



## MPRE Cheat Sheet – by JD Advising

### I. Regulation of the Legal Profession (6-12%)

- **Discipline:** A lawyer is subject to discipline where they are admitted and where the conduct occurs.
- **Reporting:** A lawyer or judge who **knows** another lawyer or judge has committed a violation of the MRPC that raises a **substantial question** as to the person's **honesty, trustworthiness, or fitness** as a lawyer **must report it** (unless it is protected by confidentiality or gained in a lawyers' or judges' assistance program).
- **Unauthorized Practice of Law:** A lawyer may delegate work to non-lawyers but is ultimately responsible for the product and must **sign** letters to clients, opposing counsel/parties or the court.
- **Multijurisdictional Practice:** A lawyer may practice on a temporary basis if **(RAMS): reasonable relation** to lawyer's practice, they **associate** with a local lawyer who actively participates in the case, they participate in a **mediation** or arbitration arising out of home state practice, or obtain **special permission** to practice.
- **Non-lawyer:** A lawyer must not form a partnership with non-lawyer if any of the activities constitute the practice of law.
- **Subordinate lawyers:** They are protected from violations of the MRPC that is a result of a reasonable resolution of an **arguable question** of professional duty by a supervisor.
- **Sale of a law practice:** A law practice may be sold if the **entire practice area** is sold, **written notice** is given to each of the clients, the **fees charged to clients do not increase** as a result of the sale, and the **seller ceases** to engage in private practice or the area of practice.

### II. The Lawyer-Client Relationship (10-16%)

- **Formation:** A person manifests an intent and the lawyer agrees or fails to make it clear she does not wish to take on the client's case.
- **Decisions:** A client decides objectives, whether to settle, expenses to be incurred and in a criminal case whether to enter into a plea, testify, or waive a jury trial.
- **Diminished Capacity:** Even if the client has diminished capacity, the lawyer must try to maintain a lawyer-client relationship as far as reasonably possible.
- **Withdrawal:** A lawyer must withdraw if the representation results in a violation of the MRPC, the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or the lawyer is **discharged by the client** (this could be for any reason). A lawyer may withdraw if they have good cause. The lawyer should **(RRR)** give **reasonable notice** to the client, **refund any advance payment** of unearned fee, **return papers to client**, and allow the client time to employ other counsel.
- **Communication:** A lawyer must keep a client informed about case.
- **Fees:** Fees must be reasonable and communicated in advance. Contingent fees require two writings—one at the **beginning** of the case (agreeing to the fee and stating the method of calculation) and one at the **conclusion** of the case (stating the outcome and showing what recovery, if any, the client is getting as well as how that is determined). Contingent fees are not permitted in **family law** matters (for divorce or securing alimony, support, or property settlement) or **criminal matters**.
- **Sharing fees:** Lawyers from different firms can share a fee only if the division is proportionate to work done, client agrees, and the total fee is reasonable.

### III. Client Confidentiality (6-12%)

- **Attorney-Client Privilege:** This is an evidentiary rule that prevents a **court or other governmental entity** from using its powers to **compel** the

revelation of **confidential communications between an attorney and a client** (or agents of either). The client holds the privilege. It lasts forever.

- **Confidentiality:** A **lawyer shall not reveal information relating to the representation** of a client unless the client gives **informed consent**, the disclosure is **impliedly authorized** in order to carry out the representation or the disclosure is **permitted** (below). This, too, lasts forever and survives death.
- **Exceptions to this rule include: (CCCCC)**
  - **Certain Death or Harm:** To prevent **reasonably certain death or substantial bodily harm**;
  - **Crime or Fraud in Which Lawyer's Services Have been Used;**
  - **Compliance with Rules:** To **secure legal advice** about the lawyer's compliance with these Rules;
  - **Controversy between Lawyer and Client:** To **establish a claim or defense on behalf of the lawyer in a controversy** between the lawyer and the client;
  - **Court Order:** To comply with other **law or a court order**;
  - **Conflicts of Interest:** To detect and resolve **conflicts of interest** arising from the lawyer's change of employment or from changes in the composition or ownership of a firm.

### IV. Conflicts of Interest (12-18%)

- **Current Client Conflicts:** A lawyer shall not represent a client if the representation involves a concurrent conflict of interest which exists when: (1) The **representation of one client will be directly adverse to another client**; or (2) there is a **significant risk that the representation** of one or more clients will be **materially limited** by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer.

**Note:** Even if there is a conflict, a lawyer may represent a client if she **reasonably believes** she can provide competent and diligent representation, it is not **prohibited by law**, it is not **client against another client** in the same litigation and each client gives **informed written consent**.

- **Former Clients of a Lawyer:** A lawyer who has formerly represented a client in a matter shall not thereafter represent **another person** in the **same or a substantially related matter** in which that person's interests are **materially adverse** to the interests of the former client **unless the former client gives informed consent, confirmed in writing**.
- **Former Clients of Lawyer's Firm:** A lawyer who acquires material confidential information in one firm should not thereafter represent a client when the lawyer works for a different firm unless the former client gives **informed consent, confirmed in writing**.
- **Prospective Client Conflicts:** A lawyer shall not reveal confidential information or represent a client with interests **materially adverse to those of a prospective client** in the **same or a substantially related matter**.
- **Imputed Conflicts:** While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by the conflict rules unless the prohibition is based on a **personal interest** of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm or it is based on a conflict with a former client from a lawyer's former firm and the lawyer is **timely screened**, given **no part of the fee from the matter**, and **written notice** is given to any affected former client.
- **Transactions with clients.**
  - **Business transactions:** A lawyer shall not enter into a business transaction with a client unless: **(FARIIS)** the transaction is **fair and reasonable** to the client, the client is **advised in writing** of



the desirability of seeking and is given a **reasonable opportunity** to seek the advice of **independent legal counsel** on the transaction; and, the client gives **informed consent**, in a **writing signed** by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in it.

- **Gifts:** A lawyer shall not **solicit** any **substantial gift** from a client, or prepare a client an instrument giving the lawyer or a person related to the lawyer any substantial gift **unless the lawyer or other recipient of the gift is related to the client**.
- **Literary or Media rights:** **Prior to the conclusion of representation** of a client, a lawyer shall not make or negotiate an agreement giving the **lawyer literary or media rights** to a portrayal or account based in substantial part on information relating to the representation.
- A lawyer **shall not provide financial assistance** to a client in connection with litigation except that it may advance court costs contingent on the outcome, or may pay costs for an indigent client.
- **Proprietary interest:** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client. Exceptions include contingent fees or liens to secure a lawyer's fee.
- **Compensation from third party.** This is permitted only if the client gives **informed consent**, there is **no interference** with the lawyer's independence of professional judgment or with the client-lawyer relationship; and information relating to representation of a client is kept **confidential**.
- **Malpractice Liability:**
  - **Waiving Malpractice Liability:** A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is **independently represented** in making the agreement.
  - **Settling a Claim:** A lawyer shall not settle a claim with an unrepresented client or former client unless that person is **advised in writing of the desirability of seeking** and is given a **reasonable opportunity to seek the advice of independent legal counsel** in connection therewith
- **Sexual relations:** A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. (Note: This conflict is not imputed to the rest of the firm since it is personal.)

● **Lawyers or judges Currently or Formerly in Government Service.** They are subject to Conflicts rules. Further, they may **not otherwise represent a client in connection with a matter** in which the lawyer participated **personally and substantially** as a public officer or employee or judge or mediator, arbitrator, or third-party neutral, unless the **appropriate government agency gives its informed consent, confirmed in writing**, to the representation. **Note: "Matter" is narrowly defined (meaning specific facts and parties) and it only covers information actually obtained.**

Exception: An arbitrator selected as a **partisan of a party in a multimember arbitration panel** is not prohibited from subsequently representing that party.

## V. Competence, Legal Malpractice, and other Civil Liability (6-12%)

- **Competence and diligence:** A lawyer shall provide competent representation and exercise diligence and care. This includes promptness.
- **Negligence:** A plaintiff must establish duty, breach, cause, and harm (i.e. that it would have received a favorable outcome absent the lawyer's negligence) to prove a claim for negligence.

## VI. Litigation and Other Forms of Advocacy (10-16%)

- A lawyer may only bring a claim if there is a basis in law (or extension or modification or reversal of the law) and fact and the claim is not frivolous.
- **Candor to the tribunal:** A lawyer shall not knowingly:
  - **Make a false statement of fact or law** to a tribunal or fail to correct a false statement of material fact or law previously made;
  - Fail to disclose to the tribunal **legal authority in the controlling jurisdiction** known to the lawyer to be **directly adverse to the position of the client** and **not disclosed by opposing counsel**;
  - **Offer evidence that the lawyer knows to be false.** (Note: A lawyer in a criminal case who knows a defendant will testify falsely – exercising his Sixth Amendment Right—should tell the judge the situation and allow the judge to decide what to do.)
- **Ex Parte Proceedings:** In an ex parte proceeding (one where the other side is not present) a lawyer shall inform the tribunal of **all material facts known to the lawyer that will enable the tribunal to make an informed decision**, whether or not the facts are adverse. A lawyer shall not communicate orally about the merits of a case without adequate notice to the opposing party (a written communication is okay so long as the other side receives notice).
- **Fairness to Opposing Party and Counsel:** A lawyer shall not unlawfully obstruct or falsify evidence, offer an inducement to a witness prohibited by law, knowingly disobey an obligation, make frivolous discovery requests, or at trial allude to a matter it does not reasonably believe to be relevant or admissible, assert personal knowledge of facts at issue in trial except as a witness, or state a personal opinion as to the justness of a cause, credibility of witnesses, guilt or innocence of defendant or litigant.
- **Trial Publicity:** A lawyer who is participating or has participated in the investigation or litigation of a matter (or any lawyer associated with their firm or government agency) shall not make an **extrajudicial statement** that the lawyer knows or reasonably should know will be disseminated by means of **public communication** and will have a **substantial likelihood of materially prejudicing** an adjudicative proceeding in the matter.

Exception: **Right of Reply:** A lawyer may make a statement that a **reasonable lawyer** would believe is **required to protect a client** from the **substantial undue prejudicial effect of recent publicity** not initiated by the lawyer or the lawyer's client.

● **Lawyer as Witness:** A lawyer shall not act as advocate at a trial in which the lawyer is **likely to be a necessary witness** unless: the testimony relates to an **uncontested issue**; the testimony relates to the **nature and value of legal services** rendered in the case; or disqualification of the lawyer would pose **substantial hardship** on the client.

## VII. Transactions and Communications with Other Persons (2 – 8%)

● **Truthfulness:** In the course of representing a client a lawyer shall not knowingly make a **false statement of material fact** or law to a third person or **fail to disclose a material fact** to a third person unless disclosure is prohibited by the rules of confidentiality.

● **Communications with Represented and Unrepresented Persons:** In representing a client, a lawyer shall not communicate about the subject of the representation **with a person the lawyer knows to be represented by another lawyer** in the matter, unless the lawyer has the **consent of the other lawyer** or is authorized to do so by law or a court order. A lawyer may communicate with an unrepresented person but may not state or imply that they are disinterested.

## VIII. Different Roles of the Lawyer (2 – 8%)

● A lawyer may act as an **advisor, evaluator, and negotiator**. A lawyer may also arbitrate or mediate a case but must make unrepresented parties aware that she is not representing them.



- **Prosecutors and Government Lawyers:** A prosecutor must not prosecute a charge he knows is not supported by probable cause. He must make sure the accused knows of the right to retain counsel and must make a **timely disclosure to the defense of all evidence** or information known to the prosecutor that **tends to negate the guilt of the accused or mitigates the offense**.

- **Lawyer Representing Organization:** A lawyer owes a duty of loyalty to the organization (not its constituents).

**Duty to Report Inside Organization:** If a lawyer for an organization knows that a person associated with the organization is acting or going to act in a matter that is a **violation of a legal obligation** to the organization, or a **violation of law** that reasonably might be **imputed to the organization**, and that is likely to result in **substantial injury** to the organization, then the lawyer shall proceed as is **reasonably necessary in the best interest of the organization**. This usually includes referring to a higher authority in the organization. They may report outside of the organization if they reasonably believe that there is a clear violation of law that is reasonably certain to result in substantial injury to the organization.

**Sarbanes-Oxley Act:** Securities' lawyers who become aware of credible evidence that their client is materially violating a federal or state securities law or fiduciary duty **must** report it to the clients Chief Legal Officer (CLO) or Chief Executive Officer (CEO).

The CLO must then determine whether a violation has occurred. If a violation has occurred an **appropriate response** must be taken. If no such response is taken then the securities lawyer **must** report the evidence to the board of directors.

The **securities' lawyer may reveal to the SEC**, without the client's consent, any confidential information that is reasonably necessary to (i) stop the client from committing a violation that will cause substantial financial injury to the client or its investors; (ii) rectify the injury if the lawyer's services were used to further the violation; or (iii) prevent the client from committing perjury in an SEC or federal matter.

### IX. Safekeeping Funds and Other Property (2-8%)

- When a client "pre-pays" a lawyer for services not yet given, the lawyer must keep it separate from its own and must not steal it, borrow it, or use it for the lawyer's personal advantage. The lawyer generally should put the money in a **pooled client trust account** (IOLTA account).

**Disputed Claims:** If there is a dispute, the lawyer must keep the disputed portion in the client trust account until the dispute is resolved.

### X. Communications about Legal Service (4-10%)

- **General Rule:** A lawyer may advertise through written, recorded or electronic means, however, communications can't be false or misleading.

- **Payment:** A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may: pay the **reasonable costs of advertisements** or communications, pay the **usual charges of a legal service plan** or a referral service, or pay for a law practice in accordance with Rule 1.17 (sale of a law practice).

- **Solicitation:** A lawyer shall not by in-person, live telephone or real-time electronic contact solicit employment when a significant motive for the lawyer's doing so is the **lawyer's pecuniary gain** (to make money) unless the person contacted: is a **lawyer**; is **family** or has a **close personal relationship**; or has a **prior professional relationship** with the lawyer.

### IX. Lawyers' Duties to the Public and Legal System (2-8%)

- A lawyer *should* render 50 hours of free services per year.
- **Appointments:** A lawyer should not avoid a court appointment to represent a person except for good cause, such as: representing the client is likely to result in **violation** of the MRPC, or it is likely to result in an **unreasonable financial burden** on the lawyer or client or the cause is so

**repugnant** to the lawyer as to be likely to impair the lawyer-client relationship or the lawyer's ability to represent the client.

- **Law Reform Activities:** A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration **notwithstanding that the reform** may affect the **interests of a client** of the lawyer. When the lawyer knows that the interests of a client may be **materially benefitted** by a decision in which the lawyer participates, the **lawyer shall disclose that fact** but **need not identify the client**.

### XII. Judicial Conduct (2-8%)

- **Disqualification:** A judge shall disqualify himself or herself in any proceeding in which the judge's **impartiality might reasonably be questioned**. This includes when the judge is likely to be a **material witness**, a family member is a **party to the proceeding** or has a more than de minimus **interest** that could be effected by the case, or the judge knows that a party/lawyer/law firm has contributed to the judges campaign, the judge made a public statement which appears to commit her to a particular result or she was involved in the case in a material way (lawyer, witness, etc, judge in another court) prior to becoming the judge in the current court.

- **Acceptance and Reporting of Gifts, Loans, Bequests, or Other things of value:** A judge **shall not accept any gifts**, loans, bequests, benefits, or other things **of value**, if it would appear to undermine her **independence, integrity, or impartiality**.

- **Extrajudicial Activities:**

**General Rule:** A judge may engage in extrajudicial activities. However, when engaging in extrajudicial activities, a judge may not do any of the following: **(RRIID)**

- **(R)** Engage in conduct that would appear to a **reasonable person to be coercive**.
- **(R)** Make use of **court premises, staff, stationery, or other resources, except for incidental use for activities that concern the law**, the legal system, or the administration of justice,
- **(I)** Participate in activities that **will interfere with the proper performance** of the judge's judicial duties.
- **(I)** Participate in activities that would reasonably appear to undermine the judge's **independence, integrity, or impartiality**.
- **(D)** Participate in activities that will lead to **frequent disqualification** of the judge.

### Appearances before Governmental Bodies and Consultation with Government Officials:

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: **(CAP) (1)** in connection with matters **concerning the law, the legal system**, or the administration of justice; **(2)** in connection with matters about which the judge **acquired knowledge or expertise in the course of the judge's judicial duties**; or **(3)** when the judge is **acting pro se** in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

**Testifying as a Character Witness:** A judge shall not testify as a character witness except when duly summoned.

**Practice of Law:** A full-time judge shall not practice law. A judge may act pro se (on their own, without a lawyer) and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but, **may not serve as the family member's lawyer**.

**Discriminatory Organization:** A judge shall **not hold membership in any organization** that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. And, he must not **use the benefits or facilities** of an organization if the judge knows or should know that the organization practices invidious discrimination. There is an exception for religious organizations.