**QUESTIONS**

**TOPIC 5: LAW FIRMS AND ASSOCIATIONS**

75. Jack Harlow is an attorney who is moving from the only state where he is licensed to

practice law. He has an offer in another state to go to work as in-house counsel for a major insurance company. Jack's job would be to counsel senior adjusters about how to make sure they avoid any "bad faith” claims and also to represent policyholders of the company in certain high profile cases in his new home state. May Jack undertake this new position, as described, consistent with his responsibilities under the Model Rules of Professional Conduct?

(A) No, because Jack would be practicing law without a license in his new state.

(B) No, because Jack would be appearing in court in his new state.

(C) Yes, because Jack will be acting as in-house counsel.

(D)

Yes, because Jack is duly licensed in a U.S. jurisdiction.

76.

Irene Wetmore is an attorney who is interested in joining a new firm in a metropolitan area. The firm has asked her to sign an employment agreement that states that, in exchange for the training the firm will provide, Irene will agree not to compete with the law firm for a period of one year in the metropolitan area. Which of the following statements most accurately reflects Irene's options under the Model Rules of Professional Conduct?

(A) Irene may not agree to this provision,

(B) Irene may agree to this provision as long as the restrictions of time and place are reasonable.

*(*C) Irene may agree to this provision as long as she is receiving consideration for the agreement.

(D) Irene may agree to this provision.

*77.*

Carl Denton is an attorney who is employed full time by the Parents United to Protect Students (PUPS), a non-profit organization (controlled by nonlawyers) that provides legal representation in cases involving access to education for disabled people. Carl has just completed a case in which he was awarded $50,000 in attorney's fees under the Equal Access to Justice Act because he prevailed in an action against a local community college district. Which of the following statements most accurately describes Carl's options, with respect to the fees, under the Model Rules of Professional Conduct?

(A) Carl may not share the fees with PUPS because the organization is controlled by

nonlawyers.

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(B) Carl may share the fees with PUPS because it is his employer and is a nonprofit

organization.

(C) Carl may share the fees with PUPS because it is his employer.

(D) Carl may not share the fees with PUPS because the organization is not a law firm.

78. Laurie Traynor has a highly specialized practice. She is a leading expert on the standards

that for-profit colleges must meet in order for their students to be eligible to receive federal student loans. She travels to many states and provides legal advice to institutions about compliance with these standards. She is licensed, however, only in one state. Which of the following statements most accurately describes the propriety of Laurie's practice under the Model Rules of Professional Conduct?

(A) Laurie's out-of-state activities violate the rule against practicing law in another jurisdiction

without authority to do so.

(B) Laurie's out-of-state activities are permitted because she is giving advice about federal law.

(C) Laurie's out-of-state activities are permitted because they arise out of her home-state

practice.

Laurie's out-of-state activities are prohibited because she is not admitted pro hac vice in those states where she is not licensed.

79. Nick Kolb is an attorney who has decided that he no longer desires to keep up the pace

required by a full-time solo practice. He does both estate planning and probate adminis tration. Which of the following statements most accurately reflects Nick's options under the Model Rules of Professional Conduct?

(A) He may not sell the practice but may withdraw from representation of his clients because

good cause exists to do so.

(B) He must sell his entire practice and retire if he chooses to sell any of it.

(C) He may sell the estate planning portion of his practice but remain in the practice of law

part-time by maintaining his probate administration practice.

(D) He may sell a substantial portion of his practice if he gives reasonable notice to the affected

clients.

Dane Finley is an attorney who recently won a major case. As soon as the verdict was announced, Dane's nonlawyer secretary sent the following message via Twitter: “Dane won big again. He can win big 4 u 2!" Dane soon found out about the message. Assuming that this was a false or misleading communication about Dane's services, under what circum stances, if any, will Dane will responsible for this violation of the Rules of Professional Conduct?

(A) Dane will not be responsible because he did not send the message.

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(B) Dane will not be responsible because he did not order his secretary to send the message. (C) Dane will not be responsible because he has done nothing to ratify the conduct.

(D) Dane will be responsible unless he takes reasonable remedial action to avoid the

consequences of the misconduct.

81.

Doug Oyler is an estate planning attorney who is licensed in a state that adjoins another state. To make ends meet, Doug regularly goes into the adjoining state to meet with clients and prepare their estate plans. He does not maintain an office in the adjoining state, and he is careful always to let his clients in that state know where he is licensed. Which of the following statements most accurately describes the propriety of Doug's actions under the Model Rules of Professional Conduct?

(A) Doug is not committing misconduct because he has not established an office in the adjoining

**state.**

(B) Doug is not committing misconduct because he advises his clients truthfully about his

licensure only in his home state.

*(*C) Doug is committing misconduct by practicing law in a state where he is not licensed.

(D) Doug is committing misconduct by continuous and systematic presence in the adjoining

state for the practice of law.

82*.*

Harry Sherrill is an attorney who has been asked to litigate a case in a state that adjoins the only state in which he is licensed. He believes that there are witness interviews that must be conducted in that state. Which of the following statements most accurately describes Harry's options under the Model Rules of Professional Conduct?

*(*A) Harry may conduct the interviews because doing so is a temporary activity and not the

continuous and systematic practice of law in a state where he is not licensed.

(B) Harry must not conduct the interviews until he is admitted pro hac vice in the case.

(C) Harry can conduct the interviews before the case is filed because this activity is reasonably

related to his practice in his home state.

(D) Harry may conduct the interviews as long as he reasonably expects to be admitted pro hac

vice in the case once it is filed.

83. Amber Burris is an attorney who represents Paul Bunyan Insurance (PBI) in connection

with the settlement of a class action lawsuit against PBI involving the sale of credit life insurance for new car buyers. PBI is so bitter about being sued that it instructs Amber to make the settlement offer but condition it on agreement by plaintiff's counsel never to sue PBI again for any client or class of clients. Which of the following statements best describes Amber's options under the Model Rules of Professional Conduct*?*

*(*A) Amber may make the offer.

**LAW FIR**MS AND ASSOCIATIONS

(B) Amber must communicate to the client that she is not permitted by the Rules of Professional

*C*onduct to make that offer.

(C) Amber must immediately withdraw from representing PBI.

(D) Amber must consult with the client about whether this offer is the best means of achieving

the client's objectives.

84. Keith Lopes is an attorney who is licensed in only one state. Keith is a tax lawyer. He

prepares corporate and partnership tax returns. He does no litigation or alternative dispute resolution. He likes it that way. He receives a telephone call from his elderly Aunt Lucille in the distant state where Keith grew up. Aunt Lucille helped pay Keith's way through law school, and now she is asking for his help. She has been sued by a credit card company, and the court has ordered mediation. Aunt Lucille wants Keith to come hor **represen**t her at the mediation. Which of the following statements most accurately describes Keith's options under the Model Rules of Professional Conduct*?*

*(*A) Keith may represent Aunt Lucille because it would be a temporary activity related to an

alternative dispute resolution proceeding.

(B) Keith may represent Aunt Lucille only if he associates a lawyer licensed in her jurisdiction

and that lawyer actively participates in the matter.

(C) Keith may not represent Aunt Lucille because the mediation does not arise out of or

**reason**ably relate to his practice.

(D) Keith may not represent Aunt Lucille because he is not licensed in her jurisdiction.

85. Melody Faulk is an attorney who frequently is appointed by her local court to represent indigent

criminal defendants. In fact, the frequency of the appointments has become so great that she now believes she has as many cases as she can competently and diligently handle. The court contacts her about an additional appointment. What is her responsibility under the Model Rules of Professional Conduct?

ANSWER:

**86.**

Rita Hornbeck is an attorney who has received notice that the judge of her local criminal court intends to appoint Rita to represent the defendant in a murder case. When Rita arrives for the first hearing, she learns for the first time that the victim of the alleged murder was a former client of Rita. Is there any basis upon which Rita could seek to avoid the appointment as counsel in the murder case?

ANSWER:

*8*7.

Ridgeway & Secrest (R & S) is a law firm that is concerned about departing partners who then take clients of the firm and otherwise compete with the firm. R & S is considering whether it can implement a “retirement plan” that would pay departing lawyers the amounts in their capital

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accounts (which under the partnership agreement belong to the individual lawyers) and any fees earned by but not paid to the departing lawyers only on the condition that the departing lawyers not compete with R & S after their departure. Is the plan consistent with the Model Rules of Professional Conduct?

ANSWER:

88.

Penny Moss is an attorney who has been offered a job as an attorney for Costco Stores, Inc. Although Penny would be paid a salary by Costco, her clients would be individuals who are members of Costco's “Saver's Club," a membership that entitles members to shop at Costco stores and purchase household items in bulk, and which now includes the right to two hours per year of legal services provided by Costco lawyers. What concerns should Penny have about potential violations of the Model Rules of Professional Conduct if she accepts this position, given that she would be working as a salaried lawyer for Costco?

ANSWER:

Reggie Grimes is an associate in the law firm of Winthorp & Winthorp. Reggie was admitted to the bar just a few months ago. Reggie has been instructed by one of the partners in his firm to file a lawsuit for a client and obtain an ex parte temporary restraining order to prevent a foreclosure sale of the client's property. The partner has instructed Reggie not to inform the court at the ex parte hearing of certain material facts that harm their client's case. Under the Model Rules of **Profession**al Conduct, may Reggie follow the partner's instructions*?*

ANSWER:

**ANSWERS**

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75*.*

**The correct answer is (B).** This is a question of multijurisdictional practice under Rule 5.5. As an in-house counsel, Jack may work on a permanent basis in a state where he is not licensed as long as his services do not include services for which the forum requires pro hac vice admission (i.e., as long as they are not court appearances). Rule 5.5(d)(1). Answer (B) correctly identifies the problem: with this job description, Jack would be representing the company in court in his new state with a license from another sta**te. Answer (A) is incorrect** because Jack is permitted under Rule 5.5(d)(1) to practice law as an in-house counsel in the new state as long as he is not appearing in court. His counseling about “bad faith," for example, is the practice of law in a state where he is not licensed but is permissible**. Answer (C) is incorrect** because it is overbroad. His status as in-house counsel is significant because it permits him to do some activities without a local license, but it does not permit the court appearances that will be in his job description**. Answer (D) is incorrect** because a license in one state does not carry the unqualified right to practice in another state. U.S. lawyers are still licensed and regulated on a state-by-state basis and, under the Model Rules of Professional Conduct, may undertake legal activities in a state where they are not licensed only in the limited circumstances set forth in Rule 5.5.

7*6*.

**The correct answer is *(*A**). Under Rule 5.6(b), lawyers are not permitted to offer or make agreements that restrict the lawyer's right to practice. This provision is a covenant not to compete, and it would restrict Irene's right to practice and thus deprive the public of the availability of her services. Only Answer (A) correctly states that Irene may not make this **agreement. Answers (B), (C), and (D) are all incorrect** because those answers make this impermissible agreement permissible, at least under certain conditions. Answer (A) is correct.

**The correct answer is (B).** The general rule is that a lawyer cannot share legal fees with a nonlawyer. Rule 5.4(a). One of the exceptions, however, permits lawyers like Carl to share court-ordered legal fees with a nonprofit organization that employs, retains, or recommends the lawyer in the matter. Rule 5.4(a)(4). Answer (B) is therefore correct**. Answers (A) and (D) are incorrect** because of the exception in Rule 5.4(a)(4)**. Answer (C) is wrong** because the employer must be nonprofit before the lawyer can share fees. Answer (B) is correct.

78.

**The correct answer is Answer** (C). Under Rule 5.5(c)(4), a lawyer licensed in one state may provide services in other states on a temporary basis as long as those services are not related to litigation of alternative dispute resolution and as long as they arise out of or are

to the lawyer's practice in her home state. Here, Laurie is just giving advice, so these activities are not related to litigation or alternative dispute resolution. This is what she does at home and elsewhere, so the out-of-state activities relate to her home state practice. **Answer (A) is incorrect b**ecause these are authorized temporary activities. **Answer (B) is incorrect** because it does not matter whether Laurie is advising about federal law. As long as her non-litigation, non-ADR activities arise out of or are reasonably

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related to her home practice, federal or not, the activities are permitted. **Answer (D) is incorrect b**ecause pro hac vice admission is for litigation. Laurie is not participating in litigation. Because she is just giving advice, pro hac vice admission is unnecessary.

**The correct answer is Answer** (C). Nick could sell all of his practice by complying with Rule 1.17's requirements regarding notice to existing clients and other matters. **Answer (A) is wrong** because it is possible, under the right circumstances, to sell a law practice. Because Nick also has the option of selling an entire area of practice, such as the estate planning portion of the practice, Rule 1.17(b), A**nswer (B) (must sell all or nothing) is incorrect. A** partial sale would enable him to stay in practice but scale back his activities. See Comment 5 to Rule 1.17. Nick then would not be permitted to undertake representation in the estate planning field. What he cannot do is sell a portion of an area of practice without selling all of that portion of his practice. **Answer (D), therefore, is incorrect**. The purpose of this restriction is to prevent lawyers from selling off less lucrative clients who might have trouble obtaining other counsel. Comment 6 to Rule 1.16. Answer (C) is correct.

80.

**The correct answer is Answer (D**). It is possible that this is a false and misleading communication, because it may create unjustified expectations that Dane can accomplish the same results for others without regard to the underlying merits of their claims. See Comment 3 to Rule 7.1. This question raises the issue of vicarious liability for the actions of nonlawyer assistants. Under Rule 5.3, Dane will be responsible if he orders or ratifies the conduct, or if he fails to take remedial action at a time when the consequences could be avoided (for example, by sending out a follow-up message: "I cant guarantee the sa results 4u -- all cases r different!"). **Answer (A) is incorrect b**ecause Rule 5.3(c) lists the circumstances under which a lawyer can be responsible, as a disciplinary matter, for actions of nonlawyer assistants. **Answers (B) and (C) refer to two of the circumstances under which there will be such liability, but these answers are incorrect** because these are not the only such circumstances. Answer (D) is correct.

81.

**The correct answer is Answer (D)**. Under Rule 5.5, Doug may conduct some temporary activities in another state, but he may not establish an office there, represent to the public that he is licensed to practice there, or practice there on a continuous and systematic basis. Here, Doug “regularly” goes into the adjoining state to meet and service clients. That continuous and systematic presence violates Rule 5.5. **Answers (A) and (B) are incorrect** because the establishment of an office and misrepresentation of licensure are two of the grounds for finding misconduct, but they are not the only ones. **Answer (C) is incorrect** because it is too general. Under Rule 5.5, lawyers are authorized under the right circumstances to practice law in another state. The problem for Doug, of course, is that he does not fit any of those circumstances. Answer (D) is correct.

82.

**The correct answer is Answer (**D). Temporary activities in a state where a lawyer is not licensed are governed by Rule 5.5. Because not all temporary activities are permitted, **Answer (A) is wrong**. Usually, litigation-related activities require admission pro hac vice by the court in the other state. Answer *(*C) states the standard for non-litigation temporary activities, but witness interviews are related to litigation**. Answer (C), therefore, is incorrect**. Harry's problem is that he cannot be admitted pro hac vice to the court until the case is filed. He may need to interview these witnesses to decide whether he is permitted to file the case at all. See Federal Rule of Civil Procedure 11. To classify these pre-filing activities as improper would be to place lawyers like Harry potentially in a Catch-22

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situation. For that reason, Rule 5.5(c)(2) permits Harry to proceed as long as the interviews **are r**easonably related to a potential proceeding in which he reasonably expects to be authorized by the court to procee**d. Answer (B) is incorrect b**ecause it would create the Catch-22. Answer (D) is correct.

**The correct answer is Answer (B).** Amber may not make an offer to settle a case that **includes a restriction on the other lawyer's right to pr**actice. Rule 5.6(b). If the clie**nt insists,** then Amber will have to withdraw under Rule 1.16(a)(1). However, there is an intermediate step. The client may not know that this is something the lawyer cannot do, and therefore Amber must consult with the client under Rule 1.4(a)(5) about the limitation on her conduct. **Answer (A) is incorrect** because Amber would be committing misconduct even by making such an offer**. Answer (C) is incorre**ct because Amber must consult with the client about the **limitations on her conduct before abruptly withdrawing. Answer (*D*) is correct in that** Amber must consult, but it is incorrect in describing the consultation. This is not a run-of the-mill consultation about means. It is instead a communication from the lawyer that the lawyer cannot do something the client has asked her to do. Answer (B) is correct.

**84.**

**The correct answer is (B).** Keith must be careful not to practice law in a jurisdiction where he is not authorized to do so. Under Rule 5.5, Keith could represent a client in an alternative dispute resolution proceeding on a temporary basis in another state if the mediation arose out of or was reasonably related to his practice. It is neither, and so Keith must look for some other authorization to help. Answer (B) is correct because the only authorization available to him is Rule 5.5(c)(1), which authorizes lawyers to practice temporarily in another jurisdiction as long as they associate local counsel and that counsel is active in the matter. **Answer (A) is incorrect** because this mediation does not arise out of or reasonably relate to Keith's practice, so Rule 5.5(c)(3) will not authorize his help. **Answer (C) is incorrect** because there is an alternative, to associate the local lawyer**. Answer (D) is incorrect** because there are numerous circumstances under which lawyers may practice law temporarily in jurisdictions where they are not licensed. Answer (B) is correct.

Melody has no choice but to request that the court not assign her any more cases until her circumstances are such that she can competently and diligently represent her clients. All

**ading those whose law*y*ers are appointed by the court and paid by the state, are** entitled to competent and diligent counsel. If Melody undertakes more cases, she will be violating her duties under Rules 1.1 *(*competence) and 1.3 (diligence). See ABA Formal Op. **06-441.**

86.

Rita is obligated not to seek to avoid the appointment unless good cause exists. Rule 6.2. One example of good cause is when the representation is likely to result in a violation of the Rules of Professional Conduct. Here, it is likely that Rita has a conflict of interest in representing this defendant. Lawyers and clients often develop good relationships, and Rita may have a hard time representing the alleged killer of her former client without being materially limited by her feelings for the victim. If that is the case, then Rita would be obliged to seek to avoid this appointment.

The "retirement plan" is not consistent with the Model Rules of Professional Conduct. Generally, lawyers are not permitted to enter into covenants not to compete. See Rule 5.6(a). An exception to this rule is an agreement concerning benefits upon retirement, but the proposed plan is a "retirement plan" in name only. It is not limited to lawyers of a certain

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age or after a certain number of years of service, and the "benefits” are amounts that are already owed to the lawyers. In effect, the agreement is nothing more than an agreement not to compete, on pain of forfeiture of sums that belong to the departing lawyer. That is not a “retirement plan," and it would violate Rule 5.6(a). See ABA Formal Op. 06-444.

***88.***

Penny should be concerned first that she would be in violation of Rule 5.5(a) because she would be assisting in the unauthorized practice of law. Costco, Inc. is not licensed to practice law, and by offering legal services through its own salaried employees, for a profit, Costco might be found to be engaging in the unauthorized practice of law. At the very least, Penny should be worried about her independence. She would be serving individual clients, but she would be paid and supervised by employees of Costco. Under Rule 5.4(c), Penny must be careful to make sure that her employer does not purport to direct or regulate her professional judgment in representing the members.

89.

Reggie may not follow the partner's instructions. Reggie is a subordinate lawyer, but he is bound by the Rules of Professional Conduct. Rule 5.2(a). He has a defense to misconduct based upon his superior's instructions only if those instructions reflect a reasonable resolution of an arguable question of professional duty. Rule 5.2(b). The partner has instructed Reggie to engage in a clear violation of Rule 3.3(d), which requires lawyers in an ex parte proceeding to reveal all material facts that will help the court make an informed decision, regardless of whether those facts are adverse to the lawyer's client. Reggie will commit misconduct if he follows the partner's instructions.