

2022-2023 Daniel Webster-Batchelder
American Inns of Court

Ethics March Madness
March 1, 2023
Table 6

INTRODUCTION

Table 6 is proud to host this year's March Madness Ethics Grab Bag II covering the Unauthorized Practice of Law & Interstate Practice. The polling software being employed to facilitate this competition may be found at:

[Pollev.com/truesand360](https://pollev.com/truesand360)

Or simply follow the QR code below:



Questions for this competition are in standard multi-choice formatting. Choose only the most correct answer, as no credit is given for wrong guesses or slightly correct answers. Choose quickly, greater points are given according to the speed of the answer. To provide an example, the following example hypothetical and question is provided.

WARM-UP ROUND

The 2022-2023 Daniel Webster-Batchelder American Inns of Court for the state of New Hampshire is being hosted in Manchester, New Hampshire. You have decided not to attend in person because your daughter has COVID and you did not wish to expose others. Thank you for that by the way. You are instead, watching from the comfort of a ski resort in Colorado. Wait, I thought you said you were out because of illness, this is sounding more like a vacation?!

1. **When you sign into the NH Bar CLE Portal to enter in your CLE information afterwards using the Attorney Recording Tool, where should you say the program was originally located?**
 - a. Manchester, UK
 - b. Doesn't matter, misrepresenting the reason you weren't able to attend in person invalidates your right to attend via satellite.
 - c. **Physical location is irrelevant, there is no longer a "physical in person" attendance requirement for CLE credit.**
 - d. Colorado
 - e. New Hampshire

ROUND 1: ELITE EIGHT

Sally Smith is employed as in-house counsel by ABC Corporation, the second largest producer of basketballs used throughout North America, including in the NBA and NCAA. ABC Corp. has a principal place of business in Hudson Falls, New York. ABC Corp. recently expanded its manufacturing facilities and opened a new facility in New Hampshire with more expansion forthcoming. Sally Smith is admitted to practice law in New York and works in Hudson Falls, NY. Given the expansion into New Hampshire, ABC Corp. has opened a new office in Concord, New Hampshire and has assigned Sally Smith to work from that location. With laptop in hand, Sally Smith dutifully reported to New Hampshire for work.

2. Does Sally Smith's physical location in New Hampshire have any bearing on her ability to provide legal advice to ABC Corp.?

- a. Yes.
- b. No.**
- c. Maybe.

Sally Smith is asked by the CEO of ABC Corp. to provide legal advice regarding a second expansion of ABC Corp.'s manufacturing facilities into Bow, NH. Specifically, the CEO asks Sally to interpret and provide advice relative to the Town of Bow Zoning Ordinance.

3. Can Sally Smith ethically advise the CEO on the Town of Bow Zoning Ordinance?

- a. Yes.**
- b. No.

ABC Corp. is sued by Jack Richard, a resident of Pembroke, NH, in Merrimack County Superior Court. Jack Richard, proceeding pro se, claims the basketballs produced by ABC Corp. simply cause too much fun and seeks to enjoin further production of basketballs by ABC Corp. Sally believes the lawsuit is frivolous and recommends to her CEO that Sally file an appearance and defend the litigation rather than incur the cost and expense of hiring an outside law firm.

4. Can Sally appear and defend the litigation on behalf of ABC Corp.?

- a. Yes.
- b. No.**

An unpleasant surprise: Sally learns that she has been suspended from the practice of law in New York (for reasons she would rather not share). Undeterred by the suspension, she continues with her duties as in-house counsel in New Hampshire and continues to provide legal advice to ABC Corp. in spite of her suspension.

5. Is Sally permitted to continue to provide legal advice to ABC Corp. under the rules?

- a. Yes.
- b. No.**

6. What NH Rule of Professional Conduct would be most helpful in evaluating Sally's conduct in the preceding questions?

- a. Rule 5.5**
- b. Rule 1.12A
- c. Rule 8.9
- d. None of the above.

ROUND 2: SUPER SIX

Drew Timmee's team was playing against Marcus Sasser's team in the finals of the NCAA tournament. These two players did not get along after years of playing against each other. The tournament, by a twist of fate, was being played at the University of New Hampshire at Wildcat Stadium. After the game was played, the winning team was celebrating their victory in the locker room, when some of the players from the other team rushed into the locker room because they were angry about several calls that had gone against them. Some good-natured ribbing led to a tussle, and some things were said that could be detrimental to being picked by an NBA team in the draft, and both players filed lawsuits against the other for slander in Carroll County Superior Court.

Drew Timmee had a family connection to an attorney in Massachusetts and wanted her to defend him in the lawsuit filed against him. This attorney, Lisa Ns. Little, generally handled collections for local businesses, but wanted to help her cousin and assured him she was qualified to defend him in the defamation action. She reached out to an attorney in New Hampshire to ask if they would be local counsel so that she could be admitted pro hac vice for this action. The attorney, Albert Truster, in New Hampshire did not know Attorney Little, but knew of the firm where she practiced and agreed to file an appearance and file a Motion to Admit her pro hac vice. Attorney Albert Truster, whose practice focuses on Estates and Trusts, checked Attorney Little's license status with the Massachusetts Board of Bar Overseers, and filed the motion. Attorney Albert Truster also filed an Affidavit attesting to the fact that Attorney Little was an attorney in good standing. Shortly after the Motion was filed, it was granted.

Attorney Little immediately took over the handling of the case, and often did not include Attorney Truster on emails or even consult with him on motions or pleadings. She subpoenaed two key witnesses for deposition without notifying Attorney Truster, who was naturally then, not present during the depositions. Attorney Truster found out about the depositions after they had been completed, but figured there was no harm. Attorney Truster also didn't want to be bothered with more emails, so he didn't ask Attorney Little to copy him on all communications in the future, nor did he advise Attorney Little that he had to be present for any formal proceeding, including depositions.

Attorney Truster later discovered that Attorney Little had spoken to the two witnesses and had taken them out to dinner. Subsequently, opposing counsel, Attorney Opp O. Zing, learned of the connection between Attorney Little and the two witnesses. Attorney Zing also learned that there was a matter pending against Attorney Little for violation of the Rules of Professional Conduct in Massachusetts for improper contact with witnesses.

Attorney Zing reaches out to you and has a number of questions for you.

7. What New Hampshire Superior Court Rule governs admission pro hac vice?

- a. Rule 72
- b. Rule 68
- c. Rule 19**
- d. Rule 14

8. Can the Court revoke Attorney Little's admission pro hac vice?

- a. Yes.
- b. No.

9. Can the Court sanction Attorney Truster for not properly overseeing Attorney Little?

- a. Yes.
- b. No.

10. Is Attorney Little subject to the NH Rules of Professional Conduct?

- a. Yes under Rule 8.5(a).
- b. No under Rule 8.3.
- c. Yes under Rule 4.2.
- d. No.

11. Has Attorney Little violated any of the New Hampshire Rules of Professional Conduct?

- a. Yes
- b. No

12. Has Attorney Truster violated any of the New Hampshire Rules of Professional Conduct?

- a. Yes
- b. No

13. If the litigation in this hypothetical was brought in the United States District Court for the District of New Hampshire, what local rule would apply to pro hac vice admission?

- a. Local Rule 88
- b. Local Rule 83.2(a)
- c. Local Rule 83.2(b)
- d. Local Rule 10890

ROUND 3: FINAL FOUR

After a storied career with the New Hampshire Public Defender program, Lucy Lawyer is offered an opportunity to join a boutique law firm in Massachusetts that specializes in criminal defense. She accepts. Knowing that the firm has never been hired to represent a client in New Hampshire, she goes on inactive status with the New Hampshire Bar.

Lucy has been working at her new firm for three years when a former client, Jean Valjean, who had successfully turned his life around, contacted her because he was arrested for violating his probation. He had a disagreement with his current counsel and reached out to Lucy to see if she could represent him on a pro bono basis. Jean is indigent and says he'll have to represent himself without Lucy's help.

Lucy had a good working relationship with Jean and has pro bono hours she needs to complete to meet her firm's expectations but practicing in Massachusetts means she has not kept up with her NH CLEs.

14. Can Lucy Lawyer represent Jean?

- a. Yes, Lucy can represent him without doing anything.
- b. No, Jean is out of luck, Lucy cannot represent him.
- c. Yes, Lucy could contact colleagues in New Hampshire to be anchor counsel for a pro hac vice motion.
- d. Yes, Lucy can apply for Limited Active Status and represent Jean in his upcoming case.

Lucy Lawyer wants to avail herself of the Limited Active Status and agrees to accept contract cases from the Judicial Council. Lucy enters into the necessary agreements to accept appointments as counsel representing indigent criminal defendants, including Jean. She successfully assists Jean. Her success in assisting Jean reinvigorates her and she takes on another indigent client to defend. This trial is much more taxing, but she ultimately, successfully defends her second client. Given her recent successes, her firm has been directing more criminal cases toward Lucy. Lucy is unable to take on additional appointments from the Judicial Council that year. When she renews her NH Bar Membership the following year, she applies for Limited Active Status. Pursuant to the program, she does not submit trust certifications or CLE records.

15. Did Lucy satisfy the requirements of the Limited Active Status program?

- a. Yes, because she's agreed to accept clients appointed by the Judicial Council.
- b. No, because she did not represent the minimum number of indigent clients.
- c. No, because she did not submit CLE records.
- d. No, because she did not submit her trust account certification.

Lucy's colleague, Carrie Nation, has learned of Lucy's success representing indigent clients, and although lacking criminal experience, has a passion for taking on cases where she can help individuals in recovery—particularly with respect to retaining housing and employment.

16. Can Carrie participate in the Limited Active Status program?

- a. Yes, the limited active status program allows the Judicial Council to appoint counsel in all cases where clients are indigent.
- b. No, the limited active status program only applies to defendants in criminal cases.
- c. Yes, so long as Carrie agrees to accept clients from one of New Hampshire's legal assistance programs.
- d. No, the only civil matters covered by the limited active status program are cases where there is a right to counsel, such as involuntary admission or termination of parental rights proceedings.

Jean Valjean created a new harness that would help workers reduce the workload while trying to lift large wagons and save lives. Another company, Big Co., is interested in licensing it from him. Jean worked with a French Patent Attorney to draft the patent application, but he was told he needs a US attorney to do the filing for him. Lucy does not have a patent bar, but she looked at the filing process, and feels confident she's capable of filing the application.

17. Can Lucy file the patent application for Jean?

- a. Yes. She can file it for Jean, as his representative.
- b. No. The USPTO requirement for a US attorney is based on passing the patent bar, not a state bar.
- c. No. Jean cannot file the application without an attorney that has passed the patent bar.
- d. No, the French Patent Attorney must file it.

Another company, Big Co., is excited about the opportunity that this represents and is interested in licensing the technology from Jean Valjean.

18. Can Lucy write a licensing agreement for Jean and Big Co.?

- a. Yes. She can write it for Jean if she's willing to do the work to find out what she doesn't already know.
- b. No. The USPTO requirement for a US attorney covers licensing matters as well.
- c. Yes. She doesn't know the first thing about the differences between an exclusive or nonexclusive license, but surely that doesn't matter that much.
- d. No. You can only practice soft IP without a technical background.

ROUND 4: CHAMPIONSHIP

Andy Associate has been practicing law at a large New Hampshire law firm for a little over a year. He is contentedly wrapping up the last few matters one peaceful Friday afternoon in mid-February and relishing the prospect of spending the upcoming three-day weekend at one of the picturesque ski areas up north creating content for his social media, when in charges Marta Partna, with her hair disheveled and a decidedly unmellow look in her eyes.

Marta snarls, “Andy! I hear you know a thing or two about employment law! That’s great! My client, Heinz Hedgefund, has a bunch of employment questions he needs sorted out by COB Monday. First—he is the president of GunCo—they’re up in Newport—they’ve hired a CFO and a Reiki Counselor who are both going to be working remotely. They’re starting Monday. The employees live in Arizona and Colorado—I need you to draft employment contracts that will be enforceable in those states and make sure that GunCo has everything they need to onboard their new talent.”

Andy realizes his hopes of a quiet weekend are gone when Marta Partna continues, “Also, Heinz is the Managing Member of MustardGas LLC, down in Newport, Rhode Island. He’s got an employee who has complaining that her supervisor won’t stop asking her out on dates. I guess it’s gotten to the point where the employee’s about to file a complaint with the state agency. He needs someone to advise him about his exposure so he can respond on Monday.”

“Oh—and, last thing” she said, silently relishing the look of despair that Andy was still too green to conceal—“Heinz also owns shares in a Maine logging company—they have 350 employees at their sawmill up near Limestone. The company doesn’t have cash to cover payroll and they need employment advice about how to lay off their staff. I told him you’d get to him before COB today so he could break the bad news to the employees before the weekend but” —she added, sniffing contemptuously—“I guess Monday midday will do. I have cleared conflicts for all of these matters and my admin will be in tomorrow morning to give you all the file materials you need, contact information, etc. I’m getting on a plane to go close a deal out in Aspen this weekend, but I’ll be reachable by cellphone between 4-6am and 9-11pm, of course.”

Marta departs without allowing Andy to respond. As he tries to clear his head (and wonders if he detects a faint scent of sulphur), it occurs to him that he is only licensed to practice law in New Hampshire. Andy calls you, the firm’s in-house ethics counsel, and asks which of these matters he might be able to handle:

19. What do you tell Andy?

- a. He can handle the GunCo employment counseling issue.
- b. He can handle the MustardGas, LLC liability counseling issue.
- c. He can handle the logging company layoff counseling issue
- d. He can handle A and B, but not C.
- e. He can handle all of the above.
- f. He can handle none of the above.