

JUDICIAL SQUARES

Round 1

HOST: LAKEN SHULER

Question 1: Juliet and Carlton share custody of Lottie. Juliet consistently fails to exercise visitation, despite Carlton's request to see Lottie. Carlton goes to his attorney asking what can be done. What should his attorney do?

Answer 1: The attorney should assist Carlton in seeking a modification of child support. Virginia law provides a rebuttable presumption that child support should be modified when a parent fails to exercise custody or visitation as agreed. **Code § 20-108.2(G)(3)(e)**

Question 2: A newly licensed attorney, Laken, represents a client in a criminal case. During trial preparation, the client tells Laken that he is going to lie under oath about his alibi. Laken advises the client against committing perjury, but the client insists and says to Laken, “you’re just a new attorney, what are you going to do about it?” Is Laken required to disclose the perjury to the court?

Answer 2: Yes, if Laken cannot dissuade the client from committing perjury, she is obligated to inform the court. Virginia law requires attorneys to reveal a client's intention to commit a crime, including perjury, if the client cannot be dissuaded. Laken should counsel the client to correct the false testimony or refrain from lying. If the client refuses, Laken must disclose the perjury to the court and withdraw from representation if necessary. This obligation is codified in **Rule 3.3(a)(4) of the Virginia Rules of Professional Conduct and DR:4-101(D).**

Question 3: One evening, Shawn and Gus decided to street race down Commonwealth Avenue in Bristol, VA. Unfortunately, while racing, Shawn's vehicle struck and killed an innocent bystander.

Shawn was charged with Reckless Driving and Involuntary Manslaughter. Gus was charged with involuntary manslaughter only. Gus argues that he shouldn't be charged with involuntary manslaughter because his vehicle wasn't the one that struck and killed the innocent bystander. Can Gus be charged?

Answer 3: Yes, under Virginia law, the driver of the other vehicle in a street race can be charged with involuntary manslaughter even if their vehicle did not directly cause the accident that killed an innocent bystander. The key legal principle is that criminal negligence, which is gross, wanton, and culpable conduct showing a reckless disregard for human life, can establish liability if it is a proximate cause of the victim's death. **See O'Connell v. Commonwealth, 48 Va. App. 719.**

Question 4: Officer Graham finds a driver asleep in a car at a gas station. While speaking with him, Officer Graham sees a small baggie of marijuana (about 3-4 grams) in the open console. Believing there might be more drugs inside, Officer Graham orders the driver out and searches the vehicle, finding fentanyl and prescription pill bottles. The driver moves to suppress the evidence, arguing the officer lacked probable cause for the vehicle search. Should the evidence be suppressed?

Answer 4: Probably, yes. While Officer Graham could lawfully seize the marijuana that was in plain view, possession of a small amount of marijuana was only a civil offense at the time and did not provide probable cause to search the rest of the vehicle. Because Officer Graham acted on a hunch rather than specific facts indicating criminal activity, the additional search was unlawful, and the evidence should be suppressed. *See Harvell v. Commonwealth*, Record No. 1859-22-1, March 19, 2024. CAV (unpublished opinion)

Question 6: Claire drafts a handwritten document stating her intention to leave all her property to her niece, Ella. Claire signs it and stores it in her safe. Before Claire dies, her and Ella had an ugly argument. In response to the argument resulting in Ella screaming “You suck and I hate you!”, Claire ripped the will up and placed the contents in her safe. After Claire’s death, Ella seeks to probate the document as Claire’s will. Is the document valid under Virginia law?

Answer 6: No, the document is not valid as a will under Virginia law because Claire revoked it by ripping it up. **See Code § 64.2-410(A)** (“If a testator with the intent to revoke a will or codicil, or some person at his direction and in his presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or some provision thereof, such will, codicil, or provision thereof is void and of no effect.”).

Question 8: Joe attacked a stranger in a park and was subsequently charged with assault. His attorney files notice of an insanity defense under 19.2-168. The Commonwealth requests a court-ordered evaluation of Joe's sanity, but Joe refuses to cooperate with the evaluation. If Joe continues to refuse to comply with the court-ordered evaluation, can he be barred from presenting evidence to support his NGRI defense?

Answer 8: Virginia law requires defendants asserting an insanity defense to cooperate with court-ordered evaluations requested by the Commonwealth. If the defendant refuses to cooperate, the court has discretion to exclude the defendant's expert evidence on the issue of sanity. This rule ensures fairness by allowing the Commonwealth to rebut the defendant's claims with its own evaluation. **Va. Code Ann. 19.2-168.1, Grattan v. Commonwealth, 278 Va. 602.**

Question 9: In a slip-and-fall case after a snowstorm, the record shows conflicting evidence: some testimony suggests Kroger salted and plowed before the accident, while other testimony suggests it did not. Can the district court resolve this conflict on summary judgement by holding that no breach occurred?

Answer 9: No. Determining whether a breach occurred requires analyzing (1) what Kroger was required to do under the circumstances and (2) what Kroger actually did. Because the record contained disputed and contradictory evidence on both points, a jury-not the court- must decide whether Kroger acted reasonably. Granting summary judgement was error. *See Brown v. Wal-Mart Stores East LP*, Case No. 24-1102, June 4, 2025. 4th Cir

Question 10: Zola and Zeke are in a heated discussion when Zeke raises a fist to punch Zola. In response, Zola shoots Zeke, causing fatal injuries. Can Zola successfully claim self-defense?

Answer 10: No, Zola cannot claim justifiable self-defense. Virginia law requires that the force used in self-defense be proportionate to the threat faced. *Diffendal v. Commonwealth*, 8 Va. App. 417 (1989). Using a firearm in response to a non-lethal threat, such as a punch, is excessive and not justified.

Question 11: Officer Jacobs responds to a report of burglary. Once Officer Jacobs arrived, he arrested Jake for the burglary. After taking Jake into custody, Officer Jacobs starts to question him without providing a Miranda Warning. During the interrogation, Jake confesses to the crime. Can the confession be used as evidence in court?

Answer 11:No, the confession cannot be used as evidence because the suspect was not informed of his Miranda rights prior to the custodial interrogation. **Olson v. Commonwealth, 2008 Va. App. LEXIS 95, Aldridge v. Commonwealth, 44 Va. App. 618.**

Question 12: Burton, a prisoner in a Virginia state correctional facility, is found in possession of a small knife hidden in his mattress. The knife was not authorized by the superintendent of the facility. Burton claims he found the knife and intended to turn it in but forgot after he fell asleep. If Burton says it was never his intent to use the knife to harm anyone, can he still be charged as a prisoner in possession of contraband?

Answer 12: Yes. Under Virginia law, it is unlawful for a prisoner to make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury **Va. Code Ann. 53.1-203(4)**. The statute does not require intent to use the item for harm; mere possession is sufficient for a violation. John's claim that he intended to turn in the knife does not negate the fact that he possessed it unlawfully.

Question 13: Police found Dan sitting in the driver's seat of a car parked on private property, with the key in the ignition. He appeared intoxicated and smelled of alcohol. Dan was charged with DUI under Va. Code 18.2-266. At trial, he argued (1) he was not "operating" the vehicle because the car was parked and (2) that he was on private property and not on a public highway. Will Dan's argument succeed?

Answer 13: No. Under Virginia law, being behind the steering wheel with the key in the ignition is enough to prove “operation.”

Further, 18.2-266 does not require the prosecution to prove operation “on a highway.” *See Sarafin v. Commonwealth*, 288 Va. 320 (2014).

Question 14: Miles was leaving the casino when he was attacked by a stranger in the parking lot. Fearing for his life, Miles uses a knife to fatally stab the attacker. Miles had no prior interaction with the attacker and did not provoke the altercation. Can Miles claim self-defense?

Answer 14: Yes. Under Virginia law, justifiable self-defense applies when the accused is “without any fault on his part in provoking or bringing on the difficulty” and acts under a reasonable apprehension of death or great bodily harm. *Bailey v. Commonwealth, 200 Va. 92 (1958)*. John did not provoke the attack and acted to protect himself from imminent harm.

Question 15: Ron executes a valid will leaving his estate to his brother. Years later, Ron writes “void” across the will and tears it in half. He does not execute a new will before his death. Is Ron’s will revoked?

Answer 15: Yes, Ron's will is revoked because his actions demonstrate an intent to revoke the will. ***See Code § 64.2-410(A)*** (“If a testator with the intent to revoke a will or codicil, or some person at his direction and in his presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or some provision thereof, such will, codicil, or provision thereof is void and of no effect.”).

Ethics Blast!

Which of the following statements about non-refundable flat fee agreements in Virginia is correct under the Virginia Rules of Professional Conduct?

- A. A non-refundable flat fee is always permissible as long as it's in writing
- B. A non-refundable fee must be deposited in a trust account until earned
- C. A lawyer may label a fee non-refundable only if the agreement clearly explains the circumstances under which it becomes earned
- D. Such fees are prohibited under Rule 1.15

Answer: A lawyer may label a fee non-refundable only if the agreement clearly explains the circumstances under which it becomes earned. Rule 1.5 and Rule 1.15

A lawyer accepts a \$20,000 flat fee for a domestic matter and immediately deposits it into an operating account, then withdraws before significant work is done. Which rule has likely been violated?

- A. Rule 1.6 – Confidentiality of Information
- B. Rule 1.7 – Conflict of Interest
- C. Rule 1.15 – Safekeeping Property (trust account violation)
- D. Rule 4.4 – Respect for Rights of Third Persons

**Answer: C. Rule 1.15 – Safekeeping Property
(trust account violation)**

A lawyer is fired by a client who demands their full file. The lawyer refuses, citing unpaid fees and the inclusion of sensitive work product. What is the most accurate statement under Virginia Rule 1.16(e)?

- A. The lawyer may retain the file until payment is made in full
- B. The lawyer must surrender the full file, including most work product, regardless of outstanding fees
- C. The lawyer can retain anything prepared internally
- D. The lawyer must only return original documents provided by the client

**Answer: B. The lawyer must
surrender the full file, including
most work product, regardless
of outstanding fees**

A lawyer wants to withdraw because the client is ignoring legal advice and pursuing legally unsound strategies. Which of the following is required before withdrawing?

- A. The client must approve in writing
- B. The lawyer must notify the State Bar
- C. The lawyer must ensure withdrawal can be accomplished without material adverse effect on the client
- D. The lawyer must refer the client to replacement counsel

Answer: C. The lawyer must ensure withdrawal can be accomplished without material adverse effect on the client

Facts:

Attorney Adam represents a client in a property dispute. The client becomes increasingly hostile, repeatedly missing meetings, refusing to provide documents, and sending abusive emails to Adam's paralegal. Adam files a motion to withdraw under Rule 1.16(b), citing breakdown of communication and client misconduct.

The court denies the motion, stating that the trial date is too close and allowing withdrawal would prejudice the client.

Question:

What should Adam do next?

- A. Stop work immediately; once a withdrawal motion is filed, representation ends automatically
- B. Notify the Bar that he's being forced to represent a client who is abusive
- C. Continue the representation as ordered by the court, despite personal misgivings
- D. File a grievance against the judge for interfering with his ethical duties

Answer: C. Continue the representation as ordered by the court, despite personal misgivings.

Even when withdrawal would be ethically justified under **Rule 1.16(b)**, a lawyer may not simply exit the case if the court denies leave. Under **Rule 1.16(c)**, the lawyer must comply with applicable law requiring court approval and **continue representation** unless or until the court permits withdrawal. Failure to do so could prejudice the client and violate the lawyer's professional obligations.

JUDICIAL SQUARES

Round 2

HOST: LAKEN SHULER

Question 16: A plaintiff files a lawsuit alleging emotional distress but fails to include any specific facts supporting the claim. If the complaint lacks sufficient supporting facts, what motion can the defendant file to have the lawsuit dismissed in state court? What about federal court?

Answer 16: A demurrer for state court & 12(b)(6) motion pursuant to the Federal Rules of Civil Procedure.

Question 17: Under the Uniform Commercial Code, as adopted by Virginia, a “_____” is any practice or method of dealing having such regularity of observance to justify an expectation that it will be observed with respect to the transaction in question.

**Answer 17: Usage of trade See Va. Code Ann. §
8.1A-303- “Course of performance, course of
dealing, and usage of trade”**

Question 18: Ashlyn steals a diamond necklace worth \$2,500 from a person walking down State Street in the City of Bristol. She is later apprehended in Washington County, where she resides. The Commonwealth seeks to prosecute her in Washington County. If the victim also resides in Washington County, can the case be heard in that jurisdiction?

Question 19: A Virginia resident files a lawsuit against a Kansas corporation in Virginia. The corporation has no offices, employees, or business operations in Virginia. Can the corporation file a motion to dismiss?

Answer 19: Yes, the corporation doesn't have “sufficient minimum contacts” in Virginia to be beneath the state's jurisdiction. See Va. Code 8.01-328.1

Question 20: What is the minimum number of credit hours approved continuing legal education courses all active members of the Virginia State Bar must annually complete and certify attendance of?

Answer 20: 12 see Va. R. CLE Reg. 102

Question 21: Tiffany and Darian got into a heated argument about Tennessee vs. Alabama football. Darian punched Tiffany in the face and broke her jaw. Tiffany, a Virginia resident, files a personal injury lawsuit in Washington County against Darian who resides in Bristol City. The injury occurred in Bristol City. Is venue proper in Washington County?

Answer 21: No. Under Virginia law, venue is proper in the county where the defendant resides or where the cause of action arose. Since the defendant resides in Bristol City and the injury occurred in Bristol City, venue is proper in Bristol City. **Code § 8.01-262(1) and (4)**

Question 22: Testator, Kendrick, created a valid will as a young man. In his old age, Kendrick promises to make a will that devises his property to his friend, Sia, if she moves in with him to take care of him and his dog. For five years, Sia lives with Kendrick and takes care of both him and his dog. Kendrick dies in year six without having made such a will. Will Kendrick's first will be probated?

Answer 22: Yes, because contract law applies here. The agreement between Testator and Sia does not give her standing to block the probate of Testator's first will. Instead, she must pursue a remedy for breach of contract.

Question 23: A Virginia attorney, Chloe, employs a paralegal, Liam, to assist with client matters. Chloe allows Liam to draft legal documents and communicate with clients without her review or oversight. Unfortunately, the advice Liam had provided was incorrect and the client ultimately filed a bar complaint. Did Chloe violate her ethical obligations under Virginia law?

Answer 23: Yes. Under Virginia ethical rules, attorneys must provide “direct supervision” of non-lawyer personnel to ensure compliance with professional standards. The level of supervision required depends on the nature of the work and the experience of the non-lawyer employee. Allowing Liam to draft legal documents and communicate with clients without review constitutes insufficient supervision.

Question 24: Officer Stacy is monitoring traffic when he sees Ray drive by with a broken taillight. Officer Stacy pulls Ray over and conducts a warrantless search of Ray's vehicle. During the search, Officer Stacy discovers illegal drugs. The suspect argues that the search violated his Fourth Amendment rights. Can the evidence be suppressed?

Answer 24: Yes, the evidence can be suppressed unless the Commonwealth can demonstrate that an exception to the exclusionary rule, such as the doctrine of inevitable discovery, applies. **Bell v. Commonwealth, 2009 Va. App. LEXIS 9.**

Question 25: Officer Smith pulled over Mark after Mark made an improper rolling stop at a stop sign. Officer Smith observed Mark's "nervous behavior" and acknowledged he was leaving a known drug area. While preparing the written warning, Officer Smith call for a K-9 unit. When the K-9 arrives 12 minutes later, Officer Smith observed the dog stiff, taking a break from writing the ticket. The K-9 alerts, police search, and illegal drugs were seized. At trial, Mark moves to suppress the evidence, arguing the stop was impermissibly prolonged without reasonable suspicion. The Commonwealth argues the brief delay was de minimis and justified by officer safety. How should the court rule?

Answer 25: The court should grant the motion to suppress. Under *Rodriguez v. United States* and Virginia precedent, even a brief (de minimis) extension of a traffic stop to conduct a dog sniff violates the Fourth Amendment unless supported by independent reasonable suspicion. Here, the officer conceded he stopped working on the warning and waited for the sniff, which meant the stop reasonably could have been completed before the alert. Nervousness and leaving a known drug house, without more, do not establish reasonable suspicion. The stop was impermissibly prolonged, making the K-9 search unconstitutional, and the evidence must be suppressed. *See Johnson (Va. App. 2016), Rivera (Va. App. 2018), Eady (Chesapeake Cir. Ct. 2019), Knight-Walker (Va. App. 2025)* all suppress on this ground) - *Ramey (Danville Cir. Ct. 2021)*.

Question 26: A plaintiff from New York files a lawsuit in Virginia against a Virginia corporation for an incident that occurred in New York. The defendant moves to dismiss the case, arguing that New York is a more convenient forum. Can the Virginia court dismiss the case?

Answer 26: Yes, the Virginia court can dismiss the case under the doctrine of forum non conveniens. Virginia law allows a court to dismiss an action brought by a non-resident plaintiff if the cause of action arose outside the Commonwealth and a more convenient forum is available. **Domby v. Norfolk S. Ry. Co., 2021 Va. Cir. LEXIS 125.**

Question 27: In an assault and battery on a family or household member case, individuals who lived together at some point within the last 24 months are considered “household members” as defined by the code. **True or False?**

Answer 27: False. Individuals who have cohabitated within the previous 12 months. See § 16.1-228 and 18.2-57.2.

Question 28: A non-resident defendant, Michael, operates an online business called Vac-4-U that ships vacuums to Virginia customers. A Virginia resident sues Michael for breach of contract, alleging defective goods. Can a Virginia court exercise personal jurisdiction over Michael?

Answer 28: Yes. Under Virginia's long-arm statute, a court may exercise personal jurisdiction over a non-resident defendant who transacts business in the Commonwealth or causes tortious injury by an act or omission in the Commonwealth. Michael's act of shipping products to Virginia customers constitutes transacting business in Virginia. **Code § 8.01-328.1(1) and (3)**

Question 30: Landon was driving his vehicle down State Street and decided that while at a stop light, he'd use his phone to order some food from DoorDash. Officer Matt noticed Landon using his phone, pulled him over, and issued him a citation for operating a mobile device while driving. If Landon used his phone while lawfully stopped at the stop light, is he guilty of using a mobile device while operating a vehicle?

Answer 30: Under Virginia law, a person who uses their cellphone while lawfully stopped at a stop light is not guilty of using a mobile device while operating a vehicle. According to **Va. Code Ann. 46.2-818.2**, the prohibition on holding a handheld personal communications device applies to individuals "while driving a moving motor vehicle on the highways." However, the statute explicitly exempts operators who are "lawfully parked or stopped" from this prohibition.

Question 31: A sheriff's deputy, Dante, stops a driver near a country store after receiving a tip he may be transporting illegal drugs. At trial, Deputy Dante testifies about finding fentanyl but never testifies that the store is located in the trial county. The defense counsel moves to strike for lack of venue. How should the court rule?

Answer 31: The motion should be granted. Without testimony or evidence showing the stop occurred in that county, the Commonwealth has not met its burden to prove venue. *See Kilby v. Commonwealth*, Record No. 1451-23-4, Apr. 29, 2025. CAV (unpublished opinion)

Ethics Blast!

FACTS: Attorney Jordan, a solo practitioner, agrees to represent Rebecca, a business owner, in a partnership dispute with her former co-founder. Jordan charges a flat fee of \$30,000, billed as “earned upon receipt” and “non-refundable.” Rebecca pays \$20,000 upfront. The agreement does not explain when or how the fee is earned.

Jordan deposits the money into his operating account and begins work. Early in discovery, Jordan learns that Rebecca had previously been investigated for tax fraud—though never charged—and the records are under seal. Jordan decides to use this as leverage by anonymously hinting at the allegations in an email to the opposing party, hoping to induce a favorable settlement.

Meanwhile, Rebecca becomes increasingly aggressive and verbally abusive with Jordan’s assistant. She also insists that Jordan file a motion based on unsupported legal theories and refuses to approve more funding for expert witnesses.

Feeling overwhelmed and having recently been diagnosed with a serious illness, Jordan informs Rebecca that he intends to withdraw. He stops working on the case and refuses to give Rebecca her file until the remaining \$10,000 is paid. When the Virginia State Bar contacts Jordan about a complaint filed by Rebecca, he fails to respond.

**Question 1: Did Jordan's
handling of the flat fee and
client funds comply with
Virginia ethics rules?**

Answer:

No. Under **Rule 1.15(b)** and **Rule 1.5**, Jordan violated multiple obligations:

A flat fee labeled “non-refundable” and “earned upon receipt” **must be clearly explained** to avoid misleading the client.

Because the work wasn’t yet performed, the \$20,000 was **client property** and should have been placed in a **trust account**, not the operating account.

Question 2: Was Jordan ethically permitted to leak sealed tax fraud allegations to the opposing party?

Answer:

No. Under **Rule 1.6(a)** and **Rule 8.4(c)**:

Even if the information is true, revealing or threatening to reveal sealed or confidential information **without client consent** is unethical.

Sending anonymous, misleading communications to the opposing party is **deceitful conduct**, violating **Rule 8.4(c)**.

Question 3: Was Jordan ethically permitted to withdraw from representing Rebecca?

Answer:

Yes, but only with conditions. Under **Rule 1.16(a)(2)** and **Rule 1.16(c)**:

A serious illness may justify **mandatory withdrawal**, but since the matter was in litigation, Jordan needed **court approval** to withdraw.

Under **Rule 1.16(d)**, he was also required to **take reasonable steps** to protect Rebecca's interests (e.g., give notice, provide the file, and return unearned fees).

Question 4: Can Jordan ethically withhold Rebecca's file until the remaining \$10,000 is paid?

Answer:

No. Under Rule 1.16(e):

A lawyer **must return the client's file upon termination**, regardless of any unpaid fees.

Work product, discovery, and all materials related to the representation belong to the client, **except limited internal-use documents.**

**Question 5: Duty to Cooperate
with Bar Investigation**

**Did Jordan violate any rule by
failing to respond to the Bar's
inquiry?**

Answer:

Yes. Under **Rule 8.1(b)**:

A lawyer must not “knowingly fail to respond to a lawful demand for information from a disciplinary authority.”

Even if Jordan believed the matter involved confidential information, he was still obligated to **assert Rule 1.6**, explain his reasoning, and engage with the process.