

Professional Responsibility: Quiz 1

Elon Law School
Prof. Fink

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Instructions

- This is an open-book, open-note quiz. You may use any printed or handwritten material. **You may not use computers, phones, or other electronic devices.**
- This quiz consists of ten (10) multiple-choice questions.
- You will have thirty (30) minutes to complete the quiz.
- You must use the Scantron sheet for your answers. You may write on the document with the quiz questions if you wish, but you will only receive credit for answers entered correctly on the Scantron sheet.
- Write your Midterm Exam ID number (**not your name**) in the space for “Name” on the Scantron sheet.
- Sign the Law School Honor Pledge below, using your Midterm Exam ID number. **Do not write your name anywhere on this document**

Honor Pledge

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

Exam ID Number

Questions

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.

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.
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.

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.
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.

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.
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.
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.

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.
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.