PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 17, 2021
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:
OPEN-BOOK EXAM: This is an open book exam to be taken via EXAM4 at home at the regularly scheduled time set by the Registrar's office. You may use any written materials or electronic devices you want in taking this exam, but you are not permitted to communicate in any way with any other person.

GENERAL INSTRUCTIONS:

This examination consists of 50 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. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

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

It is strongly recommended that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You may be unable to review your exam if you do not.

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.**

Note: "Both of the above" (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

1 Lawyer represents an elderly woman accused of a hit and run. The evidence shows a big dent and fibers matching the victim's clothing on the client's car. Lawyer wants to raise reasonable doubt about the client's guilt by showing that her nephew sometimes borrows the car without permission (she leaves a key in the garage). Most lawyers would probably agree it is proper for Lawyer to do this:

a. Only if Lawyer affirmatively believes his client is not guilty.

b. Only if Lawyer has a reasonable belief that his client is not guilty.

c. Whether or not Lawyer affirmatively believes that his client was driving the car at the time of the hit and run.

d. Only if Lawyer believes the nephew was driving the car at the time of the hit and run.

2 Suppose in the preceding question the prosecutor is aware that the nephew might have been driving the car at the time of the hit and run. Given the evidence, however, he thinks it would be easier to get a conviction against the owner of the car. The ethical rules would permit the prosecutor to pursue hit-and-run charges against the owner of the car:

a. As long as the charges are supported by probable cause.

b. Whether or not the prosecutor has a personal belief one way or the other concerning the owner's guilt.

c. Both of the above.

d. Only if the prosecutor actually believes the owner is in fact the guilty party.

e. If but only if the prosecutor reasonably believes that the owner is the guilty party.

3 The principal rulemaking authority for the rules governing the practice of law is:

a. The courts of the state in which the lawyer practices.

b. The state legislature.

c. Congress.

d. The state disciplinary boards.

4 The ABA Model Rules of Professional Conduct:

a. Are binding on lawyers and have the force of law because they have been adopted by the American Bar Association.

b. Are an influential guide but do not have the force of law except to the extent they have been adopted by the state as legally binding.

c. Have largely been superseded by the ABA's Model Code of Professional Responsibility.

d. Generally provide definite answers to most ethical questions.

5 Lawyer's client has been accused of a June 14 murder in Centerville. The client has a plane ticket and boarding passes showing that he flew from Centerville to Marksburg on June 12, returning on June 16. He has, however, confidentially admitted to Lawyer that he took a bus back to Centerville on June 14 and committed the murder. The client wants to get on the stand at trial and testify that he was "traveling out of town" on the day of the murder.

a. Lawyer has a duty of loyalty to assist the client in telling the story that the client wants to tell, even if Lawyer knows that story isn't true.

b. Lawyer's first duty is to attempt to dissuade the client from testifying falsely.

c. Lawyer's duty of confidentiality prevents Lawyer from informing on his own client, even if the client tells lies on the stand.

d. If Lawyer thinks the client is going to testify falsely, Lawyer should bring in another attorney to handle that part of the trial.

6 Suppose that Lawyer in the preceding question persuaded the client not to testify falsely and the client was then convicted of murder. The client now claims he was denied effective assistance of counsel because Lawyer refused to help him testify as he wanted. In order to succeed in this claim, the client must show:

a. Serious attorney error.

b. Prejudice.

c. A reasonable probability that the result would have been different if the lawyer had conducted himself properly.

d. All of the above.

7 Lawyer has a client who has told Lawyer that he is planning to commit a crime. Lawyer believes the client and, despite all her efforts, is unable to dissuade him. Under what circumstances is Lawyer ethically permitted to inform on her client:

a. Never.

b. Whenever Lawyer is reasonably certain she can prevent the crime by alerting the police to her client's intentions.

c. If the client intends to commit perjury or other criminal conduct relating to an adjudicatory proceeding.

d. Whenever the proposed crime is a serious one.

e. Only if the proposed crime would involve substantial risk of bodily injury or death.

8 Lawyer has a commercial client who wants Lawyer to help it collect on consumer debts that are barred by the statute of limitations. The client's plan is for Lawyer to sue the debtors in the expectation that some of them will be ignorant of the limitations defense and pay at least part of the barred debts in settlements. If any of the targeted debtors get lawyers of their own and assert the limitations defense, Lawyer would simply drop the case. Lawyer finds this whole plan to be morally repugnant.

a. Lawyer may not assist the client in this plan because collecting time-barred debts would not be a lawful objective of the client.

b. Though the client's objective may not be unlawful, Lawyer would be ethically permitted to secretly inform the debtors that they have a defense.

c. Lawyer would be ethically *required* to inform the debtors that they have a defense.

d. None of the above.

9 It is said that the principal purpose of lawyer discipline is to:

a. Punish lawyers who fail to comply with the rules of legal ethics.

b. Protect the public.

c. Provide lawyers with an administrative alternative to criminal prosecution.

d. Provide restitution and damages to clients and others who are financially injured by lawyers' misdeeds.

e. All of the above.

10 Lawyer received a check for $10,000 that was owed to his client in connection with a business transaction. Lawyer promptly deposited the check in the account he maintained for clients' funds. Later that week Lawyer received a past due notice for tuition from The Sidley School, where his son is an honor student. Expecting to receive payment of a large fee in a couple of days, Lawyer borrowed $6000 from the client account and used it to cover the tuition—promptly replacing $6000 two days later.

a. Lawyer has committed a very serious ethical violation and may be subject to disbarment.

b. Lawyer has committed a serious ethical violation but there is no risk of disbarment.

c. Inasmuch as no one lost anything, and Lawyer did not intend to steal the money, Lawyer's violation would be considered more technical than serious.

d. Since no one lost anything, Lawyer's conduct did not violate the ethical rules.

11 Lawyer has engaged in civil litigation for the past ten years. A litigation client asks Lawyer to draft her a simple will. This is something Lawyer has never done. She did not even take the course in Wills during law school.

a. Lawyer must advise the client to find a lawyer with expertise in Wills and Estates, and she should help her client find somebody.

b. Lawyer must advise her client to find another lawyer to draft the will, but she has no obligation to help her client find somebody who can do it.

c. Lawyer can properly accept the will drafting assignment if the needed competence can be achieved by reasonable preparation.

d. Lawyer can properly accept the will drafting assignment only if she associates herself with someone who has the needed expertise.

12 Lawyer's new client is accused of committing a crime. By skillful advocacy, Lawyer knows she can probably reduce the consequences the client will face and, perhaps, even get him off entirely. She thinks, however, that her advocacy may be constrained if she actually knows that her client is guilty as charged. Should Lawyer ask her client whether he did it or not?

a. No, it would not be ethically proper to do so.

b. Yes, the ethics rules specifically require her to do so.

c. According to an ABA opinion, Lawyer's duty of competent representation requires thorough inquiry into the facts, which would include what her client has done.

d. According to an ABA opinion, Lawyer's duty of competent representation requires her to avoid knowledge that would tie her hands in advocacy.

13 During a complex settlement negotiation, Lawyer saw the opposing lawyer commit several violations of the ethical rules. He is pondering whether he should report it to the disciplinary authorities. One valid reason why lawyers do not report ethical violations they see other lawyers commit is that:

a. They are prevented from doing so by Rule 1.6.

b. They feel empathy for the other lawyer and find snitching to be personally repugnant.

c. They know that, if they report others for violations, it is just a matter of time before others will report them.

d. Lawyers have no general duty to report violations *except* under Rule 5.1 when they are the partners or direct supervisors of the violators.

e. None of the above. There are no valid reasons for lawyers not to report ethical violations that they see other lawyers commit.

14 Lawyer is defending a client accused of a crime. The trial is coming up in a few days. The client wants to testify at trial, but

Lawyer thinks he wouldn't be a credible witness and that his testimony would increase the chances of conviction.

a. The decision of whether the client testifies or not should be determined in accordance with Lawyer's best professional judgment.

b. Because the client's testifying is not the *objective* of the representation but a *means* to achieve it, it is up to Lawyer to decide whether the client testifies.

c. It is good practice for lawyers to defer to the client's choice of whether to testify, but Lawyer is not ethically required to do so.

d. Lawyer is ethically required to go along with the client's choice to testify.

15 Client privately told Lawyer to negotiate a settlement on Client's behalf but stipulated that the settlement amount had to be at least $625,000. At a pre-trial conference, under pressure from the judge, Lawyer agreed to accept a settlement of $615,000, assuring the judge and the other side that his client would accept that amount. Client now wants to reject the settlement and insists that Lawyer did not have authority to bind Client to it. Under these facts (and the usual rules of agency), the $615,000 settlement is:

a. Binding on Client because, as an attorney, Lawyer had actual authority to settle for that amount.

b. Binding on Client because, as an agent, Lawyer had inherent authority to settle for that amount.

c. Binding on Client because Lawyer had apparent authority to settle for that amount.

d. Not binding on Client.

16 Client is accused of a nighttime robbery. Prior to trial, Lawyer told a newspaper reporter that Client was "near the scene of the crime but was not the one who committed it." The prosecutor wants to put the reporter on the stand to testify that Lawyer admitted his client was "near the scene of the crime." The reporter's testimony about Lawyer's admission would be:

a. Admissible as a vicarious admission that cannot be rebutted by the defense.

b. Admissible as a vicarious admission that *can* be rebutted by the defense.

c. Inadmissible because Lawyer made the admission in violation of his duty of confidentiality.

d. Inadmissible if the client did not authorize Lawyer to make the admission.

17 During the testimony of Lawyer's key expert witness at trial, Lawyer inadvertently omitted to ask a routine but crucial question concerning causation. Both opposing counsel and the judge realized that Lawyer was making a serious blunder and that, without testimony on that point, Lawyer's client would almost certainly lose the case:

a. Normally, both the judge and opposing counsel would be ethically expected to call the error discreetly to Lawyer's attention so he could rectify it.

b. Opposing counsel but not the judge would be ethically expected to call the error discreetly to Lawyer's attention so he could rectify it.

c. Opposing counsel would not normally be expected to call the error to Lawyer's attention, but neither is he permitted to exploit it.

d. Neither opposing counsel nor the judge would normally be expected to call the error to Lawyer's attention in time for him to rectify it.

18 In the lead-up to the trial of a major lawsuit, counsel for the defendant made a motion for summary judgment. The motion was served on Lawyer by electronic service, pursuant to court rules. Due to a glitch in Lawyer's email system, the motion went in his junk mailbox and Lawyer did not respond to it. As a result, the court rendered summary judgment against Lawyer's client, depriving the client of a large judgment that he almost certainly would otherwise have won. Based on the Federal cases we discussed in class:

a. Lawyer would probably be able to get the court to vacate the summary judgment so his client's case could be presented on the merits.

b. The court would probably vacate the summary judgment if persuaded that Lawyer's client had a strong chance of prevailing on the merits.

c. The court would probably vacate the summary judgment in the interest of fairness to the client because electronic glitches can happen to anyone.

d. It is not very likely that the court would vacate the summary judgment against Lawyer's client.

19 Lawyer has been assigned by an insurance company to represent its insured, who is the defendant in an automobile negligence case. When the insured tells Lawyer that his steering malfunctioned, Lawyer realizes that the insured might have a good products-liability claim against the manufacturer. However, Lawyer does not do products liability cases and does not want to.

a. Lawyer has no ethical duty to take on the products liability claim or to talk to the insured about it.

b. As fiduciary for the insured, Lawyer has a duty to pursue all of the insured's legal needs and cannot limit the representation to only some of them.

c. Lawyer represents only the insurance company that hired her and assigned the case to her, and the insured is not really even her client.

d. Lawyer has at the very least a duty to make the insured aware of the products liability claim.

20 While representing Client-1, Lawyer learned that Client-1 might be named in a certain threatened major patent lawsuit with multiple defendants. At the same time, she also learned

that another of her clients, Client-2, might likewise be named a defendant in the same lawsuit. Lawyer wants to warn Client-2 so that Client-2 can reduce its liability by stopping use of a certain patented product in its business. The problem is that Client-1 is trying to negotiate a pre-filing settlement and needs secrecy.

a. Lawyer cannot ethically warn Client-2 and probably is ethically required to withdraw from representing Client-2.

b. Lawyer cannot ethically warn Client-2 but there is no reason why Lawyer cannot continue representing Client-2.

c. Lawyer's fiduciary duty to warn Client-2 would ordinarily override the duty of confidentiality she has to Client-1.

d. Lawyer's duties to her two clients are in conflict, and she is ethically permitted to use her best judgment to decide which of her clients to prioritize.

21 Lawyer has represented Client for over 7 years. Recently, Lawyer received a very attractive offer to become a member of a prestigious law firm. To accept the offer, Lawyer would have to give up representing Client. May Lawyer ethically do so?

a. Yes, a lawyer is ethically permitted to terminate the representation of a client at any time for any reason or even for no reason.

b. Yes, Lawyer may terminate the representation if he can do so without a material adverse effect on Client's interests.

c. Yes, to avoid conflicts of interest a lawyer can and should terminate the representation of a client whenever it is in the lawyer's best interest to do so.

d. No, there is no ethical way in which Lawyer can unilaterally terminate the representation of a client who has done no wrong.

22 Lawyer has been retained by members of an activist group called Save Our Schools (SOS). Members of SOS oppose several Board of Education policies and they attend Board meetings to express their opposition en masse. The members ask Lawyer what the penalties would be if, "in their excitement," they erupt into chants and "disrupt" Board proceedings. Disrupting an official public meeting is an offense under state law.

a. Lawyer must consider terminating the lawyer-client relationship to avoid an appearance of impropriety.

b. Lawyer may advise SOS members as to the actual consequences of their proposed illegal activity.

c. Lawyer may not advise SOS members as to the legal consequences of their proposed illegal activity without running afoul of Rule 1.2(d).

d. According to the comments to the Model Rules, when a lawyer advises a client that has questionable plans, it's almost inevitably an endorsement of the client's activities.

23 Assume in the preceding question that members of SOS are arrested while disruptively chanting "No more masks!" at a Board of Education meeting. Lawyer now is acting as their defense attorney. She should:

a. Take whatever law and ethical measures are required to vindicate the SOS members' interests.

b. Provide vigorous and forceful advocacy to bring about a just outcome.

c. Bear in mind that, as an officer of the court, she must avoid tactics that might get her clients more than they deserve.

d. Follow her clients' instructions but only to the extent they are likely to advance the clients' interests.

24 Lawyer represents Client who is borrowing a substantial sum of money and using his small motor yacht as collateral. The day before the loan closing, Client informed Lawyer that the yacht's engine "threw a rod" and needs an expensive overhaul, significantly reducing its market value. Client asks Lawyer not to mention any of this to the lender because it would prevent Client from getting the much-needed money. Lawyer cannot dissuade Client from attempting the planned deception.

a. Lawyer cannot ethically continue to represent Client in getting the loan if doing so involves assisting the client in a fraud.

b. One way for Lawyer to avoid assisting in fraud is by a noisy withdrawal in which Lawyer disaffirms any documents previously prepared for the loan transaction.

c. Both of the above.

d. Lawyer's first duty is to keep Client's information confidential even if it means helping with a transaction in which Client is committing fraud.

25 Assume in the preceding question that Client's conduct constitutes fraud and Lawyer nonetheless continues with the representation. In these circumstances:

a. Rule 1.6(b) may require Lawyer to inform the prospective lender that the yacht's engine needs an overhaul.

b. Rule 4.1, read together with Rule 1.6(b), may require Lawyer to tell the prospective lender that the yacht's engine needs an overhaul.

c. Both of the above.

d. There is no reading of the Model Rules under which Lawyer would be required to tell the prospective lender that the yacht's engine needs an overhaul.

26 Lawyer represents Client who has a fairly severe mental disability. Client has been under the care of a paid caregiver, but certain of Client's family members fear that she and her caregiver may be developing a "relationship." Over Client's objection, the family members want to get a court order terminating the services of the caregiver. In representing Client, Lawyer should:

a. Seek whatever outcome that Lawyer determines would be in Client's best interest.

b. Seek to advance Client's wishes in the situation and not make her decisions for her, unless Client's choice is patently absurd or subjects her to undue risk.

c. Urge the court to reach an outcome that the court determines would be in Client's best interest.

d. Leave the choice of Client's future up to her family members unless their choice is patently absurd or subjects her to undue risk.

27 Lawyer represents Client who is charged with murder in a mugging gone wrong. During a private jailhouse interview, Client told Lawyer that the gun he used is traceable to him and that he threw it in a dumpster at a construction site near the scene of the crime. Lawyer went to the dumpster and saw that the gun was still there.

a. Lawyer's duty of confidentiality prevents him from voluntarily disclosing what Client told him about the location of gun.

b. The attorney-client privilege prevents Lawyer from voluntarily disclosing what Client told him about the location of gun.

c. Lawyer's duty of confidentiality prevents Lawyer from being forced to disclose what Client told him about the location of gun.

d. All of the above.

28 In the preceding question

a. It would not have been improper for Lawyer to take the gun to his office and keep it until the end of the trial because it is protected by the attorney-client privilege.

b. If Lawyer had taken the gun from the dumpster and turned it over to police, he could not be compelled to reveal where he found it.

c. If Lawyer didn't touch the gun but left it in the dumpster, his knowledge that he'd seen the gun there would be protected by the attorney-client privilege.

d. None of the above. The attorney-client privilege would only protect the communication by Client to Lawyer that he'd thrown the gun in a dumpster.

29 Client left Lawyer a voicemail. In it, Client said he'd taken his laptop in for repair and, when he got it back, it had child pornography on it. He claims the images weren't put there by him but says he's afraid to report it because he fears a sting and thinks the authorities might accuse him no matter what he does. It is unlawful to possess the images and, of course, also to destroy evidence that might be used in an official proceeding. As an *ethical* matter, Lawyer should:

a. Not return Client's call.

b. Advise Client to deep-erase (destroy) the images because it would not be in Client's interest to be caught with them in his possession.

c. Advise Client to deep-erase (destroy) the images since that wouldn't be any more unlawful than continuing to possess them,

d. Advise Client to promptly throw the laptop in the river.

e. None of the above.

30 Lawyer represents Acid Bath, Inc. (ABI), a company that provides cleaning services for industrial machinery. ABI has just learned that some of its employees have been illegally disposing of used acids. It has asked Lawyer to confidentially interview the employees in question and find out what happened. Lawyer did so, keeping detailed records of the interviews. Now the prosecutor wants Lawyer to turn over the interview records so she can use them in prosecuting ABI along with the responsible employees. Under the *Upjohn* rule:

a. The interview records appear to be protected from subpoena by the attorney-client privilege.

b. The attorney-client privilege would protect the interview records from subpoena only if Lawyer was also representing the employees.

c. The attorney-client privilege would protect the interview records from subpoena only if the employees interviewed were senior managers of ABI.

d. The attorney-client privilege would probably not protect the interview records from subpoena.

31 Same facts as in the preceding question. Assume again that the *Upjohn* rule applies:

a. ABI would have a right to prevent the interview records from being turned over to the prosecution.

b. The employees who were interviewed would have a right to prevent the interview records from being turned over to the prosecution.

c. Both of the above.

d. None of the above.

32 Same facts as in the preceding question. ABI asks Lawyer to turn the interview records over to the prosecution and Lawyer does so despite vigorous objections of the employees who were interviewed. Lawyer could potentially be held liable to the employees for disclosing their confidential information:

a. If Lawyer said or implied to the employees that he was acting as their attorney in doing the interviews.

b. If Lawyer told the employees that anything they said during the interviews would be kept confidential since he was acting as their attorney (even if he wasn't).

c. Both of the above.

d. None of the above. Lawyer would not be liable to the employees for disclosing their confidential information as long as he was only representing ABI.

33 Lawyer was in her office when her secretary informed her that a certain Ms. Davis was calling. Lawyer's client was currently in litigation against Ms. Davis, who was represented by another lawyer. Ms. Davis will not tell the secretary what she's calling about.

a. Lawyer cannot ethically take the call until she first finds out what Ms. Davis is calling about.

b. Lawyer can ethically speak with Ms. Davis as long as nothing is said about the ongoing litigation.

c. Lawyer can ethically speak with Ms. Davis about the case if Ms. Davis first assures Lawyer that she freely and willingly waives her right to have her own lawyer in on the call.

d. Lawyer can ethically speak with Ms. Davis about the case since it was Ms. Davis who initiated the communication and not the other way around.

e. More than one of the above is correct.

34 Lawyer works for a public interest law firm that brings cases to enforce civil rights laws. There are reports that a local real estate broker discriminates on the basis of race in showing houses for sale. To get evidence, Lawyer wants to send people of different racial backgrounds to pretend they are interested in buying a home—in order to see how the broker treats them. Lawyer knows that the broker is represented by another attorney. Lawyer's plan:

a. Seems to constitute at least a technical violation of the ethical rules because it involves dishonesty, deceit and misrepresentation.

b. Seems to constitute at least a technical violation of the ethical rules because it would run afoul of the no-contact rule.

c. Both of the above.

d. Would not be deemed to constitute a technical violation of the ethical rules as long as Lawyer does not personally contact or deceive the broker.

35 Client is a board member of the city transit authority. Client tells Lawyer he's heard that there's a Federal investigation of alleged kickbacks to board members. He claims to be innocent but says he's afraid that an undercover informant might trick him into saying something incriminating. Lawyer should advise Client that:

a. As long as he's represented by counsel, anything he says to an informant in Lawyer's absence would violate the no-contact rule and could not be used against him.

b. Federal prosecutors are not subject to state ethical rules, such as the no-contact rule.

c. Client should avoid talking to anybody, no matter how trusted, about the subject of the kickback investigation unless Lawyer is present.

d. Client shouldn't be too concerned because investigators working under the direction of Federal prosecutors are not permitted to use trickery or deceit.

36 Lawyer is suing Nemo, Inc. on behalf of Client. One morning she arrived at her office to find a packet of documents lying in front of the door. Inside the packet was a note signed "Out to Get Justice" and saying that the sender, an employee of Nemo, Inc., had copied the documents from Nemo, Inc.'s files.

a. If Lawyer looks at or uses the documents, she risks being disqualified from continuing to represent Client in the case.

b. Lawyer is free to examine the documents since the sender was anonymous.

c. Out of loyalty to her client, Lawyer should quickly read the documents before calling the lawyer who represents Nemo, Inc.

d. Nemo, Inc., due its carelessness, probably lost or implicitly waived any attorney-client privilege that it might have had with respect to the documents.

37 Three days after negotiating the basic terms of a settlement, Lawyer learned that his client had died. The client's death could seriously reduce that amount of damages recoverable at trial (as well as Lawyer's contingent fee). Therefore, Lawyer did not mention the client's death when, a week later, he and the other side met with the judge to finalize the settlement and get the court to approve it. When the lawyer on the other side found out about the death, he went ballistic and moved to vacate the settlement. Courts are generally:

a. Not willing to vacate a settlement just because a lawyer fails to volunteer important material information from the other side.

b. Willing to vacate a settlement when a lawyer withholds the fact that his client has died.

c. Both of the above.

d. Willing to vacate a settlement when a lawyer withholds essentially any relevant fact from the other side.

38 Representing Client in the purchase of a small business, Lawyer asked the seller's lawyer if all the permit renewals were up to date. Seller's lawyer assured Lawyer that they were, which was not true. As a result, Client incurred $100,000 of losses due to permitting delays. Under the usual rule:

a. A lawyer has no right to rely on factual statements made by his adversary, so seller's lawyer would not be liable in this case.

b. A lawyer can be held liable for losses that result from the other side's reasonable reliance on the lawyer's knowing false statements.

c. When Lawyer asked seller's lawyer a factual question, the latter had a duty to answer truthfully and there was no option to lie or remain silent.

d. Lawyers have an absolute privilege for any statements they make while representing clients and cannot be held liable for such statements.

39 Lawyer represents the defendant in a personal injury matter. He received an email from plaintiff's counsel asking the amount of the defendant's insurance. Lawyer immediately emailed back but, due to an inadvertent (and negligent) typo, the email stated the insurance amount was $400,000 instead of actual amount ($500,000). Relying the email, the plaintiff agreed to settle for $400,000 instead of a higher amount. Under the more modern cases:

a. Lawyer would not be liable to the plaintiff for the misstatement because the rule of privity would apply.

b. Lawyer could be held liable to the plaintiff for the misstatement if it was reasonably foreseeable that the plaintiff would rely on Lawyer's email.

c. Lawyer would not be liable to the plaintiff for the misstatement because Lawyer did not owe a fiduciary duty to either the plaintiff or her counsel.

d. More than one of the above.

40 Client was the seller in the sale of a residence. Acting on behalf of Client, Lawyer handed the buyer an engineer's report at the closing. Lawyer did so knowing that the report contained a false statement of material fact. Lawyer considered the engineer's error as a "windfall" for Client. Had the buyer known the truth, Client would have probably either lost the deal entirely or had to agree to a lower price. Lawyer is now being sued by the angry buyer. Following the logic of *Schatz v. Rosenberg*:

a. Lawyer would be held liable to the buyer for misrepresentation because lawyers impliedly vouch for the truth of documents that they deliver to others.

b. Lawyer's conduct assisted client fraud in violation of MR 1.2(d) and, based on that, Lawyer would be liable to buyer for the resulting loss.

c. Lawyer should not be held liable to the buyer for not disclosing the report's falsity because Lawyer owed no duty to the buyer but owed confidentiality to Client.

d. More than one of the above is correct.

41 Which of the following most accurately describes, as a practical matter, the current goal of our adversarial system of justice?

a. To achieve procedural justice insofar as reasonably possible.

b. To achieve actual substantive justice (substantive rectitude) as opposed to mere procedural justice.

c. To determine truth above all else.

d. To achieve a rewarding and remunerative lifestyle for attorneys at law.

42 During Client's trial for bank fraud, one of the prosecution witnesses on direct examination said something favorable to Client but which Lawyer (defense counsel) knew, based on confidential information, was false. Lawyer is not sure if the witness made the misstatement knowingly. Should Lawyer report the false statement to the court?

a. No, a lawyer is never permitted to report a false statement by a witness if doing so would reveal confidential information.

b. Yes, Lawyer has an ethical duty to take reasonable remedial measures including, if necessary, reporting the false testimony to the court.

c. No, Lawyer would not need to take reasonable remedial measures in this situation because the false statement was not made by a witness called by Lawyer.

d. No, a lawyer never has an ethical duty to report false testimony given by witnesses called by the adversary.

43 During a deposition, Lawyer's client was asked if he'd ever met with Mr. Vycek. The client replied, "My assistant met with Mr. Vycek a number of times and reported back to me." This was true but, in addition, the client had also personally met with Mr. Vycek on at least one occasion—a material fact in the case. The client's reply was:

a. Clearly perjury.

b. Probably not perjury under Supreme Court precedent.

c. Evasive and misleading.

d. Both b. and c. above.

44 During direct examination of a witness called by the other side, Lawyer heard the witness give testimony that was very unfavorable to Lawyer's client. Lawyer believes the testimony to be true. Now Lawyer is about to cross-examine the witness. Most attorneys in Lawyer's position would:

a. Probe and poke into the witness's story but be careful not to undermine the persuasiveness or credibility of the truthful testimony.

b. Probe and poke into the witness's story in an effort to undermine and discredit testimony that is unfavorable to attorney's own client.

c. Make an effort to bring out, insofar as possible, the truth, the whole truth and nothing but the truth.

d. Reinforce the truthful testimony and discredit any falsehoods that the witness may have uttered.

45 Client is accused of committing a random assault on the street. He has confidentially admitted the crime to Lawyer. Surveillance video shows the attacker wearing a striped shirt with a white collar. At Client's home police found a striped shirt nearly identical to the one in the video except without a white collar. Client tells Lawyer confidentially that he has *two* similar striped shirts, one with a white collar and another one without. Lawyer wants to argue, based on the shirt found by the police, that Client does not appear to be the person in the video. Most lawyers would probably agree that:

a. It would be improper for Lawyer to argue for this inference because Lawyer knows it is false.

b. It would be permissible for Lawyer to argue for this inference because it supported by the evidence.

c. It would violate the rule requiring candor to the tribunal for Lawyer to argue for this inference.

d. As an officer of the court Lawyer has a duty to inform the judge that Client has *two* similar striped shirts, one with a white collar and another one without.

46 Client is being sued for a serious intentional tort for which he is uninsured. Client has asked Lawyer to stretch out the litigation as much as possible with motions, requests for postponements, and other procedural tactics, hoping to stress the other side into a favorable settlement. This sort of delaying strategy:

a. Usually does not work because courts are loathe to allow lawyers extra time for filings, etc. unless a very good reason is shown.

b. Is an often-tolerated advocacy technique and is officially condoned as ethical.

c. Is improper because lawyers are not supposed to use procedural rules in order to win cases.

d. Is sometimes employed but is probably unethical under the Model Rules and comments.

47 During a deposition in a hotly contested case, Lawyer tried to get the opponent off his game by using several racial and

sexist epithets. The name-calling had the desired effect and helped Lawyer stop the other side from eliciting information from the witness, information that would have been harmful to Lawyer's client. In doing so, Lawyer saved his client a lot of money in settlement payments.

a. It is a tenet of the adversary system that "all's fair in love and war," so to speak, and Lawyer should be commended for his advocacy acumen.

b. As long as Lawyer does not use such language in court, no ethical problem is presented.

c. Racist and sexist language reflects badly on the legal system and Lawyer can be sanctioned for using such language in litigation, including in depositions.

d. As long as Lawyer used the epithets to obtain a legitimate advocacy objective, no ethical problem is presented.

48 Client-1 and Client-2 have retained Lawyer to represent them in a lawsuit for personal injuries they sustained when their car was negligently rammed by another driver. After spending considerable time and money preparing the case for trial, Lawyer learned that Client-1, who was driving, had been drinking before the accident. Therefore, Client-2's injuries might be partly attributable to the Client-1's intoxication.

a. There is no ethical reason why Lawyer cannot continue to represent both Client-1 and Client-2.

b. Lawyer may ethically continue representing both Client-1 and Client-2 as long as nobody raises an objection.

c. There would be no ethical reason why Lawyer could not continue representing both Client-1 and Client-2 if both give informed consent in writing.

d. Lawyer appears to have a non-waivable conflict of interest that prevents him from continuing to represent both Client-1 and Client-2.

49 Client does business deals in which Lawyer usually, but not always, provides the legal representation. Last week, Client came to the Lawyer with a sketch of terms for a small business deal in which Lawyer, Client and several others would take partial ownership interests. Client asked Lawyer to prepare the legal paperwork but not to act as Client's attorney for this particular deal. Nor will Client pay Lawyer a fee for doing the paperwork. Do these facts raise conflicts-of-interest problems?

a. No, because Lawyer is not representing Client in the deal.

b. No, because the terms of the deal were determined solely by Client, and Lawyer just accepted them as given.

c. No, because Client is not going to pay Lawyer a fee for doing the paperwork.

d. All of the above are true.

e. None of the above.

50 Lawyer represented Seller in the sale of a house. After the sale, the buyer complained that Seller had failed to perform certain agreed repairs. At the buyer's request, Lawyer helped Seller and the buyer work out a settlement of their differences, offering advice to both during the negotiations. The buyer paid Lawyer's entire fee for his help in the settlement. Does Lawyer have any reason for concern about malpractice liability if Seller later finds he is dissatisfied with the terms of the settlement?

a. No, because Lawyer was clearly no longer representing Seller in negotiating the settlement.

b. No, because Seller should have realized that any advice Lawyer offered him during the negotiations was purely gratuitous and not as his attorney.

c. No, because Seller hardly had a right to think that Lawyer was protecting Seller's interests when the buyer was the one paying the fee.

d. Yes.

<End of examination>