

Maryland State Board of Law Examiners
REPRESENTATIVE GOOD ANSWERS FOR THE JULY 2016 MARYLAND OUT OF STATE
ATTORNEYS' BAR EXAM

NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Maryland Out-of-State Attorneys' Bar Examination. The Representative Good Answers are not "average" passing answers nor are they necessarily "perfect" answers. Instead, these are the two (2) highest scoring overall exam responses for this session. These answers are transcribed from the hand-written answer books without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.

Representative Good Answer No. 1

Question 1

A. Under CP§7-102(a), a convicted person may bring a post-conviction proceeding if the person claims it was imposed in violation of constitutional rights. Under CP§7-102(b), the error cannot have been previously litigated. Under MD. Rule 4-401(a), the proceeding is brought in circuit court where conviction took place. Under CP§7-103, the petition may not be brought more than 10 years after sentence is imposed.

Although Xavier is within the 10 year timeframe, he is likely barred from filing a post-conviction proceeding as his Alford plea was a waiver of all defects in his conviction.

Under Md. Rule 4-345(b), the Court has revisory power over a sentence in case of fraud, mistake or irregularity. Under Md. Rule 4-331(b), the court has control to set aside an unjust or improper verdict. Such motions can be made at any time in the case of "fraud, mistake or irregularity."

Here Susan fraudulently reported a crime upon which Xavier's plea was based. Xavier should file a motion to set aside the conviction under revisory powers.

B. MRPC 1.2 Scope: lawyer shall abide by client's decision to plead in criminal case "after consultation." The consultation was defective.

MRPC 1.1 – Competence – lawyer must provide competent representation. Here, lawyer lied about speaking with Susan and/or never inquired into her story. It also does not appear that lawyer made any attempts to defend Xavier.

MRPC 1.3 – Diligence – lawyer shall represent client with reasonable diligence. Here, lawyer did not inquire into the merits of the accusation or attempt to mount any defense.

MRPC 1.4 – Communications – lawyer did not fully consult with client about actions taken in investigating matter or advise regarding possible options.

MRPC 8.4 – Misconduct – it is professional misconduct to violate the rules. See above violations.

Question 2

Notice – Under the Local Government Tort Claims Act, an action for unliquidated damages may not be brought against a local government unless notice of the claim required is given within 1 year after the injury (changed from 180 days in 2016). See CJP §5-304(b).

Under CJP§5-304(b)(2)) given in person or by certified mail, return receipt requested (CJP §5-304(c)(1)) to the proper person.

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Under CJP §5-304(c)(3)(iii), notice to Prince George's County shall be given to the county solicitor or the county attorney. Here, the required notice has not been provided to the county solicitor or county attorney. However, there is still time, so motion probably will not succeed under CJP §5-304(d).

Damages limitation - Under CJP 5-303(a) the liability of the local government may not exceed \$200,000 per individual claim. Here, Billie Mae seeks \$250,000, which is in excess of the statutory limitation.

Question 3

Untimely – Under CP§10-105(c) a petition for expungement based on a nolle prosequi may not be filed within 3 years after the disposition unless the petitioner files a general waiver and release of all tort claims arising from the charge.

Here Billie Mae filed the petition in under 3 years from the disposition. Furthermore, she has already sued in tort for claims arising from the charge, so she cannot meet the requirements for expungement within 3 years.

Improper Venue – Under Md. Rule 5-504(a), a petition for expungement shall be filed in the original action.

Here, Billie Mae was charged and the original action took place in District Court, but Billie Mae filed her petition in Circuit Court, which is not the proper court for filing.

Question 4

Competence – Under MRPC 1.1, a lawyer shall provide “competent representation” to a client. This requires “skill, thoroughness and preparation.”

Here, Sonny has no experience handling the matter he was retained for and his actions have called into question his experience.

Scope – Under MRPC 1.2(a), a lawyer shall “abide by a client's decisions concerning the objectives of the representation.”

Here, Aleem sought suit against both Elbert and Randy, but Sonny announced that he only planned to sue Randy. This is contrary to Aleem's objective and there was not apparent discussion regarding this decision.

Diligence – MRPC 1.3 requires a lawyer to “act with reasonable diligence and promptness.”

Here, Sonny failed to return Aleem's telephone calls, showing a lack of promptness.

Communication – MRPC 1.4(a) requires a lawyer to “(2) keep the client reasonably informed about the status of the matter,” and “(3) promptly comply with reasonable requests for information.”

Here, Sonny failed to return Aleem's several phone calls and only told him “I am working on your case.” He also did not disclose the conflict.

Fees – MRPC 1.5(a) prohibits a lawyer from making an agreement for, charging, or collecting “an unreasonable fee.” The reasonableness of the fee will depend upon several factors including the attorney's experience, the amount of time involved, and the amount involved.

Here, Sonny is charging a total of \$30,000 to go “to court.” Sonny has no experience in handling this type of matter and his fees are 60% of the amount involved. Accordingly, Sonny's fees are unreasonable.

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Conflicts – MRPC 1.7 prohibits a lawyer from representing a client where there is “a conflict of interest.” Under MRPC 1.7(a)(2), there is a conflict of interest if “there is a significant risk that the representation of one or more clients will be materially limited by a lawyer’s responsibilities to . . . a third person or by personal interest of the lawyer.”

Here, Sonny and Elbert (the defendant) are friends, which is a conflict of interest.

Under MRPC 1.7(b), the lawyer can represent the client notwithstanding the conflict of interest if the conflict is waivable and the client “gives informed consent, confirmed in writing.”

Here Sonny did not inform Aleem of the conflict and did not obtain his informed consent in writing.

Trust Accounts/Safekeeping – Under MRPC 1.15(a), a lawyer shall hold property of clients separate from the lawyer’s own property. Under Md. Rule 16-603, a lawyer has a duty to maintain an “attorney trust account for the deposit of funds received . . . for the intended benefit of clients.” Under Md. Rule 16-604, the lawyer is required to deposit all funds received from a client, other than fees already earned, in the attorney trust account. Under MRPC 1.15(c) a lawyer shall deposit all legal fees and expenses that have been paid in advance into a trust account and may withdraw funds only as fees are earned or expenses incurred, “unless the client gives informed consent, confirmed in writing, to a different arrangement.”

Here, Sonny deposited the \$13,000 check/advance into his own operating account instead of a trust account. Sonny had not yet earned these funds and he did not have Aleem’s informed consent, in writing, to deposit the advance into the operating account.

Under MRPC 1.15(a), upon request by a client, the lawyer shall promptly deliver to the client any funds that the client is entitled to.

Here, Aleem requested a refund of his retainer, but Sonny refused to return it even though Sonny had not yet earned the full amount.

Termination – Under MRPC 1.16(d), upon termination of the representation, a lawyer shall refund any advance payment of a fee that has been unearned. Here, Sonny refused to refund the balance of the retainer.

Advertising – Under MRPC 7.1(c) a lawyer cannot compare his services with other lawyer’s services, “unless the comparison can be factually substantiated.”

Here, Sonny advertised that “no one expertly represents the people of Hanover, Maryland better than he does.” This comparison cannot be factually substantiated so it violates MRPC 7.1.

Misconduct – MRPC 8.4 provides that it is professional misconduct to violate the Rules of Professional Conduct. Here, Sonny has committed the violations discussed above.

Question 5

I would have to appeal the decision to the Circuit Court in Charles County.

Under Md. Rules 7-201 and 7-202, a person can seek judicial review of an agency action when authorized by statute by filing a petition for judicial review in the circuit court. Under Md. Rule 7-203(a) the petition for judicial review shall be filed within 30 days after the latest of the date of the action, the date the agency sent notice of the action, or the date the petitioner received notice of the action. After filing the petition, the agency will have the opportunity to respond (Md. Rule 7-204), the agency shall transmit to the clerk and original or certified copy of

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the record (Md. Rule 7-206), and the parties have the opportunity to file memoranda (Md. Rule 7-207). For each of these tasks and under each of these rules, the time requirements can be shortened by the court.

Here, I would immediately file a Petition for judicial review of the agency's action as we are still within the 30 day filing deadline. In order to expedite the matter, I would also move to shorten the deadlines for filing a response, the record, and memoranda.

If review of this agency's action is not authorized by statute, I would instead file a complaint for administrative mandamus under Md. Rule 7-401 – 7-403.

In either case, I could also waive any hearing if I think my client's case can succeed without such a hearing to further expedite the matter.

I could also file for an injunction or temporary restraining order requesting that the permit be issued pending the judicial review. Under Md. Rule 15-504, a temporary restraining order may be granted if there is "immediate, substantial, and irreparable harm" will result before a full adversary hearing.

Here, it is not clear that needing the license "as soon as possible" is immediate enough to accelerate the grant of the permit pending review. Furthermore, mandatory or affirmative injunctions are granted with caution and it is unlikely one would be issued in this case.

Question 6

Under Md. Rule 2-623(a), upon receiving a copy of a judgment of another court, certified or authenticated, the clerk of the circuit court shall record and index the judgment if it was entered by "(5) any other court whose judgments are entitled to full faith and credit" in Maryland. Under CJP §11-402(c), if properly indexed and recorded under the Maryland Rules, the money constitutes a lien on the judgment debtor's land in the county.

Here, Yeazy could file a certified or authenticated copy of the judgment in the circuit court for the county encompassing Glenelg, Maryland and thereby have a lien on any property owned by Ivy in the county if the judgment is entitled to full faith and credit.

Under CJP §§10-702 and 10-703, a foreign judgment that is final, conclusive and enforceable where rendered is conclusive between the parties when it grants recovery of money and is entitled to enforcement in the same manner as a judgment which is entitled to full faith and credit. Under CJP §10-704(a), a judgment is not conclusive if the foreign jurisdiction did not have personal jurisdiction over the defendant. (CJP §10-704(a)(2)). CJP §10-705 sets forth various circumstances in which a foreign judgment may not be refused recognition for lack of personal jurisdiction. To exercise personal jurisdiction, a court must comport with minimum standards of due process and the defendant must have certain minimum contacts with the State, such as those enumerated in CJP §6-103.

Here, it is unlikely that the New York court had personal jurisdiction over Ivy based on the facts because she does not live in NY, does not operate a business in NY, and did not cause a tortious injury in NY. In addition, she did not appear in the action, evidenced by the default judgment. Accordingly, none of the exceptions in CJP §10-705 apply. Ivy did not have sufficient contacts with NY to Subject her to NY jurisdiction in this matter consistent with due process for the reasons more fully explained in answer #6. In addition, Ivy had not received notice of the proceeding, which means that she was not served with process – another requirement for NY to exercise personal jurisdiction over her.

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In addition, Ivy never received notice of the foreign proceeding, so under CJP §10-704(b)(1), the foreign judgment does not to be recognized.

Appeal – Finally, Ivy should hire a New York licensed attorney to appeal the judgment in New York based on lack of personal jurisdiction.

Question 7

Stay - Under CJP §10-706, if the defendant satisfies the court that she is entitled and intends to appeal from the foreign judgments, the court may stay the proceedings until the appeal has been determined.

Here Ivy should make a motion to stay enforcement of the enrolled judgment under CJP §10-706 pending her appeal.

Challenge – Ivy should also challenge the enrollment of the judgment at all because the judgment is not entitled to full faith and credit and therefore should not have been recorded and indexed under Md. Rule 2-623(a).

Under CJP §10-703, a foreign judgment is entitled to enforcement if conclusive, final and enforceable in the foreign jurisdiction. Under CJP §10-704(a)(2), a foreign judgment is not conclusive if the foreign court did not have personal jurisdiction over the defendant. Under CJP §10-704(b)(1), a foreign judgment need not be recognized if the defendant in the proceedings in the foreign court did not have notice of the proceedings in sufficient time to enable her to defend.

Here, the NY court did not have personal jurisdiction over Ivy and none of the exceptions seem to apply and the judgment would not be entitled to full faith and credit under CJP §10-704. Yeazy will have to sue Ivy in Maryland.

Representative Good Answer No. 2

Question 1

A) CrimP §7-102 allows for an individual convicted of a crime to file a petition to challenge the conviction and sentence imposed. Such a petition must be filed within 10 years of the sentence imposition per CrimP §7-103(b) and can only be filed once per CrimP §7-103(a). A petition would be filed in the Circuit Court where the conviction and sentence was imposed per Rule 4-401. It is also possible to seek expungement of a criminal charge per CrimP §10-105 if the person was acquitted, the charge was dismissed, or probation before judgment, or a nolle prosequi was entered. This must not be attempted within 3 years per CrimP §10-105(c) without a waiver of civil tort liability given by the petitioner. A hearing on expungement may be held per CrimP §10-105(e).

Here, Xavier was convicted within 10 years from the date he visited me asking for assistance. Therefore, he would be eligible for the post-conviction procedures covered in CrimP §7-102 and Rule 4-401 et seq. He could file a petition to challenge the sentence imposition per Rule 4-402. However, Xavier would not be eligible for seeking expungement because he was more than 3 years removed from the conviction, as it is 6 years later. Also he was convicted upon a plea and therefore does not meet the eligibility requirements of CrimP §10-105. Therefore, he could not file a petition for expungement under Rule 4-504. Also regarding the mentioned post-conviction petition, he has already served the sentence and so nothing could be done despite his eligibility. Nothing can be done for Xavier.

B) MRPC 1.3 requires that a lawyer exhibit diligence in his representation. MRPC 1.4 requires that a lawyer communicate with his client and keep him aware of case details and make sure he is informed. MRPC 1.2 requires the lawyer to abide by a client's decisions and MRPC 8.4 makes violation of the rules misconduct. Here, the

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public defender mislead Xavier about Susan's statements, removing Xavier's informed consent to actions in his case in violation of MRPC 1.3, 1.4 and 1.2. This is a violation under MRPC 8.4. Xavier was denied his right to be communicated with and have a diligent attorney.

Question 2

A civil suit requesting \$250,000 is within the jurisdiction of the Circuit Court per CJP §4-401. Suits against local governments are covered by CJP §5-301 et seq., the Local Government Tort Claims Act. Such suits must be filed within 180 days of the incident per CJP §5-304 and with notice regarding unliquidated damages to the county per that same rule. Notice must be served to the County Solicitor or Attorney per CJP §5-304(c)(3)(iii). Here, the suit was filed in Circuit Court. I would seek to dismiss the suit per Rule 2-322 because the facts do not indicate that any notice was given. That motion citing CJP 5-304, would seek to show that prejudice was done to our case by the lack of notice filed within 180 days because the case was filed in January and the incident happened the previous May. If Billie Mae cannot show good cause, and we know he was not imprisoned or otherwise prevented from acting, then the court may dismiss the action per CJP §5-304(d).

Question 3

Expungement of criminal records is allowed per CrimP §10-101 et seq. A petition may be filed according to Rule 4-5-4 in the original court where the action occurred. It must not be filed within 3 years of the disposition of the case per CrimP §10-105(c) and only if a nolle prosequi, acquittal, dismissal or other similar event occurred, per CrimP §10-105(a). An answer to the petition may be filed per Rule 4-505 by the state and must be done within 30 days of service of the petition. Failure to answer constitutes consent by the state per Rule 4-505(d); and the answer requires the detailed objection to the petition. A hearing will be held if the state objects according to Rule 4-507(b). Here, the petition was filed within a year and pursuant to a nolle pros, as allowed by CrimP §10-105. However, it was filed in the wrong court. The action occurred in PG County District Court, but the petition was filed PG Circuit Court, that is improper. Also the petition was filed within 3 years of the disposition, therefore it is not timely per CrimP §10-105(c) without a general waiver of all tort claims. We know that Billie Mae is indeed pursuing tort claims, so I would object that without a waiver, the request is not timely and must be dismissed. Unless good cause is shown per CrimP §10-105(c)(7) the petition should be dismissed. I would put all this in my Rule 4-505 answer and file within 30 days.

Question 4

MRPC 1.3 requires that an attorney be diligent in his representation of a client. MRPC 1.4 requires that a lawyer answer client questions and keep the client informed. MRPC 1.5 requires that all fees charged be reasonable, calculated, inter alia, pursuant to the lawyer's experience and the expected work in the case. MRPC 1.6 requires that a lawyer keep client representation information confidential. MRPC 1.7 prohibits representation of a client when there is a conflict of interest, such as when there is substantial risk that representation of a client will be materially limited by responsibilities to a third person. Representation may still be possible under MRPC 1.7(b) if the lawyer believes, reasonably, he can represent the client and the client gives informed written consent. MRPC 1.15 requires that a lawyer keep client property, including funds, safe in a client trust accounts per Rule 16-607. Co-mingling funds is expressly prohibited, lawyers must keep client funds separate from the lawyers operating account unless there is informed consent from a client per MRPC 1.15(c) Client property must be returned upon termination of representation per MRPC 1.16(d). A lawyer may not create unjustified expectations of his ability per MRPC 7.1(b). Attorney advertising must state the lawyers name and endorsement and must not disparage

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other lawyers/compare services to other lawyers per MRPC 7.1(c) and MRPC 7.2(c). Violation of the rules is misconduct per MRPC 8.4

Here, Sonny wrongly advertised comparing himself to another lawyer, violating MRPC 7.1(c), created unjustified expectations of his expertise given that the only does criminal defense work, violating MRPC 1.16(d). Sonny's fee is also potentially questionable per MRPC 1.5 because he has little relevant experience and has charged \$45,000 pre-trial. This matter may not reasonably cost \$50,000 for a \$50,000 recovery. Sonny also violated the client communication provision in MRPC 1.4 when he did not promptly return Aleem's attempts at contact and only answered with useless "I am working on your case." Critically, a major conflict may exist per MRPC 1.7 because Sonny and Elbert are close friends. It is very likely that Sonny will be unable to reasonably serve Aleem given this connection. Determining to sue only Elbert's son does not change this. The connection is still there and Elbert may pressure Sonny even more, plus deciding to sue only Randy violates MRPC 1.2 requirement that the client "call the shots." Altering the suit to cure a conflict that Sonny failed to disclose prior to his hire violates MRPC 1.2 and MRPC 1.4 by limiting Aleem and his informed decision making. MRPC 1.16(c) was also violated when Sonny refused to refund the balance of Aleem's money. Sonny can only keep what he earns. No accounting was given. Finally, Sonny violated MRPC 8.4 by his misconduct in the previously mentioned rules. It is also true that it appears that no written fee agreement was in place. Strongly discouraged by MRPC 1.5(b).

Question 5

According to Rule 7-201 et seq., appeals of administrative decisions may be made. Review is accomplished by filing a petition according to Rule 7-202 in the circuit court authorized to provide review. The petition, which must seek review of a decision of an "agency, board, department, district, commission," etc., Rule 7-201(b) must request judicial review, identify the action, and otherwise meet the content requirements of Rule 7-202(c). Rule 7-203 explains that the petition must be filed within 30 days of the date of the admin decision or the date it was sent or the date it was received. The admin agency must file a response per Rule 7-204 within 30 days of the petition. An administrative memoranda must be filed within 30 days of the notice that the clerk has filed the record, per Rule 7-207(a). Sanctions may accrue for a late filing per Rule 7-207(d).

No additional evidence is allowed in an admin appeal per Rule 7-208, a hearing will be held no earlier than 90 days from the record's filing unless waived by the parties. In the meanwhile, a party can file a motion and have a hearing involving a stay of the Board decision, which the Court may grant and may impose a bond, per Rule 7-205. Here, I would immediately file a petition in the Circuit Court of Charles County (certainly within 30 days of July 1, 2016, the date of the admin decision.) I would file a motion per Rule 7-205 and seek a stay of the Board's decision, citing my reason that a local church's moral objections should be an insufficient cause to deny my application. I would seek a hearing per Rule 7-208, after filing my memoranda per Rule 7-207. I might also file a temporary restraining order and preliminary injunction per Rule 15-504 because of the immediate harm my client is to fall. I would argue that the reasoning of the Board is unlikely to prevail, that my client would lose its financing and ability to operate without the court's intervention, that there is little injury to defendant, and that public interest favors fair dealing such as my request, per Rule 15-504(a). I will similarly seek a preliminary injunction ordering the Board to grant my license per Rule 15-505. I will serve all documents and provide notice to the Board.

Question 6

According to CJP §11-801 a foreign judgment is a judgment from a U.S. Court or court of another state entitled to "full faith and credit." The Uniform Enforcement of Foreign Judgment's Act covers such judgments. According

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to CJP §11-802, a copy of a foreign judgment which is authenticated may be filed with the circuit court. CJP §11-802(a) clarifies that if the judgment is \$2500 or less, it should be filed with the district court. However, if it is more than \$2500 but less than the jurisdictional limit of the district court, \$30,000 per CJP 4-401(b), it may be filed in either circuit or district court. Once a judgment is filed in a Maryland court, notice to the judgment debtor must be provided per CJP §11-803, provided that the judgment creditor must provide the last known post office address of the judgment debtor through affidavit. Enforcement of the judgment is stayed if there is notice of an appeal of the judgment according to CJP §11-804. Procedurally, Rule 2-623 provides the method for entering the judgment in circuit court. Here, I would advise that since the judgment is more than \$2500, it could be filed in either the circuit court or district court where Ivy's business is located per CJP §6-201. I would advise that Yeazy initiate the procedures of CJP §11-802 and CJP §11-803, file the judgment per Rule 2-623 in circuit court, and seek judgment enforcement per Rule 2-633.

Question 7

Under the Uniform Enforcement of Foreign Judgments Act it is permissible to seek a stay of enforcement of a foreign judgment through CJP §11-804. This stay may be granted if the judgment debtor can show the court grounds, such as if the judgment debtor were never made aware of the foreign action leading to the judgment, per CJP §11-804(b). Enforcement may also be stayed upon a filing of the appeal of the judgment according to CJP §11-804(a). A default judgment may also be challenged according to Rule 2-613 by a motion filed to vacate the order, setting forth the reasons for the failure to plead. The Court may, per Rule 2-613(f), seek to substantiate the averments that the defendant was provided proper notice. An appeal of the denial of the motion to vacate the default judgment may be made to the Court of Special Appeals per Rule 8-201(a) by filing a notice of appeal within 30 days of the entry of judgment per Rule 8-202(a). It is also possible to file a Motion for a new trial according to Rule 2-533 within 10 days of the entry of judgment. The grounds, such as not having received notice of the proceedings, must be stated. A motion to alter or amend the judgment could be filed according to Rule 2-534, and the court may take additional evidence to decide the proper judgment, if any. Finally, it is possible to seek revisory power from the Court within 30 days of the entry of judgment per Rule 2-535 with an argument that fraud, mistake or irregularity has occurred. Additionally, lack of notice prior to a foreign judgment being entered violates CJP §11-803, which requires notice at the time of filing, but before enrollment.

Here, Ivy could seek to show that CJP §11-803 was violated in challenging the judgment by asking the Court for a CJP 11-804(b) stay, or by seeking revocation of the default judgment, amending of the judgment, revisory power, a new trial, or if none of these are successful, either appeal in the proper Ithaca, NY court with appellate jurisdiction or an appeal before the Court of Special Appeals per Rule 8-201. Key facts would be the lack of notice from Yeazy of the NY action and the lack of notice of the filing of the judgment in Maryland.

The circuit court powers regarding revision, alteration, etc. are possible because a foreign judgment has the same effect and allows the same procedures and defenses as if the judgment were filed originally in the circuit court, as state by CJP §11-803(b). This allows the full remedies of the Maryland courts. The 10 and 30 day deadlines start as of June 25, 2016.