Civil Trial Law Certification Examination
Sample Questions

Disclaimer: The following questions are provided to the public as examples of the types of questions that appear on the Civil Trial Law certification exams, as well as the subject areas that are tested. All questions have been pulled from previous examinations and were correct and factual at the time of administration; however, the Civil Trial Law Certification Committee acknowledges that some questions and/or answers may no longer be accurate due to the passage of time since administration. None of these questions will appear on future exams.

Civil Trial Multiple Choice Questions

1. Which of the following statements is **NOT** true?

   (a) The scope of discovery includes all matters relevant to the subject matter of the pending action, but that are not privileged.

   (b) Court may not compel discovery of material that is not itself admissible at trial.

   (c) Work product may only be discovered by the party seeking discovery upon a showing of substantial need for case preparation, and the inability

without undue hardship to obtain the substantial equivalent by other means.

(d) Pursuant to the Florida Rules of Civil Procedure, if a response to an interrogatory or request for production was complete when made, there is no duty to supplement such response with information thereafter acquired.

Answer: (B)

2. Which one of the following statements is **NOT** true?

(a) A party may amend a pleading once as matter of course at any time before a responsive pleading is served.

(b) At a hearing on a Motion for a Summary Judgment, the court may weigh conflicting evidence in order to resolve the issue being presented.

(c) A proposal for settlement may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered.

(d) A deposition may only be used against a party who was present or represented at the deposition, or who had reasonable notice thereof.

Answer: (B)

3. Which one of the following statements is **NOT** true?

(a) Acceptance of service of process by mail does not waive any objection to personal jurisdiction.

(b) Pleadings may be stated in the alternative.

(c) A motion for judgment on the pleadings is available after the pleadings are closed, but within such time as not to delay the trial.

(d) A motion to strike a sham pleading must be made within 20 days after the pleading is filed.

Answer: (D)

4. Which one of the following statements is **NOT** true?

(a) Pleadings may be stated in the alternative.

(b) Pleadings may be amended to conform to the evidence, but only after all of the parties have rested.

(c) An exhibit attached to a pleading is a part of that pleading for all purposes.

(d) The purpose of a pleading known as a "reply" is to raise affirmative defenses to affirmative defenses.

Answer: (B)

5. Which of the following statements is **NOT** true?

(a) By reviewing the pleadings, the litigants can determine when the action was commenced, as well as when the action is at issue.

(b) By reviewing the pleadings, the litigants can determine when the action can be set for trial.

(c) By reviewing the pleadings, the litigants can determine what relief is being sought and what defenses should be considered.

(d) By reviewing the pleadings, the litigants can determine who the parties are but not who the real parties in interest are.

Answer: (D)

6. Which of the following statements is **NOT** true?

(a) Subject matter jurisdiction can only be waived by stipulation of the parties.

(b) A challenge to be sufficiency of service of process is waived if not raised in the defendant's first response to the complaint.

(c) As a matter of course, without court order, a pleading may be amended once before a responsive pleading is served.

(d) A cross-claim must arise out of the same transaction or occurrence as does the original claim or relate to property that is the subject matter of the original claim.

Answer: (A)

7. Which of the following statements is **NOT** true?

(a) Errors in the manner of taking the deposition which might be cured it properly presented are waived unless made at the deposition.

(b) In order to take oral depositions by video, there must be a stipulation of the parties or an order from the court.

(c) Counsel, at an oral deposition, may examine and cross examine as at trial.

(d) A deposition may be noticed without a court order by a defendant at any time after service of process.

Answer: (B)

8. The difference between a compulsory counterclaim and a permissive counterclaim, each referenced in Rule 1.170, FRCP, is that:

1. A compulsory counterclaim arises out of the transaction or occurrence that is the subject matter of the opposing party=s claim and does **NOT** require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.
2. A compulsory counterclaim arises out of the transaction or occurrence that is the subject matter of the opposing party=s claim and does **NOT** require, for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.
3. A compulsory counterclaim, unlike a permissive counterclaim, may arise out a transaction or occurrence that is **NOT** the subject of the opposing party's claim.
4. A permissive counterclaim, unlike a compulsory counterclaim, shall arise out of a transaction or occurrence that is **NOT** the subject of the opposing party's claim.

A. Only 1 is a correct statement of the Rule.
B. Only 2 is a correct statement of the Rule.
C. Only 3 is a correct statement of the Rule.
D. Only 4 is a correct statement of the Rule.

Answer: (A)

9. Under the Amended and Supplemental Pleadings Rule, 1.190, FRCP:

1. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has **NOT** been placed on the trial calendar, may so amend it at any

time within 20 days after it is served.

2. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has **NOT** been placed on the trial calendar, may so amend it at any time within 30 days after it is served.
3. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment is **NOT** permitted to relate back to the date of the original pleading.
4. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.
5. At every stage of the action, the court must disregard any error or defect in the proceedings which does **NOT** affect the substantial rights of the parties.

A. Only 2 & 4 are correct statements of the Rule.
B. Only 2, 4 & 5 are correct statements of the Rule.
C. Only 3 & 5 are correct statements of the Rule.
D. Only 1, 4 & 5 are correct statements of the Rule.

Answer: (D)

10. Pursuant to Rule 1.110(b), FRCP, a pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim or third-party claim, must state a cause of action and shall contain:

1. A demand for judgment for the relief to which the pleader deems himself or herself entitled.

2. A short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it.
3. A short and plain description of the conclusions of the pleader showing that the pleader is entitled to relief.
4. A short and plain statement of the ultimate facts showing that the pleader is entitled to relief.
5. A demand for pre-judgment and post-judgment interest based upon the Aunfairness@ doctrine.

A. Only 1, 2 & 3 are correct statements of the Rule.
B. Only 2, 3 & 4 are correct statements of the Rule.
C. Only 1, 2 & 4 are correct statements of the Rule.
D. Only 1, 4 & 5 are correct statements of the Rule.

Answer: (C)

Ethics Essay Question

Robert Gambini has tried a number of cases in various areas (commercial, real estate, personal injury, etc.), but he has never been involved in any litigation concerning trusts, trust disputes or claims made against trustees. In fact, Robert has always found matters relating to probate and trust law confusing, and he normally ignores reading any case law or other secondary sources about these areas of the law, considering them too complicated for his sole practitioner's law office.

Recently Robert was asked to review a very complicated and detailed trust agreement for the purpose of defending a lawsuit filed against Trustee, Tom Brutal. Robert agrees to undertake the legal representation and enters an appearance for the Trust and Trustee.

The nature of the new trust case is that the beneficiaries of the actual Trust have sued Trustee, Tom Brutal, for self-dealing and breach of fiduciary duty. Essentially, the beneficiaries claim that Trustee Brutal made a certain investment for the Trust, in a real estate venture, losing substantial amounts of money due to the real estate venture's poor performance. Despite the Trust's substantial loss of money due to the real estate investment, Trustee Brutal still paid himself large consulting fees for what clearly appeared to be very bad investment advice. When Robert was asked to handle this new case Trustee Brutal said to Robert, "don't worry the Trust has plenty of funds left to pay for legal representation and I don't care about the cost. All I want you to do is bury the beneficiaries with litigation tactics so don't hold back on anything."

Continued on Next Page…

Coincidentally, Robert knows Trustee Brutal from an earlier case wherein Robert represented the actual real estate venture which forms the very basis of the Trust's loss of funds. Indeed, in that earlier matter, which was litigated, Robert represented the principals of the real estate investment, which included Mr. Brutal. In this earlier case, a fraud in the inducement claim was alleged and the case was quickly settled after Robert investigated the facts and found that certain untrue statements were made in advertising brochures for the venture. Robert always suspected then that it was Mr. Brutal who caused the false information to be disseminated in the advertising brochures. In fact, after concluding that the information was false, Robert made certain recommendations to the principals as to how better state certain factual information, so it would be harder to prove fraud should some other case ever be filed against the real estate venture or its principals in the future. In this regard, the real estate investment's principals took Robert's advice and made the suggested changes. Although the brochures included Robert's recommendations, they still contained clearly untruthful statements. Robert never commented on the changes after making them thinking; "well the clients haven't asked me, so I have no duty to say anything."

The new Trust case begins to actively litigate, and Robert attends hearings, depositions and conferences. He immediately recognizes that the case is well beyond his comfort level. As such, he signs up for and attends a crash course in "Trust Litigation 101." The course requires 60 hours of time to complete, and Robert bills the Trust for all of the time he spent learning the topics assigned in the course. When the course was completed Robert felt better about the area of law, but still was not comfortable that he completely understood all of the material, especially the tax consequences related to the subject matter.

Continued on Next Page…

Of interest is that after Robert entered his appearance in the new Trust case, the Trustee informed Robert that he was holding valuable coins "which were the property of the Trust."

Robert immediately agreed that he would hold the coins "in trust" and notified the beneficiaries' lawyer of such by email. The opposing lawyer confirmed that Robert would hold such in trust "for all of the beneficiaries as the coins have sentimental value and are not replaceable." It turns out that when each coin was bought they were purchased by the beneficiaries' father who promised certain particular coins to each of the beneficiaries when they turned 35 years old. In his email to the Trustee, Robert agreed to hold the coins in Trust indicating, "I agree to keep the coins in a secure manner, and also I acknowledge that the coins are unique." Thereafter, Robert kept the coins in the unlocked filing cabinet at his office that contained the Trust litigation file in an envelope marked "Trust Property, Do not Misplace."

As the case proceeded along things did not go very well for Robert, as he was continually overmatched by the opposing lawyer, Sarah Dogood. For many reasons, Robert began to lose his temper at Sarah, and her clients, at various times during the representation. In fact, Robert began to lash out against opposing counsel, the witnesses and the beneficiaries. In this regard, and at a deposition, Robert referred to one of beneficiaries as a "nut case." At one hearing, prior to the Judge entering the courtroom, Robert stated to the opposing side, "you are a bush leaguer" and "these cases are not conducted under girl's rules." The comments were heard by several people present in the courtroom. In an email exchange, Robert commented to the same lawyer "you are incompetent and need to go back to law school." Finally, at an evidentiary hearing, in a hallway of the courthouse during a recess, Robert actually said to a witness, "let's go outside and handle this matter the old school way."

Continued on Next Page…

After the real estate venture was joined in the Trust litigation as a party and it was learned that Robert had previously represented the venture, the beneficiaries filed a Motion to Disqualify Robert from further representation of the Trustee. In actuality, Robert was very relieved when he received the motion to disqualify and he immediately filed his Motion to Withdraw, claiming a disagreement with his client the Trustee as the basis for the motion. The Trustee was surprised to receive the motion but hired new lawyers.

Prior to scheduling a hearing on his Motion to Withdraw, Robert wrapped the coins and had them sent, by general U.S. Mail, to the Trustee's new lawyers. Robert never informed opposing counsel that he was sending the coins to the new lawyers.

Upon receipt of the coins, the new lawyers prepared an inventory wherein they found that several of the coins (the ones most valuable) were missing. When asked by the new lawyers about the missing coins, Robert denied ever having them and immediately blamed the Trustee Brutal for not giving him all of the coins when they were delivered to him. Robert also told the new lawyers, "I am going to tell you something under the attorney client privilege", and he began informing the lawyers that he always suspected that Trustee Brutal was "a bad guy" as Robert saw "first hand" Mr. Brutal's willingness to commit fraud when Robert represented him and the real estate venture in the earlier case.

Discuss in detail the ethical issues concerning Robert's conduct. (Do not discuss trust law or any substantive legal issues other than your views of the ethical issues presented by Robert's conduct.)

Ethics Essay Model Answer

The question presents numerous standard ethical issues which any Florida Bar board-certified trial lawyer should be able to identify and discuss. Specifically, the question presents issues related to adequate representation, charging a reasonable fee, conflicts of interest, divulging client confidentiality, handling of a legal case without proper knowledge or training, informing a client when independent counsel is necessary, allowing clients to perpetuate false statements and/or false information, assisting in possible criminal or civil wrongs, failure to recognize trust obligations, showing selfish motives and acting in an unprofessional and unethical manner by disparaging and humiliating opposing parties and counsel.

The question is composed of a compendium of Florida Rules Regulating The Florida Bar as well as actual case law on the issues presented in the question including *The Florida Bar v. Nealy*, 587 So.2d 465 (Fla. 1991) (trust account violation); *The Florida Bar v. Johnson*, 132 So.3d 32 (Fla. 2014) (trust account violation); and *The Florida Bar v. Martocci*, 791 So.2d 1074 (Fla. 2001) (attorney's misconduct in making unethical, disparaging and profane remarks to belittle and humiliate both opposing party and counsel).

The following areas of "ethics" as delineated by The Florida Bar's rules regarding professional responsibility are included in the question:

***4-1.1 Competence*.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Lawyers must be competent in the subject matter before undertaking representation.

Continued on Next Page…

4-1.2 Objectives and Scope of Representation.

(d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

A lawyer is an officer of the court. As such, a lawyer cannot accept or condone fraudulent information, especially if such is considered inaccurate and/or misleading / fraudulent. The facts of the question present significant issues as to whether Robert assisted clients with perpetrating a fraud and whether he had a duty to disclose such to the client and/or resign from further representation.

4-1.3 Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Robert had no formal education in trust litigation and decided to enter an appearance in a case where he did not have the legal experience necessary to represent the client. Although Robert attempted to learn the subject matter, he could not have acted with reasonable diligence given the circumstances, specially waiting until the case was in full litigation mode before undertaking an educational program in trust litigation.

Continued on Next Page…

4-1.5 Fees and Costs for Legal Services.

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive **fee** or **cost**, or a **fee** generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A **fee** or **cost** is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the **fee** or the **cost** exceeds a reasonable **fee** or **cost** for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the **fee** or **cost** is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a non-client party, or any court, as to either entitlement to, or amount of, the **fee**.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable **fee** include:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the **legal service** properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the **fee**, or rate of **fee**, customarily charged in the locality for **legal services** of a comparable or similar nature;

(D) (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any

additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the **fee** is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable **costs** include:

(A) the nature and extent of the disclosure made to the client about the **costs**;

(B) whether a specific agreement exists between the lawyer and client as to the **costs** a client is expected to pay and how a **cost** is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific **costs** can be identified and allocated to an individual client or a reasonable basis exists to estimate the **costs** charged;

(E) the reasonable charges for providing in-house service to a client if the **cost** is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All **costs** are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging **costs**, the **costs** charged thereunder shall be presumed reasonable.

Robert did not have the requisite skill and education to undertake representation and charged an unreasonable fee.

4-1.6 Confidentiality of Information.

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c) and (d), unless the client gives informed consent.

Robert represented the real estate investment in an earlier litigation and learned confidential information concerning such. Robert disclosed the information, without authorization from the client or otherwise satisfying the requirements of the Rules.

Continued on Next Page…

4-1.7 Conflict of Interest.

(a) **Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) **Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

Robert engaged in a potential conflict of interest by representing the Trust wherein he previously represented the real estate investment, especially since he learned information concerning the investment which would be material to representation of the Trust and Robert knew or should have known that the real estate investment would be involved in the new Trust litigation.

Continued on Next Page…

4-1.9 Conflict of Interest; Former Client.

A lawyer who has formerly represented a client in a matter must not afterwards:

(a) 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;

(b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or

(c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

Robert is now representing the Trust in a matter directly related to the real estate investment. Further, Robert learned and disclosed information to the new attorney which was deemed confidential and was learning the information he learned through his attorney-client relationship with a former client.

4-1.15 Safekeeping of Property.

Compliance with trust accounting rules. A lawyer shall comply with The Florida Bar rules regulating trust accounts.

Robert did not properly safe keep the coins and improperly transferred them without adequate notification to the beneficiaries who Robert knew had an interest in the property (coins). See The Florida Bar v Nealy, supra and The Florida Bar v. Johnson, supra.

Continued on Next Page…

4-1.16 Declining or Terminating Representation.

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged;

(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or

(5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

Robert may or may not have had a reasonable suspicion that the Trustee was perpetrating a fraud and/or self-dealing when he undertook the representation of the Trust. Nonetheless, given Robert's prior experience with Tom Brutal, Robert had reason to believe that his representation could result in a violation of the Florida Rules of Professional Conduct. Specifically he represented the real estate investment on a prior occasion and learned confidential information which revealed that the investment engaged in fraudulent conduct. In the representation of the Trust, Robert could now be asserting arguments that he knows or had reason to know are improper and quite possible fraudulent.

(b) Declining or Terminating Representation (When Withdrawal is Allowed).

Robert improperly withdrew from the case without his client's consent and for purposes solely related to his own interests.

Continued on Next Page…

***4-2.1 Adviser*.**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

Given the fact that Robert was retained by the Trustee he had an independent duty to now inform the Trustee of his concerns about the Trustee's conduct (charging a fee for advice in a real estate investment that contained improper brochure information) and that there may be no good faith basis to assert a defense against the beneficiaries in the Trust litigation.

***4-3.1 Fairness to Opposing Party and Counsel*.**

Robert acted in an unprofessional and unethical manner by making disparaging and profane remarks to belittle and humiliate opposing counsel and opposing party. In the questioned facts there is clear documentary (and testimonial evidence to support the fact that Robert engaged in unprofessional conduct in seeking to belittle and humiliate opposing counsel and her clients. In this regard Robert's conduct in calling Sarah a "bush-leaguer" and stating that this case will not be under "girl's rules" are comments considered highly unprofessional. Furthermore, Robert's threat made to the witness in the courtroom's hallway is clearly unprofessional. In this regard, see The Florida Bar v. Martocci, supra, in which the quotes stated in the question are actually part of the factual rendition of the opinion.

Continued on Next Page…

4-4.1 Truthfulness in statements to others.

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 4-1.6.

A *lawyer cannot provide, convey, condone or corroborate false statements to third parties. Robert's knowledge of the underlying fraudulent information from his representation of the real estate investment could well require that Robert advanced false statements about the investment in defending the Trustee. Moreover, after Robert provided the information to the principals of the real estate investment he knew that the fraudulent information was continuing to be disseminated and took no action to inform the principals that such conduct could not be condoned.*

4-8.4 Misconduct.

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Robert's conduct evinces behavior revealing an attempt to act dishonestly. Given Robert's prior knowledge and information related to the Trust Robert must address the conduct with the client, provide appropriate counseling and request that the client not perpetrate additional misinformation or fraudulent conduct. In the event Robert's client refuses to comport himself accordingly, Robert must withdraw from further misrepresentation.

Failure to honor Trust Obligations

Robert had specific trust obligations regarding the coins and failed to properly maintain the trust property and thereafter failed to honor the obligation to maintain the trust property.

Evidence Essay Question

Pam Plaintiff slipped and fell while at the RU Fit Gym. Pam did not have any health insurance coverage. Her attorneys at IM Hurt, LLC referred her to Dr. Frank N. Stein, an orthopedic surgeon. The attorneys at IM Hurt, LLC sent many referrals to Dr. Stein. In fact, Dr. Stein's practice was 90% from plaintiff's attorney referrals. In all of Dr. Stein's attorney referral cases, the patients were required to sign Letters of Protection (LOPs). In the LOP, the patient pledges to pay Dr. Stein if there is a settlement or judgment in the patient's favor. Pam Plaintiff signed an LOP at Dr. Stein's office, before starting her accident treatment.

Prior to trial, Pam's attorney's file a Motion in Limine to exclude any evidence or questions about:

A. Their possible referral of Pam to Dr. Stein based upon attorney client/privilege.

B. The admission of the LOP Pam signed based upon relevance and prejudice arguments.

C. The number or percentage of Dr. Stein's patients that sign LOPs.

D. The relative cost of Dr. Stein's bills compared to other providers.

Question:

Assume you are the judge in the case. As the judge in the case, how should you rule on each of the 4 issues (A-D) raised in Pam's Motion in Limine?

Evidence Essay Model Answer

(A) The referral of Pam by her attorneys to Dr. Stein is protected by the attorney/ client privilege. This would not be discoverable nor admissible. Therefore the motion as to #3A would be sustained.

Worley v. Cent. Fla. YMCA, 228 So. 3d 18 (Fla. 2017).

The attorney-client privilege is the oldest confidential communication privilege known in the common law. *See Upjohn Co. v. United States, 449 U.S. 383, 389, 101 S. Ct. 677, 66 L. Ed. 2d 584 (1981)*. It is governed by the Florida Evidence Code, codified at *section 90.502, Florida Statutes* (2015). Under the Florida Evidence Code, A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client

(B) The LOP signed by Pam would be admissible to show Dr. Stein has potential interest in the outcome of the case. This interest could arguably cause him to be biased in his opinions.

Worley v. Cent. Fla. YMCA, 228 So. 3d 18 (Fla. 2017). Therefore the motion as to #3B would be overruled.

"a treating physician, like any other witness, is subject to impeachment based on bias." *Steinger, 103 So. 3d at 203*.

The evidence code allows a party to attack a witness's credibility based on bias. § 90.608(2), Fla. Stat. (2015). 90.608 Who may impeach.—Any party, including the party calling the witness, may attack the credibility of a witness by: (2) Showing that the witness is biased.

The Florida Standard Jury Instructions 601.2 (a) refer to “any interest a witness may have in the outcome of a case”. 601.2 (a) In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case;

Treating physicians, however, "[do] not acquire [their] expert knowledge for the purpose of litigation, but rather simply in the course of attempting to make [their] patient[s] well." *Frantz v. Golebiewski, 407 So. 2d 283, 285 (Fla. 3d DCA 1981)*. Moreover, they "typically testif[y] . . . concerning [their] .. . own medical performance on a particular occasion and [do] not opin[e] about the performance of another." *Fittipaldi USA, Inc. v. Castroneves, 905 So. 2d 182, 186 (Fla. 3d DCA 2005)*.

(C) Like #3B above, the number or percentage of LOP patient’s Dr. Stein has is relevant to show potential bias in litigation cases. Worley v. Cent. Fla. YMCA, 228 So. 3d 18 (Fla. 2017). Therefore the motion as to #3C would be overruled.

(D) Medical bills that are higher than normal can be presented to dispute the physician's testimony regarding the necessity of treatment and the appropriate amount of damages. Worley v. Cent. Fla. YMCA, 228 So. 3d 18 (Fla. 2017). Therefore, the motion as to #3D would be overruled.

Worley v. Cent. Fla. YMCA, 228 So. 3d 18 (Fla. 2017).

We recognize that the evidence code allows a party to attack a witness's credibility based on bias. § 90.608(2), Fla. Stat. (2015). We also agree that "a treating physician, like any other witness, is subject to impeachment based on bias." Steinger, 103 So. 3d at 203. However, bias on the part of the treating

physician can be established by providing evidence of a letter of protection (LOP),4 which may demonstrate that the physician has an interest in the outcome of the litigation. In the instant case, Worley was treated by all of her specialists pursuant to letters of protection. Bias may also be established by providing evidence that the physician's practice was based entirely on patients treated pursuant to LOPs, as was found in the instant case. Specifically, a Sea Spine employee testified during depositions that at the time of Worley's treatment, its entire practice was based on patients treated pursuant to LOPs. Additionally, medical bills that are higher than normal can be presented to dispute the physician's testimony regarding the necessity of treatment and the appropriate amount of damages.