assistance provided to her personal friend during the discussion being held between them
- C. The judge may provide informal legal advice provided the friend acknowledges that the advice does not create a formal attorney-client relationship between them at the time being addressed
- D. Under Rule 3.10 of the Code of Judicial Conduct, a judge shall not practice law, with limited exceptions for the judge acting pro se and giving uncompensated legal advice to certain family members

## ANSWER KEY – PRACTICE EXAM 33 (MPRE)

- 1. A** — Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. The diligence duty operates throughout the representation and is not limited to deadline-driven moments such as statute-of-limitations periods or court filings. Ten months of inaction allowing evidence to deteriorate breaches the rule regardless of formal deadlines or client complaints.
- 2. D** — Rule 1.6(b)(1) permits a lawyer to reveal information relating to the representation to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm. Comments to the rule and ABA guidance confirm that the exception reaches self-inflicted harm such as imminent suicide. Disclosure is permissive, not mandatory, and the credibility of the threat and specificity of the plan support the reasonable-certainty standard.
- 3. B** — Rule 5.5(c)(2) permits temporary practice in another jurisdiction when the services are in or reasonably related to a pending or potential proceeding before a tribunal, if the lawyer or a person the lawyer is assisting is authorized to appear in that proceeding. Under Rule 1.0(m), a binding arbitration proceeding is a tribunal. The lead lawyer's authorization in the State B arbitration brings the assisting State A lawyer within the safe harbor.
- 4. C** — Rule 8.4(b) makes it professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Embezzlement involving sustained deception falls squarely within the dishonesty-related conduct that triggers the rule. The professional-versus-personal distinction does not shield the lawyer when the underlying crime implicates the integrity-related qualities the rule protects.
- 5. D** — Rule 1.7(a)(2) provides that a concurrent conflict of interest exists if there is a significant risk that the representation of a client will be materially limited by a personal interest of the lawyer. A direct financial stake in a competing venture creates that risk. Continuation requires disclosure, the lawyer's reasonable belief that competent representation can be provided, and informed consent confirmed in writing.
- 6. A** — Rule 3.3(a)(1) prohibits a lawyer from knowingly making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal by

the lawyer. Creative interpretation of precedent that does not misstate the holdings is advocacy, not falsity. Debatable readings of authority are permitted; the rule targets knowing misstatement, not contested interpretation.

**7. C** — Rule 4.4(b) requires a lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or ESI was inadvertently sent to promptly notify the sender. ABA Formal Opinion 06-442 specifically applies the notification principle to inadvertently included metadata. Notification preserves the sender's opportunity to assert protections such as privilege or claw-back.

**8. B** — Rule 1.15(a) requires a lawyer to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a client trust account. Commingling violates the rule regardless of the lawyer's intent to disburse promptly or to track funds through accounting records.

**9. D** — Rule 7.3(b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive is the lawyer's pecuniary gain, with exceptions only for other lawyers and persons with whom the lawyer has a family, close personal, or prior professional relationship. Identifying potentially wealthy strangers at social events does not fit any exception. Sophistication of the targets does not displace the rule's protections against in-person solicitation.

**10. B** — Rule 1.18 Comment [4] specifically encourages limiting the prospective-client consultation to information reasonably necessary to determine whether to undertake the representation. Where the lawyer obtained only such limited information, Rule 1.18(d)(2) permits later adverse representation through a screening and notice pathway. The rule balances prospective-client protection against practical conflict-checking needs.

**11. A** — Rule 1.7 Comments [4] and [5] address conflicts arising after a representation has begun. The lawyer must act to address the conflict, with options that may include withdrawal from one or both matters. Allocation depends on factors such as the timing and source of the conflict, the prejudice each client would suffer, and the lawyer's involvement in each matter.

**12. C** — Rule 5.2(a) provides that a lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person. The Rule 5.2(b) safe harbor protects subordinates only for conduct in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. A clearly frivolous filing is not an arguable question, so the safe harbor does not apply.

**13. B** — Rule 8.5(b)(1) provides that for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits shall apply, unless the rules of the tribunal provide otherwise. The federal court in State D applies State D's rules. Multiple state admissions do not displace the tribunal-based choice-of-law rule for litigation conduct.

**14. C** — Rule 1.5(a) sets a reasonableness standard evaluated against multiple factors including time and labor required, novelty and difficulty, customary fees in the locality, amount involved and results obtained, time limitations, the lawyer's experience, and the nature of the fee arrangement. Absolute fee amount is

not determinative. A large fee proportionate to complex, lengthy work with a successful outcome can satisfy the multi-factor analysis.

**15. A** — Rule 1.6(b)(3) permits a lawyer to reveal information relating to the representation to the extent reasonably necessary to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services. Both the lawyer's-services prong and the substantial-injury prong are met. Disclosure is permissive, not mandatory, and does not require a court order.

**16. D** — 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. Standing orders are obligations of the tribunal within the rule's scope. Instructing associates to ignore inconvenient orders without an open challenge to their validity violates the rule.

**17. C** — Rule 1.16(b)(4) permits withdrawal when the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. The rule does not require that the client's position be illegal. A deeply imprudent, harm-causing position the lawyer fundamentally opposes meets the threshold for permissive withdrawal.

**18. A** — Rule 4.1(b) provides that in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6. The duty extends to client misrepresentations the lawyer would otherwise be assisting by silence. Withdrawal may not alone be sufficient if disaffirmance and noisy withdrawal are needed under the rule's framework.

**19. D** — Rule 8.4(d) makes it professional misconduct to engage in conduct that is prejudicial to the administration of justice. A sustained pattern of unsupported personal attacks disrupting orderly proceedings, continuing despite judicial admonitions, meets the prejudicial-to-administration standard. Substantive merit on underlying positions does not license collateral conduct that obstructs orderly process.

**20. B** — Rule 1.10(b) provides that when a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter. Both conditions must be met to disqualify the firm. Absence of substantial relationship and absence of remaining-lawyer confidences both fail to support disqualification here.

**21. C** — Rule 3.5(c) prohibits post-discharge juror communication if the communication is prohibited by law or court order, the juror has made known to the lawyer a desire not to communicate, or the communication involves misrepresentation, coercion, duress, or harassment. A juror's expressed desire not to be contacted is one of the three independent triggers. Post-discharge timing does not override the juror's expressed wish.

**22. A** — Rule 1.13(d) provides that the requirements of paragraph (c) regarding reporting up shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law. The internal-investigation context falls within the express carve-out. The narrow exception protects the integrity of investigation and defense functions.

**23. B** — Rule 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer, subject to narrow exceptions for death benefits to estates, payments to nonlawyer employees as part of a compensation or retirement plan based on a profit-sharing arrangement, sharing court-awarded legal fees with a qualified nonprofit organization, and certain other limited circumstances. Direct percentage-of-fee compensation to a paralegal for individual matters does not fit any exception. The rule preserves the lawyer's independent professional judgment.

**24. D** — Rule 7.6 prohibits a lawyer or law firm from accepting a government legal engagement or appointment by a judge if the lawyer or firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment. Constitutional contribution rights and compliance with campaign finance laws do not save the conduct when the purpose triggers the rule. The temporal pattern of contributions followed by engagements supports a finding of prohibited purpose.

**25. C** — Rule 1.6(b)(5) permits a lawyer to reveal information relating to the representation 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, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client. Both the disciplinary complaint and the threatened malpractice claim trigger the exception. Disclosure is limited to what is reasonably necessary for the defense.

**26. D** — Rule 3.7(a) prohibits a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness, with limited exceptions for uncontested issues, the value of legal services rendered, and substantial hardship to the client. The scenario expressly forecloses all three exceptions. Client consent or court permission does not displace the rule when no exception applies.

**27. A** — Rule 1.9 prohibits a lawyer who has formerly represented a client from thereafter representing another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client. Rule 1.11(d) governs current government employees who previously represented private clients. Government investigation of the former corporate client implicates the duty not to use confidential information against the former client to the former client's disadvantage.

**28. B** — Rule 8.3(b) provides that a lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority. Repeated ex parte communications with a party about substantive case issues clearly raise such a question. Personal involvement in the underlying case is not required to trigger the reporting duty.

**29. D** — Rule 1.5(c) provides that a contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Failure to address the expense components renders the writing deficient. The rule's specificity protects the client from unclear fee calculation.

**30. C** — Rule 6.5(a) provides that a lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest. Rule 6.5(b) modifies imputation so other firm lawyers are not automatically disqualified. The rule facilitates volunteer participation in short-term programs.

**31. B** — Rule 2.1 provides that in representing a client, a lawyer shall exercise independent professional judgment and render candid advice, and 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 lawyer's role includes broader practical counsel where appropriate. The rule expressly endorses candid advice beyond narrow legal analysis.

**32. A** — Rule 1.7(b)(2) provides that notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client only if the representation is not prohibited by law. A statutory prohibition on dual representation in the relevant transaction type forecloses the representation regardless of client consent. The rule recognizes that statutory bars operate independently of conflict consent procedures.

**33. B** — Rule 4.2 Comment [7] provides that in the case of a represented organization, the no-contact rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter, has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. A supervising general counsel falls within the protected category. Outside counsel's consent is required for direct contact.

**34. D** — Rule 1.6(c) provides that a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Comment [18] addresses reasonable security measures, and ABA Formal Opinion 477R and related authority emphasize the lawyer's affirmative duty regarding cybersecurity. Outdated, unsupported software failing to receive current security patches likely falls below the reasonable-efforts threshold.

**35. A** — Rule 1.8(j) provides that a lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. The rule operates as a bright-line prohibition during the representation. Consent, lack of effect on the matter, and written acknowledgments do not override the bright-line prohibition.

**36. C** — Rule 3.6(b)(7) provides a safe harbor permitting statements in a criminal case regarding the identity, residence, occupation, and family status of the accused, information necessary to aid in

apprehension if the accused has not been apprehended, the fact, time, and place of arrest, and the identity of investigating and arresting officers or agencies and the length of the investigation, in addition to other enumerated categories. Identity, schedule, and the defendant's plea intention fit within the recognized safe-harbor categories. The rule preserves space for routine procedural communications.

**37. A** — Rule 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the status of the matter, and Rule 1.4(a)(4) requires the lawyer to promptly comply with reasonable requests for information. Two months of unresponsiveness to reasonable client requests violates both subsections. Workload considerations and silent case progress do not satisfy the communication obligations.

**38. B** — 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 in a law firm, 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 of Professional Conduct. The absence of structural policies on conflicts, confidentiality, and supervision falls below the reasonable-efforts threshold. The duty is structural and proactive.

**39. D** — Rule 1.16(a)(1) requires a lawyer to withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law. Filing documents containing material misrepresentations with the court violates Rule 3.3(a)(1) and likely other law. The mandatory withdrawal duty is triggered when continued representation would compel rule violations.

**40. C** — Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The rule applies regardless of whether the conduct occurs in the lawyer's professional practice or personal life. Material misrepresentations in a personal real estate transaction implicate the lawyer's honesty and fitness as a member of the bar.

**41. B** — Rule 3.4(b) prohibits a lawyer from falsifying evidence, counseling or assisting a witness to testify falsely, or offering an inducement to a witness that is prohibited by law. Comment [3] and supporting authority confirm that reasonable compensation for a witness's time and expenses is generally permitted, while payment contingent on testimony content or favorability is prohibited. The non-contingent, reasonable-amount nature of the payment places it outside the prohibition.

**42. D** — Rule 1.5(e) provides that a division of a fee between lawyers who are not in the same firm may be made only if the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation, the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing, and the total fee is reasonable. All three requirements must be met. Failure to communicate the arrangement to the client and obtain written client agreement defeats the arrangement.

**43. C** — Rule 7.1 prohibits a lawyer from making a false or misleading communication about the lawyer or the lawyer's services. An unconditional promise of "maximum recovery every time" cannot be factually substantiated against actual case results that include unfavorable outcomes. Generic disclaimers do not cure the underlying misleading nature of an unsubstantiated absolute promise.

**44. A** — Rule 1.7(a)(1) provides that a concurrent conflict of interest exists if the representation of one client will be directly adverse to another client. Representing Manufacturer B directly against current

client Manufacturer A creates direct adversity regardless of subject-matter overlap with the firm's existing trademark work. Continuation requires informed consent confirmed in writing from both clients under Rule 1.7(b), if the conflict is consentable.

**45. D** — Rule 3.3(a)(3) provides that a lawyer shall not knowingly offer evidence that the lawyer knows to be false, and if the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. Rule 3.3(c) provides that the duties continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. Jury deliberation precedes the proceeding's conclusion, so the duty remains active.

**46. A** — Rule 1.11(b) provides that when a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom, and written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule. All three elements are satisfied here. Screening, fee apportionment, and notice together cure the imputation.

**47. C** — Rule 5.7 provides that a lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services if the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients, or in other circumstances by an entity controlled by the lawyer individually or with others, if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services of the entity are not legal services and that the protections of the client-lawyer relationship do not apply. The rule guards against client confusion about the nature of the services and the available protections.

**48. B** — Rule 1.8(c) provides that a lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare 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 of the gift is related to the client. "Related person" includes the lawyer's spouse. Caregiver relationships do not satisfy the relatedness requirement under the rule.

**49. D** — Rule 4.3 provides that in dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client. Witness interests at deposition often conflict with the deposing party's client. The only permitted advice is to secure independent counsel.

**50. C** — 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 that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services. Both prongs are met where the lawyer's transactional work is being used in ongoing investor fraud. Disclosure is discretionary and does not require a court order or law-enforcement report.

**51. A** — Rule 7.2(b)(4) permits a lawyer to refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if the reciprocal referral agreement is not exclusive and the client is informed of the existence and nature of the agreement. Non-exclusivity and client disclosure are the two operative requirements. Money exchange is not required, and the rule does not require shared office space or joint operations.

**52. B** — Rule 3.1 provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, 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. Novel constitutional challenges with colorable arguments based on developments in related areas fit the good-faith-argument allowance. Uniformity of existing adverse authority does not bar good-faith challenges to that authority.

**53. A** — Rule 2.6(A) of the Code of Judicial Conduct provides that a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Docket-management discretion does not override the right to be heard. Truncating arguments before counsel has finished presenting substantive positions implicates the rule even when written supplementation is theoretically available.

**54. B** — Rule 1.15(e) provides that when in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved, and the lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute. The rule requires distribution of the undisputed portion and segregation of the disputed portion. Neither full release to the client nor full release to the third party satisfies the rule.

**55. D** — Rule 8.4(g) provides that it is professional misconduct for a lawyer to engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status in conduct related to the practice of law. Repeated mockery of national origin and ethnicity during legal proceedings falls squarely within the rule's prohibition. Substantive case adequacy and the absence of judicial sanctions do not authorize the harassment.

**56. C** — Rule 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, 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. Jurisdictions differ on the scope of "client file," but the surrender obligation is real and substantial. Full payment does not entitle the lawyer to withhold materials the client is entitled to receive.

**57. B** — Rule 1.7 Comment [11] addresses lawyer relationships, providing that when lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. Disclosure to and informed consent of each lawyer's own client is required. Same-firm employment is not a prerequisite for the personal-interest analysis.

**58. C** — Rule 6.2 provides that a lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as representing the client is likely to result in violation of the Rules of Professional Conduct or other law, representing the client is likely to result in an unreasonable financial burden on the lawyer, or the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. Reputational concern in the community is not among the recognized good-cause grounds. The rule preserves the bar's role in providing representation in unpopular matters.

**59. A** — Rule 1.5(b) provides that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. A three-month delay where the first written fee communication arrives only as an invoice typically exceeds a reasonable time. The rule's communication requirement protects the client at the outset of the engagement.

**60. D** — Rule 3.10 of the Code of Judicial Conduct provides that a judge shall not practice law, with limited exceptions for the judge acting pro se and giving uncompensated legal advice to and drafting or reviewing documents for a member of the judge's family. Personal friends do not fall within the family exception. The prohibition applies even when the friend's matter is not pending before the judge's court and the assistance is informal.