

## Professional Responsibility

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Elon Law School  
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## Practice Examination Questions

1. Attorney Terranova is the managing partner at a mid-size law firm with numerous lawyer and non-lawyer employees. The firm had a very good year. Terranova wants to share the success of the year with her employees, so she gives each employee a “holiday bonus” equal to 5% of each employee’s annual salary. Is Terranova subject to discipline?
  - a. Not for a bonus given to any equity partners in the law firm, but yes for any non-equity lawyers and non-lawyer staff.
  - b. Yes, because law firms may not offer bonuses to any employees, as bonuses undermine the professional independence of a law firm.
  - c. Not for a bonus given to lawyers in the law firm.
  - d. Yes, because lawyers are prohibited from including non-lawyer employees in a compensation plan that is based in whole or in part on a profit-sharing arrangement.
2. Attorney Anders in his spare time served as co-leader to a local Boy Scout Troop. In that role, Anders had responsibility for collecting money from parents and donors on behalf of the Troop, and Anders was expected to deposit these funds into a bank account designated by the Boy Scout Council. In the last year, Anders received \$2,500 to be deposited in this manner. Anders, however, objected to the Boy Scouts’ historical policies excluding openly gay scouts and scout masters, so he took these Troop funds and secretly donated the money to an LGBT advocacy organization. When the Boy Scout Council discovered Anders’ actions and confronted him, Anders immediately repaid the money, plus interest. Is Anders subject to discipline?
  - a. No, because Anders had a 1st Amendment right to protest the Boy Scouts’ policy.
  - b. No, because Anders repaid the money with interest.
  - c. Yes, because attorneys can be disciplined for misconduct involving fraud or breach of trust even if unrelated to the practice of law.
  - d. No, because Anders’ actions constituted a good faith effort to determine the validity, scope, or meaning of the Boy Scouts’ policy.
  - e. No, because Anders did not act as an attorney when he misappropriated the Boy Scouts’ funds.
3. Start-up was a small three-person company that designed a unique computer part. Although Start-up’s three owners stood to realize a tremendous profit in a short time once this computer part hit the market, this profit remained speculative and the company had little capital. The company thus was unable to secure competent legal counsel to negotiate several proposed business

contracts for the computer part's manufacture and distribution. Attorney Erik, a distant relative of one of the three owners, agreed to handle all transactional work for no fee up front if the owners assigned 10% of the company's first two years of profit to Erik. The owners balked at first, but with no other choice, they agreed. Erik ably represented Start-up through several complex negotiations and contracts, and Start-up realized approximately \$5 million in profit by the end of its first two years. Erik demanded \$500,000 for his legal services. If Erik had billed Start-Up by the hour consistent with his experience and the nature of the work, Start-up would have paid \$100,000-125,000 in legal fees. Is Erik subject to discipline?

- a. Yes, because the contingent fee amount exceeded the market value of Erik's legal services when billed by the hour.
  - b. Yes, because the contingent fee agreement gave Erik a proprietary interest in the subject matter of the representation.
  - c. Yes, if Erik knew that the clients had no other options for securing legal counsel.
  - d. No, if the fee agreement was in a writing signed by the clients.
4. Lawyer Xavier has represented Company in business matters over several years. Company recently asked Xavier to negotiate a lucrative contract with the United States military. Xavier has no experience with military contracts and knows that this contract will immediately demand expertise in a specialized field involving complex regulations. Xavier would like to add this area of expertise to his business law experience. Which of the following options may Xavier ethically pursue?
- a. Decline to represent Company in the contract negotiation, and accept a modest fee for referring Company to a lawyer who specializes in this type of military contract.
  - b. Agree to represent Company if Company agrees, confirmed in writing, to Xavier associating and proportionately splitting the fees with an attorney who specializes in this type of military contract.
  - c. Agree to represent Company and unilaterally subcontract all the legal work to an attorney who specializes in this type of military contract.
  - d. Agree to represent Company with the sincere intent that, at some point during the representation, he would teach himself this specialized field.
5. Attorney Mervin represented Dr. Hack in a medical malpractice case against Hack. Although an experienced medical malpractice lawyer, Mervin lost Hack's case to the tune of a \$250,000 judgment. Mervin, however, defeated a punitive damages claim in the amount of \$1 million. Just prior to trial, Hack made a damaging statement to Mervin in confidence that, if known, likely would have justified punitive damages in addition to the judgment amount. Hack nevertheless was furious, believing he should have won altogether. Hack thus refused to pay the \$20,000 fee that he had agreed to pay if the case went to trial. Hack also sued Mervin for malpractice in the amount of the judgment. May Mervin disclose Hack's damaging statement either in seeking the unpaid fee or in responding to Hack's malpractice claim?
- a. Yes, to collect the fee, but not to defend against the malpractice claim.

- b. Yes for both purposes, if Mervin reasonably believes the statement necessary to show that Mervin did not commit malpractice and that the fee agreement was reasonable.
  - c. No, for either purpose.
  - d. Yes, to defend against the malpractice claim, but not to collect the attorney's fee.
6. Attorney Spencer was approached by Blohardovich, a recently disgraced local politician who was indicted on corruption charges. Blohardovich had little money for his defense, and Spencer had little time for pro bono work. But the case already had received a great deal of media attention and could result in a rather sensational trial. Spencer decided to take Blohardovich's case for a very low fee, with the expectation that he would write a book or a screenplay about the case to realize his profit. Is Spencer subject to discipline?
- a. Yes, if Spencer negotiated media rights for Blohardovich's case while representing Blohardovich.
  - b. No, if Blohardovich gave informed consent confirmed in writing.
  - c. Yes, because of the rule that prohibits attorneys from acquiring a proprietary interest in the subject matter of litigation.
  - d. No, even if Spencer negotiated the media rights while representing Blohardovich, because Spencer had a 1st Amendment right to publish a book or a screenplay.
  - e. No, even if Spencer negotiated the media rights while representing Blohardovich, because the Model Rules encourage reduced-fee pro bono representation.
7. Attorney Drazen represents Plaintiff in a wrongful death action against Defendant. Defendant is accused of negligently killing Plaintiff's son, a local honor student, during a drunk driving accident. The case has generated some publicity in the local media, and is approaching trial. Defendant's lawyer recently was interviewed by a local news station about the case. During the interview, Defendant's lawyer said, "We of course all mourn the loss of this young man. Even if he was experiencing personal problems involving serious drug abuse, no one minimizes the loss." Upset at these statements, Drazen the next day called a press conference and said, "This young man before his death set an example for our youth to follow. Any problems he had were the minor and private indiscretions of youth with no relevance to this case. Plus, the loss here is not just the loss of this outstanding young man, but also the terrible emotional toll that this tragic loss will inflict on his parents for life. No amount of damages properly can remedy this kind of loss. Nor can it adequately condemn the heinousness of Defendant's dangerous conduct. The trial will show that this kind of dangerousness is nothing new for Defendant, who has made a habit out of endangering the public." Is Defendant's lawyer subject to discipline?
- a. Yes, because attorneys may not comment publicly about pending litigation.
  - b. Yes, if Defendant's lawyer knew or reasonably should have known that her public comments would materially prejudice the proceedings.
  - c. No, if Defendant's lawyer had an objective, good faith belief in the accuracy of the facts she asserted during the interview.
  - d. No, if Defendant's lawyer honestly intended to offer those facts at trial.

8. Attorney Drazen represents Plaintiff in a wrongful death action against Defendant. Defendant is accused of negligently killing Plaintiff's son, a local honor student, during a drunk driving accident. The case has generated some publicity in the local media, and is approaching trial. Defendant's lawyer recently was interviewed by a local news station about the case. During the interview, Defendant's lawyer said, "We of course all mourn the loss of this young man. Even if he was experiencing personal problems involving serious drug abuse, no one minimizes the loss." Upset at these statements, Drazen the next day called a press conference and said, "This young man before his death set an example for our youth to follow. Any problems he had were the minor and private indiscretions of youth with no relevance to this case. Plus, the loss here is not just the loss of this outstanding young man, but also the terrible emotional toll that this tragic loss will inflict on his parents for life. No amount of damages properly can remedy this kind of loss. Nor can it adequately condemn the heinousness of Defendant's dangerous conduct. The trial will show that this kind of dangerousness is nothing new for Defendant, who has made a habit out of endangering the public." Is Attorney Drazen subject to discipline?
- a. Yes, because attorneys may not comment publicly about pending litigation.
  - b. No, because Drazen's public comments responded to the public comments that Defendant's lawyer previously made.
  - c. Yes, because Drazen's public comments were not limited to facts mitigating the effect of Defendant's lawyer's public comments.
  - d. No, if Drazen had an objective, good faith belief in the facts he asserted.
  - e. Yes, if Drazen knew or reasonably should have known that his public comments would materially prejudice the proceedings.
9. Shark often has been in trouble with the law, and he always retained Attorney Suit. Shark now plans to import a large shipment of cocaine across the U.S.-Mexico border. Shark also plans to murder a rival drug dealer, Jet. Rather than wait to see whether the authorities get wind of this plot, Shark decides to act proactively: he goes to Suit's office, tells Suit about his plans, and asks Suit for advice on how best to succeed at each stage without being detected by the authorities. Suit, however, is no criminal himself, so he declines to give Shark the advice he seeks. Instead, Suit explains the potential criminal liability to Shark and tries to dissuade Shark from his plans. Shark says, "Well, this was a big mistake. I'll call you if there's a problem," and he leaves Suit's office. If Suit reasonably believes that Shark will act on his plans, which answer most accurately describes Suit's professional responsibility?
- a. Suit must reveal Shark's plan to murder Jet, and may reveal the plan to import the cocaine.
  - b. Suit may reveal the plan to murder Jet, but may not reveal the plan to import the cocaine.
  - c. Suit must reveal both of Shark's plans.
  - d. Suit may reveal either Shark's plan to murder Jet or the plan to import the cocaine, but not both.
  - e. Suit acted unethically when he counseled Shark on his potential criminal liability.

10. Shark often has been in trouble with the law, and he always retained Attorney Suit. Shark now plans to import a large shipment of cocaine across the U.S.-Mexico border. Shark also plans to murder a rival drug dealer, Jet. Rather than wait to see whether the authorities get wind of this plot, Shark decides to act proactively: he goes to Suit's office, tells Suit about his plans, and asks Suit for advice on how best to succeed at each stage without being detected by the authorities. Suit, however, is no criminal himself, so he declines to give Shark the advice he seeks. Instead, Suit explains the potential criminal liability to Shark and tries to dissuade Shark from his plans. Shark says, "Well, this was a big mistake. I'll call you if there's a problem," and he leaves Suit's office. If Suit reasonably believes that Shark will act on his plans, which answer most accurately describes Suit's professional responsibility? Suit practices in Washington State.
- a. Suit must reveal Shark's plan to murder Jet, and may reveal the plan to import the cocaine.
  - b. Suit must reveal Shark's plan to murder Jet, but may not reveal the plan to import the cocaine.
  - c. Suit may reveal the plan to murder Jet, but may not reveal the plan to import the cocaine.
  - d. Suit must reveal both of Shark's plans.
  - e. Suit may reveal both of Shark's plans.
11. Shark often has been in trouble with the law, and he always retained Attorney Suit. Shark now plans to import a large shipment of cocaine across the U.S.-Mexico border. Shark also plans to murder a rival drug dealer, Jet. Rather than wait to see whether the authorities get wind of this plot, Shark decides to act proactively: he goes to Suit's office, tells Suit about his plans, and asks Suit for advice on how best to succeed at each stage without being detected by the authorities. Suit, however, is no criminal himself, so he declines to give Shark the advice he seeks. Instead, Suit explains the potential criminal liability to Shark and tries to dissuade Shark from his plans. Shark says, "Well, this was a big mistake. I'll call you if there's a problem," and he leaves Suit's office. The authorities intervened before Shark could act on his plans, and he has been charged with conspiracy to commit murder and to import cocaine. Prior to trial, the prosecutor learns from an informant that Shark is upset that Suit will not represent him as usual because of a "conflict." Suspecting that Shark told Suit about his plans, the prosecutor subpoenas Suit as a trial witness to testify to any statements Shark made to Suit about an intent to commit the murder or to import the cocaine. Suit moves to quash the subpoena, claiming attorney-client privilege. The court holds an ex parte hearing, at which Suit describes the facts presented in this problem. Should the court order Suit to testify?
- a. Yes, but only as to the murder plot; the communications regarding the plan to import cocaine remain privileged.
  - b. Yes, because Suit unethically invoked the attorney-client privilege.
  - c. No, because the communications between Suit and Shark remain privileged.
  - d. Yes, but only if Suit already had disclosed Shark's plans to the authorities under an exception to confidentiality.
  - e. Yes, the court should require Suit to testify to Shark's statements.

12. Attorney Norman and Weston have known each other for some time as friends. Weston recently needed to negotiate a complex business transaction, and Norman specializes in this practice area. Weston thus retained Norman's legal services, and the two worked closely together over several weeks of preparing and completing the transaction. During a few latenight meetings at Norman's office, Norman and Weston had sex. Is Norman subject to discipline?
- a. Yes, because an attorney never may have a sexual relationship with a client.
  - b. No, because the ethical prohibition on attorneys having sex with clients does not apply to same-sex clients.
  - c. No, if Weston gave informed consent before having sex with Norman.
  - d. Yes, unless Norman and Weston had a pre-existing sexual relationship prior to forming an attorney-client relationship.
  - e. Yes, because an attorney may not represent a friend.
13. Attorney Natasha has represented Joe Conza for years in various business matters. Conza asked Natasha to revise his will because Conza's wife unexpectedly pre-deceased him. Conza told Natasha that he would like to leave a substantial sum of money to Natasha's daughter's college fund to reward Natasha for her years of valuable legal services. Which answer accurately describes Natasha's professional responsibility?
- a. Natasha may prepare Conza's will if she obtains his informed consent confirmed in writing waiving any conflict of interest.
  - b. Natasha may not prepare the will if it contains a substantial gift to Natasha's daughter.
  - c. Natasha must not permit Conza to leave a substantial gift to her daughter.
  - d. Conza may leave money to Natasha's daughter only if Natasha writes the will to place this money in trust for her daughter.
14. Attorney Natasha has represented Joe Conza for years in various business matters. Conza asked Natasha to revise his will because Conza's wife unexpectedly pre-deceased him. Conza told Natasha that he would like to leave a substantial sum of money to Natasha's daughter's college fund to reward Natasha for her years of valuable legal services. Conza is Natasha's grandfather. Which answer accurately describes Natasha's professional responsibility?
- a. Natasha may prepare Conza's will if she obtains his informed consent confirmed in writing waiving any conflict of interest.
  - b. Natasha may not prepare the will if it contains a substantial gift to Natasha's daughter, because Natasha and Conza are not related to each other closely enough.
  - c. Natasha must not permit Conza to leave a substantial gift to her daughter.
  - d. Conza may leave money to Natasha's daughter only if Natasha writes the will to place this money in trust for her daughter.

15. Lawyer Simmons was retained to represent Jefferies in a kidnapping case that involved a young child who recently went missing. Jefferies advised Simmons that he knew where the child was and that the child was trapped and alone, with only water to drink. But, Jefferies swore he had nothing to do with the child's disappearance. Which response accurately describes Simmons' professional responsibility?
- a. Simmons must disclose this information if she reasonably believes that the information is true.
  - b. Simmons may disclose this information if she reasonably believes that the information is true.
  - c. Simmons may not disclose this information without informed consent unless she reasonably believes that Jefferies personally put the child in harm's way.
  - d. Simmons may not disclose this information without informed consent unless she reasonably believes that the child's death is imminent.
  - e. Simmons may disclose this information unless Jefferies' statement was protected by the attorney-client privilege.
16. A public defender represented a client in a murder case. While investigating the case, the public defender obtained indisputable evidence that the client committed another murder for which a different, innocent person was wrongfully convicted and sentenced to 20 years in prison. Which answer accurately describes the public defender's professional responsibility?
- a. The public defender must disclose confidential information necessary to remedy the wrongful conviction of an innocent person.
  - b. The public defender may disclose confidential information necessary to prevent a wrongful conviction, but not to remedy a wrongful conviction already entered as a final judgment.
  - c. The public defender may disclose confidential information to remedy the wrongful conviction of an innocent person.
  - d. The public defender may not disclose this information to remedy the wrongful conviction, unless the client consents to this disclosure.
17. Attorney Christopher is the managing partner of a 10-lawyer firm that has organized as a limited-liability partnership. The firm handles a large number of clients and cases for its size, so it employs a team of paralegals who help to manage caseloads. Christopher ensures that each paralegal has graduated from a certified paralegal program, and Christopher diligently trains and supervises them. Recently, however, a paralegal negligently misplaced a client's file due to the paralegal's disregard of the appropriate supervision Christopher had provided. As a result, the client's meritorious lawsuit was not filed within the statute of limitations. Which answer most accurately describes Christopher's individual professional responsibility?
- a. Christopher is subject to both personal civil liability and discipline.
  - b. Christopher is subject to neither personal civil liability nor discipline.
  - c. Christopher is subject to personal civil liability, but not discipline.

- d. Christopher is subject to discipline, but not personal civil liability.
  - e. Christopher is subject to discipline only if the client does not recover any malpractice award against Christopher.
18. Attorney Viktoria just lost a civil jury trial where she thought she convincingly had established liability. Viktoria would like to talk with the jurors to learn why they returned a verdict for defendant. The trial court issued no special orders concerning juror contact when the jurors were dismissed from service. May Viktoria talk with the jurors about their verdict?
- a. No, attorneys may not speak with jurors in a trial that the attorney personally has litigated.
  - b. Yes, but Viktoria only may ask general questions about her performance.
  - c. Yes, because jurors are required to answer for the verdict if a party inquires.
  - d. Yes, except for any juror who indicates he or she does not wish to communicate with Viktoria.
19. Judge Jones contacted Lawyer Lisa and said, "Counsel, I have a defendant who needs an attorney in a criminal matter. I'd like you to take the case." Under what circumstances may Lisa ethically seek to avoid this appointment?
- a. Lisa may decline the case for any reason, because lawyers are not public utilities.
  - b. Lisa may refuse the case only if the representation will result in her violating the Rules of Professional Conduct.
  - c. Lisa may seek to avoid the appointment if the representation likely will result in her violating the Rules of Professional Conduct.
  - d. Lisa may not refuse the case under any circumstance, because a judicial officer sought to appoint her.
20. Attorney Canseco must write an appellate brief, where the defendant was convicted of a drug conspiracy involving steroids. Canseco has identified an interesting issue of first impression in his jurisdiction. The highest court of the adjoining state, however, has ruled directly adverse to Canseco's position on the exact same issue involving identical facts and addressing the identical argument Canseco intends to press on appeal. Must Canseco disclose the adjoining state court's decision in his brief?
- a. Canseco must disclose the decision because it involved the same issue and facts as Canseco's case, and addressed Canseco's precise argument on appeal.
  - b. Canseco may not disclose the decision without his client's informed consent.
  - c. Canseco is not required to disclose the decision in his brief.
  - d. Canseco must cite to the decision somewhere in his brief, but need not discuss or highlight the decision in any particular manner.



21. Lawyer Justice is a local prosecutor. Ten years earlier, another prosecutor in Justice's jurisdiction convicted Ted Time of rape, for which he was sentenced to 25 years in prison. Justice has acquired newly discovered DNA evidence that clearly and convincingly establishes Time's innocence of the rape. Which of the following actions would fully satisfy Justice's professional responsibility?
- a. Justice disclosing the DNA evidence to the court in which Time was convicted.
  - b. Justice disclosing the DNA evidence to Time or his counsel.
  - c. Justice seeking to remedy Time's conviction.
  - d. Justice notifying the prosecutor who convicted Time ten years earlier of the DNA evidence.
  - e. Justice need not act on the DNA evidence, because she was not the prosecutor who convicted Time ten years earlier.
22. Attorney Miles agreed to represent Krista in a personal injury lawsuit against Product, Inc., for injuries Krista sustained when using a Product-designed auto part. Krista and Miles agreed that Miles would take the case on a contingent fee basis, with Miles to receive 30% of any settlement and 40% of any trial verdict. Within days, Miles negotiated a favorable \$500,000 settlement with Product, which Krista accepted. When Krista came to Miles' office to collect her check, Miles told her that he would subtract 30%—\$150,000—from the settlement amount. Krista objected to the 30% contingency fee as unreasonable when Miles could not have done more than five hours of work on the case. Miles told Krista that he received a telephone call from a person named Freddy Freeloader who said that he heard about the settlement and claimed Krista owed him \$50,000 on a past personal loan. Freddy could not document or confirm the debt in any way. Krista said she does not know Freddy or owe him any money. Which of the following actions best satisfies Miles' professional responsibility?
- a. Transfer the 30% contingent fee amount to Miles' personal account, withhold the \$50,000 from the remaining amount in a trust account to protect Freddy's claim, and release the remainder to Krista.
  - b. Keep the 30% contingent fee amount in a trust account and suggest prompt means for resolving the fee dispute, and release the full remainder to Krista, including the \$50,000 amount that Freddy has claimed.
  - c. Place the entire \$500,000 settlement into a trust account until the matter is resolved, and suggest prompt means for resolving both disputes.
  - d. Place both the 30% contingency fee and the \$50,000 claimed by Freddy into Miles' personal account pending resolution of the disputes, and release the remainder to Krista.
23. Steve Harris was injured in an auto accident and treated at the hospital for several days by physician Paul DiAnno. DiAnno's bill totaled \$7,500. The accident prevented Harris from working and he could not pay DiAnno's medical bill. Harris hired Attorney Adrian Smith to sue the driver of the other vehicle. In a signed written fee agreement, Smith promised to represent Harris on a 30% contingency basis. Smith decided that DiAnno would make a valuable expert witness in

Harris' case. Smith agreed to advance Harris \$7,500 to resolve Harris' medical bill with DiAnno, and also to advance the \$200 an hour fee that DiAnno said he would charge as an expert witness. Harris agreed to repay these funds to Smith at the conclusion of the case. Which of the following statements is most accurate?

- a. Smith is subject to discipline for taking the case on a contingent fee basis.
  - b. Smith is subject to discipline for agreeing to compensate DiAnno for testifying as a witness.
  - c. Smith is subject to discipline for advancing Harris the \$7,500 cost of Harris' medical bills.
  - d. Smith is subject to discipline for advancing Harris the \$200 an hour cost of DiAnno's expert witness fee.
  - e. Smith is subject to discipline for advancing Harris both the cost of both Harris' medical bills and DiAnno's expert witness fee.
24. Attorney Geri practices criminal defense, and was retained by Tony to represent him in a fraud case. Tony agreed to pay Geri \$10,000 to represent him, a reasonable fee under all the circumstances. Tony, however, only had \$5,000 up front, and asked to pay the other half in six months after he could work to save the remainder. After confirming Tony's employment, Geri agreed. A month later, Geri was contacted by Tony's Uncle Sam, who said, "Counselor, I think Tony's innocent, and I see how hard he's working just to pay your fee. I know you're doing a good job and I don't want to see a problem with money, so I'm going to pay the \$5,000 that Tony still owes you. Please don't tell him about it, though, because he's very proud and would tell you to return the money to me. Just tell him the case is more simple than you expected or something. I'll transfer the money to you today." May Geri properly accept the payment from Sam?
- a. Yes, if Geri honestly doubts that Tony will pay the remaining \$5,000 that he owes her.
  - b. No, because a lawyer may not accept compensation from a third party because of the conflicts of interest such payments can create.
  - c. Yes, if Geri is not directed by Sam on how to handle the case.
  - d. Yes, if Geri advises Tony of the proposed payment by Sam and obtains informed consent from Tony to take the payment.
  - e. No, unless both 3 and 4 are satisfied.
25. Attorney Felicia works as chief legal counsel to a large company. The company's Chief Executive Office ("CEO") hired Felicia and works with her daily. Felicia recently met with CEO to review some strange bookkeeping notations that Felicia noticed. The CEO admitted to Felicia that he improperly diverted \$50,000 in company funds to buy his daughter a new Mercedes for her 16th birthday. The CEO said to Felicia, "It was a one-time thing, and I'll repay it. No one will notice, and you know better than anyone I've earned it with the profit margin I've brought to this company. Plus, if I don't live up to those parents on MTV's 'Sweet 16' show, my daughter will never speak to me again" Which answer most accurately describes Felicia's professional responsibility?
- a. Felicia's client is the company, not the CEO, and thus Felicia owes no duty of confidentiality to the CEO's statements.

- b. Felicia must treat the CEO's statements as confidential, unless the CEO communicated this information outside of the CEO's organizational role as a constituent.
  - c. Felicia must "report-out" the CEO's misconduct to the extent reasonably necessary to protect the company's interests.
  - d. Felicia must not disclose the CEO's misconduct to anyone.
26. Attorney believes that her client will testify falsely at his upcoming administrative law hearing on his social security claim. Attorney's jurisdiction requires the "narrative" approach when an attorney presents a perjurious client as a witness, but otherwise adheres to the ABA Model Rules. Which of these statements accurately reflects Attorney's professional responsibility in her jurisdiction?
- a. Attorney must invoke the "narrative" approach to presenting her client's testimony if a reasonable attorney would believe that her client's testimony is probably false.
  - b. Attorney must notify the court in advance that her client will testify falsely.
  - c. Attorney may not assist her client to offer testimony she knows is false.
  - d. If the client testifies falsely, the client will waive Attorney's competent and diligent assistance for all of the client's testimony, including truthful portions.
  - e. The duty of candor to the tribunal does not apply to an administrative law hearing.
27. Attorney Janx specializes in disputes involving securities brokers and their clients. Janx has been asked to represent Runway Enterprises in a civil action seeking to void an arbitration award entered against Runway. Janx, however, has learned that an associate in her law firm, Attorney Santino, served as one of three non-partisan arbitrators in this case prior to joining Janx's firm. Which option most accurately describes Janx's ethical obligations?
- a. Janx may represent Runway.
  - b. Janx may represent Runway if Santino is timely screened from any participation in the case, receives no portion of any fee earned from it, and all parties and the court are notified in writing.
  - c. Janx may represent Runway if Janx reasonably believes that she can represent Runway free of any material limitation on her professional loyalty and independent judgment.
  - d. Janx may represent Runway if a court determines after a hearing that no substantial conflict exists.
  - e. Janx may not represent Runway.
28. Attorney Short-sighted represents twelve people injured in a bus accident who have sued the bus driver, the bus company, and the bus manufacturer. Short-sighted anticipates receiving a group settlement offer from the defendants, and recommends to the twelve clients that they agree to a majority vote procedure to resolve potential settlement disputes within the group. All twelve clients agree to the majority vote procedure, and they all sign a written memorandum confirming

this agreement. Later, Short-sighted returns from a settlement meeting bearing an offer. Three clients vigorously object to the settlement, but the other nine vote to accept it. Short-sighted telephones the defendants' lawyers and accepts on behalf of all twelve clients. Is Short-sighted subject to discipline?

- a. Yes, because Short-sighted represented more than one plaintiff in a single cause of action.
  - b. No, because majority vote agreements are permitted when multiple clients are represented by one counsel, if all clients give informed consent to the procedure in a signed writing.
  - c. Yes, because each individual client must consent to the group settlement in a signed writing after full disclosure of the nature of all claims, the total amount of the settlement, and the proportion of settlement to be received by each client.
  - d. No, if the terms of the settlement were reasonable to all clients.
29. Lawyer Alice prepared a proposed written agreement to settle a lawsuit. Alice circulated the agreement to other lawyers in her firm for editing and comment, which Alice maintained through a standard document "Track Changes" function. Some of the edits and comments revealed client objectives and law firm strategies in the representation. After completing a final draft, Alice emailed the proposed agreement to opposing counsel. Alice turned "track changes" to "off" in the document settings so that the edits and comments no longer were visible. Alice did not realize that a recipient simply could turn track changes to "on" and all the edits and comments would re-appear. Is Alice subject to discipline?
- a. Yes, if Alice's failure to scrub the edits and comments failed reasonably to protect the client's confidential information from unauthorized access.
  - b. Yes, but only if Alice's failure to scrub the edits and comments damaged the client's interests.
  - c. No, because lawyers are not expected to manage the "metadata" of electronic documents and other electronically stored information.
  - d. No, if a supervising lawyer in Alice's firm advised her not to bother with "technical stuff" if it proved too time-consuming.
30. Lawyer Alice prepared a proposed written agreement to settle a lawsuit. Alice circulated the agreement to other lawyers in her firm for editing and comment, which Alice maintained through a standard document "Track Changes" function. Some of the edits and comments revealed client objectives and law firm strategies in the representation. After completing a final draft, Alice emailed the proposed agreement to opposing counsel. Alice turned "track changes" to "off" in the document settings so that the edits and comments no longer were visible. Alice did not realize that a recipient simply could turn track changes to "on" and all the edits and comments would re-appear. Lawyer Brad was opposing counsel. When Brad received the proposed agreement, he promptly turned "track changes" to "on" because, in his experience, he sometimes could find valuable data embedded in the document. Brad immediately saw the edits and comments in Alice's document. Suspecting that Alice's inclusion of this electronically stored information was inadvertent and therefore valuable, Brad read the edits and comments. Is Brad subject to discipline?

- a. Yes, because when Brad read this electronically stored information, he failed adequately to respect the rights of other attorney-client relationships.
  - b. No, because in the adversary system, Brad was required to maximize his client's interests, even at the expense of the interests of Alice and her client.
  - c. No, unless Brad knew that Alice inadvertently had left the electronically stored information in the document.
  - d. Yes, unless Brad promptly notified Alice of his receipt of the electronically stored information in the document.
31. A statute in your jurisdiction requires that mentally ill persons confined to an institution be provided with treatment, safe and sanitary conditions, and vocational training when appropriate. The statute permits attorneys' fees to plaintiffs' lawyers in successful litigation under this statute. You have filed a lawsuit alleging that the State failed to provide safe and sanitary conditions for several mentally ill persons, whom you represent. After extensive discovery, research, client and witness interviews, and pre-trial litigation, the Commission of Mental Health offers to settle the lawsuit by entering into a consent decree that provides full equitable relief to the plaintiffs. Because of the high cost of this relief, the Commission has conditioned this settlement on a waiver of attorneys' fees. What should you do with the offer?
- a. Reject the offer because to accept it without attorneys' fees would frustrate the legislative purpose of encouraging attorneys to represent mentally ill persons.
  - b. Reject the offer if the loss of attorneys' fees substantially would burden your practice.
  - c. Accept the offer as presented if it remedies the challenged conditions.
  - d. Explain the terms and conditions of the offer, including the absence of attorneys' fees, to your clients or their designated representatives and allow them to decide whether to accept or reject the offer.
  - e. Decide whether to accept the offer, because a lawyer must decide whether to settle on behalf of a client with diminished capacity.
32. A New Jersey law firm ("Firm") represents an Oregon company ("Company") in several business ventures that Company has pursued in New Jersey. Company, however, recently had a contractual dispute with an Oregon manufacturer ("Manufacturer") whose product Company used in its New Jersey business ventures. The manufacturing agreement between Company and Manufacturer contained an arbitration clause, and Company asked Firm to represent it in the Oregon arbitration proceedings. Firm sent Attorney, its resident arbitration expert, to Oregon to handle the dispute. Attorney met in Oregon with Company executives and accountants, advised them on arbitration strategy, interviewed potential arbitrators, and ultimately negotiated an advantageous settlement with Manufacturer. Attorney is licensed to practice only in New Jersey. Is Attorney subject to discipline?
- a. No, because Attorney's services to Company in Oregon involved potential arbitration and reasonably related to Firm's practice in New Jersey.
  - b. Yes, because Attorney needed to associate with local counsel to practice law in Oregon on behalf of Company.

- c. No, if Attorney obtained Company's informed consent confirmed in writing.
  - d. No, if Attorney diligently and competently represented Company while practicing in Oregon.
  - e. Yes, because Attorney could not negotiate a settlement with Manufacturer; only local counsel could handle this part of the case.
33. Lawyer Frodo represents Sam in a major commercial loan application with a bank. The bank has requested that Frodo report on Sam's financial condition as a condition of the loan. May Frodo report on Sam's financial condition to the bank?
- a. Yes, but only with Sam's informed consent confirmed in writing.
  - b. Yes, but only if Frodo writes the report to advocate zealously for Sam's interest in obtaining the loan.
  - c. Yes, but only if Frodo reasonably believes that reporting on Sam's financial condition to the bank is compatible with Frodo's representation of Sam.
  - d. No, because lawyers may not report on confidential client finances to third parties.
34. Attorney Wiley consulted with Acme Slingshot Company about the possibility of representing Acme in a lawsuit arising out of an accident involving Roadrunner. Wiley limited the consultation with Acme to information reasonably necessary to evaluate representation. No attorney-client relationship ensued between Wiley and Acme. Roadrunner later retained Wiley to represent her in the lawsuit against Acme. Roadrunner gave informed consent confirmed in writing to this representation waiving any conflict arising from Wiley's prior consultation with Acme. Under which circumstances may Wiley properly represent Roadrunner against Acme?
- a. Wiley may not represent Roadrunner under any circumstance.
  - b. If Acme gave informed consent confirmed in writing.
  - c. Wiley may represent Roadrunner because Wiley never represented Acme.
  - d. Wiley's law firm may represent Roadrunner if it timely screens Wiley from participation in the case, Wiley receives no fee from the case, and Wiley's law firm promptly notifies Acme in writing.
  - e. Representation of Roadrunner is permissible under EITHER option 2 or option 4.
35. Attorney Giresi represents Defendant in a medical malpractice case. While investigating the case, Giresi obtained a critical factual concession from one of Plaintiff's main witnesses. No one else heard the witness' statement to Giresi because Giresi interviewed the witness by telephone. The witness subsequently denied stating this fact to Giresi. Which answer accurately describes Giresi's professional responsibility if the case proceeds to trial?
- a. Giresi may remain as trial counsel unless she knows prior to trial that she will need to testify to impeach the witness.

- b. Giresi must move to withdraw as trial counsel if her testimony is likely to be necessary to impeach the witness, but another lawyer from Giresi's firm may try the case and present Giresi as a witness.
  - c. Giresi must move to withdraw as trial counsel if her testimony is likely to be necessary to impeach the witness, and any other lawyer from Giresi's firm also will be disqualified.
  - d. Giresi should promptly advise the trial judge that she may need to testify if the witness denies the prior statement to her.
  - e. Remain as trial counsel if the plaintiff gives informed consent confirmed in writing to Giresi serving as an advocate and a witness in the same trial.
36. Michael had an automobile accident in his sports car, injuring his girlfriend, Jan, who was riding in the front seat. Michael retained Attorney Dwight because of his possible legal liability to Jan. After ensuring that Jan had not retained counsel, Dwight visited her in the hospital to learn how badly she was injured and to ask for her description of the accident. Dwight identified himself as Michael's lawyer, and Jan agreed to speak with him. After a short while, Jan asked Dwight whether she should sue Michael. Dwight gave his honest opinion that Jan should not sue—litigation might prove costly and time-consuming, Michael's liability remained debatable, and a lawsuit might undermine Michael and Jan's relationship. Plus, Dwight noted, Jan's insurance would cover her medical expenses. Which statement accurately reflects Dwight's professional responsibility?
- a. Dwight's conduct was proper, because Jan was not represented by counsel when Dwight spoke with her.
  - b. Dwight's conduct was proper, because he identified himself as Michael's lawyer.
  - c. Dwight's conduct was proper if he responded to Jan's question accurately under all of the circumstances.
  - d. Dwight is subject to discipline.
  - e. Dwight is subject to discipline, but only if he made the statements to Jan with the purpose of advancing Michael's position at Jan's expense.
37. Thelma and Louise asked Attorney Brad to represent both of them in their no-fault, uncontested dissolution of marriage petition in Iowa. The couple has no children. Thelma is a successful physician, and Louise is an unemployed software designer. Thelma and Louise told Brad that they want him to represent both of them because they anticipate an agreeable marriage dissolution, want to avoid litigation, and do not want competing lawyers to instigate disputes. Thelma and Louise both signed written conflict waivers. Which of the following answers most accurately reflects Brad's professional responsibility?
- a. If Brad represents both Thelma and Louise, he will be subject to discipline.
  - b. Brad may represent both Thelma and Louise, if he obtains separate agreements from them not to sue him for any malpractice based on joint representation.
  - c. Brad probably should not represent both Thelma and Louise, even though they consented, because Brad may not be able to represent both of them competently and diligently at the same time, and future conflicts are foreseeable.

- d. Brad properly could represent Thelma and Louise because he obtained informed consent confirmed in writing.
38. Dumb and Dumber are independent lawyers who have decided to pool resources in these tough economic times. The two lawyers rented a joint office space, where they share a common legal assistant, office equipment, and supplies. The two lawyers also advertise jointly on buses and billboards, as “Dumb and Dumber: Quality and attentive legal representation. Call now.” This arrangement has proven very efficient, especially when clients need to be referred, because Dumb and Dumber always refer their clients only to each other. Dumb and Dumber never exchange anything of value for these referrals. Which of the following responses accurately addresses the ethical liabilities presented by Dumb and Dumber’s business arrangement?
- a. Dumb and Dumber’s advertisement improperly solicits legal business.
  - b. Dumb and Dumber improperly have implied that they practice in a partnership.
  - c. Dumb and Dumber’s referral arrangement is unethical.
  - d. Independent lawyers may not share a common office space.
  - e. Option 2 and option 3 are both correct responses.
39. You practice as a junior associate in a large law firm, and are working on a litigated matter with a senior supervising partner. The partner directs you to withhold certain information from discovery. You believe this information may be discoverable, but you also recognize that the question is reasonably debatable. The partner says, “If it’s arguable whether I have to disclose it, I don’t—I play hardball, and that’s what my clients prefer.” Under the Model Rules:
- a. You must reject your supervising attorney’s directive and adhere to your independent professional judgment.
  - b. You ethically may defer to your supervising attorney’s directive.
  - c. You must defer to your supervisor’s directive.
  - d. You should communicate with the client personally to determine what the client wishes, and pursue that course of action.
40. Antigone, an experienced business litigator, was retained by Classic, Inc. Antigone worked closely in this role with Marcus, Classic’s Chief Legal Officer. While Antigone represented Classic, she and Marcus became romantic and had sexual relations. May Antigone represent Classic while having a sexual relationship with Marcus?
- a. Yes, because Marcus is a lawyer too, so the ethical prohibition on sexual relations with clients does not apply.
  - b. Yes, but only with informed consent confirmed in writing from Classic.
  - c. Yes, but only with informed consent confirmed in writing from Marcus.
  - d. Yes, because Marcus as Chief Legal Officer is a constituent, not Antigone’s client—only Classic is Antigone’s client.
  - e. No, Antigone may not represent Classic while having a sexual relationship with Marcus.



41. You are a busy solo practitioner. A prospective client has approached you about representing her on a transactional matter. Although this case could prove lucrative, you cannot dedicate adequate time to it with your upcoming schedule. Consequently, you refer the client to another lawyer you know, whom you regard highly. In exchange for this referral, you may accept:
- a. A reasonable referral fee, if the client consents in a signed writing.
  - b. The gratitude of the client for a reliable referral.
  - c. A gratuity, such as a golf package or a steak dinner, so long as it did not affect your independent professional judgment and did not involve cash.
  - d. A promise from the other lawyer that she will send all her future referral cases to you.
  - e. None of the above.
42. Francois is a French lawyer, licensed to practice law in France and elsewhere in the European Union. Francois wants to accept an in-house counsel job offer from a United States company that has a major business presence in Europe. The company, however, wants Francois to relocate to its law department headquarters in the United States. Francois has overcome his concerns about adapting to American food and wine. May Francois represent this company as in-house counsel at its law department headquarters in the United States?
- a. No, unless Francois is admitted to practice law in the State where the company has its law department headquarters.
  - b. No, unless Francois is admitted to practice law in a State somewhere in the United States.
  - c. No, because Francois is not a United States citizen.
  - d. Yes, if Francois exclusively represents the company as his client when he practices in the United States.
  - e. Yes, if Francois exclusively represents the company as his client when he practices in the United States, but only if he refers questions of United States or local law to a lawyer admitted to practice law in the United States.
43. Juan Carlos and Danova are married. Juan Carlos is a public defender, and Danova is a prosecutor in the same jurisdiction. Which the following statements most accurately describes lawyers' professional responsibility relating to Juan Carlos and Danova's relationship?
- a. Juan Carlos and Danova may oppose each other in the same case, so long they believe they competently and diligently can represent their clients.
  - b. Juan Carlos and Danova may not oppose each other in the same case, and the public defender and prosecutor offices also may not oppose each other because Juan Carlos and Danova's conflict is imputed to each office.
  - c. Juan Carlos and Danova may not oppose each other in the same case, but the public defender and prosecutor offices still may oppose each other through other lawyers.
  - d. Either Juan Carlos or Danova must leave the job to relieve these public offices of this conflict of interest.

44. Lawyer Napoleon practiced law for 25 years in Spokane, Washington, developing a lucrative combined family law and intellectual property practice. Napoleon decided to move to Corsica permanently to make cheese and wine. Which of the following options could Napoleon ethically pursue?
- a. Napoleon could sell his law practice, or a area of his practice, and remain “of counsel” to the practice, so long as the identity of the new controlling attorney is made clear to clients.
  - b. Napoleon may sell only his entire law practice.
  - c. Napoleon may sell his entire law practice, or areas of his law practice, so long as he notifies clients of the impending sale and gives them an opportunity to retain different counsel.
  - d. Napoleon may transfer his law practice to another qualified attorney, but may not profit from his development of a lucrative law practice.
  - e. Napoleon may sell his entire law practice, or areas of his law practice, so long as he notifies clients of the impending sale and gives them an opportunity to retain different counsel, and so long as the purchasing attorney retains the right to adjust client fees to reflect the reasonable market value of purchased cases.
45. Prosecutor Primo was prosecuting an arson case against Defendant. Several weeks before trial, a police officer informed Primo of a previously unknown eyewitness to the arson who claimed to see someone other than Defendant leaving the scene of the crime. Despite this eyewitness evidence, Primo still believed that Defendant was guilty because in Primo’s professional judgment the other evidence of guilt overwhelmed this eyewitness evidence. Defendant does not know about the eyewitness. Under what circumstance would the Model Rules require Primo to disclose the eyewitness to Defendant?
- a. Primo is not required to disclose the eyewitness to Defendant, so long as Primo does not deceive Defendant about the eyewitness’ existence or obstruct Defendant’s access to the eyewitness.
  - b. Primo must disclose the eyewitness to Defendant.
  - c. Primo must disclose the eyewitness to defendant only if Primo reasonably believes that the eyewitness’ testimony raises a reasonable doubt about Defendants’ guilt.
  - d. Primo need not disclose the eyewitness to Defendant if Defendant’s counsel would have learned about the eyewitness through competent and diligent investigation.
  - e. Primo must disclose the eyewitness to Defendant, but only at trial.
46. Buyer hired Lawyer to represent Buyer in acquiring a McDonalds franchise. Buyer agreed to pay Lawyer \$250 an hour plus costs, a reasonable fee under the circumstances. A year later, the deal closed and the franchise was awarded to Buyer. During the closing, Lawyer sent an itemized bill to Buyer in the amount of \$55,000, consistent with the fee agreement. Buyer had no cash to pay, so Buyer offered to sign a promissory note payable in installments plus interest, secured by a second mortgage on Buyer’s home. Lawyer agreed, prepared the note and mortgage, and had Buyer sign promptly. Buyer has paid the installments, and is grateful that Lawyer was flexible with the alternative fee-payment arrangement after securing such a lucrative franchise. Is Lawyer subject to discipline?

- a. No, because Lawyer represented Buyer competently and diligently notwithstanding the alternative fee-payment arrangement.
  - b. No, if both the original fee agreement and the alternative fee-payment arrangement were reasonable.
  - c. Yes, because Lawyer entered into a business transaction with Buyer.
  - d. Yes, because Lawyer could not modify an existing fee agreement once Buyer agreed to it.
  - e. No, because Buyer offered the alternative fee-payment arrangement to ensure that Lawyer was paid for his services.
47. Lawyer Frank's client requested that Frank disperse funds from a settlement. After Frank checked his client trust account, he realized that his bookkeeper's accounting error left the trust account under-funded to cover the client's settlement. Which of the following actions by Frank are expressly authorized by the ABA Model Rules of Professional Conduct?
- a. Moving funds temporarily from Frank's office operating account to the client's trust account cover the discrepancy.
  - b. Promising to pay the client the unavailable settlement amount once Frank earns some additional fees to cover the discrepancy.
  - c. Borrowing funds from the bank where Frank keeps his client trust account to cover the discrepancy, so long as Frank, and not his client, pays the interest on this loan.
  - d. Temporarily avoiding the client's calls until Frank can bring the account back into good standing.
  - e. None of the above.
48. Which of the following circumstances are examples of a lawyer ethically practicing law in a jurisdiction where the lawyer is not licensed to practice law?
- a. Representing a client on a systematic and continuous basis in association with a lawyer who is admitted to practice in that jurisdiction and who actively participates in the client matter.
  - b. Appearing in court to represent a client when the representation reasonably relates to the lawyer's representation of the client in a jurisdiction where the lawyer is licensed to practice law.
  - c. Opening a law office to practice arbitration law when that office practice reasonably relates to the lawyer's representation of clients in a jurisdiction where the lawyer is licensed to practice law.
  - d. Exclusively representing an organizational client as in-house counsel on a systematic and continuous basis.
  - e. Option 1 and option 4 are both correct.
49. Lawyer Nelly has represented Husband in a divorce case pending in the local family court for over a year. Husband has paid Nelly \$10,000, with a \$3,000 balance more than 90 days past due. Trial is scheduled in 10 days. Nelly has become frustrated with Husband's inability to make important decisions, advise Nelly on how he wants to resolve the case, stick to agreements on legal

strategies, or pay bills on time. Therefore, Nelly has decided to withdraw. Nelly wrote to Husband, "This letter confirms our telephone conversation today. Effectively immediately, I withdraw as your attorney. You should retain new counsel promptly. As soon as you remit the \$3,000 in outstanding fees, I will return your case file and records." Is Nelly subject to discipline?

- a. Yes, because Nelly did not reasonably protect his client's interest upon withdrawing.
- b. Yes, because Nelly threatened to retain client property to coerce payment of a fee.
- c. Yes, because Nelly withdrew without seeking permission from the court.
- d. All of the above.

50. Lawyer Sven was admitted to practice law in Washington State and Idaho. Sven represented a client in a potential employment discrimination case. The case had not yet been filed in court, but Sven planned to file in Washington State if the case proceeded to litigation. Sven traveled to Idaho to interview a potential witness in the case. While interviewing the witness, Sven offered the witness a bribe to testify favorably for his client. The witness reported Sven's conduct to both the Washington State and Idaho Bar Associations, and each State initiated a disciplinary proceeding against Sven. Which Rules of Professional Conduct will govern the disciplinary proceeding in each state?

- a. The Washington Rules in the Washington proceeding, and the Idaho Rules in the Idaho proceeding.
- b. The Washington Rules in both proceedings, because the misconduct related to a case that would have been filed in a Washington court.
- c. The Idaho Rules, unless the predominant effect of Sven's misconduct was in Washington State.
- d. Only one State may discipline Sven for his misconduct, so the Rules of whichever State ultimately disciplines Sven will govern.

51. Attorney Mauricio heard that Joan Jett, an immigrant farm worker, had been severely injured at work. Mauricio specializes in immigrant advocacy, and has been using litigation and public education to improve unsafe working conditions for immigrant workers. Mauricio believes that Jett's case would be a great test case for his cause. But because Jett's employer is a deep pocket, the case also may offer a big payday to whoever represents Jett. Concerned that the personal injury bar may get to Jett first, Mauricio visits Jett in the hospital to pitch himself as her lawyer. Is Mauricio subject to discipline?

- a. Yes, because in-person solicitation by lawyers is prohibited.
- b. Yes, if pecuniary gain significantly motivated Mauricio when he solicited business from Jett.
- c. No, because the 1st Amendment protected Mauricio's right to communicate with Jett about his services.
- d. Yes, but only if Mauricio used coercion, duress, or harassment to persuade Jett to retain him as her lawyer.

52. Lawyer Lucy represented Ricky in his business dealings. Ricky instructed Lucy to negotiate a business deal that Lucy believed will cause Ricky to breach an existing contract with a third party. Which answer presents an ethical response by Lucy to Ricky's instruction?
- a. Lucy must refuse to assist Ricky because Lucy's proposed business deal will breach a contract with a third party.
  - b. Lucy must advise Ricky that his proposed business deal will breach an existing contract with the third party.
  - c. Lucy must follow Ricky's instruction to negotiate the business deal because the client controls the objectives of representation.
  - d. Lucy may advise the third party of Ricky's proposed business deal because it will breach a contractual obligation with the third party.
53. Lawyer worked at a large private law firm where she billed voluminous hours for lucrative pay. Lawyer could not fit full-service pro bono representation into this work flow, so she volunteered at a one-weekend "will clinic" for veterans hosted at the local law school and sponsored by a non-profit veterans organization. At the clinic, all clients signed limited scope representation agreements with the volunteer lawyers staffing the clinic. These agreements made clear the volunteer lawyers would not provide continuing representation beyond the will preparation assistance offered at the clinic. Lawyer represented Veteran at the clinic, helping him to update his will, which needed to account for a pending lawsuit in which Veteran was a party. Lawyer did not ask Veteran who represented him in this lawsuit. Another lawyer in Lawyer's firm represented the opposing party to Veteran. Is lawyer subject to discipline?
- a. Yes, because Lawyer did not provide at least 50 hours of pro bono service.
  - b. Yes, because the other lawyer's conflict of interest in representing Veteran was imputed to Lawyer through their firm association.
  - c. No, unless Lawyer knew that the other lawyer in her firm was disqualified from representing Veteran due to the conflict of interest.
  - d. No, but only if the firm properly screened Lawyer from any future work on the lawsuit in which Veteran was an opposing party.
  - e. Yes, because limited scope representation agreements are unethical.
54. Client asked Lawyer to represent him and ten other named representatives of a plaintiff class involving an employment discrimination claim against Corporation, a large and successful corporate entity. Depending on the outcome, the class action suit could result in a multi-million dollar award against Corporation. Lawyer has a robust retirement plan investment fund, and lawyer discovered that the fund includes numerous shares in Corporation. Lawyer does not manage the retirement fund personally. Lawyer's shares in Corporation represent approximately 1.5% of Lawyer's total retirement investment fund, and far under 1% of the total shares issued by Corporation. Lawyer does not believe that her financial interest in Corporation will affect her representation of the plaintiff class against Corporation, but she has asked you for advice. May Lawyer represent the plaintiff class against Corporation?

- a. No, because Lawyer's financial interest in the opposing party irrevocably disqualifies her from representing the named plaintiff class.
  - b. Yes, if Lawyer obtains informed consent confirmed in writing from all of the named plaintiff class representatives after full disclosure of the Lawyer's financial interest in Corporation.
  - c. Yes, if Lawyer obtains informed consent confirmed in writing from a majority of the named plaintiff class representatives after full disclosure of the Lawyer's financial interest in Corporation.
  - d. Yes, if Lawyer obtains informed consent confirmed in writing from all named and unnamed plaintiff class members after full disclosure of the Lawyer's financial interest in Corporation.
55. Brad represented Thelma and Louise jointly in their uncontested divorce. Assume that Thelma and Louise consented to Brad's joint representation following a full conflict waiver confirmed in writing, and that this jurisdiction does not categorically prohibit this joint representation in an uncontested divorce. Thelma and Louise had difficulty resolving all of their marital interests through negotiation, but they still did not want to litigate a contested divorce in court. Brad suggested mediation, to which Thelma and Louise agreed. Under the Model Rules, may Brad continue to represent both Thelma and Louise before the mediator?
- a. No, Brad's joint representation of Thelma and Louise in mediation presents a non-consentable conflict of interest between adverse parties before a tribunal.
  - b. Yes, if the jurisdiction permits joint representation in an uncontested divorce, Thelma and Louise's willingness to waive any conflict suffices for continued representation in mediation.
  - c. No, because the mediation process in divorce cases precludes traditional advocacy by lawyers.
  - d. Yes, because mediation is not a proceeding before a tribunal for conflict purposes, but mediation presents significant questions about Brad's ability to provide competent and diligent representation to both Thelma and Louise.
56. Lawyer Hogan was a partner in the Firm, a for-profit practice organized as a limited liability corporation. Lawyer Hogan passed away, leaving his significant interest in the Firm to his estate. The estate administrator, who was not a lawyer, contacted Piper, the managing partner of the Firm. Piper agreed to ensure that Hogan's interest in the Firm continued to accrue profits while the estate administrator resolved Hogan's estate. During this time, the estate administrator technically held an ownership interest in the Firm. Is Piper subject to discipline?
- a. Yes, because Piper allowed a non-lawyer to hold an ownership interest in the Firm.
  - b. No, because the fiduciary representative of Hogan's estate was entitled to hold an ownership interest in the Firm for a reasonable time during administration.
  - c. No, because non-lawyer ownership in the Firm was permissible so long as the estate administrator did not interfere with the professional judgment of lawyers in the firm.
  - d. No, if Hogan intended for a non-lawyer to inherit his interest in the Firm.

57. Lawyer had a really terrible day in court on front of Judge Tyrant. In Lawyer's view, Judge Tyrant lived up to her name, and unfairly caused Lawyer to lose her client's case with erroneous evidentiary rulings. Frustrated, Lawyer vented to a group of friends and acquaintances at a dinner function. Lawyer exclaimed: "Judge Tyrant is the worst judge in town. She doesn't know the law of evidence, has no judgment, and has a terrible temperament for a judicial officer." Lawyer sincerely believed in all of these claims. The group seemed unimpressed with these complaints, however, so Lawyer upped the ante to ensure the group left with the right opinion of Judge Tyrant. "Judge Tyrant," Lawyer added, "failed the Bar Exam five times and has been accused of taking bribes." Lawyer knew that these two facts were false. One member of the group also was a lawyer, and she reported Lawyer to the Bar for these critical comments about a judicial officer. Is Lawyer subject to discipline?
- a. No, because Lawyer had a First Amendment right to speak his mind about Judge Tyrant.
  - b. Yes, regarding all of Lawyer's critical comments against Judge Tyrant, because lawyers may not publicly criticize sitting judges.
  - c. Yes, but only regarding the two comments that Lawyer knew were false.
  - d. Yes, because Lawyer violated his duty of confidentiality in criticizing Judge Tyrant.
58. Lawyer represented Client in foreclosure litigation with a bank seeking to foreclose on Client's condo apartment. Client could not afford to pay Lawyer up-front. Lawyer hoped to win statutory attorney's fees to cover her fee and expenses, but to protect her interests, Lawyer asked Client to agree to Lawyer placing a lien against Client's condo consistent with a reasonable fee amount and expenses. Client promptly consented to the lien in a signed writing, and Lawyer acquired the lien against Client's condo. Is Lawyer subject to discipline?
- a. Yes, because Lawyer acquired a proprietary interest in the subject matter of litigation that Lawyer was conducting for Client.
  - b. No, because Lawyer's interest in Client's condo was limited to a lien to secure Lawyer's fee and expenses.
  - c. No, because Client consented to the lien in a signed writing.
  - d. Yes, because Lawyer did not advise Client of the desirability of seeking outside counsel and also give Client an opportunity to seek outside counsel before agreeing to the lien.
59. Lawyer represented Client in an employment discrimination litigation matter. During one consultation, Lawyer said to Client, "Your case raises a lot of issues relating to gender dynamics. If we go to trial, the biases many people have on this subject might cut in your favor. Something we should consider, that we could capitalize on these gender biases." Is Lawyer subject to discipline for advising client in this manner?
- a. No, because as a zealous advocate, Lawyer was not responsible to any interests other than the interests of her client.
  - b. Yes, because Lawyer's advice and advocacy strategy manifested improper bias on the basis of gender.

- c. No, because any bias that lawyer manifested arose in the context of advocacy and advice to the client.
  - d. No, because Lawyer was advising Client about advocacy strategies, but only if Lawyer's advice and advocacy was otherwise consistent with the Model Rules.
60. Professor X was admitted to practice law in Florida, but taught at a law school in Texas. Samantha, a student at the Texas law school, asked Professor X to complete a required reference letter to support Samantha's application to join the Texas State Bar after she graduated. The reference letter inquired whether the signer "knows of any act of dishonesty by the applicant relating to the applicant's fitness to practice law." Samantha previously had worked as Professor X's research assistant. On one occasion, Professor X busted Samantha for an act of plagiarism when she prepared research for him. Professor X nevertheless believed that Samantha was fit to practice law, because in Professor X's judgment, Samantha's plagiarism was a one-time, anomalous act that did not fairly reflect her overall trustworthiness and fitness to practice. Professor X therefore responded "no" in response to the question, and did not disclose the plagiarism. Is Professor X subject to discipline?
- a. No, because Professor X submitted the reference letter to the Texas State Bar, and Professor X was licensed only in Florida.
  - b. Yes. Professor X was free to vouch for Samantha's fitness to practice law despite the act of plagiarism, but Professor X's failure to disclose the plagiarism in response to the question was, in context, a material omission.
  - c. No, if Professor X reasonably believed that Samantha was fit to practice law, despite the act of plagiarism.
  - d. No, because Professor X did not affirmatively misstate that Samantha had not committed an act of plagiarism.
  - e. Yes, because law professors have a conflict of interest that prevents them from vouching for their students on state bar applications.