

PRACTICE EXAM 34: MPRE SIMULATION

Time Allotted: 2 hours

Format: Multiple choice — select the best answer

1. A lawyer obtains her client's informed consent to a conflict via a recorded video call. The consent terms are clearly stated and unambiguously accepted. Does the recording satisfy Rule 1.0's "writing" requirement when the rules require a writing?

A. No, because Rule 1.0 limits "writing" to handwritten or printed documents executed in pen-and-ink form regardless of the substance of the consent provided through the video call by the client to the lawyer in the matter

B. No, because Rule 1.0 requires every consent confirmation to be in a notarized written document signed by the client before any reliance by the lawyer on the consent in the matter being handled by counsel currently

C. Rule 1.0(n) defines "writing" to denote a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications; a recorded video call generally qualifies

D. Yes, but only if the recording is reduced to a printed transcript and signed by the client before the lawyer may rely on the consent in connection with the matter being handled by counsel at the time of the engagement

2. A lawyer accepts a complex new matter that requires substantial preparation. The matter is set for trial in nine months. The lawyer plans her preparation schedule accordingly. What does Rule 1.1 require regarding preparation?

A. Rule 1.1 Comment [5] explains that competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners; adequate preparation is part of competence

B. Rule 1.1 imposes no specific preparation requirement on the lawyer because preparation is governed exclusively by Rule 1.3 diligence concerns rather than by Rule 1.1 competence concerns in any matter being handled by counsel currently

C. Rule 1.1 requires the lawyer to complete all substantive preparation within thirty days of accepting the engagement regardless of the trial date in the underlying matter being handled by counsel at the time of the engagement

D. Rule 1.1 requires the lawyer to obtain the trial court's prior approval of her preparation schedule before any substantive work may be undertaken in connection with the matter being handled by counsel at the time at issue

3. A lawyer's client tells her that he plans to commit perjury at his upcoming deposition. The client asks the lawyer for advice on how to make the false testimony sound believable. May the lawyer counsel the client?

A. Yes, provided the lawyer also advises the client that he may face criminal exposure for the perjury he is planning to commit at the deposition in connection with the matter being prosecuted by the parties currently in court

B. Yes, because Rule 1.2(d) permits a lawyer to provide any advice the client requests regardless of the substantive purpose of the advice being given by the lawyer in the matter being prosecuted by the parties currently

C. Yes, but only if the client signs a written acknowledgment that he understands the legal risks of perjury before any substantive advice may be provided by the lawyer in connection with the planned testimony at the deposition

D. No, Rule 1.2(d) prohibits a lawyer from counseling a client to engage, or assisting a client, in conduct that the lawyer knows is criminal or fraudulent; advising a client on how to commit perjury falls squarely within this prohibition

4. A sole practitioner has heavy workload and significant personal responsibilities. She has handled her docket capably for many years. Comment [2] to Rule 1.3 addresses what?

A. The Comment requires sole practitioners to take on no more than three matters at a time regardless of the substantive complexity of the matters being handled by the lawyer in her practice at any time during the engagements

B. Comment [2] notes that a lawyer's workload must be controlled so that each matter can be handled competently, and that the perception of neglect can result from the procrastination of even excellent lawyers

C. The Comment authorizes sole practitioners to abandon matters when workload becomes excessive regardless of the impact on existing clients of the lawyer's practice in connection with the matters being handled currently

D. The Comment requires sole practitioners to associate with a larger firm whenever the workload exceeds a specified threshold regardless of the substantive complexity of the matters being handled by the lawyer at the time

5. A lawyer is asked by a client to explain the legal consequences of a complex transaction. The client has limited education and may not fully understand technical legal terminology. What does Rule 1.4(b) require?

A. The lawyer must communicate using only the most technical legal terminology to ensure the precise legal meaning is conveyed to the client regardless of the client's level of education in the matter being handled by counsel currently

B. The lawyer must obtain the client's written acknowledgment that she understands the legal concepts before any substantive advice may be provided by the lawyer in connection with the matter being handled at the time currently

C. Rule 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; this requires the lawyer to adapt her explanation to the client's understanding

D. The lawyer must refer the client to outside counsel with specialized expertise in client communication before any substantive advice may be provided in connection with the matter being handled by counsel at the time currently

6. A lawyer agrees to represent a new client and intends to charge an hourly fee. The lawyer has not previously represented the client. What does Rule 1.5(b) require regarding fee communication?

A. 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

B. The fee arrangement must be reduced to a notarized written contract before any substantive legal work may be undertaken on behalf of the new client in connection with the matter being handled by counsel at the time

C. The fee arrangement need not be communicated to the client at all because hourly billing is the standard practice in the profession and clients are presumed to understand its terms in any matter being handled at the time

D. The fee arrangement must be approved by the bar disciplinary authority before any substantive legal work may be undertaken on behalf of the new client in connection with the matter being handled by counsel currently

7. A lawyer wishes to refer a client to another lawyer at a different firm and to share in the resulting fee. The clients consent and the total fee is reasonable. What additional requirement does Rule 1.5(e) impose?

A. The fee may be divided without any additional requirement because the clients have given informed consent to the referral and the total fee is reasonable in the matter being handled by the lawyer at the time currently

B. The division must be in proportion to the services performed by each lawyer or each lawyer must assume joint responsibility for the representation; the client must agree to the arrangement, including the share each lawyer will receive, in a writing; and the total fee must be reasonable

C. The lawyer must first obtain a court order approving the proposed fee-sharing arrangement before referring the client to the other lawyer at the different firm in connection with the matter being handled at the time currently

D. The lawyer must keep the referral fee in a separate trust account for twelve months before any distribution to the referring lawyer in connection with the matter being handled by the referring lawyer at the time of the referral

8. A lawyer reveals confidential client information to her paralegal so that the paralegal can prepare a draft motion. The client has not specifically authorized this disclosure. Has the lawyer violated Rule 1.6?

A. Yes, because Rule 1.6 requires express written consent for every disclosure of client information regardless of the purpose of the disclosure in the matter being handled by counsel at the time currently in the matter

B. Yes, unless the lawyer first obtains the trial court's express approval for the proposed disclosure to the paralegal in connection with the matter being handled by counsel in court at the time of the disclosure

C. Yes, but only if the paralegal subsequently discloses the information to a third party without the client's consent in connection with the matter being handled by counsel at the time of the disclosure currently

D. No, Rule 1.6(a) impliedly authorizes a lawyer to make disclosures that are necessary to carry out the representation; disclosure to firm personnel who need the information to assist in the representation is the paradigm of implied authorization

9. A lawyer is asked to file a lawsuit against a current client of her firm. The proposed lawsuit involves a different matter unrelated to the lawyer's prior representation of the client. May the lawyer accept the new engagement?

A. No, Rule 1.7(a)(1) provides that a concurrent conflict exists when the representation of one client will be directly adverse to another client; filing suit against a current client is directly adverse regardless of the unrelated subject matter

B. Yes, because the new matter is unrelated to the lawyer's prior representation of the current client and Rule 1.7 applies only to substantially related matters being handled by the firm in the engagement currently

C. Yes, provided the lawyer first formally withdraws from her ongoing representation of the current client before accepting the new adverse engagement against the same client in the matter at issue currently

D. Yes, but only if the firm assigns the new matter to a different attorney within the firm who has not previously worked on the existing client's matters in connection with the engagement at the time

10. A lawyer learns confidential information about her client's business strategy during the representation. The lawyer is also a personal investor in a competing business that could profit from the information. May the lawyer use the information for her personal investment?

A. Yes, because confidential information becomes the lawyer's own knowledge once she learns it during the representation in connection with any matter being handled for the client at the time of the engagement currently in the matter

B. Yes, provided the lawyer also provides the same investment opportunity to her client at no cost to the client in connection with the matter being handled by counsel at the time of the engagement on the matter

C. No, Rule 1.8(b) prohibits a lawyer from using information relating to the representation of a client to the disadvantage of the client unless the client gives informed consent; using confidential business strategy for personal investment in a competitor is precisely that disadvantage

D. No, unless the lawyer first provides written notice to the client of her intention to use the information and the client fails to object within thirty days of receiving the notice in the matter being handled currently

11. A lawyer's client cannot afford the lawyer's fees. The client's wealthy uncle agrees to pay the legal bills directly. The uncle expects to receive updates on the matter and to provide input on strategic decisions. What does Rule 1.8(f) require?

A. The lawyer must decline the third-party payment because Rule 1.8(f) categorically prohibits any third-party payment of legal fees regardless of the parties' wishes in the matter being handled by counsel at the time of the engagement

B. The lawyer may accept payment from one other than the client only if the client gives informed consent, there is no interference with the lawyer's independence of professional judgment or the client-lawyer relationship, and information relating to the representation is protected as required by Rule 1.6

C. The lawyer must obtain the trial court's express approval of the third-party payment arrangement before accepting any payment from the uncle in connection with the matter being handled by counsel at the time of the payment

D. The lawyer must waive her professional duty of confidentiality to the uncle in exchange for accepting payment of the legal bills from him in connection with the matter being handled by counsel at the time of the engagement currently

12. A lawyer represents two co-plaintiffs in a personal injury action. The defendant offers an aggregate settlement of \$500,000 to be divided between the two plaintiffs. The lawyer needs to obtain their consent. What does Rule 1.8(g) require?

A. The lawyer may accept the aggregate settlement on behalf of both plaintiffs without separate consent because she represents both clients and they have authorized her to negotiate the matter in court at the time of the negotiation

B. The lawyer must accept the aggregate settlement and divide the proceeds equally between the two clients regardless of the parties' wishes in the matter being prosecuted by the lawyer in court at the time of the settlement

C. The lawyer may accept the aggregate settlement provided each client subsequently approves her allocation of the settlement proceeds between the two clients in connection with the matter being prosecuted at the time of the settlement

D. A lawyer who represents two or more clients shall not participate in making an aggregate settlement unless each client gives informed consent in a writing signed by the client; the lawyer's disclosure must include the existence and nature of all claims and the participation of each person in the settlement

13. A lawyer is negotiating an initial engagement with a new client. The lawyer wishes to include in the engagement letter a provision prospectively limiting her malpractice liability to the amount of fees actually paid. May the lawyer include the provision?

A. Rule 1.8(h)(1) prohibits a lawyer from making an agreement prospectively limiting her liability to a client for malpractice unless the client is independently represented in making the agreement; absent such independent representation, the provision is impermissible

B. Yes, because the client is signing the engagement letter voluntarily and Rule 1.8 permits any prospective liability limitation the parties agree to in writing at the outset of the matter being handled by counsel currently

C. Yes, provided the lawyer prominently discloses the liability limitation in bold type in the engagement letter and the client initials the disclosure before signing the agreement in connection with the matter being handled

D. Yes, but only if the limitation does not exceed three times the fees actually paid by the client to the lawyer at the conclusion of the matter being handled by counsel in connection with the engagement at issue currently

14. A lawyer represents a client in a complex commercial dispute. The lawyer wishes to acquire a security interest in the client's business to secure the lawyer's fee. The business is the subject matter of the litigation. May the lawyer acquire the security interest?

A. Yes, because security interests for legal fees are permitted under all circumstances regardless of the relationship between the security and the subject matter of the litigation at issue in the matter being handled currently

B. Yes, provided the lawyer first obtains the trial court's express approval of the proposed security interest before acquiring any rights in the client's business in connection with the matter being prosecuted at the time

C. Rule 1.8(i) prohibits a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation she is conducting for a client, with limited exceptions for fee liens authorized by law and contingent fees in civil cases

D. Yes, but only if the lawyer's security interest is recorded in the public records office of the relevant jurisdiction before the lawyer may rely on the security interest in connection with the matter being handled currently

15. A lawyer begins a sexual relationship with a divorce client. The relationship did not exist before the representation began. Has the lawyer violated the Rules?

A. No, because consensual relationships between lawyers and adult clients are protected privacy matters outside the scope of the Rules of Professional Conduct in any matter being handled by counsel at the time of the relationship

B. No, but only if the lawyer also recuses herself from any contested custody proceedings arising from the underlying divorce matter being handled by counsel for the client at the time of the relationship at issue

C. No, provided the client signs a written acknowledgment that the relationship is voluntary and consensual before any substantive intimate contact begins between the parties in the matter being handled by counsel

D. Rule 1.8(j) prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced; the rule applies regardless of the client's consent during the representation

16. A lawyer previously represented a corporation in a major commercial transaction. The lawyer has since left the firm and now wishes to represent a party in litigation that is substantially related to the prior transaction and materially adverse to the former corporate client. May the lawyer proceed?

A. Yes, because the lawyer has formally left the prior firm and is no longer subject to the conflict rules that applied to her at the firm during the time she represented the former corporate client in the transaction at issue

B. No, Rule 1.9(a) prohibits a lawyer who has formerly represented a client in a matter from thereafter representing another person in the same or a substantially related matter in which that person's interests are materially adverse to the former client unless the former client gives informed consent confirmed in writing

C. Yes, provided the lawyer's new firm imposes a formal screening procedure around the lawyer for the duration of the new engagement against the former client in connection with the matter being handled currently

D. Yes, but only if the lawyer's prior firm consents in writing to her new representation in connection with the matter being handled at the new firm against the former client of the prior firm at issue currently

17. A small firm has two lawyers. Lawyer A has an unwaivable conflict that prevents her from handling a particular matter. The firm wishes to have Lawyer B handle the matter. What is required under Rule 1.10?

A. The matter cannot be handled by either lawyer because Rule 1.10(a) categorically imputes the conflict from Lawyer A to Lawyer B unless the affected client gives informed consent confirmed in writing under Rule 1.10(c)

B. The matter may be handled by Lawyer B without any further procedure because Rule 1.10 does not impute conflicts between two lawyers at the same firm regardless of the substantive nature of the conflict at issue currently

C. The matter may be handled by Lawyer B provided the firm imposes a formal screening procedure around Lawyer A for the duration of the matter being handled at the firm in connection with the engagement at the time

D. The matter cannot be handled by either lawyer because Rule 1.10 categorically prohibits all imputed conflicts at firms with fewer than three lawyers regardless of the affected client's wishes in the matter currently

18. A lawyer who is leaving government service represented her agency in a major matter. She now wishes to represent a private party in the same matter on behalf of her new firm. Whose informed consent does Rule 1.11(a) require?

A. Only the agency's informed consent confirmed in writing is required regardless of any continuing private-party interests in the matter being handled by the lawyer at the new firm during the engagement currently in the matter

B. Only the private party's informed consent confirmed in writing is required regardless of any continuing agency interests in the matter being handled by the lawyer at the new firm during the engagement currently in the matter

C. Rule 1.11(a)(2) requires the appropriate government agency to give informed consent confirmed in writing before a former government lawyer may represent a private client in connection with a matter in which she participated personally and substantially while in government

D. Both the agency and the private party must give informed consent confirmed in writing before the lawyer may handle the matter at the new firm in connection with the engagement at issue currently in the matter

19. A former federal prosecutor has confidential government information about a person obtained during her government service. The information could be used to the material disadvantage of that person. What does Rule 1.11(c) require?

A. The lawyer may freely use the confidential government information once she leaves government service because the information becomes the lawyer's own knowledge in connection with any matter being handled at the time currently

B. The lawyer must disclose the confidential government information to her new firm's clients to ensure transparency in connection with any matters being handled by the firm in the engagement at issue currently in the matter

C. The lawyer must obtain the trial court's express approval before using the confidential government information in any subsequent matter being handled by the lawyer in private practice at the new firm currently

D. Rule 1.11(c) prohibits a lawyer with confidential government information about a person, acquired while a public officer or employee, from representing a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person

20. A lawyer served as a judge in a particular case before leaving the bench for private practice. A party to that case now wishes to retain her as private counsel in a related new matter. May the lawyer accept?

A. Yes, because the lawyer's prior judicial service creates no continuing conflict once she leaves the bench for private practice in connection with any subsequent representation being undertaken by the lawyer in the matter

B. Rule 1.12(a) generally prohibits a lawyer from representing anyone in connection with a matter in which she participated personally and substantially as a judge, unless all parties to the proceeding give informed consent confirmed in writing

C. Yes, provided the lawyer's new firm imposes a formal screening procedure around her for the duration of the new engagement in connection with the matter being handled by the firm at the time of the engagement

D. Yes, but only if the lawyer was the sole judge who heard the prior matter and not part of a multi-judge panel at the time of the prior proceeding involving the party seeking representation in the new matter

21. A lawyer represents a corporation. The lawyer has reported up the ladder regarding serious misconduct by the CEO, but the board has failed to take any corrective action. The misconduct will substantially injure the organization. What does Rule 1.13(c) permit?

A. Rule 1.13(c) permits the lawyer to reveal information relating to the representation to prevent substantial injury to the organization, even if Rule 1.6 would otherwise prohibit disclosure, when the highest authority insists upon or fails to address in a timely manner an action or refusal to act that is a clear violation of law

B. Rule 1.13(c) requires the lawyer to continue working on the matter without disclosure because the highest authority's failure to act binds the lawyer to the organization's chosen course in the matter being handled at the time currently

C. Rule 1.13(c) requires the lawyer to immediately disclose the misconduct to the bar disciplinary authority before any further work on the matter being handled by the lawyer in connection with the engagement at issue

D. Rule 1.13(c) prohibits any disclosure of organizational confidential information regardless of the magnitude of the substantial injury being inflicted on the organization by the highest authority of the organization at the time

22. A lawyer represents a corporation. During an internal investigation, the lawyer interviews a current employee about her conduct. The interview occurs in a context where the employee's interests may be adverse to the organization's. What does Rule 1.13(f) require?

A. The lawyer must invite the employee's family members to attend the interview to ensure her interests are adequately protected in the matter being investigated by the lawyer on behalf of the corporation at the time

B. The lawyer must terminate the interview immediately upon learning that the employee's interests may be adverse to the organization's in connection with the matter being investigated at the time of the interview currently

C. The lawyer must offer the employee a written waiver of the corporation's attorney-client privilege before any substantive questioning may begin in connection with the matter being investigated by the lawyer at the time

D. In dealing with an organization's constituents whose interests are adverse to those of the organization, the lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents

23. A lawyer represents an elderly client with diminished capacity. The lawyer reasonably believes that the client is at risk of substantial harm and cannot adequately act in her own interest. What does Rule 1.14(b) permit?

A. The lawyer must immediately move for the appointment of a permanent guardian to make all decisions for the client regardless of the client's residual capacity in connection with the matter being handled at the time currently

B. The lawyer must withdraw from the representation immediately upon noticing any risk of substantial harm to the client during the engagement on the underlying matter being handled by the firm currently in the matter at issue

C. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in her own interest, the

lawyer may take reasonably necessary protective action, including consulting with individuals who have the ability to protect the client and seeking the appointment of a guardian

D. The lawyer must obtain the bar disciplinary authority's express approval before taking any protective action on behalf of the diminished-capacity client in connection with the matter being handled by the lawyer at the time currently

24. A lawyer maintains a client trust account at a bank that charges monthly service fees. The lawyer must keep some funds in the account to cover these fees. What does Rule 1.15(b) provide?

A. The lawyer must absorb the bank service fees personally and cannot deposit any of her own funds into the client trust account regardless of the practical necessity in connection with the engagement at issue currently

B. A lawyer may deposit her own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose

C. The lawyer must move all client funds to a non-interest-bearing account that does not charge any service fees regardless of the practical implications for client funds being held in trust at the time of the engagement

D. The lawyer must obtain the trial court's express approval before depositing any of her own funds into the client trust account regardless of the purpose of the deposit in connection with the matter being handled currently

25. A lawyer receives a settlement payment from the opposing party in trust for her client. The payment is deposited in the lawyer's client trust account. What does Rule 1.15(d) require regarding the client's funds?

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

B. The lawyer must hold the settlement payment in the client trust account for thirty days before any distribution may be made to the client regardless of the client's wishes in connection with the matter being handled at the time

C. The lawyer must obtain the trial court's express approval before any distribution of the settlement payment may be made to the client in connection with the matter being handled by the lawyer at the time of the settlement currently in the matter

D. The lawyer may retain a percentage of the settlement payment as additional compensation beyond the agreed fee in connection with the matter being handled by the lawyer for the client at the time of the settlement payment in the matter

26. A lawyer is currently representing a client. She discovers that continued representation will require her to violate the Rules of Professional Conduct. What does Rule 1.16(a)(1) require?

A. The lawyer may continue the representation provided she takes reasonable steps to avoid the violation while continuing to handle the matter for the client at the time of the discovery in connection with the engagement at issue

B. The lawyer must obtain the client's express consent to continue the representation despite the necessary violation of the Rules of Professional Conduct in connection with the matter being handled at the time of the discovery

C. The lawyer must obtain the trial court's express approval before any withdrawal may be considered in connection with the matter being handled by the lawyer in court at the time of the discovery of the violation in the matter

D. Rule 1.16(a)(1) requires a lawyer to withdraw from a representation when she knows or reasonably should know that the representation will result in a violation of the Rules of Professional Conduct or other law; withdrawal is mandatory

27. A lawyer is representing a client in a matter that she now finds personally repugnant despite the legality of the client's objectives. The lawyer is no longer able to provide effective representation due to her personal feelings. May the lawyer withdraw?

A. No, because Rule 1.16 prohibits withdrawal based solely on the lawyer's personal feelings about the matter being handled by the lawyer in connection with the engagement on behalf of the client at the time currently

B. Rule 1.16(b)(4) permits a lawyer to withdraw if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; withdrawal is permissive when the conditions are met

C. The lawyer may withdraw only if she first obtains the trial court's express approval based on a sworn affidavit setting forth her personal repugnance to the client's planned course of action in the matter at issue currently

D. The lawyer must wait for the client to discharge her before any withdrawal may be considered in connection with the matter being handled by the lawyer in court at the time of the lawyer's feelings about the matter at issue

28. A lawyer wishes to sell her entire law practice or a specific area of practice to another lawyer. May the lawyer sell only part of her practice (one area, for example)?

A. No, because Rule 1.17 categorically prohibits any sale of less than the lawyer's entire law practice regardless of the parties' wishes in connection with the proposed transaction between the seller and the buyer in the matter

B. Yes, but only if the lawyer first obtains the trial court's express approval of the proposed partial sale before any transfer of the area of practice to the purchasing lawyer in the matter being negotiated currently

C. Rule 1.17 permits a lawyer to sell or purchase a law practice, or an area of law practice, including good will, if the seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted

D. Yes, provided the buyer agrees in writing to retain all of the seller's existing staff and physical office location during the transition period for the sale in connection with the matter being negotiated at the time

29. A prospective client met briefly with a lawyer for a consultation that did not result in representation. The prospective client provided some background information during the meeting. What does Rule 1.18(b) require?

A. The lawyer owes no continuing duty to the prospective client because no engagement letter was signed at the conclusion of the meeting in connection with the matter being discussed by the parties at the time of the consultation

B. The lawyer must immediately disclose all information learned during the meeting to any future client whose interests may conflict with the prospective client's interests in the matter being discussed at the time of the consultation

C. The lawyer must obtain the trial court's express approval before using any information learned during the meeting in connection with any subsequent matter being handled by the lawyer at the time of the new engagement currently

D. Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client

30. A lawyer is asked by a longtime client for her honest, candid assessment of a proposed business venture. The client may not like what the lawyer has to say. What does Rule 2.1 require?

A. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice; the lawyer should not be reluctant to give the client her honest assessment even when the news is unwelcome

B. The lawyer must soften any negative assessment to avoid alienating the longtime client regardless of the substantive accuracy of the assessment being given in connection with the matter being handled by counsel currently

C. The lawyer must obtain the client's express written consent before delivering any candid assessment that may be unwelcome to the client in connection with the matter being handled by counsel at the time of the engagement

D. The lawyer must consult with another attorney before delivering any candid assessment that may be unwelcome to the client in connection with the matter being handled by counsel in the engagement at issue currently

31. A lawyer is asked by her client to evaluate the value of a particular asset for use by a third party. The evaluation will require disclosure of confidential client information to the third party. May the lawyer perform the evaluation?

A. No, because Rule 2.3 categorically prohibits any evaluation that requires disclosure of confidential client information regardless of the client's wishes in the matter being handled by counsel at the time of the engagement

B. Yes, but only if the lawyer first obtains the bar disciplinary authority's express approval of the proposed evaluation in connection with the matter being handled by counsel for the client at the time of the engagement

C. Rule 2.3 permits a lawyer to evaluate a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the relationship; informed consent is required when the evaluation is likely to affect the client's interests materially and adversely

D. Yes, provided the lawyer also obtains a court order authorizing the proposed disclosure of confidential client information in connection with the evaluation being performed for the third party at the time of the engagement

32. A lawyer is serving as a third-party neutral in a dispute between two parties. The lawyer's role is to assist the parties in reaching a resolution. What does Rule 2.4 generally provide regarding this role?

A. The lawyer is automatically subject to all the rules governing the lawyer-client relationship with both parties regardless of her neutral role in connection with the matter being mediated at the time of the proceedings

B. Rule 2.4(a) defines a lawyer serving as a third-party neutral as one who assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them; serving as an arbitrator, mediator, or in another capacity is contemplated

C. The lawyer must obtain a court order before serving as a third-party neutral in any matter being mediated between two or more parties in connection with the dispute being resolved by the parties at the time of the proceeding

D. The lawyer must obtain the trial court's express approval before serving as a third-party neutral in any matter being mediated between two or more parties in connection with the dispute being resolved at the time of the engagement

33. A criminal defense lawyer represents a defendant who has been charged with a serious felony. The defendant insists on going to trial. The lawyer believes the prosecution's evidence is very strong. May the lawyer pursue the defense at trial?

A. No, because Rule 3.1 prohibits a lawyer from pursuing any defense at trial when the prosecution's evidence is very strong in connection with the matter being prosecuted by the state in court at the time of the trial

B. No, but only if the lawyer also obtains the trial court's express approval before withdrawing from the matter being prosecuted by the state in court at the time of the lawyer's assessment of the evidence in the matter

C. Yes, provided the defendant signs a written acknowledgment that he understands the strength of the prosecution's evidence before any defense may be pursued in court at the time of the trial in the matter currently

D. Rule 3.1 contains a specific carve-out for criminal cases: a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established

34. A lawyer is representing a client in litigation. Opposing counsel proposes a continuance to delay the proceedings. The lawyer agrees solely to gain a tactical advantage from the delay. Has the lawyer violated Rule 3.2?

- A. Yes, Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; a Comment to the rule clarifies that the question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay
- B. No, because Rule 3.2 governs only direct procedural requests to the trial court rather than informal agreements between counsel in connection with the matter being prosecuted at the time of the continuance request in the matter
- C. Yes, but only if the trial court formally finds that the continuance has prejudiced the opposing party in connection with the matter being prosecuted in court at the time of the agreement between the parties currently
- D. No, because Rule 3.2 prohibits only the substantive delay of court proceedings rather than the tactical agreement between counsel to extend the timeline in the matter being prosecuted at the time of the request

35. A lawyer makes a statement to the trial court during oral argument that she later discovers is false. The statement was material to the court's consideration of a pending motion. What does Rule 3.3(a)(1) require?

- A. The lawyer may continue with her advocacy without addressing the false statement because Rule 3.3 governs only intentional false statements rather than statements later discovered to be false in the matter being argued at the time
- B. A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; the duty to correct continues even when the falsity is discovered after the original statement was made
- C. The lawyer must obtain the trial court's express approval before correcting the false statement in connection with the matter being argued before the court at the time of the discovery of the falsity in the statement in the matter
- D. The lawyer must immediately withdraw from the representation upon discovering the falsity of any prior statement made to the trial court in connection with the matter being argued at the time of the discovery of the falsity at issue

36. A lawyer is representing a client in a contested administrative proceeding before a state agency. The proceeding will result in a binding decision affecting the client's rights. Does Rule 3.3 apply to this proceeding?

- A. No, because Rule 3.3 applies only to traditional judicial tribunals rather than administrative proceedings before state agencies in connection with any matter being prosecuted at the time of the administrative hearing in the matter

B. Yes, but only if the administrative proceeding has the formal trappings of a judicial proceeding rather than an informal administrative process in connection with the matter being adjudicated by the agency at the time currently

C. Rule 3.3(b) provides that the candor duties apply in any proceeding before a tribunal as defined in Rule 1.0(m); a "tribunal" includes a court, an arbitrator in a binding arbitration, and a legislative body, administrative agency, or other body acting in an adjudicative capacity

D. No, unless the administrative agency expressly adopts the Rules of Professional Conduct as governing its proceedings in connection with the matter being adjudicated by the agency at the time of the proceeding currently

37. A lawyer's client gives the lawyer a piece of physical evidence connected to a crime. The lawyer believes the evidence might be inculpatory. May the lawyer dispose of the evidence to protect the client?

A. No, Rule 3.4(a) prohibits a lawyer from unlawfully obstructing another party's access to evidence, or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value; the disposal of physical evidence is squarely within this prohibition

B. Yes, because the lawyer's duty of confidentiality under Rule 1.6 overrides any evidentiary concerns regardless of the potential criminality of the underlying conduct at issue in the matter being handled by counsel currently

C. Yes, provided the lawyer first obtains the client's express written consent to dispose of the evidence in connection with the matter being prosecuted by the state in court at the time of the disposal in the matter at issue

D. Yes, but only if the lawyer's disposal occurs before the formal initiation of any criminal proceeding against the client in connection with the conduct at issue in the matter being investigated at the time of the disposal

38. A lawyer offers a witness \$10,000 to testify favorably for her client in a civil trial. The witness's testimony will be material to the case. Has the lawyer violated Rule 3.4(b)?

A. No, because witness compensation arrangements are permitted under all circumstances regardless of the amount of compensation being paid by the lawyer in connection with the matter being prosecuted at the time of the agreement

B. No, but only if the lawyer first obtains the trial court's express approval of the proposed witness compensation arrangement in connection with the matter being prosecuted at the time of the agreement between the parties

C. No, provided the witness signs a written acknowledgment that the compensation is contingent on truthful testimony in connection with the matter being prosecuted in court at the time of the agreement currently in the matter

D. 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; paying a witness for favorable testimony is the paradigmatic violation

39. A lawyer is making a closing argument to a jury. She wishes to state her personal belief that her client is innocent and that the prosecution's witnesses lied. May the lawyer do so?

A. Yes, provided the lawyer also presents the underlying evidence that supports her personal belief in connection with the matter being prosecuted by the state in court at the time of the closing argument in the matter currently

B. Rule 3.4(e) prohibits a lawyer in trial from asserting personal knowledge of facts in issue except when testifying as a witness, or stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused

C. Yes, because closing arguments permit a lawyer to express any personal belief about the merits of the case being argued before the jury at the time of the closing argument in the matter being prosecuted by the state currently

D. Yes, but only if the lawyer first obtains the trial court's express approval of the proposed personal-belief statements before delivering them to the jury in connection with the matter being prosecuted in court at the time

40. A lawyer wishes to communicate ex parte with the judge presiding over her client's case about a procedural matter. The opposing counsel is not present. What does Rule 3.5 require?

A. The lawyer may communicate freely with the judge about any procedural matter regardless of opposing counsel's presence in connection with the matter being prosecuted in court at the time of the communication currently in the matter

B. The lawyer must first obtain opposing counsel's express written consent before any ex parte communication with the trial judge may occur in connection with the matter being prosecuted in court at the time of the communication

C. Rule 3.5(b) prohibits a lawyer from communicating ex parte with a judge, juror, prospective juror, or other official during the proceeding unless authorized to do so by law or court order

D. The lawyer must immediately disclose any ex parte communication with the trial judge to the bar disciplinary authority within twenty-four hours of the communication in connection with the matter being prosecuted in court at the time

41. A lawyer in a high-profile civil trial wishes to make extrajudicial statements to the press about the merits of her client's case. The trial is in its early stages. What is the general standard under Rule 3.6(a)?

A. A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter

B. The lawyer may make any extrajudicial statement she wishes regardless of the potential prejudice to the underlying matter being prosecuted in court at the time of the statement being made by counsel in the matter at issue

C. The lawyer must obtain the trial court's express approval before making any extrajudicial statement to the press in connection with the matter being prosecuted in court at the time of the statement being made by counsel currently

D. The lawyer must wait until the conclusion of the trial before making any extrajudicial statement to the press in connection with the matter being prosecuted by the parties at the time of the proposed statement in the matter

42. A lawyer's client has been subjected to substantial undue prejudicial publicity initiated by opposing counsel. The lawyer wishes to make a public statement responding to the publicity. What does Rule 3.6(c) permit?

A. The lawyer may make no responsive public statement because Rule 3.6 categorically prohibits any extrajudicial statement during a pending proceeding regardless of the source of the prior publicity in the matter currently in dispute

B. The lawyer must obtain the trial court's express approval before making any responsive public statement in connection with the matter being prosecuted in court at the time of the proposed statement by counsel currently

C. The lawyer must wait until the conclusion of the trial before making any responsive public statement in connection with the matter being prosecuted by the parties at the time of the proposed statement in the matter currently

D. Rule 3.6(c) provides that, notwithstanding the general prohibition, a lawyer may make a statement reasonably required to protect a client from the substantial undue prejudicial effect of recent publicity not

initiated by the lawyer or the client; the statement must be limited to information necessary to mitigate the recent adverse publicity

43. A lawyer at a firm is likely to be a necessary witness at trial in a matter the firm is handling. May another lawyer at the same firm serve as trial counsel?

A. No, because Rule 3.7 categorically imputes the advocate-witness disqualification to every lawyer at the same firm regardless of the substantive scope of the proposed testimony being given at the trial in the matter at issue

B. Rule 3.7(b) permits a lawyer to act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless precluded from doing so by Rule 1.7 or Rule 1.9

C. Yes, but only if the firm formally screens the witness-lawyer from any participation in the trial proceedings in connection with the matter being prosecuted by the firm in court at the time of the trial in the matter

D. Yes, provided the trial court formally approves the firm's continued representation in light of the witness-lawyer's role at the trial in connection with the matter being prosecuted by the firm at the time currently

44. A prosecutor is preparing to interrogate an accused suspect who has not yet been charged. The suspect has not retained counsel and has waived important pretrial rights. What does Rule 3.8(c) require?

A. The prosecutor may continue interrogating the suspect without any further consideration because Rule 3.8 governs only the formal charging and trial stages rather than pre-charge interrogation of any suspect at the time of the interrogation

B. The prosecutor must immediately appoint counsel for the suspect before any interrogation may continue in connection with the matter being investigated by the prosecutor at the time of the interrogation in the matter at issue

C. The prosecutor in a criminal case shall not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing

D. The prosecutor must obtain the trial court's express approval before any interrogation of an unrepresented accused may continue in connection with the matter being investigated by the prosecutor at the time of the interrogation

45. A prosecutor learns, after a defendant has been convicted, of new credible evidence creating a reasonable likelihood that the convicted defendant did not commit the offense. What does Rule 3.8(g) require?

A. The prosecutor has no continuing obligations after the conviction because Rule 3.8 governs only the pre-conviction stages of any criminal matter being prosecuted by the office at the time of the new evidence in the matter

B. The prosecutor must immediately move to dismiss the conviction without any further investigation regardless of the substantive nature of the new evidence in connection with the matter being investigated at the time of the discovery

C. The prosecutor must obtain the trial court's express approval before taking any action regarding the new evidence in connection with the matter being investigated by the prosecutor at the time of the discovery of the new evidence

D. When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense, the prosecutor shall promptly disclose that evidence to the appropriate court or authority, and if the conviction was in her jurisdiction, also to the defendant, and undertake further investigation to determine whether the defendant was wrongly convicted

46. A prosecutor knows of clear and convincing evidence establishing that a defendant in her jurisdiction was convicted of an offense the defendant did not commit. What does Rule 3.8(h) require?

A. When a prosecutor knows of clear and convincing evidence establishing that a defendant in her jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction

B. The prosecutor must wait for the defendant to formally request post-conviction relief before taking any action regardless of the prosecutor's clear and convincing evidence of innocence in the matter being reviewed at the time

C. The prosecutor must immediately disclose the new evidence to the press to ensure public accountability regardless of the procedural posture of the underlying criminal matter being reviewed by the prosecutor at the time

D. The prosecutor has no obligation to take any action regarding the new evidence because Rule 3.8 governs only the pre-conviction stages of any criminal matter being prosecuted by the office at the time of the discovery in the matter

47. A lawyer is representing a client in a non-adjudicative proceeding before a legislative body. The lawyer wishes to advocate for her client's position before the legislators. What disclosure does Rule 3.9 require?

A. The lawyer has no specific disclosure obligation because Rule 3.9 governs only adjudicative proceedings before a tribunal regardless of the substantive nature of the legislative process being addressed by the lawyer at the time

B. The lawyer must obtain the trial court's express approval before any advocacy before the legislative body may occur in connection with the matter being handled by counsel at the time of the legislative proceeding currently

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

D. The lawyer must disclose her client's identity and all confidential client information to the legislative body before any advocacy may occur regardless of the client's wishes in the matter being handled at the time currently

48. A lawyer is negotiating with a third party on behalf of her client. The lawyer makes a false statement to the third party about the existence of a key fact material to the negotiation. Has the lawyer violated Rule 4.1(a)?

A. No, because negotiations are exempt from the truth-telling requirements of Rule 4.1 in connection with the matter being negotiated by the parties at the time of the false statement being made by counsel currently

B. In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person; false statements of material fact in negotiation violate the rule even when made on the client's behalf

C. No, but only if the third party can independently verify the truth of the matter through reasonable investigation in connection with the matter being negotiated by the parties at the time of the statement being made

D. No, because the lawyer is acting in a representative capacity for her client and is therefore not personally responsible for the truth of substantive statements made in connection with the matter being negotiated currently

49. A lawyer wishes to communicate directly with an opposing party. The opposing party's lawyer has given express written consent to the direct communication. Has the lawyer violated Rule 4.2?

A. Yes, because Rule 4.2 prohibits any direct communication between a lawyer and a represented person regardless of opposing counsel's consent to the proposed communication in the matter being negotiated at the time currently

B. Yes, but only if the trial court formally orders the direct communication to cease in connection with the matter being negotiated by the parties at the time of the communication between them in the matter at issue currently

C. Yes, unless the lawyer first obtains the trial court's express approval of the direct communication in addition to opposing counsel's written consent in connection with the matter being negotiated at the time of the communication

D. No, Rule 4.2 prohibits direct communication with a represented person about the subject of the representation unless the lawyer has the consent of the other lawyer or is authorized by law or a court order; opposing counsel's consent removes the prohibition

50. A lawyer is communicating with an unrepresented person about a matter in which the lawyer's client has interests adverse to the unrepresented person. The unrepresented person seems confused about the lawyer's role. What does Rule 4.3 require?

A. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested; when the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role, she shall make reasonable efforts to correct the misunderstanding

B. The lawyer must immediately terminate the conversation and refer the unrepresented person to outside counsel before any further substantive discussion may occur in connection with the matter being negotiated at the time of the conversation

C. The lawyer must obtain the trial court's express approval of any further communication with the unrepresented person in connection with the matter being negotiated by the parties at the time of the communication currently

D. The lawyer may give the unrepresented person any substantive legal advice the unrepresented person requests regardless of the conflict between her client's interests and the unrepresented person's interests in the matter

51. A lawyer wishes to use legal process — repeated subpoenas, harassing depositions, and burdensome discovery requests — solely to embarrass and harass an opposing party. The opposing party is not a witness or relevant to the substantive merits of the case. Has the lawyer violated Rule 4.4(a)?

A. No, because the use of formal legal process is permitted under all circumstances regardless of the lawyer's underlying motivation for the process in the matter being prosecuted by the parties at the time of the process

B. In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person

C. No, but only if the trial court formally sustains the opposing party's objection to the legal process being used in connection with the matter being prosecuted by the parties at the time of the legal process being used

D. No, because zealous advocacy permits a lawyer to use any legal process that may benefit her client regardless of the underlying motivation for the process in the matter being prosecuted at the time of the legal process

52. A lawyer has direct supervisory authority over a junior associate in her firm. The junior associate engages in conduct that violates the Rules of Professional Conduct. Under what circumstances is the supervisor responsible under Rule 5.1(b)?

A. The supervising lawyer is responsible only if she personally ordered the misconduct rather than merely supervising the associate during the engagement on the underlying matter being handled by the firm at the time currently

B. The supervising lawyer is responsible only if the associate's misconduct directly affects a client of the lawyer's firm in connection with the matter being handled by the firm in the engagement at the time of the misconduct

C. The supervising lawyer is responsible only if the bar disciplinary authority formally charges the supervisor with a separate disciplinary violation in connection with the matter being handled by the firm at the time of the misconduct

D. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct; this duty is independent of the Rule 5.1(c) responsibility for ratifying or ordering specific misconduct

53. A junior associate is acting under the direct supervision of a senior partner. The senior partner instructs the associate to handle a matter in a way that raises an arguable question of professional conduct. The senior partner's resolution is reasonable. May the associate follow the supervisor's instruction?

A. No, because the associate is independently bound by the Rules of Professional Conduct regardless of any supervisory instruction from the senior partner in the matter being handled by the firm at the time currently

B. No, unless the associate also obtains the bar disciplinary authority's express approval of the proposed course of action in connection with the matter being handled by the firm at the time of the instruction in the matter

C. Rule 5.2(b) provides that a subordinate lawyer does not violate the Rules of Professional Conduct if she acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty

D. Yes, but only if the associate first obtains a written acknowledgment from the senior partner confirming the resolution before any substantive work may be undertaken on the matter being handled by the firm currently

54. A partner at a law firm is responsible for the firm's overall management. The firm uses non-lawyer assistants — paralegals, secretaries, investigators, and consulting experts. What does Rule 5.3(a) require?

A. With respect to a non-lawyer employed by, retained by, or associated with a lawyer, a partner and a lawyer with comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer

B. The partner has no specific managerial obligations regarding non-lawyer personnel because Rule 5.3 applies only to direct supervisors of specific non-lawyers in connection with specific client matters at any time during the engagement

C. The partner must require every non-lawyer to obtain a separate license from the bar disciplinary authority before performing any substantive work on behalf of the firm in connection with the matters being handled at the time

D. The partner must require every non-lawyer to sign a separate ethical commitment document acknowledging the Rules of Professional Conduct before performing any substantive work on behalf of the firm in any matter currently

55. A lawyer wishes to share a portion of her legal fees with a marketing consultant who refers clients to her firm. The marketing consultant is not a lawyer. May the lawyer share fees with the consultant?

A. Yes, because referral arrangements are permitted under all circumstances regardless of the non-lawyer status of the referring party in connection with the matter being handled by the firm at the time currently in the matter

B. Rule 5.4(a) prohibits a lawyer or law firm from sharing legal fees with a non-lawyer, with limited exceptions including payments to a lawyer's estate, payments to a non-lawyer employee under a

compensation plan, and certain court-awarded legal fees; referral compensation to a marketing consultant is not within the exceptions

C. Yes, provided the lawyer first obtains the trial court's express approval of the proposed fee-sharing arrangement before any payment may be made to the marketing consultant in connection with the matter being handled by the firm

D. Yes, but only if the lawyer's fee share does not exceed twenty percent of the total fee earned in connection with the referred client matter being handled by the firm at the time of the engagement on behalf of the client at issue

56. A non-lawyer employer pays a lawyer to provide legal services to its customers. The non-lawyer employer wishes to direct or regulate the lawyer's professional judgment in rendering those legal services. What does Rule 5.4(c) require?

A. The lawyer may follow the non-lawyer employer's directions because the employer is paying for the legal services in connection with the matter being handled by the lawyer for the customers at the time of the engagement currently

B. The lawyer may follow the non-lawyer employer's directions provided the customers consent to the arrangement in connection with the matter being handled by the lawyer at the time of the engagement currently in the matter

C. The lawyer must obtain the trial court's express approval of any conflict between the non-lawyer employer's directions and her professional judgment in connection with the matter being handled at the time of the conflict

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

57. A lawyer admitted in State X is physically present in State Y. She accepts an in-person retainer from a State Y resident to provide ongoing legal advice on State Y matters. She maintains no office in State Y. What does Rule 5.5(a) prohibit?

A. The lawyer may freely accept the in-person retainer because she is admitted in State X and may practice law anywhere in the United States regardless of her admission status in the relevant jurisdiction of the practice

B. The lawyer may accept the in-person retainer provided she discloses her State X admission to the State Y resident at the outset of the engagement on the matter being handled by counsel at the time of the retainer

C. Rule 5.5(a) prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so; accepting an in-person retainer to provide ongoing State Y legal advice without proper State Y authorization typically falls within this prohibition

D. The lawyer may accept the in-person retainer provided she completes a one-time State Y continuing legal education course before any substantive legal work may be undertaken on behalf of the client at the time of the retainer

58. A lawyer admitted in State X wishes to serve as counsel in a binding arbitration proceeding in State Y. The arbitration relates to the lawyer's practice in State X. What does Rule 5.5(c)(3) generally permit?

A. Rule 5.5(c)(3) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis in a jurisdiction where she is not admitted, if the services are in or reasonably related to a pending or potential arbitration, mediation, or other ADR proceeding, and arise out of or are reasonably related to the lawyer's practice in a jurisdiction where she is admitted to practice

B. The lawyer may not serve as counsel in the arbitration because Rule 5.5 categorically prohibits any practice in a jurisdiction where the lawyer is not admitted regardless of the substantive nature of the arbitration at issue

C. The lawyer may serve as counsel in the arbitration provided she also obtains pro hac vice admission from a State Y trial court regardless of the arbitral nature of the underlying proceeding being handled at the time

D. The lawyer may serve as counsel in the arbitration provided she completes a State Y continuing legal education course before any substantive work may be undertaken on behalf of the client at the time of the engagement currently

59. A lawyer is negotiating the settlement of a malpractice claim by a former client. The opposing party wishes to include a clause in the settlement agreement that would restrict the lawyer's right to practice law. May the lawyer agree?

A. Yes, because settlement agreements may include any terms the parties agree to in connection with the matter being settled by the parties at the time of the agreement between them in the matter at issue currently

B. Rule 5.6(b) prohibits a lawyer from offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy; the rule is intended to protect future clients' access to counsel of choice

C. Yes, provided the lawyer first obtains the bar disciplinary authority's express approval of the proposed practice restriction in connection with the matter being settled by the parties at the time of the agreement

D. Yes, but only if the restriction is limited to the specific geographic area where the underlying matter occurred in connection with the matter being settled by the parties at the time of the agreement between them currently

60. A lawyer wishes to satisfy the aspirational professional responsibility to render public interest legal service. The lawyer chooses to provide legal services at no fee or a substantially reduced fee to individuals of limited means. Does this satisfy Rule 6.1?

A. No, because Rule 6.1 categorically requires every lawyer to render at least fifty hours of pro bono publico legal services per year regardless of the substantive nature of the services being rendered by the lawyer in the matter

B. No, but only if the lawyer also provides legal services to charitable organizations in addition to the services to individuals of limited means in connection with her overall public interest practice during the year at issue

C. Rule 6.1 establishes an aspirational goal of at least 50 hours of pro bono publico legal services per year; the rule explicitly identifies providing services at no fee or a substantially reduced fee to persons of limited means as a primary way to fulfill this professional responsibility

D. No, because Rule 6.1 requires every lawyer to render her pro bono services exclusively through formal organized programs sponsored by the local bar association in connection with the relevant jurisdiction of practice at the time

PRACTICE EXAM 34 :ANSWERS AND EXPLANATION

1. C — Rule 1.0(n) defines "writing" broadly to include a tangible or electronic record of a communication, encompassing handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A recorded video call capturing clear consent terms qualifies as a writing for purposes of any rule requiring a writing or confirmation in writing.

2. A — Rule 1.1 Comment [5] explains that competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. Adequate preparation is an integral component of competence, not a free-standing requirement separate from it.

3. D — Rule 1.2(d) prohibits a lawyer from counseling a client to engage, or assisting a client, in conduct that the lawyer knows is criminal or fraudulent. Advising a client on how to commit perjury is direct assistance in a criminal act and falls squarely within the rule's prohibition.

4. B — Comment [2] to Rule 1.3 notes that a lawyer's workload must be controlled so each matter can be handled competently, and warns that the perception of neglect can result from the procrastination of even

excellent lawyers. The Comment guides workload management without imposing categorical caseload limits.

5. C — Rule 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The duty necessarily includes adapting the explanation to the client's level of understanding so that the client can meaningfully participate in decisions.

6. 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. A writing is preferred but not strictly required for non-contingent fees with new clients.

7. B — Rule 1.5(e) permits division of a fee between lawyers who are not in the same firm only if the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility, the client agrees to the arrangement (including the share each lawyer will receive) in a writing, and the total fee is reasonable. All three conditions must be satisfied.

8. D — Rule 1.6(a) impliedly authorizes a lawyer to make disclosures of client information that are necessary to carry out the representation. Disclosure to firm personnel (paralegals, secretaries, associates) who need the information to assist in the representation is the paradigm of implied authorization.

9. 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. Filing suit against a current client is directly adverse regardless of whether the new matter is substantively unrelated to the prior representation.

10. C — Rule 1.8(b) prohibits a lawyer from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent. Personal investment in a competitor based on confidential client business strategy is a textbook use of the information to the client's disadvantage.

11. B — Rule 1.8(f) permits a lawyer to accept compensation from one other than the client only if the client gives informed consent, there is no interference with the lawyer's independence of professional judgment or the client-lawyer relationship, and information relating to the representation is protected as required by Rule 1.6. All three conditions must be satisfied for third-party payment to be permissible.

12. D — Rule 1.8(g) prohibits a lawyer who represents two or more clients from participating in making an aggregate settlement unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure must include the existence and nature of all claims involved and the participation of each person in the settlement.

13. A — Rule 1.8(h)(1) prohibits a lawyer from making an agreement prospectively limiting her liability to a client for malpractice unless the client is independently represented in making the agreement. The independent-representation safeguard is structural and cannot be substituted with disclosure or client signature alone.

14. C — Rule 1.8(i) prohibits a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation she is conducting for a client. The rule has two limited exceptions: a lien authorized by law to secure the lawyer's fee or expenses, and a reasonable contingent fee in a civil case.

15. D — Rule 1.8(j) prohibits a lawyer from having sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. The rule does not permit current-engagement consent to cure the prohibition.

16. B — Rule 1.9(a) prohibits a lawyer who has formerly represented a client in a matter from thereafter representing another person in the same or a substantially related matter in which that person's interests are materially adverse to the former client unless the former client gives informed consent confirmed in writing. The duty survives the lawyer's departure from the prior firm.

17. A — Rule 1.10(a) imputes one lawyer's conflicts to other lawyers in the same firm; Rule 1.10(c) permits a representation otherwise prohibited by 1.10(a) when each affected client gives informed consent confirmed in writing. The two-lawyer firm cannot circumvent imputation without compliant consent.

18. C — Rule 1.11(a)(2) requires the appropriate government agency to give informed consent confirmed in writing before a former government lawyer may represent a private client in connection with a matter in which she participated personally and substantially while in government. The agency, not the private party, is the consent-holder.

19. D — Rule 1.11(c) prohibits a lawyer who has confidential government information about a person, acquired while a public officer or employee, from representing a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The duty protects the person about whom the information was acquired, not the agency.

20. B — Rule 1.12(a) generally prohibits a lawyer from representing anyone in connection with a matter in which she participated personally and substantially as a judge or other adjudicative officer, unless all parties to the proceeding give informed consent confirmed in writing. Consent of every party — not just the prospective client — is the cure.

21. A — Rule 1.13(c) permits the lawyer to reveal information relating to the representation, even if Rule 1.6 would otherwise prohibit disclosure, when the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization.

22. D — Rule 1.13(f) requires that, in dealing with an organization's constituents whose interests are adverse to those of the organization, the lawyer shall explain the identity of the client when she knows or reasonably should know that the organization's interests are adverse to those of the constituents. This is the "corporate Miranda" or Upjohn warning concept.

23. C — Rule 1.14(b) permits a lawyer who reasonably believes that a client with diminished capacity is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in her own interest to take reasonably necessary protective action. This includes consulting with persons or

entities able to take protective action and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

24. B — Rule 1.15(b) creates a narrow exception to the rule against commingling: a lawyer may deposit her own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose. The exception is strictly cabined to bank charges.

25. A — Rule 1.15(d) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person; she shall promptly deliver to the client any funds or property the client is entitled to receive and, upon request, shall promptly render a full accounting. The three duties are notify, deliver, and account.

26. D — Rule 1.16(a)(1) requires a lawyer to withdraw from a representation when she knows or reasonably should know that the representation will result in a violation of the Rules of Professional Conduct or other law. Mandatory grounds for withdrawal cannot be cured by client consent or workarounds.

27. B — Rule 1.16(b)(4) permits a lawyer to withdraw when the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. The ground is permissive, not mandatory, but is one of several discretionary bases for withdrawal under Rule 1.16(b).

28. C — Rule 1.17 permits a lawyer to sell or purchase a law practice, or an area of law practice, including good will, if the seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted. The 2002 amendments expressly extended the rule beyond entire-practice sales to area-specific sales.

29. D — Rule 1.18(b) provides that even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client. The duty of confidentiality attaches at the consultation, not at engagement.

30. A — Rule 2.1 provides that in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. Comment [1] explains that a client is entitled to straightforward advice expressing the lawyer's honest assessment, even when the advice will be unwelcome.

31. C — Rule 2.3 permits a lawyer to provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client. When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer must obtain the client's informed consent.

32. B — Rule 2.4(a) defines a lawyer serving as a third-party neutral as one who assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. The lawyer's role may include service as an arbitrator, mediator, or in another capacity that contemplates impartial assistance to the parties.

33. D — Rule 3.1 prohibits a lawyer from bringing or defending a proceeding, or asserting an issue, unless there is a basis in law and fact that is not frivolous. The rule contains a specific exception: a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

34. A — Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Comment [1] clarifies that the test is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay; agreement to delay solely for tactical advantage violates the rule.

35. B — 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. The duty to correct attaches when the lawyer learns of the falsity, even after the original statement was made in good faith.

36. C — Rule 3.3(b) provides that the candor duties apply in any proceeding before a tribunal as defined in Rule 1.0(m). A "tribunal" includes a court, an arbitrator in a binding arbitration proceeding, and a legislative body, administrative agency, or other body acting in an adjudicative capacity.

37. A — Rule 3.4(a) prohibits a lawyer from unlawfully obstructing another party's access to evidence, or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value. The disposal of physical evidence connected to a crime is a textbook violation regardless of the lawyer's protective motive.

38. D — 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. Paying a witness substantial money for favorable testimony is the paradigmatic improper inducement under common law and statutory prohibitions on witness bribery.

39. B — Rule 3.4(e) prohibits a lawyer in trial from asserting personal knowledge of facts in issue except when testifying as a witness, or from stating a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused. Personal-belief statements in closing argument violate the rule.

40. C — Rule 3.5(b) prohibits a lawyer from communicating ex parte with a judge, juror, prospective juror, or other official during the proceeding unless authorized to do so by law or court order. The procedural-versus-substantive distinction does not create an exception to the rule.

41. A — Rule 3.6(a) provides that a lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. The substantial-likelihood standard governs general permissibility.

42. D — Rule 3.6(c) provides that, notwithstanding the general prohibition, a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue

prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. The responsive statement must be limited to such information as is necessary to mitigate the recent adverse publicity.

43. B — Rule 3.7(b) permits a lawyer to act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless precluded from doing so by Rule 1.7 or Rule 1.9. The advocate-witness rule is not automatically imputed within the firm under Rule 1.10.

44. C — Rule 3.8(c) provides that the prosecutor in a criminal case shall not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing. The rule protects the accused from waiving substantive procedural protections without the benefit of counsel.

45. D — Rule 3.8(g) requires that when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense, the prosecutor shall promptly disclose that evidence to an appropriate court or authority, and if the conviction was obtained in the prosecutor's jurisdiction, also to the defendant unless a court authorizes delay, and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense the defendant did not commit.

46. A — Rule 3.8(h) provides that when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction. The duty is affirmative and does not depend on the defendant requesting relief.

47. C — Rule 3.9 requires that a lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5. The rule extends key candor and fair-dealing duties to non-adjudicative advocacy.

48. B — Rule 4.1(a) provides that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person. The duty applies to negotiation; statements of material fact are not exempted because the lawyer is acting on the client's behalf.

49. D — Rule 4.2 prohibits a lawyer from communicating with a person the lawyer knows to be represented by another lawyer in the matter, about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Opposing counsel's written consent removes the prohibition.

50. A — 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 state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, she shall make reasonable efforts to correct the misunderstanding.

51. B — Rule 4.4(a) provides that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. Repeated harassing legal process directed at a non-witness is the paradigmatic violation.

52. D — Rule 5.1(b) provides that a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The duty is structural and independent of Rule 5.1(c)'s responsibility for ratifying or ordering specific misconduct.

53. C — Rule 5.2(b) provides a safe harbor: a subordinate lawyer does not violate the Rules of Professional Conduct if she acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. The resolution must be objectively reasonable, but the subordinate need not independently second-guess every supervisory call.

54. A — Rule 5.3(a) requires that with respect to a non-lawyer employed by, retained by, or associated with a lawyer, a partner and a lawyer with comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer. The duty is firm-wide and structural.

55. B — Rule 5.4(a) prohibits a lawyer or law firm from sharing legal fees with a non-lawyer, with limited exceptions including payments to a lawyer's estate, payments to a non-lawyer employee under a compensation or retirement plan, payments for purchase of a deceased lawyer's practice, and certain court-awarded legal fees in nonprofit settings. Referral compensation to a marketing consultant falls outside every enumerated exception.

56. D — Rule 5.4(c) prohibits a lawyer from permitting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services. The rule protects the independence of legal judgment regardless of who pays the fee.

57. C — Rule 5.5(a) prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so. Accepting an in-person retainer to provide ongoing State Y legal advice without proper State Y authorization typically constitutes prohibited unauthorized practice.

58. A — Rule 5.5(c)(3) permits a lawyer admitted in another U.S. jurisdiction to provide legal services on a temporary basis in a jurisdiction in which she is not admitted if the services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in that or another jurisdiction, and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which she is admitted to practice. The ADR safe harbor is one of four temporary-practice paths in Rule 5.5(c).

59. B — Rule 5.6(b) prohibits a lawyer from offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy. The rule protects future clients' access to counsel of choice and the lawyer's professional autonomy.

60. C — Rule 6.1 establishes an aspirational professional responsibility goal that every lawyer should render at least 50 hours of pro bono publico legal services per year. Rule 6.1(a) explicitly identifies

providing services at no fee or a substantially reduced fee to persons of limited means as a primary way to fulfill this responsibility.