

Professional Responsibility: Final Examination

Elon Law School
Prof. Fink

Fall 2018

Instructions

- This is a **closed-book** examination. You should have received three items from the proctor: (1) this document with the exam instructions and questions, (2) a copy of the Model Rules of Professional Conduct, and (3) a Scantron sheet. You may not use any other material during the exam.
- This exam consists of forty (40) multiple-choice questions. You will have two (2) hours to complete the exam.
- You must use the Scantron sheet for your answers. You may write on the exam questions and rules handout if you wish, but you will only receive credit for answers entered correctly on the Scantron sheet
- Write your Final Exam ID number in the upper-right corner of this page and in the space provided on the Scantron sheet. **Do not write your name anywhere on the exam or your Scantron sheet.**
- You must return all exam documents to the proctor at the conclusion of the exam
- In the space below, write out the Elon Law School Honor Pledge and sign with your Final Exam ID number (not your name)

Honor Pledge

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

Exam ID Number:

Question 1

Attorney represents Client in a personal injury action brought by Plaintiff. The suit alleged that Plaintiff was injured when a wooden plank in the front porch of Plaintiff's cabin gave way. Client is adamant that the porch was properly constructed and that Plaintiff must have concocted the story. Plaintiff's counsel arranges for an engineer to examine the porch. Two days before the engineer was scheduled to arrive, Attorney sends Investigator, an employee of Attorney, to examine the porch. Investigator tells Attorney that the porch was constructed of substandard material and a board had obviously come loose. The next day, before the engineer's appointment, a brushfire, caused by lightening, destroyed thousands of acres of forest, including the Client's cabin.

Must Attorney inform Plaintiff's counsel about Investigator's findings?

- a. Yes, because Investigator's findings were material to Plaintiff's claim.
- b. Yes, because Plaintiff's expert was unable to conduct their examination.
- c. No, if Client truly believes the porch was properly constructed.
- d. No, because the information was subject to the duty of confidentiality.

Question 2

Attorney and Lawyer were partners in Attorney & Lawyer Law Firm for 25 years. After Attorney died, Lawyer continued in practice at the same location. She rented the extra office space to Counselor on a monthly basis. The rent included the use of a shared law library, conference room, and a secretary. Lawyer and Counselor do not represent each other's clients, nor do they share any fees paid by their respective clients. Attorney hangs a sign outside the office reading "Law Firm of Attorney, Lawyer & Counselor."

Is Attorney subject to discipline?

- a. Yes, because Attorney and Counselor are not partners.
- b. Yes, because Lawyer died prior to the arrangement between Attorney and Counselor.
- c. No, because Attorney and Lawyer had been partners for the past 25 years.
- d. No, because Attorney and Counselor were sharing office space, the law library, and secretarial services.

Question 3

Attorney represents Client, a prominent business figure charged with securities fraud. Attorney and Client agree to an hourly fee arrangement, with monthly billing. The case proves to be more complex than anticipated, requiring Attorney to spend significantly more time. Faced with mounting legal bills, Client proposes that, instead of paying the hourly fees, he will assign to Attorney the rights to any literary or other media portrayal of Client's business career, including the securities fraud case.

May Attorney agree to this arrangement?

- a. Yes, provided Attorney advises Client to obtain independent legal counsel and the value of the media rights would be a reasonable fee for Attorney's services.
- b. Yes, because a client may agree to any fee arrangement with his attorney.
- c. No, because at the time of the agreement, Attorney's representation of Defendant had not concluded.
- d. No, because the media rights could be worth more than the amount Attorney would receive under the hourly fee arrangement.

Question 4

Attorney represents Company in a lawsuit brought by Employee. The suit alleges that Company failed to pay Employee the full amount of sales commissions he earned over the past year. Attorney reviewed Company's records, which showed sales made and commissions paid. The records indicated that Employee was responsible for \$1 million, but was paid commissions for only half those sales. Based on that information, Attorney believes Company should accept liability and settle with Employee.

What should Attorney do?

- a. Advise Company of all options with the recommendation that it settle with Employee, and continue to represent Company even if it decides to reject the settlement and proceed to litigation.
- b. Advise Company of all options with the recommendation that it settle with Employee, and withdraw from representation if Company decides to reject the settlement and proceed with litigation.
- c. Withdraw from representation because Attorney believes Company does not have a case.
- d. Settle the case as quickly as possible.

Question 5

Attorney is a solo practitioner who represents clients in the formation of new businesses. Attorney meets with the clients to discuss their business plans and advise them about the options and legal requirements for various types of business entities. Once the client is ready to proceed, Attorney's paralegal completes the necessary legal forms, using information that Attorney has provided from the client meetings.

Is it proper for Attorney to have the paralegal perform that task?

- a. No, because the paralegal is engaging in the unauthorized practice of law.
- b. No, unless there is a specific statute that allows paralegals to perform that task in that jurisdiction.
- c. Yes, but only if the client gives informed written consent.
- d. Yes, as long as Attorney supervises and retains responsibility for the paralegal's work.

Question 6

Attorney represents Plaintiff in a medical malpractice case against Doctor. Plaintiff maintains that Doctor negligently performed surgery on Patient's back, which was injured in a car collision. After a court hearing, Spectator stopped Attorney as he was walking out of the courtroom. Spectator told Attorney he was injured in a car collision with Plaintiff (the same collision in which Plaintiff's back was injured). Spectator wants Attorney to represent him in a personal injury suit against Plaintiff.

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

- a. No, because Attorney is currently representing Plaintiff 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, if both Spectator and Plaintiff consent to the representation.

Question 7

For many years, Attorney has represented Client, the reputed head of an organized crime family, in various criminal cases. On four occasions, Attorney has successfully defended Client against murder charges. Client faces yet another murder charge, and has once again retained Attorney to represent him.

Shortly before the trial, Attorney is involved in a serious car accident. Attorney was clinically dead for several minutes before being resuscitated. Attorney withdraws as counsel, with the court's permission, and the trial is postponed to allow Client's new counsel to prepare.

Two weeks before the new trial date, Attorney, contacts the prosecutor in Client's murder case, explaining that the near-death experience caused him to reconsider his role as Client's mouthpiece. Attorney tells the prosecutor that Client admitted to all of the murders, including the pending case. Attorney is willing to testify against Client, hoping it will ease his conscience.

Is Attorney subject to discipline?

- a. No, because he is preventing the perpetration of a fraud on the court.
- b. No, because he no longer represents Client.
- c. Yes, but only if the prosecutor calls Attorney as a witness at trial.
- d. Yes, regardless of whether or not Attorney testifies at trial.

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, Lawyer, a partner in the same firm, 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 partners in a law firm are vicariously liable for the misconduct of other lawyers in the firm.
- b. Yes, if Partner knew that the MRI report was a piece of evidence.
- c. No, because Partner did not direct or assist Attorney in destroying the report.
- d. No, because doing so would breach the duty of confidentiality to Client.

Question 9

Attorney represented Client in a personal injury lawsuit against Store. Client alleges that he slipped and fell on a floor that was wet because of some spilled milk. Store denies that it was on notice of the spill. During the trial, Attorney called Manager as a witness, and asked, "Isn't it true that another customer told you about the spill 5 minutes prior to the incident?" Manager responded, "No. I didn't know about the wet floor until I heard Client yell as he fell." In response, Attorney shouted: "You're lying. You knew that the floor was wet because you ordered it mopped up. How could you tell such a blatant lie?"

Was Attorney's conduct at trial proper?

- a. Yes, if Attorney could prove that Manager was lying.
- b. Yes, if Attorney has a good faith belief that Manager was lying.
- c. No, because he expressed his personal opinion as to Manager's credibility.
- d. No, because an Attorney called Manager as a witness.

Question 10

Attorney represents Doctor in a medical malpractice lawsuit. Doctor had instructed the plaintiff to apply an ointment twice a day to control a rash. After the area of the rash became badly swollen and painful, the plaintiff contacted Doctor, who told her to keep using the ointment, but only once a day. Doctor keeps notes of all conversations with patients in the patient's file. Doctor tells Attorney that he altered the notes of his initial consultation with the plaintiff to indicate he'd told her to apply the ointment only once daily. 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 Doctor made the alteration after Plaintiff filed her suit.
- b. Yes, because Attorney knows the medical record has been falsified.
- c. No, because it is the opposing attorney's duty to discover the alteration and raise it on cross-examination.
- d. No, because Attorney has the duty to advocate zealously on behalf of Doctor.

Question 11

Attorney represents Client in a divorce from Spouse. During the initial consultation with Attorney, Client tells Attorney, "I can't believe that I was such a sucker to stay with that cheating louse for so many years. I want you to make sure that when this divorce is final, Spouse is left penniless." Under the applicable law, all marital property is subject to equitable distribution, without regard to either spouse's fault.

Which of the following is true?

- a. Attorney must continue to represent Client and must follow Client's objective of leaving Spouse penniless.
- b. Attorney must withdraw and must notify the court of Client's improper objective.
- c. Attorney must either withdraw or notify the court of Client's improper objective.
- d. Attorney may continue to represent Client but may withdraw if she insists on pursuing her improper objective.

Question 12

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 discuss Client's case.
- c. No, unless Judge initiates the conversation.
- d. No, regardless of the subject.

Question 13

A hurricane recently caused extensive damage to many homes in City. Two weeks after the storm, Attorney sends a letter to all City residents, saying "Has your homeowner's insurance refused to cover damage from the recent storm? I have extensive experience representing homeowners in such claims. Contact me for a free consultation."

Is it proper for Attorney to send such a letter?

- a. Yes, but only if the recipients are former clients, family members, or friends of Attorney.
- b. Yes, if the letter is identified as lawyer advertising and contains no false or misleading information.
- c. No, because the letter does not specify the fees that Attorney will charge.
- d. No, because the letter constitutes an attempt to solicit business from people currently in need of legal services.

Question 14

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.

For which of the following would Attorney be subject to discipline?

- a. Paying Client a referral fee for every person referred by Client.
- b. Sending Client more business cards if Client so requests.
- c. Accepting a new client referred by Client.
- d. All of the above

Question 15

Builder is planning a new residential development and speaks with Supplier about buying the materials required for the construction. After the two agree to terms, Supplier suggests having Attorney, who regularly handles such matters for Supplier, draft the contract, with Supplier paying Attorney's fee. Builder and Supplier meet with Attorney, who explains that he would be representing each of them as a party to the transaction, and discusses the effect of this dual representation, including the consequences if a dispute should arise over the contract. After doing so, Builder and Supplier each agree to have Attorney represent them both in drafting the contract.

Is it proper for Attorney to prepare the contract between Builder and Supplier?

- a. No, unless each client agrees to waive any potential claims against Attorney for malpractice and breach of fiduciary duty.
- b. No, because Supplier is paying Attorney's fees for representing both parties.
- c. Yes, because this is a transactional matter.
- d. Yes, if Attorney reasonably believes he can competently and diligently represent both parties.

Question 16

Defendant is arrested and charged with pick-pocketing. He meets with Attorney, who agrees to represent him with the following fee arrangement: Defendant will pay Attorney \$100 an hour, plus an additional \$2,000 if Attorney obtains an acquittal.

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, unless the agreement is in writing.
- c. No, if the total amount of the fee is reasonable.
- d. No, if Defendant had the opportunity to negotiate Attorney's fee and seek advice from independent counsel.

Question 17

Attorney represented Client in a contract dispute. Their fee agreement provided for Client to make a \$1,000 retainer payment at the outset of the representation, and for Attorney would bill client monthly, at the rate of \$100/hour, for all services rendered during the previous month. Attorney promptly deposited the \$1000 payment in a client trust account. Unfortunately, a week after taking on the case, Attorney was hit by a speeding car while crossing the street, suffering a severe head injury that has left him mentally incapacitated for the foreseeable future. Before the accident, Attorney had spent a total of 5 hours investigating the facts and researching the applicable law, leaving detailed notes in the file.

Which of the following is correct?

- a. Attorney may continue to represent Client in the matter, provided Client gives informed consent.
- b. Attorney must withdraw from the representation, turn over the file to Client or Client's new lawyer, and refund \$500 to the Client.
- c. Attorney must withdraw from the representation, and must turn over the file to Client or Client's new lawyer, but may keep the entire \$1000 payment.
- d. Attorney must withdraw from the representation, but may keep the file and the entire \$1000 payment.

Question 18

Two years ago Client hired Attorney to represent her in a discrimination suit against Employer. During the initial consultation, Client informed Attorney of the circumstances surrounding her claim. Attorney decided that Client had a good case and accepted the representation. In accordance with the written representation and fee agreement, Client gave Attorney a check for \$1,000 as an advance against fees and expenses, which Attorney promptly deposited in a client trust account. Because of several other matters that consumed all of Attorney's time, Attorney did no further work on Client's case for two years. During that time, Attorney never heard from Client. When the work for those other matters finally subsided, Attorney turned his attention back to Client's case and drafted a complaint on her behalf. As soon as he'd filed the complaint with the court, Attorney received a phone call from Client, who informed Attorney that she'd hired another lawyer to represent her in the discrimination case.

Is Attorney subject to discipline?

- a. Yes, but only if the statute of limitations had run before Attorney filed the complaint.
- b. Yes, because Attorney did not act with diligence and in representing Client.
- c. No, if the delay did not cause any harm to Client's case.
- d. No, because Client never contacted Attorney to ask about the status of her case.

Question 19

Three years ago, Attorney represented Pa in a paternity suit brought by Ma. The court determined that Pa was the father of Child and ordered Pa to pay monthly child support until Child reaches 18. Recently, Child, who has been living with Ma, decided he wants to live with Pa instead. Ma does not agree, and asks Attorney to represent her in the custody dispute.

May Attorney do so?

- a. No, unless Pa gives informed consent.
- b. No, even if Pa gives informed consent.
- 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 20

Partner represents Company in various legal matters. Recently, Partner hired four associates to assist with a growing volume of work. Three of the associates quit within a few weeks, leaving only Associate. The rapid turnover, along with the lack of specificity in Partner's bills, have raised concerns among Company's directors. At the board's request, Company's CEO meets with Associate to review the recent bills. The entries for Associate provide specific breakdowns of time spent and work performed. But most of Partner's entries are vague, indicating large blocks of time for "case review and preparation". Several entries are for dates when Associate knew Partner had done no work and had played golf with other clients. Associate returns to the office and confronts Partner about the bills. Partner angrily tells Associate, "Mind your own business and keep your mouth shut". Fearful about losing her job, Associate decides not to pursue the matter any further.

Is Associate subject to discipline?

- a. No, because she is not responsible for Partner's misconduct.
- b. No, because she is following Partner's instructions.
- c. Yes, but only if Partner continues to represent Company.
- d. Yes, because she knows that Partner has billed for work he did not perform.

Question 21

Lawyer, who has a thriving practice in commercial real estate law, hires Associate, a recent law school graduate who has just passed the bar exam and been admitted to practice. Associate's only previous legal practice experience involved a summer internship with the local prosecutor's office following her second year of law school and a criminal defense clinic in her third year. Soon after Associate was hired, Lawyer announced that he was taking a long-deferred vacation to a remote tropical island without any phone or internet access and would be gone for a month. He handed Associate a stack of files and told her, "While I'm away, I need you to negotiate and draft all these lease agreements for Client. I know you haven't done this before, so here's a sample agreement. You're very smart and I'm confident you'll do a great job. See you in a month."

Is Lawyer's conduct proper?

- a. No, because Lawyer did not adequately supervise Associate's work.
- b. No, because Clients did not consent before Lawyer instructed Associate to draft the lease agreements.
- c. Yes, because Lawyer gave Associate a sample lease agreement.
- d. Yes, because Associate has passed the bar exam and is admitted to practice.

Question 22

To promote her employment discrimination practice, Attorney runs a TV ad portraying a dramatized account of a past case. The ad opens with Attorney meeting with a client who tearfully recounts the persistent and severe harassment she has experienced at work. Next, it shows Attorney in court, delivering an impassioned argument on behalf of her client, after which a judge bangs his gavel and announces "I find in favor of the plaintiff and order the defendant to pay \$1 million." It ends with a picture of Attorney and client toasting their victory, with a voice-over saying "If you've been harassed at work, call the Law Offices of Attorney and she'll get you the compensation you deserve!" and superimposed text giving Attorney's phone number and office address.

Is it proper for Attorney to run this ad?

- a. Yes, as long as it contains a disclaimer stating that it is a dramatization.
- b. Yes, as long as it accurately portrays the outcome of the case it is based on.
- c. No, because it may create an unjustified expectation about the results Attorney could achieve for other clients.
- d. No, because it encourages people to bring lawsuits.

Question 23

Aunt hires Lawyer to represent Nephew, who is charged with a crime. Aunt agrees to pay all of Nephew's legal fees and Nephew consents to the arrangement. On the eve of trial, the prosecution offers a deal under which Nephew would plead guilty to a lesser charge, with probation instead of a prison sentence. Lawyer advised Nephew to accept the plea deal, as the prosecution had a very strong case. Nephew agreed and called Aunt to tell her. Aunt immediately called Lawyer and told him, "I don't want Nephew to take this deal. Anything other than an acquittal will bring shame on our entire family. You convince him to go to trial, or I'm not paying you one dime!" Worried about not getting paid, Lawyer calls Nephew and tells him, "After giving it some more thought, I don't think you should take the plea." Nephew agrees, and Lawyer informs the prosecutor that Nephew has rejected the plea offer.

Is Lawyer subject to discipline?

- a. No, if Client is ultimately acquitted.
- b. No, if Lawyer's representation of Client was competent
- c. Yes, because he allowed Aunt to control his professional judgment.
- d. Yes, if Client is convicted.

Question 24

Lawyer represents Client, who is charged with attempted murder. The case has attracted a great deal of media attention. Following Client's arraignment, Lawyer spoke to reporters outside the courthouse. In response to a question about what he thought would happen in the case, Lawyer said, "We're confident of an acquittal. The state's entire case centers on the testimony of one witness, Jones, a notorious liar who's trying to avoid his own prosecution."

Is Lawyer subject to discipline?

- a. No, if the Lawyer's statements were true.
- b. No, because the trial has not yet begun.
- c. Yes, but only if the judge had previously issued an order restricting statements to the press.
- d. Yes, because Lawyer identified and impugned the credibility of a witness

Question 25

A recently-enacted state law makes it a crime to wear white pants in public between Labor Day and Memorial Day. Client's religion requires all adherents to wear all white clothing as a sign of moral purity. Concerned about the implications of the new law, which contains no exception for religious requirements, Client contacts Lawyer for advice. Lawyer tells Client, "This ordinance is absurd and discriminatory. Just keep wearing white pants and if they arrest you, you can challenge the statute as unconstitutional." Following Lawyer's advice, Client goes out wearing his usual white pants the day after Labor Day and is arrested for violating the state law.

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

Question 26

Before attending law school, Lawyer had spent several happy years working in a traveling carnival. After a decade of legal practice, Lawyer yearned for the adventures of carnival life. He approached the carnival's owner and proposed the following business arrangement: The carnival owner and Lawyer would be partners, with the carnival owner managing the carnival operations and Lawyer operating a traveling law office. Lawyer would represent carnival employees in any legal matters at a reduced rate, and would also be free to accept other clients at Lawyer's usual rates. Lawyer would pay a share of the carnival's operating expenses, and the carnival owner would receive a share of any legal fees received. Lawyer is admitted to practice in every jurisdiction that the carnival visits.

Is Lawyer subject to discipline?

- a. Yes, unless the carnival owner is also a lawyer.
- b. Yes, because practicing law as part of a carnival undermines the integrity of the legal profession.
- c. No, because he was licensed to practice law in each jurisdiction visited by the carnival.
- d. No, provided the terms of the arrangement are fair and Lawyer gives the carnival owner an opportunity to obtain independent legal counsel.

Question 27

Client meets with Attorney about a complex litigation matter. Attorney agrees to take Client's case on a contingent fee basis, with Attorney to receive one-third of any amount recovered on behalf of Client.

Just a few days after the initial meeting, Attorney falls seriously ill. He calls Client and explains that he will be unable to continue working. Attorney says that he has a friend, Lawyer, who is highly experienced in the relevant area of law, and that Attorney intends to refer some of his pending matters to Lawyer. Attorney arranges a meeting with Client and Lawyer, after which Client agrees to have Lawyer take over the case from Attorney. Client further agrees that Attorney and Lawyer will each receive one-sixth of any recovery obtained on behalf of Client.

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 28

Client is stopped for speeding. The police officer detects the smell of marijuana and searches the car, discovering a large bag of marijuana under the passenger seat. Client is arrested for possession of marijuana with intent to distribute. Client's mother hires Lawyer to represent Client and tells Lawyer she will pay Client's legal fees. Lawyer meets with Client, who tells him that the marijuana belonged to his brother, who has several previous convictions and faces a long prison sentence if he's convicted again. To protect his brother, Client, who has a clean record, is prepared to plead guilty, as long as he doesn't have to serve jail time. Lawyer believes the prosecution is likely to offer such a deal, but doesn't think Client should plead guilty to a crime he didn't commit. After Client leaves, Lawyer calls Client's mother and tells her that Client is planning to take the rap for his brother.

Is Lawyer subject to discipline?

- a. Yes, for violating the duty of confidentiality.
- b. Yes, for allowing someone other than Client to pay Client's legal fees.
- c. No, because he is trying to prevent Client from pleading guilty to a crime he did not commit.
- d. No, because Client's mother is paying Client's legal fees.

Question 29

Attorney represents Client in a personal injury suit. Attorney's written fee agreement (signed by Client) provides that Attorney would receive 25% of any recovery. Client accepts Defendant's offer of \$200,000 to settle the case. The settlement agreement gives Defendant 90 days to pay the full amount. Two weeks after the settlement agreement is signed, Defendant sends a check for \$100,000 to Attorney's office. Attorney promptly deposits the check into the checking account he maintained for office expenses. Eight weeks later, Defendant sends a check for the remaining \$100,000 to Attorney, who again immediately deposits the check into the same account. Two weeks later (90 days after the settlement agreement was signed), 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, for commingling Client's funds with his own funds.
- b. Yes, for commingling Client's funds with his own and holding Client's funds without notice and for too long.
- c. No, because Client received the full amount due under the settlement and the fee agreement.
- d. No, as long as Attorney did not use any of the settlement funds to pay business expenses.

Question 30

Patient had an unsightly wart on her chin. Three times, she had the wart surgically removed by Doctor, but each time it grew back within a few weeks. Patient sued Doctor for medical malpractice. Lawyer represented Doctor in Patient's suit. In the course of investigating the case, Lawyer learned that the standard treatment included application of a prescription ointment following the surgery, but that Doctor had failed to prescribe the ointment. Lawyer thus concluded that Doctor was likely to lose if the case went to trial. A week before trial, Patient's attorney called Lawyer with an offer to settle the case for \$5,000. Lawyer believed this was far less than a jury was likely to award, and immediately accepted the offer on behalf of Doctor.

Is Lawyer subject to discipline?

- a. Yes, because Lawyer accepted the offer without consulting with Doctor.
- b. Yes, because Doctor might still have prevailed at trial.
- c. No, because there was a risk that Patient would rescind the offer if Lawyer did not accept immediately.
- d. No, if Lawyer reasonably believed \$5,000 was a reasonable settlement amount.

Question 31

Attorney practices elder law. She regularly volunteers to give free seminars on elder law through civic organizations or churches. At the seminars, Attorney is careful to discuss issues in general and scrupulously avoids giving legal advice on any specific matter. She reminds those attending 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 suggests contacting that organization for referrals to local attorneys. Attorney never specifically recommends other attorneys nor does she ever recommend herself. Each time Attorney gives a seminar, she routinely gets calls from several attendees who want her to 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 advertisements 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 32

Attorney recently graduated from law school and passed the bar exam. Before going to law school, Attorney was a dentist and he has many friends who are dentists. He contacted some of his dentist friends and tells them, "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?

- a. Yes, because the agreement allows non-lawyers to practice law.
- b. Yes, because the agreement involves Attorney giving something of value in exchange for referrals.
- c. No, but only if Attorney does not share any legal fees with the dentists.
- d. No, because Attorney receives a bigger benefit in this Agreement than the dentists.

Question 33

Client has had a bad back for many years, but never sought medical treatment for his pain. Last month, he was in a car accident that temporarily exacerbated his pre-existing back troubles. Within a few days, Client's back felt the same as it did prior to the accident. But the experience prompted Client to want treatment for his back pain. So he hired Attorney to represent him in a suit against the other driver in the car accident, hoping he would get some money to pay for physical therapy.

Client informed Attorney of his pre-existing back pain, but told Attorney that if the case proceeded to trial, he would testify that his back trouble didn't start until the car accident. Attorney told Client he must testify truthfully about his pre-existing condition. Client assured Attorney he would do so. At trial, Attorney called Client to testify and asked him about the origin of his back pain. Client said he'd never experienced any back pain before the accident.

Must Attorney take remedial measures as a result of Client's testimony?

- a. Yes, because Attorney knows that Client gave false testimony.
- b. Yes, but only if Client prevails at the trial.
- c. No, because Attorney advised Client against testifying falsely.
- d. No, because Client's statement to Attorney is protected by the attorney-client privilege.

Question 34

Attorney, a lover of adventure travel, went on an expedition to the Siberian tundra, along with 4 other participants and a guide, none of whom had met before. A few days into the expedition, the group was caught in an extreme blizzard and most of their food was consumed by a pack of wild bears. Convinced that they were all going to die, one of the other participants, Clint, asked Attorney to prepare his will. Attorney told Clint he had no experience drafting wills, but that he remembered the basics from the wills and trusts course he had taken in law school. Attorney wrote out a will in a notebook he'd brought for the trip. Client signed the will, with two other participants signing as witnesses.

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

- a. No, because Attorney has never drafted a will.
- b. No, unless Clint 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 turns out that the will does not meet the technical requirements to be valid.

Question 35

Several years ago, Attorney represented Corporation in a class action employment discrimination lawsuit. The case ended with a verdict in favor of Corporation.

Employee, who was part of the plaintiff class in the employment discrimination suit against Corporation, recently quit to accept a job with another company. Corporation has threatened to sue Employee for breach of a non-compete agreement that Employee had signed while working for Corporation. Employee asks Attorney to represent him against Corporation in the non-compete case.

May Attorney represent Employee in this action?

- a. No, unless Corporation consents.
- b. No, even if Corporation consents.
- c. Yes, because the non-compete case is unrelated to the discrimination case.
- d. Yes, because Attorney no longer represents Corporation.

Question 36

Attorney represents Client in a medical malpractice suit against Doctor, who surgically removed a large mole on Client's face. The procedure left Client with a large, painful, unsightly scar.

State law requires a medical malpractice plaintiff to offer expert testimony to establish that the defendant's treatment was negligent. Attorney retained Expert for this purpose. Expert's fee for reviewing the medical records and testifying at a deposition and trial was \$2000. Attorney advanced the \$2000 to cover Expert's fee, as provided in the contingent fee agreement that Client had signed. Meanwhile, Client wanted to have surgery to correct the scar on her face. Because Client was short of funds, Attorney loaned Client \$1000 to pay for the surgery, which Client orally agreed to repay out of any recovery in the malpractice case.

Is Attorney subject to discipline?

- a. Yes, for advancing the expert witness fee.
- b. Yes, for loaning Client money for the surgery.
- c. Yes, for advancing the expert witness fee and for loaning Client money for the surgery.
- d. No, because Attorney's conduct was entirely proper.

Question 37

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

Subsequently, as Attorney and Client were discussing trial strategy, Client 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 offered a plea bargain under which Client would plead guilty to a reduced charge. Attorney was confident he could get an acquittal at trial, so he rejected the offer. The case went to trial and Client was convicted.

Was it proper for Attorney to reject the plea?

- a. Yes, if Attorney reasonably believed there was a strong probability of an acquittal.
- b. Yes, if Client would have rejected the plea anyway.
- c. No, because Attorney did not advise Client of the plea.
- d. No, because Client was ultimately convicted.

Question 38

Client's mother dies and her body is cremated. There is a dispute among the surviving family members over what should happen with the remains. Client believes his mother, who was an avid surfer, wanted her ashes scattered in the Pacific Ocean. But Client's siblings believe their mother's remains should be kept in the family home.

Client hires Attorney to represent him in the dispute over the mother's remains. Client, who is in possession of the urn containing the mother's ashes, gives the urn to Attorney for safekeeping. Attorney labeled the urn and placed it in a closet in Attorney's office. The following day, an earthquake destroyed the building in which Attorney had his office. The urn broke and the ashes were strewn throughout the wreckage of the building.

Is Attorney subject to discipline?

- a. No, because Attorney could not have anticipated that there would be an earthquake.
- b. No, because Client assumed the risk of leaving the urn with Attorney.
- c. Yes, because Attorney did not exercise reasonable care in storing the urn.
- d. Yes, because Attorney is strictly liable for any damage to Client's property.

Question 39

Attorney represents Defendant who is charged with murder. The defense hinges on the fact that the murder weapon is missing. Trial is scheduled to begin in a week and is expected to last 5 days. Attorney receives a phone call from Witness, who tells Attorney he saw the knife allegedly used in the murder, but that the knife no longer exists. Attorney thanks Witness for the information and tells him he should take an extended vacation out of the country. Following Attorney's advice, Witness immediately left for a two month trekking expedition in Nepal.

Is Attorney subject to discipline?

- a. Yes, if Witness was on the witness list for testimony at trial.
- b. Yes, because Attorney suggested that Witness conceal himself during the trial.
- c. No, because Attorney did not tell Witness to lie.
- d. No, because Attorney did not coerce Witness to leave the jurisdiction.

Question 40

Attorney has practiced corporate law in State for the past 15 years. A bill that would increase annual filing fees for all corporations with their principal places of business in State was up for consideration during the summer session in State'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.