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Question: 1

Attorney Green represents Mr. Snow in the sale of his business as he prepares to retire. During negotiations, Attorney Green grows increasingly frustrated with Mr. Snow's affirmative statements to the buyer regarding the profitability of the business. Attorney Green believes the statements may go beyond mere "puffing." He advises Mr. Snow to avoid making these statements. He documents this in writing and places a copy in the legal file. The buyer subsequently files suit against both Attorney Green and Mr. Snow, alleging fraud. Attorney Green and Mr. Snow retain separate counsel. In response to discovery requests, Attorney Green advises his counsel that he would like to produce the written document, which will be favorable to this defense but potentially damaging to Mr. Snow. Is it proper for Attorney Green to release this information?

A. Yes, because the information was disclosed in a prior business transaction before the fraud claim was filed.
B. Yes, because Attorney Green is revealing the information to defend himself against a civil claim.
C. No, because no criminal charges have been brought against Attorney Green.
D. No, because the information will be prejudicial to Mr. Snow.

Answer: B

Explanation:
Model Rule allows an attorney to reveal confidential information to establish a defense on behalf of the lawyer in a controversy between the lawyer and the client. Because the buyer is suing both Mr. Snow and Attorney Green over the same real estate transaction, Attorney Green may reveal the information to defend himself. Model Rule 1.6 applies to both civil and criminal actions. Although the disclosure may be prejudicial to Mr. Snow, the rule still allows Attorney Green to defend himself against a legal action.

Question: 2

Mr. Abernathy issued in a landlord/tenant action in a Kansas trial court. Mr. Abernathy's cousin, Vincent, is an attorney practicing just across the state line in Missouri. Vincent is licensed to practice law in Missouri only. Mr. Abernathy calls Vincent and asks if he will represent him in the landlord/tenant trial. Which of the following best states Vincent's professional responsibility?

A. Vincent must decline his cousin's request because he is not licensed to practice law in Kansas.
B. Vincent should advise his cousin to tell the court he is representing himself without counsel. Vincent will then be allowed to attend the trial and argue the case for Mr. Abernathy because his name does not appear on the record.

C. Vincent may file a motion to appear pro hac vice and, if granted by the court, he may represent Mr. Abernathy in Kansas.
D. Vincent may represent this cousin, but only so long as he does so on a pro bono basis.

Answer: C

Explanation:
Model Rule 5.5 (a) states that a lav.yer may not practice law in a jurisdiction in violation of that jurisdiction's regulation of the legal profession. As a rule, Vincent could not practice in Kansas without a license (as required by Kansas regulations). Under limited circumstances, however, an attorney admitted to the bar in one state may seek to temporarily provide legal services in another state, through "admission pro hac vice" [Rule 5.5(c)].
In option B, Vincent could assist Mr. Abernathy in representing himself, but he cannot appear and represent him without being licensed in Kansas. Further, in option D, the unauthorized practice of law is not negated by waiver of legal fees.

Question: 3

Attorney Blue opened a client trust account at First National Bank. First National requires a SIO monthly service charge to manage the account. Attorney Blue deposits money from his firm's operating account into the client trust account each month to cover the service fee. He takes the added measure of depositing S20 monthly to ensure that the service fee never depletes the client funds held in the account. Attorney Blue keeps detailed records regarding deposits into the client account. Is Attorney Blue's management of the client trust account appropriate?

A. No, because he deposits more into the client trust account than is needed to cover the service fee.
B. No, because Attorney Blue is commingling the firm's money with the client trust funds.
C. Yes, because deposits from the firm's account are protecting the client funds.
D. Yes, because he maintains detailed records delineating his funds from the client funds.

Answer: A

Explanation:
Although Model Rule 1.15(a) prohibits the commingling of attorney and client funds, Model Rule 1.15 (b) provides that a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose. Attorney Blue acted inappropriately by depositing more of the firm's funds in the client trust account than were necessary to pay the service fee. While deposits from the firm's account may ultimately protect the clients funds, these deposits exceed that which is necessary to pay the service fee. The fact that Attorney Blue keeps detailed records is irrelevant if there is impermissible commingling of funds.

Question: 4

Attorney Stone practices for a large firm in St. Louis, Missouri. The firm has offices in St.

Louis and just across the state line in Collinsville, Illinois. Attorney Stone is licensed in Missouri only, but routinely works out of the Collinsville office, providing legal services in Illinois. An attorney at another St. Louis firm reports Attorney Stone to the Missouri Bar. Which of the following is the most accurate statement regarding disciplinary authority?

A. Missouri has disciplinary authority because this is where Attorney Stone is licensed.
B. Illinois has disciplinary authority because this is where the violation (practicing without a license) occurred.
C. Both Missouri and Illinois have jurisdiction because Attorney Stone is subject to disciplinary authority in both jurisdictions for the same conduct.
D. Illinois has no jurisdiction because Attorney Stone has no license within the state to discipline.

Answer: C

Explanation:
Model Rule 8.5(a) states that a lawyer admitted to practice in a jurisdiction is subject to the disciplinary authority of that jurisdiction, regardless of where the lawyer's conduct occurred. While option A is technically correct and option B is incorrect. the rule goes on to state, "A lawyer not admitted to practice in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." This would mean that both Missouri and Illinois have jurisdiction. This is supported by the rule that concludes with the statement, "A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct." Therefore, option C is the most accurate response.

Question: 5

An attorney represents Metropolis General Hospital in a medical malpractice lawsuit filed against it by the plaintiff, a former patient of the hospital. The suit is filed in a jurisdiction that requires the plaintiff to file an affidavit of merit, no later than 30 days after filing the petition, attesting that the care at issue has been reviewed by a qualified healthcare provider who determined it failed to meet a reasonable standard of care. No affidavit has been filed by the plaintiff and the deadline for filing expired 10 days ago. Is it appropriate for defense counsel to proceed with a motion for default judgment for failure to file the affidavit?

A. No, because defense counsel should notify the plaintiff’s counsel of his intent to file the motion before proceeding.
B. No, because doing so would constitute a failure to extend professional courtesy to another member of the bar.
C. Yes, because defense counsel is representing the best interest of the hospital.
D. Yes, because defense counsel has determined, after review by a qualified healthcare provider, that the hospital provided a reasonable standard of care.

Answer: C

Explanation:
In filing the motion for default judgment, defense counsel is acting in the best interest of his client: the hospital. This includes expediting litigation (Model Rule 3.2) and diligent and prompt representation (Model Rule 1.3).
While Model Rule 3.4 generally covers fairness to opposing counsel, nothing within the rule requires defense counsel, procedurally or as a professional courtesy, to warn opposing counsel of a default judgment. While an independent review by a qualified healthcare provider is appropriate, the reviewer's opinion would not form the basis for the motion for default judgment, so option D is not the best answer.

Question: 6

Attorney Booth was employed by the US Department of Homeland Security. During his tenure, a number of investigations into suspected cyberattacks were completed. Attorney Booth was not a part of the investigation team and had no knowledge of any facts or findings of the investigations. Last year, Attorney Booth left the Department and started his own private practice. He was recently contacted by a potential client who had been charged with several causes of action, apparently disclosed in one of the Department's cybersecurity investigations. Before Attorney Booth agrees to represent the client, he contacts the Department and obtains its written consent to the representation. May Attorney Booth represent the client?

A. Yes, because he was neither a part of nor had any knowledge of the facts of the Department of Homeland Security's investigation.
B. Yes, because the Department of Homeland Security consented to the representation.
C. No, because he was employed by the Department of Homeland Security during the time of the investigation.
D. No, because the actions he is being asked to defend arose directly from the Department of Homeland Security's investigation.

Answer: A

Explanation:
Model Rule 1.11 (a)(2) states that a lav.yer who has formerly served as a public officer or employee of the government shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. The purpose of Rule 1.11 is to prevent former government employees from unfairly exploiting knowledge they obtained by virtue of their employment. Attorney Booth had nothing to do with the Department of Homeland Security's investigation and thus had no knowledge to exploit, Although the Department consented, it was unnecessary. Even though Attorney Booth was employed by the department during the time of the investigation, and even though the facts from the investigation gave rise to the current causes of action, he did not participate "personally or substantially" in the investigation and had no knowledge of the facts from the investigation.

Question: 7

Attorney Tillman is retained by Mr. Walton to defend him in an action for breach of contract. Mr. Walton is 82 years old, widowed, and has no family other than a niece with whom he rarely communicates. As Attorney Tillman prepares his defense, he becomes concerned about Mr. Walton's cognition and capacity to make decisions for himself. In fact, Attorney Tillman suspects the breach of contract arose from Mr. Walton's failure to understand the terms of the agreement. Attorney Tillman contacts the niece, who informs him she is in poor health and unable to assist with the care of her uncle. As there are no other known family members, Attorney Tillman files a petition to have a public administrator appointed as Mr. Walton's guardian. Mr. Walton is quite angry, accusing Attorney Tillman of taking unauthorized action and disclosing information that is protected by the attorney-client privilege. Is Mr. Walton likely to prevail in his objections to Attorney Tillman's actions?

A. Yes, because Mr. Walton did not authorize Attorney Tillman to act on his behalf other than to defend him in the breach of contract action.
B. Yes, because Attorney Tillman released confidential financial and health information without his consent.
C. No, because Attorney Tillman sought the consent of Mr. Walton's only relative before proceeding with a guardianship action.
D. No, because Attorney Tillman reasonably believed that Mr. Walton could not act in his own best interest.

Answer: D

Explanation:
Model Rule 1.14(b) provides that when a lav.yer reasonably believes that a client has diminished capacity or is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian. Further, when taking this action, the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Question: 8

Attorney McGinnis is a partner in a midsize law firm. She specializes in bankruptcy law. She agrees to represent Beta Inc„ one of the firm's corporate clients, in bankruptcy proceedings. Shortly thereafter, another case she is handling for the firm is set for trial. The trial would be more lucrative for the firm, so she transfers Beta's case to an associate attorney in the firm. The associate disputes the new assignment based on his unfamiliarity with bankruptcy law. He argues that he lacks reasonable time to gain sufficient legal competence to handle Beta's case without assistance from Attorney McGinnis. Attorney McGinnis believes the associate can handle the assignment independently. Did Attorney McGinnis properly handle this case?

A. Yes, because the associate is licensed to practice any type of law.
B. Yes, Attorney McGinnis has the right to withdraw from Beta's case because handling it would cause her financial hardship.
C. No, because Attorney McGinnis did not seek Beta's consent to transfer the case to the associate.
D. No, because Attorney McGinnis was aware of the associate's lack of competence to handle the case, but failed to provide oversight to protect Beta's interests.

Answer: D

Explanation:
Model Rule 1.1 requires an attorney to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Further, Model Rule 1.16 (d) states that. upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests. Attorney McGinnis failed to oversee the associate's work as would have been reasonably practicable to protect Beta's interests. Licensure does not necessarily equate to competence in all areas of the law. The facts do not indicate a financial hardship in retaining the case, and even if this were the case, financial hardship is not by itself a justifiable reason to withdraw representation. Finally, Beta's consent may have been required by the firm, but the issue here is competence to handle the case.

Question: 9

An attorney and client enter into an agreement as follows:
• The client pays a retainer fee of $2,500 in advance of services being provided
• The attorney agrees to return any portion of the retainer remaining after completion of services
• The attorney provides the client with monthly statements outlining fees for the work performed
The $2,500 retainer fee is deposited in the attorney's client trust account. The attorney sends monthly statements to the client, outlining her total fees of $2,000, but does not withdraw any of the $2,500 retainer fees until the case is concluded. At that time, she writes two checks on the client trust account: one to herself for $2,000 and one to the client for $500. Was the attorney's conduct proper?

A. Yes, because the attorney deposited the retainer fee in her client trust account
B. Yes, because the attorney provided the client with accurate monthly billing statements.
C. No, because the attorney's failure to withdraw her fees as they were billed resulted in improper commingling of her funds with the client's funds.
D. No, because the attorney requested an advanced payment against her fees.

Answer: C

Explanation:
Model Rule 1.15 requires an attorney to hold property of clients separate from the attorneys own property. Once the funds were identified as belonging to the attorney (in the form of fees earned), they should have been removed from the client account.
It is permissible to require an advanced payment, so long as those fees are kept in the client trust account. Here, although the billing statements were accurate, the funds remained impermissibly

commingled in the client account.

Question: 10

Attorney Salvador represents five family members who filed a claim against Chicago General Hospital for the alleged wrongful death of their family member who was treated at the hospital. The case is settled at mediation. On late Friday afternoon prior to a long holiday weekend, defense counsel had five settlement checks delivered to Attorney Salvador, one for each of the attorney's clients. Attorney Salvador deposits the checks into a client trust account. On Tuesday morning after the holiday weekend, he contacts the client spokesperson for the family and advises that the checks were deposited the week prior and were ready for the clients. The clients pick up the checks the following day. Was Attorney Salvador's conduct proper?

A. No, because he should have notified his clients on Friday when he received the checks.
B. No, because the funds should have been kept separate from the client trust account.
C. Yes, because the clients did not object to the delayed delivery.
D. Yes, because the clients could not have done anything with the funds over the holiday weekend due to bank closures.

Answer: A

Explanation:
Model Rule 1.15(d) states that a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. Attorney Salvador received the funds on Friday and had an obligation under the rule to promptly notify his clients that the checks were available and to deliver them if the clients so requested. Waiting over the weekend without notifying the clients is not "prompt" delivery. The fact that banks may be closed or that the clients did not object does not relieve Attorney Salvador of his responsibility to notify them. Depositing the checks in the client trust account is appropriate (as opposed to keeping them separate), but not until the clients have been notified and agree to the deposit.

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