



*MPRE Sample
Questions VI*

See Caveat Inside



CAVEAT!

Most of the 150 questions contained in this document appeared on **MPREs administered between 1980 and 2002**. A few questions are included that were not administered on the MPRE but were written as samples of the kinds of questions that would be included under the test specifications. Because of their dated nature, many of the questions may test principles that have been altered by changes in the law and thus are no longer suitable topics to be tested. As a result, some of the answers shown in the answer key may be incorrect under currently accepted principles of law. Further, many of these questions do not reflect the current style of MPRE questions, and a number of the questions appear in formats that are no longer used on the MPRE.

The questions and answers in this document are provided only for the purpose of providing applicants with a sample of the range and general format of questions that appeared on previously administered MPREs, not as examples of the content currently tested or of the material to be studied for the substance of the examination. Many of these questions are currently in use, sometimes with alteration, by commercial bar review courses under a licensing arrangement with NCBE. Because these questions are available in the marketplace, NCBE is choosing to make them available online.

DO NOT USE THESE QUESTIONS TO STUDY CONTENT FOR THE MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION!!

Applicants are encouraged to use as a study aid the MPRE Online Practice Exam 1, available for purchase at <http://www.ncbex2.org/catalog>. This study aid, which includes explanations for each option selected, contains questions that more accurately represent the current content and format of the MPRE.

(Note: The introductory material on the following pages may no longer be current. Visit the NCBE website at www.ncbex.org for the most current information about the MPRE.)

This publication consists of 150 questions, some of which have been previously published in MPRE Sample Questions V and others in MPRE Information Booklets. Most of these questions have been administered on actual Multistate Professional Responsibility Examinations, although a few questions are included that were not administered on the MPRE but were written as samples of the kinds of questions that would be included under the test specifications. The questions as a whole cover the eleven major topics in the MPRE subject matter outline, although they do not appear in exactly the same proportions as specified in the outline.

PREFACE

The Multistate Professional Responsibility Examination (MPRE) is assembled and administered by ACT, Inc., on behalf of the National Conference of Bar Examiners. A passing score partially fulfills the requirements for admission to practice law in jurisdictions that require the MPRE. The examination is administered three times per year (March, August, and November) at test centers across the country.

After each test is administered, the MPRE scaled score for each applicant is reported to the jurisdiction designated by the applicant. Because the MPRE requirements, including passing scores, vary from one jurisdiction to another and change over time, applicants should check with the board(s) of bar examiners in each jurisdiction to which they intend to apply to make sure they are in compliance with the requirements. A list of participating jurisdictions and announced passing MPRE scaled scores appears at the NCBE website (www.ncbex.org—in the online MPRE Information Booklet) or in the current printed MPRE Information Booklet.

MPRE application materials are available at law schools or by contacting:

National Conference of Bar Examiners
MPRE Application Department
2255 N. Dubuque Rd.
P.O. Box 4001
Iowa City, Iowa 52243-4001
Phone: 319/341-2500
www.ncbex.org or www.act.org/mpre

DESCRIPTION OF THE MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

The purpose of the Multistate Professional Responsibility Examination (MPRE) is to measure the examinee's knowledge and understanding of established standards related to a lawyer's professional conduct; thus, the MPRE is not a test to determine an individual's personal ethical values. Lawyers serve in many capacities: for example, as judges, as advocates, as counselors, and in other roles. The law governing the conduct of lawyers in these roles is applied in disciplinary and bar admission procedures, by courts in dealing with issues of appearance, representation, privilege, disqualification, or contempt or other censure, and in lawsuits seeking to establish liability for malpractice or other civil or criminal wrongs committed by a lawyer while acting in a professional capacity.

The law governing the conduct of lawyers is based on the disciplinary rules of professional conduct currently articulated in the American Bar Association (ABA) Model Rules of Professional Conduct (MRPC) and the

ABA Model Code of Judicial Conduct (CJC) as well as controlling constitutional decisions and generally accepted principles established in leading federal and state cases and in procedural and evidentiary rules.

The MPRE is developed by a six-member drafting committee comprised of recognized experts in the area of professional responsibility. Before a test item is selected for inclusion in the MPRE, it undergoes a multistage review process that occurs over the course of several years before the test is administered. Besides intensive reviews by the drafting committee and testing specialists, each test item is reviewed by other national and state experts. All test items must successfully pass all reviews before they are included in the MPRE. After an MPRE examination is administered, the statistical performance of each test item is reviewed and evaluated by content and testing experts before the items are included in the computation of examinees' scores. This final statistical review is conducted to ensure that each test item is accurate and psychometrically sound.

The MPRE consists of 50 multiple-choice test items. These test items are followed by 10 test center review items that request the examinee's reactions to the testing conditions. The examination is two hours and five minutes in length.

Test items covering judicial ethics measure applications of the ABA Model Code of Judicial Conduct. Other items will deal with discipline of lawyers by state disciplinary authorities; in these items, the correct answer will be governed by the current ABA Model Rules of Professional Conduct. The remaining items, outside the disciplinary context, are designed to measure an understanding of the generally accepted rules, principles, and common law regulating the legal profession in the United States; in these items, the correct answer will be governed by the view reflected in a majority of cases, statutes, or regulations on the subject. To the extent that questions of professional responsibility arise in the context of procedural or evidentiary issues, such as the availability of litigation sanctions or the scope of the attorney-client evidentiary privilege, the Federal Rules of Civil Procedure and the Federal Rules of Evidence will be assumed to apply, unless otherwise stated.

As a general rule, particular local statutes or rules of court will not be tested in the MPRE. However, a specific test question may include the text of a local statute or rule that must be considered when answering that question. Amendments to the MRPC or the CJC will be reflected in the examination no earlier than one year after the approval of the amendments by the American Bar Association.

Each question contained in the MPRE provides a factual situation along with a specific question and four possible answer choices. Examinees should pick the best answer from the four possible answer choices.

Each question may include, among others, one of the following key words or phrases:

1. Subject to discipline asks whether the conduct described in the question would subject the lawyer to discipline under the provisions of the ABA Model Rules of Professional Conduct. In the case of a judge, the test questions also ask whether the judge would be subject to discipline under the ABA Model Code of Judicial Conduct.
2. May or proper asks whether the conduct referred to or described in the question is professionally appropriate in that it:
 - a. would not subject the lawyer or judge to discipline;
 - b. is not inconsistent with the Preamble, Comments, or text of the ABA Model Rules of Professional Conduct or the ABA Code of Judicial Conduct; and
 - c. is not inconsistent with generally accepted principles of the law of lawyering.
3. Subject to litigation sanction asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to sanction by a tribunal such as contempt, fine, fee forfeiture, disqualification, or other sanction.
4. Subject to disqualification asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to disqualification as counsel in a civil or criminal matter.
5. Subject to civil liability asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to civil liability, such as claims arising from malpractice, misrepresentation, and breach of fiduciary duty.
6. Subject to criminal liability asks whether the conduct described in the question would subject the lawyer to criminal liability for participation in, or aiding and abetting criminal acts, such as prosecution for insurance or tax fraud, destruction of evidence, or obstruction of justice.

When a question refers to discipline by the "bar," "state bar," or "appropriate disciplinary authority," it refers to the agency in the jurisdiction with the authority to administer the standards for admission to practice and for maintenance of professional competence and integrity. Whenever a lawyer is identified as a "certified specialist," that lawyer has been so certified by the appropriate agency in the jurisdiction in which the lawyer practices.

The ABA Model Rules of Professional Conduct, and the ABA Model Code of Judicial Conduct are available from the American Bar Association at 750 N. Lake Shore Dr., Chicago, IL 60611 (312-988-5522 or 800-285-2221) or at www.abanet.org/cpr.

MPRE SUBJECT MATTER OUTLINE

The following subject matter outline indicates the examination's scope of coverage and the approximate percentage of items that are included in each major area. The outline is not intended to list every aspect of a topic mentioned. Although the test items for each MPRE are developed from these categories, each topic is not necessarily tested on each examination.

- I. Regulation of the Legal Profession (8-12%)
 - A. Inherent Powers of Courts to Regulate Lawyers
 - B. Admission to the Profession
 - C. Regulation after Admission
 - D. Maintaining Professional Standards—Peer Responsibility
 - E. Unauthorized Practice
 - F. Fee Division with a Non-Lawyer
 - G. The Law Firm
 - H. Contractual Restrictions on Practice
- II. The Client-Lawyer Relationship (10-14%)
 - A. Acceptance or Rejection of Clients
 - B. Scope, Objective, and Means of the Representation
 - C. Within the Bounds of the Law
 - D. Withdrawal
 - E. Client-Lawyer Contracts
 - F. Fees
- III. Privilege and Confidentiality—Clients and Former Clients (6-10%)
 - A. Evidentiary Privilege
 - B. Professional Obligation of Confidence
 - C. Client-Authorized Disclosure
 - D. Permissible Disclosure
 - E. Special Problems
- IV. Independent Professional Judgment—Conflicts of Interest—Client Consent (12-16%)
 - A. As Affected by Lawyer's Personal Interest
 - B. Lawyer as Witness
 - C. Acquiring an Interest in Litigation
 - D. Entering into Business Transactions with Client
 - E. Conflicting Interests—Current Clients and Former Clients
 - F. Influence by Persons Other than Client
 - G. Law Firm, Associates, and Related Persons
 - H. Lawyer's Service as Arbitrator, Mediator, or Judge
- V. Competence, Legal Malpractice, and Other Civil Liability (8-12%)
 - A. Civil Liability, Including Malpractice
 - B. Maintaining Competence
 - C. Acceptance of Employment

- D. Exercise of Diligence and Care
 - E. Limiting Liability for Malpractice
- VI. Litigation and Other Forms of Advocacy (12-16%)
- A. Exercise of Professional Judgment
 - B. Civility, Courtesy, and Decorum
 - C. Conduct in the Course of Litigation—
Claims, Defenses, Testimony, and Evidence
 - D. Fraud or Perjury
 - E. Communications in Course of
Representation
- VII. Different Roles of the Lawyer (4-8%)
- A. Lawyer as Advisor
 - B. Lawyer as Intermediary
 - C. Lawyer as Evaluator
 - D. Lawyer as Negotiator
 - E. Lawyer as Mediator
 - F. Special Obligations of the Lawyer in
Public Service
 - G. Appearances before Legislative Bodies
- VIII. Safekeeping Property and Funds of Clients
and Others (4-8%)
- A. Lawyer as Trustee of Client Funds
 - B. Lawyer as Custodian of Client Property
 - C. Disputed Claims
- IX. Communication About Legal Services (6-10%)
- A. Public Communications About Services
 - B. Referrals
 - C. Group Legal Services
 - D. Direct Contact With Prospective Clients
(Solicitation)
 - E. Fields of Practice—Limitations of Practice
and Specialization
- X. Lawyers and the Legal System (2-6%)
- A. Lawyer Activity in Improving the Legal
System
 - B. Impropriety Incident to Public Service
- XI. Judicial Ethics (6-10%)
- A. Upholding the Integrity and Independence of
the Judiciary
 - B. Avoiding Impropriety and the Appearance of
Impropriety
 - C. Duties of Impartiality and Diligence
 - D. Activities to Improve the Legal System
 - E. Extra-Judicial Activities
 - F. Political Activity of Judges
 - G. Candidate for Judicial Office

GUIDELINES FOR TAKING THE EXAMINATION

The following directions appear on the examination booklet.

Please read the following guidelines carefully. They are designed to help you do your best on the Multistate Professional Responsibility Examination.

1. Listen closely to all directions. Do not hesitate to ask questions if you do not understand what you are to do.
2. Be very precise in marking your answer sheet. Be sure that you blacken the appropriate ovals and that you completely erase any incorrect marks.
3. Your responses must be marked on the answer sheet if you are to receive credit for them.
4. Keep your answer sheet near your test booklet so you can mark answers quickly without moving either the booklet or the answer sheet.
5. Read each question carefully. Pay special attention to such key words or phrases as subject to discipline, may, proper, subject to litigation sanction, subject to disqualification, and subject to civil liability, among others. They are crucial in determining the correct answer.
6. Do not focus solely on the “Yes” or “No” component contained in many answers. Read the entire answer, as the explanations or qualifiers are important in determining the correct answer.
7. Answer each question. There is no penalty for guessing, so use any clues you have in choosing an answer.
8. When you are unsure of the correct answer to a question, first eliminate every wrong answer you can. Each wrong answer eliminated improves your chances of selecting the correct answer.
9. Do not spend too much time on one question. If a question is too hard for you, choose a reasonable answer and go on to the next question. Work quickly, but carefully.

SAMPLE QUESTIONS

The purpose of this publication is to familiarize applicants with the format and nature of MPRE questions. The questions in this publication should not be used for substantive preparation for the MPRE. Because of changes in the law since the time the examination was administered, the questions and their keys may no longer be current.

Each question has four responses from which you are to select the best one. The questions in the MPRE may include qualifications as part of the alternative responses. These qualifications may be essential to the correctness of the response or responses in which they appear and thus to the correct answer to the question. Consequently, you should read each question thoroughly before you select a response. You may check your answers by using the answer key on page 49 of this book.

If you use the questions in this publication as a practice exam, you should not rely on your raw score to identify how well you are doing. MPRE raw scores are converted to scaled scores through an equating procedure that is designed to ensure that the level of difficulty of the examination remains consistent from administration to administration.

Question 1.

State does not require lawyers to participate in continuing legal education courses. Attorneys Alpha, Beta, and Gamma, all lawyers recently admitted to practice, formed a law partnership in State. As they considered what expenses the partnership would pay on behalf of each lawyer, a majority decided that the firm would not pay for continuing legal education courses since they were not required by State. Gamma, who wanted reimbursement for continuing legal education courses, angrily said, "Fine. I won't attend any continuing legal education courses."

Is it proper for Gamma to refuse to attend any continuing legal education courses?

- A. Yes, unless the state offers free continuing legal education courses.
- B. Yes, if Gamma independently undertakes continuing study and education in the law.
- C. No, because Gamma cannot maintain competence without attending continuing legal education courses.
- D. No, unless Gamma obtains malpractice insurance.

Question 2.

Client, a new client of Attorney, has asked Attorney to write a letter recommending Client's nephew for admission to the bar. Client has told Attorney that he has no direct contact with the nephew, but that Client's sister (the nephew's mother) has assured Client that the nephew is industrious and honest.

Which of the following would be proper for Attorney?

- I. Write the letter on the basis of Client's assurance.
 - II. Write the letter on the basis of Client's assurance if Attorney has no unfavorable information about the nephew.
 - III. Make an independent investigation and write the letter only if Attorney is thereafter satisfied that the nephew is qualified.
- A. III only
 - B. I and II, but not III
 - C. I and III, but not II
 - D. I, II, and III

Question 3.

Alpha is a member of the bar in State First and is also licensed as a stockbroker in State Second. In his application for renewal of his stockbroker's license in State Second, Alpha knowingly filed a false financial statement.

Is Alpha subject to discipline in State First for so doing?

- A. Yes, because his actions involve dishonesty or misrepresentation.
- B. Yes, but only if he is first convicted of a criminal offense in State Second.
- C. No, because his action was not in his capacity as an attorney.
- D. No, because his action was not in State First.

Question 4.

Attorney is a sole practitioner whose practice is largely in the areas of tax, wills, estates, and trusts. Attorney learned of a new Internal Revenue Service (IRS) regulation that probably affects the trust provisions in a will she prepared for Testatrix two years ago. Attorney has not represented Testatrix since she drew the will.

Is Attorney subject to discipline if she calls Testatrix and advises her of the new IRS ruling and the need to revise the will?

- A. Yes, if Attorney has any reason to believe that Testatrix has another lawyer.
- B. Yes, because Attorney would be soliciting legal business from a person who is not a current client.
- C. No, provided Attorney does not thereafter prepare a new will for Testatrix.
- D. No, because Testatrix is a former client of Attorney.

Question 5.

Deft retained Attorney to appeal Deft's criminal conviction and to seek bail pending appeal. The agreed fee for the appearance on the bail hearing was \$50 per hour. Attorney received \$800 from Deft of which \$300 was a deposit to secure Attorney's fee and \$500 was for bail costs in the event that bail was obtained. Attorney maintained two office bank accounts: a "Fee Account," in which all fees were deposited and from which all office expenses were paid, and a "Clients' Fund Account." Attorney deposited the \$800 in the "Clients' Fund Account" the week before the bail hearing. Attorney expended six hours of time on the bail hearing. The effort to obtain bail was unsuccessful. Dissatisfied, Deft immediately demanded return of the \$800.

It is now proper for Attorney to:

- A. transfer the \$800 to the "Fee Account."
- B. transfer \$300 to the "Fee Account" and leave \$500 in the "Clients' Fund Account" until Attorney's fee for the final appeal is determined.
- C. transfer \$300 to the "Fee Account" and send Deft a \$500 check on the "Clients' Fund Account."
- D. send Deft a \$500 check and leave \$300 in the "Clients' Fund Account" until the matter is resolved with Deft.

Question 6.

Judge Alpha has been assigned to try a criminal prosecution by State against Deft. Ten years previously, Alpha, while serving as a deputy attorney general in State, initiated an investigation of Deft for suspected criminal conduct. The investigation did not establish any basis for prosecution. None of the matters previously investigated is involved in or affects the present prosecution.

Is it proper for Judge Alpha to try the case?

- A. Yes, because none of the matters previously investigated is involved in or affects the present case.
- B. Yes, unless Alpha might be prejudiced against Deft because of the prior investigation.
- C. No, if Alpha had substantial responsibility in initiating the previous investigation of Deft.
- D. No, if Alpha had substantial responsibility in determining that the previous investigation did not establish any basis for prosecution.

Question 7.

Attorney represented Landlord in a variety of matters over several years. Plaintiff, an elderly widow living on public assistance, filed suit against Landlord alleging that Landlord withheld without justification the security deposit on a rental unit that Plaintiff vacated three years ago. She brought the action for herself, without counsel, in small claims court. Attorney investigated the claim and learned that it was legally barred by the applicable statute of limitations, although Plaintiff's underlying claim was meritorious. Attorney told Landlord of the legal defense, but emphasized that Plaintiff's claim was just and that, in all fairness, the security deposit should be returned to Plaintiff. Attorney told Landlord:

"I strongly recommend that you pay Plaintiff the full amount with interest. It is against your long-term business interests to be known in the community as a landlord who routinely withholds security deposits even though the tenant leaves the apartment in good condition. Paying the claim now will prevent future headaches for you."

Was Attorney's conduct proper?

- A. Yes, if Landlord did not object to Attorney's advice and paid Plaintiff's claim.
- B. Yes, because Attorney may refer to both legal and nonlegal considerations in advising a client.
- C. No, unless Attorney's engagement letter informed Landlord that Attorney's advice on the matter would include both legal and nonlegal considerations.
- D. No, because in advising Landlord to pay the full claim, Attorney failed to represent zealously Landlord's legal interests.

Question 8.

Attorney is a member of the bar and a salaried employee of the trust department of Bank. As part of his duties, he prepares a monthly newsletter concerning wills, trusts, estates, and taxes which Bank sends to all of its customers. The newsletter contains a recommendation to the customer to review his or her will in light of the information contained and, if the customer has any questions, to bring the will to Bank's trust department where the trust officer will answer any questions without charge. The trust officer is not a lawyer. If the trust officer is unable to answer the customer's questions, the trust officer refers the customer to Attorney.

Is Attorney subject to discipline for the foregoing?

- A. Yes, because Attorney is giving legal advice to persons who are not his clients.
- B. Yes, because Attorney is aiding Bank in the unauthorized practice of law.
- C. No, because no charge is made for Attorney's advice.
- D. No, because Attorney is a member of the bar.

Question 9.

Alpha & Beta is a large firm that employs over 100 lawyers. Attorney Gamma was recently admitted to practice and was hired as a new associate of Alpha & Beta. Gamma was working late one night when he received a telephone call from his cousin Able. Able said that he was calling from the police station where he had just been arrested for possession of cocaine with intent to distribute. He was permitted to make only one phone call, and Gamma was the only lawyer he knew. Gamma responded that he had no criminal law experience and that Alpha & Beta did not handle criminal cases. Nevertheless, Able pleaded with Gamma to come to the police station and see what he could do to get Able out on bail. Gamma replied that he would do what he could.

Gamma went to the police station and using what information he recalled from his criminal law and procedure courses attempted to get Able released on bail. However, as a result of his inexperience, Gamma was unable to secure Able's release that night. The next morning, Gamma found an experienced criminal lawyer for Able, who obtained Able's release within one hour.

Was Gamma's conduct proper?

- A. Yes, because neither referral nor consultation was practical under the circumstances.
- B. Yes, because Gamma was a close relative of Able.
- C. No, because Gamma had no special training or experience in criminal cases.
- D. No, because Gamma did not have the requisite level of competence to accept representation in the case.

Question 10.

Attorney wants to make it easier for her clients to pay their bills for her fees.

Which of the following would be proper for Attorney?

- I. Accept bank credit cards in payment of Attorney's fees.
 - II. Arrange for clients to obtain bank loans for the purpose of paying Attorney's fees.
 - III. If a case is interesting, suggest that the client give Attorney publication rights concerning the case as partial payment of the fee.
- A. II only
 - B. I and II, but not III
 - C. I, II, and III
 - D. Neither I, II, nor III

Question 11.

Attorney practices law in a state that has experienced a business recession and where several banks have failed and others are severely pressed to preserve their solvency. Attorney maintains a Clients' Trust Account in Bank and that account is insured by the Federal Deposit Insurance Corporation against losses up to \$100,000. Attorney also maintains his regular office account in the same bank and that account is insured to \$100,000. During a particularly busy time, Attorney's bookkeeper told Attorney that the balance in the Clients' Trust Account had increased to \$150,000. The bookkeeper noted that the office account had a balance of \$30,000.

Which of the following courses of action by Attorney would be proper?

- I. Leave the Clients' Trust Account as is if the balance is likely to decrease to less than \$100,000 within the next ten days.
 - II. Open another Clients' Trust Account in another bank and transfer some funds to the second Clients' Trust Account to maintain a fully insured balance in both accounts.
 - III. Temporarily transfer \$50,000 from the Clients' Trust Account to the office account so the balance in both accounts is fully within insured limits.
- A. I only
 - B. II only
 - C. I and II, but not III
 - D. II and III, but not I

Question 12.

Law Firm, a professional corporation with five lawyer shareholders, employs twenty-five additional lawyers.

Which of the following is(are) proper?

- I. Employees who are members of the bar are not made shareholders until they have been with Law Firm ten years.
 - II. Manager, who is the office manager but not a member of the bar, is executive vice president of Law Firm.
 - III. Widow, whose husband was a lawyer shareholder in Law Firm until his death two years ago, continues to hold husband's shares in Law Firm, distributed in his estate, until their child completes a law school education.
- A. I only
 - B. I and II, but not III
 - C. I and III, but not II
 - D. I, II, and III

Question 13.

Attorney, who was recently admitted to the bar, has been appointed by the court as counsel for Deft, an indigent defendant charged with a felony. After consulting with Deft and attempting for two days to prepare the case for trial, Attorney became convinced that he lacked the knowledge and experience to represent Deft effectively.

Which of the following would be proper for Attorney?

- I. Request permission of the court to withdraw from representing Deft because Attorney knows that he is not competent to handle the case.
 - II. Request the court to appoint experienced co-counsel and grant a continuance to enable co-counsel to prepare the case.
 - III. Explain the circumstances to Deft and, if Deft consents, proceed to represent Deft alone to the best of Attorney's ability.
- A. I only
 - B. I and II, but not III
 - C. II and III, but not I
 - D. I, II, and III

Question 14.

While an assistant district attorney, Attorney Alpha was in charge of the presentation before a grand jury of evidence that led to an indictment charging thirty-two defendants with conspiracy to sell controlled drugs. Shortly after the grand jury returned the indictments, Alpha resigned as assistant district attorney and became an associate in the law office of Attorney Beta, a sole practitioner. At the time of such association, Beta was the attorney for Deft, one of the indicted co-defendants.

Is it proper for Attorney Beta to continue to represent Deft?

- A. Yes, if Alpha does not reveal to Beta any confidence or secret learned while an assistant district attorney.
- B. Yes, because a public prosecutor must make timely disclosure to the defense attorney of any exculpatory evidence.
- C. No, unless Alpha agrees not to participate in the representation of Deft.
- D. No, because Alpha had substantial responsibility for the indictment of Deft.

Question 15.

Attorney filed an action on behalf of Client for breach of contract. In fact, Client had no legal basis for the suit, but wanted to harass Defendant. In order to induce Attorney to file the action, Client made certain false statements of material fact to Attorney, which Attorney included in the complaint filed against Defendant.

At the trial of the case, Client took the stand and testified as set forth in the complaint. The trial court ordered judgment for Client. After entry of judgment, Client wrote Attorney a letter marked "Confidential," in which Client admitted that she had lied to Attorney and had testified falsely in the case.

Upon complaint of Defendant, who claimed Attorney had knowingly used false testimony in the case of Client v. Defendant, disciplinary proceedings were instituted against Attorney.

Is it proper for Attorney to use Client's letter to Attorney in Attorney's defense in the disciplinary proceedings?

- A. Yes, if it is necessary to do so in order to protect Attorney's rights.
- B. Yes, because Client had committed a fraud on the court in which the case was tried.
- C. No, because Attorney learned the facts from Client in confidence.
- D. No, if disclosure by Attorney could result in Client's prosecution for perjury.

Question 16.

Judge is presently serving on a state intermediate appellate court. This court, in opinions written by her, has decided several controversial cases in which the court has held that the Fourteenth Amendment to the United States Constitution does not guarantee due process protection to state prison inmates who are disciplined by prison authorities for violating the prison's rules of conduct. Judge is now a candidate for election to a vacancy on the state supreme court. She is vigorously opposed by several organizations concerned with the conditions under which prisoners are incarcerated in the state's prison. Judge is scheduled to be interviewed on television and has been informed that questions will be asked of her concerning those decisions and her attitude on the subject of prisoners' rights.

Which of the following is it proper for Judge to say during the interview?

- I. "I believe that the issues raised by the organizations opposing me are appropriate matters for legislative consideration."
 - II. "In my opinion, incarceration for the commission of a crime carries with it a loss of civil liberties in prison discipline proceedings."
 - III. "I am convinced I was right in those cases and will make the same decision in similar cases in the future."
- A. I only
 - B. II only
 - C. I and II, but not III
 - D. I, II, and III

Questions 17-18 are based on the following fact situation.

Attorney was formerly employed by Insurance Company as a lawyer solely to handle fire insurance claims. While so employed she investigated a fire loss claim of Claimant against Insurance Company. Attorney is now in private practice.

Question 17.

Assume the claim has not been settled and Claimant consults Attorney and asks Attorney either to represent him or refer him to another lawyer for suit on the claim.

Which of the following would be proper for Attorney to do?

- I. Refuse to discuss the matter with Claimant.
 - II. Represent Claimant.
 - III. Refer Claimant to an associate in her law firm, provided Attorney does not share in any fee.
 - IV. Give Claimant a list of lawyers who Attorney knows are competent and specialize in such claims.
- A. I only
 - B. I and II, but not III or IV
 - C. I and III, but not II or IV
 - D. I and IV, but not II or III

Question 18.

Assume that the original claim was settled. One year after Attorney left the employ of Insurance Company, Claimant slipped and fell in Insurance Company's office. Claimant now asks Attorney to represent him or refer him to another lawyer for suit on the "slip and fall" claim.

Which of the following would be proper for Attorney to do?

- I. Refuse to discuss the matter with Claimant.
 - II. Represent Claimant.
 - III. Give Claimant a list of lawyers who Attorney knows are competent and specialize in such claims.
- A. I only
 - B. I and II, but not III
 - C. I and III, but not II
 - D. I, II, and III

Question 19.

Client has retained Attorney to represent Client in a contract suit. Attorney's retainer agreement provided that Attorney's fees would be based on a fixed hourly rate, payable at the end of each calendar month. Two months before trial, Client fell behind in the payment of Attorney's monthly billing for fees. Attorney included the following statement on Attorney's last billing to Client:

"Your account is more than thirty days past due. If amounts due are not paid promptly in accordance with our agreement, I will terminate the representation. If you cannot pay the amount due, I will accept an assignment of your cause of action as security for your fee to me."

Two weeks after the last billing, Attorney telephoned Client and told Client that Attorney would withdraw from representing Client if the bill was not paid within forty-eight hours or adequate security given for its payment.

If the bill remains unpaid or unsecured after forty-eight hours, it would be proper for Attorney to:

- I. upon notice to Client, move the court for permission to withdraw.
 - II. turn Client's file over to another experienced lawyer in town and notify Client that Attorney no longer represents Client.
 - III. accept an assignment of Client's cause of action as security for Attorney's fee.
- A. I only
 - B. II only
 - C. I and II, but not III
 - D. I, II, and III

Question 20.

Attorney's advertisement in the local newspaper includes the following information, all of which is true:

- I. Attorney, B.A., magna cum laude, Eastern College; J.D., summa cum laude, State Law School; LL.M., Eastern Law School.
- II. My offices are open Monday through Friday from 9:00 a.m. to 5:00 p.m., but you may call my answering service twenty-four hours a day, seven days a week.
- III. I speak modern Greek fluently.

For which, if any, of these statements is Attorney subject to discipline?

- A. III only
- B. I and II, but not III
- C. I, II, and III
- D. Neither I, II, nor III

Question 21.

Alpha represents Defendant in bitter and protracted litigation. Alpha, at Defendant's request, has made several offers of settlement to Plaintiff's lawyer Beta, all of which have been rejected.

During a week's recess in the trial, Alpha and Plaintiff were both present at a cocktail party. Plaintiff went over to Alpha and said: "Why can't we settle that case for \$50,000? This trial is costing both sides more than it's worth."

Which of the following is a proper response by Alpha?

- I. "I can't discuss the matter with you."
 - II. "If that's the way you feel, why don't you and Defendant get together."
 - III. "I agree. We already have made several offers to settle this matter."
- A. I only
 - B. I and II, but not III
 - C. II and III, but not I
 - D. I, II, and III

Question 22.

The law firm of Alpha and Beta has a radio commercial which states:

"Do you have a legal problem? Are you being sued? Consult Alpha and Beta, licensed attorneys at law. Initial conference charge is \$25 for one hour. Act now and protect your interests. Call at 1234 Main Street; telephone area code (101) 123-4567."

Are Alpha and Beta subject to discipline for the commercial?

- A. Yes, because the qualifications of the lawyers are not stated.
- B. Yes, because the radio broadcast may encourage litigation.
- C. No, if all the statements in the radio broadcast are true.
- D. No, unless the radio broadcast is heard outside the state in which they are licensed.

Question 23.

Attorney Alpha represents Client, the plaintiff in a medical malpractice case. Alpha's contract with Client provides for a contingent fee of 20% of the recovery by settlement and 30% if the case is tried, with a total fee not to exceed \$50,000. Alpha associated Attorney Beta, a sole practitioner, in the case, with Client's written consent and after full disclosure of the fee agreement between Alpha and Beta. Beta is both a medical doctor and a lawyer and is well qualified by experience and training to try medical malpractice cases.

The fee agreement between Alpha and Beta reads as follows:

"The total fee in this case is 20% of recovery by settlement and 30%, if tried, with a maximum fee of \$50,000. Alpha will help with discovery and will be the liaison person with Client. Beta will prepare the case and try it if it is not settled. Alpha and Beta will divide the fee, 40% to Alpha and 60% to Beta."

Are Alpha and Beta subject to discipline for their agreement for division of the fee?

- A. Yes, unless Client's consent is in writing.
- B. Yes, because Alpha will not try the case.
- C. No, if the division of the fee between Alpha and Beta is in proportion to actual work done by each.
- D. No, because the total fee does not differ from that contracted for by Alpha with Client.

Question 24.

Attorney Alpha was retained by Client to incorporate Client's business, which previously had been operated as a sole proprietorship. Alpha noticed in Client's file copies of some correspondence from Client to Attorney Beta concerning the possibility of Beta's incorporating Client's business. Alpha questioned Client to make certain that any attorney-client relationship between Beta and Client had been terminated. Client told Alpha,

"It certainly has been terminated. When I discussed the matter with Beta six months ago, he asked for a retainer of \$1,000, which I paid him. He did absolutely nothing after he got the money, even though I called him weekly, and finally, last week when I again complained, he returned the retainer. But don't say anything about it because Beta is an old friend of my family."

Is Alpha subject to discipline if she does not report her knowledge of Beta's conduct to the appropriate authority?

- A. Yes, if Alpha believes Beta clearly was guilty of professional misconduct.
- B. Yes, unless Alpha believes Beta does not usually neglect matters entrusted to him.
- C. No, if Client was satisfied by Beta's return of the retainer.
- D. No, unless Client agrees that Alpha may report the information.

Question 25.

Alpha & Beta, a general partnership, is a litigation firm practicing in State. It hires new law school graduates as associates. These new lawyers are largely left to their own resources to practice law. Alpha & Beta accepts many small litigation matters and assigns them to the associates for training purposes. No senior partners are assigned to supervise this work. It is assumed that if an associate needs help on a case, he or she will seek the guidance of a more senior attorney.

Client retained Alpha & Beta to pursue a claim for breach of contract against City. Associate, a first year associate, was assigned Client's case. Associate failed to comply with the applicable 30-day notice requirement for filing a complaint against City, and Client lost the chance to recover \$5,000 owed to Client by City. When the complaint was dismissed for failure to comply with the notice requirement, Associate instead told Client that the case was dismissed on the merits.

Which of the following statements are correct?

- I. The law firm of Alpha & Beta is subject to discipline for failure to supervise Associate.
 - II. The individual partners of Alpha & Beta are subject to discipline for failure to make reasonable efforts to establish a system providing reasonable assurance that all lawyers in the firm comply with the rules of professional conduct.
 - III. Associate, an unsupervised subordinate lawyer, is subject to discipline for making misrepresentations to Client.
 - IV. Both the law firm of Alpha & Beta and Associate are subject to civil liability for Client's loss.
- A.** II and IV, but not I or III
B. I, III, and IV, but not II
C. II, III, and IV, but not I
D. I, II, III, and IV

Question 26.

Attorney, who represented Plaintiff, received a check from Deft payable to Attorney's order in the sum of \$10,000 in settlement of Plaintiff's claim against Deft. Plaintiff had previously paid Attorney a fee so no part of the \$10,000 was owed to Attorney.

Which of the following would be proper?

- I. Endorse the check and send it to Plaintiff
 - II. Deposit the check in Attorney's personal bank account and send Attorney's personal check for \$10,000 to Plaintiff
 - III. Deposit the check in a Clients' Trust Account, advise Plaintiff, and forward a check drawn on that account to Plaintiff
- A.** I only
B. III only
C. I and III, but not II
D. I, II, and III

Question 27.

Attorney Alpha has tried many contested cases before Judge Gamma. Alpha believes the judge is lacking both in knowledge of the law and in good judgment and that Attorney Beta would make an excellent judge. Alpha wishes to defeat Judge Gamma and assist Beta in getting elected.

Alpha intends to contribute \$5,000 to Beta's campaign.

Is it proper for Alpha to do so?

- A.** Yes, Alpha may give \$5,000 to Beta personally for his campaign.
B. Yes, if Alpha's contribution to Beta is made anonymously.
C. No, because Alpha is practicing before the court to which Beta seeks election.
D. No, unless Alpha gives the \$5,000 to a committee formed to further Beta's election.

Question 28.

Attorney represented Seller in negotiating the sale of his ice cream parlor. Seller told Attorney in confidence that, although the business was once very profitable, recent profits have been stable but modest. As the negotiations proceeded, Buyer appeared to be losing interest in the deal. Hoping to restore Buyer's interest, Attorney stated, "The ice cream business is every American's dream: happy kids, steady profits, and a clear conscience." Buyer bought the ice cream parlor but was disappointed when his own profits proved to be modest.

Is Attorney subject to discipline?

- A. Yes, because Attorney made a false statement of fact to Buyer.
- B. Yes, because Attorney exaggerated the profitability of the business.
- C. No, because Attorney represented Seller, not Buyer.
- D. No, because Attorney's statement constitutes acceptable puffing in negotiations.

Question 29.

Attorney Alpha was retained by Passenger, a passenger on a bus, who had been injured in a collision between the bus and a truck. Passenger paid Alpha a retainer of \$1,000 and agreed further that Alpha should have a fee of 25% of any recovery before filing suit, 30% of any recovery after suit was filed but before judgment, and 35% of any recovery after trial and judgment. Alpha promptly called the lawyer for the bus company and told him she was representing Passenger and would like to talk about a settlement. Alpha made an appointment to talk to the lawyer for the bus company but did not keep the appointment. Alpha continued to put off talking to the lawyer for the bus company. Meanwhile, Passenger became concerned because she had heard nothing from Alpha. Passenger called Alpha's office but was told Alpha was not in and would not call back. Passenger was told not to worry because Alpha would look after her interests. After ten months had passed, Passenger went to Attorney Beta for advice. Beta advised Passenger that the statute of limitations would run in one week and, with Passenger's consent, immediately filed suit for Passenger. Alpha, upon Passenger's demand, refunded the \$1,000 Passenger had paid.

Is Alpha subject to discipline?

- A. Yes, unless Alpha's time was completely occupied with work for other clients.
- B. Yes, because Alpha neglected the representation of Passenger.
- C. No, because Passenger's suit was filed before the statute of limitations ran.
- D. No, because Alpha returned the \$1,000 retainer to Passenger.

Question 30.

Attorney Alpha filed a personal injury suit on behalf of Plaintiff against Defendant. Defendant was personally served with process. Alpha knows that Defendant is insured by Insko and that Attorney Beta has been retained by Insko to represent Defendant. No responsive pleading has been filed on behalf of Defendant, and the time for filing expired over ten days ago.

Is Alpha subject to discipline if Alpha proceeds to have a default judgment entered?

- A. Yes, because Alpha knew that Beta had been retained by Insko to represent Defendant.
- B. Yes, because Alpha failed to extend professional courtesy to another lawyer.
- C. No, because Alpha is properly representing her client's interests.
- D. No, because any judgment will be satisfied by Insko.

Question 31.

Attorney is a candidate in a contested election for judicial office. Her opponent, Judge, is the incumbent and has occupied the bench for many years. The director of the state commission on judicial conduct, upon inquiry by Attorney, erroneously told Attorney that Judge had been reprimanded by the commission for misconduct in office. Attorney, who had confidence in the director, believed him. In fact, Judge had not been reprimanded by the commission; the commission had conducted hearings on Judge's alleged misconduct in office and, by a three to two vote, declined to reprimand Judge.

Decisions of the commission, including reprimands, are not confidential.

Is Attorney subject to discipline for publicly stating that Judge had been reprimanded for misconduct?

- A. Yes, because the official records of the commission would have disclosed the truth.
- B. Yes, because Judge had not been reprimanded.
- C. No, because Attorney reasonably relied on the director's information.
- D. No, because Judge was a candidate in a contested election.

Question 32.

Attorney is a well-known, highly skilled litigator. Attorney's practice is in an area of law in which the trial proceedings are heard by the court without a jury.

In an interview with a prospective client, Attorney said, "I make certain that I give the campaign committee of every candidate for elective judicial office more money than any other lawyer gives, whether it's \$500 or \$5,000. Judges know who helped them get elected." The prospective client did not retain Attorney.

Is Attorney subject to discipline?

- A. Yes, if Attorney's contributions are made without consideration of candidates' merits.
- B. Yes, because Attorney implied that Attorney receives favored treatment by judges.
- C. No, if Attorney's statements were true.
- D. No, because the prospective client did not retain Attorney.

Question 33.

Judge is presiding in a case that has, as its main issue, a complicated point of commercial law. The lawyers have not presented the case to Judge's satisfaction, and Judge believes she needs additional legal advice. Judge's former partner in law practice, Attorney, is an expert in the field of law that is at issue. Attorney has no interest in the case.

Is it proper for Judge to consult Attorney?

- A. Yes, because Attorney has no interest in the case.
- B. Yes, if Judge believes that Attorney's advice is needed to serve the interests of justice.
- C. No, unless all parties in the case first give their written consent to Judge's consultation with Attorney.
- D. No, unless Judge informs the parties of Attorney's identity and the substance of Attorney's advice, and asks for their responses.

Question 34.

After both parties had completed the presentation of evidence and arguments, Judge took under advisement a case tried in Judge's court without a jury in which Attorney had represented Plaintiff. The case involved a difficult fact issue of causation and a difficult issue of law.

After the case was under advisement for several weeks, Attorney heard rumors that Judge was having difficulty determining the issue of factual causation and was uncertain about the applicable law. Immediately after hearing these rumors, Attorney telephoned Judge, told Judge of the rumors Attorney had heard, and asked if Judge would like to reopen the case for additional evidence and briefing from both parties. Thereafter Judge reopened the case for further testimony and requested supplementary briefs from both parties.

Was it proper for Attorney to communicate with Judge?

- A. Yes, because both parties were given full opportunity to present their views on the issues in the case.
- B. Yes, because Attorney did not make any suggestion as to how Judge should decide the matter.
- C. No, because Attorney communicated with Judge on a pending matter without advising opposing counsel.
- D. No, because Attorney caused Judge to reopen a case that had been taken under advisement.

Question 35.

Trustco, a trust company, entered into the following arrangement with Attorney, a lawyer newly admitted to the bar.

Trustco would provide Attorney with free office space in the building in which Trustco had its offices. If a customer of Trustco contacted Trustco about a will, an officer of Trustco, who is not a lawyer, would advise the customer and help the customer work out the details of the will. The customer would be informed that the necessary documents would be prepared by Trustco's staff. The completed documents would be submitted by an officer of Trustco to the customer for execution.

Attorney, in accordance with a memorandum from Trustco's trust officer detailing the plan, would prepare the necessary documents. Attorney would never meet with the customer and would not charge the customer for these services. Attorney would be free to engage in private practice, subject only to the limitation that Attorney could not accept employment adverse to Trustco.

Is Attorney subject to discipline for entering into the arrangement with Trustco?

- A. Yes, because Attorney is restricting his right to practice.
- B. Yes, because Attorney is aiding Trustco in the practice of law.
- C. No, because Attorney is not charging the customer for his services.
- D. No, because Attorney is not giving advice to Trustco's customers.

Question 36.

Attorney represented Husband and Wife in the purchase of a business financed by contributions from their respective separate funds. The business was jointly operated by Husband and Wife after acquisition. After several years, a dispute arose over the management of the business. Husband and Wife sought Attorney's advice, and the matter was settled on the basis of an agreement drawn by Attorney and signed by Husband and Wife. Later, Wife asked Attorney to represent her in litigation against Husband based on the claim that Husband was guilty of fraud and misrepresentation in the negotiations for the prior settlement agreement.

Is it proper for Attorney to represent Wife in this matter?

- A. Yes, if all information relevant to the litigation was received by Attorney in the presence of both Husband and Wife.
- B. Yes, if there is reason to believe Husband misled both Wife and Attorney at the time of the prior agreement.
- C. No, because Attorney had previously acted for both parties in reaching the agreement now in dispute.
- D. No, unless Husband is now represented by independent counsel.

Question 37.

Alpha and Beta are members of the bar in the same community but have never practiced together. Beta is a candidate in a contested election for judicial office. Beta is opposed by Delta, another lawyer in the community. Alpha believes Beta is better qualified than Delta for the judiciary and is supporting Beta's candidacy.

Which of the following would be proper for Alpha?

- I. Solicit public endorsements for Beta's candidacy by other attorneys in the community who know Beta, including those who are likely to appear before Beta if Beta becomes a judge.
 - II. Solicit contributions to Beta's campaign committee from other attorneys in the community, including those who are likely to appear before Beta if Beta becomes a judge.
 - III. Publicly oppose the candidacy of Delta.
- A. I only
 - B. I and II, but not III
 - C. I and III, but not II
 - D. I, II, and III

Question 38.

Attorney advertises on the local television station. In the advertisements, a professional actor says:

“Do you need a lawyer? Call Attorney—her telephone number is area code 555-555-5555. Her fees might be lower than you think.”

Attorney approved the prerecorded advertisement and is keeping in her office files a copy of the recording of the actual transmission and a record of when each transmission was made.

Is the advertisement proper?

- A. Yes.
- B. No, unless Attorney’s fees are lower than those generally charged in the area where she practices.
- C. No, because she used a professional actor for the television advertisement.
- D. No, if she makes a charge for the initial consultation.

Questions 39 and 40 are based on the following fact situation.

Deft, who has been indicted for auto theft, is represented by Attorney. Prosecutor reasonably believes that Deft committed the offense, but, because of Deft’s youth, it is in the interest of justice to permit Deft to plead guilty to the lesser offense of “joy-riding” in return for an agreement by Prosecutor to recommend probation. Prosecutor has so advised Attorney, but Attorney told Prosecutor she would not plea bargain and would insist on a jury trial. Attorney informed Deft of Prosecutor’s offer and advised Deft not to accept it. Deft followed Attorney’s advice. Attorney is a candidate for public office, and Prosecutor suspects that Attorney is insisting on a trial of the case to secure publicity for herself.

Question 39.

Which of the following would be proper for Prosecutor?

- I. Send a member of his staff who is not a lawyer to consult with Deft.
 - II. Move the trial court to dismiss the indictment and accept a new complaint charging the offense of “joy-riding.”
 - III. Proceed to trial on the indictment and prosecute the case vigorously.
- A. II only
 - B. III only
 - C. I and II, but not III
 - D. II and III, but not I

Question 40.

Assume for the purposes of this question **ONLY** that Deft was tried, convicted, and sentenced to prison for two years.

Must Prosecutor report to the disciplinary authority his suspicions about Attorney’s conduct of the case?

- A. Yes, because Deft suffered a detriment from Attorney’s refusal to plea bargain.
- B. Yes, if Attorney in fact received widespread publicity as a result of the trial.
- C. No, unless Prosecutor has knowledge that Attorney’s refusal to plea bargain was due to personal motives.
- D. No, if Attorney zealously and competently represented Deft at the trial.

Question 41.

Driver consulted Attorney and asked Attorney to represent Driver, who was being prosecuted for driving while intoxicated in a jurisdiction in which there is an increased penalty for a second offense. Driver told Attorney that his driver’s license had been obtained under an assumed name because his prior license had been suspended for driving while under the influence of alcohol. Driver asked Attorney not to disclose Driver’s true name during the course of the representation and told Attorney that, if called as a witness, he would give his assumed name. Attorney informed Driver that, in order properly to defend the case, Attorney must call Driver as a witness.

Attorney called Driver as a witness and, in response to Attorney’s question “what is your name?,” Driver gave his assumed name and not his true name.

Is Attorney subject to discipline?

- A. Yes, because Attorney knowingly used false testimony.
- B. Yes, if Driver committed a felony when he obtained the driver’s license under an assumed name.
- C. No, because Attorney’s knowledge of Driver’s true name was obtained during the course of representation.
- D. No, unless Driver’s true name is an issue in the proceeding.

Question 42.

Attorney represents Client, a plaintiff in a personal injury action. Wit was an eyewitness to the accident. Wit lives about 500 miles distant from the city where the case will be tried. Attorney interviewed Wit and determined that Wit's testimony would be favorable for Client. Wit asked Attorney to pay Wit, in addition to the statutory witness fees while attending the trial, the following:

- I. Reimbursement for actual travel expenses while attending the trial.
- II. Reimbursement for lost wages while present at the trial.
- III. An amount equal to 5% of any recovery in the matter.

If Attorney agrees to pay Wit the above, for which, if any, is Attorney subject to discipline?

- A. III only
- B. II and III, but not I
- C. I, II, and III
- D. Neither I, II, nor III

Question 43.

Judge is a judge of the trial court in City. Judge has served for many years as a director of a charitable organization that maintains a camp for disadvantaged children. The organization has never been involved in litigation. Judge has not received any compensation for her services. The charity has decided to sponsor a public testimonial dinner in Judge's honor. As part of the occasion, the local bar association intends to commission and present to Judge her portrait at a cost of \$4,000.

The money to pay for the portrait will come from a "public testimonial fund" that will be raised by the City Bar Association from contributions of lawyers who are members of the association and who practice in the courts of City.

Is it proper for Judge to accept the gift of the portrait?

- A. Yes, because the gift is incident to a public testimonial for Judge.
- B. Yes, because Judge did not receive compensation for her services to the charitable organization.
- C. No, because the cost of the gift exceeds \$1,000.
- D. No, because the funds for the gift are contributed by lawyers who practice in the courts of City.

Question 44.

Attorney, who had represented Testator for many years, prepared Testator's will and acted as one of the two subscribing witnesses to its execution. The will gave 10% of Testator's estate to Testator's housekeeper, 10% to Testator's son and sole heir, Son, and the residue to charity. Upon Testator's death one year later, Executor, the executor named in the will, asked Attorney to represent him in probating the will and administering the estate. At that time Executor informed Attorney that Son had notified him that he would contest the probate of the will on the grounds that Testator lacked the required mental capacity at the time the will was executed. Attorney believes that Testator was fully competent at all times and will so testify, if called as a witness. The other subscribing witness to Testator's will predeceased Testator.

Is it proper for Attorney to represent Executor in the probate of the will?

- A. Yes, because Attorney is the sole surviving witness to the execution of the will.
- B. Yes, because Attorney's testimony will support the validity of the will.
- C. No, because Attorney will be called to testify on a contested issue of fact.
- D. No, because Attorney will be representing an interest adverse to Testator's heir at law.

Question 45.

Attorney represented Buyer in a real estate transaction. Due to Attorney's negligence in drafting the purchase agreement, Buyer was required to pay for a survey that should have been paid by Seller, the other party to the transaction. Attorney fully disclosed this negligence to Buyer, and Buyer suggested that he would be satisfied if Attorney simply reimbursed Buyer for the entire cost of the survey.

Although Buyer might have recovered additional damages if a malpractice action were filed, Attorney reasonably believed that the proposed settlement was fair to Buyer. Accordingly, in order to forestall a malpractice action, Attorney readily agreed to make the reimbursement. Attorney drafted a settlement agreement, and it was executed by both Attorney and Buyer.

Was Attorney's conduct proper?

- A. Yes, if Attorney advised Buyer in writing that Buyer should seek independent representation before deciding to enter into the settlement agreement.
- B. Yes, because Attorney reasonably believed that the proposed settlement was fair to Buyer.
- C. No, because Attorney settled a case involving liability for malpractice while the matter was still ongoing.
- D. No, unless Buyer was separately represented in negotiating and finalizing the settlement agreement.

Question 46.

Plaintiff and Defendant are next-door neighbors and bitter personal enemies. Plaintiff is suing Defendant over an alleged trespass. Each party believes, in good faith, in the correctness of his position. Plaintiff is represented by Attorney Alpha, and Defendant is represented by Attorney Beta. After Plaintiff had retained Alpha, he told Alpha "I do not want you to grant any delays or courtesies to Defendant or his lawyer. I want you to insist on every technicality."

Alpha has served Beta with a demand to answer written interrogatories. Beta, because of the illness of his secretary, has asked Alpha for a five-day extension of time within which to answer them.

Is Alpha subject to discipline if she grants Beta's request for a five-day extension?

- A. Yes, because Alpha is acting contrary to her client's instructions.
- B. Yes, unless Alpha first informs Plaintiff of the request and obtains Plaintiff's consent to grant it.
- C. No, unless granting the extension would prejudice Plaintiff's rights.
- D. No, because Beta was not at fault in causing the delay.

Question 47.

Judge and Attorney were formerly law partners and during their partnership acquired several parcels of real property as co-tenants. After Judge was elected to the trial court in County, she remained a co-tenant with Attorney, but left the management of the properties to Attorney.

Judge's term of office will expire soon and she is opposed for reelection by two members of the bar. Attorney, who has not discussed the matter with Judge, intends to make a substantial contribution to Judge's campaign for reelection.

Judge is one of fifteen judges sitting as trial court judges in County.

Is Attorney subject to discipline if Attorney contributes \$10,000 to Judge's reelection campaign?

- A. Yes, if Attorney frequently represents clients in cases tried in the trial court of County.
- B. Yes, because Judge and Attorney have not discussed the matter of a campaign contribution.
- C. No, if the contribution is made to a campaign committee organized to support Judge's reelection.
- D. No, because Attorney and Judge have a long-standing personal and business relationship.

Question 48.

Witness was subpoenaed to appear and testify at a state legislative committee hearing. Witness retained Attorney to represent her at the hearing. During the hearing, Attorney, reasonably believing that it was in Witness's best interest not to answer, advised Witness not to answer certain questions on the grounds that Witness had a constitutional right not to answer. The committee chairperson directed Witness to answer and cautioned her that refusal to answer was a misdemeanor and that criminal prosecution would be instituted if she did not answer.

Upon Attorney's advice, Witness persisted in her refusal to answer. Witness was subsequently convicted for her refusal to answer.

Is Attorney subject to discipline?

- A. Yes, because his advice to Witness was not legally sound.
- B. Yes, because Witness, in acting on Attorney's advice, committed a crime.
- C. No, if the offense Witness committed did not involve moral turpitude.
- D. No, if Attorney reasonably believed Witness had a legal right to refuse to answer the questions.

Question 49.

Pros, an elected prosecutor in City, plans to run for reelection in six months. Last year two teenage girls were kidnapped from a shopping center and sexually assaulted. The community was in an uproar about the crime and put pressure on Pros to indict and convict the assailant. Four months ago, Deft was arrested and charged with the crimes. The trial is scheduled to begin next week.

Pros met with the police chief last week to review the evidence in the case. At that time, Pros first learned that, before they were interviewed by the detective in charge of sexual assault crimes, the two victims had been tape-recorded discussing the case between themselves in an interview room. Reviewing the tape, Pros realized that the girls' descriptions of the assailant differed significantly in terms of height, weight and hair color. When officially interviewed, however, their descriptions matched almost perfectly.

Deft's appointed counsel was busy handling a large caseload of indigent defendants and neglected to seek access to the prosecution's investigative file. Pros was virtually certain that Deft's counsel was unaware of the tape recording. Given the other evidence in the case, Pros reasonably believed that the girls accurately identified Deft as their assailant. Pros did not reveal the existence of the tape to defense counsel.

Is Pros subject to discipline?

- A. Yes, because the tape raises a legitimate question about the victims' eyewitness identification of Deft as the assailant.
- B. Yes, unless Pros reasonably believed that the girls accurately identified Deft as their assailant.
- C. No, because under the adversary system of criminal justice, it is expected that each party will marshal the evidence best supporting its own position.
- D. No, unless Deft's counsel submitted a request for all mitigating or exculpatory evidence before the start of trial.

Question 50.

Attorney Alpha currently represents Builder, a building contractor who is the plaintiff in a suit to recover for breach of a contract to build a house. Builder also has pending before the zoning commission a petition to rezone property Builder owns. Builder is represented by Attorney Beta in the zoning matter.

Neighbor, who owns property adjoining that of Builder, has asked Alpha to represent Neighbor in opposing Builder's petition for rezoning. Neighbor knows that Alpha represents Builder in the contract action.

Is it proper for Alpha to represent Neighbor in the zoning matter?

- A. Yes, if there is no common issue of law or fact between the two matters.
- B. Yes, because one matter is a judicial proceeding and the other is an administrative proceeding.
- C. No, because Alpha is currently representing Builder in the contract action.
- D. No, if there is a possibility that both matters will be appealed to the same court.

Question 51.

Attorney, a sole practitioner, limits his practice to personal injury cases. Attorney regularly places an advertisement in local newspapers. The advertisement contains the following statement: "Practice limited to personal injury cases, including medical malpractice." After seeing one of Attorney's advertisements, Baker approached Attorney for representation in a medical malpractice case. After a 30-minute interview Attorney told Baker:

"I'm sorry, but I am very busy and your case appears to be very complicated. I would be happy to refer you to another lawyer who regularly practices in that field and who may have more room in her schedule. You should see another lawyer promptly before the statute of limitations expires and you lose your right to bring the lawsuit."

Although Attorney did not charge Baker for the interview, Baker was upset at the waste of 30 minutes of her time. Baker did not contact another lawyer until eight months later, when she learned that the statute of limitations on her claim had expired six months after her interview with Attorney. In fact, Baker had a meritorious medical malpractice claim.

Is Attorney subject to civil liability?

- A. Yes, because Attorney falsely advertised his availability for medical malpractice cases.
- B. Yes, because Attorney did not advise Baker as to the date the statute of limitations would expire.
- C. No, because Attorney did not violate any duty owed to Baker.
- D. No, because Attorney offered to refer Baker to another medical malpractice lawyer.

Question 52.

Alpha and Beta practiced law under the firm name of Alpha and Beta. When Beta died, Alpha did not change the firm name. Thereafter, Alpha entered into an arrangement with another attorney, Gamma. Gamma pays Alpha a certain sum each month for office space and use of Alpha's law library and for secretarial services, but Alpha and Gamma each has his own clients, and neither participates in the representation of the other's clients or shares in fees paid. On the entrance to the suite of offices shared by Alpha and Gamma are the words "Law Firm of Alpha, Beta, and Gamma."

Is Alpha subject to discipline?

- A. Yes, because Beta was deceased when Alpha made the arrangement with Gamma.
- B. Yes, because Gamma is not a partner of Alpha.
- C. No, because Alpha and Beta were partners at the time of Beta's death.
- D. No, because Gamma is paying a share of the rent and office expenses.

Question 53.

Attorney was employed as a lawyer by the state Environmental Control Commission (ECC) for ten years. During the last two years of her employment, Attorney spent most of her time in the preparation, trial, and appeal of a case involving the discharge by Deftco of industrial effluent into a river in the state. The judgment in the case, which is now final, contained a finding of a continuing and knowing discharge of a dangerous substance into a major stream by Deftco and assessed a penalty of \$25,000.

The governing statute also provides for private actions for damages by persons injured by the discharge of the effluent.

Attorney recently left the employment of ECC and went into private practice. Three landowners have brought private damage actions against Deftco. They claim their truck farms were contaminated because they irrigated them with water that contained effluent from dangerous chemicals discharged by Deftco. Deftco has asked Attorney to represent it in defense of the three pending actions.

Is Attorney subject to discipline if she represents Deftco in these actions?

- A. Yes, unless the judgment in the prior case is determinative of Deftco's liability.
- B. Yes, because Attorney had substantial responsibility in the matter while employed by ECC.
- C. No, because Attorney has acquired special competence in the matter.
- D. No, if all information acquired by Attorney while representing ECC is now a matter of public record.

Question 54.

Attorney Alpha is skilled in trying personal injury cases. Alpha accepted the representation of Plaintiff in a personal injury case on a contingent fee basis. While preparing the case for trial, Alpha realized that the direct examination and cross-examination of the medical experts would involve medical issues with which Alpha was not familiar and, as a consequence, Alpha might not be able to represent Plaintiff competently.

Without informing Plaintiff, Alpha consulted Beta, who is both a lawyer and a medical doctor and who is a recognized specialist in the care and treatment of injuries of the type sustained by Plaintiff. Alpha and Beta agreed that Beta would participate in the trial to the limited extent of conducting the direct examination and cross-examination of the medical experts and that Alpha would divide the fee in proportion to the services performed and the responsibility assumed by each.

Was the arrangement between Alpha and Beta proper?

- A. Yes, because the fee to be paid by Plaintiff was not increased by reason of Beta's association.
- B. Yes, because the fee would be divided in proportion to the services performed and the responsibility assumed by each.
- C. No, because Plaintiff was not advised of the association of Beta.
- D. No, unless, upon conclusion of the matter, Alpha provides Plaintiff with a written statement setting forth the method of determining both the fee and the division of the fee with Beta.

Question 55.

Attorney represents Client, a famous politician, in an action against Newspaper for libel. The case has attracted much publicity, and a jury trial has been demanded. After one of the pretrial hearings, as Attorney left the courthouse, news reporters interviewed Attorney. In responding to questions, Attorney truthfully stated:

"The judge has upheld our right to subpoena the reporter involved, identified in our motion as Repo, and question her on her mental impressions when she prepared the article."

Is Attorney subject to discipline for making this statement?

- A. Yes, because Attorney identified a prospective witness in the case.
- B. Yes, because prospective jurors might learn of Attorney's remarks.
- C. No, because the statement relates to a matter of public record.
- D. No, because the trial has not commenced.

Question 56.

Attorney Alpha has been employed as an assistant prosecutor in the district attorney's office during the time that an investigation of Deft was being conducted by that office. Alpha took no part in the investigation and had no knowledge of the facts other than those disclosed in the press. Two months ago, Alpha left the district attorney's office and formed a partnership with Attorney Beta.

Last week, Deft was indicted for offenses allegedly disclosed by the prior investigation. Deft asked Alpha to represent him. Alpha declined to do so, but suggested Beta.

Is Beta subject to discipline if Beta represents Deft?

- A. Yes, because Alpha was employed in the district attorney's office while the investigation of Deft was being conducted.
- B. Yes, unless the district attorney's office is promptly notified and consents to the representation.
- C. No, unless Alpha participates in the representation or shares in the fee.
- D. No, because Alpha had no responsibility for or knowledge of the facts of the investigation of Deft.

Question 57.

Deft was on trial for the murder of Victim, who was killed during a barroom brawl. In the course of closing arguments to the jury, Prosecutor said,

"Deft's whole defense is based on the testimony of Wit, who said that Victim attacked Deft with a knife before Deft struck him. No other witness testified to such an attack by Victim. I don't believe Wit was telling the truth, and I don't think you believe him either."

Was Prosecutor's statement proper?

- A. Yes, if Prosecutor accurately stated the testimony in the case.
- B. Yes, if Prosecutor, in fact, believed Wit was lying.
- C. No, because Prosecutor alluded to the beliefs of the jurors.
- D. No, because Prosecutor asserted his personal opinion about Wit's credibility.

Question 58.

Attorney represents Client, the plaintiff in a civil action that was filed a year ago and is about to be set for trial. Client informed Attorney that he could be available at any time during the months of October, November, and December. In discussing possible trial dates with opposing counsel and the court clerk, Attorney was advised that a trial date on October 5 was available and that the next available trial date would be December 10. Without first consulting Client, Attorney requested the December 10 trial date because she was representing Deft, the defendant in a felony criminal trial that was set for October 20 and she wanted as much time as possible to prepare for that trial.

Was it proper for Attorney to agree to the December trial date without obtaining Client's consent?

- A. Yes, unless Client will be prejudiced by the delay.
- B. Yes, because a criminal trial takes precedence over a civil trial.
- C. No, because Attorney should manage her calendar so that her cases can be tried promptly.
- D. No, unless Attorney was court-appointed counsel in the criminal case.

Question 59.

Able, Baker, and Carter had been indicted for the armed robbery of the cashier of a grocery store. Together, Able and Baker met with Attorney and asked Attorney to represent them. Attorney then interviewed Able and Baker separately. Each told Attorney that the robbery had been committed by Carter while Able and Baker sat in Carter's car outside the store, that Carter had said he needed some cigarettes, and that each knew nothing of Carter's plan to rob the cashier. Attorney agreed to represent both Able and Baker. One week prior to the trial date, Able told Attorney that he wanted to plea bargain and that he was prepared to turn state's evidence and testify that Baker had loaned Carter the gun Carter used in the robbery. Able also said that he and Baker had shared in the proceeds of the robbery with Carter.

It is proper for Attorney to:

- A. request court approval to withdraw as lawyer for both Able and Baker.
- B. continue to represent Baker and, with Able's consent and court approval, withdraw as Able's lawyer.
- C. continue to represent Able and, with Baker's consent and court approval, withdraw as Baker's lawyer.
- D. continue to represent Able and Baker, but not call Able as a witness.

Question 60.

While presiding over the trial of a highly publicized antitrust case, ABCO v. DEFO, Judge received in the mail a lengthy letter from Attorney, a local lawyer. The letter discussed the law applicable to ABCO v. DEFO. Judge knew that Attorney did not represent either party. Judge read the letter and, without mentioning its receipt to the lawyers in the pending case, filed the letter in his general file on antitrust litigation.

Later, after reading the trial briefs in ABCO v. DEFO, Judge concluded that Attorney's letter better explained the law applicable to the case pending before him than either of the trial briefs. Judge followed Attorney's reasoning in formulating his decision.

Was it proper for Judge to consider Attorney's letter?

- A. Yes, because Judge did not initiate the communication with Attorney.
- B. Yes, if Attorney did not represent any client whose interests could be affected by the outcome.
- C. No, unless Judge, prior to rendering his decision, communicated its contents to all counsel and gave them an opportunity to respond.
- D. No, because Attorney is not of record as counsel in the case.

Question 61.

Attorney's recorded radio advertisement stated:

"For a fee of \$600 Attorney will represent a party to a divorce that does not result in a court trial of a contested issue of fact."

Attorney had the advertisement prerecorded and approved by the appropriate bar agency for broadcast. Attorney retained a recording of the actual transmission in her office. Client, who had previously agreed with her husband to an uncontested dissolution of their marriage, heard the broadcast and called on Attorney in Attorney's office. Client told Attorney that she had heard the broadcast and asked Attorney to represent her. Attorney agreed to represent Client. Because of the nature of the parties' property, Attorney spent more time on the tax aspects of the case than Attorney anticipated. The time expended by Attorney, if charged at a reasonable hourly rate, would have resulted in a fee of \$2,000. After the decree was entered, Attorney billed Client for \$2,000.

Is Attorney subject to discipline?

- A. No, because Attorney's fee was a reasonable charge for the time expended.
- B. No, because Attorney, when the representation was accepted, did not anticipate the tax problems.
- C. Yes, unless Client pays the fee without protest.
- D. Yes, because Attorney charged a fee in excess of the advertised fee.

Question 62.

Acton, a certified public accountant, has proposed to Attorney, a recognized specialist in the field of tax law, that Acton and Attorney form a partnership for the purpose of providing clients with tax-related legal and accounting services. Both Acton and Attorney have deserved reputations of being competent, honest, and trustworthy. Acton further proposes that the announcement of the proposed partnership, the firm stationery, and all public directory listings clearly state that Acton is a certified public accountant and that Attorney is a lawyer.

Is Attorney subject to discipline if he enters into the proposed partnership with Acton?

- A. Yes, because one of the activities of the partnership would be providing legal services to clients.
- B. Yes, because Attorney would be receiving fees paid for other than legal services.
- C. No, because the partnership will assure to the public high-quality services in the fields of tax law and accounting.
- D. No, if Attorney is the only person in the partnership who gives advice on legal matters.

Question 63.

Client, who is under indictment for homicide, is represented by Attorney. In the course of representation, Client told Attorney that Client had previously killed two other persons in homicides completely unrelated to the murder indictment for which Attorney was providing representation. Attorney, with Client's consent, made a tape recording of Client's confession regarding the unrelated homicides. At Attorney's request, Client also drew a map on which he designated the remote locations of the graves of the victims of the unrelated killings. Those bodies have not been found by the police, and Client is not a suspect in either crime, both of which remain unsolved.

Is Attorney subject to discipline for failing to disclose voluntarily to the authorities his knowledge of the two prior murders and the locations of the bodies of the victims?

- A. Yes, because as an officer of the court, Attorney must disclose any knowledge that he has, whether privileged or not, concerning the commission of the prior crimes by Client.
- B. Yes, because Attorney is impeding the state's access to significant evidence.
- C. No, because Attorney did not represent or advise Client with respect to the prior crimes.
- D. No, because the information was obtained by Attorney in the course of the representation.

Question 64.

Attorney Alpha is recognized as an expert in securities regulation law. Corp, a corporation, retained Alpha's law firm to qualify Corp's stock for public sale. After accepting the matter, Alpha decided that he preferred to spend his time on cases with larger fee potential, so he assigned responsibility for the Corp matter to Attorney Beta, an associate in Alpha's office who had recently been admitted to the bar.

Beta protested to Alpha that he, Beta, knew nothing about securities regulation law and that he had too little time to prepare himself to handle the Corp matter competently without substantial help from Alpha. Alpha responded, "I don't have time to help you. Everyone has to start somewhere." Alpha directed Beta to proceed.

Was Alpha's conduct proper in this matter?

- A. Yes, because as a member of the bar, Beta is licensed to handle any legal matter.
- B. Yes, because Alpha may withdraw from a case if work on it would cause him unreasonable financial hardship.
- C. No, because Alpha knew Beta was not competent to handle the matter, and Alpha failed to provide supervision adequate to protect the client's interest.
- D. No, because Corp had not given Alpha permission to assign Beta to work on the matter.

Question 65.

Attorney represents Bank in its commercial loan transactions. Corp has applied to Bank for a loan of \$900,000 to be secured by a lien on Corp's inventory. The inventory, consisting of small items, constantly turns over. The security documents are complex and if improperly drawn could result in an invalid lien. Bank has approved the loan on the condition that Attorney prepare the necessary security instruments and that Corp pay Attorney's fees. This arrangement is customary in the city in which Attorney's law office and Bank are located. It is obvious to Attorney that he can adequately represent the interests of both Corp and Bank. After Corp and Bank consulted with other lawyers, each consented in writing to the representation.

Is it proper for Attorney to prepare the security documents under these circumstances?

- A. Yes, because Bank and Corp have given their informed consent to the arrangement.
- B. Yes, because the arrangement is customary in the community.
- C. No, because Attorney's fees are being paid by Corp not Bank.
- D. No, because Corp and Bank have differing interests.

Question 66.

Attorney, recently admitted to practice, opened an office near a residential neighborhood and published the following advertisement in the local newspaper.

COUPON

*Get Acquainted With
Your Neighborhood Lawyer*

A. Attorney

*Suite 2 – 1100 Magnolia Avenue
Sunshine City, State 01000
Telephone: (555) 555-5555*

In order to acquaint you with our services, we are offering a one-hour consultation to review your estate plans, including your wills, trusts, and similar documents, all at the nominal cost of \$25 to anyone presenting this coupon. Call now for an appointment.

Is Attorney subject to discipline?

- A. Yes, because Attorney is soliciting business from persons with whom Attorney had no prior relationship.
- B. Yes, because Attorney requires the use of a coupon.
- C. No, if Attorney provides the services described for the fee stated.
- D. No, unless Attorney is seeking business from persons who are already represented by a lawyer.

Question 67.

Attorney represented Plaintiff in Plaintiff's action for defamation against Defendant. After Defendant's lawyer had filed and served an answer, Attorney, at Plaintiff's direction, hired Inv, a licensed private investigator, and instructed Inv to attempt to interview Defendant without revealing his employment. Inv succeeded in interviewing Defendant privately and obtained an admission from Defendant that the statements Defendant had made were based solely on unsubstantiated gossip.

Is Attorney subject to discipline for obtaining the statement from Defendant in this matter?

- A. No, because Attorney was following Plaintiff's instructions.
- B. No, because the statement obtained was evidence that Defendant's allegations were unfounded.
- C. Yes, because Attorney should have interviewed Defendant personally.
- D. Yes, because Attorney instructed Inv to interview Defendant.

Question 68.

Attorney and Broker, a licensed real estate broker, entered into an agreement whereby Broker was to recommend Attorney to any customer of Broker who needed legal services, and Attorney was to recommend Broker to any client of Attorney who wished to buy or sell real estate. Attorney's practice is limited almost entirely to real estate law.

Is Attorney subject to discipline for entering into the agreement with Broker?

- A. Yes, because Attorney is compensating Broker for recommending Attorney's legal services.
- B. Yes, because the arrangement constitutes the practice of law in association with a nonlawyer.
- C. No, if neither Attorney nor Broker shares in the other's fees.
- D. No, if the fees of Attorney and Broker do not clearly exceed reasonable fees for the services rendered by each.

Question 69.

Judge, prior to her appointment to the probate court, was a partner in Law Firm. Law Firm had an extensive probate practice. At the time of Judge's appointment, Law Firm had pending before the court to which Judge was appointed numerous matters in which requests were being made for allowances for attorney's fees. When Judge left Law Firm, she was paid a cash settlement. She has no further financial interest in any matter handled by Law Firm. Judge is now being asked to rule on these requests for allowances for attorney's fees.

Is it proper for Judge to rule on these requests?

- A. Yes, because Judge has no financial interest in the outcome of these cases.
- B. Yes, if these requests are not contested.
- C. No, unless Judge notes on the record in each case her prior association with Law Firm.
- D. No, because Judge was associated with Law Firm when these matters were pending.

Question 70.

Attorney, representing Client, with Client's approval settled a claim against Defendant for \$60,000. The settlement agreement provided that one-half would be paid by Insko, Defendant's primary insurance carrier, and one-half by Sureco, a co-insurer. Attorney's agreed fee was 30% of the amount of the settlement. Attorney received Insko's check for \$30,000 and a letter from Sureco advising that its check would be sent in two weeks. Attorney promptly advised Client and deposited the \$30,000 in her Clients' Trust Account. Client demanded that Attorney send him the entire \$30,000 and take her fee out of the funds to be received from Sureco.

Which of the following would now be proper for Attorney?

- I. Send Client \$30,000.
 - II. Send Client \$21,000 and retain \$9,000 in her Clients' Trust Account.
 - III. Send Client \$21,000 and transfer \$9,000 to her personal account.
- A. I only
 - B. I and II, but not III
 - C. I and III, but not II
 - D. I, II, and III

Question 71.

Attorney is a well-known tax lawyer and author. During congressional hearings on tax reform, Attorney testified to her personal belief and expert opinion on the pending reform package. She failed to disclose in her testimony that she was being paid well by a private client for her appearance. In her testimony, Attorney took the position favored by her client, but the position was one that Attorney believed was in the public interest.

Was it proper for Attorney to present this testimony without identifying her private client?

- A. Yes, because Attorney conscientiously believed that the position she advocated before Congress was in the public interest.
- B. Yes, because Congress is interested in the content of testimony and not who is paying the witness.
- C. No, because a lawyer may not accept a fee for trying to influence legislative action.
- D. No, because a lawyer who appears in a legislative hearing should identify the capacity in which the lawyer appears.

Question 72.

Attorney represented Baker in a claim involving a breach of Baker's employment contract. The case was settled without suit being filed. The proceeds of the settlement were paid directly to Baker, who subsequently paid Attorney in full for Attorney's fee and expenses. Thereafter, Attorney did no other work for Baker.

Baker is now being audited by the Internal Revenue Service (IRS). The IRS has asked Attorney for details of the settlement, including the amount claimed for each item of damage and the amounts paid for the items. Attorney reported the request to Baker who told Attorney not to provide the information to the IRS.

Is it proper for Attorney to furnish the information to the IRS?

- A. Yes, if the information does not involve Attorney's work product.
- B. Yes, because Attorney no longer represents Baker.
- C. No, because Baker told Attorney not to provide the information.
- D. No, unless Attorney believes the disclosure would be beneficial to Baker.

Question 73.

Attorney represents Driver, the plaintiff in an automobile accident case. Two weeks before the date set for trial, Attorney discovered that Witt was an eyewitness to the accident. Attorney interviewed Witt. Witt's version of the accident was contrary to that of Driver and, if believed by the trier of fact, would establish that Driver was at fault. Witt told Attorney that she had not been interviewed by defense counsel.

Witt also told Attorney that she intended to leave for Europe the following week for a month's vacation unless she had an obligation to remain and attend the trial. Attorney told Witt:

"No one has subpoenaed you yet. You have no legal duty to make yourself available. Trials can be difficult affairs. Witnesses sometimes get very nervous because of the questions asked by the lawyers. Why don't you take the vacation as planned, and, by the time you return, the trial will be over."

Is Attorney subject to discipline?

- A. Yes, because Attorney advised Witt to leave the jurisdiction.
- B. Yes, because Attorney did not subpoena Witt knowing she was an eyewitness.
- C. No, because Witt had not been subpoenaed by the defense.
- D. No, because Attorney did not offer Witt any inducement not to appear at the trial.

Question 74.

Attorney is employed by Client, a fugitive from justice under indictment for armed robbery. Attorney, after thorough legal research and investigation of the facts furnished by Client, reasonably believes the indictment is fatally defective and should be dismissed as a matter of law. Attorney advised Client of his opinion and urged Client to surrender. Client told Attorney that she would not surrender.

Attorney informed the district attorney that he represented Client and that he counseled Client to surrender, but that Client refused to follow his advice. Attorney has not advised Client on how to avoid arrest and prosecution and does not know where Client is hiding.

Is Attorney subject to discipline if he continues to represent Client?

- A. Yes, because Client is engaged in continuing illegal conduct.
- B. Yes, because client refused to accept Attorney's advice and surrender.
- C. No, because Attorney is not counseling Client to avoid arrest and prosecution.
- D. No, because Attorney reasonably believes the indictment is defective.

Question 75.

Attorney in his capacity as part-time assistant county attorney represented County in a criminal non-support proceeding against Husband. This proceeding concluded with an order directing Husband to pay or be jailed. Husband refused to pay.

Attorney, pursuant to applicable rules, is permitted to maintain a private law practice. Wife has discovered some assets of Husband. Attorney now has accepted employment from Wife to maintain a civil action against Husband to recover out of those assets arrearages due to Wife under Wife's support decree. Attorney did not obtain consent from the county attorney or from Husband to represent Wife in the civil action.

Is Attorney subject to discipline for accepting employment in Wife's civil action against Husband?

- A. Yes, because Attorney did not obtain Husband's consent to the representation.
- B. Yes, because Attorney had personal and substantial responsibility in the first proceeding.
- C. No, because Attorney's responsibility in his public employment has terminated.
- D. No, because Attorney is representing Wife's interest in both the criminal and the civil proceedings.

Question 76.

Attorney is a lawyer for City and advises City on all tort claims filed against it. Attorney's advice is limited to recommending settlement and the amount thereof. If a claim is not settled and suit is filed, defense of the suit is handled either by lawyers for City's insurance carrier or by outside counsel specially retained for that purpose. In connection with any notice of claim and before suit is filed, Attorney arranges for an investigator to call upon the claimant at the claimant's home and, with no one else present, to interview the claimant and endeavor to obtain a signed statement of the claimant's version of the facts.

Claimant has filed a notice of claim against City. Attorney has sent an investigator to interview Claimant.

Is Attorney subject to discipline for arranging an interview with Claimant?

- A. Yes, if Claimant was known by Attorney to be represented by counsel.
- B. Yes, if the statement taken is later used to Claimant's disadvantage.
- C. No, because claimant had not filed suit at the time of the interview.
- D. No, because Attorney would not be representing City in any subsequent litigation on Claimant's claim.

Question 77.

Delta, a lawyer, has just joined the Law Offices of Alpha and Beta, a professional corporation engaged solely in the practice of law. Delta is a salaried associate and is not a member or shareholder of the professional corporation. Alpha's spouse, Veep, who is not a lawyer, is vice-president of the corporation and office manager. All of the other officers are lawyers in the firm. All of the corporate shares are held by lawyers in the corporation, except for ten shares held by the executor under the will of a lawyer-member who died one month previously and whose will is now being probated. Delta knows that Veep is an officer and not a lawyer.

Is Delta subject to discipline?

- A. Yes, because Veep is an officer of the corporation.
- B. Yes, if a nonlawyer holds the stock as the executor of the will of the deceased member.
- C. No, because Delta is a salaried employee and not a member or shareholder of the corporation.
- D. No, if Veep does not participate in any decision regarding a client or a client's case.

Question 78.

Attorney is representing Plaintiff in a paternity suit against Defendant. Both Plaintiff and Defendant are well-known public figures, and the suit has attracted much publicity. Attorney has been billing Plaintiff at an agreed hourly fee for his services. Recently, Plaintiff told Attorney,

"I'm going broke paying you. Why don't you let me assign you all media rights to books, movies, or television programs based on my suit as full payment for all services you will render me between now and the conclusion of the suit?"

Attorney replied,

"I'll consider it, but first you should seek independent advice about whether such an arrangement is in your own best interests. Why don't you do so and call me next week."

Is Attorney subject to discipline if he agrees to Plaintiff's offer?

- A. Yes, because the amount received by Attorney would be contingent on the receipts from the sale of media rights.
- B. Yes, because Attorney has not concluded the representation of Plaintiff.
- C. No, because the paternity suit is a civil and not a criminal matter.
- D. No, if Plaintiff received independent advice before entering into the agreement.

Question 79.

Four years ago, Attorney represented Husband and Wife, both high school teachers, in the purchase of a new home. Since then, Attorney prepared their tax returns and drafted their wills.

Recently, Husband called Attorney and told her that he and Wife had decided to divorce, but wanted the matter to be resolved amicably. Husband stated that they were planning to file and process their own divorce case, utilizing the state's new streamlined divorce procedure, applicable in "no-fault" cases where there are no minor children. Husband asked if Attorney would agree to work with them to prepare a financial settlement agreement that could be presented to the divorce court, reminding Attorney that the couple's assets were modest and that they wanted to "split it all down the middle."

After considering the risks of a conflict of interest arising in this limited representation, Attorney wrote to the couple separately, and advised each that he or she might be better off with separate lawyers, but that Attorney would assist with the financial settlement agreement, charging an hourly fee of \$140 per hour, provided that they were in complete agreement and remained so. Attorney advised that if a conflict developed, or if either party was dissatisfied or uncomfortable about continuing with the joint representation, Attorney would withdraw and would not represent either party from that point forward, forcing them to start all over again with separate lawyers. Finally, Attorney cautioned Husband and Wife that Attorney would be representing both of them equally, would not and could not favor one or the other, and that their separate communications to her could not be kept confidential from the other party. Both Husband and Wife signed their individual copy of the letter, consenting to the joint representation, and returned them to Attorney.

Was it proper for Attorney to accept the representation on these terms?

- A. Yes, because there was little risk that the interests of either Husband or Wife would be materially prejudiced if no settlement was reached.
- B. Yes, because Attorney had previously represented Husband and Wife in their joint affairs.
- C. No, because Attorney conditioned representation upon receiving a waiver of client confidentiality.
- D. No, unless Attorney advised both Husband and Wife, in writing, that they should seek independent counsel before agreeing to enter into the financial settlement on the terms proposed.

Question 80.

Attorney represented Client in negotiating a large real estate transaction. Buyer, who purchased the real estate from Client, has filed suit against both Client and Attorney, alleging fraud and violation of the state unfair trade practices statute. Attorney had advised Client by letter against making the statements relied on by Buyer as the basis for Buyer's claim. Attorney and Client are each represented by separate counsel. In responding to a deposition under subpoena, Attorney wishes to reveal, to the extent Attorney reasonably believes necessary to defend herself, confidential information imparted to Attorney by Client that will be favorable to Attorney but damaging to Client.

Is it proper for Attorney to reveal such information?

- A. Yes, unless Client objects to the disclosure.
- B. Yes, because Attorney may reveal such information to defend herself against a civil claim.
- C. No, unless criminal charges have also been brought against Attorney.
- D. No, because the disclosure will be detrimental to Client.

Question 81.

Attorney, who is corporate counsel for Company, is investigating a possible theft ring in the parts department of Company. Attorney knows that Employee has worked in the parts department for a long time and believes that Employee is a suspect in the thefts. Attorney believes that if Employee were questioned, Employee would not answer truthfully if she knew the real purpose of the questions. Attorney plans to question Employee and falsely tell her that she is not a suspect and that her answers to the questions will be held in confidence.

Is Attorney subject to discipline if she so questions Employee?

- A. Yes, because Attorney's conduct involves misrepresentation.
- B. Yes, unless Attorney first advises Employee to obtain counsel to represent Employee.
- C. No, because no legal proceedings are now pending.
- D. No, because Attorney did not give legal advice to Employee.

Question 82.

Manufacturer sued Partco for Partco's breach of warranty regarding machine components furnished by Partco. Judge, who presided at the nonjury trial, sent Clerk, her law clerk, to Manufacturer's plant to observe the machine that was malfunctioning due to the allegedly defective parts. Clerk returned and told Judge that the machine was indeed malfunctioning and that Engineer, an employee of Manufacturer, had explained to Clerk how the parts delivered by Partco caused the malfunction. There was testimony at the trial that supported what Clerk learned on his visit. Judge rendered a judgment for Manufacturer.

Was Judge's conduct proper?

- A. Yes, because Judge's judgment was supported by evidence at the trial.
- B. Yes, because Judge has the right to gather facts concerning the trial.
- C. No, because Judge has engaged in ex parte contacts that might influence the outcome of litigation.
- D. No, unless Engineer was a witness at the trial and subject to cross-examination by Partco.

Question 83.

Attorney regularly represented Client. When Client planned to leave on a world tour, Client delivered to Attorney sufficient money to pay Client's property taxes when they became due. Attorney placed the money in Attorney's Clients' Trust Account. When the tax payment date arrived, Attorney was in need of a temporary loan to close the purchase of a new personal residence. Because the penalty for late payment of taxes was only 2% while the rate for a personal loan was 6%, Attorney withdrew Client's funds from the Clients' Trust Account to cover Attorney's personal check for the closing. Attorney was confident that Client would not object. Ten days later, after the receipt of a large fee previously earned, Attorney paid Client's property taxes and the 2% penalty, fully satisfying Client's tax obligation. After Client returned, Attorney told Client what Attorney had done, and Client approved Attorney's conduct.

Is Attorney subject to discipline?

- A. Yes, because Attorney failed to pay Client the ten days of interest at the fair market rate.
- B. Yes, because Attorney used Client's funds for a personal purpose.
- C. No, because Client was not harmed and Attorney reasonably believed at the time Attorney withdrew the money that Client would not object.
- D. No, because when Attorney told Client what he had done, Client approved Attorney's conduct.

Question 84.

Attorney entered into a written retainer agreement with Deft, who was the defendant in a criminal case. Deft agreed in writing to transfer title to Deft's automobile to Attorney if Attorney successfully prevented Deft from going to prison. Later, the charges against Deft were dismissed.

Is Attorney subject to discipline for entering into this retainer agreement?

- A. Yes, because Attorney agreed to a fee contingent on the outcome of a criminal case.
- B. Yes, because a lawyer may not acquire a proprietary interest in a client's property.
- C. No, because the charges against Deft were dismissed.
- D. No, because the retainer agreement is in writing.

Question 85.

Attorney Alpha filed a complaint on behalf of Client against Agri, a corporation, alleging that Agri had breached a valid oral contract entered into on Agri's behalf by Pres, the president and chief executive officer of Agri, to sell Client certain merchandise for a specified price. Attorney Beta, representing Agri, has filed an answer denying the contract and asserting the statute of frauds as a defense.

Attorney Beta has given notice to Alpha that he will take the deposition of Pres on the grounds that Pres will be out of the country on the date the case is set for trial. Pres is not a shareholder of Agri. Alpha would like to interview Pres, prior to the taking of the deposition, in order better to prepare her cross-examination.

Is Alpha subject to discipline if she interviews Pres without Beta's knowledge and consent?

- A. No, unless Pres will be personally liable to Agri for damages in the event judgment is rendered against Agri.
- B. No, because Pres allegedly entered into the contract on behalf of Agri.
- C. Yes, because Pres is being called as an adverse witness.
- D. Yes, because Pres is the president of Agri.

Question 86.

Attorney represents ten plaintiffs who were injured when a train operated by Railroad was derailed. Railroad has offered Attorney a \$500,000 lump sum settlement for the ten plaintiffs. Attorney has determined a division of the \$500,000 among the ten plaintiffs with the amount paid each plaintiff dependent on the nature and extent of that person's injuries. Attorney believes the division is fair to each plaintiff.

Railroad will not settle any of the claims unless all are settled. Attorney has told each plaintiff the total amount Railroad is prepared to pay, the amount that the individual will receive, and the basis on which that amount was calculated. Attorney has not told any plaintiff the amount to be received by any other plaintiff. Attorney believes that if Attorney reveals to each plaintiff the amount of each settlement, there is danger that some plaintiffs will think that they are not getting enough in relation to the amounts others will receive and the entire settlement will be upset. Each of the plaintiffs has agreed to his or her settlement.

Is Attorney subject to discipline if Attorney effects such a settlement?

- A. Yes, because Attorney is aiding the lawyer for Railroad in making a lump sum settlement.
- B. Yes, because no individual plaintiff knows the amount to be received by any other plaintiff.
- C. No, if to disclose all settlements to each plaintiff might jeopardize the entire settlement.
- D. No, if the amount received by each plaintiff is fair and each plaintiff is satisfied.

Question 87.

Attorney Alpha serves on a bar association committee established to counsel and rehabilitate lawyers who suffer from substance abuse. The day before Alpha was to leave on a fishing trip, Alpha's close friend, Attorney Beta, disclosed to Alpha that, over the preceding two years, Beta had become heavily addicted to cocaine and was afraid he had committed criminal offenses in his banking activities as a result of his addiction. Beta asked Alpha to represent him. Alpha agreed, but explained that Alpha could do little for two weeks and would consult with Beta immediately upon Alpha's return. While on the fishing trip, Cepa, an accountant who knew that Alpha represented Beta, told Alpha that Cepa had been retained by the trust department of Bank, a commercial bank, to audit several substantial trust accounts in which Bank and Beta are co-trustees. Cepa also told Alpha that the audit furnished incontrovertible proof that Beta had embezzled more than \$100,000 from the trust accounts.

Must Alpha report Beta's embezzlement to the appropriate disciplinary authority?

- A. Yes, because Alpha learned of Beta's embezzlement from Cepa.
- B. Yes, because Alpha's failure to report would assist the concealment of Beta's breach of trust.
- C. No, because Alpha gained the information while representing Beta.
- D. No, because the information will probably be made public by Bank.

Question 88.

The following advertisement appeared in a daily newspaper in a state in which both parties are members of the bar:

A. ALPHA, M.D., J.D.
and
B. BETA, J.D.

Attorneys at Law
1000 "A" Street, City, State, 00000
Telephone (555) 555-5555.

Are Alpha and Beta subject to discipline?

- A. No, because both law and medicine are licensed professions.
- B. No, if they possess the degree(s) stated.
- C. Yes, because the reference to the M.D. degree is self-laudatory.
- D. Yes, unless they limit their practice to areas in which a medical degree is relevant.

Question 89.

While working on a complex matter for Client, Attorney Alpha, a partner in the law firm of Alpha and Beta, identified a particularly difficult issue of law that could prove decisive in the dispute. Alpha had not encountered this issue before and was uncertain of its effect. Alpha called Alpha's partner, Attorney Beta, and asked her for assistance.

Was it proper for Alpha to consult with Beta?

- A. No, unless the total fee is not increased by the consultation.
- B. No, because Client's consent was not previously obtained.
- C. Yes, unless Alpha identified Client to Beta.
- D. Yes, because Alpha and Beta are partners in the same firm.

Question 90.

Judge, a state court judge, has presided over the pre-trial proceedings in a case involving a novel contract question under the Uniform Commercial Code. During the pretrial proceedings, Judge has acquired considerable background knowledge of the facts and law of the matter and, therefore, is particularly well qualified to preside at the trial. Shortly before the trial date, Judge discovered that his brother owns a substantial block of stock in the defendant corporation. He determined that his brother's financial interests would be substantially affected by the outcome of the case. Although Judge believed he would be impartial, he disclosed to the parties, on the record, his brother's interest.

Is it proper for Judge to hear the case?

- A. Yes, because Judge is particularly well qualified to preside at the trial.
- B. Yes, because Judge believes his judgment will not be affected by his brother's stockholding.
- C. No, because disqualification based on a relative's financial interest cannot be waived.
- D. No, unless after proper proceedings in which Judge did not participate all parties and their lawyers consent in writing that Judge may hear the case.

Question 91.

Attorney is representing Deft on a charge of armed robbery. Deft claims that the prosecution witness is mistaken in her identification. Deft has produced Baker, who will testify that Deft was in another city 500 miles away when the robbery occurred. Attorney knows that Baker is lying, but Deft insists that Baker be called on Deft's behalf.

Is Attorney subject to discipline if she calls Baker?

- A. Yes, unless, before calling Baker, Attorney informs the court of her belief.
- B. Yes, because Attorney knows Baker will be testifying falsely.
- C. No, unless Attorney relies on the alibi defense in her argument before the jury.
- D. No, because Deft has insisted that Baker be called as a witness on Deft's behalf.

Question 92.

Attorney is a candidate for a judicial office that has been occupied by Incumbent for six years. Attorney has conducted a thorough investigation of Incumbent's personal and professional life.

Assume all factual statements are accurate. Which of the following statements is it proper for Attorney to make during the campaign?

- I. "Incumbent has been reversed by the appellate courts more than any other judge in the state during the preceding two years."
 - II. "Incumbent was publicly censured by the state Judicial Qualification Commission on one occasion for his overbearing conduct in court."
 - III. "Incumbent was given a poor rating for judicial temperament in a county bar association poll."
 - IV. "During the previous year, the average sentence in armed robbery cases tried in Incumbent's court was 3.5 years, and in murder cases was 8.2 years. If I am elected, I won't be soft on crime."
- A. I only
 - B. I and II, but not III or IV
 - C. I, II, and III, but not IV
 - D. I, II, and IV, but not III

Question 93.

The state bar association has offered Judge and her spouse free transportation and lodging to attend its institute on judicial reform. Judge is expected to deliver a banquet speech.

Is it proper for Judge to accept this offer?

- A. Yes, unless the value of the transportation and lodging exceeds \$500.
- B. Yes, because the activity is devoted to the improvement of law.
- C. No, if members of the bar association regularly appear in Judge's court.
- D. No, because the bar association is offering free transportation to Judge's spouse.

Question 94.

Attorney represents Client, a well-known contractor, before Agency, a state administrative agency. Agency has ordered Client to show cause why Client's license as a contractor should not be revoked for violation of agency regulations. In a newspaper interview prior to the administrative hearing, Attorney truthfully stated that:

- I. "Client denies the charge made by Agency that Client engaged in conduct constituting grounds for revocation of Client's license as a contractor."
- II. "The next step in the administrative process is the administrative hearing; if Agency is successful, we will appeal, and Agency still cannot revoke Client's license until a court affirms the finding for Agency."
- III. "Client needs witnesses who are aware of the incidents that are the subject of the hearing."

Which of these statements would be proper?

- A. I only
- B. II only
- C. III only
- D. I, II, and III

Question 95.

Leaving an airport, Attorney, who primarily practices criminal law, shared a cab with Doctor, a medical doctor. The cab was involved in a collision, and Doctor was seriously injured, while Attorney was only shaken up. Attorney accompanied Doctor to the hospital in the ambulance. Doctor believed that she was dying and asked Attorney to prepare a simple will for her. Attorney told Doctor, "I have never prepared a will, but hope that I can remember the basics from law school." Attorney then complied with Doctor's request. Doctor signed the will, and the two paramedics in the ambulance signed as witnesses.

Was it proper for Attorney to prepare the will?

- A. Yes, unless Attorney omitted some required formality that rendered the will invalid.
- B. Yes, because Attorney provided legal services that were reasonably necessary under the circumstances.
- C. No, unless Doctor waived Attorney's malpractice liability.
- D. No, because Attorney did not have the skill required for the representation.

Question 96.

Attorney has recently started her own law firm with four other lawyers as associates. The law firm has moved into offices in a new building which is owned by Bank. Attorney has borrowed heavily from Bank to finance her new law firm. In addition, Bank provides the law firm with accounting services through its computer.

At Bank's suggestion, an employee of Bank, who is not a lawyer, serves as a part-time office manager for the law firm without compensation from the firm. The duties of the office manager are to advise the firm generally on fees and time charges, program matters for the computer services, and consult with Attorney on accounting and billing practices to ensure solvency.

Is the arrangement with Bank proper?

- A. Yes, unless secrets or confidences of clients may be disclosed to Bank.
- B. Yes, because the office manager is paid by Bank.
- C. No, because a nonlawyer will be advising the law firm on fees and time charges.
- D. No, because Bank will be involved in the practice of law.

Question 97.

Attorney is representing Client, the plaintiff in a personal injury case, on a contingent fee basis. Client is without resources to pay for the expenses of the investigation and the medical examinations necessary to prepare for trial. Client asked Attorney to pay for these expenses. Attorney declined to advance the funds but offered to guarantee Client's promissory note to a local bank in order to secure the funds needed to cover those expenses. Client has agreed to reimburse Attorney in the event Attorney incurs liability on the guaranty.

Is Attorney subject to discipline if she guarantees Client's promissory note?

- A. Yes, because Attorney is lending her credit to Client.
- B. Yes, because Attorney is helping to finance litigation.
- C. No, because the funds will be used for trial preparation.
- D. No, because Attorney took the case on a contingent fee basis.

Question 98.

Attorney Alpha represents Defendant in an action for personal injuries. Alpha, pursuant to Defendant's authorization, made an offer of settlement to Attorney Beta, who represents Plaintiff. Beta has not responded to the offer, and Alpha is convinced that Beta has not communicated the offer to Plaintiff. State law authorizes a defendant to move for a settlement conference and to tender an offer of settlement. If such a motion is made and the offer is rejected by Plaintiff and the eventual judgment does not exceed the amount of the offer, Plaintiff must bear all costs of litigation, including reasonable fees, as determined by the court, for Defendant's counsel.

Alpha, with Defendant's consent, filed a motion requesting a settlement conference, tendered an offer to settle for \$25,000, and served copies of the motion and tender on Beta and on Plaintiff personally.

Is Alpha subject to discipline for serving Plaintiff with a copy of the motion and tender?

- A. Yes, unless service of copies of the motion and tender on Plaintiff were authorized by statute or rule of court.
- B. Yes, unless Alpha first informed Beta of Alpha's intention to serve copies of the motion and tender on Plaintiff.
- C. No, because the decision to accept or reject a settlement offer rests with the client.
- D. No, because the motion and tender became public documents when they were filed in court.

Question 99.

Attorney Alpha represents Wife in a marriage dissolution proceeding that involves bitterly contested issues of property division and child custody. Husband is represented by Attorney Beta. After one day of trial, Husband, through Beta, made a settlement offer. Because of Husband's intense dislike for Alpha, the proposed settlement requires that Alpha agree not to represent Wife in any subsequent proceeding, brought by either party, to modify or enforce the provisions of the decree. Wife wants to accept the offer, and Alpha believes that the settlement offer made by Husband is better than any award Wife would get if the case went to judgment.

Is it proper for Alpha to agree that Alpha will not represent Wife in any subsequent proceeding?

- A. Yes, because the restriction on Alpha is limited to subsequent proceedings in the same matter.
- B. Yes, if Alpha believes that it is in Wife's best interests to accept the proposed settlement.
- C. No, because the proposed settlement would restrict Alpha's right to represent Wife in the future.
- D. No, unless Alpha believes that Wife's interests can be adequately protected by another lawyer in the future.

Question 100.

Attorney represented Plaintiff, who was the plaintiff in litigation that was settled, with Plaintiff's approval, for \$25,000. Attorney received a check in that amount from Defendant, payable to Attorney's order. Attorney endorsed and deposited the check in Attorney's Clients' Trust Account. Attorney promptly notified Plaintiff and billed Plaintiff \$5,000 for legal fees. Plaintiff disputed the amount of the fee and wrote Attorney, stating, "I will agree to pay \$3,000 as a reasonable fee for the work you did, but I will not pay anything more than that."

It is proper for Attorney to:

- I. retain the entire \$25,000 in Attorney's Clients' Trust Account until the fee dispute is settled.
 - II. send Plaintiff \$20,000, transfer \$3,000 to Attorney's office account, and retain \$2,000 in Attorney's Clients' Trust Account until the dispute is settled.
 - III. send Plaintiff \$20,000 and transfer \$5,000 to Attorney's office account.
- A. I only
 - B. II only
 - C. I and II, but not III
 - D. I, II, and III

Question 101.

In Attorney's closing statement to the court in a bench trial, Attorney said,

"Your honor, I drive on the street in question every day and I know that a driver cannot see cars backing out of driveways as the one did in this case. I believe that my client was not negligent, and I ask you to so find."

Was Attorney's closing argument proper?

- A. Yes, if Attorney was speaking truthfully and not trying to deceive the court.
- B. Yes, because the rules of evidence are very liberal when the trial is before a judge without a jury.
- C. No, because Attorney asserted Attorney's personal knowledge of facts in issue.
- D. No, if there is no other evidence in the record about the facts asserted by Attorney.

Question 102.

Plaintiff, who is not a lawyer, is representing himself in small claims court in an action to recover his security deposit from his former landlord. Plaintiff told Attorney, a close friend who lived near him, about this case, but did not ask Attorney for any advice. Attorney said,

"I'll give you some free advice. It would help your case if the new tenants would testify that the apartment was in good shape when they moved in, and, contrary to the allegation of your former landlord, it was not, in fact, repainted for them."

Plaintiff followed Attorney's advice and won his case.

Is Attorney subject to discipline for assisting Plaintiff in preparing for his court appearance?

- A. Yes, because Attorney assisted Plaintiff in the practice of law.
- B. Yes, because Attorney offered unsolicited, in-person legal advice.
- C. No, because Plaintiff was representing himself in the proceedings.
- D. No, because Attorney was not compensated for his advice.

Question 103.

Attorney is defending Client, who has been indicted for burglary. During an interview, Client stated to Attorney that before he had consulted Attorney, Client had committed perjury while testifying before the grand jury that indicted him.

Attorney is subject to discipline if she:

- A. continues to represent Client.
- B. continues to represent Client unless Client admits his perjury.
- C. does not inform the authorities of the perjury.
- D. informs the authorities of the perjury.

Question 104.

Attorney is employed in the legal department of Electco, a public utility company, and represents that company in litigation. Electco has been sued by a consumer group that alleges Electco is guilty of various acts in violation of its charter. Through its general counsel, Electco has instructed Attorney not to negotiate a settlement but to go to trial under any circumstances since a precedent needs to be established. Attorney believes the case should be settled if possible.

Must Attorney withdraw as counsel in the case?

- A. Yes, if Electco is controlling Attorney's judgment in settling the case.
- B. Yes, because a lawyer should endeavor to avoid litigation.
- C. No, if Electco's defense can be supported by a good faith argument.
- D. No, because as an employee, Attorney is bound by the instructions of the general counsel.

Question 105.

Four years ago, Alpha was a judge in a state court of general jurisdiction and heard the civil case of Plaintiff against Defendant in which Plaintiff prevailed and secured a judgment for \$50,000 which was sustained on appeal. Since then Alpha has resigned from the bench and returned to private practice. Defendant has filed suit to enjoin enforcement of the judgment on the grounds of extrinsic fraud in its procurement. Plaintiff has now asked Alpha to represent Plaintiff in defending the suit to enjoin enforcement.

Is it proper for Alpha to accept the representation of Plaintiff in this matter?

- A. Yes, because Alpha would be upholding the decision of the court.
- B. Yes, if Alpha's conduct of the first trial will not be in issue.
- C. No, unless Alpha believes the present suit is brought in bad faith.
- D. No, because Alpha had acted in a judicial capacity on the merits of the original case.

Question 106.

Attorney Alpha represents Plaintiff in a personal injury action against Defendant, the defendant, who is represented by Attorney Beta. Alpha had heard that Defendant was anxious to settle the case and believed that Beta had not informed Defendant of a reasonable settlement offer made by Alpha. Alpha instructed Alpha's nonlawyer investigator, Inv, to tell Defendant about the settlement offer so Alpha could be sure that Beta does not force the case to trial merely to increase Beta's fee. Inv talked to Defendant as instructed.

Is Alpha subject to discipline?

- A. Yes, because Defendant was represented by counsel.
- B. Yes, because Alpha was assisting Inv in the unauthorized practice of law.
- C. No, because Inv is not a lawyer.
- D. No, if Alpha reasonably believed Beta was not keeping Defendant informed.

Question 107.

Attorney served two four-year terms as the governor of State immediately prior to reopening his law office in State. Attorney printed and mailed an announcement of his return to private practice to members of the bar, persons who had previously been his clients, and personal friends whom he had never represented. The printed announcement stated that Attorney had reopened his law office, gave his address and telephone number, and added that he had been governor of State for the past eight years.

Is Attorney subject to discipline for the announcement?

- A. Yes, because it was mailed to persons who had not been his clients.
- B. Yes, because his service as governor is unrelated to his ability as a lawyer.
- C. No, because the information in the announcement is true.
- D. No, because all of the information was already in the public domain.

Question 108.

Attorney placed Associate, recently admitted to the bar, in complete charge of the work of the paralegals in Attorney's office. That work consisted of searching titles to real property, an area in which Associate had no familiarity. Attorney instructed Associate to review the searches prepared by the paralegals, and thereafter to sign Attorney's name to the required certifications of title if Associate was satisfied that the search accurately reflected the condition of the title. This arrangement enabled Attorney to lower office operating expenses. Attorney told Associate that Associate should resolve any legal questions that might arise and not to bother Attorney because Attorney was too busy handling major litigation.

Is it proper for Attorney to assign Associate this responsibility?

- A. Yes, if the paralegals are experienced in searching titles.
- B. Yes, because Attorney is ultimately liable for the accuracy of the title searches.
- C. No, unless it enables Attorney to charge lower fees for title certification.
- D. No, because Attorney is not adequately supervising the work of Associate.

Question 109.

The law firm of Able & Baker agreed to represent Client in various business matters. The written retainer agreement called for Client to pay Able & Baker's hourly rates of \$180 per hour for a partner's time and \$110 per hour for an associate's time. The representation proceeded. Able & Baker submitted monthly bills, which Client paid promptly. After two years, Able & Baker decided to increase their hourly rates by \$10. Able & Baker thereafter billed Client at their new rates, but did not specifically inform Client of the increase. Client continued to pay monthly bills promptly.

Are Able & Baker subject to discipline?

- A. Yes, because the entire original fee agreement was required to be in writing.
- B. Yes, because Client did not consent to the increase.
- C. No, if the \$10 hourly increase is reasonable.
- D. No, because Client agreed in writing to pay Able & Baker's hourly rate.

Question 110.

During the closing argument to the jury in a civil tax fraud case, Attorney, representing the government, quoted a portion of Defendant's testimony and then said:

- I. "That testimony of Defendant directly contradicts the testimony of two witnesses for the government."
- II. "I ask you, who has the reason to lie, the two witnesses for the government or Defendant?"
- III. "I can truthfully say I have never seen a witness less worthy of belief."

Which of the above statements by Attorney would be proper?

- A. I only
- B. I and II, but not III
- C. II and III, but not I
- D. I, II, and III

Question 111.

Attorney's standard retainer contract in divorce cases provides for the payment of a fee of one-third of the amount of alimony or property settlement secured by Attorney. Attorney declines to represent clients who do not agree to this arrangement.

Is Attorney's standard retainer contract proper?

- A. Yes, because clients often prefer to pay a lawyer a fee based on the outcome of the case.
- B. Yes, if a fee of one-third is not excessive.
- C. No, because a lawyer may not acquire a proprietary interest in a cause of action.
- D. No, because the fee is contingent.

Question 112.

Attorney Alpha was retained by Client to represent Client in defense of an action brought against Client by Plaintiff. In order to obtain ample time for settlement negotiations, Alpha immediately requested and obtained from opposing counsel, Attorney Beta, a stipulation extending Client's time to answer the complaint until ten days after receipt of written demand from Beta. Four months later, no settlement had been reached, and on May 1, Beta wrote Alpha demanding that an answer be filed within ten days. When no answer was filed by May 15, Beta had a default judgment entered in favor of Plaintiff.

Alpha was away on a two-month vacation when Beta's letter was received in her office. When Alpha returned on June 15, she promptly moved to have the default set aside and her motion was granted.

Is Alpha subject to discipline?

- A. Yes, unless she makes restitution to Client for any loss sustained by Client.
- B. Yes, if she did not make provision for the handling of her pending cases while she was away.
- C. No, because the default judgment was set aside.
- D. No, unless she knew that Beta had demanded that an answer be filed within ten days.

Question 113.

Attorney represents Defendant, a prominent businessman, in a civil paternity suit brought by Plaintiff, who was formerly Defendant's employee. Blood tests did not exclude Defendant's paternity, and the case is being tried before a jury. The result turns on questions of fact. Defendant has steadfastly denied that he had sexual relations with Plaintiff, while Plaintiff has testified that they had sexual relations while on business trips and in her home. The trial has generated great public interest and is closely followed by the news media.

When Plaintiff completed her testimony, Attorney was interviewed by a newspaper reporter.

Which of the following statements, if believed by Attorney to be true, would be proper for Attorney to make?

- I. "As stated in our pleadings, we expect to prove that other men could be the father of Plaintiff's child."
 - II. "We have scientific medical tests proving that Defendant is sterile."
 - III. "We have been unable to locate several people whose testimony will be helpful to us, and I implore them to contact me immediately."
- A. II only
 - B. III only
 - C. I and III, but not II
 - D. I, II, and III

Question 114.

Attorney Alpha is a lawyer running for election as a state judge. Attorney Beta, who practices law in the same community as Alpha, has frequently observed Alpha's courtroom demeanor in litigated cases. Based on those experiences, Beta believes that Alpha does not have a proper judicial temperament. A local news reporter asked Beta how Beta would rate the candidates, and Beta responded in good faith, "I think Alpha is unsuited for the bench. Alpha lacks the proper judicial temperament and would make a very poor judge." A local newspaper with a wide circulation quoted Beta's remarks.

Were Beta's remarks proper?

- A. Yes, because Beta was not seeking judicial office.
- B. Yes, because Beta believed Alpha was unsuited for the bench.
- C. No, because the remarks serve to bring the judiciary into disrepute.
- D. No, because a lawyer should not publicly comment on candidates for judicial office.

Question 115.

Attorney has been representing Client in a matter in litigation. During protracted pretrial proceedings, Client complained bitterly about the time and expense involved and insisted that Attorney take steps to terminate the pretrial proceedings. Attorney believes that to do so would jeopardize Client's interests and has so informed Client. Attorney believes that the case cannot be adequately prepared for trial without further pretrial proceedings that will require an additional six months' delay and involve further expense. Client insists that Attorney forego any further pretrial proceedings and set the case for trial at the earliest available date. There are several other competent lawyers who are willing to undertake the representation.

Is it proper for Attorney to ask leave of the court to withdraw?

- A. Yes, because a lawyer may discontinue representation in a civil case at any time before trial.
- B. Yes, because Client's conduct makes it unreasonably difficult for Attorney to represent Client effectively and competently.
- C. No, because Attorney must follow Client's instructions.
- D. No, unless Client consents to Attorney's withdrawal.

Question 116.

The judicial district in which Judge sits has a rule that allows litigants two postponements as a matter of right. After that, a litigant who moves for a postponement must convince the presiding judge that a postponement is appropriate. Judge routinely grants additional postponements because, in her view,

"What harm is done if one of the litigants wants a postponement? The worst that can happen is that the parties have more time to negotiate and thus are more likely to settle."

Are Judge's actions proper?

- A. Yes, because Judge is exercising her judicial discretion.
- B. Yes, because a party objecting to a postponement can seek appellate review.
- C. No, because judges have no official obligation to encourage private settlements.
- D. No, because Judge should expedite the determination of matters before her.

Question 117.

Two years ago, Attorney was employed by State's Department of Transportation (DOT) to search title to several tracts of land. Attorney has not been employed by DOT during the last year. Recently, DOT instituted proceedings to condemn a tract, owned by Owner, for a new highway route. Owner asked Attorney to represent her in obtaining the highest amount of compensation for the condemnation. Owner's tract is one of the tracts on which Attorney searched title two years ago. Attorney remembers that Engineer, a DOT engineer, once drafted a confidential memorandum advising against running a new highway across Owner's land because of potential adverse environmental impact. Because of this information, Attorney believes it is possible to prevent the condemnation of Owner's land or to increase the settlement amount.

It is proper for Attorney to:

- A. represent Owner on the issue of damages only and not disclose the information that might prevent the condemnation.
- B. represent Owner and attempt to prevent the condemnation by using the information about the adverse environmental impact.
- C. refuse to represent Owner but disclose to Owner the information about the adverse environmental impact.
- D. refuse to represent Owner and not disclose the information about the adverse environmental impact.

Question 118.

Attorney, who had represented Testator for many years, prepared Testator's will and acted as one of the two subscribing witnesses to its execution. Testator's sister and brother were his sole heirs. The will left Testator's entire estate to his sister and nothing to his brother. Upon Testator's death two years later, Executor, the executor named in the will, asked Attorney to act as his lawyer in the probate of the will and the administration of the estate. At that time, Executor informed Attorney that Testator's brother would concede that the will was properly executed but intended to contest the will on the ground that he had been excluded because of fraud previously practiced on Testator by Testator's sister. The other subscribing witness to the will predeceased Testator, and Attorney will be called as a witness solely for the purpose of establishing the due execution of the will.

Is it proper for Attorney to accept the representation?

- A. Yes, if there is no contested issue of fact with respect to the formal execution of the will.
- B. Yes, because Executor has no beneficial interest under the will.
- C. No, unless Attorney's services are necessary to avoid substantial hardship to Executor.
- D. No, because Attorney will be called as a witness in the case.

Question 119.

Attorney has been retained to defend an adult charged with a sex offense involving a minor. Attorney believes that, in order to win the case, she must keep parents of minor children off the jury. Attorney instructed her investigator as follows:

"Visit the neighborhood of those prospective jurors on the panel with minor children. Ask the neighbors if they know of any kind of unusual sex activity of the prospective juror or any member of the family. This talk will get back to the prospective jurors, and they will think of excuses not to serve. But don't under any circumstances talk directly with any prospective juror or member of the family."

Is Attorney subject to discipline for so instructing her investigator?

- A. Yes, unless the prospective jurors investigated are, in fact, selected to serve on the jury in the case.
- B. Yes, because the investigation is intended to harass prospective jurors and members of their families.
- C. No, if the matters inquired into might be relevant to a prospective juror's qualifications to serve in the case.
- D. No, because no prospective juror was directly contacted.

Question 120.

Attorney prepared a will for Client and acted as one of the subscribing witnesses to Client's execution of the will. The will left all of Client's estate to Son, Client's son. Later, at Client's request, Attorney prepared a second will for Client and acted as one of the subscribing witnesses to Client's execution of the second will. The second will left one-half of Client's estate to Son and the other one-half to Housekeeper, Client's housekeeper. Client died and Housekeeper has offered the second will for probate.

If Son requests Attorney to represent him in opposing probate of the second will on the grounds of fraud and undue influence, is it proper for Attorney to do so?

- A. Yes, because after Client's death Attorney may represent Son.
- B. Yes, because Son is a beneficiary under both wills.
- C. No, because an attorney guarantees the validity of a will that he or she prepares.
- D. No, because Attorney would be taking a position adverse to a will she prepared and witnessed.

Question 121.

Attorney represented Plaintiff in an action against several defendants. The retainer agreement provided that Plaintiff would pay all costs and expenses of litigation and would, on demand, reimburse Attorney for any costs or expenses advanced by Attorney. After serving process on two defendants, Attorney had difficulty locating and serving the remaining defendants. Plaintiff approved the hiring of an investigator to locate and serve the defendants, and Attorney advanced the costs for the investigator. When Attorney asked Plaintiff for reimbursement, Plaintiff refused to pay. Attorney then told Plaintiff that Attorney would do no more work on the case until Attorney was reimbursed for the amount advanced.

Thereafter, one of the defendants filed a counterclaim that required a responsive pleading within thirty days. Because Attorney had not been paid, Attorney permitted the time to respond to the counterclaim to expire without filing a responsive pleading, and a default was entered on the counterclaim. Later, Plaintiff reimbursed Attorney for the costs Attorney had advanced, and Attorney was successful in having the default on the counterclaim set aside. The case was tried, and Plaintiff prevailed on Plaintiff's complaint, and the counterclaimant recovered nothing.

Is Attorney subject to discipline for not initially filing a responsive pleading to the counterclaim?

- A. Yes, because Attorney neglected Plaintiff's cause.
- B. Yes, unless Attorney had asked leave of court to withdraw.
- C. No, because Plaintiff breached the agreement to reimburse Attorney.
- D. No, because Plaintiff did not sustain any prejudice as a result of Attorney's action.

Question 122.

Judge, prior to her recent appointment to the federal court, had been an outspoken and effective opponent of the racial segregation policies of Gov, a foreign country. As part of its worldwide tour, Gov's national soccer team scheduled a soccer match with a team in this country. Several civil rights groups have applied to Judge for an order enjoining the playing of the proposed match. The matter is now pending. Only legal issues are presented. Judge, after painstaking consideration, has privately concluded that she cannot decide the legal questions without bias against the representatives of Gov's government. However, no one has made a motion to disqualify Judge.

Must Judge recuse herself in the pending matter?

- A. Yes, unless Judge believes she has greater expertise than other judges on the court in legal issues involving racial segregation.
- B. Yes, because Judge believes that she cannot be impartial.
- C. No, because the only issues presented for decision are legal questions.
- D. No, because none of the interested parties has moved to disqualify Judge.

Question 123.

Client telephoned Attorney, who had previously represented Client. Client described a problem on which he needed advice and made an appointment for the following week to discuss the matter with Attorney. Prior to the appointment, Attorney performed 5 hours of preliminary research on Client's problem. At the end of the appointment, Client agreed that Attorney should pursue the matter, agreed to a fee of \$100 per hour, and gave Attorney a check for \$5,000 to cover the 5 hours already worked and as an advance on further fees and expenses.

Attorney gave the check to the office bookkeeper with the directions to "Deposit the check in the Clients' Trust Account and immediately transfer \$3,000 to our General Office Account to cover the 5 hours of research already conducted plus the 25 additional hours I'll spend on it next week." At that time, Attorney reasonably believed that Attorney would spend 25 additional hours on the case.

The bookkeeper followed these directions. The next week, Attorney worked diligently on the matter for 23 hours. Reasonably believing that no significant work remained to be done on the matter, Attorney directed the bookkeeper to transfer \$200 from the General Office Account to the Clients' Trust Account. Attorney then called Client and made an appointment to discuss the status of the matter.

Is Attorney subject to discipline?

- A. Yes, because Attorney accepted legal fees in advance of performing the work.
- B. Yes, because Attorney transferred funds for unearned fees to the General Office Account.
- C. No, because Attorney transferred the \$200 owed to Client from the General Office Account to the Clients' Trust Account.
- D. No, because Attorney reasonably believed that Attorney would spend 25 additional hours on the case.

Question 124.

Candidate, a member of the bar, is a candidate for judicial office in an election. Candidate personally asked several of his friends to contribute \$1,000 each to kick off his campaign. After Candidate's friends made the contributions, Candidate, who was elated by the support, formed a committee to collect more contributions. Candidate then turned over the contributions to the committee and began campaigning in earnest.

Is Candidate subject to discipline?

- A. No, because Candidate turned over the funds to his committee.
- B. No, unless the committee includes lawyers likely to practice before Candidate.
- C. Yes, unless none of the original contributors was a lawyer.
- D. Yes, because Candidate personally solicited funds.

Question 125.

Judge Alpha has recently resigned from the state trial court bench. While she was a judge and supervising activity in cases pending before Judge Beta, who was on vacation, Alpha entered an administrative order changing the courtroom in which the case of Able v. Baker was to be tried. After trial and appeal, the case was remanded for a new trial. The plaintiff in Able v. Baker has now decided to change lawyers and has asked Alpha to try the case.

Will Alpha be subject to discipline if she tries this case on behalf of the plaintiff?

- A. Yes, because Alpha acted officially as a judge with respect to an aspect of the case.
- B. Yes, because Alpha would try the case before a judge of the court on which Alpha previously sat.
- C. No, because Alpha did not act as a judge with respect to a substantial matter or on the merits of the case.
- D. No, because any information that Alpha learned about the case while acting as a judge was a matter of public record.

Question 126.

Although licensed to practice law in State, Attorney Alpha does not practice law but works as an investment broker. Alpha could have elected inactive status as a member of the bar, but chose not to do so. Recently, in connection with a sale of worthless securities, Alpha made materially false representations to Victim, an investment customer. Victim sued Alpha for civil fraud, and a jury returned a verdict in Victim's favor. Alpha did not appeal.

Is Alpha subject to discipline?

- A. Yes, because Alpha was pursuing a non-legal occupation while an active member of the bar.
- B. Yes, because Alpha's conduct was fraudulent.
- C. No, because Alpha was not convicted of a crime.
- D. No, unless the standard of proof in State is the same in lawyer disciplinary cases and civil cases.

Question 127.

Client was an experienced oil and gas developer. Client asked Attorney for representation in a suit to establish Client's ownership of certain oil and gas royalties. Client did not have available the necessary funds to pay Attorney's reasonable hourly rate for undertaking the case. Client proposed instead to pay Attorney an amount in cash equal to 20% of the value of the proceeds received from the first year royalties Client might recover as a result of the suit. Attorney accepted the proposal and took the case.

Is Attorney subject to discipline?

- A. Yes, because the agreement gave Attorney a proprietary interest in Client's cause of action.
- B. Yes, unless the fee Attorney receives does not exceed that which Attorney would have received by charging a reasonable hourly rate.
- C. No, because Client rather than Attorney proposed the fee arrangement.
- D. No, because Attorney may contract with Client for a reasonable contingent fee.

Question 128.

Attorney has been hired by Client to represent Client in a civil commitment proceeding initiated by the state. Client is now undergoing psychiatric evaluation to determine whether civil commitment should be ordered. Client told Attorney that Client intends to commit suicide as soon as the tests are completed, and Attorney believes that Client will carry out this threat. Suicide and attempted suicide are crimes in the state.

Is it proper for Attorney to disclose Client's intentions to the authorities?

- A. Yes, because the information concerns a future crime and is not protected by the attorney-client evidentiary privilege.
- B. Yes, because the information concerns a future crime that is likely to result in Client's imminent death.
- C. No, unless Attorney knows that client has attempted suicide in the past.
- D. No, because disclosure would aid the state in its civil commitment case against Client.

Question 129.

Attorney is a long-time member of the state legislature and serves on the legislative budget committee that funds the local trial courts in the state. Attorney also maintains a part-time law practice as is permitted in the state. Able, an influential businessperson, who regularly makes significant contributions to Attorney's political campaigns, asked Attorney to help Able's uncle, Baker, who was involved in a bitter divorce. Attorney called the trial judge sitting on Baker's case, a personal friend of Attorney. In discussing some upcoming votes of the budget committee with the judge, Attorney mentioned that Baker was the type of solid citizen and influential person who could help garner support for the budget and thus ensure the economic health of the judicial system.

Is Attorney subject to discipline?

- A. Yes, if the trial judge ruled in Baker's favor.
- B. Yes, because Attorney used her public position to attempt to influence a tribunal in a pending matter.
- C. No, if Attorney called the trial judge in her capacity as a legislator and not as Baker's lawyer.
- D. No, because members of the state legislature are permitted by law to engage in part-time legal practice.

Question 130.

Attorney agreed to represent Able, a client, in bringing a lawsuit. Attorney and Able executed Attorney's preprinted retainer form that provides, in part:

"The client agrees to pay promptly Attorney's fees for services. In addition, the client and Attorney agree to release each other from any and all liability arising from the representation. The client agrees that Attorney need not return the client's file prior to receiving the client's executed release. Attorney agrees to return the client's file promptly upon receipt of all fees owed and of the client's executed release."

During their initial meeting, Attorney recommended that Able consult independent counsel before signing the retainer agreement, but Able chose not to do so. Attorney reasonably believes that his fee is fair and that the quality of his work will be competent.

Is Attorney's retainer agreement with Able proper?

- A. Yes, because Attorney furnished consideration by agreeing to release Able from liability and to return Able's files.
- B. Yes, because Attorney reasonably believes that his fee is fair and that the quality of his work will be competent.
- C. No, because Attorney is attempting to limit prospectively his liability for malpractice.
- D. No, because Attorney uses a preprinted form for all retainers.

Question 131.

Attorney represents Corp, a defendant in a product liability case. Engineer, a Corp employee nearing retirement, was likely to be a key witness in the case, as she had been in charge of all of Corp's product safety testing during the relevant period. Engineer had been very critical of Corp's safety testing procedures during that period and had repeatedly complained that the product at issue had not been adequately tested. Engineer's views were reduced to writing and were well known to many employees of Corp. Because of the early stage of the case, however, plaintiff's counsel was not yet aware of Engineer's existence or her views.

Aware of Engineer's views, Attorney approached Corp's officials and recommended that it offer Engineer a special package of severance benefits if she would retire immediately and move to the Bahamas. Attorney believed that if Engineer accepted this offer, she would be beyond the subpoena power of the court in which the suit against Corp was pending. Corp adopted Attorney's recommendation and made the offer. Engineer accepted it. Attorney did not disclose Engineer's identity to plaintiff's counsel.

Is Attorney subject to discipline?

- A. Yes, because Attorney caused Engineer to leave the jurisdiction of the court for the purpose of making her unavailable as a witness.
- B. Yes, because opposing counsel had not yet had a reasonable opportunity to learn of Engineer's views.
- C. No, because Engineer's views were reduced to writing and are well known to many other employees of Corp.
- D. No, unless there was a pending request for Engineer's testimony at the time the retirement offer was made to Engineer.

Question 132.

Attorney represented Client in a personal injury action against the driver of the car in which Client was injured while a passenger. The personal injury action was settled, and Attorney received a check in the amount of \$10,000 payable to Attorney. Attorney deposited the check in her Clients' Trust Account.

One day later, Attorney received a letter from Bank, which had heard of the settlement of the personal injury lawsuit. Bank informed Attorney that Client had failed to make his monthly mortgage payments for the last three months and demanded that Attorney immediately release \$900 of the proceeds of the settlement to Bank or Bank would institute mortgage foreclosure proceedings against Client. Attorney informed Client of Bank's letter. Client responded:

"I don't care what Bank does. The property is essentially worthless, so let Bank foreclose. If Bank wants 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 Bank.
- B. Yes, because Attorney knew that client was planning to force 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 Bank.
- D. No, because Bank has no established right to the specific proceeds of Client's personal injury judgment.

Question 133.

Three lawyers, Alpha, Beta, and Delta, formed a partnership to practice law with offices in both State First and State Second. Alpha is admitted to practice only in State First. Beta is admitted to practice only in State Second, and Delta is admitted to practice in both States First and Second. The following letterhead is on stationery used by their offices in both states:

Alpha, Beta, and Delta
Attorneys at Law

100 State Street
City, State First
(200) 555-5555

200 Bank Building
City, State Second
(202) 555-5555

Attorney Alpha Admitted
to practice only in State First

Attorney Beta Admitted
to practice only in State Second

Attorney Delta Admitted
to practice in States First and Second

Are the members of the partnership subject to discipline?

- A. No, because the letterhead states the jurisdictions in which each partner is admitted.
- B. Yes, because there is no jurisdiction in which both Alpha and Beta are admitted to practice.
- C. Yes, because the firm name used by each office contains the name of a lawyer not admitted to practice in that jurisdiction.
- D. Yes, unless Delta actively practices law in both States First and Second.

Question 134.

Attorney was engaged under a general retainer agreement to represent Corp, a corporation involved in the uranium industry. Under the agreement, Attorney handled all of Corp's legal work, which typically involved regulatory issues and litigation.

Corp told Attorney that a congressional committee was holding hearings concerning the extent of regulation in the copper industry. Because Corp was considering buying a copper mine during the next fiscal year, Corp wanted Attorney to testify that the industry was over-regulated. Attorney subsequently testified before the relevant congressional committee. Attorney registered his appearance under his own name and did not disclose that he was appearing on behalf of a client. Afterward, Attorney billed Corp for fees and expenses related to his testimony.

Was Attorney's conduct proper?

- A. Yes, because the duty of confidentiality prevented Attorney from disclosing the identity of his client.
- B. Yes, because the attorney-client evidentiary privilege prevented disclosure of the identity of his client in this context.
- C. No, because Attorney failed to disclose that he was appearing and testifying in a representative capacity.
- D. No, because Attorney accepted compensation in return for his testimony.

Question 135.

Judge is one of three trustees of a trust for the educational benefit of her grandchildren. The trust owns 5,000 shares of stock in Big Oil Company. The stock has been selling for the past year at \$10 per share. Big Oil is suing Oil Refining Company for breach of an oil refining agreement, and the case is assigned to Judge for trial. Judge believes that she can be fair and impartial.

Must Judge disqualify herself from the case?

- A. Yes, because the trust has more than a de minimus financial interest in Big Oil Company.
- B. Yes, unless the outcome of the lawsuit is unlikely to affect the value of the stock.
- C. No, unless Judge personally owns stock in either party to the litigation.
- D. No, because Judge believes she can remain impartial.

Question 136.

For many years, Attorney has served as outside counsel to Corp, a corporation. Shortly after a change in management, Attorney discovered what she reasonably believed to be a material misstatement in a document she had drafted that Attorney was about to file on Corp's behalf with a government agency. Attorney advised Corp's Board of Directors that filing the document was probably criminal. However, the Board disagreed that there was any material misstatement and directed Attorney to proceed with the filing. When Attorney indicated her intention to resign, Corp argued that a resignation at this time would send a signal that there was a problem with the filing. Corp urged Attorney to continue the representation, but offered to use in-house counsel to complete the work on the filing. Although she does not know for certain that filing the document is illegal, Attorney reasonably believes that it is. In any event, Attorney is personally uncomfortable with the representation and wants to withdraw.

May Attorney withdraw from her representation of Corp?

- A. Yes, because withdrawal is permitted but not required when a client insists on conduct which the lawyer reasonably believes, but does not know, will be criminal.
- B. Yes, because withdrawal is required when a client insists on conduct which the lawyer reasonably believes, but does not know, will be criminal.
- C. No, if Corp is correct that withdrawal would breach confidentiality by sending a signal that the filing is problematic.
- D. No, if Attorney's withdrawal as outside counsel might affect Corp's ability to complete the filing in a timely fashion.

Question 137.

Attorney represented Client on a minor personal injury claim against Driver, an uninsured motorist. Attorney represented Client on a 30% contingent fee basis. Pursuant to a negotiated settlement in the amount of \$2,000, Driver agreed to send Attorney a \$100 check, made payable to Attorney, in each of the ensuing twenty months.

Which of the following dispositions of each monthly check would be proper for Attorney?

- I. Deposit the check into her office account and immediately write Client a check for \$70 from that account.
 - II. Deposit the check into a separate account established for Client and immediately request Client to pay Attorney \$30.
 - III. Deposit the check into a trust account in which funds belonging to all Attorney's clients are deposited and immediately write Client a check for \$70 and herself a check for \$30 from that account.
- A. II only
 - B. III only
 - C. I and II, but not III
 - D. II and III, but not I

Question 138.

Attorney Alpha, a partner in the law firm of Alpha & Beta, was retained by Plaintiff, the plaintiff in a personal injury action against Deft. The jury rendered a verdict in favor of Deft, and Alpha filed an appeal on Plaintiff's behalf. Alpha reviewed the trial transcript and wrote the brief. The brief stated, "It is uncontroverted that Deft failed to signal before turning left into the intersection." In fact, Wit, a witness called by Deft, testified that Deft did signal before turning. Alpha was aware of this testimony, having read it while reviewing the trial transcript.

Three days before the appeal was scheduled to be argued in the state's intermediate appellate court, Alpha suffered a heart attack. Attorney Beta, one of Alpha's partners, agreed to argue the appeal. Beta knew nothing about the case and had no opportunity to confer with Alpha. In preparing for the argument, Beta read Alpha's brief thoroughly and read as much of the trial transcript as was possible in the limited time available, but did not read Wit's testimony. In oral argument, Beta stated to the court, "Your honors, as stated in our brief, it is uncontroverted that Deft failed to signal before turning left into the intersection." Beta assumed that Alpha's statement in the brief to that effect was correct.

Is Beta subject to discipline for making this statement during oral argument?

- A. Yes, because the statement was false.
- B. Yes, because Beta did not know whether or not the statement was true.
- C. No, because Beta did not know that the statement was false.
- D. No, because all Beta did was to truthfully recount the statement made by Alpha in the brief.

Question 139.

Judge needed to obtain a loan to be secured by a second mortgage on his house. Bank offered him a loan at a very favorable interest rate. The vice-president at Bank told Judge:

"Frankly, we normally don't give such a large loan when the security is a second mortgage, and your interest rate will be 2% less than we charge our other customers. But we know that your salary is inadequate, and we are giving you special consideration."

Is it proper for Judge to accept the loan?

- A. Yes, if Judge does not act in any case involving Bank.
- B. Yes, if Bank is not likely to be involved in litigation in the court on which Judge sits.
- C. No, unless the same terms are available to all judges in the state.
- D. No, because the amount of the loan and interest rate were not available to persons who were not judges.

Question 140.

Law Firm has 300 lawyers in 10 states. It has placed the supervision of all routine administrative and financial matters in the hands of Admin, a nonlawyer. Admin is paid a regular monthly salary and a year-end bonus of 1% of Law Firm's net income from fees. Organizationally, Admin reports to Attorney, who is the managing partner of Law Firm. Attorney deals with all issues related to Law Firm's supervision of the practice of law.

Is it proper for Attorney to participate in Law Firm's use of Admin's services in this fashion?

- A. Yes, unless Admin has access to client files.
- B. Yes, if Admin does not control the professional judgment of the lawyers in the firm.
- C. No, because Law Firm is sharing legal fees with a nonlawyer.
- D. No, because Law Firm is assisting a nonlawyer in the unauthorized practice of law.

Question 141.

Attorney experienced several instances when clients failed to pay their fees in a timely manner, but it was too late in the representation to withdraw without prejudicing the clients. To avoid a recurrence of this situation, Attorney has drafted a stipulation of consent to withdraw if fees are not paid according to the fee agreement. She proposes to have all clients sign the stipulation at the outset of the representation.

Is it proper for Attorney to use the stipulation to withdraw from representation whenever a client fails to pay fees?

- A. Yes, because a lawyer may withdraw when the financial burden of continuing the representation would be substantially greater than the parties anticipated at the time of the fee agreement.
- B. Yes, because the clients consented to the withdrawal in the stipulation.
- C. No, because a client's failure to pay fees when due may be insufficient in itself to justify withdrawal.
- D. No, unless clients are provided an opportunity to seek independent legal advice before signing the stipulation.

Question 142.

Attorney was retained by Defendant to represent him in a paternity suit. Aunt, Defendant's aunt, believed the suit was unfounded and motivated by malice. Aunt sent Attorney a check for \$1,000 and asked Attorney to apply it to the payment of Defendant's fee. Aunt told Attorney not to tell Defendant of the payment because "Defendant is too proud to accept gifts, but I know he really needs the money."

Is it proper for Attorney to accept Aunt's check?

- A. Yes, if Aunt does not attempt to influence Attorney's conduct of the case.
- B. Yes, if Attorney's charges to Defendant are reduced accordingly.
- C. No, because Aunt is attempting to finance litigation to which she is not a party.
- D. No, unless Attorney first informs Defendant and obtains Defendant's consent to retain the payment.

Question 143.

Attorney has a highly efficient staff of paraprofessional legal assistants, all of whom are graduates of recognized legal assistant educational programs. Recently, the statute of limitations ran against a claim of a client of Attorney's when a legal assistant negligently misplaced Client's file and suit was not filed within the time permitted by law.

Which of the following correctly states Attorney's professional responsibility?

- A. Attorney is subject to civil liability and is also subject to discipline on the theory of respondent superior.
- B. Attorney is subject to civil liability or is subject to discipline at Client's election.
- C. Attorney is subject to civil liability but is NOT subject to discipline unless Attorney failed to supervise the legal assistant adequately.
- D. Attorney is NOT subject to civil liability and is NOT subject to discipline if Attorney personally was not negligent.

Question 144.

Attorney represented Plaintiff, who sued Defendant for injuries Plaintiff sustained in a car accident. Prior to trial, Attorney interviewed Witness, who stated that she had observed Defendant drinking heavily hours before the accident. Unfortunately, on the eve of trial, Witness informed Attorney that Witness was ill and could not testify at trial. Attorney tried but could not obtain a continuance. As a result, Plaintiff's direct case rested solely on Plaintiff's testimony that Defendant was speeding and that Defendant's car crossed the center line and hit Plaintiff's car. Defendant testified that he was driving safely in compliance with all rules and that the accident was entirely Plaintiff's fault. On cross examination, Attorney asked Defendant, "Isn't it a fact that you were drinking prior to the accident?" Defendant answered that he had not consumed alcoholic beverages on the day of the accident. In summation to the jury, Attorney stated:

"Ladies and gentlemen of the jury, you and I know that Defendant lied when he stated that he had not consumed alcoholic beverages on the day of the accident. We know that he was impaired."

On which of the following grounds, if any, is Attorney subject to discipline?

- I. Attorney's question to Defendant implying that Defendant had consumed alcoholic beverages when Attorney knew that he could not offer evidence of Defendant drinking.
 - II. Attorney's statement to the jury asserting that Attorney knew that Defendant was drunk when no evidence in the record supported this allegation.
 - III. Attorney's statement asserting a personal belief that Defendant was drunk and lying.
- A. I and II, but not III
 - B. II and III, but not I
 - C. I, II, and III
 - D. Neither I, II, nor III

Question 145.

Pros, a prosecutor, was assigned to try a criminal case against Defendant, who was charged with robbery of a convenience store. Defendant denied any involvement, contending he was home watching television with his mother on the night in question. At the trial, Witness, a customer at the convenience store, testified that he had identified Defendant in a police line-up and provided other testimony connecting Defendant to the crime. In addition, Pros entered into evidence a poor-quality videotape of the robbery as recorded by the store surveillance camera. The jury convicted Defendant of the crime charged. Unknown to Defendant's court-appointed lawyer, Witness had first identified another person in the police line-up and selected Defendant only after encouragement by the detective. Pros was aware of these facts but did not notify Defendant's counsel who made no pretrial discovery request to obtain this information.

Is Pros subject to discipline?

- A. Yes, unless the jury could make its own identification of Defendant from the videotape.
- B. Yes, because this information tended to negate Defendant's guilt.
- C. No, because Defendant's counsel made no pretrial discovery request to obtain this information.
- D. No, unless it is likely that the jury would have acquitted Defendant had it known that Witness first identified someone else.

Question 146.

Attorney and Client entered into a written retainer and hourly fee agreement that required Client to pay \$5,000 in advance of any services rendered by Attorney and which required Attorney to return any portion of the \$5,000 that was not earned. The agreement further provided that Attorney would render monthly statements and withdraw her fees as billed. The agreement was silent as to whether the \$5,000 advance was to be deposited in Attorney's Clients' Trust Account or in a general account. Attorney deposited the entire fund in her Clients' Trust Account, which also contained the funds of other persons which had been entrusted to Attorney. Thereafter, Attorney rendered monthly progress reports and statements for services to Client after services were rendered, showing the balance of Client's fee advance. However, Attorney did not withdraw any of the \$5,000 advance until one year later when the matter was concluded to Client's complete satisfaction. At that time, Attorney had billed Client reasonable legal fees of \$4,500. Attorney wrote two checks on her Clients' Trust Account: one to herself for \$4,500, which she deposited in her general office account, and one for \$500 to Client.

Was Attorney's conduct proper?

- A. Yes, because Attorney deposited the funds in her Clients' Trust Account.
- B. Yes, because Attorney rendered periodic and accurate billings.
- C. No, because Attorney's failure to withdraw her fees as billed resulted in an impermissible commingling of her funds and Client's funds.
- D. No, because Attorney required an advanced payment against her fee.

Question 147.

Attorney Alpha, a member of the bar, placed a printed flyer in the booth of each artist exhibiting works at a county fair. The face of the flyer contained the following information:

"I, Alpha, am an attorney, with offices in 800 Bank Building, telephone (555) 555-5555. I have a J.D. degree from State Law School and an M.A. degree in fine arts from State University. My practice includes representing artists in negotiating contracts between artists and dealers and protecting artists' interests. You can find me in the van parked at the fair entrance."

All factual information on the face of the flyer was correct. There was a retainer agreement on the back of the flyer. At the entrance to the fair, Alpha parked a van with a sign that read "Alpha—Attorney at Law."

For which, if any, of the following is Alpha subject to discipline?

- I. Placing copies of the flyer in the booth of each artist.
 - II. Including a retainer agreement on the back of the flyer.
 - III. Parking the van with the sign on it at the fair entrance.
- A. III only
 - B. I and II, but not III
 - C. I, II, and III
 - D. Neither I, II, nor III

Question 148.

Attorneys Alpha and Beta had been political opponents. Alpha was elected to the state legislature after a bitter race in which Beta had managed the campaign of Alpha's opponent. Alpha had publicly blamed Beta at that time for what Alpha reasonably believed were illegal and unethical campaign practices and later had publicly objected to Beta's appointment as a judge.

Alpha represented Client in a widely publicized case tried in Judge Beta's court. At the conclusion of the trial, Beta ruled against Alpha's client. Alpha then held a press conference and said, "All that you reporters have to do is check your files and you will know what I think about Judge Beta's character and fitness."

Is Alpha subject to discipline for making this statement?

- A. Yes, if Alpha's statement might lessen confidence in the legal system.
- B. Yes, because Alpha's past accusations were unrelated to Beta's legal knowledge.
- C. No, because Alpha reasonably believed that the statements about Beta were true.
- D. No, if Beta had equal access to the press.

Question 149.

Judge, a judge in a criminal trial court of State, wishes to serve as guardian of her father, who has been declared incompetent. Accepting the responsibilities of the position would not interfere with the performance of Judge's official duties. Although the position in all likelihood would not involve contested litigation, it would be necessary for Judge to prepare and sign various pleadings, motions, and other papers and to appear in civil court on her father's behalf.

Would it be proper for Judge to undertake this guardianship?

- A. Yes, unless Judge receives compensation for her services as guardian.
- B. Yes, because the position involves a close family member and will not interfere with Judge's performance of her judicial duties.
- C. No, because the position will require Judge to appear in court.
- D. No, because the position will require Judge to prepare and sign pleadings, motions, and other papers.

Question 150.

Client hired Attorney Alpha to file a lawsuit against Client's former employer, Corp, for wrongful discharge. Alpha filed the suit in federal district court based upon three grounds. It turned out that a unanimous U.S. Supreme Court decision had recently eliminated the third ground as a theory available to plaintiffs in wrongful discharge cases. Attorney Beta, who represents Corp, filed a motion alleging that the complaint was based upon a theory (the third ground) that is no longer supported by existing law and cited the new decision. Within ten days after the filing of the complaint, Alpha withdrew the third ground and continued with the litigation.

Is Alpha subject to litigation sanction?

- A. Yes, unless Alpha discussed the adverse legal authority with Client before filing the complaint.
- B. Yes, because Alpha should have cited the U.S. Supreme Court decision in the complaint.
- C. No, because Alpha withdrew the third ground within ten days after filing the complaint.
- D. No, unless Alpha knew or should have known of the recent decision when the complaint was filed.

ANSWER KEY FOR MPRE SAMPLE QUESTIONS

The table below provides for each sample question the correct answer.

Question	Key
1	B
2	A
3	A
4	D
5	D
6	B
7	B
8	B
9	A
10	B
11	B
12	A
13	B
14	D
15	A
16	A
17	D
18	D
19	A
20	D
21	A
22	C
23	C
24	D
25	C
26	C
27	D
28	D
29	B
30	C
31	C
32	B
33	D
34	C
35	B
36	C
37	D
38	A
39	D
40	C
41	A
42	A
43	A
44	C
45	A
46	C
47	C
48	D
49	A
50	C

Question	Key
51	C
52	B
53	B
54	C
55	C
56	D
57	D
58	A
59	A
60	C
61	D
62	A
63	D
64	C
65	A
66	C
67	D
68	A
69	D
70	B
71	D
72	C
73	A
74	C
75	B
76	A
77	A
78	B
79	A
80	B
81	A
82	C
83	B
84	A
85	D
86	B
87	C
88	B
89	D
90	D
91	B
92	C
93	B
94	D
95	B
96	A
97	C
98	A
99	C
100	B

Question	Key
101	C
102	C
103	D
104	C
105	D
106	A
107	C
108	D
109	B
110	B
111	D
112	B
113	C
114	B
115	B
116	D
117	D
118	A
119	B
120	D
121	A
122	B
123	B
124	D
125	C
126	B
127	D
128	B
129	B
130	C
131	A
132	D
133	A
134	C
135	A
136	A
137	D
138	C
139	D
140	B
141	C
142	D
143	C
144	B
145	B
146	C
147	D
148	C
149	B
150	C

