

Professional Responsibility

August Term 2017
Professor Fink

Final Examination

Instructions:

- This is a ***closed-book*** examination. You may not use any material other than what is provided to you by the proctor.
- You will have two (2) hours to complete this exam. This exam consists of sixty (60) multiple-choice questions.
- You must use the Scantron sheet provided by the exam proctor for your answers. You may write on the document with the exam questions if you wish, but you will only receive credit for answers entered correctly on the Scantron sheet.
- Write your Exam ID number in the space provided above. You must also write out the Honor Pledge in the space below, and sign with your Exam ID number. Do not write your name anywhere on the exam or in your answers.
- You must return this complete document, together with your Scantron sheet, to the proctor at the conclusion of the exam.

Honor Pledge

“On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect.”

Exam ID: _____

Question 1.

Lawyer represents Client in the defense of a personal injury action brought by Plaintiff. Client had given Plaintiff the use of Client's cabin in the woods. When Plaintiff arrived at the cabin, he suffered a serious injury when one of the wooden planks in the cabin's front porch gave way. Client was adamant that the porch was properly constructed and that Plaintiff must have concocted the story about the board in order to hide Plaintiff's own carelessness. Plaintiff's attorney contacted an expert engineer to examine the porch. Two days before the engineer was scheduled to arrive, Lawyer sent Investigator, an employee of Lawyer, to examine the porch. Investigator reported to Lawyer that the porch was constructed of substandard material and a board had obviously come loose. The next day, before engineer's appointment, a brushfire destroyed thousands of acres of forest, including the Client's cabin. A careless camper had caused the fire. Lawyer never advised Plaintiff's attorney of Investigator's findings and a verdict was entered for the defense at trial.

Is Lawyer subject to discipline?

- A. Yes, since the information withheld was not subject to the duty of confidentiality.
- B. Yes, since he assisted Client in perpetrating a fraud on the court.
- C. No, if Client truly believed the porch was properly constructed.
- D. No, because the information was subject to the duty of confidentiality.

Question 2.

Xact and Young had been partners in Xact & Young Law Firm for the past 25 years. Xact recently died, but Young decided to continue the business anyway. Young became very lonely in the office by himself, so he advertised, "Office space for rent. Rent on a monthly basis. Office rental includes use of law library and secretary." Zevon rented the available office space and set up his legal practice. Young and Zevon do not represent each other's clients, nor do they share any fees paid by their respective clients. Xact had a new sign made for the entrance of the firm labeled, "Law Firm of Xact, Young & Zevon."

Is Xact subject to discipline?

- A. Yes, because Zevon is not a partner of Xact.
- B. Yes, because Young died prior to the arrangement between Xact and Zevon.
- C. No, because Xact and Young had been partners for the past 25 years.
- D. No, because Xact and Zevon were sharing office space, the law library, secretarial services.

Question 3.

Defendant is the Treasurer for City X. Attorney is defending Defendant, who was charged with embezzlement after it was discovered that certain city funds were missing. During the initial

consultation with Attorney, Defendant agreed to pay Attorney her usual hourly fee on a monthly basis.

Due to the complexity of the case, the bills began to stack up. Defendant requested that, rather than paying Attorney's hourly fee, Defendant assign the rights to any movies, television broadcasts, books, etc. regarding Defendant's life to Attorney should Attorney continue to defend him until the trial was over. Attorney told Defendant that he would think about it, but told Defendant that he should seek advice from other counsel prior to entering into such agreement.

Is Attorney subject to discipline if he agrees to Defendant's offer?

- A. No, if Defendant seeks the advice of counsel prior to finalizing the agreement.
- B. No, because a client may agree to any fee arrangement with his attorney.
- C. Yes, because at the time of the agreement, Attorney's representation of Defendant had not concluded.
- D. Yes, because it is possible Attorney would make more money under the new agreement than the old one.

Question 4.

Attorney represents Temporary Employment Agency, Inc. in a wrongful termination lawsuit brought by Head Hunter Hal. Hal claimed that he was wrongfully terminated because he allegedly failed to meet his quota repeatedly for the past several months.

Attorney sought the employment records from Temporary Employment Agency, Inc. These records included documents that indicated how many temporary employees were placed each month. Attorney discovered that not only did Hal meet his quota, he out-performed the other head hunters at Temporary Employment Agency, Inc. Thus, it is Attorney's belief that the Agency should accept liability and settle with Hal.

Attorney should:

- A. Notify Temporary Employment Agency, Inc. of all options with the recommendation that it settle with Hal, and continue to represent the Agency even if it decides to reject the settlement and pursue litigation.
- B. Notify Temporary Employment Agency, Inc. of all options with the recommendation that it settle with Hal, and withdraw from representation if the Agency decides to reject the settlement and pursue litigation.
- C. Withdraw from representation because Attorney believes that Agency does not have a case.
- D. Settle the case as quickly as possible.

Question 5.

Attorney Anderson is a successful tax attorney and owns his own law practice. He is particularly busy during the winter months meeting with clients about their tax situation. His practice is so successful that he only has time to meet with the client, and does not have any time to complete the paperwork. For this reason, Anderson hired several secretaries to fill in the legal forms based on Anderson's meeting with each client.

Is it proper for Attorney Anderson to allow his secretaries to perform such tasks?

- A. No, because Attorney Anderson hired the secretaries to perform such tasks that would be considered the practice of law.
- B. No, unless the secretaries are certified law students.
- C. Yes, unless there is a specific statute that allows secretaries to perform such tasks in that jurisdiction.
- D. Yes, as long as Attorney Anderson supervises the delegated work and retains responsibility for their work.

Question 6.

Attorney Apple represents Paul Plaintiff in a medical malpractice case against Doctor. Paul maintains that Doctor negligently performed surgery on Paul's back. After a court hearing, Spectator stopped Attorney as he was walking out of the courtroom. Spectator told Attorney that Paul rear-ended him last week in a hit-and-run accident. Spectator wants Attorney to represent him in a personal injury suit against Paul.

May Attorney represent Spectator in the personal injury suit against Paul?

- A. No, because Attorney represents Paul in the medical malpractice lawsuit.
- B. No, unless Spectator consents to the representation after seeking independent advice.
- C. Yes, because the medical malpractice suit is unrelated to the personal injury suit.
- D. Yes, because the representation of Spectator in the personal injury suit would in no way affect the representation of Paul in the medical malpractice suit.

Question 7.

Attorney has a lucrative criminal defense practice. For years, Attorney has earned a great deal of money and notoriety as trial counsel for Client, the reputed head of an organized crime family. On four occasions, Attorney has successfully defended Client against murder charges. For a fifth time, Client is charged with murder. As usual, Attorney prepares to take the case to trial.

Two days before the trial, Attorney was involved in a serious motor vehicle accident. Attorney was clinically dead for several minutes before being resuscitated. Attorney withdrew as counsel, with the court's permission, and trial was adjourned for three months to allow Client's new counsel to prepare for trial. Two weeks before the new trial date, Attorney, having

miraculously recovered from his injuries, appeared at the office of the prosecutor. Attorney advised the prosecutor that Attorney's near death experience caused him to reconsider his role as Client's "mouthpiece". Attorney told the prosecutor that Client admitted to all of the murders, including the pending case. Attorney was willing to testify against Client in order to achieve his own inner peace.

Is Attorney subject to discipline?

- A. No, because he is preventing the perpetration of a fraud on the court.
- B. No, since he no longer represents Client.
- C. No, because Attorney is obligated to report the confession to prevent Client from committing future crimes.
- D. Yes, if the admission by Client was made in confidence while Attorney represented Client.

Question 8.

Attorney filed a medical malpractice suit against Doctor on behalf of Client. The suit centered around Client's claim that Doctor removed the wrong lump on her back. Prior to the suit being filed, Attorney subpoenaed the MRI report and discovered that the lump removed was actually the correct lump. Thinking that no one was watching, Attorney destroyed the only copy of the MRI report. However, Partner saw Attorney tear up the report.

Is Partner subject to discipline for failing to report Attorney's conduct to an appropriate authority?

- A. Yes, because Partner saw Attorney destroy the MRI report.
- B. Yes, if Partner knew that the MRI report was a piece of evidence.
- C. No, because Partner can assert a Fifth Amendment right against self-incrimination since he became an accessory after the fact when he observed the destruction of the MRI report.
- D. No, because Partner does not have a duty to report the conduct of one of his employees to the authorities since Partner is already considered to be an authority.

Question 9.

Apple City is located in the state of Orange. Orange has a state law that allows an attorney to maintain a private practice while acting as a prosecuting attorney. Attorney Alpha works part-time as a City Attorney in Apple City. Recently, he prosecuted Squash who allegedly murdered Mr. and Mrs. Turnip during a home invasion. The jury convicted Squash.

The Turnips had a daughter who was only five at the time her parents were murdered. The guardian of the daughter wants to bring a wrongful death action against Squash on behalf of the daughter. Guardian asks Attorney Alpha, in his capacity as a private attorney, to represent

Guardian in the wrongful death case. Alpha did not obtain Squash's consent or the consent of the supervising prosecuting attorney prior to accepting the case.

Is Attorney Alpha subject to discipline for accepting employment in the wrongful death case against Squash?

- A. No, because the representation of Guardian would not be adverse to the City's interest.
- B. No, because Attorney's representation of the City had terminated prior to accepting the representation on behalf of Guardian.
- C. Yes, because Attorney Alpha did not obtain Squash's consent prior to accepting employment with Guardian.
- D. Yes, because Attorney Alpha participated personally and substantially in the prior criminal proceeding.

Question 10.

Attorney represented Skip in a personal injury lawsuit against Grocery Store. At issue in the case was whether Store was on notice that a bottle of water had spilled in the produce section, thereby causing the floor to be slippery. Skip slipped and fell on the water and broke his hand while trying to catch his fall.

Attorney called Manager to the witness stand. Attorney asked Manager, "Isn't it true that Customer informed you of the wet floor 5 minutes prior to the incident?" Manager responded, "No. I didn't know about the wet floor until I heard Skip yell as he fell." Attorney raised his voice; "You're lying. You knew that the floor was wet because you ordered it mopped up. How could you speak such a blatant lie?"

Was Attorney's conduct at trial proper?

- A. Yes, if Attorney could prove that Manager was lying.
- B. Yes, so long as Attorney had a good faith belief in his statement.
- C. No, because he expressed his personal opinion as to Manager's credibility.
- D. No, because Attorney raised his voice such that it threatened the witness.

Question 11.

Attorney represents Doctor in a medical malpractice lawsuit. Plaintiff alleges that Doctor instructed her to apply a certain cream to her face two times a day to control her acne problem. She followed such instruction and as a result, she developed red and painful scars on her cheeks. She contacted Doctor to inform him of her problem and Doctor directed her to continue the same cream, but to apply it only once a day instead of twice. Doctor's custom and practice is to note all conversations and medical appointments in the respective patient's chart.

During a meeting with Doctor, Attorney discovered that Doctor altered Plaintiff's medical chart after Plaintiff filed suit against him. Attorney decided that the alteration could easily be missed since Doctor's writing was difficult to read.

Must Attorney refuse to offer the altered medical record into evidence at trial?

- A. Yes, but only if the alteration is significant and material to Plaintiff's diagnosis and treatment.
- B. Yes, because Attorney knows the medical record has been falsified.
- C. No, because it would be the opposing attorney's duty to discover the alteration and bring it up on cross-examination.
- D. No, because Attorney has the duty to advocate zealously on behalf of Doctor.

Question 12.

After 25 years of marriage, Wife had enough of Husband's adulterous affairs and decided to seek a divorce. Wife opened the phone book and contacted Divorce Attorney.

During the initial consultation with Attorney, Wife explains that she has caught Husband in his last affair. She details all the property accrued during the marriage, including a home, two cars, a sailboat, and an extensive stock portfolio. Wife said to Attorney, "I want revenge. I can't believe that I was such a sucker to stay with a cheating man through all these years. I want you, Attorney, to take everything away from him. He doesn't deserve to keep anything from this marriage since he is the one who destroyed it."

Which of the following is true?

- A. Attorney must accept the case because it is obvious that Wife is in desperate need of help.
- B. Attorney may accept the case.
- C. Attorney may accept the case, but once he accepts the case, he may not withdraw without being subject to discipline.
- D. Attorney may accept the case, but then later withdraw from the representation without being subject to discipline if Wife insists upon pursuing the objective to "seek revenge."

Question 13.

Attorney represents Client in a personal injury matter. The case goes to trial before Judge. One evening, while the trial is underway, Attorney attends a social function where Judge is also present.

Is it proper for Attorney to engage in conversation with Judge?

- A. Yes, on any subject
- B. Yes, as long as Attorney does not mention the merits of Client's case.
- C. No, unless Judge initiates the conversation.
- D. No, regardless of the subject.

Question 14.

Attorney was admitted to practice law in State Z about one year ago. Since then, she has attempted to establish a solo practice, but has met with little success. She was about to close her business when one of the biggest earthquakes hit the City A area. Although the epicenter was located about ten miles from her office, she did not sustain any damage.

Attorney decided to offer her services during this tragic time. She took out the phone book that provided addresses of all the residents in City A. Attorney wrote a brief letter stating that she would file a claim on behalf of earthquake victims against the insurance companies. At the end of the letter, she described her practice and explained that, since she is a relatively new attorney, her hourly fee would be more than reasonable.

Is Attorney subject to discipline for sending such letter?

- A. Yes, because the letter constitutes an attempt to solicit business.
- B. Yes, unless Attorney also included the words "Advertising Material" on the outside of each envelope.
- C. No, Attorney is permitted to advertise her business in such a manner.
- D. No, so long as the letter did not include any false or misleading information about Attorney's business.

Question 15.

Attorney represented Client in a personal injury suit. Attorney successfully resolved the matter efficiently and with little cost to the Client. Client was thrilled with Attorney's work. Client told Attorney that Client would refer any family member or friend to Attorney for any personal injury matter. On the way out the door, Client took a stack of Attorney's business cards to give to any person in need of Attorneys services.

Attorney would be subject to discipline if:

- I. Attorney paid Client a referral fee for every person referred by Client.
 - II. Attorney sent Client another stack of business cards when requested to do so by Client.
 - III. Attorney accepted a new client who had been referred by Client.
- A. I only.
 - B. II only.
 - C. III only.
 - D. II and III.

Question 16.

Manager manages a Kosher-style Deli in Coopersville. Manager agrees to buy all of his supplies needed for the operation of Deli from Dill. Attorney is often retained by Dill in making such

agreements. Dill agrees to several provisions in their contract that were requested by Manager on the condition that Attorney prepare the contract and that Manager pay Attorney's fees for preparing the agreement. Attorney explains to both Dill and Manager that he would be, in essence, representing both their interests and the effect of the multiple representation. Attorney then advises each party to obtain an independent opinion regarding this situation from another attorney. Manager and Dill do so and decide to consent to Attorney's representation. Attorney believes that he can represent the interests of both parties.

Is it proper for Attorney to prepare the contract between Manager and Dill?

- A. No, because it would present a conflict of interest should a dispute arise.
- B. No, because Attorney's fees are not being paid by Dill, the party who initially retained Attorney.
- C. Yes, if such representation is standard and customary in the locality.
- D. Yes, because Manager and Dill gave their informed consent to the arrangement.

Question 17.

Defendant Dan, a college graduate, went to his alma mater's homecoming football game where he participated in the drunken festivities. Thinking that he had discovered his youth again, he drank several beers as well as a couple of shots of alcohol. When the party was over, Dan thought that he would drive several of his old buddies to his bachelor pad to continue the party. While en route, Dan was pulled over by the police because he was swerving at high speeds. He was subsequently arrested and charged with "Driving Under the Influence."

Dan contacted Attorney and they entered into the following agreement: Dan promised to pay Attorney \$100 an hour for Attorney's services, plus an additional \$2,000 if Attorney successfully terminated the proceedings in Dan's favor.

Is Attorney subject to discipline for entering into such agreement?

- A. Yes, because Attorney will not obtain the additional \$2,000 if Defendant is convicted.
- B. Yes, if the fee is considered to be unreasonable.
- C. No, because Attorney may enter into any agreement with a client.
- D. No, so long as Defendant had the opportunity to negotiate Attorney's fee and seek advice from independent counsel.

Question 18.

Attorney filed a medical malpractice suit on behalf of Patient against Doctor for negligence in connection with a delay in diagnosis of a rare form of skin disease. Patient had sought Doctor's treatment for a rash that developed under her left arm. After several months of treatment, the rash did not improve. Patient subsequently received treatment from Physician. Physician prescribed an aggressive therapy that caused more damage than the original rash. Attorney

then retained Expert. Expert will testify Physician's subsequent treatment was a substantial cause of Patient's injuries.

During the course of litigation, Attorney wished to depose Physician for her role in subsequent treatment. Prior to the deposition, Physician stated that she would not have an attorney present on her behalf. Attorney replied, "I have no interest in whether or not you are represented by counsel. I don't think that your role in this matter is significant." Physician then testified that her treatment was more aggressive than that of Doctor's treatment.

Is Attorney subject to discipline?

- A. No, since Physician was not represented by counsel, Attorney may speak directly with the witness.
- B. No, because Physician is expected to possess the necessary knowledge and significance of her own testimony.
- C. Yes, because Attorney advised Physician that her role was insignificant.
- D. Yes, because Attorney stated that she was disinterested in Physician's testimony.

Question 19.

Attorney represented Client in a complex business transaction. Attorney's fee agreement provided that Client pay Attorney a \$1,000 refundable retainer, in addition to \$100 per hour for services rendered. Client paid Attorney \$1,000. To date, Attorney has spent a total of 5 hours reviewing Client's case, researching applicable law, and investigating the facts. Settlement negotiations between the parties had recently commenced when suddenly Attorney fell ill.

Attorney was rushed to the emergency department whereupon it was discovered that Attorney had suffered a stroke. Attorney was left mentally impaired, with only a slight possibility of improvement over the next couple of years.

Which of the following best describes Attorney's duty:

- A. Attorney may continue to represent client in the matter.
- B. Attorney must withdraw from the representation and refund Client \$500.
- C. Attorney must withdraw from the representation and refund Client nothing.
- D. Attorney must withdraw from the representation, but keep Client's retainer in an interest bearing trust fund account since there is a slight possibility that Attorney may recover from the stroke in the distant future.

Question 20.

Two years ago Client sought to retain Attorney to file a sexual discrimination suit against Employer. During the initial consultation, Client informed Attorney of the circumstances surrounding Client's cause of action. Attorney decided that Client had a good case against Employer and accepted the representation. Client then signed Attorney's retainer agreement and wrote Attorney a check for \$1,000 to be deposited in Attorney's Client Trust Account.

Meanwhile, Attorney's practice had an unexpected boom in business and Attorney did no further work on Client's case for two years. Attorney recently drafted the complaint on behalf of Client. Just as Attorney finished the draft, Client phoned Attorney and informed her that she had retained another lawyer to represent her in this matter.

Is Attorney subject to discipline?

- A. Yes, but only if the Statute of Limitations had run before Attorney filed the complaint on behalf of Client.
- B. Yes, if Attorney did not act with diligence in representing Client.
- C. No, because the delay did not cause any harm to Client's case.
- D. No, unless time was of the essence.

Question 21.

Attorney Alpha represented Pa in a paternity suit brought by Ma. It was determined that Pa was the father of Child. As a result, Pa owes \$10,000 in back child support payments. Monthly payments are to be made to Ma to pay the overdue amount, as well as future payments until Child reaches 18 or until Ma remarries.

Child is now 13 years old. He recently discovered that Pa is his real father and wishes to live with him. Attorney Alpha accepts employment from Ma to represent her in the custody suit. Attorney Alpha did not obtain consent from Pa prior to accepting employment from Ma.

Would it be proper for Attorney to represent Ma in Ma's custody suit against Pa?

- A. No, because Attorney did not consult Pa and Pa did not consent to the representation of Ma.
- B. No, because Attorney represented Pa in the past.
- C. Yes, because Attorney's representation of Pa ended when the paternity suit concluded.
- D. Yes, if Ma pays Attorney from funds separate than those received from Pa.

Question 22.

Attorney was appointed as counsel to City. As a result of a dramatic increase in case volume, Attorney hired four associates, including Lawyer. Within four months of Attorney's appointment, three of his associates had resigned. Many of the city officials who had supported Attorney's appointment began to call for his dismissal. By this time, Lawyer was doing the work of three associates as well as performing the tasks Attorney needed to accomplish, including serving as City's lead trial counsel. One of the complaints from City's governing officials was the lack of specificity in Attorney's billing. Mayor, who now worked closely with and was quite pleased with Lawyer, asked Lawyer to review the bills Attorney had submitted. While Lawyer's bills were quite specific, referencing cases and actions performed, Attorney frequently billed eight hours for "attention to litigation matter." The dates of some of these bills coincided with dates Lawyer knew Attorney had done no work, but had played golf with private clients.

Lawyer advised Attorney of his discovery and of Lawyer's intention to notify the appropriate authority. Attorney suggested Lawyer reconsider or else Lawyer would be terminated. Fearful that he would not be able to meet his financial obligations, Lawyer decided not to refer Attorney to the proper authority.

Is Lawyer subject to discipline?

- A. No, because an associate is not responsible for the actions of his supervising attorney.
- B. No, if Lawyer's financial obligations are significant.
- C. Yes, unless Attorney was removed as counsel to City.
- D. Yes, because Attorney's false billing claims involve dishonesty and Lawyer is obligated to report them.

Question 23.

Lawyer represents Client who has been charged with the statutory rape of Victim. The age of consent in the jurisdiction is 16. The incident for which Client was charged occurred on the day before Victim's sixteenth birthday. Lawyer's research revealed a common law "coming of age" rule. Under this rule, persons are deemed to have attained the age they will be on their next birthday on the day before their birthday. Lawyer's research further revealed the jurisdiction's highest court had expressly rejected the "coming of age" rule nearly one hundred years earlier. Since its rejection, no reported decisions in the jurisdiction addressed the rule. Lawyer files a motion to dismiss the charges against Client based on the "coming of age" rule. Neither the prosecutor nor the judge discovered the decision which rejected the "coming of age" rule and the charges against Client are dismissed.

Is Lawyer subject to discipline?

- A. Yes, for failing to reveal the legal authority to the judge.
- B. No, because the burden is on the prosecution to prove every element of a crime, and the victim's age is an element of statutory rape.
- C. No, because Lawyer has no obligation to assist the prosecutor.
- D. No, because Lawyer's obligation is to zealously defend Client.

Question 24.

Julie Junior Attorney was recently admitted to the Bar and began to work for Senior Attorney, whose practice solely focuses on landlord-tenant issues, especially trailer park and mobile home law. Her cousin referred her to Senior Attorney. Julie had interned for free during law school for her cousin. Her cousin has been in practice for the past 25 years defending white collar criminals. Julie has no other legal experience and does not know anything about landlord-tenant issues.

Julie was directed by Senior to prepare, draft, and sign all new leases for the next month while Senior went on vacation, even though Senior was aware that Julie did not have any experience

in drafting leases. Upon Senior's departure, Senior said to Julie, "I know that you haven't drafted contracts before, but here is a stack of recent lease agreements to use as samples. Your cousin speaks very highly of you and I know you can do it." Senior then left on his long awaited vacation cruise through Alaska.

Is it proper for Senior to give Julie this responsibility?

- A. No, because Senior knows that Julie is not competent to draft lease agreements and Senior did not adequately supervise Julie's work even though Senior provided sample lease agreements.
- B. No, because Client did not consent before Senior instructed Julie to draft the lease agreements.
- C. Yes, since Julie had prior legal experience as an intern for her cousin.
- D. Yes, because Julie is an attorney since she was recently admitted to the Bar.

Question 25.

Client approached Lawyer for representation in a personal injury action. Client and Lawyer entered into a written retainer agreement under which Lawyer would receive a fee of 1/3 of any monies collected on client's behalf. After 8 months had passed, Client contacted Lawyer to inquire as to the status of her case. Lawyer's secretary advised Client that Lawyer had taken several weeks of vacation and had not yet taken any action on Client's behalf. Client then retained Attorney to represent her. Attorney filed suit two days prior to the running of the statute of limitations.

Is Lawyer subject to discipline?

- A. No, because Client's suit was filed before the statute of limitations ran.
- B. No, if Lawyer's vacation plans were made before Client retained Lawyer.
- C. No, because Client did not contact Lawyer for eight months.
- D. Yes, if Lawyer failed to act in a diligent manner.

Question 26.

Lawyer represents Husband in a divorce action instituted by Wife. Over the course of their twelve-year marriage, both Husband and Wife worked outside of the home and contributed equally to their various bank accounts and stock portfolios. Following the completion of voluminous discovery, which included the retention by both sides of financial experts, the parties reached a settlement. The settlement was formalized and approved by Judge and the matter was closed.

Six months later, Lawyer saw Husband at a dinner party given by a mutual friend. After exchanging pleasantries, Lawyer told Husband that he was surprised at how well Husband had accepted the settlement between Husband and Wife. Lawyer pointed out that most of his divorce clients were never happy regardless of how good a settlement or award they received.

Husband replied, "I guess most of your divorce clients don't have several bank accounts they've kept secret from their wives for more than ten years. I have enough money hidden away that I could retire now and live very happily. The only reason I keep working is so that Wife doesn't get suspicious and start looking into my finances."

The next day, Lawyer contacted Wife's counsel and Judge to advise them of the fraud perpetrated by Husband.

Is Lawyer subject to discipline?

- A. No, because Lawyer is obligated to prevent the perpetration of a fraud on a tribunal.
- B. No, unless Lawyer is still representing Husband.
- C. Yes, because the duty to reveal a fraud ends when the proceeding is concluded.
- D. Yes, for failing to discover Husband's fraud sooner.

Question 27.

Attorney is an assistant district attorney in City. Suspect was arrested on suspicion of murder, but was released when Witness failed to identify Suspect in a line-up. While Suspect was being held, a confidential informant was placed in the same cell as Suspect. Following Suspect's release, the informant advised Attorney that Suspect was very close to confessing to the murder and that Suspect probably would confess if he were held in the cell a little longer. While Suspect was being held, Victim reported being assaulted. The description Victim gave roughly fit Suspect. Upon hearing this, Attorney instituted a prosecution of Suspect for assault so that Suspect could be placed back in the cell in the hope that he would confess to the first murder. Attorney knew that Suspect could not possibly have assaulted Victim. While he was being held, Suspect confessed to the murder but vehemently denied involvement in the assault.

Is Attorney subject to discipline?

- A. No, because Suspect confessed to the murder.
- B. No, because a prosecutor has absolute discretion in the institution of criminal proceedings.
- C. Yes, because Attorney violated Suspect's right to due process.
- D. Yes, because there was no probable cause to support the assault charge.

Question 28.

Aaron and Ben were classmates in law school and, upon graduation, open their own office. After practicing together for five years, Aaron tired of the fact that he consistently worked twice as many hours as Ben with no additional compensation. Aaron decided to open his own law office. Aaron talks to Chris, one of the original clients acquired by Aaron and Ben after forming their partnership, about transferring Chris' business to Aaron's new firm. Aaron told Chris that since he had done most of the legal work for Chris over the last five years it would be in his best interest to move his business. Chris said that he would think about it.

Is Aaron subject to civil liability?

- A. Yes, because Aaron breached his fiduciary duty to Ben by pursuing Chris' business.
- B. Yes, to the extent that he has taken work that Ben handled primarily.
- C. No, because Aaron was the primary person responsible for Chris' work.
- D. No, because Chris has the right to counsel of his choice.

Question 29.

Attorney Allison has a law practice specializing in adoption cases. Her practice thrived at one point, but in the recent months it was not doing so well. She decided to hire Producer to produce a commercial for her in the hope that it would increase her clientele. Producer, with attorney's approval, made a sixty-second commercial.

The first segment of the commercial showed a 5-year-old boy, Thor, and a 3-year-old girl, Silvanna, who were sad and lonesome for a family. The next portion of the commercial depicted Attorney Allison in court fighting for Mr. and Mrs. Wannafamily to gain custody of Thor and Silvanna. Next came a clip showing that, after a rigorous debate, Attorney Allison won and Thor and Silvanna were placed with Mr. and Mrs. Wannafamily. The commercial ended with a family picture with Attorney Allison's legal fees for such a service superimposed.

Was it proper for Attorney to run the television ad?

- A. Yes, because adoption law is a field of law that is not widely publicized and the public has the right to know of Attorney Allison's services and legal fees.
- B. Yes, because the ad accurately described Attorney Allison's service and did not contain any false information.
- C. No, if the ad was misleading and created an unjustified expectation about the result Attorney Allison could achieve for each client.
- D. No, because publicizing by way of a commercial is unprofessional and degrading.

Question 30.

Lawyer was recently admitted to practice in State. Like many new attorneys, Lawyer had difficulty obtaining employment. After months of searching, Lawyer decided to open his own office. Shortly after the office opened, Benefactor met with Lawyer. Benefactor advised Lawyer that Benefactor's nephew, Client, has been charged with murder in the death of Client's business partner. Benefactor told Lawyer that Benefactor would pay all of Client's legal fees, should Lawyer agree to assume the representation of Client. Lawyer met with Client and the two of them entered into a retainer agreement. Benefactor issued a check for Lawyer's initial retainer. Client's case proceeded to trial. At trial, Lawyer was convinced the prosecution had failed to meet its burden of proof. He therefore moved for a dismissal. The judge denied the motion and recessed the trial until the next day. Lawyer told Client it would be unwise for Client to testify since the prosecution's case was so weak. Client protested, but accepted

Lawyer's advice and agreed not to testify. On the steps of the courthouse the next morning, an angry Benefactor confronted Lawyer, saying, "You put my nephew on the stand or I'm not paying the rest of his bill." Lawyer needed the money so, against Lawyer's better judgment, he put Client on the stand. The jury acquitted Client.

Is Lawyer subject to discipline?

- A. No, because Client was ultimately acquitted.
- B. No, if Lawyer's representation of Client was competent.
- C. Yes, because he allowed Benefactor to control his professional judgment.
- D. Yes, for allowing Client to testify when Lawyer felt he should not do so.

Question 31.

Lawyer is a nationally renowned criminal defense specialist. He frequently represents Client, the reputed boss of an organized crime family. On three separate occasions in the preceding five years, Lawyer has successfully defended Client against prosecution for racketeering. Client is now charged with multiple violations of the jurisdiction's R.I.C.O. statute. Like the previous prosecutions, this case has generated a great deal of notoriety and press coverage. Following Client's arraignment, Lawyer appeared on the courthouse steps, surrounded by numerous reporters and television cameras. One of the reporters asked Lawyer what he thought would happen in this prosecution. Lawyer responded, "We're confident of yet another acquittal. The state's entire case centers on the testimony of Witness, a notorious liar who's trying to avoid his own prosecution."

Is Lawyer subject to discipline?

- A. No, if the statements Lawyer made about Witness are true.
- B. No, since the trial has not yet begun.
- C. Yes, but only if the judge had previously issued a "gag" order restricting statements made to the press.
- D. Yes, because Lawyer identified and impugned the credibility of a witness.

Question 32.

Kid is an only child and lived with Father until Father's unexpected recent death from a rare form of cancer. Father's will read, "If I die before Kid is 18 years old, my estate should be placed in a trust for Kid until Kid reaches 18. In the meantime, the income generated by the trust must be used for Kid's daily living expenses until he reaches 18 years old. Upon Kid's 18th birthday, the trust should be terminated and distributed in total to Kid." A trustee was never named in this will.

Kid's only cousin sought appointment as trustee. At this hearing, the Court appointed Attorney as Guardian Ad Litem so that Kid's interest would be represented, and Cousin was appointed as trustee. Attorney's duties as Guardian Ad Litem ended once appointment proceeding ended.

Cousin then administered the trust as the appointed trustee, making payments for Kid's living expenses from the trust income.

Under the terms of the trust and the applicable law, a hearing was scheduled shortly after Kid's 18th birthday. At the hearing, Cousin was required to present an accounting, to ensure that the management and expenditures of trust funds had been proper. The trust would then be terminated, with any remaining funds being turned over to Kid. Cousin asked Attorney to represent him in connection with the accounting and hearing.

Would it be proper for Attorney to agree to represent Cousin?

- A. No, unless Attorney is paid by Cousin from Cousin's personal funds and not from Kid's estate.
- B. No, because Attorney acted as Guardian Ad Litem in the appointment proceeding at which time he represented Kid's interests.
- C. Yes, because Attorney's appointment as Guardian Ad Litem ended after the appointment proceeding.
- D. Yes, if Kid gives informed consent in writing.

Question 33.

Attorney represents Defendant in a criminal prosecution for drug trafficking. At his initial meeting with Attorney, Defendant stated that the government had seized all of his liquid assets. The only asset the government had not seized was Defendant's house, which he had inherited from his parents. The government alleged all of Defendant's other assets were income derived from his illegal activities. Defendant assured Attorney that he was innocent and the government would have to release all of his funds at the end of his trial. Defendant offered to allow Attorney to assert a lien against Defendant's home sufficient to cover Attorney's fees and expenses. It was agreed that Attorney would assert such a lien. Defendant was tried and acquitted of all charges and when his seized assets were released, Attorney was paid in full.

Is Lawyer subject to discipline?

- A. Yes, for assuming a proprietary interest in the subject matter of litigation.
- B. Yes, for entering into a business arrangement with a criminal defendant.
- C. No, since the lien was to secure Attorney's fee and expenses.
- D. No, since Defendant was acquitted.

Question 34.

Attorney was retained by Client to file a lawsuit against Client's former partner, Gates, for fraud based on deceptive business practices. Gates had acted as treasurer on behalf of the partnership for its five years of existence. Attorney filed the suit in superior court in State Red based upon sections 342 and 347 of the State Red Partnership Act. Two weeks before Attorney filed the suit, the Supreme Court of State Red declared section 347 of the State Red Partnership Act

unconstitutional under the State Red constitution. Lawyer, who represents Gates, filed a motion requesting sanctions be imposed upon Attorney, alleging that the complaint was based on a theory (section 347) that is no longer supported by existing law and citing the recent decision of the State Red Supreme Court. Within fourteen days after the filing of the complaint, Attorney amended the complaint to eliminate section 347 as a basis for the suit.

Is Attorney subject to litigation sanction?

- A. Yes, because Attorney should have revealed the State Red Supreme Court decision in the complaint.
- B. Yes, unless Attorney was, in good faith, unaware of the recent decision of the State Red Supreme Court.
- C. No, because Attorney amended the complaint to eliminate section 347 within fourteen days after filing the complaint.
- D. No, because Attorney was acting in the best interest of his client when he filed the complaint.

Question 35.

Mayor was elected based on his campaign promise to reduce crime in City and to generally improve the quality of life of City's citizens. During Mayor's first term in office, he made good on his campaign promise to reduce crime and the crime rate in City dropped a remarkable 20 percent. After being elected to a second term, Mayor determined that he needed to improve the general quality of life in keeping with his campaign promise. To further that end, Mayor initiated several ordinances designed to improve the quality of life for the citizens of City. Many of these ordinances met with little resistance, as City's citizens seemed happy to go along with whatever Mayor suggested. Eventually Mayor, citing a study sponsored by his administration, announced that hats worn by men on public streets seemed to generate hostility between wearers of hats and non-wearers. With this in mind, the Mayor announced he was proposing a new City ordinance, which banned the wearing of hats on public streets. Not wanting to oppose a popular mayor, the city counsel quickly passed the ordinance.

Client was required by his religion to wear a hat at all times when he was outdoors. Client phoned Lawyer and inquired as to what he should do with regard to his religious beliefs and the new ordinance, which did not make any exceptions for religious requirements. Lawyer replied "The Mayor has gone too far this time. If I were you, I would simply wear my hat and make them arrest you for adhering to your religious beliefs." Client followed Lawyer's advice and, although he was not arrested, he was issued a summons that required payment of a substantial fine for his violation of the ordinance.

Is Lawyer subject to discipline?

- A. No, because the ordinance was unconstitutional.
- B. No, because a lawyer may assist a client in a good faith test of the validity a law.
- C. Yes, if Client is found guilty and forced to pay the fine.

- D. Yes, because Lawyer advised his client to break the law.

Question 36.

While still an undergraduate, Lawyer spent his summers working in a traveling carnival. After several years in practice, Lawyer yearned for the more carefree days he spent on the road. He approached the owner of the carnival and proposed a business arrangement. Under the terms of Lawyer's proposal, Lawyer would pay a percentage of the carnival's operating costs and would operate a traveling law office, giving free legal advice to circus employees and representing any employees at a reduced rate. Lawyer would be free to accept other clients gained through his contact with people attending the circus. In exchange, Lawyer would share in the profits from the operation of the carnival and the carnival owner would receive a percentage of the proceeds from the traveling law office. Lawyer is admitted to practice in every jurisdiction visited by the carnival.

Is Lawyer subject to discipline?

- A. Yes, for entering into a business arrangement with a non-lawyer.
- B. Yes, because he formed a partnership with a non-lawyer in which he practiced law.
- C. No, because he was licensed to practice law in each jurisdiction visited by the carnival.
- D. No, unless a non-lawyer employed by Lawyer gave legal advice to a client.

Question 37.

Client contacted Attorney in response to a television advertisement. In the advertisement, Attorney truthfully stated that he had more than twenty years experience as a personal injury litigator, and that in those twenty years he had obtained millions of dollars on behalf of injured clients. In the advertisement, Attorney pointed out that each case is different and that a potential client recovery, if any, would be subject to any applicable laws. Client met with Attorney to discuss the facts of his particular case. At that meeting, Client was told that Attorney would be personally responsible for the handling of Client's matter from beginning to end.

One week after the initial meeting, Client received a call from Attorney. Attorney advised Client that he had suddenly taken ill and did not expect to be able to work full time for several months. Attorney advised Client that it was Attorney's intention to refer some matters, including Client's, to Lawyer, a long time colleague of Attorney. Attorney arranged a meeting between himself, Client, and Lawyer. Finally, Client was advised that Lawyer would be handling the day-to-day aspects of the representation of Client, including discovery, settlement negotiations, and preparation for trial as well as the actual trial should that prove necessary. Client orally agreed to allow Lawyer to become involved in the matter and Client further orally agreed that Lawyer would receive one-sixth of any recovery obtained on behalf of Client and that Attorney would also receive one-sixth.

Is Lawyer subject to discipline?

- A. No, because Client agreed to Lawyer's involvement in the representation.
- B. No, because Lawyer is accepting less than he was originally entitled to receive.
- C. Yes, because Attorney is receiving a disproportionate share of the fee.
- D. Yes, because Lawyer is not a member of Attorney's firm.

Question 38.

Client brought a legal malpractice suit against Attorney. Lawyer represented Attorney in the malpractice action. In her suit, Client alleged that Attorney failed to file a complaint on Client's behalf before the applicable statute of limitations had run. Thus, Client alleged she was denied recovery in a case which, had the complaint been filed, Client would almost certainly have been awarded some amount of damages. Client first consulted Attorney eighteen months prior to the running of the statute of limitations. Attorney, at that time, advised Client he would be in touch with her regarding a retainer agreement should Attorney decide to assume Client's representation. Client alleged she believed Attorney would simply commence suit on her behalf. Attorney alleged he had on three separate occasions communicated, via letter, with Client advising her that he would not be assuming her representation in this matter and reminding her of the applicable statute of limitations date. Attorney claimed these letters were sent within three months of his initial consultation with Client. When Client did not respond, Attorney alleged he simply closed his file. In discovery, Attorney produced the three letters and Lawyer then filed a motion to dismiss, since Attorney had met his obligations to Client. The motion was denied, and the matter was tried before a jury who found that, despite Client's claim that she had never received any letters, Attorney had in fact sent the letters and returned a verdict for the defense.

Some months later, Attorney and Lawyer met at a Bar Association function. Attorney, having had several drinks, was speaking freely on numerous topics. At one point, Attorney pulled Lawyer aside and told him, "Confidentially, I never sent any of those letters to Client. I didn't even dictate those letters until I realized the statute date had run. My secretary had misplaced the file and when I found it I realized that Client would probably be suing me for malpractice." The following day, Lawyer contacted the disciplinary authorities in jurisdiction to advise of Attorney's conduct.

Is Lawyer subject to discipline?

- A. No, since an attorney is required to report any violation of the rules of professional conduct that raises substantial questions as to a lawyer's honesty, trustworthiness or fitness as a lawyer.
- B. No, because Attorney's conduct caused Lawyer to participate in the perpetration of a fraud on a tribunal.
- C. Yes, because Attorney's comments were subject to the duty of confidentiality.
- D. Yes, for filing a frivolous motion.

Question 39.

Lawyer has been retained to represent Client, who has been charged with possession of narcotics with intent to distribute. Client was pulled over on a routine traffic stop when the investigating officer noticed the smell of marijuana coming from the car. The officer's search of the car revealed a large quantity of marijuana stored in the trunk. Although Client is eighteen years old, Client's mother advised Lawyer that she will pay all of Client's legal fees and has, in fact, already paid Lawyer's required retainer. Client has told both his mother and Lawyer that the marijuana in the car was, in fact, his. He only wishes for Lawyer to arrange for him to be sentenced to the statutory minimum sentences in jurisdiction.

However, at a meeting in Lawyer's office at which Client's mother was not present, Client confided to Lawyer that the drugs were not his, but that they were his brother's. Client knew that if his mother found out that his brother was involved with drugs, it would break her heart. Later that day, Client's mother phoned to speak with Lawyer. Lawyer suggested that Client's mother attempt to convince Client not to plead guilty but to mount a defense to the charges. Client's mother replied that Client had always been trouble and she wishes he were more like his brother. Lawyer then advised Client's mother of what Client had revealed, namely that it was Client's brother who was responsible for the drugs being in the car.

Is Lawyer subject to discipline?

- A. Yes, for violating the duty of confidentiality.
- B. Yes, for allowing someone other than a client to pay the client's legal fees.
- C. Yes, because allowing Client to plead guilty to a crime he had not committed would be perpetrating a fraud on the court.
- D. No, since Client's mother is paying Client's legal fees, she is entitled to know what strategy Lawyer has in mind.

Question 40.

Attorney represented Client in a personal injury action against Zeta. Attorney's agreement with Client provided that Attorney was to receive 25% of any recovery. After lengthy settlement negotiations, Client and Zeta agreed that Client should be paid \$200,000 for his pain and suffering. Zeta was given 90 days to pay the settlement amount in full. Two weeks after the settlement agreement was signed, Zeta delivered to Attorney's office a certified check for \$100,000. Zeta explained that he would not have the remaining amount due for at least 60 days. Attorney deposited the check into the checking account he maintained for office expenses. Fifty-five days later, Zeta delivered the remaining \$100,000 to Attorney, who immediately deposited this check in to the same account. Five days later, Attorney wrote the following checks on his office expense account: \$150,000 to Client and \$50,000 to Attorney's personal checking account.

Is Attorney subject to discipline?

- A. Yes, because he commingled Client's funds with his own funds.
- B. Yes, because he commingled Client funds with his own and held Client's funds without notice and for too long a period.
- C. No, because Client was not due any funds until the settlement agreement had been paid in full.
- D. No, because Client never demanded payment prior to the expiration of the 90-day period.

Question 41.

Litigious Lucy sought medical treatment from Physician for removal of a re-occurring wart located on her left thumb. She had the wart removed two times in the past year, but it kept recurring. Each time Physician would use a laser light beam, the latest technology in wart removal, to burn the wart off Lucy's left thumb. Physician informed Lucy that warts are likely to re-occur without any explanation.

Tired of dealing with the wart and believing that Physician did not provide treatment that complied with the standard of care in her community because of the wart's re-occurrence, Lucy retained Attorney Alpha to file a medical malpractice suit against Physician.

Attorney Beta represented Physician in this suit. During the litigation process, Beta discovered that Physician should also have prescribed ointment following the laser treatments but failed to do so, thereby exposing Physician to liability. Lucy demanded \$5,000 to settle the case. Beta thought that \$5,000 was a great deal considering the costs involved with going to trial and accepted it.

Is Beta subject to discipline?

- A. Yes, but only if \$5,000 was not a reasonable settlement amount.
- B. Yes, if Physician desired to go to trial.
- C. No, because accepting the \$5,000 was in Physician's best interest.
- D. No, so long as Attorney informed Physician of the settlement offer.

Question 42.

Attorney has a thriving practice specializing in elder law. Her office is located near a large retirement community. In addition to her practice, Attorney volunteers her time to give seminars to many of the elderly residents in the area. These seminars are usually run through civic organizations or churches. In the seminars, Attorney is careful to discuss issues in general. When she fields questions from her audience, she is careful not to analyze particular situations and meticulously avoids giving legal advice to any member of her audience on any specific matter. She reminds all of those who hear her speak that they should have a will and that they should have an attorney prepare the will for them. She gives the phone number for the local bar association and advises her audience members to contact that organization for referrals to local attorneys. Attorney never specifically recommends other attorneys nor does she ever

recommend herself. Invariably, in the days following each seminar she gives, Attorney receives calls from several audience members who wish to have Attorney prepare or update their wills.

Is Attorney subject to discipline?

- A. Yes, because she has engaged in improper solicitation.
- B. Yes, because the seminars are intended to serve as free advertisement for Attorney's service.
- C. No, because Attorney was not seeking to gain legal employment by speaking with individual listeners.
- D. No, but only because Attorney referred listeners to the local bar association.

Question 43.

Attorney recently graduated from Bluff Law School and successfully passed the Bar Exam. Prior to going to Law School, Attorney practiced as a dentist for the past 15 years. As a result, most of Attorney's contacts are in the dental field.

At the last Dental Conference, Attorney approached his old cronies and said, "If you refer your patients to me who are in need of legal services, I will retain you as an expert witness in all of my dental malpractice cases."

Is Attorney subject to discipline for making such an agreement with his old dental cronies?

- A. Yes, because the agreement allows non-lawyers to practice law.
- B. Yes, because Attorney's agreement involves something of value in exchange for recommending Attorney's services.
- C. No, but only if Attorney does not share any legal fees with his old cronies.
- D. No, because Attorney receives a bigger benefit in this Agreement than his cronies.

Question 44.

Clyde has had a sore back for many years, however he refuses to seek medical treatment for his pain. Last month, he was in a minor auto accident that temporarily disturbed his pre-existing back troubles. Within a few days, Clyde's back felt the same as it did prior to the accident. He decided to retain Attorney so that he could be compensated for his troubles. Clyde also thought that it would be a good idea to start paying better attention to his back and wanted to start a physical therapy program.

Clyde informed Attorney of his pre-existing back pain, but told Attorney that should this case proceed to trial, Clyde would testify that his back trouble stemmed from the car accident only. That way, Clyde's medical bills and future physical therapy program would be covered.

Attorney informed Clyde that he must testify truthfully about his pre-existing condition, but Clyde insisted on lying about the origin of his back pain. At trial, Attorney called Clyde to the stand and asked Clyde questions about the origin of his back pain, to which Clyde responded untruthfully as intended.

Is Attorney subject to discipline as a result of Clyde's testimony?

- A. Yes, because Attorney knowingly offered evidence he knew to be false.
- B. Yes, but only if Attorney receives a favorable verdict on behalf of his client.
- C. No, because Clyde insisted upon giving the false testimony even though Attorney persuaded him against lying.
- D. No, because Clyde would have lied anyway, and Attorney cannot control a client's actions.

Question 45.

After 10 years of training, Attorney was ready to hike Mount Everest. He boarded the six-seater plane with the other hikers, including A, and was air lifted to base camp where they spent the night. They began their ascent early the next morning when suddenly a white-out occurred. Attorney, A, and the others found shelter in a make shift igloo. Believing that he was going to die, A asked Attorney to prepare a will on his behalf. Attorney informed A that Attorney has never drafted a will, but would throw one together based on his knowledge from law school. Attorney then wrote out the will on A's backpack. A signed it, and two other hikers acted as witnesses.

Was it proper for Attorney to draft A's will?

- A. No, because Attorney has never drafted a will.
- B. No, unless A agrees to waive Attorney's liability for professional malpractice.
- C. Yes, because Attorney performed a legal service that was reasonable under the circumstance.
- D. Yes, unless it is discovered that the will does not meet the technical requirements to be valid.

Questions 46 & 47 are based upon the following fact situation:

Millionaire Melanie went to her doctor, Doctor, for a routine check-up. Upon physical examination, small lumps were discovered in her left breast. She was referred to a specialist and was subsequently diagnosed with breast cancer that had spread to her lungs. Unfortunately, Melanie had a poor prognosis and she was told that she only had a few months to live.

Melanie sought Attorney's services to draft a will, and to file a lawsuit for medical malpractice against Doctor for failing to discover the cancer sooner. Melanie had acquired much wealth in her lifetime, personal and real property included. Because of the complexity of her finances and because of the potential of many lawsuits that could be filed should a dispute arise over the distribution of her wealth, Attorney drafted a special retainer agreement. The agreement provided for a nonrefundable retainer fee of \$2,000, which Melanie paid in cash at her first appointment with Attorney. Additionally, Attorney charged \$100 an hour for services rendered

in connection with this matter. Attorney spent 10 hours reviewing Melanie's file, drafting the will, and investigating her medical malpractice claim. Attorney became convinced that she did not have a strong claim for malpractice and that she would not prevail in a lawsuit. The statute of limitations is about to run in the medical malpractice suit, and Attorney wishes to withdraw without filing suit. Melanie insists that Attorney at least file the medical malpractice complaint before withdrawing.

Question 46.

Is Attorney subject to discipline if she files the complaint on behalf of Melanie?

- A. No, because there is always a possibility of prevailing in a jury trial.
- B. No, unless Attorney filed the complaint for the purpose of harassing Doctor.
- C. Yes, because Attorney made an independent investigation of the facts and discovered that Melanie had no case.
- D. Yes, because Attorney should not have waited to file suit since Melanie was about to die.

Question 47.

If Attorney withdraws with Melanie's consent, is it proper for Attorney to keep all or any part of the \$2,000 retainer that she paid?

- A. No, because Attorney did not file suit on Melanie's behalf.
- B. No, because Attorney did not earn the money prior to withdrawing from representation.
- C. Yes, Attorney may keep the entire \$2,000 if it represents a reasonable nonrefundable retainer.
- D. Yes, but no more than \$1,000 for the ten hours of service rendered.

Question 48.

Attorney met Dog Breeder at the veterinarian's office. While waiting for their respective appointments, they engaged in conversation about their dogs and issues relating to dog training. Just as Breeder's appointment was called, Attorney explained her services, gave Breeder her business card, and told her to retain her should she ever need an attorney. Breeder also gave Attorney her card should Attorney ever decide to breed her mutt.

Under which of the following circumstances is Attorney subject to discipline?

- I. When Breeder finished with her appointment, she told Attorney that she would contact her tomorrow with a problem she had in collecting payments with respect to her dog breeding business.

II. During the appointment, Breeder realized that she had utilized Attorney's services last year when she was involved in a minor contract dispute.

III. Breeder is Attorney's second cousin, once removed.

- A. I only.
- B. II only.
- C. II and III.
- D. I, II, and III.

Question 49.

The Statute of Limitations for a professional malpractice action in the State of Confusion is three years. State law allows parties to either shorten or lengthen the Statute of Limitations period regarding malpractice actions, as long as the parties are competent during the relevant period.

Cloe Client retains Attorney to represent her in a personal injury suit. During Cloe's first consultation with Attorney, Attorney handed Cloe her retainer agreement. In this agreement, there is a clause which states that any malpractice actions arising out of the representation must be brought within one year of the date the cause of action occurred. Attorney did not advise Cloe that she could consult independent counsel before she signed the retainer agreement.

Is Attorney subject to discipline for including the one-year limitation in her retainer agreement?

- A. No, because Cloe could have retained another attorney who does not have such a clause in their retainer agreement.
- B. No, because the law in the State of Confusion allows the parties to shorten the statute of limitations period provided that the parties are competent during the relevant period.
- C. Yes, because such a clause in a retainer agreement is a limitation on the client's right to sue Attorney for malpractice.
- D. Yes, unless Attorney explains the effects of the provision and the client consents.

Question 50.

Shoplifter felt guilty for stealing a diamond bracelet from the display case in a jewelry store located in the Mall. She confessed to Attorney that she had taken the bracelet because she always wanted one and knew her boyfriend could not afford it. However, guilt consumed her and she wanted to return it, but did not want to get caught. She then informed Attorney that she had thrown the bracelet into the river. Shoplifter left town and was never heard from again.

Investigator somehow traced the missing bracelet to Attorney. Investigator questioned Attorney about the whereabouts of the diamond bracelet.

Should Attorney reveal where Shoplifter threw the bracelet?

- A. No, because revealing the information would violate the duty of confidentiality owed to Shoplifter.
- B. No, because there are no pending charges against Shoplifter.
- C. Yes, because Attorney is the only one to have such information and the jewelry store has the right to know if they will ever recover the stolen diamond bracelet.
- D. Yes, if Attorney reasonably believes it is necessary to establish a defense on his behalf.

Question 51.

Attorney is defending Client who was brought up on charges of violating the State's anti-foul language statute. The defense hinges on Client First Amendment right to free speech. After doing extensive research, Attorney discovers case law that may be persuasive. The case is rather old, and may be interpreted as being contrary to current law.

Is Attorney subject to discipline if Attorney asserts a defense using such case law?

- A. No, so long as Attorney believes in good faith that the defense argument has merit.
- B. No, because Attorney has the duty to zealously advocate on behalf of his client which includes the duty to present all matters favorable to Client.
- C. Yes, because the old case may be interpreted as being contrary to current case law.
- D. Yes, unless the case law is persuasive to the extent that it can be distinguished from the current case law.

Question 52.

For several years, Attorney has acted as lead counsel on behalf of State. A class action asbestos lawsuit had been filed against State by employees who allegedly received injuries as a result of working in State Agency. Attorney successfully defended State and the Appellate Court recently affirmed the judgment.

A few months after the Court of Appeal's ruling, Attorney decided to pursue private practice. While in private practice, he was approached by Employee Ernie, who was one of the individuals who brought the class action suit against State. Ernie informed Attorney that State was about to file charges against him for embezzlement and requested Attorney to defend him in that action. The embezzlement allegedly took place during the same time period as when Attorney acted as lead counsel on behalf of State.

Is Attorney subject to discipline if he represents Ernie in this action?

- A. No, unless State consented to Attorney's representation of Ernie.
- B. No, because the second representation involves a different matter.

- C. Yes, because Attorney would not be able to remain objective in the embezzlement case if Attorney discovered discrediting information about Ernie in the asbestos case.
- D. Yes, because Attorney acted as lead counsel in the asbestos lawsuit while employed by State.

Question 53.

Attorney filed suit on behalf of Patient for personal injury suffered in connection with a surgery she underwent to remove two tattoos located in a very precarious area. One tattoo depicted Mickey Mouse, the other Donald Duck. She decided to have them removed because she was getting married and they had outgrown their welcome. Because of their location, she sought treatment from Plastic Surgeon, an expert in tattoo removal. Surgeon removed them, but left big scars in their stead. Patient was embarrassed and unhappy because the scars showed through her bikini.

During the litigation process, it was necessary to hire Expert to provide testimony establishing that Surgeon performed the tattoo removal negligently. Expert estimated her fee to be \$2000, including review of medical records, deposition and trial testimony. Patient did not have the money to pay for Expert so Attorney loaned Patient the money to cover Expert's fee. Meanwhile, Patient desired to undergo a subsequent surgery to correct the scars. Attorney loaned her \$1000 for this surgery. Attorney failed to indicate to Patient in writing the terms of the loan.

Is Attorney subject to discipline?

- A. Yes, because Attorney loaned Patient money for the Expert fee.
- B. Yes, because Attorney loaned Patient money for the Expert fee and the subsequent surgery.
- C. Yes, because Attorney loaned Patient money for the subsequent surgery.
- D. No, because Attorney may loan a client money.

Question 54.

Attorney received a phone call from Fred, a close friend. Fred had just been arrested for possession of an illegal substance. Fred requested that Attorney make the arrangements to bail him out of jail, and represent him. Attorney agreed.

Subsequently, as Attorney and Fred were discussing trial strategy, Fred stated, "I don't care what you do, as long as I am cleared of these charges. I will not have my reputation smeared." At the preliminary hearing, Prosecutor informed Attorney of a plea bargain -- enter a guilty plea to a reduced charge in exchange for a reduced sentence. Attorney turned the offer down since he was confident that he could obtain an acquittal of all charges. Fred was later convicted.

Was it proper for Attorney to reject the plea?

- A. Yes, because an attorney has a duty to zealously advocate on behalf of his client.

- B. Yes, if Fred would have rejected the plea anyway.
- C. No, because Attorney did not advise Fred of the plea.
- D. No, because Fred was later convicted.

Question 55.

Concerned about the large homeless dog population within its borders, the State X legislature passed a statute which statute read, "Every dog breeder in State X must obtain a permit for every dog designated as a breeder." A permit for one dog costs \$500.

Daughter recently established her own dog breeding business. She has twenty dog which she offers for breeding purposes. Daughter retained Attorney on a contingency fee basis for the purpose of attacking the statute on constitutional grounds. Without Daughter's knowledge, Mother contacted Attorney and offered to pay Attorney \$10,000 in advance to insure that Attorney's resources will not dry up prior to completion of the case.

If Attorney accepts the \$10,000, is Attorney subject to discipline?

- A. Yes, because a third party will be paying Attorney's fee.
- B. Yes, because Daughter was not informed of the payment.
- C. No, because Attorney is allowed to be paid for services rendered.
- D. No, if \$10,000 is a reasonable fee.

Question 56.

Attorney Apple is an estate planning attorney who established the Urn's family trust. Urn Jr. informed Attorney that his mother tragically but instantly died in an auto accident recently, and her body was cremated. There is a dispute in the family over the possession of her ashes. Urn Jr. believes that his mother wanted her ashes thrown into the ocean whereas Urn Sr. believes that the ashes should stay close to him as a reminder of his wife. Attorney instructed Urn Jr. to deliver the ashes to Attorney's office until the dispute over them is resolved. Upon receipt, Attorney labeled the property and placed it in a safety deposit box located behind Attorney's desk.

The day after Urn Jr. delivered the ashes an earthquake hit the surrounding area. Attorney's building was demolished along with its contents. The ashes cannot be found.

Is Attorney subject to discipline?

- A. No, unless there was a more appropriate place to store Client's property.
- B. No, unless Attorney did not have liability insurance to cover for such losses.
- C. Yes, because Attorney should be aware of any potential natural disaster and should not store client property in his office.
- D. Yes, because ashes are personal property and, as such, should be left in the client's possession.

Question 57.

Attorney represents Defendant Dave who has been charged with the first-degree murder of Vicki, a ten-year-old girl. The defense hinges on the fact that the murder weapon is missing. Trial is scheduled to begin at the beginning of next month. One day, while Attorney was preparing for trial, he received a phone call from Bob, Dave's best friend. Bob informed Attorney that he saw the knife allegedly used in the murder, but that the knife no longer exists. Attorney thanked Bob for the information and directed Bob that he should take a European vacation for the next month. Bob took Attorney's advice.

Is Attorney subject to discipline?

- A. Yes, so long as Dave was on the witness list for testimony at trial.
- B. Yes, because Attorney suggested that Bob conceal himself during Dave's trial.
- C. No, because Attorney did not actively conceal Dave's testimony by financing Dave's vacation.
- D. No, because Attorney did not coerce Dave to leave the jurisdiction.

Question 58.

A statute recently passed in State X provides the following:

"In an effort to promote the health of the environment, every homeowner, including renters, must plant at least one evergreen tree and one fruit bearing tree on their property. Failure to do so results in a \$1000 fine and/or 6 months in jail."

When Homeowner moved to his current residence, he extracted every tree on his property and replaced them with a beautiful marble stairway with an extremely unique water fountain flowing next to it. It took Homeowner about a year to complete the project and he spent almost every penny in his bank account. In order to adhere to the ordinance, Homeowner would have to remove the stairway and fountain. Homeowner believes that the ordinance should not apply to him because of the great expense involved. Nevertheless, he believes that he is adhering to the purpose of the statute by using recycled water in the fountain.

Homeowner sought Attorney's advice. Attorney responded, "It is ridiculous to think that the statute applies to you since removal of the stairway and fountain would create such waste. You should file an action seeking declaratory relief or else just ignore the statute in its entirety. I doubt this statute would be enforced any way."

Is Attorney subject to discipline?

- A. No, because Attorney's comments were proper since the statute did not intend to create waste while promoting the environment.
- B. No, because Attorney assisted Homeowner in a good faith effort to determine the validity of the statute.
- C. Yes, because Attorney instructed Homeowner to violate the statute.

- D. Yes, but only if Attorney does not file a declaratory action on behalf of Client.

Question 59.

In which of the following situations would it be proper for Attorney to enter into a fee arrangement whereby Attorney would collect 20% of any recovery awarded to Client?

- I. Client owns an apartment complex that he obtained while married to Ex. Client and Ex have been divorced for 2 years and Client now seeks a partition of the complex that the divorce court decreed was owned in undivided one-half interests by Client and Ex.
- II. Client retains Attorney for the purpose of seeking an attachment of Ex's wages since Ex stopped paying spousal support payments five months ago.
- III. Client believes that Pa is the father of her child. Client retains Attorney to file a paternity suit to establish that Pa is the child's father and is obligated to pay child support.

- A. I and II only.
- B. I and III only.
- C. II and III only.
- D. I only.

Question 60.

Attorney has exclusively practiced corporate litigation in State Z for the past 15 years. A bill that would increase annual filing fees for all corporations with their principal places of business in State Z was up for consideration during the summer session in State Z's legislature. Attorney thought that if she could phone every client to inform them of the increase, she perhaps could rally enough people to protest the increased rate. Attorney pulled her files, and contacted every client.

Is Attorney subject to discipline?

- A. Yes, if Attorney's intention in contacting her clients was pecuniary gain since the bill, if passed, would require every client to sign additional paperwork for which Attorney could bill.
- B. Yes, because Attorney's telephone contact constitutes solicitation.
- C. No, because the contact between Attorney and the clients is not face-to-face.
- D. No, because former clients would expect Attorney to contact them with any significant change relating to their corporation's status.