

# Professional Responsibility: Quiz 1

Elon Law School  
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October 15, 2018

## Answers & Explanations

1. Associate is a first-year associate in a large national law firm. She works primarily on corporate transactional matters and has no trial or criminal law experience. The firm encourages associates to take on pro bono work as a way of enhancing their skills. Hoping to gain some courtroom experience and raise her profile with the partners, Associate accepts a pro bono criminal defense case through the local bar association. Is it proper for Associate to represent the client in this matter?
- A. Yes, because once a lawyer is admitted to the bar they are presumed competent to handle any type of case.
  - B. Yes, because Associate is taking the case pro bono.
  - C. Yes, if Associate seeks assistance from an experienced criminal defense lawyer.
  - D. No, because Associate has no criminal defense or trial experience.

*Answer C is correct. A is incorrect because admission to the bar is not sufficient to satisfy the duty of competence. B is incorrect because the duty of competence applies regardless of whether the client is paying for the representation. D is incorrect because a lawyer may attain competence through consultation with an experienced lawyer, study, or other means.*

*The following additional facts apply to Questions 2 & 3:*

Regardless of your answer to the previous question, assume instead that the court appointed Associate and Partner, a partner at the firm, to represent the client. Partner decides to let Associate handle the case on her own, so that Partner can devote her time to work for paying clients. Associate doesn't ask Partner for any advice or assistance, and Partner doesn't offer any. Associate meets with the client, prepares a strategy, and defends the client through trial. The client is convicted, and files an appeal, in which he is represented by a different lawyer from a different firm. In the appeal, the client argues that the conviction should be overturned on two grounds: (1) prosecutorial misconduct, and (2) ineffective assistance of counsel. The appellate court overturns the conviction on grounds of prosecutorial misconduct and does not address the ineffective assistance argument. The client then files complaints with the state bar against both Associate and Partner.

2. Which of the following would be an effective defense for Associate against a charge of violating Rules 1.1 and 5.2?
- A. Associate was a new, inexperienced attorney and this was her first mistake.
  - B. The conviction was overturned on appeal, so there was no harm to the client.
  - C. Partner failed to supervise her work on the case, and she was the person responsible for ensuring

competent representation.

D. None of the above.

*Answer D is correct. A is incorrect because every lawyer, regardless of experience, owes a duty of competence (though the attorney's inexperience and the fact that it was her first mistake might be treated as mitigating factors in deciding on a sanction). B is incorrect because discipline under Rule 1.1 (unlike civil liability for malpractice) does not depend on a showing of harm to the client. C is incorrect because Associate had an independent duty of competence under Rule 1.1, even if she "acted at the direction of a supervisor" (Rule 5.2, Comment 1).*

3. Which of the following would be an effective defense for Partner against a charge of violating Rules 1.1 and 5.1?

A. Partner was appointed to represent the client by the court, so she was immune from liability.

B. The client did not establish ineffective assistance of counsel, so there is no basis for a finding of incompetence.

C. Associate did all the work on the case, so she was solely liable for any incompetence.

D. None of the above.

*Answer D is correct. A is incorrect because the duties under the Rules apply regardless of whether an attorney is hired by the client or appointed by the court (court-appointed lawyers sometimes have immunity from civil liability for malpractice, but not immunity from discipline). B is incorrect because a finding of ineffective assistance is not a prerequisite for discipline under Rule 1.1 (which, unlike ineffective assistance, does not depend on a showing of prejudice). C is incorrect because Partner had an independent duty of competence under Rule 1.1 and a duty under Rule 5.1 to ensure Associate's compliance.*

4. Lawyer filed suit on behalf of Client against client's employer, alleging breach of contract and sex discrimination. Employer's attorney filed an answer and a (noncompulsory) counterclaim against Client for misappropriation of trade secrets. Lawyer believes that the employer's counterclaim is probably barred by the statute of limitations, but that the employer might have a successful argument for tolling. Lawyer also believes Client has a good defense against the counterclaim on the merits, and that this would be a stronger position to take. She also believes that Client would prefer to defend on the merits, rather than leave the allegations of misappropriation unaddressed. If Lawyer opts not to assert the statute of limitations defense in her answer to the counterclaim (thereby waiving that defense), is she subject to discipline?

A. Yes, because it is incompetent for a lawyer to waive any viable defense.

B. Yes, because the client would be prejudiced.

C. No, even without the client's consent, if Lawyer believes that it is in the client's best interest to waive the defense.

D. No, if the client gives her informed consent to waiving the statute of limitations defense.

*Answer D is correct. A and B are incorrect because an attorney is not subject to discipline for waiving a defense if instructed to do so by a client, as long as the lawyer fulfilled their duty to inform the client. C is incorrect, because*

*the decision whether to assert or waive a defense goes to the objectives of the representation, not the means.*

5. Attorney represented Client in a personal injury action. The personal injury action was settled, and Attorney received a check for \$10,000 payable to Attorney. Attorney deposited the check in Client's trust account. The next day, Attorney received a letter from Bank, stating that Client had failed to make his mortgage payments for the last three months and demanding that Attorney immediately release \$900 of the proceeds of the settlement to Bank or they would institute foreclosure proceedings against Client. Attorney informed Client of Bank's letter. Client responded: "I don't care what the bank does. The property is essentially worthless, so let them foreclose. If they want to sue me, I'll be easy enough to find. I don't think they'll even bother. You just take your legal fees and turn the rest of the proceeds over to me." Is Attorney subject to discipline if she follows Client's instructions?
- A. Yes, if Client does not dispute the \$900 debt to the bank.
  - B. Yes, because Attorney knew that Client was planning to force the bank to sue him.
  - C. No, unless Attorney had reason to believe that Client would not have sufficient funds to pay any subsequent judgment obtained by the bank.
  - D. No, because the bank has no established right to the specific proceeds of Client's personal injury judgment.

*Answer D is correct. A is incorrect, because the lawyer's duties under Rule 1.15(d) and (e) apply only if the third person has a legal interest in the specific funds received by the lawyer (e.g. if the bank had a security interest in the settlement funds). Answer B is incorrect because the client may have valid (non-frivolous) grounds for disputing the alleged debt to the bank. Answer C is incorrect because the lawyer has no duty to protect the bank against the risk of nonpayment (as long as the client is not using the lawyer's services to deprive the bank of its money through crime or fraud).*

6. Attorney represents Client, who is charged with murdering Victor. Client tells Attorney that he couldn't have murdered Victor, because at the time of the murder he was burying the body of Victoria, who he did kill. Client tells Attorney that Victoria is buried in a remote location where the body is unlikely ever to be discovered. Victoria has been reported missing and the police are investigating her disappearance. May Attorney reveal this information to the prosecutor without Client's consent?
- A. Yes, if Attorney believes he can get a favorable plea bargain for Client on both the current and prospective charges in exchange for the information.
  - B. Yes, because failure to reveal the information would impede the police investigation into Victoria's disappearance.
  - C. No, because Attorney obtained this information in the course of representing Client.
  - D. No, if Attorney is not certain that Client's alibi is true.

*Answer C is correct. A is incorrect because the lawyer may not reveal confidential information as part of a plea bargain without the client's consent. B and D are incorrect because these are not exceptions to the duty of confidentiality under Rule 1.6(b).*

7. Lawyer represents Client, the defendant in a murder trial. The police discovered the victim's body in a ditch, and found Client's fingerprints on a kitchen knife under the body. Client tells Lawyer that he is innocent, and that his son confessed to him that he killed the victim. Client tells Lawyer that under no circumstances will he turn in his son, and that he doesn't want his son to know he revealed the son's confession to anyone. What is Lawyer's best course of action?
- A. Reveal the information to the prosecutor to avoid a miscarriage of justice, but continue to represent Client if Client wants him to.
  - B. Reveal the information to the prosecutor, but move to withdraw as Client's attorney.
  - C. Tell Client's son that Client disclosed the son's confession, and urge the son to retain Lawyer as his lawyer so that he will have an obligation not to reveal the information.
  - D. Do not reveal the information to the prosecutor, and do not tell Client's son that Client disclosed the son's confession.

*Answer D is correct. A and B are incorrect because none of the exceptions to the duty of confidentiality under Rule 1.6(b) apply. C is incorrect, because the duty of confidentiality precludes the lawyer from revealing the information to anyone, including the client's son.*

8. Lawyer represented Client in his divorce. During the course of the representation, Client told Lawyer that if his wife was awarded their vacation home in the divorce, he would burn it down. Lawyer advises Client that this is a terrible idea, because it could lead to criminal charges, civil liability, and termination of his visitation rights with his children, and because someone might be hurt or killed in the fire. Client assures Lawyer that he wouldn't set the fire while anyone was at the house. As part of the final divorce decree, Wilma is awarded the vacation home. Once the divorce case is over, Lawyer terminates his lawyer-client relationship with Client. May Lawyer warn the ex-wife or her lawyer that Client is planning to burn down the vacation home?
- A. Yes, because Client is no longer his client.
  - B. Yes, if Lawyer reasonably believes Client is really going to burn down the house unless Lawyer reveals the threat.
  - C. No, because Lawyer learned of Client's threat in the course of representing Client.
  - D. No, because it's not certain that Client will go through with his threat.

*Answer C is correct. A is incorrect because the duty of confidentiality continues after the representation ends. B is incorrect because the client is not using the lawyer's services to commit arson, so the exception under Rule 1.6(b)(2) does not apply. D is incorrect because the exception under Rule 1.6(b)(2) (where the conditions are satisfied) does not require certainty that the client will commit a crime or fraud, but only that harm to property or financial interests is a reasonably certain result if the client does so.*

9. Which of the following statements would be protected by the attorney-client privilege if an adverse party sought to compel the disclosure of the information?
- A. Lawyer represents Client in a patent infringement suit. At the law firm's holiday party, Client tells Lawyer that he plans to divorce his wife because she just wants his money. The wife's divorce lawyer

seeks disclosure of this conversation as part of discovery in the divorce case (in which a different law firm represents Client).

B. Lawyer represents Plaintiff in a medical malpractice suit. Plaintiff is still in the hospital. To obtain facts about how much his client has been suffering, Lawyer interviews the patient who shares a hospital room with Plaintiff, while Plaintiff is also present. The lawyer representing the defendant doctor seeks disclosure of the conversation as part of discovery in the malpractice case.

C. Paralegal interviews Client about her case and gives notes of the interview to Lawyer. Opposing counsel requests production of the notes and seeks to depose Paralegal about the interview.

D. Lawyer advises several clients to make certain investments to minimize their tax liabilities. The government believes that the investments are unlawful tax shelters and issues a subpoena to Lawyer, seeking the names of the clients.

*Answer C is correct. The paralegal is acting as the attorney's agent for purposes of communicating with the client. A is incorrect because the client was not seeking legal advice or representation. B is incorrect because the privilege does not apply to the lawyer's communication with a person other than the client. D is incorrect because the attorney-client privilege applies only where the lawyer gives legal advice, not business advice, and because the privilege does not apply where the lawyer assists a client in committing a crime or fraud.*

10. Lawyer represents Client, the plaintiff in an employment discrimination suit. At Lawyer's request, Client prepares a written summary of the facts pertaining to the case. He asks his friend and colleague, Colleague, to read the summary before giving it to Lawyer. Who can be compelled to testify about the preparation and contents of the written summary?

A. Only Client.

B. Only Colleague.

C. Client and Colleague.

D. Neither Client nor Colleague.

*Answer C is correct because the attorney-client privilege does not apply where a third person is privy to the communication (unless the third person's involvement was necessary to facilitate the client's communication with the lawyer, such as the use of a translator).*