PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 3, 2020
FINAL EXAMINATION TIME LIMIT: 3 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS:
This examination consists of 55 multiple-choice questions to be answered using EXAM4. By now you should have downloaded EXAM4 (https://law.pace.edu/academics/registrarbursar/exam-information) and taken a Practice Exam on it.

- Open Exam4 and, following the instructions, fill out the information screens (the "Exam Mode" of this exam is OPEN LAPTOP+NETWORK). .
- After you begin the exam (by pushing the "Begin Exam button), be sure you are toggled to the "Multiple Choice" answer screen using the buttons at the top.

Answer each multiple-choice question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple Choice screen. Confirm your answer and the question number on the left side of the screen. **If you want to delete an answer, follow EXAM4 instructions using the "unlock" button. You should have already experimented with this to familiarize yourself with the process on the Practice Exam.**

When you are finished with the examination (and are sure you're done), push the "End Exam" button at the top of the screen and submit your exam electronically using the screen that comes up next. I also recommend that you **save** a copy of your exam answers to your USB flash drive.

When you see the screen that says your submission is successful, exit from Exam4 (button at top of scree).

Model Rules: Assume that the locally applicable ethical rules are the Model Rules of Professional Conduct as currently promulgated by the American Bar Association. The word "proper" means permitted by the ethical rules or applicable law. "Ethical" means according to the ethical rules. **Do not assume that "informed consent" has been given unless the question says so.**

LIMITED PERMITTED MATERIAL: The **only** material you should refer to during the examination is your copy of your assigned *Standards, Rules and Statutes* book (Dzienkowski, or Gillers & Simon). You are on the honor system.

1 Lawyer has a client, C, threatened with legal action by his neighbor. The neighbor complains that C's stone wall encroaches 8 in. over the property line. And, in fact, it does. The neighbor demands that C remove and rebuild the wall. C does not want to and asks Lawyer to help him preserve the existing wall in its present (unlawful) location.

a. Lawyer should warn the neighbor that C is trying to appropriate a portion of the neighbor's land.

b. Lawyer's ethical duty is to determine what would be the fairest resolution under the circumstances and work toward achieving that outcome.

c. Lawyer should use his best efforts (within the law and ethics) to find a way to preserve the existing wall in its present location.

d. Lawyer should decline to represent C in this matter.

2 True or false; State courts have inherent power to regulate the legal profession and, therefore, statutes that impinge on that power are void.

a. True, because the courts' judicial power under the state constitution includes the power to determine who is allowed to appear before them.

b. False, because elected legislatures always have the final say on all matters of public policy, including the regulation of the various professions.

c. True, because lawyers, acting through their bar associations, have designated the courts to carry the profession's power of self-regulation.

d. False, because the discipline of lawyers is handled by administrative bodies known as disciplinary committees.

3 Lawyer has been accused by another attorney of violating the no-contact rule. A proceeding to determine the facts of the matter is being initiated.

a. Because the purpose of discipline is to protect the public, not punishment, Lawyer is not entitled to any particular due process (such as notice of the charges).

b. It would be customary to give Lawyer notice of the charges against him and an opportunity to be heard, but there is no requirement to do so.

c. Lawyer is entitled to due process of law, and that includes receiving notice of the charges against him and an opportunity to be heard.

d. Whether Lawyer should receive advance notice of the charges and an opportunity to be heard is something that varies from state to state.

4 Client recently contracted to sell a commercial building. Now he's received a much better offer and wants Lawyer to help him get out of the contract he's already made. Lawyer reads the contract and concludes it is solid and legally binding. But Client offers a very attractive fee.

a. Lawyer may properly examine the contract more closely to see if there is any legally plausible basis to argue that it's unenforceable.

b. Even though Client's intentions are lawful they are dishonorable, and it would not be ethical for Lawyer to assist Client in pursuing this endeavor.

c. Lawyer may not knowingly assist Client in breaking promises and therefore she should withdraw if she can't persuade Client to perform the contract he agreed to.

d. Both b. and c. above.

5 An insurance company has hired Lawyer to represent one of its insureds, a pesticide maker being sued for seven-figure damages. The plaintiff is in a hospital dying of respiratory failure (allegedly due to the insured's pesticide). The insurance company has authorized making a low but not unreasonable settlement offer. It has further suggested that the plaintiff might be "softened up" to accept the offer if Lawyer starts a series of lengthy and likely burdensome deathbed depositions. Lawyer believes the depositions are not strictly needed for discovery but concedes they might turn up information that's helpful to his client at trial.

a. Lawyer may not ethically do the depositions if he believes the burden they would place on the plaintiff outweighs any likely information benefit to his client.

b. Lawyer is ethically required to avoid taking any measures that would be burdensome to others, so Lawyer should not do the depositions.

c. Both of the above.

d. If the depositions have a substantial purpose other than to burden the plaintiff, Lawyer may ethically do them.

e. If the depositions would be genuinely unpleasant for the plaintiff, Lawyer would be ethically required to devise some other means to get the information.

6 When recently applying for a loan, Lawyer deposited $300,000 of client trust funds in his personal checking account, to beef up the apparent balance. The trust funds remained in the checking account for 2 days—while the credit review was done. Lawyer then promptly returned the money to the client trust account. None of the money was spent for personal purposes and there was never any intent to do so.

a. Lawyer has committed a technical violation of the ethical rules, but he need not be concerned about serious discipline.

b. By commingling funds, Lawyer has committed a serious disciplinary violation.

c. A lawyer is prohibited from stealing money or other client property entrusted with him, but Lawyer in this case has committed no obvious violation of the Rules.

d. The Rules require lawyers to keep client funds in bank accounts but do not get into granular detail about separate accounts, combined accounts, etc.

7 Lawyer recently hired an associate who just passed the bar and has no experience in any practice area. The associate has a former roommate who runs a small computer-game startup and wants to retain the associate as the company's counsel. Neither Lawyer nor the associate has any prior experience in the legal areas in which the company needs help. Is either Lawyer or the associate ethically permitted to take on this client?

a. Yes, both may do so if the requisite level of competence can be achieved by reasonable preparation.

b. Lawyer may do so, but the associate may not (except under the close supervision of Lawyer).

c. Neither may do so under the Model Rules unless they work with a lawyer who has adequate experience in the field.

d. This is not an ethical question but a malpractice issue, and there are no ethical constraints on the kinds of matters that lawyers are permitted to take on.

8 While studying up on computer-game law in the preceding question, Lawyer got a little behind on some of his other clients' matters. It has been found that he failed to provide timely responses to phone calls, emails and texts, and, in one case, he lost a motion that he should have won—due to poorly drafted motion papers that he'd thrown together at the last minute.

a. These failings may lead to malpractice liability but they are not the kind of thing that is covered by the ethical rules.

b. Disciplinary proceedings for incompetence are common, and Lawyer should be concerned.

c. Perhaps no professional shortcoming is more widely resented than procrastination, and lawyers have a duty to act with reasonable promptness on their client's matters.

d. Both b. and c. above.

9 About 6 months after Lawyer's new associate came on board, Lawyer received a complaint from another lawyer, a frequent opponent, that the associate had been communicating directly with the other lawyer's clients. The other lawyer said he was thinking about filing a complaint against both Lawyer and his associate under the no-contact rule. Lawyer has not himself had any contact whatsoever with any other lawyer's clients. Can Lawyer be subject to discipline based on his associate's actions?

a. Yes, lawyers that employ associates to help with their work are generally responsible for any disciplinary violations that the associates commit.

b. Yes, if Lawyer had direct supervisory authority over the associate and didn't make reasonable efforts to ensure that the associate conformed to the ethical rules.

c. Both of the above.

d. No, because lawyers are only responsible for their own violations of the ethical rules, not for violations of other lawyers.

e. No, as long as Lawyer did not actually know of the associate's violations at the time they were happening.

10 Lawyer was assigned to represent Defendant in a criminal prosecution. During the initial interview, Defendant notified Lawyer that he would not plead guilty under any circumstances and that he wanted to testify at trial. Now the prosecutor has made a very attractive plea offer and Lawyer is convinced that Defendant should accept it.

a. The final decision on whether Defendant should testify is up to Lawyer, but Defendant has the last word on whether to plead guilty.

b. Lawyer has the final word on both the question of whether Defendant will testify at trial and whether to accept the prosecutor's plea offer.

c. Defendant has the final word on both the question of whether Defendant will testify at trial and whether to accept the prosecutor's plea offer.

d. There is no set rule as to who decides whether Defendant will testify at trial or whether he will accept the prosecutor's plea offer.

11 Suppose again that Lawyer has been appointed to represent Defendant in a criminal case. The state will pay her fee. She needed to prepare a Memorandum of Law (a brief) in support of a motion to suppress certain evidence. Defendant gave Lawyer a list of several arguments he wanted in the Memorandum but Lawyer didn't think they were very persuasive. After consulting with her client and over his objection, Lawyer wrote a competent and professional Memorandum that didn't include any of the arguments her client wanted. The court denied the motion to suppress and Defendant was found guilty at trial.

a. Lawyer has failed to provide Defendant with the effective assistance of counsel that is guaranteed by the Constitution.

b. Lawyer technically violated her agency duty to follow her client's instructions, but this doesn't mean the client was denied "effective assistance of counsel."

c. Lawyer has not violated any agency duties to her client because, in reality, her client is the state and her role is to provide a maximally effective defense.

d. Lawyer should have put Defendant's proposed arguments into a Supplement Brief rather than just ignore them.

12 In a case with facts analogous to those in the preceding question, the U.S. Supreme Court majority thought that the more important interest served by the constitutional right to counsel is:

a. The duty of lawyers to communicate with their clients so that the latter understand why they are being punished.

b. The state's interest in assuring substantive justice in criminal cases, even at the expense of protecting the dignity and autonomy of accused.

c. Protecting the dignity and autonomy of accused even at the expense of the interest in assuring substantive justice in criminal cases.

d. None of the above. The majority of the Court did not prioritize any of these interests over the other.

13 Lawyer represents the plaintiff in a contract dispute. Her client told her she could settle for any amount greater than $250,000, but not for less. Lawyer got a call from the other side with an offer for "$240,000 right now, take it or leave it." Lawyer reasonably decided, in her professional judgment, that the offer was close enough, and that accepting would save her client a lot of litigation expense and avoid delay in receiving compensation. So she said okay. Under the usual rules of agency, the resulting settlement agreement is probably:

a. Binding on Lawyer's client because the client gave Lawyer actual authority to negotiate and agree to a settlement.

b. Binding on Lawyer's client because lawyers in civil cases are generally recognized to have the inherent authority to negotiate and agree to settlements.

c. Binding on Lawyer's client because, on these facts, Lawyer had apparent authority to negotiate and agree to a settlement on her client's behalf.

d. Not binding on Lawyer's client.

14 A company being sued in a commercial dispute in Federal court retained Lawyer to represent it. Lawyer told the company's officers not to worry because he would "handle everything." No one from the company heard anything mere until, a year or so later, the company received a notice of a default judgment against it. It turned out that Lawyer had not even filed an answer in the case. The company made a motion to vacate the default judgment. The Federal courts generally look *favorably* on such motions:

a. Whenever an unjust outcome would otherwise result.

b. When the default has been caused by inexcusable attorney neglect at the expense of an innocent client.

c. As long as the client used due diligence to supervise the attorney and the attorney covered up his neglect by lying to the client.

d. All the above.

e. None the above. Inexcusable attorney neglect has been held to *not* be an extraordinary circumstance that would justify vacating a default judgment.

15 An insurance company has contracted with Lawyer to represent its insured, C, in a personal injury case. A lawyer-client relationship was formed between Lawyer and C. Now C wants Lawyer to file a claim for injuries that C received in a *different* accident, which happened a year before. Would the Model Rules obligate Lawyer to pursue the additional claim?

a. Yes. Once there is a lawyer-client relationship, Lawyer is a fiduciary and, as such, must follow C's instructions.

b. No, Lawyer can decline to represent C on the other matter provided C gives informed consent and the limitation on scope is reasonable in the circumstances.

c. No, Lawyer's only real duty is to the insurance company, which is paying his fee.

d. Maybe. The Model Rules do not take a position on what Lawyer's duty is to C when it comes to the scope of representation.

16 Lawyer has been assigned to represent C who is charged with possession of explicit images of an underage person. While talking to C at the jail, Lawyer becomes convinced that C is not in control of his own impulses and poses a danger to society. Nonetheless, C wants out and has instructed Lawyer to get him a bail hearing as soon as possible. Lawyer has misgivings and would feel responsible if anybody was hurt by C after he was let out on bail.

a. Lawyer doesn't have an ethical duty to try and get C out on bail just because C tells him to.

b. This is one of those instances in which Lawyer's duty to serve the public interest would override his ethical duty to the client.

c. Lawyer should either use reasonable diligence to try to get C released on bail or else withdraw from the representation.

d. Lawyer should "go through the motions" of applying for bail but may do it in such a way that the bail application will not succeed.

17 Lawyer has a client, C, who objects vehemently to the camera-doorbell that his neighbor installed across the street. He's convinced that the neighbor is spying on him. C asks Lawyer what the penalty would be if he got a can of spray paint and painted over the camera lens. Lawyer advises C not to do it but it seems obvious to Lawyer that C plans to paint the lens if the penalty isn't too great.

a. Lawyer is ethically precluded from telling C the penalty if he thinks doing so might encourage C to commit a criminal act.

b. Lawyer is permitted to give his honest opinion about the actual consequences that appear likely to result from C's proposed course of action.

c. Lawyer has an ethical duty under Rule 1.6 to warn the neighbor if he believes C is planning to damage the camera based on Lawyer's advice.

d. Lawyer is permitted but not required to tell C how to commit his proposed crime with impunity if Lawyer thinks that's necessary to protect C's interests.

18 Lawyer represents a client in the sale of a small workshop in which the client ran a parts cleaning business for over 20 years. Nine year ago, Lawyer represented the client in a state-ordered environmental clean-up process in which tons of contaminated soil were removed from the rear of the property. At the closing, Lawyer realized that his client was about to deliver a certification stating that "the premises have never been the subject of a contamination remediation." Lawyer believes that, if the truth got out, it would have a substantial negative effect on the value of the property. If there is no other way to prevent injury to the buyer,

a. Lawyer would be required under Rule 1.6 to disclose the falsity of the client's certification

b. Lawyer would be permitted under Rule 1.6 to disclose the falsity of the client's certification.

c. Lawyer could be required under Rule 4.1, if read together with Rule 1.6, to disclose the falsity of the client's certification

d. Both b. and c. above.

19 Suppose in the preceding question that the potential of the false certification to cause harm to the buyer's interests would not, in Lawyer's judgment, be enough to justify revealing client confidences that are subject to Rule 1.6. Lawyer nonetheless wants to avoid assisting the client in committing fraud in violation of Rule 1.2. To avoid providing such assistance, Lawyer could exit the representation by a noisy withdrawal, which means:

a. Notifying the other side that the client plans to deliver a fraudulent certification.

b. Notifying the other side that he's withdrawing and disaffirming documents that he previously prepared for the deal.

c. Withdrawing discretely but dropping hints that his client may be about to commit fraud.

d. Withdrawing in a way that will not create any risk of negatively affecting the client's interests or goals.

20 Lawyer has two (unrelated) business clients, Weeblex and Klein. While representing Weeblex in a negotiation, Lawyer learned in a confidential communication that XYZ Corp. was on the verge of insolvency. XYZ owes the other client, Klein, a lot of money. Lawyer would like to give Klein a warning. The hitch is that, if word gets out about the insolvency, there's a chance Weeblex could lose a lot of money, too.

a. Lawyer cannot warn Klein without getting informed consent of Weeblex.

b. If Lawyer can get informed consent from Weeblex only by revealing confidential information about Klein, then Lawyer must also get informed consent of Klein.

c. Both of the above. Lawyer may be "in a box."

d. None of the above. The lawyer's duty to communicate with clients takes precedence over the duty of confidentiality.

21 One of Lawyer's former clients, R, has an 18-year old daughter, D, who was involved in a car crash. R has asked Lawyer represent D in the matter—for a fee to be paid by R. In the first interview, D tells Lawyer she was using cocaine the night of the crash and says she absolutely doesn't want her dad to know about it. Lawyer feels torn, however, because he feels a moral obligation to tell R. After all, R is paying his fee.

a. Lawyer should not feel torn. He has an ethical duty to communicate material information concerning the representation to R, who's paying his fee.

b. Even if R is not the client, Lawyer is ethically permitted, in his discretion, to disclose information about the representation to R.

c. In cases such as this, Lawyer's ethical responsibility and duty of confidentiality is to both D and R, though primarily to R, the person who's paying the fee.

d. Since D is the client in this matter, Lawyer owes an ethical duty to D to keep her information confidential, even from R.

22 Lawyer represented C1, a pro bono client who's charged with robbing the Acme Liquor Store. C1 denies the charge. Lawyer also represents C2, a full-pay client who's charged with an unrelated crime. During an interview at the jail, C2 told Lawyer that C1 had bragged around the jail that he robbed the Acme store. He asked if the information could maybe be used in exchange for a plea deal. Lawyer wonders if she would be ethically permitted, over C1's objection, to discuss with the prosecutor what C2 told her about C1? The answer is:

a. No.

b. Yes, because Lawyer did not get the information from C1 but from somebody else.

c. Yes, because C1 can't use the attorney-client privilege to cover up a crime.

d. Yes, as long as she first withdraws from representing C1.

23 In the preceding question:

a. Lawyer has no apparent reason to concerned about conflict of interest.

b. Due to C2's desire to use the info about C1 in a plea deal, Lawyer has a serious and probably irresolvable conflict of interest.

c. Due to C2's desire to use the info about C1 in a plea deal, Lawyer has a conflict of interest but it can be resolved by informed consent from both C1 and C2.

d. Both b. and c. above.

24 Lawyer has a client who's accused of attempted murder during a robbery. The client told Lawyer confidentially that he threw the gun, still partially loaded, behind a bench in the park, about two blocks from the scene. Lawyer went to the park and, sure enough, the gun was there. Fearing it might pose a public danger if it got into the wrong hands, Lawyer considered taking the gun back to her office for safekeeping—being careful not to disturb any fingerprints or other evidence on it.

a. As long as Lawyer doesn't move or disturb the gun, her knowledge of the location where she found it would be protected by the attorney-client privilege.

b. Lawyer's knowledge of where she found the gun would still be protected by the attorney-client privilege even if she took it back to her office for safekeeping.

c. Both of the above.

d. Lawyer *should* take possession of the gun. After all, she can't be forced to reveal that she has it or where she got it if doing so could implicate her client in the crime.

e. All of the above.

25 Lawyer has a client, C, who is under investigation for illegally selling stock based on inside information (a Federal offense). In a confidential consultation, C tells Lawyer that he made a phone call to an officer of the company (a source of inside information) minutes before selling the stock. C denies having received inside information but, Lawyer realizes, C's phone records showing that the call occurred could be strong evidence against him.

a. Lawyer should discreetly suggest to C that the relevant phone records be disposed of.

b. If C leaves the records with Lawyer and she doesn't voluntarily turn them over to the government, Lawyer would probably be guilty of concealing evidence.

c. It is always unethical (not to mention illegal) to destroy anything that might serve as evidence in a later proceeding.

d. Lawyer has no duty to inform the prosecution that the phone records exist and, in fact, has a duty of confidentiality not to (unless legally ordered to do so).

26 Lawyer represents a small bank accused of violating Federal money-laundering laws by failing to report certain transactions. Lawyer interviewed several lower-level employees identified by the bank as responsible for the transactions at issue. He told the employees that their conversations with him in the interviews were protected by his duty of confidentiality and the attorney-client privilege. He also said he was there as lawyer for the bank, not for the employees individually (as was true).

a. What Lawyer told the employees concerning confidentiality and the attorney-client privilege was literally true.

b. Though Lawyer may not have lied to the employees, some of the things he told them were misleading in a potentially important way.

c. Both of the above.

d. As the lawyer for the bank, Lawyer would probably be well advised to take on representation of the employees as well, to retain control over what they say.

27 Same facts as the preceding question. If the interview statements that the employees made to Lawyer *are* protected by the attorney-client privilege, it would most likely be because:

a. The court applies the co-called "control group" test to determine the scope of the privilege.

b. The court applies the co-called "subject-matter" test to determine the scope of the privilege.

c. Both of the above (the interview statements would probably be protected by the attorney-client privilege under *either* test).

d. None of the above.

28 Same facts as the preceding question. Suppose Lawyer concludes it would be in the bank's interest to cooperate with the prosecution and, so, he considers turning over the notes from his interviews with the employees, revealing what they said. The employees (who now have lawyers of their own) strongly object.

a. The employees would have the right to stop the disclosure because the interview statements were protected by the attorney-client privilege.

b. The employees would have the right to stop the disclosure because the interview statements were protected by Lawyer's duty of confidentiality.

c. Both of the above.

d. It does not appear likely on these facts that the employees' statements are protected by the attorney-client privilege or Lawyer's duty of confidentiality.

29 According to the Supreme Court in *Upjohn*, the important purpose(s) served by the attorney-client privilege is:

a. To promote full and frank communication between lawyers and their clients.

b. To facilitate the valuable efforts of lawyers to ensure that their clients comply with the law.

c. To facilitate the provision of legal advice to the lower-level corporate employees who put the corporation's policies into effect.

d. The Supreme Court pointed to all of the above and important purposes of the attorney-client privilege.

30 When the client is a corporation, the question of which communications the attorney-client privilege applies to is more

complicated than in the case of individual clients. The reason for this greater complexity is that:

a. Corporate clients, due to their size, can get involved in much greater wrongdoing having much more serious consequences than individual clients can.

b. Corporations cannot speak or listen directly but can do so only through their officers and employees.

c. Corporations are not entitled to confidentiality or the privilege as such but only their individual officers and employees are.

d. All of the above.

31 Lawyer represents a client in a lawsuit against D, who is represented by another lawyer, L2. Suppose, out of the blue, Lawyer received a phone call from D.

a. Lawyer is permitted to discuss the case with D as long as she first gives D a clear warning that L2 should be present for (or give consent to) the conversation.

b. Lawyer is permitted to talk with D without L2's consent but not about the case.

c. Lawyer is ethically permitted to talk with D about the case without L2's consent because it was D who initiated the call.

d. Lawyer is not permitted to talk with D at all and is ethically required to politely but firmly terminate the call without delay.

32 Suppose in the preceding question, D told Lawyer that he wanted to retain Lawyer to represent him in a totally unrelated matter. D is offering to pay a handsome fee. There should be no problem with Lawyer's taking on the representation of D as long as:

a. The matter is truly unrelated to the lawsuit against D.

b. D gives informed consent to being represented by a lawyer who's suing him.

c. Both of the above.

d. None of the above. There appears to be an irresolvable conflict of interest if Lawyer takes on the representation of D.

33 Lawyer represents a client, C, who complains he was the victim of an illegal "bait-and-switch" advertising scheme run by a supplier of tile. Lawyer called the tile supplier at the number listed online. She told the person who answered the phone that she represents C, that the advertisement constituted illegal trickery, and that there would be "serious consequences" if a prompt refund was not forthcoming. Lawyer did not know whether the tile supplier had a lawyer of its own and did not ask. As a matter of fact, however, like all larger retail concerns, the supplier did have counsel on retainer for cases just such as this.

a. Lawyer could not be considered to have violated the ethical rules as long as she had not actually been told that the supplier had counsel.

b. Lawyer might be deemed to have violated the ethical rules if she shut her eyes to the obvious.

c. Lawyer risks being deemed to in violation of the ethical rules if actual knowledge that the supplier has counsel may be inferred from the circumstances.

d. Both b. and c. above.

34 Lawyer represents a housing rights organization. Her client has reports that a certain large landlord is discriminating on the basis of race. Working under Lawyer's supervision, the client sent out individuals to pose as prospective renters in an effort to get evidence of discrimination. As Lawyer was well aware, the landlord had a lawyer of its own, and he now objects to the use in court of the evidence gathered by the "pretend" renters—on the ground that it was unethically obtained.

a. On the face of it, Lawyer seems to have committed at least two ethical violations—the non-contact rule and the prohibition on deceit and misrepresentation.

b. Some courts have been inclined to admit evidence obtained in this way despite the arguable ethical questions concerning how it was obtained.

c. Both of the above.

d. There is no apparent violation of the no-contact rule because the lawyer did not contact the represented party directly but did so through others.

e. There is nothing about the way the discrimination evidence was obtained that raises any ethical questions.

35 Lawyer represents a client, C, who believes himself to be under investigation for Medicare fraud, a Federal offense Today C called Lawyer and said that B, a person with whom he recently did Medicare-related business, has just called to say he wanted to "buy me lunch" and "talk some things over."

a. No worries. If B is a prosecution informant, any incriminating information that B gains in conversations with C would be excluded under the no-contact rule.

b. The use of B as a prosecution informant to elicit admissions from C could be a legitimate investigative technique authorized by law even if B uses deceit.

c. The use of B as a prosecution informant to elicit admissions from C would be permissible only if the prosecution did not prepare or in any way control B.

d. Under Federal statutes, Federal prosecutors are exempt from state disciplinary rules for actions done while carrying out their Federal duties.

36 Following a deposition hosted at Lawyer's firm, it was discovered that somebody from the other side had inadvertently thrown away a legal pad containing extensive notes revealing

the other side's trial strategy, confidential witness interviews, etc.

a. In order to diligently represent his client, Lawyer should promptly read and absorb the contents of the legal pad before he has to give it back.

b. Most courts would hold that the other side has waived the attorney-client privilege by being careless in letting the legal pad out of its possession.

c. Lawyer has ethical duty to notify the other side that he has the legal pad.

d. Lawyer risks being disqualified from participating in the case if he reads the contents of legal pad after becoming aware that it was not meant for his eyes.

e. Both c. and d. above.

37 The reputation for honesty and trustworthiness that lawyers have among the public:

a. Should by rights be very high because Rule 4.1 forbids lawyers to tell lies and requires them to avoid saying anything that may mislead others.

b. Is likely due partly to the fact that lawyers must advocate the client's cause diligently but also not reveal anything that might be harmful to the client.

c. Is due to the fact that lawyers are actually supposed to lie, except to their clients.

d. Results mostly from the profession's inability or unwillingness to police itself effectively and prevent violations of the ethical rules.

38 Lawyer is negotiating the settlement of a personal injury action in which she represents the defendant. Which of the following statements would probably violate Rule 4.1(a)?

a. "My client will not pay more than $350,000 to settle this case." In fact, the lawyer has been given settlement authority up to $400,000.

b. "My client's insurance has a policy limit of $350,000." In fact, as the lawyer knows well, the policy limit is $500,000.

c. "My client won't settle for anything above the limit on his insurance." In fact, the client has only said that he "hopes" he won't have to settle above the limit.

d. All of the above statements would probably violate Rule 4.1(a).

e. None of the statements would probably violate Rule 4.1(a).

39 Lawyer is being sued for fraud based on a false statement he made during a personal injury case in which he represented the plaintiff. In the lawsuit, Lawyer's client complains of a knee condition that was almost certainly caused by the accident, but it might have pre-existed it. Counsel for the opposing side directly asked Lawyer if there'd been any pre-

existing issues with the knee, and Lawyer said: "C'mon Frank, that's what discovery's for—but the answer is no." It is this "no" that was allegedly false. Lawyer has made a motion for dismissal of the fraud action.

a. Most courts would probably dismiss because Frank, as a trained professional, had no right to rely on an unsworn statement of fact made by opposing counsel.

b. Most courts would probably dismiss because the other side is supposed to use discovery, not the shortcut of just casually "asking."

c. Some courts (but not all) would hold Lawyer liable for a knowingly false statement of fact made to opposing counsel.

d. In the interest of protecting lawyer independence, the general rule is that lawyers are not civilly liable for the things they say in the course of litigation.

40 Suppose in the preceding question Lawyer knew for a fact that his client had a pre-existing knee issue (which was information relating to the representation). Of the *following* responses, which would be Lawyer's best response to his opponent's question in order to avoid liability for fraud?

a. Shrug and then say "I don't know."

b. "Hmm. I don't want to just answer that off the cuff."

c. "Not that I know of."

d. "Absolutely not."

41 Lawyer represents a client who is buying some farmland for development. The client has told Lawyer that a new freeway interchange is planned nearby and, based on the low price that is being discussed, the seller is obviously unaware of it. The prospect of the new interchange is clearly a material fact that affects the fair market value of the land. So far, both Lawyer and her client have been careful not to say or imply anything to the seller concerning the possibility of the interchange.

a. Lawyer should tell the seller about the interchange before the price is finalized as part of Lawyer's duty of good faith.

b. Lawyer should insist that her client inform the seller about the interchange before the price is finalized.

c. Lawyer must insist that her client make a full disclosure of all material facts in order to avoid violating the rule against assisting the client in fraud.

d. Lawyer would be violating her duty of confidentiality to her client if she disclosed the proposed interchange to the seller.

42 Last year, Lawyer represented the seller of an apartment building. Because Lawyer had represented a previous owner of the property back in the 1990s, he happened to have a copy of an old survey. He gave the copy to his present client saying "you might want to show this to your buyer." This client did

so. Due to some relatively recent construction, however, the survey was seriously misleading in certain respects. The buyer has sued Lawyer for negligent misrepresentation.

a. Lawyers are not liable, even to their clients, for unintentional misstatements they may make in the course of practicing law.

b. The rule of privity prevents Lawyer from being liable to non-clients for economic damages resulting from negligent misrepresentation.

c. Lawyer might well be held liable if the buyer foreseeably relied to his detriment on Lawyer's negligent misrepresentation.

d. Lawyers have always been held just as responsible as everyone else for negligent misrepresentation, even to non-clients.

43 Lawyer represents a commuter railroad being sued by C, a teenager who lost her mother in a horrific car-train crash. C alleges extreme emotional distress and asserts a number of psychological symptoms allegedly caused by the loss. C's lawyer wants to present C as a happy, successful college student who was devastated by the tragedy. However, Lawyer has uncovered evidence that C was long troubled before the crash and twice nearly died of drug overdoses. This evidence will be very embarrassing and humiliating to C, who has worked hard to put her drug issues behind her.

a. The ethical rules prohibit Lawyer from using the evidence of C's prior troubles if it will be humiliating and embarrassing to her.

b. The duty of diligent representation practically requires Lawyer to use this evidence if it will reduce the likelihood of a high damage award against his client.

c. The ethical rules don't really say anything one way or the other about using means that will embarrass or burden another person.

d. Though Lawyer may not use this evidence in court, he may inform C's lawyer that he has it in the hope that it prompts C to accept a smaller settlement.

44 Which of the following comes closest to describing the reality of things?

a. The object of the trial is to produce findings of fact that are as close to the actual truth as humanly possible.

b. The object of the trial to seek truth but the law also seeks to advance various values other than truth, and these other values sometimes take precedence.

c. The legal system seeks to root out any and all barriers to truth that could possibly lead to false findings of fact.

d. Although lawyers in litigation sometimes use means that distract from the truth or tend to mislead, it is a clear violation of the ethical rules to do so on purpose.

45 Lawyer put a witness, W, on the stand and W testified that he'd never been photographed with Defendant (a material fact in the case). Later on, before the trial was over, Lawyer ran across a photo, about 20 years old, that shows Defendant and W along with 7 other people at a racetrack. The photo means his client may now lose the case. Under the ethical rules:

a. Lawyer has no obligation to do anything about this as long as Lawyer thought W was telling the truth at the time W testified.

b. Lawyer has no obligation to do anything about this unless Lawyer knows that W *knew* he was telling a lie at the time he testified.

c. Lawyer is required to take reasonable remedial measures including, if necessary, disclosure to the court that the W's testimony was false.

d. Lawyer is permitted but not required to take reasonable remedial measures including, if necessary, disclosure to the court.

46 Listening to testimony coming in during a trial, Lawyer heard a witness called by the other side say he has a Ph.D. in chemistry, a material fact in the case. Lawyer knows this is false. What is more, Lawyer knows that the witness also knew the statement was false. The statement is, however, favorable to Lawyer's own client.

a. Lawyer may properly decide, in this instance, just to let the false statement stand, as he has no obligation to do anything about it.

b. Lawyer is required to take reasonable remedial measures including, if necessary, disclosure to the court that the statement is false.

c. Because of his duty of confidentiality to his client, Lawyer must not do anything that might reveal that the statement is false.

d. It is not up to lawyers to fact-check the testimony presented by other parties in the case, and Lawyer should not presume to do so.

47 Lawyer has a client in an employment discrimination case. The client has a very compelling story to tell but he's prone to forget key details and underplay important parts of the scenario. In order to meet her duty of competent and diligent representation:

a. Lawyer should carefully go over the client's testimony in advance, laying out for client exactly what to say and how to say it.

b. Lawyer should avoid talking with the client about the testimony as much as possible in order to not disturb the client's spontaneous credibility to the jury.

c. Lawyer should prepare the client to testify but avoid coaching the client or telling him what he specifically should say and not say.

d. Lawyer is permitted coach the client to provide the strongest story possible consistent with the facts when testifying in court.

48 A fight broke out during a recent backyard keg party. Lawyer represents the homeowner who is being sued by one of the guests, who needed 17 stitches. Lawyer has, of course, advised the client not to voluntarily speak about the case with anybody from the other side. In addition, Lawyer would like to make a similar request to as many of the other witnesses as possible. To which of the following persons (if any) is Lawyer ethically permitted to make a similar request?

a. The client's wife.

b. The client's daughter

c. The boyfriend of the client's daughter.

d. The employee of the client who was serving as bartender at the party.

e. Both a. and b. above.

49 During a sprawling conspiracy trial involving 37 corporate defendants, Lawyer called his client's CEO to testify. On cross-examination, the CEO was asked if he'd ever heard of "Project Stafford." He answered: "I'm not familiar with it." Later on, in private, Lawyer asked the CEO if he'd really hadn't heard of Project Stafford. The CEO replied "Oh sure, but I know very little about it, how it works, etc., and that's why I said I'm not *familiar* with it. I'm really not." There is a plausible legal argument that:

a. The CEO has given a literally true but evasive and misleading answer of the sort that the Supreme Court has held would not constitute perjury.

b. The CEO has given an unambiguously false answer but Lawyer's duty of confidentiality prevents Lawyer from revealing the falsehood in court.

c. The CEO has given an unambiguously false answer but the attorney-client privilege prevents Lawyer from revealing the falsehood in court.

d. Both b. and c. above.

e. None of the above. There's no plausible argument that the CEO hasn't committed perjury, and Lawyer has a duty to take reasonable remedial measures.

50 Lawyer represents a client, C, charged in a gun-running case. One of the allegations is that C bought handguns at a gun shop in Charlotte, N.C. and brought them north to sell on the street. During cross-examination, the prosecutor asked C: "Is it true you were in Charlottesville on November 5 and came back north on the 6th?" Knowing he'd been in Charlotte on that date (not in Charlottesville) and that questioner was mixing up the city names, C answered "No," which was literally true.

a. C's answer cannot be considered perjury because it is literally true.

b. With facts case similar to this, a court said a person can be held guilty of perjury if it was reasonable to expect the person to have understood what the question meant.

c. Some courts have, in effect, used a negligence mens rea for perjury, treating literally true answers as perjury if it was reasonably foreseeable that the answer would mislead.

d. Both b. and c. above.

51 Lawyer represents a client charged with murder in the shooting death of V. When V's body was found, he was clutching a small, metallic box containing lozenges. The client and V were on extremely bad terms, and each had threatened to kill the other. Privately, the client does not deny that he killed V, but he wants to go for an acquittal anyway. Lawyer thinks he can argue self-defense on the theory that the evidence can support a conclusion that the client saw the metal box, mistook it for a gun and shot V out of fear for his life.

a. Lawyer should be ashamed (and perhaps even disbarred) for even thinking of suggesting such a false version of what happened.

b. Once Lawyer determines the facts of the case, he is not ethically permitted to spin a narrative to the jury that doesn't comport with what actually happened.

c. Lawyer can ethically present his self-defense theory to the jury as long as he does no more than ask the jury to draw plausible inferences from the evidence.

d. If Lawyer presents his self-defense theory to the jury he would be ethically required to report his own false statements to the court.

52 In the preceding question suppose the prosecutor called a person who witnessed the shooting. The witness will testify that he saw Lawyer's client walk straight up to V and shoot him in cold blood. Privately, the client agrees that this was how it happened. But Lawyer's investigator has discovered that, two years earlier, the witness paid a substantial fine for falsifying records in a tax case.

a. It would be unethical for Lawyer to use the tax matter to impugn the credibility of the truthful witness.

b. Lawyer may ethically bring up the tax matter but may not urge the jury to conclude from it that the witness's testimony was anything but truthful.

c. Lawyer would probably be failing in his duty to his client if he did not use the tax matter to impeach the witness.

d. If Lawyer gives the jury reason to doubt the truthful witness, it would amount to the same thing as making a false statement to the court.

53 A corporate partner in Lawyer's law firm represents, Coe, a small restaurant entrepreneur. Coe offered the partner a stake in a new restaurant he wants to open. Coe designed and laid out all of the terms of the deal, including that the partner would

make a cash investment of $20,000. The partner thinks he's getting a great deal.

a. This situation presents no obvious conflict-of-interests problems as long as the corporate partner does not prepare the legal papers for the deal.

b. The corporate partner must make sure that the final terms are fair and reasonable for Coe, even it if means making the investment less of a great deal for himself.

c. The corporate partner needn't worry about making the final terms fair and reasonable for Coe since it was Coe himself who proposed those terms.

d. The corporate partner should say "No, thank you" because lawyers are ethically prohibited from entering into business transactions with their own clients.

54 Assume again that a corporate partner in Lawyer's law firm represents, Coe, a small restaurant entrepreneur. Another lawyer in the firm, Trobe, has been approached by a person who wants to sue Coe for injuries sustained when he nearly choked to death on a foreign object in some lasagna he was eating at Coe's restaurant. The personal injury case would provide a very attractive contingent fee.

a. This situation presents no obvious conflict-of-interest problem because the corporate partner and Trobe are two different lawyers.
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b. This situation presents no obvious conflict-of-interest problem as long as the corporate partner does not work on the lasagna case.

c. Any conflict-of-interest problem that this case might present could be handled by careful and effective screening between the corporate partner and Trobe.

d. None of the above.

55 Lawyer represents two defendants accused of joining together to rob a liquor store. The two are charged with first-degree murder in the death of the store's owner. The prosecutor offers to reduce the charges to second-degree murder if both defendants plead guilty. The younger defendant wants to take the deal but the older one does not because he has a prior record and, as a repeat offender, would face life in prison without parole. Both defendants want Lawyer to continue to represent them.

a. Lawyer has an irreconcilable conflict of interest.

b. Lawyer can continue representing the defendants as long as neither of them objects.

c. Lawyer can continue representing the defendants if they both give informed consent.

d. There is no real conflict of interest here because everybody wants the same thing, namely, the best outcome possible.