



1B:

"For the Love of Ethics": A 'Dating Game' for Choosing the Right Rule of Professional Conduct

CA MCLE credit: 1.0 hour (Legal Ethics credit) and 0.5 hour (Competence Issues credit)

**ALSTON
& BIRD**



Speakers:

Hon. Rupert Byrdsong
Judge
Los Angeles Superior Court

Michelle Watkins
Partner
WFBM LLP

Mandana Massoumi
Partner
Seyfarth Shaw LLP

Moderator:

Adriene Lynch
Senior Associate
Alston & Bird LLP

Paul Rivera
Discovery Counsel
Google Inc.

**ALSTON
& BIRD**

Meet your host and contestants:



**Adriene
Lynch**
Alston & Bird



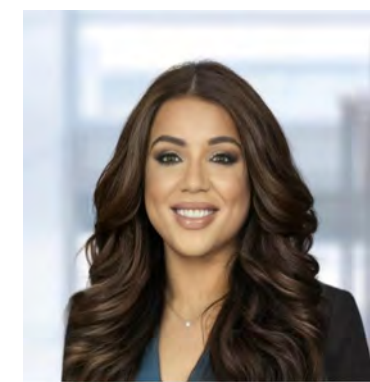
**Judge Rupert
A. Byrdsong**
Superior Court of
Los Angeles



Paul D. Rivera
Google



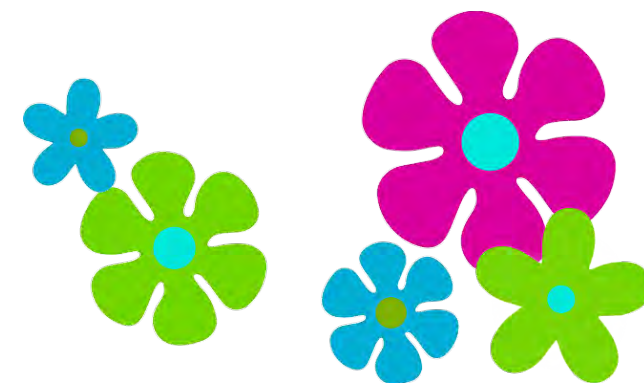
**Mandana
Massoumi**
Seyfarth



Michelle Watkins
Walsworth - WFBM



Question 1



Question 1: Reporting

Lawyer Ace knew that Lawyer Barbara drinks on the job. Ace did not pay much attention to Barbara's drinking. He reasoned that Barbara has been working on a big merger deal and likely needs to unwind. As Barbara passed Ace in the hallway, Ace heard bottles clinking from Barbara's purse. In another instance, Ace saw Barbara drunk while in a group call regarding the critical terms of the merger.

While reviewing Barbara's work, Ace noticed several mistakes in the merger documents that would result in their clients being on the losing end of the deal. Ace spoke to Barbara about the mistakes and her drinking, but Barbara denied drinking on the job and blamed the mistakes on someone else. Several months passed, every merger document Barbara drafted had critical mistakes. Ace later found that Barbara had been convicted of DUI four times.



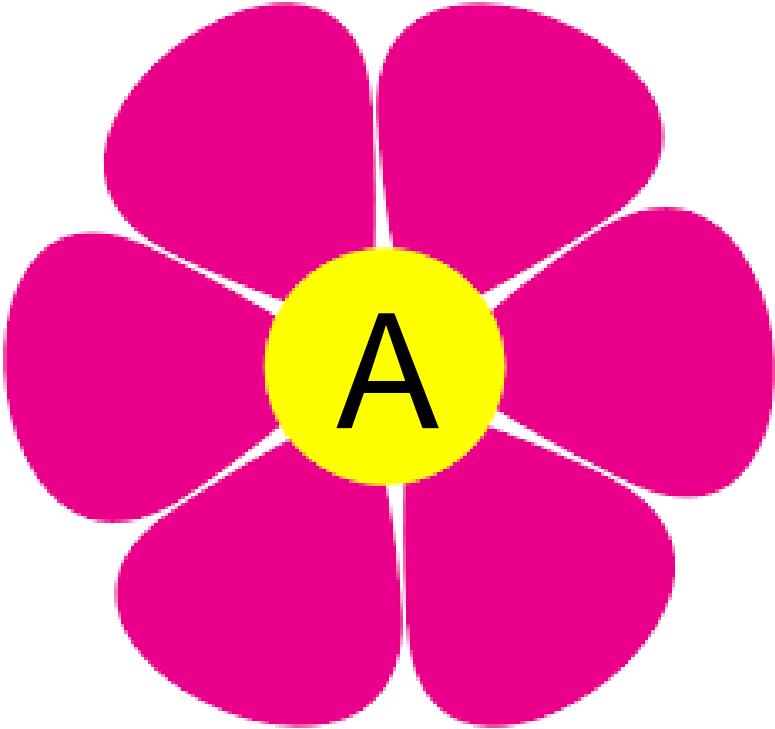
Question 1: Reporting

What does the ABA require Ace to do?

- A. Report Barbara to the Ethics Board Committee.
- B. Report Barbara to Human Resources and have HR handle the situation.
- C. Remove Barbara from the merger deal.

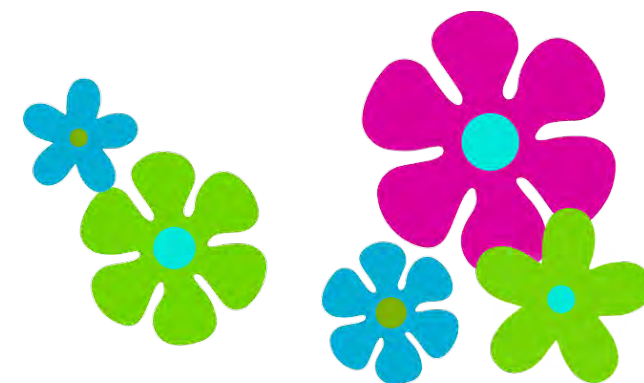


Answer





Question 2



Question 2: Privileged Conversations While Working Remotely

During these times of COVID you have fortunately been able to work from home.

You have an upcoming phone call with a very long-time client, N'gossi, at his request. You have worked with N'gossi for years, are close friends with him, and you have even met each other's families. N'gossi has yet to provide you with specific questions he would like to discuss, and you know that sometimes he calls to chat generally about his company's industry, provide general updates on his business, or talk about each other's families. Even before the pandemic, N'gossi would sometimes ask you to meet up for dinner to talk about sensitive issues. Additionally, N'gossi has occasionally discussed a mix of personal and legal issues with you. During COVID, you seem to have gotten closer as you have had some driveway happy hours and socially-distanced meet ups. You know your partner and child will be home today during the call, and you are concerned about keeping the call confidential.



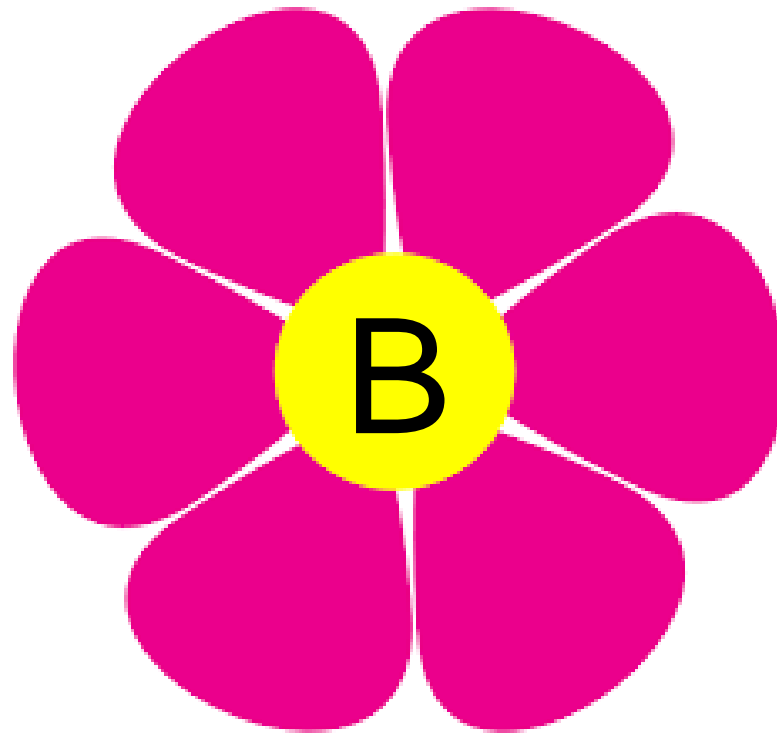
Question 2: Privileged Conversations While Working Remotely

Where is an acceptable place to take the call?

- A. In the kitchen which is connected to the office – with headphones in, where your partner and child are also doing work
- B. In the office—which is connected to the kitchen and where you have been working from home due to the pandemic—with the door closed.
- C. You must leave the house entirely, taking the phone call in places such as the garage, the car, or a private space in another building.

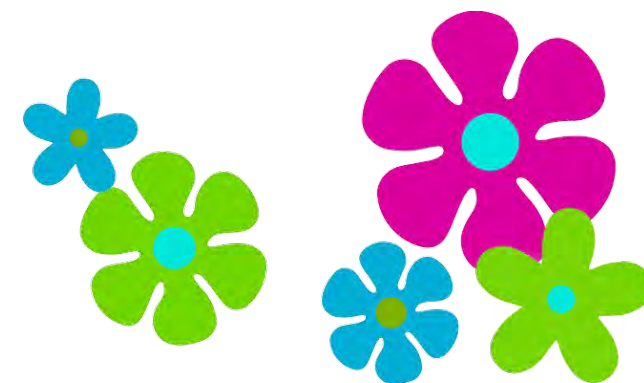


Answer





Question 3



Question 3: Retrieving Confidential Information at Risk of Health

Since the pandemic began, you have only worked within your home, and due to being immunocompromised, have not left home. In order to continue to represent your clients, you have told all of your clients to mail all documents and packages to your home. Additionally, you have arranged with your office staff to have any and all mail addressed to you sent to your private residence.

Very early this morning, the office building in which your firm is located confirmed several cases of COVID-19. Out of an abundance of caution, the building closed except for emergency situations. The firm promptly contacted all clients to let them know of the situation, and the firm was informed by the building staff that any mail delivered would be available for pick-up. Late that afternoon, you received a panicked call from one of your clients. They had sent a set of highly sensitive documents needed for a filing due the end of the next day, and they had received confirmation that the documents had just arrived at the office rather than your private residence.

You know that no one was at the office to forward or deliver the incredibly important package. Moreover, you know the court is closed for the day, so you are unable to request an extension. You have also attempted to contact the judge—who you know will also be absent the next day—via phone and email for an ex parte conversation but have yet to hear back.



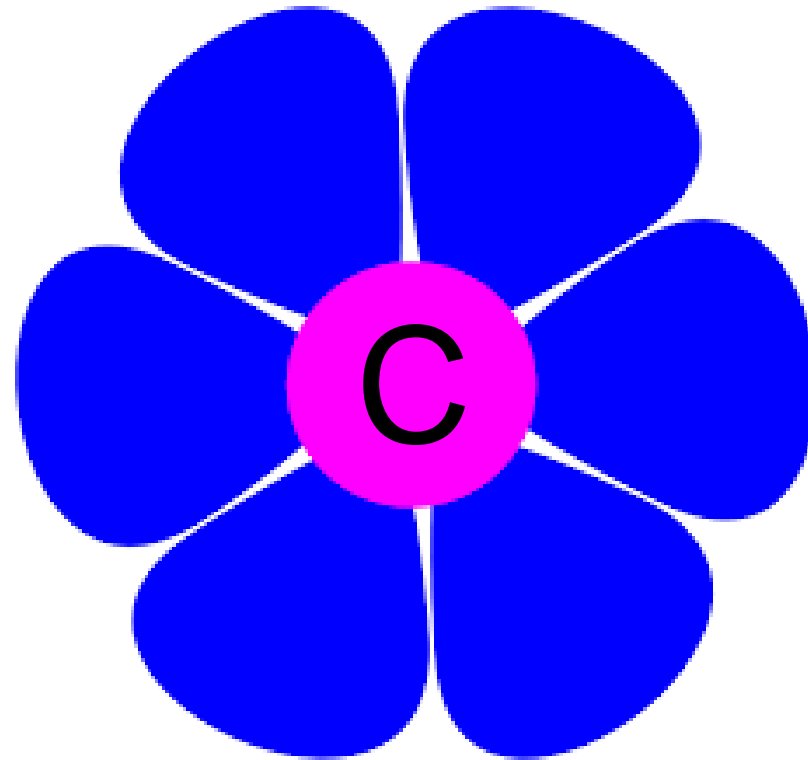
Question 3: Retrieving Confidential Information at Risk of Health

What is the best course of action?

- A. Contact opposing counsel
- B. Do your best to finish the filing with the information you have
- C. Go to the office and retrieve the package yourself

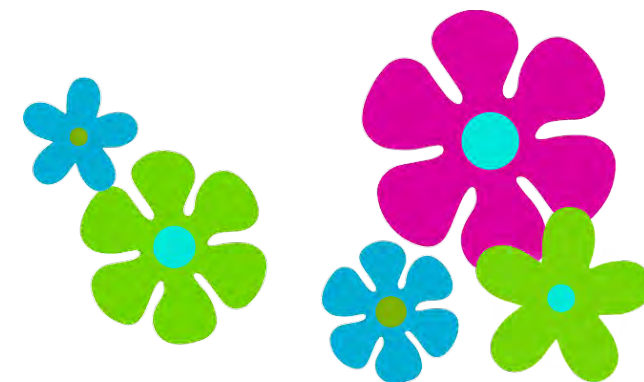


Answer





Question 4



Question 4: Friending the CFO

You are sitting at your dining room table working on a long to do list of items and trying not to get distracted by the last episode of Queen's Gambit. Your cell phone rings and you see the name of your business client and of course you pick up because hey, with COVID you work any time of the day!

“Hey, got a minute?” she asks and not waiting for you to respond, says: “As you know, we’re doing this acquisition of notsohot.com and I’m worried about the other side’s CFO. He might be stealing, and I feel like there are likely employment issues he is not telling us about. He seems so sleazy. I want to find out more about him on social media. I’m going to have my friend, a paralegal who used to work here, send a “friend” request to the CFO and get access to his Facebook page. Then we wouldn’t have to identify the company and could find out what was there. Can you think of anything specific we should look for or dig around the CFO’s Facebook page for?”



Question 4: Friending the CFO

Is it okay to do this? Why or why not?

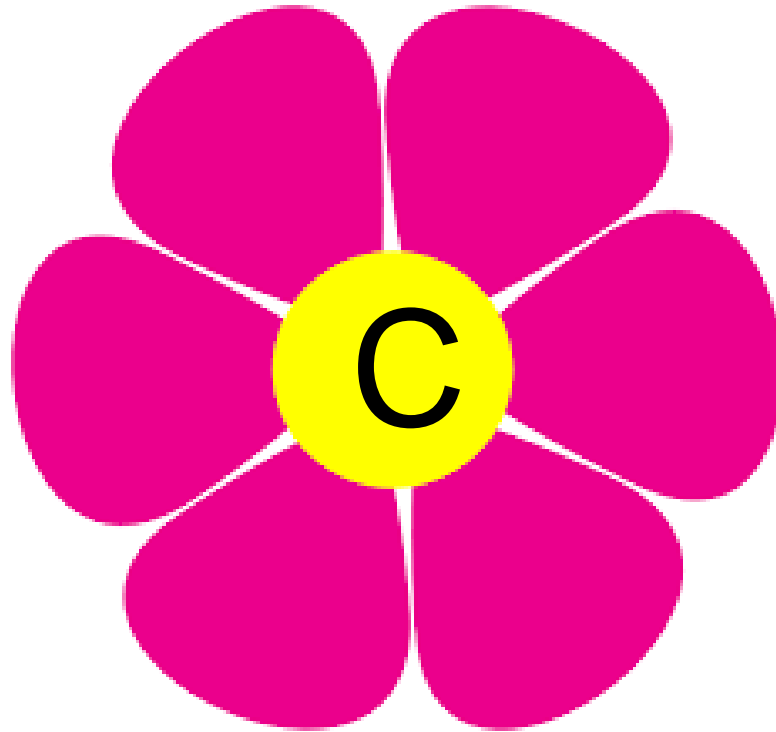
A. That's a great idea!

B. Your business client should send the request

C. Do not friend the CFO!

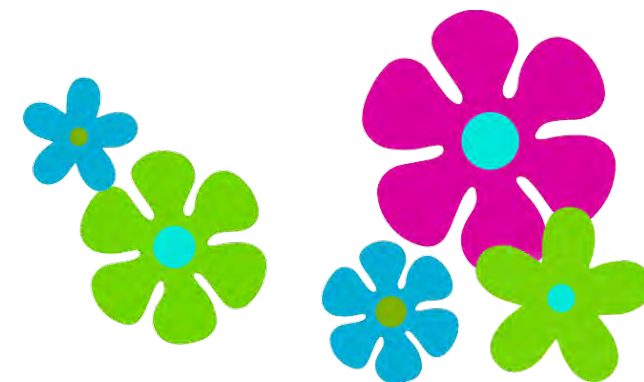


Answer





Question 5





Question 5: Reporting

Lawyer Hank saw Lawyer Charlie working late for several weeks in a row. Hank did not pay much attention to Charlie drinking when working at night. He thought Charlie was trying to unwind because of the multi-million dollar case Charlie and Hank were handling.

During a scheduled client meeting, Charlie appeared late, slurred his words, and smelled like alcohol. Hank also noticed several mistakes in a brief Charlie drafted for the client. Several weeks later, Hank noticed Charlie had missed several strategy meetings.

Hank spoke with Charlie about his work and constant tardiness. Charlie acknowledged his poor work quality and informed Hank that he has been seeing a therapist and group for his alcoholism per the Lawyer Assistance Program's recommendation. Charlie also informed Hank that he would be stepping back as the lead attorney on the case.



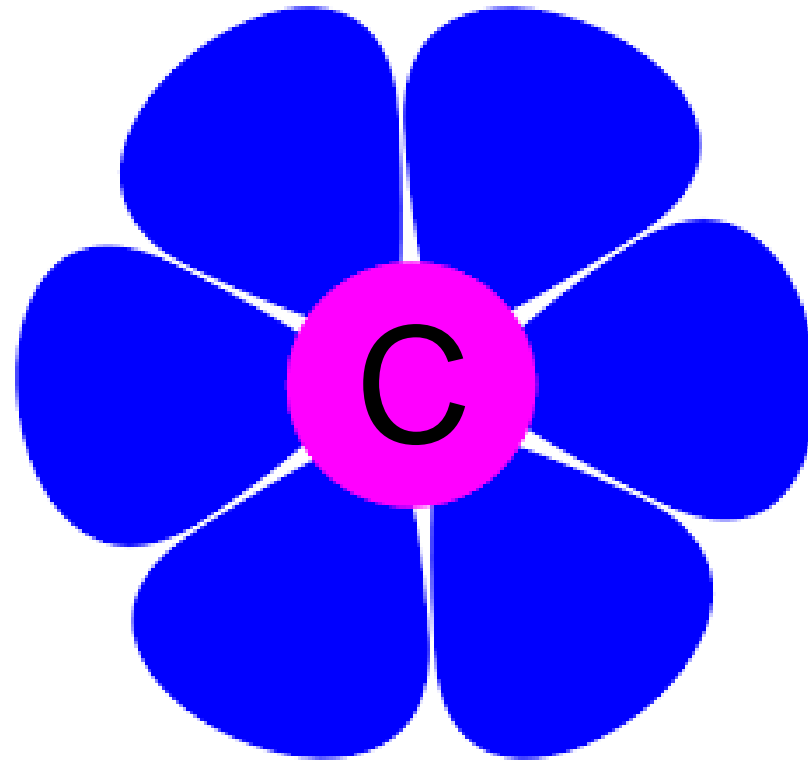
Question 5: Reporting

What is the best course of action?

- A. Report Charlie to the Ethics Board Committee because her drinking still poses a substantial question as to her fitness as a lawyer
- B. Remove Charlie from the merger deal.
- C. Do nothing. Acknowledge Charlie is dealing with the issue and handle being the lead attorney for the case.

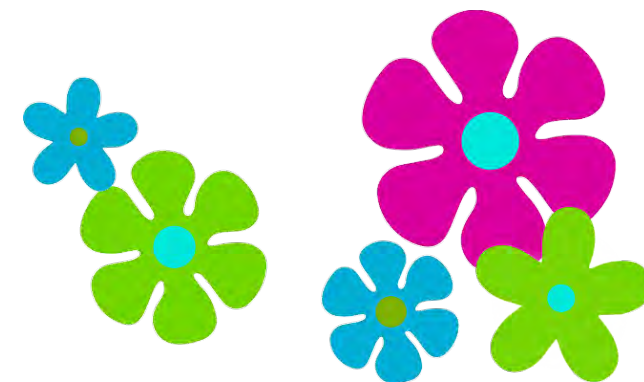


Answer





Question 6



Question 6: “Private” Social Media Pages

Because no good deed goes unpunished, you volunteered to help out with a matter involving one of your company’s executives, Joe Executive, who (along with the company) has been individually named in a lawsuit. He’s not only accused of defaming the plaintiff but also for harassment and discrimination. The lawyers on the other side have been aggressive in their discovery requests and recently served the following:

“Produce copies of all of Joe Executive’s current and historical Facebook and Instagram pages, including all deleted and archived pages and information.”

You call Joe Executive to talk to him about this request and he scoffs and says: “Ha! Good luck with them getting that. Let them file a motion. Most of it was marked “private” anyway.”



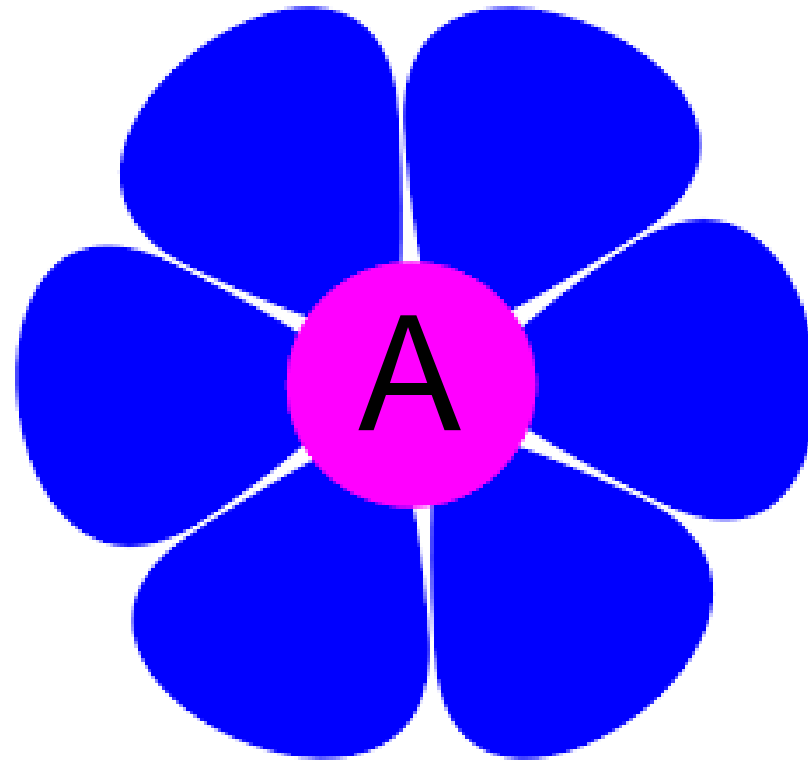
Question 6: “Private” Social Media Pages

Is the opposing party going to need luck to get Joe’s “private” information on Facebook and Instagram?

- A. It’s a close case
- B. Not much luck needed
- C. They’re going to need a lot of luck

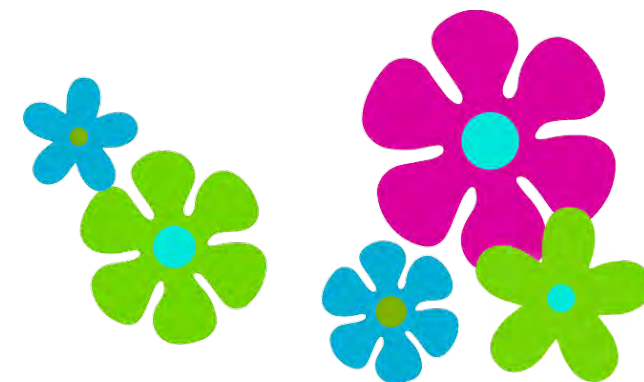


Answer





Question 7



Question 7: Disclosing Information During Settlements

You are an in-house attorney and your outside counsel calls you about a case that you have been trying to settle for a while.

“Good news,” she tells you, “the plaintiff has agreed to settle that serious accident claim against us for only \$1 million. As you know, that’s far less than the \$4 or \$5 million that we had reserved. But there’s one thing you should know. The plaintiff’s offer came after we’d conducted our independent medical exam on the plaintiff, but before we’d received the written report. The examining doctor said that he had found an aortic aneurysm that had not been previously discovered. The doctor didn’t know whether it was caused by the accident in your store, but the condition was fairly serious, and he wasn’t sure that it could be corrected.”

Your outside counsel then lets you know that she told the doctor not to complete the report because we would likely settle the case. Your outside counsel is afraid that if the plaintiff’s lawyer knows about this condition, there won’t be a chance to settle for the \$1 million. Your outside counsel wants your permission to not tell plaintiff’s lawyer about the report.



Question 7: Disclosing Information During Settlements

Do you give the permission to your outside counsel to withhold the information?

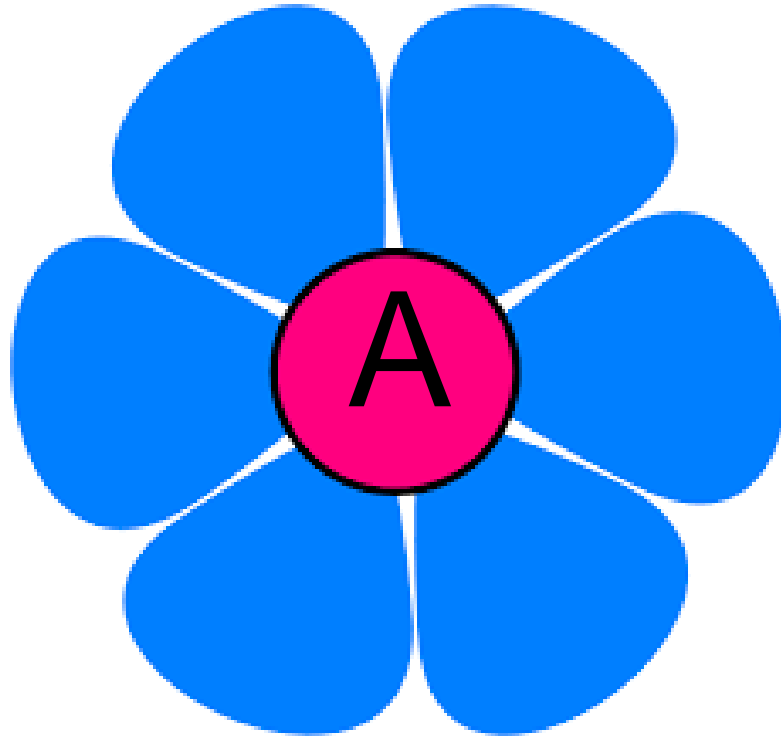
A. Neither.

B. Yes! Permission is granted. We owe them nothing!

C. No way, we should tell the other side.

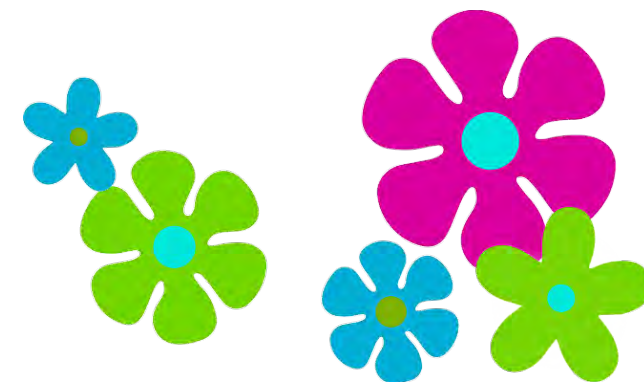


Answer





Question 8



Question 8: Stress

Associate Chloe is a newly licensed attorney. She never turned down a case from any partners at her firm. Because she over-committed her time, Chloe spent weekends and holidays working on her cases. She missed her sister's wedding, niece's christening, and mother's birthday. Chloe soon became the star associate of the law firm. After three years of working non-stop, Associate Chloe's work product started to decline. She kept missing critical case laws, forgetting deadlines, and foregoing team building exercises at the law firm. As a result, she is thinking about quitting law and starting a shop somewhere in a desolate California mountain.



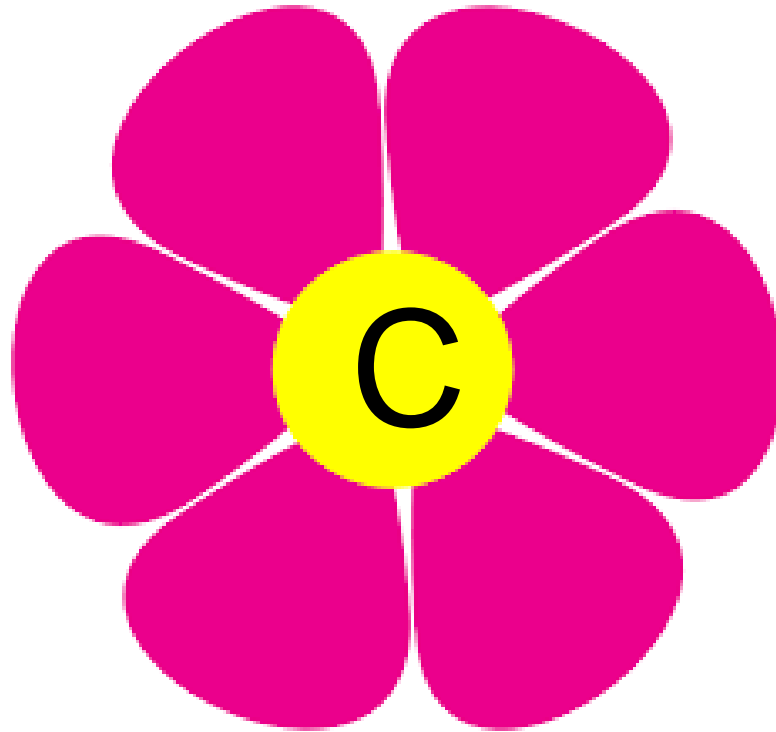
Question 8: Stress

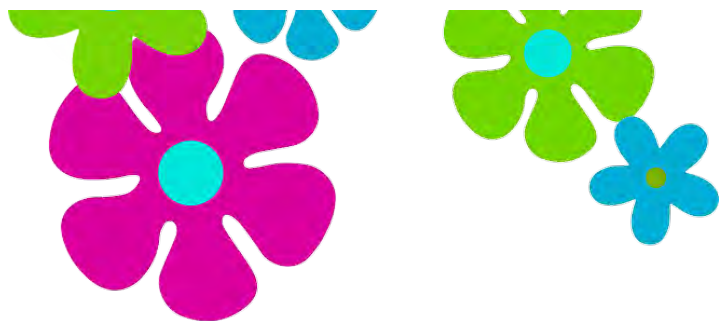
As a partner assigned to mentor Associate Chloe, what should you do?

- A. Do nothing. Law is a sink or swim profession.
- B. Talk to HR and report Chloe's declining work product.
- C. Speak with Chloe and recommend she plans a vacation and sign up to a lawyer assistance program.

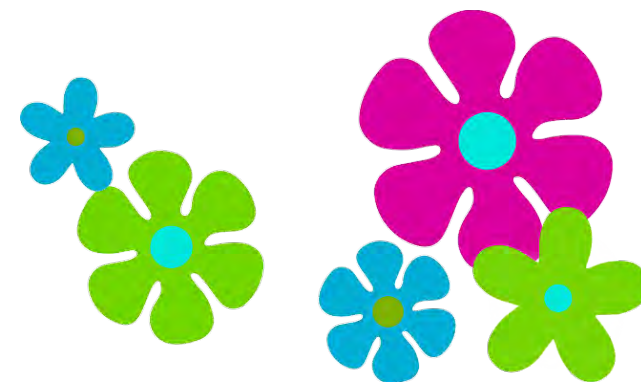


Answer





Question 9



Question 9: Accidental Disclosure

Your company has been targeted by a foreign plaintiff named Money Umbrella alleging “idea theft.” Money Umbrella is one of your company’s main competitors. You and one of your company’s Creative Executives are attending a Zoom business negotiation meeting with Money Umbrella and its in-house legal team at Money Umbrella’s offices. You and the Creative Executive log into the Zoom and someone lets you in the Zoom Room. You are told there will be a slight delay and are asked to wait for about 15 minutes. You notice in the chat function that there are communications between parties who were previously using the same Zoom link and the discussion appears to relate to “Creation Ideas” and “Items for Negotiation” but you need to scroll down to see more information. The Creative Executive calls you on your cell and says “Did you see the chat, I’m going to scroll down!”



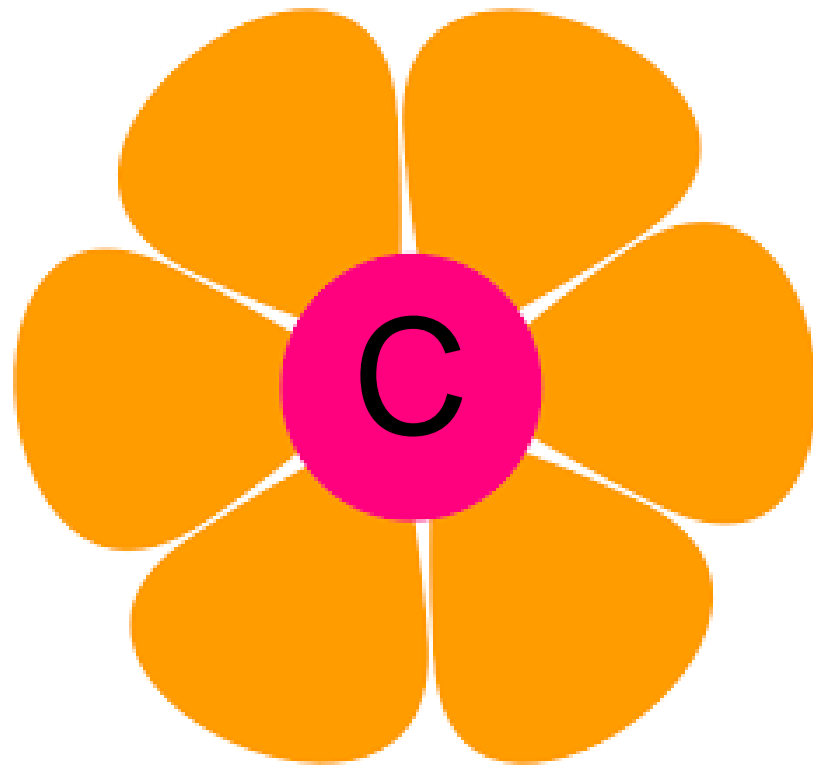
Question 9: Accidental Disclosure

What should you tell your Creative Executive to do?

- A. Don't scroll down, but what's visible in the chat is fair game.
- B. Scroll.
- C. Close the chat.

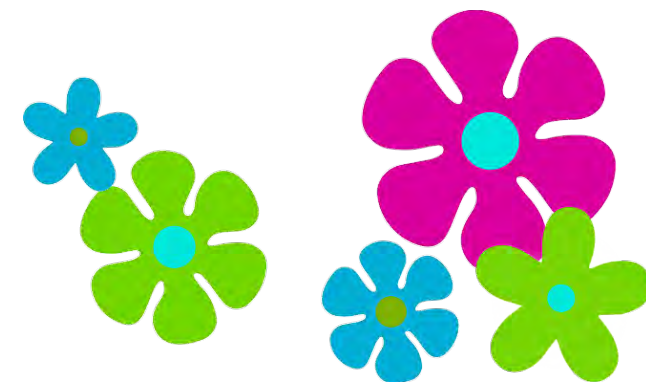


Answer





Question 10



Question 10: Privileged Emails

This conversation happens to you one day:

Smart: “Ms. Lawyer, this is Assistant U.S Attorney Albert Smart. I am calling to see if you would accept service of a grand jury subpoena for documents on behalf Your Company. If so, it will save a trip by the FBI to serve it on you in person.”

You: “Yes,” you say, because you want to be cooperative.

Smart: “Great. By the way, does Your Company’s email policy inform its employees that the email system belongs to Your Company, and therefore, the employee has no expectation to privacy in their email?”

You: “Yes,” you reply cautiously.

Smart: “Good,” says Smart, “because you will notice the subpoena asks for emails pertaining to the XYZ Association, and your CEO is on its Board. Just so the government is clear on this, we want any emails that your CEO’s company computer has relating to the XYZ Association, even if the emails are from XYZ’s Association’s lawyers.”

You: “Ok but those emails may be privileged . . .”

The AUSA hangs up before you can finish. . .



Question 10: Privileged Emails

What are you going to tell the CEO if he asks if the emails are privileged?

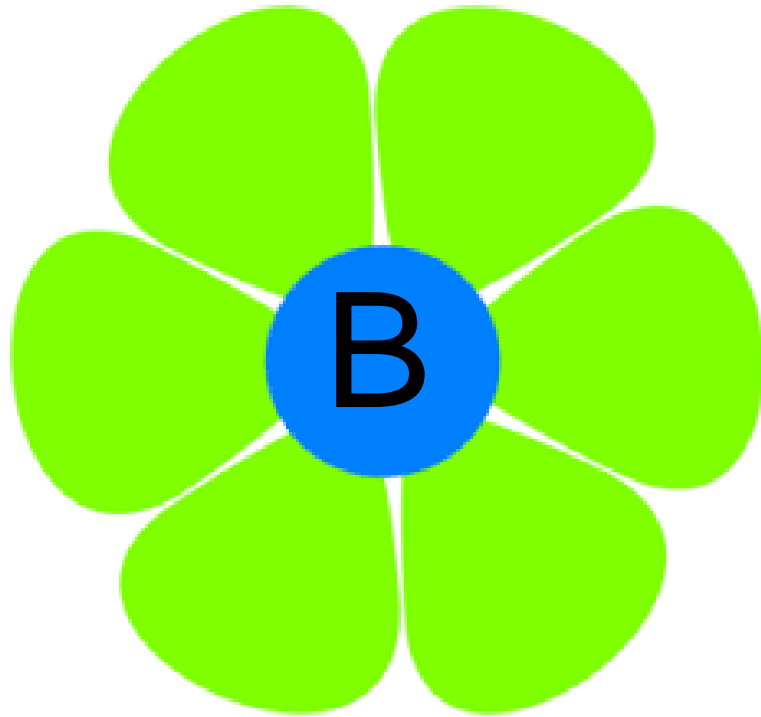
A. Don't worry about it!

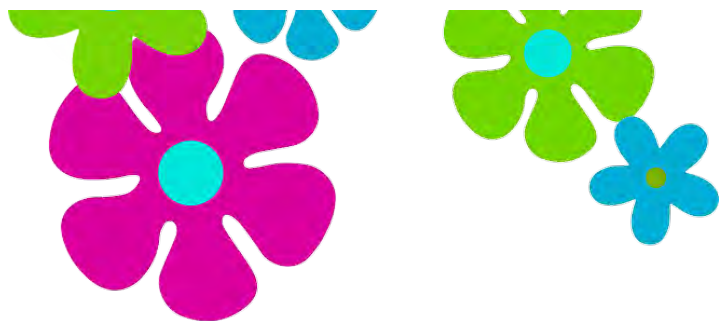
B. I need to see your emails, we may have a problem...

C. You are screwed!

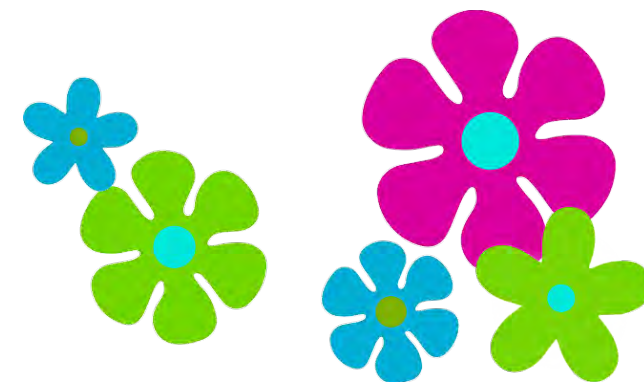


Answer





Question 11



Question 11: Over-Commitment

Associate Ben has been working on several cases for most of the senior partners at his firm. He has over-committed his time and feels he does not have enough time outside the firm. He already reached his billable hour requirement six months into the year. He is exhausted, stretched thin, and unable to attend social functions any longer.

Partner Cary asked if Ben wanted to be part of another case in the pipeline. Cary asked Ben because of Ben's work product, but other associates are available. The case involved an area of law that would require Ben to learn and include extensive research.



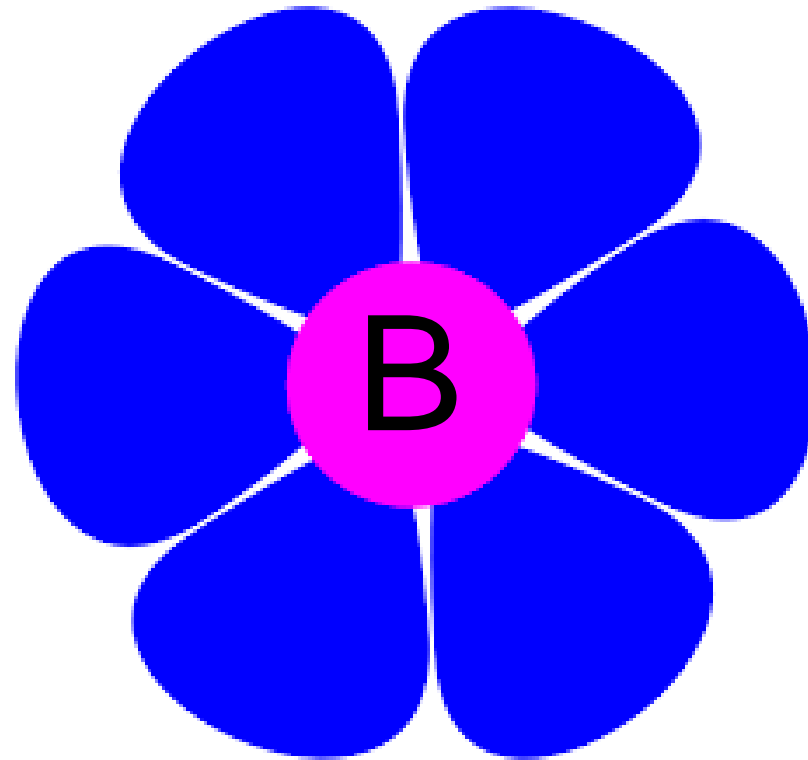
Question 11: Over-Commitment

What should Ben do?

- A. Do not reply to the email. Maybe Cary will forget ever emailing him.
- B. Defer, Refer, or Batch.
- C. Take on the case because it will help him become a partner at the firm sooner.

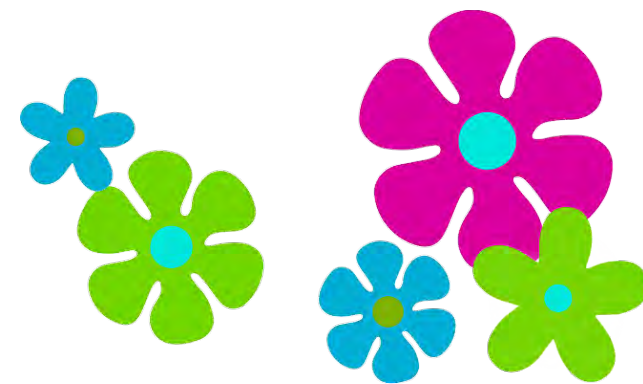


Answer





Question 12



Question 12: Appearing in a Jurisdiction You Are Not Barred In

This next question is for those of you at companies where your in-house legal department takes or defends depositions without using outside counsel.

One of your in-house colleagues from New York, Kathleen, is visiting. One of the company's IT people has been subpoenaed to give a record's custodian deposition in a California state court case in which the company is not a party. The deposition shouldn't be adversarial and shouldn't last long. It's at 2:00 p.m. today and there is no one available to cover the deposition so you ask Kathleen to cover and represent the witness.

At 2:45 p.m. on the same day, the deposition becomes contentious because the witness can't answer questions. After several "badgering, asked and answered" objections by Kathleen, the examining lawyer says: "I must inquire – are you licensed to practice in California? If so, what is your bar number?"

At a break in the deposition, Kathleen calls you in a panic: "Help. What do I do? Does my New York license help? It's the only state in which I have a license?"



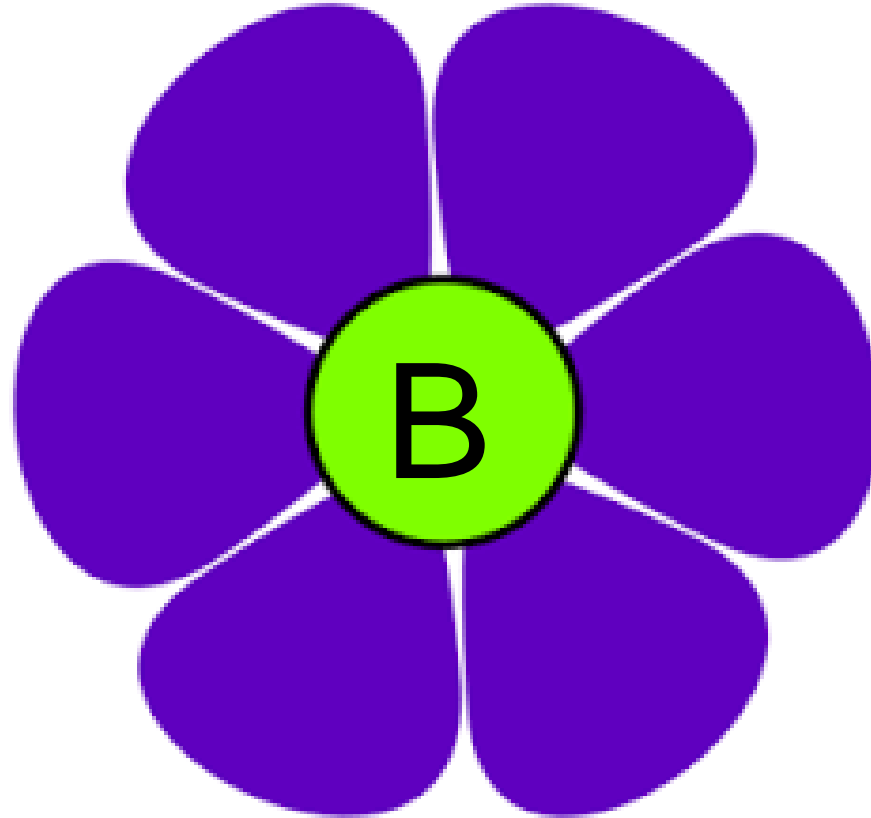
Question 12: Appearing in a Jurisdiction You Are Not Barred In

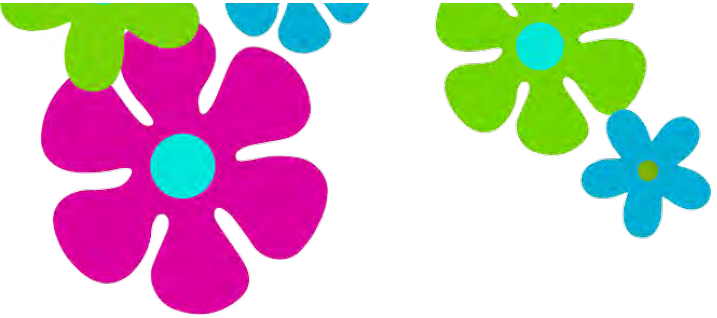
Does Kathleen have a problem with the California Bar?

- A. No, because she isn't appearing in court or holding herself out as a California Lawyer.
- B. Yes.
- C. No, because her involvement is temporary.

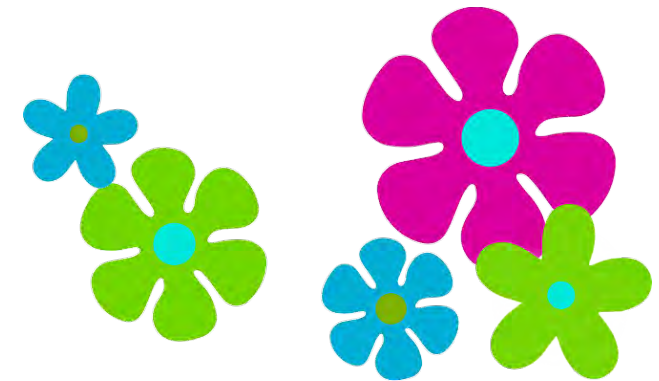


Answer





**Thank you for playing
“For the Love of Ethics”**





UP NEXT
12:15 PM - 1:45 PM

Bosses Lunch
Gold 2

No Bosses Lunch
Gold 3

Lunch with a GC
Gold 4