

Description of the Examination

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

The law governing the conduct of lawyers is based on the disciplinary rules of professional conduct currently articulated in the American Bar Association (ABA) Model Rules of Professional Conduct and the ABA Model Code of Judicial Conduct (2007 as amended), as well as on controlling constitutional decisions and generally accepted principles established in leading federal and state cases and in procedural and evidentiary rules.

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

The MPRE consists of a total of 60 multiple-choice test questions. There are 50 scored questions and 10 non-scored pretest questions. Since the pretest questions are indistinguishable from those that are scored, it is important that examinees answer all of the questions on the examination. These questions are followed by 10 Test Center Review questions that request the examinee's reactions to the testing conditions.

The examination is two hours and five minutes in length.

Test questions covering judicial ethics measure applications of the ABA Model Code of Judicial Conduct (2007 as amended) (CJC). Other questions will deal with discipline of lawyers by state disciplinary authorities; in these questions, the correct answer will be governed by the current ABA Model Rules of Professional Conduct (MRPC). The remaining questions, outside the disciplinary context, are designed to measure an understanding of the generally accepted rules, principles, and common law regulating the legal profession in the United States; in these questions, the correct answer will be governed by the view reflected in a majority of cases, statutes, or regulations on the subject. To the extent that questions of professional responsibility arise in the context of procedural or evidentiary issues, such as the availability of litigation sanctions or the scope of the attorney-client evidentiary privilege, the Federal Rules of Civil Procedure and the Federal Rules of Evidence will be assumed to apply, unless otherwise stated.

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

Each question contained in the MPRE provides a factual situation along with a specific question and four possible answer choices. Examinees should pick the best answer from the four possible answer choices. Each question may include, among others, one of the following key words or phrases:

1. **Subject to discipline** asks whether the conduct described in the question would subject the lawyer to discipline under the provisions of the ABA Model Rules of Professional Conduct. In the case of a judge, the test question also asks whether the judge would be subject to discipline under the ABA Model Code of Judicial Conduct.
2. **May or proper** asks whether the conduct referred to or described in the question is professionally appropriate in that it:
 - a. would not subject the lawyer or judge to discipline; and
 - b. is not inconsistent with the Preamble, Comments, or text of the ABA Model Rules of Professional Conduct or the ABA Code of Judicial Conduct; and
 - c. is not inconsistent with generally accepted principles of the law of lawyering.

3. **Subject to litigation sanction** asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to sanction by a tribunal such as contempt, fine, fee forfeiture, disqualification, or other sanction.
4. **Subject to disqualification** asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to disqualification as counsel in a civil or criminal matter.
5. **Subject to civil liability** asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to civil liability, such as claims arising from malpractice, misrepresentation, and breach of fiduciary duty.
6. **Subject to criminal liability** asks whether the conduct described in the question would subject the lawyer to criminal liability for participation in, or aiding and abetting criminal acts, such as prosecution for insurance or tax fraud, destruction of evidence, or obstruction of justice. When a question refers to discipline by the "bar," "state bar," or "appropriate disciplinary authority," it refers to the agency in the jurisdiction with authority to administer the standards for admission to practice and for maintenance of professional competence and integrity. Whenever a lawyer is identified as a "certified specialist," that lawyer has been so certified by the appropriate agency in the jurisdiction in which the lawyer practices. The phrases "informed consent" and "consent after consultation" are to be interpreted as having the same meaning.

MPRE 2008 Subject Matter Outline

The following subject matter outline indicates the 2008 examination's scope of coverage and the approximate percentage of items that are included in each major area. The outline is not intended to list every aspect of a topic mentioned. Although the test items for each MPRE are developed from these categories, each topic is not necessarily tested on each examination.

- I. Regulation of the Legal Profession (8–12%)
 - A. Inherent Powers of Courts to Regulate Lawyers
 - B. Admission to the Profession
 - C. Regulation after Admission
 - D. Maintaining Professional Standards—Peer Responsibility
 - E. Unauthorized Practice of Law

- F. Fee Division with a Non-Lawyer
- G. Law Firm and Other Forms of Practice
- H. Contractual Restrictions on Practice
- II. The Client-Lawyer Relationship (10–14%)
 - A. Acceptance or Rejection of Clients
 - B. Scope, Objective, and Means of the Representation
 - C. Within the Bounds of the Law
 - D. Withdrawal
 - E. Client-Lawyer Contracts
 - F. Fees
- III. Privilege and Confidentiality (6–10%)
 - A. Lawyer-Client Privilege and the Work Product Doctrine
 - B. Professional Obligation of Confidentiality
 - C. Client-Authorized Disclosure
 - D. Exceptions to Confidentiality
 - E. Special Problems
- IV. Independent Professional Judgment—Conflicts of Interest (12–16%)
 - A. As Affected by Lawyer's Personal Interest
 - B. Lawyer as Witness
 - C. Acquiring an Interest in Litigation
 - D. Entering into Business Transactions with Client
 - E. Conflicting Interests—Prospective Clients, Current Clients, and Former Clients
 - F. Influence by Persons Other than Client
 - G. Imputed Disqualification
 - H. Lawyer's Service as Arbitrator, Mediator, or Judge
- V. Competence, Legal Malpractice, and Other Civil Liability (8–12%)
 - A. Civil Liability, Including Malpractice
 - B. Maintaining Competence
 - C. Acceptance of Employment
 - D. Exercise of Diligence and Care
 - E. Limiting Liability for Malpractice
- VI. Litigation and Other Forms of Advocacy (12–16%)
 - A. Authority to Act for Client
 - B. Civility, Courtesy, and Decorum
 - C. Conduct in the Course of Litigation—Claims, Defenses, Testimony, and Evidence
 - D. Client Fraud and Perjury by a Client or Witness
 - E. Communications in Course of Representation
- VII. Different Roles of the Lawyer (4–8%)
 - A. Lawyer as Advisor
 - B. Lawyer as Evaluator
 - C. Lawyer as Negotiator

Question 4.

An attorney, a member of the state legislature, is allowed to engage in private practice under state law. The attorney represents a plaintiff in a personal injury case. The attorney reasonably believes that the trial of the case will last at least two weeks. When the case was first scheduled for trial, the attorney requested a continuance, truthfully stating, "As the court knows, I am a member of the legislature, which will be going into special session next week. Because of my legislative duties, I must be in the state capitol for the duration of the session." The defendant objected to the continuance, but the court granted it.

Is the attorney subject to discipline?

- A. Yes, because the defendant objected to the continuance.
- B. Yes, because the attorney used her public position to influence a tribunal.
- C. No, because the attorney's statements to the court were truthful.
- D. No, unless the continuance will give the plaintiff an advantage in the litigation.

Question 5.

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

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

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

Is the attorney subject to civil liability?

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

Question 6.

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

Must the attorney withdraw as counsel in this case?

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

Question 7.

An attorney represented a client in a personal injury action against the driver of the car in which the client was injured while a passenger. The personal injury action was settled, and the attorney received a check in the amount of \$10,000 payable to the attorney. The attorney deposited the check in her clients' trust account.

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

"I don't care what the bank does. The property is essentially worthless, so let the bank foreclose. If the bank wants to sue me, I'll be easy enough to find. I don't think they'll even bother. You just take your legal fees and turn the rest of the proceeds over to me."

Is the attorney subject to discipline if she follows the client's instructions?

- A. Yes, if the client does not dispute the \$900 debt to the bank.
- B. Yes, because the attorney knew that the client was planning to force the bank to sue him.
- C. No, unless the attorney had reason to believe that the client would not have sufficient funds to pay any subsequent judgment obtained by the bank.
- D. No, because the bank has no established right to the specific proceeds of the client's personal injury judgment.

Question 8.

An attorney represents a client in an action by the client against the client's former partner to recover damages for breach of contract. During the representation, the client presented the attorney with incontrovertible proof that the partner committed perjury in a prior action that was resolved in the partner's favor. Neither the attorney nor the client was involved in any way in the prior action. The attorney believes that it would be detrimental to the client's best interests to reveal the perjury because of the implication that might be drawn from the former close personal and business relationship between the client and the partner.

Would it be proper for the attorney to disclose the perjury to the tribunal?

- A. Yes, because the information is unprivileged.
- B. Yes, because the attorney has knowledge that the partner perpetrated a fraud on the tribunal.
- C. No, because neither the client nor the attorney was involved in the prior action.
- D. No, because the attorney believes that the disclosure would be detrimental to the client's best interests.

Question 9.

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

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

Was the attorney's conduct proper?

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

Question 10.

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

Should the judge disqualify herself from the case?

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

Question 11.

An attorney represented a plaintiff in a civil suit against a defendant, who was represented by a lawyer. In the course of developing the plaintiff's case, the attorney discovered evidence that she reasonably believed showed that the defendant had committed a crime. The attorney felt that the defendant's crime should be reported to local prosecutorial authorities. After full disclosure, the plaintiff consented to the attorney's doing so. Without advising the defendant's lawyer, the attorney informed the local prosecutor of her findings, but she sought no advantage in the civil suit from her actions. The defendant was subsequently indicted, tried, and acquitted of the offense.

Was the attorney's disclosure to prosecutorial authorities proper?

- A. Yes, because the attorney reasonably believed the defendant was guilty of a crime.
- B. Yes, because the attorney was required to report unprivileged knowledge of criminal conduct.
- C. No, because the attorney did not advise the defendant's lawyer of her disclosure before making it.
- D. No, because the plaintiff's civil suit against the defendant was still pending.

Question 12.

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

Is it proper for the attorney to represent the executor in the probate of the will?

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