

1. Lawyer represents Client, but loses at the jury verdict stage due to acts of legal malpractice. Client fires Lawyer and hires Second Lawyer to handle post-judgment and appeal, which end up adverse to Client. Client sues Lawyer for legal malpractice. In the legal malpractice lawsuit, may Client seek to recover from Lawyer attorney's fees Client paid to Second Lawyer in an effort to mitigate damages caused by Lawyer's legal malpractice?

- a. Yes.**
- b. Yes in Dallas, but no in San Antonio.**
- c. No in Dallas, but yes in San Antonio.**
- d. No.**

Compare:

Akin, Gump, Strauss, Hauer & Feld, L.L.P., v. National Dev. & Research Corp., No. 05-06-01024-CV (Tex. App.– Dallas August 29, 2007, no pet. hist.), with:

Parenti v. Moberg, No. 04-06-00497-CV (Tex. App.– San Antonio May 30, 2007, no pet. hist.).

2. Attorney and Client both sign Representation Agreement with the following essential terms:

You have requested that I assist with the writing of the Appellant's Brief and any reply. My rate for this particular matter will be \$200.00 per hour. Paralegals are \$75.00 per hour. You are responsible for all costs and expenses in the case as incurred.

Client refuses to pay Attorney's \$30,000+ invoice. Attorney sues and files summary judgment seeking payment. Client responds that Attorney never told him he would have to pay over \$30,000. Summary judgment granted for attorney. On appeal:

- a. affirm because Client was responsible for inquiring how much the maximum fee might be;**
- b. affirm because in the absence of a stated maximum, attorney's fees contracts are open accounts to bill and collect for the stated number of hours of work times the stated rate;**
- c. reverse because the language in question is ambiguous since it does not state that the contract is an "open account";**
- d. reverse because the contract must state a reasonable good faith estimate of total fees and expenses and this contract fails to do so.**

Haden v. Sacks, 222 S.W.3d 580 (Tex. App.–Houston [1st Dist.] 2007, pet. filed).

- 3. With respect to the surreptitious recording of telephone conversations, which of the following is true?**
- a. An attorney may never record telephone conversations without the prior express consent of all participants to the telephone conversation;**
 - b. An attorney may not never record telephone conversations without the prior express consent of his or her client, but he or she may record telephone conversations with third parties without obtaining prior express consent;**
 - c. An attorney may record telephone conversations with his or her client or third parties without informing any of them provided: (1) recordings of conversations involving a client are made to further a legitimate purpose of the lawyer or the client, (2) confidential client information contained in any recording is appropriately protected by the lawyer in accordance with Rule 1.05, (3) the undisclosed recording does not constitute a serious criminal violation under the laws of any jurisdiction applicable to the telephone conversation recorded, and (4) the recording is not contrary to a representation made by the lawyer to any person. it is legal for people generally to record telephone conversations in that jurisdiction;**
 - d. An attorney may not record telephone conversations without the prior express consent of all participants to the telephone conversation, but he may advise his or her client that it is legal for the client to do so if the client so chooses;**

4. Lawyer represents Client in a contingent fee lawsuit in which Lawyer accepts a 1/3 attorney's fee. Case results in a take-nothing judgment. Client sues Lawyer for legal malpractice claiming Lawyer should have recovered \$3 million in damages. Lawyer contends Client is limited to recovering \$2 million because Client would have had to pay Lawyer a 1/3 contingent fee:

- a. Client may only recover \$2 million because Client would only have had a net recovery of \$2 million in the underlying litigation;**
- b. Client may recover \$3 million from Lawyer's insurer, but must pay Lawyer \$1 million pursuant to the contingent fee contract;**
- c. Client may recover the full \$3 million, because Lawyer failed in the attempt to obtain a favorable result for the Client;**
- d. Client may recover the full \$3 million and also recover the Client's attorney's fees in the legal malpractice lawsuit.**

Akin, Gump, Strauss, Hauer & Feld, L.L.P., v. National Dev. & Research Corp., No. 05-06-01024-CV (Tex. App.– Dallas August 29, 2007, no pet. hist.).

5. In Texas, if a client fires an attorney that was hired on a contingent-fee basis without good cause before the representation is completed, the attorney may seek to recover:

- a. only the portion of the fees earned by that attorney in proportion to the total work performed by all attorneys in the representation;**
- b. compensation in quantum meruit, provided the fee is not unconscionable;**
- c. breach of contract damages in a suit to enforce the contract by collecting the fee from any damages the client subsequently recovers, provided the fee is not unconscionable;**
- d. either b. or c.**

Hoover Slovacek, LLP v. Walton, 206 S.W.3d 557, 560-61 (Tex. 2006).

6. Client hires attorney to sue a Ferrari dealership for damages caused by a defective vehicle. The final judgment awards the client \$900,000 in damages, but provides the dealership with a \$300,000 offset for past due car payments that Client refused to make. Attorney's fee contract states that attorney recovers "one-third of any amount received by settlement or recovery." Attorney charges client a fee of \$300,000. That fee should be:

- a. reduced to \$200,000 because the client only "received" \$600,000 "by settlement or recovery";**
- b. subject the attorney to possible discipline and fee forfeiture because the attorney charged an illegal or unconscionable fee;**
- c. a. and b;**
- d. paid because it accurately reflects the terms of the contract.**

Levine v. Bayne, Snell & Krause, Ltd., 40 S.W.3d 92, 95 (Tex. 2001).

7. All Texas attorneys must provide notice to each of the attorneys' clients of the existence of a grievance process by:

- a. making complaint brochures prepared by the state bar available at the attorney's place of business or posting a sign prominently displayed in the attorney's place of business describing the process;**
- b. including the information on a written contract for services or bill for services to the client;**
- c. any of the above;**
- d. all of the above.**

Tex. Gov't Code sec. 81.079(b)

8. The firm of Brisket, Chrysler & Toxicdump has offices in Texas, Michigan and New Jersey. One of the firm lawyers was recently named one of “America’s Most Incredible Attorneys,” in a publication of the same name. The firm wants to feature this information on its website. It

- a. can do so in Michigan, cannot do so at the present time in New Jersey and possibly cannot do so in Texas;**
- b. can do so in Texas and New Jersey, and who cares about Michigan;**
- c. probably can do so because a state’s disciplinary rules do not address the conduct of a law firm on the internet, which is international in scope;**
- d. definitely can do so because all of the big law firms in Texas, Michigan and New Jersey are presently doing it.**

9. Which of the following types of fee contracts are expressly subject to the unconscionability standard set forth in Hoover Slovacek?

- a. Hourly rate fee contracts;**
- b. Fee shifting contracts (where the opposing party pays attorney's fees);**
- c. contingent fee contracts;**
- d. all of the above.**

Hoover Slovacek, LLP v. Walton, 206 S.W.3d 557, 560-61 (Tex. 2006).

10. Client files suit against attorney for legal malpractice two years and two months after the conclusion of all litigation and all appeals that are the subject of the representation. Which of the following is true:

- a. cause of action for legal malpractice should be dismissed because the statute of limitations is two years for legal malpractice;**
- b. cause of action for legal malpractice may be considered under four year statute of limitations for breach of contract if the attorney and client have entered into a written contract;**
- c. cause of action for legal malpractice should be dismissed, cause of action for breach of contract should be subject to dismissal on special exceptions, but a fraud claim arising out of the representation would be subject to a four year statute of limitations;**
- d. a. and c.**

11. Lawyer represents Client in an appellate mediation against Opponent. Case between Client and Opponent settles. During mediation, Lawyer tells Client in front of mediator that he will cut his bill to Client in half. Lawyer subsequently sues client for full fee. Which of the following is true?

- a. The mediator should not be permitted to disclose what Lawyer said during mediation due to the absolute nature of the attorney-client privilege;**
- b. The mediator should be permitted to disclose what Lawyer said during mediation due to offensive use waiver;**
- c. The mediator should not be permitted to disclose what Lawyer said during mediation due to the absolute nature of the mediation confidentiality statute;**
- d. The mediator should only be able to disclose what the Lawyer said during mediation with informed consent from the Client.**

Alford v. Bryant, 137 S.W.3d 916 (Tex. App.– Dallas 2004, pet. denied).

12. Client requests that the attorney turn over his/her written notes to the client. Which of the following is true?

- a. the attorney may withhold the notes or portions thereof when required by court order;**
- b. the attorney may never withhold the notes from the client;**
- c. the attorney may withhold the notes or portions thereof when failing to do so would risk causing serious harm to the client;**
- d. a. and c.**

Ethics Opinion No. 570; May 2006

- 13. A lawyer may share a contingent fee with a disbarred or suspended attorney:**
- a. if a valid fee-sharing agreement existed before the suspension or disbarment and the suspended or disbarred lawyer fully performed all work in the matter before the suspension or disbarment;**
 - b. never;**
 - c. only with client consent after full disclosure of the disbarment or suspension;**
 - d. only with prior written consent of the Commission for Lawyer Discipline.**

Ethics Opinion 568; April 2006

14. May a law firm disclose confidential information about a client to a collection agency that is hired to collect legal fees owed to the attorney?

- a. No;**
- b. Yes, if the collection agency employees are deemed to be “borrowed servants” of the law firm;**
- c. Yes, but only with client consent after full disclosure;**
- d. Yes, if the collection agency enters into a fully enforceable confidentiality agreement with the law firm.**

Ethics Opinion 556; May 2005.

15. Lawyer is hired by Insurance Company to defend Insured. Insurer requires Lawyer to send copies of all fee bills to Third-Party Auditing Company for review of “reasonableness,” by email over the internet. Which of the following is true:

- a. this practice is permissible because the Insurance Company is paying the attorney;**
- b. this practice is prohibited without prior informed consent by the insured;**
- c. this practice is prohibited because the internet is deemed to be an environment that is unsafe for transmission of attorney-client confidences;**
- d. this practice is permissible because the standard liability insurance policy waives all rights of client confidentiality with respect to invoices of Insurance Company’s insureds.**

Ethics Opinion 552; August 2004.

16. May a lawyer, who is retained by an insurance company to defend its insured, ethically comply with litigation/billing guidelines which place certain restrictions on how the lawyer should conduct the defense of the insured?

- a. yes, because the insurance company is paying for the representation;**
- b. yes, with prior informed consent of the client (the insured);**
- c. no;**
- d. yes, because the standard insurance policy gives the insurance company the right to control the manner of the defense.**

Ethics Opinion 533; September 2000.

17. Which of the following is a legally permissible name for a law firm?

- a. The Legal Clinic of John Doe;**
- b. Discount Legal Services of Jones & Doe;**
- c. John Doe and Jane Roe, Trial Lawyers;**
- d. none of the above.**

Ethics Opinion 529.

18. If an associate in a law firm forms a clear belief that an attorney at the firm has performed negligent legal services for the client, what, if anything, are the associate's obligations?

- a. inform the partners or shareholders of the law firm of the negligence and confirm in writing that the partners or shareholders will inform the client about the negligent representation;**
- b. inform the client himself or herself about the negligent representation if the partners or shareholders refuse to confirm in writing that they will do so;**
- c. a. and b.**
- d. notify the Commission for Lawyer Discipline.**

Ethics Opinion 523.

19. Generally speaking, may an attorney enter into a contingency fee arrangement where the attorney is to be paid the greater of: the fee that normally would be charged for the same services on an hourly basis, or, the usual percent of the amount recovered for the client on a contingent fee basis.

- a. yes, provided that the hourly rate is the attorney's usual hourly rate and is reasonable standing alone;**
- b. yes, provided that the percentage of the contingent fee, standing alone, is reasonable;**
- c. no;**
- d. yes, provided that both the hourly rate (which is the attorney's usual hourly rate), and the percentage of the contingent fee are reasonable.**

Ethics Opinion 518; September 1996.

20. Three sisters, age 34, 31, and 28 are injured in a car wreck. The driver of the other vehicle has \$100,000 combined single limits. It is likely that each of the sisters has damages that exceed the available insurance and assets sufficient to satisfy a judgment or settlement. Which of the following is true:

- a. the attorney may represent all of the sisters so long as they give informed consent under the circumstances;**
- b. the attorney may not represent all of the sisters;**
- c. the attorney may represent all of the sisters so long as they share pro rata, in the recovery (equal shares);**
- d. the attorney may represent all of the sisters so long as they share in the recovery in relation to the seriousness of their injuries, and with prior informed consent of all three sisters.**

Rule 1.06(a); Comment 2.

- 21. Fee forfeiture is available as a remedy against an attorney without actual damages in the presence of which of the following:**
- a. breach of fiduciary duty by an attorney;**
 - b. breach of contract by an attorney;**
 - c. gross negligence by an attorney;**
 - d. clear and serious breach of a fiduciary duty by an attorney.**

Burrow v. Arce, 997 S.W.2d 229, 245 (Tex. 1999).

- 22. Generally speaking, a guardian ad litem representing a minor in a personal injury lawsuit is entitled to recover which of the following as a reasonable fee:**
- a. his or her hourly rate times the number of hours for all time spent assisting the plaintiff's attorney while working on behalf of the minor plaintiff;**
 - b. his or her hourly rate times only the number of hours of work performed by the guardian ad litem that actually added direct benefit to the compensation provided to the minor plaintiff;**
 - c. his or her hourly rate times the number of hours of work performed strictly in the capacity as a guardian ad litem BUT NOT not work traditionally performed by the plaintiff's attorney regardless of the benefit to the minor plaintiff;**
 - d. his or her hourly rate times a lodestar multiplier depending upon the amount of the recovery obtained for the minor plaintiff.**

Land Rover UK v. Hinojosa, 210 S.W.3d 604 (Tex. 2006).

- 23. An appellate judge who worked at the firm of Big & Strong prior to taking the bench is constitutionally disqualified from hearing a case if:**
- a. the case was at the firm when he worked there, regardless of the fact that the matter was handled by a different attorney at the firm and the now-judge acquired no knowledge of any kind about the case while at the firm;**
 - b. the case was at the firm when he worked there, he had knowledge regarding any aspect of the case, even though he never worked on the case himself;**
 - c. the case was at the firm when he worked there, and he personally worked on the case in any capacity;**
 - d. the case was at the firm when he worked there, and the now-judge had direct responsibility for handling the case in question.**

Tesco American v. Strong Industries, 221 S.W.3d 550 (Tex. 2006).

- 24. Fee agreements entered into between an attorney and an existing client:**
- a. are always presumed to be unfair to the client. The attorney has the burden to prove that the agreement is fair and reasonable to the client in order to enforce it;**
 - b. are treated like any other contract-enforceable if unambiguous, construed to ascertain the intent of the parties if ambiguous;**
 - c. will be enforced if unambiguous, construed against the attorney if it is ambiguous, but there is no presumption of unfairness;**
 - d. are clothed with a presumption of unfairness to the client if the client is determined to be an “unsophisticated party susceptible of being taken advantage of as a result of the superior bargaining power of an attorney.”**

Keck, Mahin & Cate v. Nat’l Union Fire Ins. Co., 20 S.W.3d 692, 699 (Tex. 2000).

- 25. Which of the following is true:**
- a. An oral contingent fee contract is enforceable by the client;**
 - b. An written contingent fee contract that is signed by the client but not by the attorney may, or may not, be enforceable by the attorney;**
 - c. An written contingent fee contract that is signed by the client but not by the attorney can result in disciplinary action against the attorney;**
 - d. all of the above;**
 - e. none of the above.**

Tex. Gov't Code 82.065(a), 82.065(b).

26. Which of the following is true with respect to attorney advertising?

- a. Attorneys who have not attained board certification must include the following in all printed and broadcast advertising: “Not certified by the Texas Board of Legal Specialization.”**
- b. Attorneys who have obtained board certification in Civil Appellate Law must include the following in all printed and broadcast advertising: “Board Certified - Civil Appellate Law - Texas Board of Legal Specialization.”**
- c. Attorneys may practice under a trade name provided it includes the name of the attorney and is not misleading to the ordinary consumer.**
- d. Pre-approval of an advertisement by the State Bar’s Advertising Review Committee is binding in favor of the attorney in any disciplinary proceeding provided the content of the advertisement is true, and not misleading.**

Chapter 7 - Texas Disciplinary Rules of Professional Conduct

- 27. If a lawyer has not regularly represented a client, which of the following is true:**
- a. the attorney must communicate the manner of calculating the attorney's fee in writing if the representation is hourly;**
 - b. the attorney must communicate the manner of calculating the attorney's fee in writing if the representation is a flat fee;**
 - c. the attorney must explain in writing whether a contingent fee will be calculated before or after expenses of litigation are deducted;**
 - d. all of the above.**

Tex. R. Disc. P. 1.04(c).

- 28. Which of the following is true:**
- a. Under certain circumstances, an attorney may represent a client in a criminal matter on a contingent fee basis;**
 - b. Under certain circumstances, an attorney may represent a client in a family law matter on a contingent fee basis;**
 - c. Under certain circumstances, an attorney may enter into a contingent fee contract where expenses of litigation come out of the client's share of the recovery, but the particular expenses are not detailed in the fee contract;**
 - d. none of the above.**

Tex. R. Disc. P. 1.04

29. Which of the following is not permitted under any circumstances?

- a. A lawyer enters into a business transaction with a client;**
- b. A lawyer acquires a proprietary interest in the subject matter of the litigation except for a contingent fee or a lien to secure payment of his or her attorney's fee;**
- c. A lawyer prepares a document in which the client gives a gift to a member of the lawyer's family;**
- d. A lawyer accepts literary rights from a client regarding the subject matter of the representation.**

Tex. R. Disc. P. 1.08

30. The Texas Lawyers Creed - A Mandate for Professionalism:

- a. may not be enforced because they are aspirational and voluntary standards;**
- b. may be enforced through use of penal statutes;**
- c. may be enforced only through the use of peer pressure and adverse publicity;**
- d. may be enforced through exercise of the court's inherent power, including but not limited to issuance of sanctions and finding of contempt.**

- 31. Which of the following is NOT contained in the Texas Lawyer's Creed - A Mandate for Professionalism?**
- a. "I will advise my client of the contents of this Creed when undertaking representation."**
 - b. "I will serve opposing counsel with pleadings, motions and other documents such that opposing counsel receives the document within the same approximate time period as the Court."**
 - c. "I will refrain from excessive and abusive discovery."**
 - d. "I will advise my client of proper and expected behavior."**

Texas Lawyer's Creed.

32. A non-refundable retainer:

- a. falls in the same category as Santa Claus, the Easter Bunny, and snowy days in August in Houston, Texas– there is no such thing;**
- b. can be accepted from a client and is fully earned when received, provided it is expressly intended to remunerate the attorney for the loss of the opportunity to accept other employment that will probably be lost;**
- c. can be used as a prepayment for professional legal services rendered by an attorney;**
- d. is fully earned at the moment it is received if accepted by the attorney as a prepayment for professional legal services rendered by the attorney.**

Cluck v. Commission for Lawyer Discipline, 214 S.W.2d 736 (Tex. App.– Austin 2007, no. pet.).

Answer Key

1. C	2. C	3. C	4. C	5. D	6. C
7. C	8. A	9. C	10. D	11. B	12. D
13. A	14. C	15. B	16. C	17. D	18. C
19. C	20. B	21. D	22. C	23. A	24. A
25. D	26. D	27. C	28. B	29. A	30. D
31. B	32. B				