

MPRE Review - Outline of BAR-BRI Book NOTES

II. Client-Lawyer Relationship

A. Competence

1. competent
2. Dont: neglect, try without preparation, take on something not competent for
3. emergency its okay
4. take CLE courses

B. Malpractice Liability

3. duty to client and intended 3P beneficiaries
4. liable for non-legals in employ
5. insurance not mandatory
6. can't limit malpractice liability in K
7. can't settle mal with unrepresented client without first advising cleitn in writing to ge help

C. Scope of Representation

1. cleitn makes key decisions
2. lawyer makes tactical decisions
3. may limit scope of representation if client agrees
4. May not help client to do crime.
 - a. can explain unlawfulness
 - b. can refuse to assist
 - c. if client is using law services for illegal conduct, must withdraw.
 - d. may do "test" case

D. Duty of Diligence

1. diligence and promptness
2. zeal
3. see it to the end

E. Keep client informed

1. promptly respond to requests for information
2. may withhold temporarily if client would react rashly, or may withhold entirely if court orders

F. Attorney's Fees

1. How much is up to client and lawyer
2. do agreement early on, in writing
3. unreasonable fee prohibited
4. price fixing against Sherman Antitrust Act
5. Fee in advance okay
property for services okay
credit card okay, bank financing okay
6. Contingent fees okay, not in criminal or domestic relations
Where there is doubt, offer alternative methods
Must be in writing
7. Fee disputes - don't sue except to prevent really bad

result

8. Fee splitting - NO, unless:
 - a. firm
 - b. former partner or associate under former, or retirement, e.g., agreement
 - c. OKAY IF: total is reasonable, client knows, split is proportional
9. Referral fees - NO!
- G. Confidentiality
 1. Can't tell anything relating to representation of client
 2. CONF v. PRIV:
 - a. priv - evidentiary only
 - b. priv - Client/attorney communications only
 - c. priv - disclosure. CONF means you can't even use the info.
 3. A-C info can't be compelled
clients include prelim info, even if relationship does not occur
attorney is licenced in any state
NOT documents discoverable in clients hands, just because C gave it to A!
Eavesdroppers also prohibited from telling
EXCEPTIONS:
 - 1) future crime or fraud
 - 2) relevant to breach of A-C duties
 - 3) litigation between two people who were previously repped by one A
 - 4) when A can give info about dead person who has attempted inter vivos transfer
 4. Ethical considerations:
EXCEPTIONS:
 - 1) client consent
 - 2) implied authority
 - 3) dispute about attorney's conduct
 - 4) future crimes (bodily harm)
- H. Conflict of interest (C/I)
 1. Loyalty - dont let 3P interests get in
 2. Can't represent conflicting sides, conflicting legal positions, maybe even in non-litagation context
 3. Potential c/i okay to rep both if reasonably believe you can be effective for both, and both consent
- I. C/I - Transactions prohibited
 1. Business with client - NO
 2. Using client confidential info to client's disadvantage
 3. Lawyer may not prepare will which lawyer is benficairy of

4. No rights to client's story
 5. litigation expenses may be loaned, other wise NO
 6. MAY NOT BE PAID BY 3P, unless client consents, and 3P doesnt interfere, and confidentiality not disturbed
 7. can't do aggregate settlement for multiple clients
 8. no malpractice limits agreements
 9. lawyers who are related may not rep conflicting clients without consent. This is not imputed to law firm members
 10. Can't acquire proprietary interest in the litigation
- J. C/I - Former clients
1. still confidential
 2. can't oppose former client if confidential info would be relevant unless former consents
 3. can't oppose former in substantially related matter w/o consent
- K. C/I - imputed disqualification
1. If one lawyer can't do it, whole firm can't do it.
 2. former firm can go against client of A who left, unless matter is substantially related, or any lawyer still there has info
 3. all this can be waived by consent
- L. C/I - Gov't Jobs
1. Gov -> private, keep conf!
 2. see state statutes!
 3. On same "matter", where A participated "personally and substantially", NO, unless gov consents.
 4. Gov lawyer who gets conf. info about 3P may not later go against that 3P where it could harm 3P
 5. same with priv -> gov., unless this lawyer is the only gov lawyer authorized to be representation
 6. Gov lawyer may not negotiate for private employment while personally and substantially involved with a matter
- M. C/I - Former Judge or Arbitrator
2. Cant represent client in matter previously involved in without consent of all parties
 3. If A is disqualified, firm is also, unless:
 1. lawyer is screened off
 2. lawyer gets no fee part
 3. tribunal knows and can check
 4. Law clerks must tell possible employers first
 5. like gov A, can't nego for job while involved with matter
- N. C/I - Organization as client
1. duty to organization, not human beings
- P. Client's money and Property
1. Dont comingle with own
 2. Promptly place funds in trust account

Doesn't have to be separate for each client. It may bear interest.

3. All money received on behalf of client must go in, advanced or not yet earned
4. If some in dispute, must leave that part in trust
5. May refuse to release until 3P has been paid
6. Duty to safeguard properties
7. duty to notify, keep records, pay over promptly

Q. Terminating the A-C relationship

1. client can fire, attorney can sometimes withdraw, sometimes must.
2. Client fires, owes quantum meruit
3. Court can prohibit client from firing if it will slow things down too much
4. A must withdraw if A cannot represent anymore, physically, mentally or ethically
5. Attorney may withdraw if:
 - a. no harm to client
 - b. client persists in criminal or fraud conduct (without lawyer's help)
 - c. client used lawyer services in past for crime
 - d. client's objective is repugnant
 - e. client breaks promise to pay lawyer
 - f. financial burden on attorney
 - g. client will not cooperate
6. Withdrawing attorney must give notice, give client chance to get another, refund monies not owed

III. Lawyer as Counselor

A. Lawyer as advisor to client

1. candid advice!
2. can give moral, economic, social advice where relevant
3. may volunteer without being asked, where appropriate

B. Lawyer as intermediary between clients

1. okay to be intermediary for multiple clients
2. Three conditions
 - a. impartiality
 - b. all clients interests can be resolved consistently
 - c. consent of all involved clients
3. Confidentiality applies! Not privilege, since not litigation.
4. Must withdraw if any of conditions fail.

IV. Lawyer as Advocate

A. Frivolous Claims - DONT! In crim cases, may make prosecution establish all the elements.

B. Expedite the litigation! Don't sacrifice client interests.

- C. Duty of Candor to the tribunal
 - 1. Candid about the law:
 - a. no false statements about the law
 - b. must disclose controlling authority if directly adverse to client
 - 2. Candid about the facts - no misrepresentations
 - 3. Volunteering Adverse facts - don't have to unless in ex parte proceedings, or if withholding will aid in crime
 - 4. False evidence - NO
 - 5. Perjury by Criminal Defendant
 - a. first urge client to fess up
 - b. then tell court, except if privileged
- D. Fairness to Opposing Counsel
 - 1. Don't suppress or tamper with evidence
 - 2. Don't counsel witness to falsify
 - 3. Can only pay witnesses expenses, lost time, expert's fees.
 - 4. Can't tell adverse witness to flee jurisdiction
 - 5. May not knowingly violate procedural rule, rule of evidence, unless good faith challenge
 - 6. don't abuse discovery
 - 7. don't refer, at trial, to inadmissible material, assert personal knowledge of facts, or personal opinions
- E. Impartiality, Decorum to Tribunal
 - 1. Don't improperly influence judge
 - 2. EX Parte communication - NO
 - a. tell adversary about it when discussing merits with the judge
 - b. No lawyer may talk to juror about the case
 - 3. Don't be disruptive to judge
- F. Trial Publicity - No out of court statements which could be prejudicial.
- G. Trial Counsel as Witness
 - 2. Don't take case if you know you'll be called as witness
 - 3. Uncontested matter or mere formality is okay
 - 4. Don't have to withdraw if it would be undue hardship on client
- H. Prosecutor Duties
 - 1. Ensure fairness of procedures
 - 2. Make sure there is probable cause for proceedings
 - 3. Protect accused right to counsel
 - 4. Don't get waiver of pre-trial rights
 - 5. Disclose evidence which will help defense
 - 6. disclose info which may mitigate punishment
 - 7. Subordinates must be made sure to say nothing prosecutor can't say either

V. Transactions with Third Persons

- A. Truthfulness with 3P
 - 1. no false statements
 - 2. must disclose where needed to avoid crime
- B. Communication with Person represented by Counsel--don't, unless that attorney consents
- C. Don't give legal advice to unrepresented person

VI. Law firms

- B. All supervisory lawyers have responsibility to make sure others are ethical. Supervisory lawyer is subject to discipline if he ordered or ratified the conduct, or fails to mitigate it upon finding out (and there's still time to do something about it).
- D. Non-lawyer assistants should be guided too.
- E. Professional Independence
 - 1. no fee-splitting with non-lawyer, except death benefits, retirement benefits
 - 2. No partnerships with non-lawyers
 - 3. Non-lawyer may not own any interest in law firm, be corporate officer, or have any right of control
 - 4. Can't take controlling advice from non-lawyer
- F. Unauthorized practice of law - DONT, dont help another do it either, though you can instruct non-lawyer for law-related work, and can advice people representing themselves
- G. Can't restrict lawyers right to practice (e.g. termination agreement)

VII. Public Service

- A. Do pro bono
- B. Make representation available to all
 - Take court appointments
- C. Can be member, officer of legal services organization
- D. Law Reform activities - okay, unless harms client's interest

VIII. Advertising and Solicitation

- A. Ads - true, not misleading
- B. Limits - fields of law, sample clients (consent), must identify at least one lawyer responsible for the ad, must keep records of where placed
- C. Limits on Solicitation - no in person or live telephone solicitation
 - a. agents cannot do what lawyer cannot do
 - b. okay if its for free representation
 - c. okay for family members
 - d. no harassment
 - e. must label ads as ads

- E. Firm Names
 - 1. can use trade name
 - 2. state jurisdictions should be shown, where out-of-state
 - 3. Can't use name of lawyers who went into public office

- IX. Integrity of Legal Profession
 - A. Bar admission
 - 1. no false statements
 - 2. disclose all
 - C. Duty to Report Professional Misconduct by lawyers and judges

- X. Judicial Ethics
 - B. Judge should participate in establishing, maintaining and enforcing standards of conduct, on and off bench.
 - C. Impropriety, Appearance of same
 - 1. act to promote public confidence in the impartiality of the judiciary
 - 2. not allow family, social, political or other relationships interfere with judge's conduct or judgement
 - 3. not use prestige of office for other things
 - 4. not remain member of discriminatory organization
 - D. Diligent, impartial performance of Duty
 - 1. Judicial activities take precedence
 - 2. Must hear all unless disqualified
 - 3. faithful to law
 - 4. exercise control, keep decorum
 - 5. be courteous
 - 6. avoid bias or prejudice
 - 7. give all with legal interest a right to be heard
 - 8. No ex parte communications except:
 - a. where expressly authorized by law
 - b. consent of parties in attempt to settle matter
 - c. emergency or administrative matter, provided no party will gain advantage
 - 9. Communications with others - nothing not before parties except
 - a. court personnel
 - b. disinterested legal experts, provided party lawyers have chance to respond
 - c. emergency or administrative matters, no advantage to either party, and notice is given to both parties, gives opportunity to respond
 - d. between trial and appellate courts
 - 10. Findings of fact or law - if judge asks one side, must ask other side as well
 - 11. judge cannot independently investigate facts
 - 12. judge must be prompt, efficient

13. may not make any public comment on any pending case which would affect case
 14. should not criticize or commend jurors for their verdict.
 15. may not disclose non-public information acquired in judicial capacity
 16. no bias or prejudice
 17. appointments without bias
 18. take disciplinary action against violators of ethics
- E. Disqualification
1. when "might reasonably be questioned"
 - a. judge should disclose to parties any info which might be considered relevant for this
 - b. emergency - then its okay
 2. if judge has personal knowledge of facts, or personal bias to one lawyer
 3. judge who served as witness in the matter, was a lawyer in the matter, was associated with a law practice which was involved in the matter then, should recuse!
 4. recuse if judge or his family has econ interest
 5. recuse if relative (to 3d degree) has interest
 6. parties can waive, except personal bias
- F. Extrajudicial Activities
1. conduct so they do not interfere with duties or demean the office, or cast doubt on his impartiality
 2. may write, speak, teach legal and nonlegal subjects
 3. may not appear at governmental hearing, consult with legislative body, unless for legal matter
 4. Cannot accept appointment to governmental committee if it does not relate to law.
 5. Cannot serve as officer, director, etc. of non-profit organization if its like ACLU (litigious). Also, may not participate in fund-raising for the org, may not be guest of honor at fund-raising dinner. May solicit members for the organization, but not use prestige of office to do this.
 6. Investments okay (ceterus parabus)
 7. No financial dealings which appear to exploit position
 8. May not direct, manage, run any business (except family involvement)
 9. NO gifts accepted, except public testimonials, ordinary social hospitality, from someone not likely to appear before the judge, gifts from relative or friend on special occasion
 10. Judge cannot be executor, or other fiduciary, except for family
 11. Full time cannot also do arbitration, mediation, etc.
 12. May not practice law if full time

13. May be paid expenses for outside activities, and compensation, if no impropriety or look of such. Judge must report activities for which he receives compensation, how much.

G. Judges and Politics

1. Judge should avoid politics, except to improve the law

2. a. "candidate" - when announced candidacy, or files candidacy, or authorizes solicitation of funds

b. Judge or candidate shall not

1) act as leader or hold public office in political organization

2) publicly endorse another candidate

3) make speeches for political org.

4) attend political gatherings

5) financially support political org.

d. Judge must resign when he becomes candidate for non-judicial office

3. Candidates for judicial office - act with integrity. make no promises.

4. For appointed position - may not solicit funds for candidacy. May not engage in political activity to get position. Note - non-judge candidates may stay in political organizations, attend political gatherings, make contributions.

5. Judges and candidates subject to election:

a. may attend political gatherings, contribute to party

b. may advertise, speak publicly

c. may campaign, but may not solicit money or support

d. may establish election committees to get money and support

3.