MASSACHUSETTS SCHOOL OF LAW at ANDOVER
Professional Responsibility
Spring 2012 – Final Exam – May 15, 2012

Student ID#_____

Please also write your Student ID numbers on all bluebooks you use

I. **Short Answer Questions (10 points each – recommended 20 minutes each): All students must answer at least *six (6)* short answer questions using *no more than three (3)* blue book *sides* (*not pages – sides of pages*) for each question. If you choose to answer more, I will consider your answers for extra credit.**

A. Judge Sam Floute has been asked to serve on the Board of Directors of the Sons of Perdition, a nonprofit fraternal organization devoted to "preserving the memory of the valiant service of the men who fought and died for the Confederate States of America." The organization's membership is all white and all male. May the judge accept the invitation to join the Board? Be sure to discuss the Model Code of Judicial Conduct (and comments) and any constitutional principles which might apply.

B. Judge May Crane has just learned that her granddaughter is one of several counsel of record in a complex case in her court. The granddaughter will not be in court for the trial. Judge Crane does not believe that her granddaughter's involvement will affect her judgment in the case. What steps, if any, and the Judge take to continue in the case? Be sure to discuss the Model Code of Judicial Conduct and comments in your answer.

C. Guy Warnock is an attorney whose specialty is initial public offerings of stock. He has been asked by a group that has formed a company called Buy-A-Badger.com to do the legal work necessary for them to make an initial public offering. These owners have asked Guy to take some of the stock as his fee. Under what circumstances, if at all, may Guy do so? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any Restatement provisions you might know about.

D. Arbella Schotte is an attorney who represents a developer, Brian Carbuncle. Arbella has just learned that Brian once used one of her legal opinions to defraud the seller of a parcel of land that he needed for an apartment complex. Although Arbella is not happy that he did this, she believes that he will not do it again. She also derives a substantial part of her income from representing Brian. She is having trouble with her conscience, however, about the poor man who was defrauded out of his land with her unknowing assistance. May she continue to represent Brian under these circumstances, and if she no longer represents Brian, can she at least tell the victim that she has withdrawn from representing him and that she disaffirms the opinion he used to perpetrate the fraud? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any relevant tort law from the jurisdiction. Also, discuss any Restatement provisions you might know about.

E. Maggie O'Reilly is an attorney who represents Ennis Frome, an elderly plaintiff in a personal injury case. Maggie has been negotiating with opposing counsel to settle the case. Just before appearing at a court status conference where Maggie believes a final, favorable settlement can be reached, Maggie learns that Ennis has died. Must she reveal his death to opposing counsel and the court? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any Restatement provisions you might know about.

F. Class action requirements are often overlooked and the protections for the class often do little to protect class members. Does the abuse present in many class action cases and the emptiness of many of the procedural protections designed to protect class members somehow warrant a relaxation of the aggregate settlement rule? Due to the laxity of judicial oversight of class action settlements and the anything-goes attitude that still persists in most courts as to class counsel's conflicts, as a practical matter class members with strong claims have little protection from settlements that transfer money that might be available to pay them to class members with weak or nonexistent claims. If that is how things actually work, is there really any justification for insisting that "mass" clients be treated with more care, as MR 1.8(g) directs? Or does it make more sense to insist that class action notices conform to MR 1.8(g), i.e., use that rule as an argument to improve class action representation instead of using class action practice as an excuse to weaken 1.8(g)? Be sure to discuss all the relevant Model Rules of Professional Conduct in your answer (and comments) in addition to anything you may remember from civil

procedure rules on class actions. Also, discuss any Restatement provisions you might know about.

G. An authority on legal ethics points out the hypocrisy in the ethics rules permitting lawyer disclosure of confidential information for purposes of self-defense but prohibiting disclosure in cases of client fraud. (Please not that in the summer of 2003, the ABA House of Delegates, in an attempt to stave off the SEC's proposed noisy withdrawal rule, adopted amendments to MR 1.6 and 1.13 that permit the disclosure of client fraud.) A further manifestation of this (now prior) hypocrisy is that to justify the prohibition on disclosure of client fraud, lawyers often argue that if a fraud exception to confidentiality were recognized, a lawyer would be forced to warn the client about the exception before the client said something that might later have to be revealed, which would inevitably lead to clients withholding information. But lawyers never seem to make that argument about the self-defense exception. That is, lawyers do not argue that under the existing self-defense exception, a lawyer is obligated to inform his client that the lawyer might reveal the client's information in the event of a later dispute between the client, or a third party, and the lawyer, even though this would seem to have the same incentive effects on the client. Lawyers do not, so far as we I know, have such conversations with their clients now. What might motivate the silence in these circumstances and lawyer disclosure in the case of impending fraud? Do you think lawyer behavior is likely to change under the newly revised MRs 1.6 and 1.13? Why or why not? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any Restatement provisions you might know about.

H. A leading authority on professional responsibility discusses liability arising from a lawyer giving advice that might land a client in trouble with the authorities, but he does not mention the rules governing reliance on the advice of counsel. Generally, the fact that one relied on a lawyer's advice does not excuse a client from criminal or regulatory liability. Thus, in most of the cases presented by this authority, if the client's conduct was discovered and the client was sued or prosecuted, the client would lose. If the lawyer should have known what the client was up to, why not hold the lawyer liable for damages or discipline too? Then the question would be whether the lawyer was willing to take the same risk he was advising the client to take. If it could not be shown that the client would be liable, the lawyer would not be either. Is the authority arguing that lawyers should enjoy legal immunity for providing advice even if clients are actually held liable? He seems to suggest as much when he talks about situations in which "formally

criminal conduct may well be facilitated, yet most lawyers would think it appropriate to provide the client with information about the law." Is that consistent with MR 1.2(d)? What would justify giving lawyers such immunity? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any Restatement provisions you might know about.

I. In recent years, the most famous denial of bar admission based on character involves Matthew Hale, an advocate of white supremacy, who was denied admission to the Illinois state bar. In his bar application and hearings before the character committee, Hale frankly admitted his racist and anti-Semitic views, his past activities in support of these views and his intention to work to reform the law to coincide with these views. He also said that he would have no trouble taking the oath of admission to abide by and uphold the law and the Constitution. Hale had some mostly minor run-ins with the law on his record all related to his activist role, but had not been convicted of any crime greater than violating a public ordinance. The character committee said it was not his "criminal" record that demanded denying his admission, noting that many have been admitted to the bar who have had more serious legal violations on their records. The character committee found that "Hale's active commitment to bigotry under 'any civilized standards of decency' demonstrated a 'gross deficiency in moral character, particularly for lawyers who have a special responsibility to uphold the rule of law for all persons.'"

Hale appealed to the Illinois Supreme Court, arguing *inter alia*, that the denial on these grounds violated the First Amendment. The Illinois Supreme Court rejected the appeal. The United States Supreme Court denied Hale's petition for certiorari. Hale then sued, alleging his civil rights had ben violated, but the Seventh Circuit held that for a district court to hear the case would amount to the federal courts hearing an appeal from a state court proceeding, something the federal courts do not have jurisdiction to do. Hale's remedy, if any, would have to come in state court, said the federal court of appeals. Is the active advocacy of racist views, as the Illinois committee believed, so antithetical to the commitment to equal protection, the Bill of Rights, and the Constitution that it is proper to deny bar admission on these grounds? Is the nexus, in other words, between these beliefs and the job Hale was applying to do (lawyering) so close as to make it legitimate for the government to consider these views? Be sure to discuss all the relevant Model Rules of Professional Conduct and comments in your answer. Also, discuss any Restatement provisions you might know about.

J. Wally Peoples is an attorney who formerly represented Bilbo Baggins Freight Company in negotiations in which Bilbo purchased the assets of a rival company. Wally has now been asked to represent Freitex Freight Company in negotiations to sell Freitex's assets to Wally's former client, Bilbo. The CEO of Freitex had preliminary discussions with Wally, but no agreements have been signed. What duties does Wally owe to the various parties, and what will determine whether or not Wally can represent Freitex in this matter?

K. Bill Wagner is litigating a personal injury case. The injuries to his client were so severe that millions of dollars are at stake, and Bill has had trouble obtaining documents during the discovery process. The other side has been resisting producing most of his critical requests. At times, opposing counsel (a partner at a large insurance defense firm with more than one hundred lawyers and a considerable support staff) has been more than resistant; he has been downright hostile. In fact, opposing counsel has filed what Wagner considers to be frivolous motions for sanctions and costs because of Wagner's requests; he has also filed motions for protective orders, arguing that the materials requested are covered by non-existent privileges. The defendant is a huge multinational corporation.

One day prior to trial, Wagner opened his e-mail in-box and saw a message from opposing counsel. Wagner knows that the opposition would not have voluntarily disclosed the information in the e-mail. However, he also realizes that using the information in the e-mail would help his client's case; he could also use it to gain access to material he has been denied in the discovery process. Discuss what Wagner should do with the e-mail, and also discuss duties opposing counsel owes to his client, duties Wagner owes to his client, and any civil procedure and model rules that might apply to any of these issues.

L. Fred and Dana were driving in the same car on the way to work one day in Lowell, Massachusetts when they collided owned by the principal of a lawn care company. Fred was driving. Fred and Dana both believe that the other driver was primarily at fault; however, Alan was reading an e-mail on his cell phone at the time of the crash – an issue that the trier of fact might find relevant. Massachusetts is a comparative negligence jurisdiction.

Fred and Dana both come to your office, seeking your representation of both of them. What steps should you take to ensure that your initial conversation with them will not be construed as forming an attorney client relationship should you choose not to take on the representation?

Additionally, discuss whether and under what circumstances you could take them both on as clients.

After you decide to take on both of them as clients, you do a little informal discovery before filing a complaint (discuss how much informal discovery might be necessary to comply with your duties under both the model rules and relevant rules of civil procedure). After interviewing both clients individually and two different witnesses, you learn that Dana may have been snorting cocaine and causing distractions in the passenger seat at the time of the crash. Under these circumstances, he may have contributed to the cause of the crash. How much of these conversations do you need to reveal to either of your two clients? If both Fred and Dana insist that you still provide representation to both of them (and they're willing to waive any conflicts), can you represent both? Be sure to discuss all relevant model rules and Restatement provisions.

M. Marty Billings decided to retain the same lawyer, Wanda Peoples, representing his partners in crime in an armed robbery. Peoples had previously represented Billings in a civil case involving a personal injury matter. The cases were bifurcated, and Billings's trial took place before his co-defendant's. Though the case against him consisted of entirely circumstantial evidence, Peoples rested the case without presenting any evidence, and Billings was convicted. Billings's co-defendants' trials resulted in their acquittals. Peoples admitted after all trials were concluded that she had never liked Billings; she thought he was too demanding during the personal injury matter. She also admitted that she had engaged in consensual sex with one of the co-defendants in her office prior to taking on the case; Peoples would not say whether or not her intimate relationship with the co-defendant continued. Discuss all model rules, constitutional provisions, and Restatement provisions that might apply.

N. Mary Stein called Sam Johnson, a civil lawyer, told him that she had killed someone, told him that the murder weapon was behind a maintenance shed near the railroad tracks, and spoke of suicidal ideation. Stein and Johnson agreed that they should call a rabbi and the police. Johnson then called his mother, Sarah Pinehurst, who is Stein's friend. Pinehurst then called Stein, who admitted that she had killed someone before Pinehurst told Stein that Johnson had revealed this the information about the crime and the weapon to her. Pinehurst also failed to reveal that she had gone to the scene and retrieved the weapon for Johnson.

With Stein's permission, Pinehurst called the police and told them that a killing had occurred near the railroad tracks. After the police arrived, Stein refused to speak to them without Johnson's presence. Stein told the police that she had already called Johnson. Johnson suggested that a different lawyer, Wiley Warnock, a criminal defense specialist, take the case from this point on. Warnock moved to suppress all the evidence of the crime; he never revealed that he knew Johnson still had the knife retrieved by Pinehurst. He also moved to suppress all conversations because he asserted they were covered by the attorney client privilege and the confidentiality duty under M.R. 1.6. Discuss all evidentiary and ethical issues, referring to any relevant model rules, evidentiary rules, and Restatement provisions.

II. Essay Questions (20 points each): All students must answer two of three essay questions using *no more than eight* blue book sides for each of your chosen questions.

A. You are a partner in a small law firm that specializes in matters involving family law. You have just completed an initial intake interview with Lena, a new client who is seeking representation on a divorce and child custody matter. (You had a preliminary conversation with her last week on the telephone, during which you agreed to represent her and gave her the necessary information about your fees.) Lena separated from Bernard, her soon-to-be ex-husband, three months ago after a conflict-ridden eight-year marriage. Both parents want sole custody of their six-year-old son Max. As yet, no legal action has been initiated for divorce or custody.

Lena brought Max with her when she came to meet you; he came running into the reception area of your office, leapt onto the couch, and jumped up and down a few times before his mother stopped him. Lena explained that she couldn't get a babysitter, so you asked your secretary to keep an eye on Max while you talked to Lena. You took some toys from a cabinet and put them on the floor for Max. As he ran over to see them, you noticed that the left side of his face was deeply bruised, from just below the eye down to the chin. You saw bruises on his left forearm that looked like adult fingerprints.

During the initial interview, Lena told you that she wants custody of Max and that she needs child support from Bernard. She makes $80,000 per year as a part-time real estate agent, while Bernard earns at least $250,000 per year as an accountant. Also, she believes that Bernard's current lifestyle would not be appropriate for Max. He works long hours and travels a lot.

You asked Lena how Max got injured. She looked you straight in the eye and said, "Oh, it was a fight with a playground bully." You asked when the fight occurred and for the name of the child. She told you the fight happened last week at school, but she was not sure which child had inflicted the injuries. You asked if she had

taken Max to a doctor after the injuries. Lena said, "No, he really seemed okay. Nothing was broken." Then she asked "Is it true that this conversation is completely confidential?" "Of course it is," you replied.

You asked whether Max has spent much time with Bernard lately. She said that Max spent a weekend with his father six weeks ago, but that Bernard would have another visit with Max this weekend—during the day on Saturday.

You asked about the current child-care arrangements. Lena said she takes care of Max all the time except when he is at school. She works during his school hours. You asked her how she has adjusted to being a single parent. She said, "It's hard. I wish my Mom did not live so far away; I really don't have anyone to help me. I have good days and bad days. Of course I love Max, and I love being with him. It's hard, though, because he is so hyperactive and he talks constantly. I lose my temper once in a while, but not too often."

You were only able to meet with Lena for a half-hour today because you squeezed her in before another appointment. Lena has agreed to return tomorrow afternoon to finish the initial interview. This is a good thing, because you need a little time to figure out what are your duties under the state ethics code, and how those relate to any duties you might have under the child abuse reporting statute.

A law in your state requires that if any person has "reason to believe" that another person has "committed an assault or other act of violence against a minor child" that has produced "any visible injury, or any injury that requires or receives medical attention," you must report the incident to the state Department of Human Services. Failure to make a report under the statute is a criminal offense, punishable by up to one year in prison and/or a fine of up to $5,000. The statute explains that "persons" who must report under the statute include "all providers of medical, legal or social services, including lawyers and their staff, doctors and their staff, social workers and mental health professionals and their staff."

You called your friend Anna, who is a social worker in your town. She is familiar with the state law on reporting child abuse. Anna said that based on what you now know, you do not have a clear duty to report the injury to Max. However, she said that if you get additional information indicating that Lena caused the bruises on Max's face and arms, you must file a report.

Explain your ethical and legal obligations relating to Max's injury and to your obligations to Lena in this situation. Describe specifically what you plan to ask or tell Lena and in what order. Try to anticipate how she will react, and think about how this might inform your approach to the meetings. Also explain what if any other action you would take at this point or based on the outcome of the meeting. Explain the potential ethical, strategic and practical implications of the choices that are presented by the upcoming meeting.

Note: This is not a traditional "issue-spotter" question. While there are ethical and legal rules that are relevant to the analysis of this problem, this professional dilemma requires careful consideration of other issues in addition to rule application.

B. The law firm of Callan and Dvorjak has 200 lawyers in three American cities. The firm has been struggling to control costs during the recession and has had to lay off some lawyers and some staff. Firm managers have noted that some other firms have greatly reduced the cost of providing legal services by contracting with firms in India and elsewhere to do some legal research, drafting of pleadings, legal memoranda and contracts, review of transactional and litigation documents, and other tasks. Consequently, the firm is about to enter into a contract for such substantive legal support services with Legal Solutions, Inc., a legal support firm in New Delhi, India. The average cost of the work done in New Delhi will be about one-third of the cost of the work if it were done in the US. Most of the work received at Legal Solutions, Inc. through contracts with American firms is done by paralegals who are supervised by Indian lawyers in the New Delhi office. Some of the lawyers have law degrees (usually LL.Ms) from US law schools; others received their legal training in India. None of these lawyers are licensed to practice in the US.

You are the ethics counsel to Callan and Dvorjak. The management committee of the firm has asked you to evaluate the proposed arrangement to see if it might involve violate any disciplinary rules. If so, explain whether the firm can institute policies or procedures that would bring the firm into compliance with the rules. The management committee has asked you to address a few specific questions. As you provide opinions, please note any relevant ethical authority and explain your reasoning. (You have not been asked to evaluate the attorney-client privilege implications of the proposed arrangement.)

i. The management committee is uncertain about how closely involved it should be with Legal Solutions, Inc., and seeks your guidance on this matter. For example, does the firm need to send a team to New Delhi to meet the staff at Legal Solutions, Inc. and to inspect the facilities? Should the firm do some other investigation of the New Delhi firm or its staff before entering a contract with them? Does the firm need to have one or more lawyers on site in New Delhi while the delegated work is done to supervise the work? You may not have a basis to answer these questions with precision, but general guidance would be most appreciated.

ii. Some of the work that would be sent to Legal Solutions, Inc. would require that the US firm send confidential documents to the Indian firm. The firm would remind the Indian firm of its obligation to protect confidences. Is this ethically permissible, and does the firm need client consent in order to do this?

iii. Do you see any other potential ethical problems with this arrangement besides those that have been identified by the management committee? If so, please list other potential rule violations that are presented by the facts described, mentioning the relevant facts and the specific provisions in the rules that might be violated.

C. You are a lawyer in private practice in DC, representing Guido Rojas, who owns and operates a local business that imports reptiles and sells them to local pet shops. You have advised your client about the federal criminal penalties that may be imposed for importation of certain venomous reptiles, and you thought that your client was observing those restrictions. Recently, however, your client has been sued by a young man who was bitten by one of the legally prohibited poisonous snakes in the store. The store owner told the plaintiff that your client's company supplied the snake.

After you received a copy of the complaint of the snake-bite victim, your client comes to meet with you in your office. The client gives you a flash drive (a USB key used to store documents) which he says contains all the importation records from the last five years. He mentions that he has taken his computer to a store to have the hard drive erased and "scrubbed" to eliminate any residual data. "No sense having extra copies hanging around." You agree that you will review the importation documents and then you and your client will meet again. The client departs. Upon review of the documents on the flash drive, you discover that your client has imported dozens of venomous reptiles whose importation is prohibited by federal law. The documents are invoices for the reptiles imported. The reptiles are listed by species and the documents make clear that they were delivered to your client's business.

Discovery has not yet begun. Please explain any duties imposed on you by ethical or legal rules, and explain what if any action you would take before discovery commences.

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I. Short Answer Questions (10 points each – recommended 20 minutes each): All students must answer at least six short answer questions using *no more than three* blue book sides for each question. If you choose to answer more, I will consider your answers for extra credit.

A. Anne, a young attorney relatively new to her firm, has just been assigned a secretary. Anne becomes involved in a contentious case with an older, experienced attorney who succeeds at intimidating her every chance he gets. One day the older attorney phones and begins yelling that his request for production of documents did not yield what he had been looking for. Terrified, Anne quickly hands the phone to the secretary, instructing her to tell the older attorney that no such documents exist. Actually, Anne had found the documents past the deadline and was too afraid to turn them over late. Anne feels badly for putting her secretary on the spot. Will Anne be subject to discipline? Why and why not?

B. Fred Mertz bought 2 million bottles of salad dressing from a wholesaler. The salad dressing is what is called "shelf stable," meaning that it has no safe-consumption expiration date. But it does have a required "best when purchased by" dater on the label. When Mertz buys the salad dressing bottles, the "best when purchased by" date is already six months in the past. In violation of law, he changes the labels, adding a year to the "best" date.

Paula Potemkin obtains an indictment against Mertz and takes him to trial. Before trial, Paula informs the local media that she is prosecuting Mertz, whom she refers to as the "salad killer." She tells reporters that Mertz's dressing is a major public health concern. However, no on has become ill from the salad dressing, and there is no medical evidence that it would be dangerous to consume.

During the trial, Potemkin refers to the "best when purchased by" date as the "expiration date" in opening statement, questions to witnesses, and closing argument. Is Potemkin subject to discipline for any of her actions? Why and why not?

C. Judge Martha is presiding over a case against Bollocks Corp. The case involves a sexual harassment claim against Bollocks and several of its former high-level managers. While Martha was still in private practice, one of his fellow attorneys at a law firm litigated a matter against Bollocks in a completely unrelated labor dispute over wages. Bollocks argues that Martha should be disqualified because of her former associations. Is the company correct? Why and why not?

D. Attorney Maura is representing an accused drug dealer. Maura has been over her client's story many times and doesn't think that it rings true. There are no glaring inconsistencies, and her investigation has not revealed any directly contrary evidence; she simply thinks that her past experience makes her able to read clients well enough to suspect when one of them is lying. Maura still has no evidence to the contrary; however, and she decides that her client's best strategy is to testify. Maura puts her client on the stand to testify. Is Maura subject to discipline? Why and why not?

E. You represent an injured employee of Nails Corp. The employee worked in the chemistry laboratory under the Products Development Division. Not knowing much about the Corporation generally, you wish to get a little background information. To that end, you interview a neighbor of yours who is a midlevel manager in a department of the Corporation that is unrelated to the subject matter of your representation. Before conducting the interview, you notify Corporation's lawyer of your intentions. You tell the neighbor whom you represent and the nature of your interest in talking with him about the Corporation. Assuming that the employee you chose may not make a statement that could be admissible as an admission of Nails, have you violated any disciplinary rules? Why or why not?

F. Landon Myers is an attorney who represents Unipill Pharmaceutical Company in connection with obtaining approval of the Food and Drug Administration for new drugs. Landon has just learned from his primary contact at the Company that the research department has altered some test results for a new drug in order to facilitate its approval. The altered results, which appear to show that the drug is less risky than supposed, are being prepared for submission to the FDA. What steps should Landon be prepared to take in light of this information?

G. Claire Williams is an attorney who specializes in divorce and child custody matters. She has been approached by David and Bernice Jones, who tell her that they want her to represent both of them in documenting an "amicable" separation (their religious beliefs preclude divorce). David and Bernice tell Claire that they have reached agreement about child visitation by David and about David's financial support of Bonnie and the children. They also tell Claire that they want to save money by having only one lawyer. What steps should Claire take before deciding whether she can undertake this representation?

H. Raymond & Norris is a big firm that wants to get bigger. It is considering merging with several smaller firms that, like R & N, do civil litigation. In considering the mergers, R & N is concerned about creating conflicts of interest, but the managing partner hopes that effective screening procedures for lawyers will enable the firm to minimize conflicts. Under the Model Rules of Professional Conduct, under what

circumstances will the firm be able to use screening to protect the firm from conflicts of interest after the mergers? Explain.

I. Onus Onya is a 64-year-old attorney who has been practicing law for 35 years. His new associate has tried to introduce him to the concept of using e-mail for prompt communication with clients. Onus reminded the young lawyer that she has an ethical obligation under Model Rule of Professional Conduct 1.6 to take reasonable precautions to protect confidential client information and that e-mail, he has heard, can be intercepted.

J. Arlene Smeloff is an attorney who represents a land developer, Karl Johnson. Arlene has just learned that Karl once used one of her legal opinion letters to defraud the seller of a parcel of land that he needed for an apartment complex. Although Arlene is not happy that he did this, she believes that he will not do it again. She also derives a substantial part of her income from representing Karl. She is having trouble with her conscience, however, about the poor man who was defrauded out of his land with her unknowing assistance.

May Arlene continue to represent Karl under these circumstances, and if she no longer represents Karl, can she at least tell his victim that she has withdrawn from representing him and that she disaffirms the opinion he used to perpetrate the fraud?

II. Essay Questions (25 points each): All students must answer two of three essay questions using *no more than eight* blue book sides for each of your chosen questions.

A. Several employees of Metadata Inc. filed a class action against Metadata for gender discrimination. Martha Manzi, an attorney in Metadata's in-house legal department, began to work on the defense of the suit. In the course of her preparation, Manzi obtained information from Metadata about its personnel practices. As Manzi explained later, "I obtained specific information from the personnel department concerning salaries and hiring practices . . . I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment. I obtained interoffice memoranda . . . regarding the case."

Manzi decided not only that the plaintiffs had a good case against Metadata, but also that she herself had been the victim of gender discrimination by the company. Manzi elected to join the very class action suit against Metadata that she had been preparing to defend. Accordingly, Manzi asked the plaintiffs' counsel to represent her, and she resigned from her position at Metadata.

Plaintiffs' counsel agreed to represent Manzi, and she joined the litigation as a plaintiff. Metadata's new counsel then moved the court to disqualify plaintiffs' counsel, alleging a conflict of interest. Should the motion be granted? Explain why and why not. Is Manzi subject to discipline for her conduct – why and why not?

B. You practice law out of an office building in Lawrence, Massachusetts. Since you are newly admitted to the bar of the Commonwealth of Massachusetts, you have experienced the anxieties typical of any young attorney: how to pay the rent, how to purchase copy machines, how to pay the secretary (can I afford to hire a secretary?), and how to get clients. Luckily, you solved the first of these problems (how to pay the rent) by entering into a space-sharing arrangement with a few other recent law school graduates and by reaching an agreement with the building's landlord. The arrangement with the other graduates includes a provision mandating that the names of all the grads (Williams, Morrison, Blake, Arsenault, Jennings and Palmer) will be listed on a sign on the outside of the building; the sign will simply say "Law Offices" with the names listed beneath this introduction. The agreement with the building's landlord dictates that you and the other recent grads will do the lease work for the landlord while you will pay a reduced rent. Since the landlord feels she is getting the better part of the bargain, she has agreed to recommend your services to her friends and relatives while you have agreed to market the available office space to persons in need of space.

Like any neophyte in the legal field, you've struggled to get and keep clients. You've tried a number of methods to try to attract clientele, including: a radio advertising campaign on Massachusetts and New Hampshire public radio (the campaign features spots in which you advise callers who dial up your number looking for advice on varied legal topics); a series of seminars at your office building for accident victims, for persons who may have been the victims of medical malpractice, and for tenants seeking help with problems with their landlords (both you and the persons with whom you share office space have occasionally spoken directly with the attendees at these seminars attempting to drum up business), and a web page on which you tout your success in getting favorable plea bargains for most of your criminal clients. You also joined the Essex County Bar Association; as part of your membership duties, you've offered your expertise at conferences where you've spoken to other attorneys on subjects like recent developments in criminal law, family law and basic estate planning.

So far, most of your clients have needed assistance with criminal matters; your most frequently encountered difficulty is getting paid. However, some other issues have also arisen. Your client, Bill Smith, is a defendant in a robbery prosecution - - weapons were allegedly stolen from a federal facility. Smith told you that he would like to be called as a witness in order to present an alibi defense. After you reminded him that he had never mentioned an alibi defense before, Smith said that his girl friend had now agreed to lie for him and testify that he was at her house at the time of the robbery. Smith told you that he would like to take the stand to confirm his girlfriend's story.

You told Smith, "I can't be a party to any perjurious testimony." Smith retorted, "I have a right to take the stand and testify," but you were reluctant to let Smith do so. Smith assured you, "The last thing I would want you to do is to be unethical. Put me on the stand; I will have to tell the truth." You're a trifle

concerned about this matter because Smith has told you that the stolen weapons *might* be stored at his girlfriend's cabin in Coos County New Hampshire.

Prior to trial in this matter, as part of the discovery process, you learned that Assistant U.S. Attorney Meeldeer had sent a confidential informant to discuss the purchase of the stolen weapons. Supposedly, the CI uncovered very helpful material during his conversations with Smith. You are concerned that such material will prove very damaging to Smith's case; you have wracked your brain trying to figure out a way to exclude such material from evidence.

Similarly, Assistant U.S. Attorney Meeldeer has called on a number of occasions to discuss a deal for your client. You have never spoken with Smith about these conversations because you consider them to be in the nature of preliminary negotiations. In fact, during the last conversation Meeldeer told you he would be willing to offer Smith six months jail time and 5 years probation if he would agree to testify against his co-defendant, Jackson. Jane Palmer, one of your fellow recent graduates, represents Jackson. You're thinking seriously of having a conversation with her relative to some deals you might broker to come up with the best deal for both your clients.

Lately, you've given serious thought to spending more time with your family because the helter-skelter nature of legal practice has got your head in a spin. You've done quite a bit of work in the family law area; in fact, you're currently representing a couple in negotiating their divorce settlement agreement (the Watsons). You've had a number of conversations with them, both individually and collectively; during these conversations, you've worked hard to consider the needs of both and the best interests of the children. What's making this case especially difficult are a couple of conversations you've had with Jane and Mark Watson. During a meeting with Jane Watson, she informed you that her daughter Melissa, 13 years old, has told her that her father, Mark Watson, has been touching her in unwanted and inappropriate ways for the last six months. During an individual conversation with Mark Watson, he informed you that he contracted Acquired Immune Deficiency Syndrome (AIDS) approximately two years ago. He has told neither his wife nor his mistress about his condition.

Recently, a friend at the Essex County Probate Court - - Family Division has offered you a way out of legal practice. She says you can cut back on the irritating part of lawyering, make good money, and live a more fulfilling life by becoming a Family Law Mediator. You've told her you'd like to give this a try, and because you know a great deal about the Watson matter, you'd like to help them save money and save the court's time by mediating their divorce.

Fully discuss all the issues you can in the time allotted; remember to follow the IRAAC approach. You will also receive credit for discussing approaches you might take in dealing with your clients in this fact pattern.

C. Following her graduation from law school in 1995, Susan Spencer joined the law firm of Vendage & Ennis (V&E), outside counsel of the First Boston Bank

("FBB") Although she had been promised by V&E's recruiters that she would be working on litigation matters, Spencer was assigned as an associate under partner John Stockdale to work on FBB's real estate transactions. She also had secondary responsibility, under partner Wayne Morris, for overseeing FBB's compliance with securities regulations. During 1998, Spencer performed the legal work for FBB in connection with a large loan to the Dayton Development Corporation ("DDC"). The loan was to be used by DDC to construct a large office complex -- "Dayton World" -- in the Back Bay of Boston. Throughout her five-year tenure at FBB, Spencer did both real estate work and securities compliance work.

(1) For several years prior to Spencer's arrival, V&E, through the efforts of Morris, had assisted the Chief Financial Officer of FBB, Arnie Wolcott, in structuring complex entities to take advantage of arcane accounting rules, permitting FBB to report higher earnings. Additionally, Morris and Wolcott worked together to shield the activities of stockbrokers and analysts who sometimes engaged in questionable practices to inflate FBB's stock value and to earn higher profits from stock trades. After years of evading SEC scrutiny (sometimes with a nod and a wink and sometimes with strategic payoffs to the right SEC agent), a senior manager (Eileen Wright) working under Wolcott has become worried about these transactions.

Once Spencer joined Morris's office, Wright met with her to discuss what she should do. Spencer advised Wright to draft a memo to FBB's CEO, Bill Rundle, warning him of significant adverse consequences if certain accounting adjustments were not made. Spencer told Wright to do this without first consulting with Morris. Wright sent the memo to Rundle; then about a week later, Wolcott and Morris called Spencer and Wright into Wolcott's office to rebuke them about their insubordination. Wolcott and Morris suggested to Spencer and Wright that no adjustments would be made, and they should continue doing their jobs without making any more waves.

Meanwhile, Rundle is inclined to hire V&E to investigate the allegations in Wright's letter because lawyers there are familiar with the details of the transactions and the brokers/analysts' activities (having prepared the documents themselves!) and can perform an investigation quickly and inexpensively.

(2) In late 2000 tiring of real estate work, Spencer left the bank and joined a local law firm. She finally got the opportunity to work on litigation, and for the better part of three years she represented the firm's clients in a number of cases in courts throughout Boston, including the United States Bankruptcy Court. In 2002, FBB sold its entire real estate loan portfolio to Liberty Bank ("Liberty"), including the Dayton World loan consisting of a principal balance of twenty million dollars. In 2003, Dayton determined that it would have to file a petition to reorganize in bankruptcy, and it selected Spencer as its bankruptcy attorney. At the time of the bankruptcy, Dayton's second largest asset was Dayton World; the outstanding balance on the loan -- now held by Liberty -- was eighteen

million dollars. Several other Dayton loans were also held by Liberty because Liberty had previously loaned money to Dayton. As a result, Liberty was Dayton's largest creditor. Part of Spencer's bankruptcy strategy on behalf of Dayton was to restructure all outstanding loans so that bank creditors (like Liberty) would receive only 75% of each loan dollar held.

(3) During 2003 and during the pendency of the bankruptcy, Spencer was asked by the Columbia Development Corporation ("Columbia") to represent it in a proposed real estate loan transaction between Columbia and two banks, FBB and Liberty. Columbia was aware that Spencer had done real estate work for FBB, and it was also aware of the facts surrounding the Dayton bankruptcy and Spencer's representation of Dayton. The Columbia transaction was unrelated to any specific work Spencer did for FBB, but it was the same type of work.

(A) With respect to paragraph (1), can V&E take the case? What should Susan Spencer do? Did any lawyers engage in disciplinable conduct? If so, what rules might these lawyers have violated? Remember to consider both the Model Rules that might apply.

(B) With respect to paragraph (2), what should be the result if Liberty moves to disqualify Spencer from representing Dayton in the bankruptcy because of her former representation of FBB? Explain.

(C) With respect to paragraph (3), what should be the result if FBB files a complaint with the lawyer disciplinary authorities concerning Spencer's proposed representation of Columbia? To what extent and why is your answer the same or different if both FBB and Liberty also complain that Spencer should be disqualified from representing Columbia because of the pending bankruptcy?

Happy Summer!!!

MASSACHUSETTS SCHOOL OF LAW at ANDOVER

PROFESSIONAL RESPONSIBILITY 2010 - Professor Olson

FINAL EXAM

Write your student ID number (and only your student ID number – no names please) in the space provided below and on the front covers of your bluebooks. When you have completed the exam, insert this exam into the middle of your bluebook. If you use more than one bluebook, insert subsequent bluebooks into the middle of book one.

Both the essay and short answer portions of this examination are Open Book examinations: You may use any material **either prepared by you during the course of the semester for the course in Professional Responsibility or made available to you during the course of the semester by Professor Olson. You may also use commercially prepared outlines.** You may also use both the casebook and supplemental books assigned to this course. You must work alone and are not authorized to receive assistance from any other person except Professor Olson; you are aware that the Law School operates under an Honor Code. By turning in an answer you expressly agree that you are bound by the provisions of the Honor Code, as well as all of these instructions.

Your answer to the Essay Question counts for 40% of your grade on this examination; your answers to the Short Answer Questions count for 60% of your grade on this examination.

Student ID Number: _____

To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does **not** mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result

if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

Part A – Answer any One (1) of the Following Three (3) Essays (40 points).

Essay #1

The law firm of Reedman & Moncton represents MenRus, Inc., which, as you might guess, is a discount seller of men's clothing. The president of MenRus believes that it is unable to obtain Morningstar suits for sale because the manufacturer of the suits, Hillare, has exclusive retailer agreements with only a few high-priced men's stores in any given region. A partner for Reedman & Moncton, Mike Mangrum, conducts some preliminary investigation by calling sales managers at men's stores in New York City, Boston, Philadelphia, and Washington, D.C. He also called representatives of the Association of Clothing Retailers and the Confederated Association of Department Stores. From these calls, Mike concluded that only one store in any metropolitan area sells Morningstar suits, and that this limitation was due to an exclusive retail agent arrangement imposed by Hillare. Based on that research, Reedman & Moncton filed an antitrust lawsuit on behalf of MenRus, alleging a nationwide scheme to fix prices and eliminate competition through an exclusive retailer policy and uniform pricing scheme.

Hillare filed an answer to the complaint, denying that it had any exclusive retailer agreement or had imposed a uniform pricing policy. Mr. Mangrum and a few associates took a series of depositions in the case. The relevant portion of the transcript from the deposition of the Hillare's CEO, Alice O'Shea, is set forth below.

Q. Ms. O'Shea, you were supposed to bring a number of documents with you today. Do you have them?

A. Actually, they're all out in my car, but I can go get them.

Q. Yes, do that now.

(The witness left the room at that point.)

Mr. Mangrum: She's going to meet another boyfriend at the car.

Ms. Paxton (lawyer for the Association of Clothing Retailers): That's in poor taste, Mr. Mangrum.

Mr. Stuptak: (lawyer for Hillare): Get smart for a change, Mike. Please refrain from making any more derogatory comments about my client.

Mr. Mangrum: I guess I'll have to reserve all my derogatory comments for you, you piece of shit.

Mr. Stuptak: Whatever you like, Mike. This ought to be a fun trial.

Mr. Mangrum: It must have been in poor taste if Ms. Paxton says it was in poor taste.

Ms. Paxton: You got a problem with me?

Mr. Mangrum: No, I don't have any problem with you, babe.

Ms. Paxton: Babe? You called me babe? What generation are you from?

Mr. Mangrum: At least I didn't call you a bimbo.

Mr. Stuptak: Cut it out.

Ms. Paxton: The BBO will enjoy hearing about that.

Mr. Stuptak: Mike, you ought to stay out of the gutter.

(The witness then returned to the room, and she handed a number of documents to Mr. Mangrum.)

Q. I'd like to mark this as O'Shea Deposition Exhibit Number 1. Do you recognize this document?

(The exhibit was so marked.)

A. Yes, I do.

Q. I'll ask you to turn to page 7 of O'Shea Deposition Exhibit Number 1 under the heading of Roman I about "CEO's Activities." And it the, it talks about a number of meetings and conferences that you attended, one of which is periodic meetings you have had with the Association of Clothing Retailers and the Confederated Association of Department Stores.

Could you tell us how frequently you meet with Rand Lally, the President of the Association of Retailers, and Claude Rowell, the President of the Confederated Association?

A. We, the three, the three of us try to meet every four months or so, but we're not always successful.

Q. And you review activities of the three organizations at those meetings?

A. We discuss current activity. We really report to each other some of our current activities.

Q. To what extent do you, as CEO of Hillare, coordinate with the Association and the Confederated Association regarding what clothing lines will be sold to what retailers in any given region?

Ms. Paxton: Object to form.

Mr. Mangrum: I don't have to talk to you, little lady.

Mr. Stuptak: : Yes, could I hear the question back, please?

(The question was then read by the court reporter.)

Mr. Stuptak: I object to the form of that too, I think it assumes facts that are not in evidence.

Mr. Mangrum: Well, aren't you just the cutest little thing, Stuptak, la la la . . . "facts not in evidence." You disgust me. You remind me of some Little Lord Fauntleroy lawyer . . . all dressed up and no place to go. In case you hadn't noticed, we're not at trial here, moron. Why don't you grow up?

Q. Do you coordinate with offices of the Association and the Confederated Association with respect to what stores will receive what clothing lines in any given region?

Ms. Paxton: Objection.

Mr. Mangrum: Tell that little mouse over there to pipe down.

The Witness: Hillare has a policy of selling to many different retailers in the Association and many different stores under the Confederated umbrella of stores. It could be as many as ten different retailers in any given market in the Midwest and West.

Q. I think that is non-responsive. I asked you if you coordinate with the Association and the Confederated Association. Do you?

Mr. Stuptak: I object because that question has been asked and answered, and I demand an immediate suspension of this deposition.

(At this point, Mr. Stuptak led the witness out of the conference room into the hallway. The two returned five minutes later.)

Mr. Mangrum: Stuptak, do that again, and I will take this up with the judge next chance I get. What kind of a scumbag are you? Have you ever defended a deposition before, or are you some kind of a tyro, still wet behind the ears? I have half a mind to bring criminal charges against your client in my role as private attorney general.

Q. I will repeat the question I asked before you left the room. By the way, you'd do best not to follow your lawyer's advice the next time he tells you to leave the room with him. I do have the power to bring a criminal complaint against your company, and you personally could do time behind bars. Do you coordinate with offices of the Association and the Confederated Association with respect to what stores will receive what clothing lines in any given region?

Ms. Paxton: Objection.

Mr. Mangrum: Be quiet, little girl! You can object all you want, babe, but remember that at least so far, you don't even have a dog in this hunt. While I might not look forward to going up against you in a courtroom, looking good in a skirt like you do, I'll amend the complaint to bring your Association in as a party defendant in a New York fucking minute. Got it?

Mr. Mangrum did later amend the complaint to bring in both the Association and the Confederated Association. The discovery process was not perfect from defendants' standpoint either. In particular, defendants' lawyers instructed their clients not to answer a number of deposition questions, engaged in private off-the-record conferences, and aborted many depositions unilaterally.

Additionally, counsel for Confederated produced a memorandum entitled, "Preparing for your Deposition," which the lawyers used to prepare clients to testify in all antitrust cases. The memorandum advised clients that it was important for them to testify that they never agreed with any clothing manufacturers that any particular manufacturer would be the only one Confederated used in conjunction with the Association of Clothing Retailers.

After the depositions of the Hillare employees had concluded, Mr. Stuptak sent a letter to Reedman & Moncton demanding that the firm voluntarily dismiss its lawsuit, and threatening to seek Rule 11 sanctions from the district court if it refused to do so.

Did the antitrust complaint violate Rule 11 when it was filed? If not, did the firm subsequently do anything that violated the rule? Remember to also consider all Model Rules that may have been violated in this scenario.

It's clear that both sides displayed "hard ball" litigation tactics in this case. You want to be prepared to deal with such tactics if they ever arise in depositions you may conduct or defend. What types of problems can you anticipate? How would you plan to respond to these problems? Remember to consider both the intersection of ethical and moral considerations and the law review article, *The Rambo Problem: Is Mandatory CLE the Way Back to Atticus?*, in your answer.

Essay #2

You are an attorney who has been in general practice in Methuen for five years.
You have built up a small reputation as a good lawyer, but with the stiff competition from other lawyers in the Merrimack Valley, you have struggled a bit for income.
Your office is located in a small house that has been converted to business uses.
You have been renting the house for five years and your yearly lease has three months to run. The owner of the building has informed you that he will not renew the lease. In fact, the owner will put the building on the market next week. A client, with whom you have built a friendship, has offered to loan you money at a very favorable interest rate to purchase the building. Owning your own building has been your dream from the beginning and this location is perfect for your needs. The price is a good one, given the increasing rise in area prices generally.

You have decided that this weekend is a good time to think carefully about buying the building and about some things that are going on in your practice. You have three cases that are causing you some concern.

(1) In an unusual move, you have been asked to defend the Department of Social Services in a class action suit claiming that conditions at its facilities violate federal statutory law and the constitutional rights of juveniles. When you discuss the matter with the agency's director, you are told that the agency cannot do anything about the problems because the state legislature has not provided sufficient funds for the department. You are asked to do what you can in defending the case, although it has no real chance of winning, to give the agency time to pursue some funding sources.

(2) A new client came in to last week to complain about her lawyer. The litany of attorney actions (or inactions) related by the client are somewhat shocking, because you've known the attorney since law school where you were good friends. Client was being threatened with suit by a creditor and went to the lawyer, Mary Barrister, about

eight months ago. Mary had quoted an hourly rate of $125.00 to negotiate with the creditor. If trial preparation and/or trial were required, the hourly rate would be $200.00. Client did not hear from Mary for about six months, although she received statements monthly, which she paid within two weeks. The first monthly statement totaled $375.00. After the second monthly statement, which totaled $500.00, Client began calling Mary to learn what was happening with the negotiations. At first, Mary's secretary spoke with Client at length, telling her about the phone calls and meetings Mary had had with the creditor and how hard Mary was working on the matter. Soon, however, the secretary stopped talking with Client except to say that she would give the message to Mary. The monthly statements continued. After about six months, Mary returned one of client's calls, saying that the creditor was being difficult but that she (Mary) was certain an accommodation could be reached. Client has not spoken with Mary for two months now. By the time Client walked into your office, she had paid $1,875.00 to Mary. Client's total debt to the creditor is $3,350.00. Client brought you copies of Mary's monthly statements but had no other documents. The statements contain merely a total amount, with the words "For services rendered."

(3) You have represented Robert on a number of occasions. He has come to rely on you not just as a lawyer but also as an advisor and counselor. Last week Robert came to see you. It seems that Robert's physician had diagnosed Robert as having an advanced stage of pancreatic cancer. Pancreatic cancer is incurable. The diagnosis was confirmed when Robert went to the Mayo Clinic. Robert has always been a proud, independent person. He told you that he does not want to cause his wife and children significant grief by a prolonged illness, nor does he wish to subject his family to the extensive financial costs of a prolonged illness.You told him that you could help him by drafting legal instruments that would instruct his physicians not to engage in heroic efforts to prolong his life when his cancer begins to impair his day-to-day activities. You also began to tell him about "Do Not Resuscitate" instructions when Robert cut you off. "I've considered all that," he said, "but I've decided on a more direct approach." It seems that Robert had contacted Dr. Dan, a physician who believes in euthanasia. Dr. Dan has constructed a machine that enables a person to self-administer a fast acting sedative and poison that enables a person to commit suicide painlessly. Dr. Dan sells the machine for $25,000.

Robert wants you to represent him in two ways: First, Robert wants you to handle the purchase of the suicide machine from Dr. Dan. Robert would authorize you to pay up to $25,000 for the machine and to draft and review all necessary legal documents. Robert told you that Dr. Dan insists that the sale include a "hold harmless" clause, a waiver of liability and remedy for any resulting death or injury resulting from the intended use of the machine, and a general release. These documents would prevent Robert's wife and children from recovering against Dr. Dan for Robert's wrongful death. Robert told you he was agreeable to these demands by Dr. Dan.

Second, Robert wants you to draft a will for Robert that will leave all his property to his wife and children. He also wants you to prepare the necessary documents so that his life insurance will be paid to his wife. Because the insurance policy was taken out years ago, Robert had initially named himself as the beneficiary. The change will enable Robert's

wife to obtain the life insurance free of probate.*
Assume that Chapter 265 of the Massachusetts General Laws contains this section: "Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony."

You told Robert that you wanted a few days to think about his requests.

* You are to assume that the life insurance will be paid even if Robert's death is deemed to be self-inflicted.

Being an organized person, you have written out the above facts and now proceed to "discuss" with yourself (in writing) the professional responsibility issues these various matters present.

Essay #3

Following her graduation from law school in 1995, Susan Spencer joined the law firm of Vendage & Ennis (V&E), outside counsel of the First Boston Bank ("FBB") Although she had been promised by V&E's recruiters that she would be working on litigation matters, Spencer was assigned as an associate under partner John Stockdale to work on FBB's real estate transactions. She also had secondary responsibility, under partner Wayne Morris, for overseeing FBB's compliance with securities regulations. During 1998, Spencer performed the legal work for FBB in connection with a large loan to the Dayton Development Corporation ("DDC"). The loan was to be used by DDC to construct a large office complex -- "Dayton World" -- in the Back Bay of Boston. Throughout her five-year tenure at FBB, Spencer did both real estate work and securities compliance work.

(A) For several years prior to Spencer's arrival, V&E, through the efforts of Morris, had assisted the Chief Financial Officer of FBB, Arnie Wolcott, in structuring complex entities to take advantage of arcane accounting rules, permitting FBB to report higher earnings. Additionally, Morris and Wolcott worked together to shield the activities of stockbrokers and analysts who sometimes engaged in questionable practices to inflate FBB's stock value and to earn higher profits from stock trades. After years of evading SEC scrutiny (sometimes with a nod and a wink and sometimes with strategic payoffs to the right SEC agent), a senior manager (Eileen Wright) working under Wolcott has become worried about these transactions.

Once Spencer joined Morris's office, Wright met with her to discuss what she should do. Spencer advised Wright to draft a memo to FBB's CEO, Bill Rundle, warning him of significant adverse consequences if certain accounting adjustments were not made. Spencer told Wright to do this without first consulting with Morris. Wright sent the memo to Rundle; then about a week later, Wolcott and Morris called Spencer and Wright into Wolcott's office to rebuke them about their insubordination. Wolcott and Morris suggested to Spencer and Wright that no adjustments would be made, and they should continue doing their jobs without making any more waves.

Meanwhile, Rundle is inclined to hire V&E to investigate the allegations in Wright's letter because lawyers there are familiar with the details of the transactions and the brokers/analysts' activities (having prepared the documents themselves!) and can perform an investigation quickly and inexpensively.

(B) In late 2000 tiring of real estate work, Spencer left the bank and joined a local law firm. She finally got the opportunity to work on litigation, and for the better part of three years she represented the firm's clients in a number of cases in courts throughout Boston, including the United States Bankruptcy Court. In 2002, FBB sold its entire real estate loan portfolio to Liberty Bank ("Liberty"), including the Dayton World loan consisting of a principal balance of twenty million dollars. In 2003, Dayton determined that it would have to file a petition to reorganize in bankruptcy, and it selected Spencer as its bankruptcy attorney. At the time of the bankruptcy, Dayton's second largest asset was Dayton World; the outstanding balance on the loan -- now held by Liberty -- was eighteen million dollars. Several other Dayton loans were also held by Liberty because Liberty had previously loaned money to Dayton. As a result, Liberty was Dayton's largest creditor. Part of Spencer's bankruptcy strategy on behalf of Dayton was to restructure all outstanding loans so that bank creditors (like Liberty) would receive only 75% of each loan dollar held.

(C) During 2003 and during the pendency of the bankruptcy, Spencer was asked by the Columbia Development Corporation ("Columbia") to represent it in a proposed real estate loan transaction between Columbia and two banks, FBB and Liberty. Columbia was aware that Spencer had done real estate work for FBB, and it was also aware of the facts surrounding the Dayton bankruptcy and Spencer's representation of Dayton. The Columbia transaction was unrelated to any specific work Spencer did for FBB, but it was the same type of work.

(i) With respect to paragraph (A), can V&E take the case? What should Susan Spencer do? Did any lawyers engage in disciplinable conduct? If so, what rules might these lawyers have violated? Remember to consider both the Model Rules that might apply as well as what you learned from watching the documentary, *Enron: The Smartest Guys in the Room*.

(ii) With respect to paragraph (B), what should be the result if Liberty moves to disqualify Spencer from representing Dayton in the bankruptcy because of her former representation of FBB? Explain.

(iii) With respect to paragraph (C), what should be the result if FBB files a complaint with the lawyer disciplinary authorities concerning Spencer's proposed representation of Columbia? To what extent and why is your answer the same or different if both FBB and Liberty also complain that Spencer should be disqualified from representing Columbia because of the pending bankruptcy?

Part B – Answer all ten (10) of these short answer questions. Remember to choose one of the four (4) or five (5) letters and then

explain both why you chose the letter you did and why you did not choose the other letters. You *must not* exceed one side of a page in your bluebook for any short answer response: You will not receive credit for anything beyond one side of a page. (6 points each)

Remember that you can get points even if you choose the incorrect letter; it is all about your ability to analyze why a particular choice is right or wrong; while your conclusion as to any answer choice will matter to the MPRE graders, I am more concerned with your ability to analyze effectively.

QUESTION 1: Attorney Malcolm receives a $50,000 check. Identify the ethically permissible action(s) for Malcolm:

(1) Depositing the check in her firm's IOLTA trust account, if the check is written by the client as an advance against the attorney's fees that the attorney is likely to earn over the next year.

(2) Sending the client a check for $29,322, along with a full accounting of how this amount was determined pursuant to the written fee agreement and a letter saying "We did not want to deposit the check into our trust account, because you are entitled to the interest, so we have deposited our share into our firm account and sent you a check for your share," if the check is a settlement check.

(3) Depositing the check into the firm's IOLTA trust account, if the check is written by the client as an advance against estimated expenses expected to be incurred in the next two weeks, and writing checks totaling $5,425 out of the trust account for expenses the next day.

(4) Depositing the check in her firm's IOLTA trust account, if the check is a settlement check that resolves a personal injury case that the lawyer had undertaken on behalf of the client two months ago, and instructing the firm's bookkeeper to begin working on an accounting of the settlement proceeds to be forwarded to the client within the next two days.

(5) None of the above.

QUESTION 2: Identify the correct statement(s).

(1) Although lawyers usually cannot enter into agreements that restrict the right of a lawyer to practice law, some of these agreements are acceptable.

(2) If a client contacts an attorney about the possibility of suing another law firm for malpractice, the attorney's engagement letter should include a statement whereby the client agrees not to sue the attorney for malpractice, and the attorney should make sure the client signs and therefore ratifies the terms in the engagement letter.

(3) A non-lawyer may own an interest in a business entity that engages in the practice of law, if the entity is carefully structured.

(4) All of the above.

(5) None of the above.

QUESTION 3: Sharon Storrs is an attorney who represents a plaintiff who seeks to recover for injuries she received while riding the roller coaster at Nine Monkeys Amusement Park. Identify the correct statement(s).

(1) Abe should talk to as many Nine Monkeys employees as possible before filing suit, because the Model Rules "no contact" rule is inapplicable to his conversations with Nine Monkeys employees before formal litigation is initiated.

(2) After suit is filed, Sharon should send her firm's investigator to talk to Nine Monkeys' employees who are covered by the Model Rules "no contact" rule, because Sharon cannot talk to them.

(3) If Sharon reasonably believes that she has to "level the playing field" against the well-financed defendant, Nine Monkeys, and its large law firm, which has a reputation for "stonewall" pretrial tactics, she can send a large set of discovery requests that include several requests that would otherwise be improper.

(4) If a "fellow rider" witness (who has no connection to Nine Monkeys outside of being an occasional customer) tells Sharon during an interview "I don't mind talking to you about this accident, as long as you are not a lawyer," Sharon is under no obligation to tell her that she is indeed a lawyer.

(5) None of the above.

QUESTION 4: Which of the following statements violate the Model Rules (or indicate(s) a violation of the Model Rules)?

(1) A partner telling an associate: "In his brief on our motion to dismiss this Massachusetts state court suit for failure to state a claim, that idiot plaintiff's attorney did not even discuss the *Milligan v. Smythe* case that the First Circuit just decided under Massachusetts law. You and I know that case could kill us if the judge finds out about it, but she is not going to find out about it from us. I'll be prepared to discuss it at the hearing if anyone brings it up, but we won't be the ones to bring it up!"

(2) A trial lawyer telling her client: "Given what you just told me, I now realize that the key chart that I introduced into evidence last week is incorrect. I would look like a fool trying to correct it now, though, with only one day to closing argument. Keep quiet about this, and I will, too."

(3) A trial attorney saying in closing argument: "The evidence shows that Karl Kaplan was lying. In your heart, you know she was lying. Listen to your heart."

(4) A trial attorney saying in closing argument: "For what it is worth, and I realize that it may not be worth much because I am admittedly biased and you are the judges of the facts, I think Karl Kaplan was lying."

(5) Both (2) and (4).

QUESTION 5: Identify the correct statement(s):

(1) Due to an attorney's duty to avoid taking frivolous positions, a lawyer for a criminal defendant who is charged with a crime that has five statutory elements and who believes that she can legitimately argue only the absence of the fifth statutory element cannot require the prosecutor to prove the first, second, third, and fourth elements.

(2) Due to an attorney's duty to avoid taking frivolous positions, a lawyer for a civil defendant who is alleged to be liable for a tort having five elements and who believes that she can legitimately argue only the absence of the fifth element cannot require the plaintiff's attorney to prove the first, second, third, and fourth elements.

(3) Under Rule 11 of the Federal Rules of Civil Procedure, a federal judge who determines that Rule 11(b) has been violated must impose a sanction on the attorneys, law firms, or parties who are responsible for the violation.

(4) Any attorney who threatens to bring criminal charges for no reason other than an attempt to advance a civil claim is violating the Model Rules.

(5) Two of the above answers are correct.

QUESTION 6: Assume that the following extrajudicial statements were made by a lawyer in a well-attended press conference about a high profile case. Which of the statements is most likely to be deemed permissible under the Model Rules?

(1) By the prosecutor in a criminal case: "Given the current status of plea negotiations, we are not likely to see a trial in this one."

(2) By the attorney representing the defendant in a criminal case, in response to a reporter asking "Is he guilty?": "I believe in my client, William Dawkins, and I believe he is innocent."

(3) By the attorney representing the defendant in a criminal case: "I just had a one-on-one meeting with my client, and he told me that he was at the scene of the crime, but he did not commit the crime."

(4) By a former prosecutor, who is not involved in the current case regarding William Dawkins: "I prosecuted the defendant, William Dawkins, many years ago. Although this case is not related to the case where I prosecuted him, I think he did it."

(5) By an attorney defending a civil environmental case: "We all know about the questionable reputation of the plaintiff. That reputation speaks for itself, and tells you that we are not worried about this case."

QUESTION 7: In which of the following circumstances is an attorney allowed to represent a client, despite the fact that the attorney's personal financial interests are (or could be) in conflict with the client's interests?

(1) When the lawyer and client have negotiated (as a part of the initial engagement agreement) an agreement giving the lawyer literary rights to a portrayal based on information relating to the representation, and the agreement that the client has consented to in writing (after being given a reasonable opportunity to seek the advice of independent counsel) is fair, reasonable, written, and understandable.

(2) When the client, the attorney's grandfather, has asked the lawyer to prepare a will leaving a substantial gift to the attorney's children.

(3) When the attorney and client have orally agreed to a contingent fee that is reasonable and is based upon the terms they operated under in previous cases where the attorney represented the client.

(4) All of the above.

(5) None of the above.

QUESTION 8: Identify the correct statement(s).

(1) If a civil suit involves complicated legal issues, a non-lawyer cannot represent herself pro se.

(2) An attorney who is charged with a crime cannot represent herself pro se.

(3) A non-attorney can represent herself pro se in litigation, but she cannot draft documents to be signed by her and another party that have legal significance.

(4) None of the above.

(5) Both (1) and (3).

QUESTION 9: Which of the following situation(s) require a judge to disqualify herself from a proceeding when she is aware of them?

(1) The judge's adult child, who resides in another state, has an economic interest in the proceeding.

(2) The judge's uncle is an employee of the corporation that is a defendant.

(3) The judge sentenced the defendant in a criminal case to probation in a previous case and told her, "Understand that I am giving you a break, because I think you can get your life in order. I do not ever want to see you in this courtroom as a criminal defendant again."

(4) All of the above.

(5) None of the above.

QUESTION 10: Marsha Snow is applying for admission to the bar. She is concerned about some of her prior activities, so she consults with a lawyer about filling out her bar application. Which of the following statements constitute correct advice from the lawyer?

(1) "Do not tell me the details about any activity that would raise a substantial question regarding your honesty or trustworthiness, because then I would be required to report that activity to the proper authorities."

(2) "The activities that you described to me do constitute a crime, and the statute of limitations has not run. To completely answer question 19 on this bar application, you would have to admit that you participated in these activities. However, you do not forfeit your Fifth Amendment rights just because you are applying for admission to the bar, and you do not want to cause yourself trouble with some prosecutor by stating that you are asserting your Fifth Amendment rights. Therefore, you should just leave the answer to question 19 blank, just like you are leaving the answers to all of the other questions where there is no relevant information blank."

(3) "If I understand you correctly, you were arrested for those activities, but the charges against you were later dropped and you were never convicted of any crime. Question 24 asks you to state any occasion on which you were arrested, but you do not have to answer that question. If you are innocent until proven guilty, the state bar has no right to ask you about arrests."

(4) All of the above.

(5) None of the above.

Legal Ethics
Olson

M

MASSACHUSETTS SCHOOL OF LAW at ANDOVER
Professional Responsibility
Final Examination – Spring 2009
General Instructions

1. This is a three hour examination. It consists of four parts, to each of which a suggested time is given which reflects its relative value for grading purposes:

I ..... 60 Minutes
II ..... 30 Minutes
III ..... 30 Minutes
IV ..... 90 Minutes

All students must answer the questions in part I, all students must choose to answer the questions in either part II or III, and all students must answer all the short answer questions in part IV.

2. Question IV consists of 10 short answer questions, each of which requires (i) an answer and (ii) a brief explanation, preferably in one bluebook page (one side) or less. The following is a sample answer to suggest form only:

"Yes. The CPR prohibits sharing of legal fees with a non-lawyer; Smith is not a lawyer and the payment made constitutes a share of legal fees."

With respect to all questions, unless the question clearly indicates otherwise, assume that the applicable law is identical to the Model Rules of Professional Conduct.

3. This is an open-book test. You may use any materials you have brought with you: This means books, rule books, notes, and anything else except for a lawyer, paralegal, legal assistant or someone who plays one of these on T.V.

4. There are 6 pages in this examination, including this cover sheet. Make sure you have the complete test.

I
(60 Minutes)

Lawyer agrees to represent Client in pursuing a personal injury claim against Tortfeasor arising out of a collision between Tortfeasor's car and Client's bicycle. Based on Client's property damage and medical expenses past and future, Lawyer estimates that (i) there is reasonable grounds for recovery against Tortfeasor, and (ii) $40,000 is an appropriate amount of damages to claim. Client signs Lawyer's standard contingent fee agreement, which provides for a fee of $1,000 due immediately on signing the agreement, plus 50% of Client's total net recovery, after payment of expenses. The agreement lists the following as "expenses to be reimbursed to Lawyer by Client":

"Court fees, expert witness fees and expenses, travel expenses for Lawyer, fees for court reporters at depositions and court sessions, copying expenses, secretarial assistance, legal research database access fees, and other reasonable expenses incurred by Lawyer in the course of the representation."

The agreement also provides that Client will be billed monthly for expenses incurred. Client presents Lawyer with a check for $1,000, which Lawyer deposits in his office account. Lawyer writes a letter to Tortfeasor stating that he (Lawyer) has been employed by Client in the car-bicycle collision matter and requesting that henceforth all communications concerning the matter should be directed to him.

One month later Lawyer submits the first monthly bill for a total of $175, which includes two items: "Secretarial assistance, 5 hours @ $15/hr.", and "Legal research database fees, 1 hr. @ $100/hr." When Client asks for an explanation of this bill, Lawyer says (truthfully) that he pays his secretary $15/hour and she has worked 5 hours on the case typing the above letter as well as preparing and organizing files and materials relating to the case, including that supplied by Client; and that Lawyer has spent 1 hour on WEXIS (an electronic legal database provider) gathering cases, statutes and law review articles relevant to the case, for which WEXIS has billed him $100.

Before Client pays this bill, Lawyer receives a settlement offer from Tortfeasor's attorney in the amount of $8,000, which (after Lawyer's fee) would give Client enough to cover his property damage and actual out-of-pocket medical costs (the part Client's medical insurance wouldn't pay for) and a little left over for his trouble. He transmits this offer to Client with the recommendation that he accept it, explaining that they could get more after more preparation but that it wouldn't be worth the extra time and expense. Client expresses deep disappointment in the offer, and tells Lawyer he is fired.

Client gets another attorney, and on the latter's advice now demands from Lawyer:(1) return of all files and materials provided to him by Client, and (2) return of the $1,000 advance fee. Lawyer, in turn, demands payment of the $175 bill, which Client refuses.

Answer each of the following questions concerning the above fact situation independently of the other.

(A) Assume that Lawyer has done no work on the matter other than writing the letter (which took 15 minutes) and doing the 1 hour of research on WEXIS. Assume further that Lawyer's normal hourly fee rate is $100. Is Lawyer entitled to retain any part of the $1,000 advance fee? If so, how much? Explain.

(B) Does Lawyer's conduct raise other ethical issues not covered in your answer to (A)? Explain.

II
(30 Minutes)

Lawyer represents Husband in a marriage dissolution action brought by Wife. The action is tried to a judge and results in a decree against Husband. At the dissolution trial, when asked by Wife's attorney whether he was receiving any rental income from jointly-owned property, Husband denied any such income. During a recess of the trial, after Husband's testimony was completed, Lawyer asked Husband whether he had received rental income from that property, and Husband said that he had. The decree becomes final and Lawyer performs no further services for Husband.

Husband now files for bankruptcy, and does not list any rentals in his statement of assets attached to his petition. Lawyer's fee has not yet been paid, and this obligation is listed in Husband's petition as a debt which would be discharged in the bankruptcy (that is, it is listed as one of Husband's debts, and under the bankruptcy law he would be entitled to full or partial relief from the duty to pay it). The petition states expressly that this and other listed debts are acknowledged by Husband to be due and owing to the named creditors. Lawyer is notified of the bankruptcy petition with a copy thereof, and he checks to verify that renters are living in the property.

Lawyer then files a complaint in the bankruptcy court charging Husband with making a false statement of assets, reciting the fact of Husband's having received rental income without disclosing it on the petition, and asking the court to deny Husband the right to discharge his debts. Assume that (i) under the bankruptcy law denial of discharge would be a proper sanction for filing a false statement, if properly proven; and (ii) the denial would not be specific to Lawyer's fee but would extend to all of Husband's debts.

Has Lawyer acted properly on the above facts? Explain. In your answer, discuss only issues of professional responsibility and **do not discuss any issues of bankruptcy law that might be raised by the above statement of facts.**

III
(30 Minutes)

Attorney Arthur has represented Sebastian Stevens in a number of matters over many years, including writing his will and representing him in his divorce; none of these matters is still pending. Arthur also represented Sebastian's sister Stephanie in her divorce, which resulted in a decree of dissolution requiring her ex-husband to pay her child support and giving him limited visitation rights. Stephanie's children are still in grade school and the decree is still in force.

Sebastian now asks Arthur to write a will for their dying father, who is widowed , has only the two children and has only two assets: a farm and a town house. According to Sebastian he wants to leave the farm to Sebastian and the town house to Stephanie. Sebastian takes Arthur to the father's nursing home and Arthur determines that the father, though terminally ill and bed-ridden, is alert and clear-minded. As he told Sebastian he would, Arthur asks Sebastian to leave the room so he can talk with the father in private. The father tells Arthur that he wants to leave the farm to Sebastian because he knows that Sebastian loves the farm and won't sell it; he wants to leave the town house to Stephanie because it is a comfortable place for her to raise her children. He believes the two parcels to be worth about the same and takes comfort in that. Arthur tells the father he will draft up a document for him to look at.

On the way back from the nursing home, Arthur asks Sebastian what he thinks the farm is are worth. Sebastian answers: "About half a million, I guess, as a development property. I plan to subdivide it, and of course I'll want you to handle all of that for me. And don't worry about Stephanie; that's a nice house, and it's easily worth $75,000, just right for her."

How should Arthur now proceed? Explain.

IV
(90 Minutes)
Short Answer Questions (see Instructions para. 2)

1. Lawyer prepares a will and a revocable trust for Client. In the will, Client leaves two substantial parcels of real estate to Client's daughter Jill. In the trust, all three of Client's children - his sons Jake and Jerry as well as Jill - are to share equally in all trust property on Client's death. At the same time that he prepares the above instruments, Lawyer prepares and has Client sign two deeds which transfer title to the two parcels of real estate to the trust. After Client's death, Jill claims title to the two parcels, while her brothers each claim 1/3 shares in each. The dispute is ultimately settled between them by transferring one of the parcels to Jill alone and the other to Jake and Jerry jointly.

Jill now sues Lawyer for malpractice, in failing to add to the trust a clause providing that Client's real property (he had only the two parcels) should be distributed in accordance with the terms of his will. Assuming this failure to be negligence which prevented Client's wishes from being carried out, does Jill's suit state a viable claim?

2. Client consults Lawyer about the conduct of Former Lawyer who represented Client in her capacity as executor of her mother's will. She believes that Former Lawyer stole money from the estate, and she wants Lawyer to advise her on how to get the money back. Lawyer examines the estate records which clearly show discrepancies, and interviews Former Lawyer who breaks down and admits he has stolen money from Client's mother's estate. Former Lawyer offers to make full restitution if Lawyer and Client agree to drop the matter, and adds: "In fact, I also stole money from X's estate, and I'll make full restitution to it, too, if you promise not to say anything about it." X's estate is wholly unrelated to Client's mother's estate, and Lawyer had known nothing about it before this. At Client's insistence, she and Lawyer agree that if Former Lawyer makes full restitution to both estates, they will not say or do anything further about either matter. Former Lawyer sells his home and makes full restitution from the proceeds. Has Lawyer acted improperly?

3. Bob Boozer is the president and sole shareholder of Boozer Auto Sales, Inc., a corporation engaged in the business of selling used cars. He is also a lawyer whose license to practice law has been suspended indefinitely for misappropriation of client funds. He now files an action in superior court against a person who bought a car from the corporation but has failed to make a required payment. The complaint identifies the plaintiff as "Boozer Auto Sales, Inc.", and it is signed 'Boozer Auto Sales, Inc., by Bob Boozer, President.' Has Bob acted properly?

4. Henning files suit on behalf of Lawless against Organ in the Superior Court of Essex County, Massachusetts, for damages resulting from Organ's maintenance of a slaughterhouse next door to Lawless' house, in violation of state environmental laws. The case is assigned to Judge Pushaw. Judge Pushaw discloses in open court, with the parties and their lawyers present, that he and Organ are regular golfing buddies, that he is godfather of Organ's seven children, and that he and Lawless recently exchanged letters to the editor of the local newspaper in which Lawless accused him of mishandling of a case and the judge expressed deep offense at this unjustified slur and demanded an apology, which Lawless refused to do. He then invited the parties and their counsel to consider, in his absence, whether they nonetheless wished him to proceed. Did the judge err?

5. The Supreme Court of the State of Rihannon adopts a rule governing admission to the bar, which disqualifies any person from admission who has ever declared personal bankruptcy. Assume that the state's constitution gives the Court exclusive authority to regulate the practice of law, and no state statute exists which is inconsistent with this rule. Is the rule valid?

6. Lawyers should not be required to withdraw from representation of criminal defendants who commit perjury. On the one hand . . . on the other hand.

7. Using some cases you might be familiar with, discuss the circumstances under which the United States Supreme Court has found that representing conflicting interests will amount to ineffective assistance of counsel in the criminal defense context. Start by setting forth the test that the Court will apply to such conflicted representation.

8. Law firms are growing so large that it is becoming impossible to do the conflict-of-interest checks expected under the Model Rules. Accordingly, Model Rules 1.7 and 1.10 should be amended to provide that a lawyer working for a particular law firm should not undertake

representation of a client if the representation of the client will be directly adverse to another current client of another lawyer in the same law firm only if the two lawyers are working for the SAME OFFICE of that law firm. On the one hand . . . on the other hand.

9. Comment 2 of ABA Model Rule 4.1 should be deleted because lawyers should have the same duties of truthfulness in negotiations as in any other context. On the one hand . . . on the other hand.

10. Explain why Model Rule 4.2 is too restrictive on lawyers' ability to interview employees of represented entities outside of the formal discovery process, and then explain why the rule is properly restrictive of lawyers' ability to do so. Cite relevant case law if you have some . . . hint, hint.

Legal Ethics

M

MASSACHUSETTS SCHOOL OF LAW at ANDOVER

PROFESSIONAL RESPONSIBILITY
Prof. Olson
Final Examination – May 20th, 2008
General Instructions

Write your social security number (and only your social security number – no names please) in the space provided below and on the front covers of your bluebooks. When you have completed the exam, insert this exam into the middle of your bluebook. If you use more than one bluebook, insert subsequent bluebooks into the middle of book one.
Both the essay and short answer portions of this examination are Open Book examinations: You may use any material either prepared by you during the course of the semester for the course in Professional Responsibility or made available to you during the course of the semester by Professor Olson. You may also use commercially prepared outlines. You may also use both the casebook and supplemental books assigned to this course. You must work alone and are not authorized to receive assistance from any other person except Professor Olson; you are aware that the Law School operates under an Honor Code. By turning in an answer you expressly agree that you are bound by the provisions of the Honor Code, as well as all of these instructions.
Your answer to the Essay Question counts for 60% of your grade on this examination; your answers to the Short Answer Questions count for 40% of your grade on this examination.

Student Social Security Number: _____

Part A - To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does not mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

Part B – This part consists of 10 short answer questions, each of which requires (i) an answer and (ii) a brief explanation, preferably on one-side of a bluebook page or less. The following is a sample answer to suggest form only: "Yes. The MRPC prohibits sharing of legal fees with a non-lawyer; Smith is not a lawyer and the payment made constitutes a share of legal fees." Your answers to most short answer questions should probably be a little longer.

Part A – Essay Questions (2 Hours)
Answer any One (1) of the Following
Three (3) Essays (60 points).

1. Cindy Sheehan agrees to represent Fred Thompson in pursuing a personal injury claim against Sam Spring arising out of a collision between Spring's car and Thompson's bicycle. Based on Thompson's property damage and medical expenses past and future, Sheehan estimates that (i) there is reasonable grounds for recovery against Spring, and (ii) $40,000 is an appropriate amount of damages to claim. Thompson signs Sheehan's standard contingent fee agreement, which provides for a fee of $1,000 due immediately on signing the agreement, plus 50% of Thompson's total net recovery, after payment of expenses. The agreement lists the following as "expenses to be reimbursed to Lawyer by Client":

   "Court fees, expert witness fees and expenses, travel expenses for Sheehan, fees for court reporters at depositions and court sessions, copying expenses, secretarial assistance, legal research database access fees, and other reasonable expenses incurred by Sheehan in the course of the representation."

   The agreement also provides that Thompson will be billed monthly for expenses incurred. Thompson presents Sheehan with a check for $1,000, which Sheehan deposits in her office account. Sheehan writes a letter to Spring stating that she (Sheehan) has been employed by Thompson in the car-bicycle collision matter and requesting that henceforth all communications concerning the matter should be directed to her.

   One month later Sheehan submits the first monthly bill for a total of $175, which includes two items: "Secretarial assistance, 5 hours @ $15/hr.", and "Legal research database fees, 1 hr. @ $100/hr." When Thompson asks for an explanation of this bill, Sheehan says (truthfully) that she pays her secretary $15/hour and she has worked 5 hours on the case typing the above letter as well as preparing and organizing files and materials relating to the case, including that supplied by Thompson; and that Sheehan has spent 1 hour on WEXIS (an electronic legal database provider) gathering cases, statutes and law review articles relevant to the case, for which WEXIS has billed her $100.

   Before Thompson pays this bill, Thompson receives a settlement offer from Spring's attorney (Barney Rothstein) in the amount of $8,000, which (after Sheehan's fee) would give Thompson enough to cover his property damage and actual out-of-pocket medical costs (the

part Thompson's medical insurance wouldn't pay for) and a little left over for his trouble. Thompson transmits this offer to Sheehan, explaining that he would like to get more money before accepting. Sheehan calls and tells him that he should accept this offer because trying to get more probably won't be worth the trouble or expense. Thompson expresses deep disappointment in the offer, and tells Sheehan she is fired.

In the meantime, Rothstein communicates with the insurance company that is footing the bill for Spring's representation to tell the adjuster that he doesn't think the offer will result in a settlement. The adjuster tells Rothstein that he is authorized to engage in only limited discovery of the plaintiff; the company will refuse to pay for any extra depositions of witnesses. Further, the company wants to limit the amount of time Rothstein spends preparing Spring for his deposition, and it want Rothstein to call Thompson directly to get him to limit the amount of time spent on his deposition.

Rothstein is conflicted about this advice, but he then gets a call from Spring during which Spring tells him that he received a call from a witness to the accident (Mary Jones) who told Spring that he saw Spring driving too fast and not paying attention to the road prior to the accident occurring. In fact, Jones told Spring that he saw him looking down at and fiddling with his Sirius radio receiver just prior to the collision with Thompson's bike. Spring said that Jones told him that he has hired a lawyer (Zach Billings) to represent him. Spring wants to know what to do, and Rothstein, panicked, says that Spring should call Jones back to tell him Spring will pay for an all-expenses paid trip to the Dominican Republic for Jones if Jones doesn't say anything about what she saw.

A few hours later, Spring calls back to tell Rothstein that he tried what Rothstein suggested, but Jones said she was holding out for a better deal. Rothstein then called Billings to discuss the case. Billings confided in Rothstein that he's not really a lawyer; after enduring a tough first semester at the Massachusetts School of Law, he had decided to go to paralegal school instead. However, Billings told Rothstein that he would be willing to advise Jones not to reveal what she saw if she got $5,000.00 in addition to the all-expenses paid trip and if Billings could split any fee Rothstein received 50/50. Rothstein agreed to this arrangement.

Thompson then hired another attorney, Wally Semper, and on Semper's advice now demands from Sheehan: (1) return of all files and materials provided to her by Thompson, and (2) return of the $1,000 advance fee. Sheehan, in turn, demands payment of the $175 bill, which Thompson refuses.

What issues are raised by this fact pattern?

2. You are an attorney who has been in general practice in Worcester for five years. You have built up a small reputation as a good lawyer, but with the stiff competition from other lawyers in central Massachusetts, you have struggled a bit for income.

Your office is located in a small house that has been converted to business uses. You have been renting the house for five years and your yearly lease has three months to run. The owner of the building has informed you that he will not renew the lease. In fact,

the owner will put the building on the market next week. A client, John Martin, with whom you have built a friendship, has offered to loan you money at a very favorable interest rate to purchase the building. Owning your own building has been your dream from the beginning and this location is perfect for your needs. The price is a good one, given the increasing rise in area prices generally.

You have decided that this weekend is a good time to think carefully about buying the building and about some things that are going on in your practice. You have three cases that are causing you some concern.

(A) In an unusual move, you have been asked to defend the Division of Youth Services, in the Department of Human Services, in a class action suit claiming that conditions at its facilities violate federal statutory law and the constitutional rights of juveniles. When you discuss the matter with the agency's director, you are told that the agency cannot do anything about the problems because the state legislature has not provided sufficient funds for the department. You are asked to do what you can in defending the case, although it has no real chance of winning, to give the agency time to pursue some funding sources. In the past your practice has been limited to real estate closings and handling DUI cases; your sole knowledge of constitutional law or federal practice comes from a class with Fonstance Cudnick you had in law school 7 years ago.

(B) A new client, Jane Song, came in last week to complain about her lawyer. The litany of attorney actions (or inactions) related by Song are somewhat shocking because you've known the attorney since law school where you were good friends. Song was being threatened with suit by a creditor and went to the lawyer, Mary Barrister, about eight months ago. Mary had quoted an hourly rate of $125.00 to negotiate with the creditor. If trial preparation and/or trial were required, the hourly rate would be $200.00.

Song did not hear from Mary for about six months, although she received statements monthly, which she paid within two weeks. The first monthly statement totaled $375.00. After the second monthly statement, which totaled $500.00, Song began calling Mary to learn what was happening with the negotiations. At first, Mary's secretary spoke with Song at length, telling her about the phone calls and meetings Mary had had with the creditor and how hard Mary was working on the matter.

Soon, however, the secretary stopped talking with Song except to say that she would give the message to Mary. The monthly statements continued. After about six months, Mary returned one of Song's calls, saying that the creditor was being difficult but that she (Mary) was certain an accommodation could be reached. Song has not spoken with Mary for two months now.

By the time Song walked into your office, she had paid $1,875.00 to Mary. Song's total debt to the creditor is $3,350.00. Song brought you copies of Mary's monthly statements, but had no other documents. The statements contain merely a total amount, with the words "For services rendered."

(C) You have represented Robert on a number of occasions. He has come to rely on you not just as a lawyer but also as an advisor and counselor. Last week Robert came to see

you. It seems that Robert's physician had diagnosed Robert as having an advanced stage of pancreatic cancer. Pancreatic cancer is incurable. The diagnosis was confirmed when Robert went to the Mayo Clinic.

Robert has always been a proud, independent person. He told you that he neither wants to cause his wife and children significant grief by a prolonged illness, nor does he wish to subject his family to the extensive financial costs of a prolonged illness.

You told him that you could help him by drafting legal instruments that would instruct his physicians not to engage in heroic efforts to prolong his life when his cancer begins to impair his day-to-day activities. You also began to tell him about "Do Not Resuscitate" instructions when Robert cut you off. "I've considered all that," he said, "but I've decided on a more direct approach." It seems that Robert had contacted Dr. Dan, a physician who believes in euthanasia. Dr. Dan has constructed a machine that enables a person to self-administer a fast acting sedative and poison that enables a person to commit suicide painlessly. Dr. Dan sells the machine for $25,000.

Robert wants you to represent him in two ways: First, Robert wants you to handle the purchase of the suicide machine from Dr. Dan. Robert would authorize you to pay up to $25,000 for the machine and to draft and review all necessary legal documents. Robert told you that Dr. Dan insists that the sale include a "hold harmless" clause, a waiver of liability and remedy for any resulting death or injury resulting from the intended use of the machine, and a general release. These documents would prevent Robert's wife and children from recovering against Dr. Dan for Robert's wrongful death. Robert told you he was agreeable to these demands by Dr. Dan.

After speaking with Dr. Dan, you decided he had a pretty good gig going, so you decided to enter into a business relationship with him. Once you purchased the building, you would offer him space for marketing his machine, and he would receive reduced fee legal services in setting up a business entity. Additionally, you agreed with Dr. Dan that you would place yellow page ads together which promoted the "Dr. Dan Euthanasia Machine & Legal Clinic." You also agreed that you and Dr. Dan would share managerial responsibilities in the business entity you set up.

Second, Robert wants you to draft a will for him that will leave all his property to his wife and children. He also wants you to prepare the necessary documents so that his life insurance will be paid to his wife. Because the insurance policy was taken out years ago, Robert had initially named himself as the beneficiary. The change will enable Robert's wife to obtain the life insurance free of probate.*

Although you have decided to handle these matters for Robert, you have gotten Robert to sign a document that holds you harmless from any claims he or his family may have against you should you draft the necessary documents in a way that doesn't ensure his legal rights. You got him to sign this document after telling him that everything would be alright; you were secure in your ability to draft the documents competently.

Assume that Massachusetts Penal Code has the following statute: "Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a

felony."

You told Robert that you wanted a few days to think about his requests.

* You are to assume that the life insurance will be paid even if Robert's death is deemed to be self-inflicted.

Discuss all the legal issues this fact pattern raises.

3. Bill Fisher was asked by a local judge to represent a man who had been arrested in a stalking case. A short time later, Fisher met his new client, Tommy, at the county jail. As they discussed the case, it became obvious to Fisher that the relationship between Tommy and the alleged victim (Tommy's ex-girlfriend, Yolanda) had gone very sour. Although Tommy denies that he stalked Yolanda, he admits a deep dislike for her and, among other things, hopes that Fisher will be able to essentially destroy her reputation at during cross-examination at trial—if it comes to that. Tommy says he has a number of very "juicy" tidbits about her past that could be used to devastate her credibility.

   Tommy also told Fisher he had a number of stories to tell him about other inmates at the county jail. He suggested that he and Fisher could work together to create a series of short stories that could later be made into movies. Though he was reluctant to do so at first, Fisher suggested that Tommy might also include something about his stormy relationship with Yolanda.

   "I also need a small favor," Tommy said to Fisher as the interview was coming to a close. "I owe some money, and these guys don't like excuses. If you get my clothes and stuff that they took when I came in here, you'll find my wallet. It's got a bank safe deposit key where I've got a bunch of cash and also the telephone number of the guy I've gotta pay." Reluctantly, Fisher agreed and, on his way out of the jail, he picked up a small bag from the clerk. The bag contained Tommy's street clothes and sneakers, his wallet and other personal effects he had at the time of his arrest. Later that day, Fisher discovered that Tommy's safe deposit box contained over $20,000. He called the telephone number and met the guy that Tommy owed, paying the amount that Tommy had mentioned.

   The next time Fisher went to see Tommy at the jail, he asked Tommy what he wanted done with the rest of the stuff in the bag. Tommy told him to keep the wallet and its contents but to just throw everything else away, since it was "junk." This suggestion struck Fisher as unusual, but when he got back to his office parking lot he tossed the bag (minus the wallet) in a dumpster at a construction area at the edge of the lot. In his office there was a phone message waiting for him from Ned, the local assistant prosecutor and an old law school buddy. Fisher returned the call. Ned suggested they get together for a drink.

   Over a couple of Laiphroigs across the street at Brendan's Bar & Grille, Ned conceded that the evidence against Tommy was relatively weak, and he wasn't actually sure that Tommy had actually done anything at all. But Yolanda was pressing hard for him to pursue the case and Ned thought the evidence was enough to give him a reasonably good

shot at convincing a jury. Under the circumstances, it would be difficult to even consider dropping the charges, especially since the chief prosecutor (Ned's boss) had recently adopted a hard line on domestic violence cases. Ned offered a fairly generous plea deal.

Fisher knew that Ned had Yolanda's eyewitness statement that she'd seen Tommy through her living room window, peering in through the drapes. Thinking that was all he had, Fisher's initial inclination was to reject the plea offer out of hand. And he said so. Then, however, Ned went on to say he also had a Converse sneaker print, the same shoe size as Tommy's, found in the dirt outside Yolanda's window. While Ned admitted that a search of Tommy's apartment did not turn up the corresponding sneaker, Ned added that the police were, at that very moment, checking out a couple of other places, like Tommy's sister's house. If they found the sneaker that made the print, he warned Fisher, the plea offer would be off the table for good.

Fisher felt his stomach clutch when Ned mentioned the shoe. He clearly remembered, and could practically see before his eyes, a pair of Converse sneakers in Tommy's bag that he'd just tossed in the dumpster. The weekly dumpster pickup won't be till next Tuesday, but Fisher did not immediately retrieve Tommy's bag. Instead, he went to the jail to see Tommy (who was still trying to make bail). When confronted with Fisher's information, Tommy became evasive but then, after a while, he said: "Look, I said I didn't do it, and that's that. I want to plead not guilty and testify that, number one, I didn't do it and, besides, I've never even *owned* any Converse sneakers. My instructions to you, counselor, are this: Don't forget who your client is. And just forget about that bag in the dumpster." Fisher is now fairly convinced that he's defending a guilty man.

At trial, Fisher reluctantly agrees to put Tommy on the stand in his own defense, even after Tommy confirms that he will deny ever even owning a pair of Converse sneakers. When he starts to question him about the events on the day in question, he tries to avoid any questioning about the sneakers, but Tommy blurts out, "And I've never owned any Converse sneakers," after he responded to the question, "What were you wearing on the day in question?" on direct exam.

Additionally, Fisher feels conflicted about the arrangement he has previously worked out with Tommy about the book/movie deal. However, he feels a number of strategic decisions belong to him, and Tommy won't have any reason to complain if he succeeds in having him acquitted or if he gets him a reduced sentence.

Prior to trial, Ned's supervisor, distraught over the increase in domestic violence incidents in the city, called Ned into his office to tell him that he should contact the local court beat reporter. He said that Ned should tell the reporter that the DA's office considered Tommy to be guilty as hell. He also told Ned to tell the reporter that DNA evidence would suggest that Tommy was the guilty party; he had allegedly cut himself on a rusty nail near Yolanda's window, and the dried blood provided all the evidence they would need to convict him. He also told Ned that anyone with any other information about the crime should contact the authorities as soon as possible; a substantial reward for any information contributing to Tommy's conviction would be offered. Ned's supervisor told him that all these comments would comport with local ethical rules.

After the judge instructed the jury on the law, the jury returned a guilty verdict. The judge then sentenced Tommy to the mandatory minimum sentence. Though Fisher felt this was a miscarriage of justice, he decided not to appeal the jury's verdict. Instead, he contacted a book publisher, received a substantial advance, and wrote Tommy a disengagement letter telling him that he regretted the outcome and his decision not to pursue an appeal. However, he was now moving to Los Angeles to pursue his writing career and to attempt to sign a movie contract/screenwriting deal.

After he departed for Los Angeles, the Massachusetts Board of Bar Overseers contacted the California disciplinary authorities to have them pursue Fisher for his over-aggressive cross-examination of Yolanda at trial and for various other disciplinary violations. Responding to the charges, Fisher's lawyer told the authorities that Fisher was not practicing law in the Golden State, and the Mass. BBO could go pound sand.

What issues does this scenario present?

Part B – Short Answers (1 Hour)
Answer all ten short answer questions
Each is worth 4 points.

1. Marsha Wilmot is an attorney who has been hired by Salisbury Ranch Insurance Company to defend one of its insureds, Freda Stebbins, in a personal injury action. The Insurance Company has just sent Marsha lengthy memorandum about its "litigation procedures." The memo purports to limit the number of depositions that Marsha can take and places a very low ceiling on the amount of time she may bill for research. Marsha believes these limits are too severe for her to represent Freda competently. What are Marsha's options under the Model Rules of Professional Conduct?

2. Mark Wiseman is a criminal defense attorney who has been asked to defend a retired professional hockey player on a charge of murder. The hockey player has few liquid assets, but he owns a very valuable parcel of undeveloped property. Mark would like to take a security interest in the property to secure payment of his fee. Under what conditions, if at all, may Mark take such an interest?

3. Paul Punjab is an attorney who represents Jo Jo Magglio, an elderly plaintiff, in a personal injury case. Paul has been negotiating with opposing counsel to settle the case. Just before appearing at a court status conference where Paul believes a final, favorable settlement can be reached, he learns that his client has died. Must she reveal his death to the opposing party and the court or both?

4. Steve Wilson is an attorney who is representing a corporate defendant in a securities fraud case that has been filed as a class action. The class has not yet been certified. Steve would like to contact people who may become members of the class to see what representations, if any, were made to these individuals about the securities in question. Under the Model Rules of Professional Conduct, may Steve contact these people without the consent of counsel for the plaintiffs?

5. Bonnie Rastnick is an attorney who represents the plaintiff in a bitter lawsuit over a failed joint venture. Connie's client loathes the opposing party and that party's lawyer. Connie's client has instructed Connie to litigate this case as vigorously as Connie knows how and to make it as unpleasant as possible (within rules of procedure) for the opposing party and the opposing lawyer. What are Connie's obligations under the Model Rules of Professional Conduct with respect to these instructions from the client?

6. John Buckwheat is an attorney who has just learned that his client changed the date on a crucial document in order to help defeat an argument that the client's claim is barred by the applicable statute of limitations. The document was admitted into evidence during the trial. The case has been submitted to the jury. What obligation, if any, does John have with respect to the falsified document? Would his obligation be different if trial had ended?

7. Maggie Twibble is an attorney who is representing a client in a civil case involving an alleged breach of contract. A crucial issue in the case will be what the parties intended by certain provisions in their complicated contract. In discovery, Maggie has received an electronic version of the contract from her adversary's attorney. Maggie is informed that she can access certain "meta-data" in that contract, which may include revisions and comments that were made by the opposing party (and not its counsel) during the negotiations over the contract. May Maggie take steps to access this "meta-data," consistent with her obligations under the Model Rules of Professional Conduct?

8. Finn & Swarms is a law firm that is concerned about departing partners who then take clients of the firm and otherwise compete with the firm. F & S is considering whether it can implement a "retirement plan" that would pay departing lawyers the amounts in their capital accounts (which under the partnership agreement belongs to the individual lawyers) and any fees earned but not paid to the departing lawyers only on the condition that the departing lawyers not compete with F & S after their departure. Is the plan consistent with the Model Rules of Professional Conduct?

9. Millie West is an attorney who has been offered a job as an attorney for DoorMat Stores, Inc. Although Millie would be paid a salary by DoorMat, her clients would be individuals who are members of DoorMat's "Saver's Club," a membership that entitles members to shop at DoorMat stores and purchase household items in bulk, and which now includes the right to two hours per year of legal services provided by DoorMat lawyers. What concerns should Millie have about potential violations of the Model Rules of Professional Conduct if she accepts this position, given that she would be working as a salaried lawyer for DoorMat?

10. Brendan Morales is an attorney who has enjoyed some success in high-stakes product liability litigation and would like to attract more such business. He is considering posting on his firm's web site "summaries" of cases that he has won in the past and the amounts that he has recovered for clients in those cases. He has also said that he would like to include the following language on his web-site: "Morales is a certified specialist in products liability litigation." What advice could you give Brendan about the propriety of his plans?

MASSACHUSETTS SCHOOL OF LAW at ANDOVER

PROFESSIONAL RESPONSIBILITY
Prof. Olson
Final Examination – May 15th, 2007
General Instructions

Write your social security number (and only your social security number – no names please) in the space provided below and on the front covers of your bluebooks. When you have completed the exam, insert this exam into the middle of your bluebook. If you use more than one bluebook, insert subsequent bluebooks into the middle of book one.
Both the essay and short answer portions of this examination are Open Book examinations: You may use any material **either prepared by you during the course of the semester for the course in Professional Responsibility or made available to you during the course of the semester by Professor Olson. You may also use commercially prepared outlines.** You may also use both the casebook and supplemental books assigned to this course. You must work alone and are not authorized to receive assistance from any other person except Professor Olson; you are aware that the Law School operates under an Honor Code. By turning in an answer you expressly agree that you are bound by the provisions of the Honor Code, as well as all of these instructions.
Your answer to the Essay Question counts for 60% of your grade on this examination; your answers to the Short Answer Questions count for 40% of your grade on this examination.

Student Social Security Number: _____

Part A - To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does **not** mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

Part B – This part consists of 10 short answer questions, each of which requires (i) an answer and (ii) a brief explanation, preferably on one-side of a bluebook page or less. The following is a sample answer to suggest form only: "Yes. The MRPC prohibits sharing of legal fees with a non-lawyer; Smith is not a lawyer and the payment made constitutes a share of legal fees." Your answers to most short answer questions should probably be longer.

Part A – Essay Questions (2 Hours)
Answer any One (1) of the Following Three (3) Essays (60 points).

Essay #1: You are a recently-admitted attorney, and you have gone to work for a medium-sized law firm, the Billabong Firm, in Haverhill, Massachusetts. One of the firm's senior partners, Joshua Lambert, has recently come to you explaining that a new client, Susan Quimby, came to the firm seeking to prosecute a class action involving construction of a standard life insurance policy. Quimby has asked the firm to file a class action. The firm would need to advance the needed funds, and Quimby agreed to remain liable for all costs of the litigation; that is, Quimby will pay for all costs out of any recovery. However, if the litigation were unsuccessful, and there is no recovery, Quimby would not have sufficient funds to repay the firm. If the firm finances the law suit, what issues might arise? How would the situation change if Quimby were a legal secretary employed by the law firm?

The Billabong Firm also represents the CanDo Corp as outside counsel. The Government is investigating CanDo for alleged violations of the criminal law. Steve Toil, the executive vice president of CanDo, has come to you to complain that the Government is interviewing CanDo's agents and employees without first obtaining the permission of the general counsel of CanDo. Some of the agents and employees of CanDo are hourly employees. Others are salaried. Some are independent contractors. None have personal counsel. The Government has brought suit only against the corporate entity.

After Lambert told you to sit down with Toil, you had a lengthy conversation with him about various matters. First, he told you that he had been negotiating agreements with other corporations in their industry in which they would all agree to ratchet prices up or down depending on market conditions and the corporations' financial needs. These agreements would lead to a strengthened market position for CanDo. Second, he told you that he had never informed any of his superiors about the negotiations he had been having. Third, he told you that he had been embezzling funds because he desperately wanted to build a mountain retreat in the White Mountains. Lastly, he wanted to know if you wanted to leave your associate's position and come to work for him. He told you he was thinking of forming his own corporation, and he would need a savvy young business lawyer as general counsel.

Subsequently, you had two conversations about your talk with Toil. While casually sipping the third of your three martinis at the China Dragon restaurant after lunch, you told the other three members of your golf foursome that you couldn't believe the things you'd learned about the CanDo corporation. You then related all the things Toil had told you in minute detail. You told them you

didn't know what to do next, but you were thinking about taking Toil up on his offer to depart the Billabong firm and go to work for Toil.

Then you had a conversation with Senior Partner Lambert. Although you didn't share Toil's offer of employment or your thoughts of leaving the Billabong firm with Lambert, you did tell him everything else Toil had told you. After sharing this information, you asked Lambert for his opinion on what you should do next. Lambert told you to forget about the whole conversation – make believe it had never happened. Then he told you to call Toil to tell him to keep his trap shut; together the three of you would stonewall the Government. He also said that if Toil needed independent legal assistance, he could count on you and him to provide competent help at a reduced rate. Lambert said he would accept a $15,000 non-refundable retainer in unmarked bills in a brown paper grocery sack. He said that although he mostly handled family law matters for the Billabong firm, he'd ask one of his friends from another firm to help with the criminal and corporate matters.

At the end of the meeting with Lambert, he told you that he had one other matter to discuss with you. He said that he was representing a husband, Charles, in a divorce action. He said that Charles had filed a claim for joint custody. Lambert explained that prevailing legal standards base custody decisions on the best interest of the child and give preference to the "friendly parent" – that is, the parent who has demonstrated the most willingness to share custody or grant extensive visitation rights. The wife, Celia, told her lawyer that she wouldn't agree to joint custody but that she might make other concessions to spare herself and the children an acrimonious battle. Lambert told you that he had anticipated such a response; he had subsequently told Charles to contact Celia directly offering to withdraw the custody claim if Celia would relinquish claims to spousal support and to certain jointly owned property. Lambert said that he knew that Charles did not in fact want joint custody, and he knows that such an arrangement would not be in the best interests of the children.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the Essay section. You will also receive credit for discussing approaches you might take in dealing with your clients in this fact pattern.

Essay #2: You are the junior partner at a firm in Massachusetts working on the defense of a sex harassment case. At issue is the conduct of several male supervisors in one of your client's automobile factories. These supervisors allegedly made sexually explicit comments to female subordinates, questioned these women about their sex lives, referred to them in lewd graffiti, and left magazines with nude centerfolds in work areas. The disputed issues in the case are whether the conduct was so pervasive and offensive as to adversely affect working conditions, whether female employees made sufficiently clear that all sexual comments were unwelcome, and whether they suffered substantial damages.

The senior partner has developed a line of deposition questions that she believes might encourage the plaintiffs to accept a modest settlement rather than risk a public trial. For example, she proposes to ask them whether they have ever read sexually explicit magazines or watched sexually explicit movies; whether they have had extramarital affairs or told a sexually explicit joke at work; and whether they are having difficulties in intimate relationships that might contribute to the psychological damages they are claiming. One of the plaintiffs is from a quite traditional Asian-American family, and you believe she may find such questions particularly intrusive. Another has a

history of therapy from problems that are likely to be painful to discuss at a deposition or trial. Are you willing to pursue such inquiries if they might yield evidence relevant at trial?

Assume you schedule one of the depositions and the lawyer for the plaintiffs constantly advises his client not to answer questions, requests that the court reporter go off the record and then hurls racial and sexist slurs at you and your clients, and calls for breaks at odd times during which you suspect he is coaching the witness. How would you handle this deposition and any subsequent ones you may have with this particular lawyer?

You have learned that the senior partner has told the magistrate supervising depositions in this case that the other side has unlawfully withheld documents from perfectly appropriate document requests. The only problem is that you know the other side has fully complied with all document requests. What do you do?

You have learned that a memo was sent in error by one of the plaintiff's attorneys; this memo suggests that the Asian-American plaintiff mentioned above may have fabricated some of her responses to interrogatories. The secretary who received the memo has not yet shown it to the senior partner, but she is asking for your advice as to what to do now. What do you suggest she do with this memo?

You later learn that you opponent's key witness is about to leave for a long-planned vacation that will extend until the trial begins. You suspect that your opponent often makes arrangements with expert and other witnesses to be out of the jurisdiction at key points in litigation. In this case, the expert's deposition, already rescheduled once because of opposing counsel's "illness," is currently set for just before the expert's departure. If you suddenly become unable to make that date and insist on rescheduling during the expert's vacation (to make a point and to get back at the opposition), you suspect that she will drop out of the case. May you arrange your calendar to require rescheduling? Is there anything you can do to deal with the other side's tactics with respect to witnesses, especially when you learn from knowledgeable sources that your opponent often pays expert's fees contingent on the amount of settlement?

When you get to trial, you are second chair for your senior partner. During the highly publicized trial, a reporter asks the senior partner about her midafternoon naps; she replies that the trial is "boring." You suggest to the reporter that you hope these sleeping habits will make the jury feel sorry for your clients. By your own account, you have spent between 60 and 70 hours preparing this case. The senior partner has seemingly not read the case file. How should you handle your frustrations about the senior partner's sloth?

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the Essay section.

Essay #3: This is the story of a portion of the legal career of Samantha Barnes. It is suggested that you read it through before starting your response.

Samantha Barnes graduated from an American Bar Association approved law school, applied, took, and passed the Massachusetts Bar Examination, as well as the MPRE and the character and fitness review, and was sworn into the practice of law by the Mass. S.J.C.

Even after obtaining substantial settlements in several personal injury actions, Samantha was still quite young and regularly attended various "sports" bars in town. She became noted for regaling

customers with whom she sat of her personal injury victories and what her conduct meant to the families of her clients. While she was not trying to advertise, word spread and, eventually, Samantha built up a pretty good practice. One of Samantha's regular clients was Alberta Hogan, who had three teenage sons who regularly had automobile problems that required Samantha's attendance in District Court. When one of her sons got a ticket, Alberta Hogan would call Samantha, tell Samantha about the problem, work out a fee and Samantha would then go to the A.D.A. and work out a deal. When the case came on for hearing, Samantha would tell the son involved that this was the plea agreement that she had worked out and the case would resolve. One time, one of Alberta's sons told Samantha that he did not want to plead guilty, but changed his mind when Samantha told him: "Look, this is what your Mother wants and she is paying for me to be here, so this is what I think you should do."

Another of Samantha Barnes's regular clients was Leonard Nickel, the principal shareholder in Nickel Candy, Inc, a local company that maintains vending machines dispensing candy. Samantha has represented Leonard almost since she started practice, doing personal work on his estate plan as well as incorporating and serving as counsel for Nickel Candy, Inc, which has since become highly profitable. In fact, for the past 5 years, Samantha has also served on the Board of Directors of Nickel Candy, Inc. About a month ago, Samantha learned that Nickel Candy, Inc. was under state investigation for failure to pay state sales tax. It seems that money that was supposed to be set aside for sales tax was actually going to Leonard Nickel, who was in the process of divorcing his wife, Chloe. Samantha learned this through conversation with Samantha's husband, Harrison, a lawyer with the law firm that represents Chloe. Under state tax law, if the taxes are not paid, the state can seek reimbursement from the corporation, as well as individually from any members of its board of directors and the principal shareholders of the corporation.

Also about a month ago, Samantha received phone calls from both Alberta Hogan and Leonard Nickel. It seems Hogan was driving a car that went through a malfunctioning red/yellow/green light and struck a car being driven by Leonard Nickel. Samantha explained to both Hogan and Nickel the potential conflicts that could arise, the potential benefits to both of them if Samantha represented both, and, after further consultation, continued to represent both in the accident investigation. Now, it appears that, in addition to any municipal liability, Hogan could also be negligent. Samantha explains the problem to both Hogan and Nickel, again explains the benefits and detriments of her continued mutual representation, and then asks both of them: "What do you want me to do?" When they both ask Samantha what she thinks about an ongoing representation, Samantha says: "This is not my call. I have to make sure that you each have enough information to make a fully informed decision, and I think you do, and then I must abide by your decision as to whether I continue." After further consultation, Samantha determined that she could no longer represent Hogan in the action. Samantha then asks Nickel: "Do you want me to continue to represent you?" When Nickel asks what is needed for the representation to continue, Samantha states: "I just need your decision to go ahead. So long as you understand the facts, my continued representation of you is exclusively your decision."

While she was discussing representation with both Hogan and Nickel, Samantha got a call from John Worthington. After some investigation, Samantha learns that some time ago, George Ebert was convicted and sentenced to death as a result of the murder of Mabel Smith, whose body had never been discovered. Samantha had no part in Ebert's case, or any appeals, but was aware that all appeals, both direct and collateral, have resulted in affirmance of the verdict. Ebert is scheduled to be executed by the federal government by lethal injection in two days. Yesterday, John Worthington, whom Samantha had not previously met, indicated he needed legal advice about the consequences of not telling information he possessed about commission of a crime. After Samantha agreed to give advice, Worthington indicated that he had, in fact, killed Mabel Smith. He also told Samantha how and why Ms. Smith had to die and where the body was buried. He indicated that he

had never met George Ebert, and that Ebert could have had nothing to do with Smith's death. Samantha, of course, felt quite strongly that there must be a connection between Worthington and Ebert and that Worthington's story was nothing more than a last ditch attempt to save Ebert. After telling Worthington of her concerns, Worthington gave Samantha more specific information, told Samantha to go ahead and check him out, and then advise him. In fact, Samantha and her investigator spent most of last night checking out Worthington's claims; they found Smith's body, but did nothing to disturb it. This morning, Samantha's investigator used a number of personal contacts to check out the relationship between Ebert and Worthington and found none. Samantha is now convinced, beyond a reasonable doubt, that Worthington and Ebert have no connection, and that Worthington is, in fact, telling the truth.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the Essay section.

Part B - Short Answer Questions (1 Hour)
Answer all ten. (40 points).

1. Lawyer prepares a will and a revocable trust for Client. In the will, Client leaves two substantial parcels of real estate to Client's daughter Jill. In the trust, all three of Client's children - his sons Jake and Jerry as well as Jill - are to share equally in all trust property on Client's death. At the same time that he prepares the above instruments, Lawyer prepares and has Client sign two deeds which transfer title to the two parcels of real estate to the trust. After Client's death, Jill claims title to the two parcels, while her brothers each claim 1/3 shares in each. The dispute is ultimately settled between them by transferring one of the parcels to Jill alone and the other to Jake and Jerry jointly.

Jill now sues Lawyer for malpractice, in failing to add to the trust a clause providing that Client's real property (he had only the two parcels) should be distributed in accordance with the terms of his will. Assuming this failure to be negligence which prevented Client's wishes from being carried out, does Jill's suit state a viable claim?

2. Client consults Lawyer about the conduct of Former Lawyer who represented Client in her capacity as executor of her mother's will. She believes that Former Lawyer stole money from the estate, and she wants Lawyer to advise her on how to get the money back. Lawyer examines the estate records which clearly show discrepancies, and interviews Former Lawyer who breaks down and admits he has stolen money from Client's mother's estate. Former Lawyer offers to make full restitution if Lawyer and Client agree to drop the matter, and adds: "In fact, I also stole money from X's estate, and I'll make full restitution to it, too, if you promise not to say anything about it." X's estate is wholly unrelated to Client's mother's estate, and Lawyer had known nothing about it before this. At Client's insistence, she and Lawyer agree that if Former Lawyer makes full restitution to both estates, they will not say or do anything further about either matter. Former Lawyer sells his home and makes full restitution from the proceeds. Has Lawyer acted improperly?

3. Bob Boozer is the president and sole shareholder of Boozer Auto Sales, Inc., a corporation engaged in the business of selling used cars. He is also a lawyer whose license to practice law has been suspended indefinitely for misappropriation of client funds. He now files an action in municipal court against a person who bought a car from the corporation but has failed to make a

required payment. The complaint identifies the plaintiff as "Boozer Auto Sales, Inc.," and it is signed "Boozer Auto Sales, Inc., by Bob Boozer, President." Has Bob acted properly?

4. Henning files suit on behalf of Lawless against Organ in the Circuit Court of Norfolk County, Massachusetts, for damages resulting from Organ's maintenance of a slaughterhouse next door to Lawless' house, in violation of state environmental laws. The case is assigned to Judge Pushaw. Judge Pushaw discloses in open court, with the parties and their lawyers present, that he and Organ are regular golfing buddies, that he is godfather of Organ's seven children, and that he and Lawless recently exchanged letters to the editor of the local newspaper in which Lawless accused him of mishandling of a case and the judge expressed deep offense at this unjustified slur and demanded an apology, which Lawless refused to do. He then invited the parties and their counsel to consider, in his absence, whether they nonetheless wished him to proceed. Did the judge err?

5. The Supreme Court of the State of Jefferson adopts a rule governing admission to the bar, which disqualifies any person from admission who has ever declared personal bankruptcy. Assume that the state's constitution gives the Court exclusive authority to regulate the practice of law, and that no state statute exists which is inconsistent with this rule. Is the rule valid?

6. Sam Dashiell is consulted by Richard Roe, a former employee of Acme Corporation, who believes he was wrongfully discharged. Roe had written a letter to the company's chief personnel officer complaining about it, and got a letter back from the company's General Counsel stating simply that there were proper grounds for the dismissal. Dashiell concludes from Roe's story that several fellow employees have information needed to evaluate Roe's claim. He gives Roe detailed instructions whom to talk to and what questions to ask. Roe then talks to three such employees and obtains sworn statements from them that are favorable to his case. Has Lawyer acted improperly?

7. In #6 above, assume instead that Dashiell immediately files suit against the company for Roe, and that the action progresses through discovery. Dashiell has agreed to take the case on an hourly rate basis, with fees to be paid monthly. The trial date is set for 6 weeks hence. Roe now discharges Dashiell, saying that he has lost confidence in him and has found a new lawyer. Roe has not paid the last 3 months' bills from Dashiell, amounting to over $1,000. Dashiell demands payment of these bills, and refuses to turn over the case file to the new lawyer until payment is made. Has Dashiell acted properly?

8. John Smith consulted Harold Henning, partner in the firm of Gold & Silver, concerning an offer Smith had received to enter into a substantial business investment. In the course of the consultation Smith disclosed the essentials of his personal financial situation. Based on this consultation Smith decided not to hire the firm or Henning to represent him in the transaction. Five years later Robert Gold, senior partner in the firm, is asked to represent Smith's wife in seeking a divorce from Smith. Gold asks Mrs. Smith how she thought of coming to him, and she says that she recalls her husband having mentioned talking to Henning a long time ago. Gold determines that there is no office file on the Smith consultation, Henning says that he vaguely remembers having spoken to Smith but has no file on or recollection of the content of the consultation, and Gold has no recollection of ever having heard anything about such a consultation. Can Gold properly accept this representation?

9. The Bar Association of the State of Jefferson is a private organization of Jefferson lawyers, of which approximately 90% of all lawyers admitted in the state are members. The leadership of the

Association argues in various public forums that there are too many lawyers in the state for the amount of available business, and that there should be a sharp limit put on new admissions. At the annual meeting the general membership overwhelmingly approves a recommendation to the State Supreme Court to adopt a revised admissions rule specifying that only the top 40% of scores on the bar examination be admitted (the current pass rate is about 80%). The Court, with a newly appointed Chief Justice who is a past president of the Association, adopts the proposed rule by a vote of 3-2. Disappointed takers of the next bar exam sue the Association in an appropriate federal court for combining in restraint of trade in violation of the federal antitrust laws, alleging the above facts. The Association moves to dismiss for failure to state a claim, and the motion is denied. Did the court err?

10. The state legislature adopts a statute forbidding lawyers from making targeted direct-mail solicitations to persons accused of crime, less than 30 days after the addressee has been arrested. The statute makes such a solicitation a misdemeanor punishable by a fine, and requires that the violator be suspended from the practice of law for 30 days. John Daly, a criminal defense lawyer in the state capitol, sues in an appropriate state court to have the statute declared invalid on the ground that it is inconsistent with the state constitution. How should the court decide this claim?

That's All Folks!!!

Have a fun summer!

PROFESSIONAL RESPONSIBILITY 2006 - Professor Olson
FINAL EXAM - - MAY 16, 2006

Write your social security number (and only your social security number – no names please) in the space provided below and on the front covers of your bluebooks. When you have completed the exam, insert this exam into the middle of your bluebook. If you use more than one bluebook, insert subsequent bluebooks into the middle of book one.

Both the essay and short answer portions of this examination are Open Book examinations: You may use any material **either prepared by you during the course of the semester for the course in Professional Responsibility or made available to you during the course of the semester by Professor Olson. You may not use commercially prepared outlines.** You may also use both the casebook and supplemental books assigned to this course. You must work alone and are not authorized to receive assistance from any other person except Professor Olson; you are aware that the Law School operates under an Honor Code. By turning in an answer you expressly agree that you are bound by the provisions of the Honor Code, as well as all of these instructions.

Your answer to the Essay Question counts for 66 2/3% of your grade on this examination; your answers to the Short Answer Questions count for 33 1/3% of your grade on this examination.

Student Social Security Number: _____

To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does **not** mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

Part A – Answer any One (1) of the Following Three (3) Essays (66 2/3 points).

Essay #1

The law firm of Reedman & Moncton represents MenRus, Inc., which, as you might guess, is a discount seller of men's clothing. The president of MenRus believes that it is unable to obtain Morningstar suits for sale because the manufacturer of the suits, Hillare, has exclusive retailer agreements with only a few high-priced men's stores in any given region. A partner for Reedman & Moncton, Mike Mangrum, conducts some preliminary investigation by calling sales managers at men's stores in New York City, Boston, Philadelphia, and Washington, D.C. He also called representatives of the Association of Clothing Retailers and the Confederated Association of Department Stores. From these calls, Mike concluded that only one store in any metropolitan area sells Morningstar suits, and that this limitation was due to an exclusive retail agent arrangement imposed by Hillare. Based on that research, Reedman & Moncton filed an antitrust lawsuit on behalf of MenRus, alleging a nationwide scheme to fix prices and eliminate competition through an exclusive retailer policy and uniform pricing scheme.

Hillare filed an answer to the complaint, denying that it had any exclusive retailer agreement or had imposed a uniform pricing policy. Mr. Mangrum and a few associates took a series of depositions in the case. The relevant portion of the transcript from the deposition of the Hillare's CEO, Alice O'Shea, is set forth below.

Q. Ms. O'Shea, you were supposed to bring a number of documents with you today. Do you have them?

A. Actually, they're all out in my car, but I can go get them.

Q. Yes, do that now.

(The witness left the room at that point.)

Mr. Mangrum: She's going to meet another boyfriend at the car.

Ms. Paxton (lawyer for the Association of Clothing Retailers): That's in poor taste, Mr. Mangrum.

Mr. Stuptak: (lawyer for Hillare): Get smart for a change, Mike. Please refrain from making any more derogatory comments about my client.

Mr. Mangrum: I guess I'll have to reserve all my derogatory comments for you, you piece of shit.

Mr. Stuptak: Whatever you like, Mike. This ought to be a fun trial.

Mr. Mangrum: It must have been in poor taste if Ms. Paxton says it was in poor taste.

Ms. Paxton: You got a problem with me?

Mr. Mangrum: No, I don't have any problem with you, babe.

Ms. Paxton: Babe? You called me babe? What generation are you from?

Mr. Mangrum: At least I didn't call you a bimbo.

Mr. Stuptak: Cut it out.

Ms. Paxton: The BBO will enjoy hearing about that.

Mr. Stuptak: Mike, you ought to stay out of the gutter.

(The witness then returned to the room, and she handed a number of documents to Mr. Mangrum.)

Q. I'd like to mark this as O'Shea Deposition Exhibit Number 1. Do you recognize this document?

(The exhibit was so marked.)

A. Yes, I do.

Q. I'll ask you to turn to page 7 of O'Shea Deposition Exhibit Number 1 under the heading of Roman I about "CEO's Activities." And it the, it talks about a number of meetings and conferences that you attended, one of which is periodic meetings you have had with the Association of Clothing Retailers and the Confederated Association of Department Stores.

Could you tell us how frequently you meet with Rand Lally, the President of the Association of Retailers, and Claude Rowell, the President of the Confederated Association?

A. We, the three, the three of us try to meet every four months or so, but we're not always successful.

Q. And you review activities of the three organizations at those meetings?

A. We discuss current activity. We really report to each other some of our current activities.

Q. To what extent do you, as CEO of Hillare, coordinate with the Association and the Confederated Association regarding what clothing lines will be sold to what retailers in any given region?

Ms. Paxton: Object to form.

Mr. Mangrum: I don't have to talk to you, little lady.

Mr. Stuptak: : Yes, could I hear the question back, please?

(The question was then read by the court reporter.)

Mr. Stuptak: I object to the form of that too, I think it assumes facts that are not in evidence.

Mr. Mangrum: Well, aren't you just the cutest little thing, Stuptak, la la la . . . "facts not in evidence." You disgust me. You remind me of some Little Lord Fauntleroy lawyer . . . all dressed up and no place to go. In case you hadn't noticed, we're not at trial here, moron. Why don't you grow up?

Q. Do you coordinate with offices of the Association and the Confederated Association with respect to what stores will receive what clothing lines in any given region?

Ms. Paxton: Objection.

Mr. Mangrum: Tell that little mouse over there to pipe down.

The Witness: Hillare has a policy of selling to many different retailers in the Association and many different stores under the Confederated umbrella of stores. It could be as many as ten different retailers in any given market in the Midwest and West.

Q. I think that is non-responsive. I asked you if you coordinate with the Association and the Confederated Association. Do you?

Mr. Stuptak: I object because that question has been asked and answered, and I demand an immediate suspension of this deposition.

(At this point, Mr. Stuptak led the witness out of the conference room into the hallway. The two returned five minutes later.)

Mr. Mangrum: Stuptak, do that again, and I will take this up with the judge next chance I get. What kind of a scumbag are you? Have you ever defended a deposition before, or are you some kind of a tyro, still wet behind the ears? I have half a mind to bring criminal charges against your client in my role as private attorney general.

Q. I will repeat the question I asked before you left the room. By the way, you'd do best not to follow your lawyer's advice the next time he tells you to leave the room with him. I do have the power to bring a criminal complaint against your company, and you personally could do time behind bars. Do you coordinate with offices of the Association and the Confederated Association with respect to what stores will receive what clothing lines in any given region?

Ms. Paxton: Objection.

Mr. Mangrum: Be quiet, little girl! You can object all you want, babe, but remember that at least so far, you don't even have a dog in this hunt. While I might not look forward to going up against you in a courtroom, looking good in a skirt like you do, I'll amend the complaint to bring your Association in as a party defendant in a New York fucking minute. Got it?

Mr. Mangrum did later amend the complaint to bring in both the Association and the Confederated Association. The discovery process was not perfect from defendants' standpoint either. In particular, defendants' lawyers instructed their clients not to answer a number of deposition questions, engaged in private off-the-record conferences, and aborted many depositions unilaterally.

Additionally, counsel for Confederated produced a memorandum entitled, "Preparing for your Deposition," which the lawyers used to prepare clients to testify in all antitrust cases. The memorandum advised clients that it was important for them to testify that they never agreed with any clothing manufacturers that any particular manufacturer would be the only one Confederated used in conjunction with the Association of Clothing Retailers.

After the depositions of the Hillare employees had concluded, Mr. Stuptak sent a letter to Reedman & Moncton demanding that the firm voluntarily dismiss its lawsuit, and threatening to seek Rule 11 sanctions from the district court if it refused to do so.

Did the antitrust complaint violate Rule 11 when it was filed? If not, did the firm subsequently do anything that violated the rule? Remember to also consider all Model Rules that may have been violated in this scenario.

It's clear that both sides displayed "hard ball" litigation tactics in this case. You want to be prepared to deal with such tactics if they ever arise in depositions you may conduct or defend. What types of problems can you anticipate? How would you plan to respond to these problems? Remember to consider both the intersection of ethical and moral considerations and the law review article, *The Rambo Problem: Is Mandatory CLE the Way Back to Atticus?*, in your answer.

Essay #2

You are an attorney who has been in general practice in Methuen for five years. You have built up a small reputation as a good lawyer, but with the stiff competition from other lawyers in the Merrimack Valley, you have struggled a bit for income. Your office is located in a small house that has been converted to business uses. You have been renting the house for five years and your yearly lease has three months to run. The owner of the building has informed you that he will not renew the lease. In fact, the owner will put the building on the market next week. A client, with whom you have built a friendship, has offered to loan you money at a very favorable interest rate to purchase the building. Owning your own building has been your dream from the beginning and this location is perfect for your needs. The price is a good one, given the increasing rise in area prices generally.

You have decided that this weekend is a good time to think carefully about buying the building and about some things that are going on in your practice. You have three cases that are causing you some concern.

(1) In an unusual move, you have been asked to defend the Department of Social Services in a class action suit claiming that conditions at its facilities violate federal statutory law and the constitutional rights of juveniles. When you discuss the matter with the agency's director, you are told that the agency cannot do anything about the problems because the state legislature has not provided sufficient funds for the department. You are asked to do what you can in defending the case, although it has no real chance of winning, to give the agency time to pursue some funding sources.

(2) A new client came in to last week to complain about her lawyer. The litany of attorney actions (or inactions) related by the client are somewhat shocking, because you've known the attorney since law school where you were good friends. Client was being threatened with suit by a creditor and went to the lawyer, Mary Barrister, about eight months ago. Mary had quoted an hourly rate of $125.00 to negotiate with the creditor. If trial preparation and/or trial were required, the hourly rate would be $200.00. Client did not hear from Mary for about six months, although she received statements monthly, which she paid within two weeks. The first monthly statement totaled $375.00. After the second monthly statement, which totaled $500.00, Client began calling Mary to

learn what was happening with the negotiations. At first, Mary's secretary spoke with Client at length, telling her about the phone calls and meetings Mary had had with the creditor and how hard Mary was working on the matter. Soon, however, the secretary stopped talking with Client except to say that she would give the message to Mary. The monthly statements continued. After about six months, Mary returned one of client's calls, saying that the creditor was being difficult but that she (Mary) was certain an accommodation could be reached. Client has not spoken with Mary for two months now. By the time Client walked into your office, she had paid $1,875.00 to Mary. Client's total debt to the creditor is $3,350.00. Client brought you copies of Mary's monthly statements but had no other documents. The statements contain merely a total amount, with the words "For services rendered."

(3) You have represented Robert on a number of occasions. He has come to rely on you not just as a lawyer but also as an advisor and counselor. Last week Robert came to see you. It seems that Robert's physician had diagnosed Robert as having an advanced stage of pancreatic cancer. Pancreatic cancer is incurable. The diagnosis was confirmed when Robert went to the Mayo Clinic. Robert has always been a proud, independent person. He told you that he does not want to cause his wife and children significant grief by a prolonged illness, nor does he wish to subject his family to the extensive financial costs of a prolonged illness.You told him that you could help him by drafting legal instruments that would instruct his physicians not to engage in heroic efforts to prolong his life when his cancer begins to impair his day-to-day activities. You also began to tell him about "Do Not Resuscitate" instructions when Robert cut you off. "I've considered all that," he said, "but I've decided on a more direct approach." It seems that Robert had contacted Dr. Dan, a physician who believes in euthanasia. Dr. Dan has constructed a machine that enables a person to self-administer a fast acting sedative and poison that enables a person to commit suicide painlessly. Dr. Dan sells the machine for $25,000.

Robert wants you to represent him in two ways: First, Robert wants you to handle the purchase of the suicide machine from Dr. Dan. Robert would authorize you to pay up to $25,000 for the machine and to draft and review all necessary legal documents. Robert told you that Dr. Dan insists that the sale include a "hold harmless" clause, a waiver of liability and remedy for any resulting death or injury resulting from the intended use of the machine, and a general release. These documents would prevent Robert's wife and children from recovering against Dr. Dan for Robert's wrongful death. Robert told you he was agreeable to these demands by Dr. Dan.

Second, Robert wants you to draft a will for Robert that will leave all his property to his wife and children. He also wants you to prepare the necessary documents so that his life insurance will be paid to his wife. Because the insurance policy was taken out years ago, Robert had initially named himself as the beneficiary. The change will enable Robert's wife to obtain the life insurance free of probate.*
Assume that Chapter 265 of the Massachusetts General Laws contains this section: "Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony."

You told Robert that you wanted a few days to think about his requests.

* You are to assume that the life insurance will be paid even if Robert's death is deemed to be self-inflicted.

Being an organized person, you have written out the above facts and now proceed to "discuss" with yourself (in writing) the professional responsibility issues these various matters present.

Essay #3

Following her graduation from law school in 1995, Susan Spencer joined the law firm of Vendage & Ennis (V&E), outside counsel of the First Boston Bank ("FBB") Although she had been promised by V&E's recruiters that she would be working on litigation matters, Spencer was assigned as an associate under partner John Stockdale to work on FBB's real estate transactions. She also had secondary responsibility, under partner Wayne Morris, for overseeing FBB's compliance with securities regulations. During 1998, Spencer performed the legal work for FBB in connection with a large loan to the Dayton Development Corporation ("DDC"). The loan was to be used by DDC to construct a large office complex -- "Dayton World" -- in the Back Bay of Boston. Throughout her five-year tenure at FBB, Spencer did both real estate work and securities compliance work.

(A) For several years prior to Spencer's arrival, V&E, through the efforts of Morris, had assisted the Chief Financial Officer of FBB, Arnie Wolcott, in structuring complex entities to take advantage of arcane accounting rules, permitting FBB to report higher earnings. Additionally, Morris and Wolcott worked together to shield the activities of stockbrokers and analysts who sometimes engaged in questionable practices to inflate FBB's stock value and to earn higher profits from stock trades. After years of evading SEC scrutiny (sometimes with a nod and a wink and sometimes with strategic payoffs to the right SEC agent), a senior manager (Eileen Wright) working under Wolcott has become worried about these transactions.

Once Spencer joined Morris's office, Wright met with her to discuss what she should do. Spencer advised Wright to draft a memo to FBB's CEO, Bill Rundle, warning him of significant adverse consequences if certain accounting adjustments were not made. Spencer told Wright to do this without first consulting with Morris. Wright sent the memo to Rundle; then about a week later, Wolcott and Morris called Spencer and Wright into Wolcott's office to rebuke them about their insubordination. Wolcott and Morris suggested to Spencer and Wright that no adjustments would be made, and they should continue doing their jobs without making any more waves.

Meanwhile, Rundle is inclined to hire V&E to investigate the allegations in Wright's letter because lawyers there are familiar with the details of the transactions and the brokers/analysts' activities (having prepared the documents themselves!) and can perform an investigation quickly and inexpensively.

(B) In late 2000 tiring of real estate work, Spencer left the bank and joined a local law firm. She finally got the opportunity to work on litigation, and for the better part of three years she represented the firm's clients in a number of cases in courts throughout Boston, including the United States Bankruptcy Court. In 2002, FBB sold its entire real estate loan portfolio to Liberty Bank ("Liberty"), including the Dayton World loan consisting of a principal balance of twenty million dollars. In 2003, Dayton determined that it would have to file a petition to reorganize in bankruptcy, and it selected Spencer as its bankruptcy attorney. At the time of the bankruptcy, Dayton's second largest asset was Dayton World; the outstanding balance on the loan -- now held by Liberty -- was eighteen million dollars. Several other Dayton loans were also held by Liberty because Liberty had previously loaned money to Dayton. As a result, Liberty was Dayton's largest creditor. Part of Spencer's bankruptcy strategy on behalf of Dayton was to restructure all outstanding loans so that bank creditors (like Liberty) would receive only 75% of each loan dollar held.

(C) During 2003 and during the pendency of the bankruptcy, Spencer was asked by the Columbia Development Corporation ("Columbia") to represent it in a proposed real estate loan transaction between Columbia and two banks, FBB and Liberty. Columbia was aware that Spencer had done real estate work for FBB, and it was also aware of the facts surrounding the Dayton bankruptcy and Spencer's representation of Dayton. The Columbia transaction was unrelated to any specific work Spencer did for FBB, but it was the same type of work.

(i) With respect to paragraph (A), can V&E take the case? What should Susan Spencer do? Did any lawyers engage in disciplinable conduct? If so, what rules might these lawyers have violated? Remember to consider both the Model Rules that might apply as well as what you learned from watching the documentary, *Enron: The Smartest Guys in the Room.*

(ii) With respect to paragraph (B), what should be the result if Liberty moves to disqualify Spencer from representing Dayton in the bankruptcy because of her former representation of FBB? Explain.

(iii) With respect to paragraph (C), what should be the result if FBB files a complaint with the lawyer disciplinary authorities concerning Spencer's proposed representation of Columbia? To what extent and why is your answer the same or different if both FBB and Liberty also complain that Spencer should be disqualified from representing Columbia because of the pending bankruptcy?

Part B – Answer all ten (10) of these short answer questions. Remember to choose one of the four (4) or five (5) letters and then explain both why you chose the letter you did and why you did not choose the other letters. You *must not* exceed one side of a page in your bluebook for any short answer response: You will not receive credit for anything beyond one side of a page. (3.3 points each)

Remember that you can get points even if you choose the incorrect letter; it is all about your ability to analyze why a particular choice is right or wrong; while your conclusion as to any answer choice will matter to the MPRE graders, I am more concerned with your ability to analyze effectively.

QUESTION 1: Attorney Malcolm receives a $50,000 check. Identify the ethically permissible action(s) for Malcolm:

(1) Depositing the check in her firm's IOLTA trust account, if the check is written by the client as an advance against the attorney's fees that the attorney is likely to earn over the next year.

(2) Sending the client a check for $29,322, along with a full accounting of how this amount was determined pursuant to the written fee agreement and a letter saying "We did not want to deposit the check into our trust account, because you are entitled to the interest, so we have deposited our share into our firm account and sent you a check for your share," if the check is a settlement check.

(3) Depositing the check into the firm's IOLTA trust account, if the check is written by the client as an advance against estimated expenses expected to be incurred in the next two weeks, and writing checks totaling $5,425 out of the trust account for expenses the next day.

(4) Depositing the check in her firm's IOLTA trust account, if the check is a settlement check that resolves a personal injury case that the lawyer had undertaken on behalf of the client two months ago, and instructing the firm's bookkeeper to begin working on an accounting of the settlement proceeds to be forwarded to the client within the next two days.

(5) None of the above.

QUESTION 2: Identify the correct statement(s).

(1) Although lawyers usually cannot enter into agreements that restrict the right of a lawyer to practice law, some of these agreements are acceptable.

(2) If a client contacts an attorney about the possibility of suing another law firm for malpractice, the attorney's engagement letter should include a statement whereby the client agrees not to sue the attorney for malpractice, and the attorney should make sure the client signs and therefore ratifies the terms in the engagement letter.

(3) A non-lawyer may own an interest in a business entity that engages in the practice of law, if the entity is carefully structured.

(4) All of the above.

(5) None of the above.

QUESTION 3: Sharon Storrs is an attorney who represents a plaintiff who seeks to recover for injuries she received while riding the roller coaster at Nine Monkeys Amusement Park. Identify the correct statement(s).

(1) Abe should talk to as many Nine Monkeys employees as possible before filing suit, because the Model Rules "no contact" rule is inapplicable to his conversations with Nine Monkeys employees before formal litigation is initiated.

(2) After suit is filed, Sharon should send her firm's investigator to talk to Nine Monkeys' employees who are covered by the Model Rules "no contact" rule, because Sharon cannot talk to them.

(3) If Sharon reasonably believes that she has to "level the playing field" against the well-financed defendant, Nine Monkeys, and its large law firm, which has a reputation for "stonewall" pretrial tactics, she can send a large set of discovery requests that include several requests that would otherwise be improper.

(4) If a "fellow rider" witness (who has no connection to Nine Monkeys outside of being an occasional customer) tells Sharon during an interview "I don't mind talking to you about this accident, as long as you are not a lawyer," Sharon is under no obligation to tell her that she is indeed a lawyer.

(5) None of the above.

QUESTION 4: Which of the following statements violate the Model Rules (or indicate(s) a violation of the Model Rules)?

(1) A partner telling an associate: "In his brief on our motion to dismiss this Massachusetts state court suit for failure to state a claim, that idiot plaintiff's attorney did not even discuss the *Milligan v. Smythe* case that the First Circuit just decided under Massachusetts law. You and I know that case could kill us if the judge finds out about it, but she is not going to find out about it from us. I'll be prepared to discuss it at the hearing if anyone brings it up, but we won't be the ones to bring it up!"

(2) A trial lawyer telling her client: "Given what you just told me, I now realize that the key chart that I introduced into evidence last week is incorrect. I would look like a fool trying to correct it now, though, with only one day to closing argument. Keep quiet about this, and I will, too."

(3) A trial attorney saying in closing argument: "The evidence shows that Karl Kaplan was lying. In your heart, you know she was lying. Listen to your heart."

(4) A trial attorney saying in closing argument: "For what it is worth, and I realize that it may not be worth much because I am admittedly biased and you are the judges of the facts, I think Karl Kaplan was lying."

(5) Both (2) and (4).

QUESTION 5: Identify the correct statement(s):

(1) Due to an attorney's duty to avoid taking frivolous positions, a lawyer for a criminal defendant who is charged with a crime that has five statutory elements and who believes that she can legitimately argue only the absence of the fifth statutory element cannot require the prosecutor to prove the first, second, third, and fourth elements.

(2) Due to an attorney's duty to avoid taking frivolous positions, a lawyer for a civil defendant who is alleged to be liable for a tort having five elements and who believes that she can legitimately argue only the absence of the fifth element cannot require the plaintiff's attorney to prove the first, second, third, and fourth elements.

(3) Under Rule 11 of the Federal Rules of Civil Procedure, a federal judge who determines that Rule 11(b) has been violated must impose a sanction on the attorneys, law firms, or parties who are responsible for the violation.

(4) Any attorney who threatens to bring criminal charges for no reason other than an attempt to advance a civil claim is violating the Model Rules.

(5) Two of the above answers are correct.

QUESTION 6: Assume that the following extrajudicial statements were made by a lawyer in a well-attended press conference about a high profile case. Which of the statements is most likely to be deemed permissible under the Model Rules?

(1) By the prosecutor in a criminal case: "Given the current status of plea negotiations, we are not likely to see a trial in this one."

(2) By the attorney representing the defendant in a criminal case, in response to a reporter asking "Is he guilty?": "I believe in my client, William Dawkins, and I believe he is innocent."

(3) By the attorney representing the defendant in a criminal case: "I just had a one-on-one meeting with my client, and he told me that he was at the scene of the crime, but he did not commit the crime."

(4) By a former prosecutor, who is not involved in the current case regarding William Dawkins: "I prosecuted the defendant, William Dawkins, many years ago. Although this case is not related to the case where I prosecuted him, I think he did it."

(5) By an attorney defending a civil environmental case: "We all know about the questionable reputation of the plaintiff. That reputation speaks for itself, and tells you that we are not worried about this case."

QUESTION 7: In which of the following circumstances is an attorney allowed to represent a client, despite the fact that the attorney's personal financial interests are (or could be) in conflict with the client's interests?

(1) When the lawyer and client have negotiated (as a part of the initial engagement agreement) an agreement giving the lawyer literary rights to a portrayal based on information relating to the representation, and the agreement that the client has consented to in writing (after being given a reasonable opportunity to seek the advice of independent counsel) is fair, reasonable, written, and understandable.

(2) When the client, the attorney's grandfather, has asked the lawyer to prepare a will leaving a substantial gift to the attorney's children.

(3) When the attorney and client have orally agreed to a contingent fee that is reasonable and is based upon the terms they operated under in previous cases where the attorney represented the client.

(4) All of the above.

(5) None of the above.

QUESTION 8: Identify the correct statement(s).

(1) If a civil suit involves complicated legal issues, a non-lawyer cannot represent herself pro se.

(2) An attorney who is charged with a crime cannot represent herself pro se.

(3) A non-attorney can represent herself pro se in litigation, but she cannot draft documents to be signed by her and another party that have legal significance.

(4) None of the above.

(5) Both (1) and (3).

QUESTION 9: Which of the following situation(s) require a judge to disqualify herself from a proceeding when she is aware of them?

(1) The judge's adult child, who resides in another state, has an economic interest in the proceeding.

(2) The judge's uncle is an employee of the corporation that is a defendant.

(3) The judge sentenced the defendant in a criminal case to probation in a previous case and told her, "Understand that I am giving you a break, because I think you can get your life in order. I do not ever want to see you in this courtroom as a criminal defendant again."

(4) All of the above.

(5) None of the above.

QUESTION 10: Marsha Snow is applying for admission to the bar. She is concerned about some of her prior activities, so she consults with a lawyer about filling out her bar application. Which of the following statements constitute correct advice from the lawyer?

(1) "Do not tell me the details about any activity that would raise a substantial question regarding your honesty or trustworthiness, because then I would be required to report that activity to the proper authorities."

(2) "The activities that you described to me do constitute a crime, and the statute of limitations has not run. To completely answer question 19 on this bar application, you would have to admit that you participated in these activities. However, you do not forfeit your Fifth Amendment rights just because you are applying for admission to the bar, and you do not want to cause yourself trouble with some prosecutor by stating that you are asserting your Fifth Amendment rights. Therefore, you should just leave the answer to question 19 blank, just like you are leaving the answers to all of the other questions where there is no relevant information blank."

(3) "If I understand you correctly, you were arrested for those activities, but the charges against you were later dropped and you were never convicted of any crime. Question 24 asks you to state any occasion on which you were arrested, but you do not have to answer that question. If you are innocent until proven guilty, the state bar has no right to ask you about arrests."

(4) All of the above.

(5) None of the above.

PROFESSIONAL RESPONSIBILITY 2005 - Professor Olson
FINAL EXAM - - MAY 17, 2005

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Your answer to each Essay Question counts for 40% of your grade on this examination; your answer to the Short Answer Question counts for 20% of your grade on this examination.

Student Social Security Number: _____

To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does <u>not</u> mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

Part A – Answer Two (2) of the Following Five (5) Essays (40 points each).

QUESTION ONE

This is the story of a portion of the legal career of Ollie Stegner. It is suggested that you read it through before starting your response.

Ollie Stegner graduated from an American Bar Association approved law school, applied, took, and passed the Massachusetts Bar Examination, as well as the MPRE and the character and fitness review, and was sworn into the practice of law by the Massachusetts Supreme Judicial Court.

Some time ago, Daniel Webber came into Ollie's law office complaining bitterly about the conduct of Sara Friedland, the attorney who represents Webber's wife in the divorce case in which Ollie represents Daniel. He had all kinds of petty complaints, but became irate when Ollie tried to soothe him. As he left the inner office, he looked Ollie right in the eye and said: "I'm going to get that witch." Startled, but remembering that Webber had prior service as an Army Ranger and, more recently, as a clerk with the United States Post Office, Ollie asked Webber what he meant: "Just don't be surprised when she turns up in pieces," Webber said as he walked out. Ollie was pretty sure that Webber could carry out this threat and knew that Sara Friedland had no idea of what was going on– so Ollie gave considerable thought to calling Webber's wife, who Ollie had represented when the couple had purchased their house, to warn her of what Webber might do. Ollie reasoned that if Webber's wife knew what was going on, she would be in the best position to prevent this potential harm. Ollie also gave some thought to calling the judge who was handling the Webber divorce. Ollie knew that judge had been partners with Friedland and thought the judge could maybe do something that would not alarm Friedland.

Ollie could not think much more about Friedland because he had another trial to attend. In that trial, which was being held in state court in Worcester, Ollie's client, Velma Coachman, was the plaintiff in an action seeking a portion of the proceeds of the sale of a home that had once belonged to her daughter and the daughter's husband. The husband had divorced Velma's daughter while the house was for sale and, unfortunately before a purchaser agreed to the sale's price, Velma's daughter had died. Velma reasoned that if the sale had been conducted before her daughter died, Velma, who was the daughter's only heir, would have received part of the proceeds through equitable distribution of the marital estate. Ollie is aware that just such a claim had been rejected by the Massachusetts Appeals Court, but had brought the claim anyway. The hearing that Ollie was now attending was a motion hearing with two motions. First, Ollie had moved for sanctions against the defendant's lawyer because there was a case decided by the S.J.C. in which the court had awarded some of such proceeds to the estate of a spouse who died before a sale could be consummated. Ollie was unaware of the case when he had filed his brief in the case. The case was not included in his adversary's brief and Ollie later learned the adversary knew of the case and deliberately omitted it. The other motion was for sanctions against Ollie for filing a frivolous claim in violation of the Massachusetts version of Rule 11 and for violation of Rule 3.3 based on the fact that the Massachusetts Appeals Court had already decided the issue against Ollie's position.

After the judge took both motions under advisement, telling Ollie and his adversary that it might be a year before a decision could be reached, the judge expressed the opinion that this matter ought to be settled and recommended that the parties engage in court-annexed arbitration. The judge explained that a "special master" would hear the case and make a recommendation, but that neither party would be bound by the result. In fact, the judge said, a "special master" was immediately available and could hear the parties at that moment. When Ollie, Velma, Velma's daughter's husband and his lawyer arrived at the special master office, the special master indicated that he first wanted to speak with Ollie and Velma in private and would later speak with Velma's

daughter's husband and his lawyer in private, "just so I have a better understanding of both sides' positions." Then, the special master said, he would hold a more public hearing.

When Ollie returned to his law office, it was in chaos. While he was out, Ollie's secretary had opened the day's mail. One of those pieces of mail was an unmarked envelope. Inside was a small newspaper clipping from the previous night's newspaper indicating that "partners of local lawyer Sara Friedland continued to look for her today as she failed to appear for court as scheduled. Friedland's office became concerned about her when she did not appear for work yesterday." This last sentence had been circled in red pen and next to it were the scribbled words: "Told ya!! Start planning my defense? DW." Ollie recognized the writing as Webber's and recalled that he had just purchased a vacation home at the Lake Chargogagogmanchaugagogchabunagungamog. Too upset to work, and because he told Ollie to work on his defense, Ollie drove to the vacation home at the Lake. Ollie found Friedland's badly shot-gun-pellet-riddled body tied to upper branches of a tree at the back of Webber's property. Nearby, Ollie found a knife with what appeared to be blood stains. Ollie brought the knife back to his office and sent it to a laboratory he regularly used for analysis, telling the lab technicians that he wanted the apparent stains disturbed as little as possible. When those results came back, Ollie kept the knife in his office.

Suspicion in the death of Sarah Friedland soon focused on Daniel Webber and the police invited Webber in for questioning. He asked Ollie to accompany him. When the police ask Webber his whereabouts during the 3 day period preceding discovery of Friedland's body, Webber told the police a complicated story that Ollie knew bore no relation to reality. Even with this story, Webber was charged and Ollie represented him at trial. Ollie and Webber agreed that if Webber testified, he would testify truthfully. Webber also indicated that he wanted to take the stand. Unfortunately, however, when Ollie put him on the stand, Webber immediately started to lie. As Ollie attempted to discuss the issue with the trial Judge, she asked Ollie and the prosecutor to approach and then, out of the jury's hearing, said: "Stop, don't say anything further. I understand your problem and it is not going to be mine. I want this trial to conclude. Just ask the witness if he has anything more to say and let's go on."

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on pages one & two.

QUESTION TWO

This is the story of a portion of the legal career of Marilyn Hibbard. It is suggested that you read it through before starting your response.

Marilyn Hibbard graduated from an American Bar Association approved law school, applied, took, and passed the Massachusetts Bar Examination, as well as the MPRE and the character and fitness review, and was sworn into the practice of law by the Massachusetts Supreme Judicial Court. She needed clients and decided to set up a web page. She did set up a web page, informing the web surfing public about her educational background, as well as her office location and phone number. She also indicated that she was especially willing to accept cases in Family Law, Criminal Law, Wills and Trusts, and Plaintiff's Personal Injury. Finally, Marilyn included an email hyperlink so that individuals could write to Marilyn and inquire about her services. The hyperlink proved very successful as Marilyn was soon receiving inquiries about legal problems, not only from people in her own state, but from many people around the country. Some of the email inquiries were long and detailed, offering many facts about the inquirer's legal problems and the names of those who allegedly wronged the inquirer. Many also indicated the inquirer was counting on Marilyn's responses to help resolve the problem presented. Most of these inquiries, Marilyn simply ignored, not responding. Others that presented factual matters of interest to Marilyn, she answered and, in fact, gained some clients.

Marilyn also decided to advertise. Unfortunately, the state legislature adopted (and this is an assumption for this examination ONLY), and the governor signed into law, a new statute rendering void as against public policy any attempt by any person to enter into a personal service contract with any other person within two years of the date on which the other person was injured due to the alleged negligence of another. The legislative purpose of this statute was to prevent people like lawyers from exercising impermissible coercion or duress over potential clients during a time when these professionals should know that the person is unlikely to be able to make reasonable decisions about the choice of counsel. Based on her reading of cases, however, Marilyn ignored this new law and wrote personal letters to the families of the victims of a plane crash that occurred in her area two days prior to her letter. Marilyn offered her services in personal injury actions. All of the statements Marilyn made in her letters were truthful. Shortly thereafter, however, Marilyn received a letter from the BBO advising that her conduct allegedly violated the provisions of the new statute and that she was, as a result, under formal investigation by the Board. Marilyn believed that the BBO had no authority to investigate her for this conduct and, while the disciplinary action was still pending, she filed suit in the United States District Court claiming that the new statute violated her Constitutional rights under the First Amendment.

Undaunted by the Board investigation, Marilyn decided to take a different tack with her advertising. She advertised and then conducted informational estate planning seminars. When people attended, she did not ask them directly if they wanted representation in their estate planning needs, but she did get names and addresses of attendees. After the seminars, she wrote and offered her legal services to those who had attended her seminar.

One of the families who attended one of Marilyn's seminars were Gus and Arlene Baker. They later made an appointment with Marilyn after telling one of Marilyn's secretaries they needed to change their Wills to omit a charity the Bakers thought had cheated them. They did not show up for their appointment, and Marilyn read about 6 months later that Gus Baker had died. In fact, Arlene was shocked when Gus died and the charity they sought to delete from their Will got 50% of Gus's estate. Arlene blamed Marilyn for her failure to change these Wills and is contemplating a malpractice action.

In the family law area, Marilyn's business was not nearly as successful as it was in other areas. She found that many family law clients did not pay their legal bills on time–or at all. As a result, Marilyn added a provision to her standard engagement letter in family law matters which indicated that if the client's monthly bill went unpaid for a period of 15 days or more, Marilyn was permitted to stop working on the client's matter until the unpaid balance of the bill was paid.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on pages one & two.

QUESTION THREE

This is the story of a portion of the legal career of Samantha Barnes. It is suggested that you read it through before starting your response.

Samantha Barnes graduated from an American Bar Association approved law school, applied, took, and passed the Massachusetts Bar Examination, as well as the MPRE and the character and fitness review, and was sworn into the practice of law by the Mass. S.J.C.

Even after obtaining substantial settlements in several personal injury actions, Samantha was still quite young and regularly attended various "sports" bars in town. She became noted for regaling customers with whom she sat of her personal injury victories and what her conduct meant to the families of her clients. While she was not trying to advertise, word spread and, eventually, Samantha built up a pretty good practice. One of Samantha's regular clients was Alberta Hogan, who had three teenage sons who regularly had automobile problems that required Samantha's attendance in District Court. When one of her sons got a ticket, Alberta Hogan would call Samantha, tell Samantha about the problem, work out a fee and Samantha would then go to the A.D.A. and work out a deal. When

the case came on for hearing, Samantha would tell the son involved that this was the plea agreement that she had worked out and the case would resolve. One time, one of Alberta's sons told Samantha that he did not want to plead guilty, but changed his mind when Samantha told him: "Look, this is what your Mother wants and she is paying for me to be here, so this is what I think you should do."

Another of Samantha Barnes's regular clients was Leonard Nickel, the principal shareholder in Nickel Candy, Inc, a local company that maintains vending machines dispensing candy. Samantha has represented Leonard almost since she started practice, doing personal work on his estate plan as well as incorporating and serving as counsel for Nickel Candy, Inc, which has since become highly profitable. In fact, for the past 5 years, Samantha has also served on the Board of Directors of Nickel Candy, Inc. About a month ago, Samantha learned that Nickel Candy, Inc. was under state investigation for failure to pay state sales tax. It seems that money that was supposed to be set aside for sales tax was actually going to Leonard Nickel, who was in the process of divorcing his wife, Chloe. Samantha learned this through conversation with Samantha's husband, Harrison, a lawyer with the law firm that represents Chloe. Under state tax law, if the taxes are not paid, the state can seek reimbursement from the corporation, as well as individually from any members of its board of directors and the principal shareholders of the corporation.

Also about a month ago, Samantha received phone calls from both Alberta Hogan and Leonard Nickel. It seems Hogan was driving a car that went through a malfunctioning red/yellow/green light and struck a car being driven by Leonard Nickel. Samantha explained to both Hogan and Nickel the potential conflicts that could arise, the potential benefits to both of them if Samantha represented both, and, after further consultation, continued to represent both in the accident investigation. Now, it appears that, in addition to any municipal liability, Hogan could also be negligent. Samantha explains the problem to both Hogan and Nickel, again explains the benefits and detriments of her continued mutual representation, and then asks both of them: "What do you want me to do?" When they both ask Samantha what she thinks about an ongoing representation, Samantha says: "This is not my call. I have to make sure that you each have enough information to make a fully informed decision, and I think you do, and then I must abide by your decision as to whether I continue." After further consultation, Samantha determined that she can no longer represent Hogan in the action. Samantha then asks Nickel: "Do you want me to continue to represent you?" When Nickel asks what is needed for the representation to continue, Samantha states: "I just need your decision to go ahead. So long as you understand the facts, my continued representation of you is exclusively your decision."

While she was discussing representation with both Hogan and Nickel, Samantha got a call from John Worthington. After some investigation, Samantha learns that sometime ago, George Ebert was convicted and sentenced to death as a result of the murder of Mabel Smith, whose body had never been discovered. Samantha had no part in Ebert's case, or any appeals, but was aware that all appeals, both direct and collateral, have resulted in affirmance of the verdict. Ebert is scheduled to be executed by the federal government by lethal injection in two days. Yesterday, John Worthington, whom Samantha had not previously met, indicated he needed legal advice about the consequences of not telling information he possessed about commission of a crime. After Samantha agreed to give advice, Worthington indicated that he had, in fact, killed Mabel Smith. He also told Samantha how and why Ms. Smith had to die and where the body was buried. He indicated that he had never met George Ebert, and that Ebert could have had nothing to do with Smith's death. Samantha, of course, felt quite strongly that there must be a connection between Worthington and Ebert and that Worthington's story was nothing more than a last ditch attempt to save Ebert. After telling Worthington of her concerns, Worthington gave Samantha more specific information, told Samantha to go ahead and check him out, and then advise him. In fact, Samantha and her investigator spent most of last night checking out Worthington's claims; they found Smith's body, but did nothing to disturb it. This morning, Samantha's investigator used a number of personal contacts to check out the relationship between Ebert and Worthington and found none. Samantha is now convinced, beyond a reasonable doubt, that Worthington and Ebert have no connection, and that Worthington is, in fact, telling the truth.

Discuss any ethics issues that arise under these facts.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on pages one & two.

QUESTION FOUR

The Following 5 Questions are All True/False with an Explanation. Begin each answer with your response to the Question "Is the Questioned Statement True of False?" Then follow that answer with not more than 4 Sentences, BUT IN NO CASE MORE THAN 8 LINES of explanation. Do Not use IRAAC in answering these questions.

4-1-Ollie Jenson is a practicing attorney in this jurisdiction and a member of a five person private law firm in the City of Brettwood. Before he was in private practice, Ollie was a full-time city attorney for the City of Brettwood. As City Attorney, Ollie personally drafted, among other things, zoning ordinances dealing with Brettwood's downtown area. He also personally negotiated ground leases for use of the City's fairgrounds whereby Palace Amusements, Inc. rented the fairground site and held its SummerFest there.

Yesterday, Ollie was asked to represent Jacobson, Inc., a private company that wants to put up an ultramodern office building in downtown Brettwood, in clear violation of the city's zoning ordinance. Jacobson wants Ollie to challenge the zoning ordinance. In addition, Ollie was asked to represent Palace Amusements in renegotiating its lease of the fairground property to change some of the contract's prior terms.

Neither Ollie nor members of his firm can represent either Jacobson or Palace Amusements because of Ollie's prior service as City Attorney. ***Is this statement True or False?*** (Remember, you should first indicate if the statement is True or False and then follow that with no more than four sentences, but in no case more than 8 lines of explanation).

4-2– While she was in law school, Shirley Stanley worked in a law school sponsored Legal Services clinic. She was certified to actually represent clients, under the supervision of a faculty member, under the provisions of the state's court rules. The clinic in which Shirley Stanley worked represented poor people in civil actions. One of the cases handled by Shirley, under the supervision of an attorney, was that of Mark Andrews and Albert Belton, who were accused of civil fraud in connection with lies to an insurance company. Andrews and Belton, who were neighbors, both claimed that their vehicles had been caught in flood waters and destroyed during spring rains and both made claims to their insurance company. In fact, neither Andrews or Belton's cars were damaged and, after collecting on the insurance proceeds, the pair had been caught drag racing on a local street. Both were tried and convicted of felonies, and placed on a lengthy period of probation, but Shirley Stanley did not represent either in the criminal case. Stanley represented the pair in a case for damages filed by the insurance company. Once they were convicted of the criminal charge, it was clear that principles of preclusion would apply and that Andrews and Belton would be civilly liable. Partially as a result, Shirley Stanley was able to work out a settlement with the insurance company in which both Andrew and Belton agreed to pay back a portion of the money they received.

Shirley Stanley graduated from law school and now represents her small county as prosecutor. Shirley Stanley received a call recently from a public defender indicating that Shirley had filed a probation revocation charge against Mark Andrews. The revocation proceeding arose from

the probation arising from the insurance fraud matter. The public defender indicated that Andrews recalled that Shirley Stanley represented him while Stanley was in law school on the original civil suit the facts for which support the violation of probation charge now pending. Shirley Stanley honestly has no recollection of the case, has no file reflecting what she did, and has absolutely no recollection of anything she learned either from or on behalf of Andrews. As a result, Shirley Stanley declines to recuse herself from prosecuting the probation revocation against Andrews. **This decision by Shirley Stanley is correct under the Rules.** ***Is this statement True or False?*** (Remember, you should first indicate if the statement is True or False and then follow that with no more than four sentences, but in no case more than 8 lines of explanation).

4-3--Leslie Cohen is a lawyer admitted to practice in this state. She is an associate in the law firm of Hirsch and Zabler. Because of her handling of cases, however, the firm of Hirsch and Zabler elects to discharge Cohen. Cohen then files a lawsuit alleging wrongful discharge. You may assume for the purpose of this question that the state does recognize a cause of action by an at-will employee for wrongful discharge if the employee can show that they were discharged while following some industry standard. Leslie Cohen alleged that she was discharged because she continually alleged that the firm was not depositing funds the firm received in settlement of cases into the firm's Trust Account, in violation of the industry standard, Rules of Professional Conduct. When the *Cohen v. Hirsch & Zabler* lawsuit comes on for trial, Leslie Cohen wants to use specific client files to demonstrate her claim. The law firm, which claims that it fired Cohen because of her incompetence, wants to use other client files to show that she was simply incompetent. **Because the client files all contain client confidential information, the law firm can use the files because doing so is in "defense" of the action by Cohen, but Cohen cannot use files because she is not defending her own conduct.** ***Is this statement True or False?*** (Remember, you should first indicate if the statement is True or False and then follow that with no more than four sentences, but in no case more than 8 lines of explanation).

4-4--Jolene Antoine is an attorney in the office of legal counsel of the United States Central Intelligence Agency. She is also a member of the bar of the State of Massachusetts. Jolene has just received a memo from the Director of Central Intelligence. The memo indicates that the Director has met with the President of the United States and with the appropriate Senate and House committees on intelligence and they have all agreed on a new policy for employees of the CIA and that this policy is now official United States policy and is in effect immediately. Under this policy, any CIA employee, including legal counsel, are permitted to use fraud, deceit, or misrepresentation if the employee "reasonably believes" that the employee's official duties require covert action or another form of duplicity. Jolene believes that the conduct authorized by this new policy violates her obligations under the Rules of Professional Conduct and that this executive decision cannot override those obligations. Because this policy directly conflicts with Rule 8.4(c), Jolene is of the opinion that the new policy cannot, therefore, apply to a Massachusetts attorney without some sort of approval by the Mass. S.J.C. **Jolene's thinking is correct.** ***Is this statement True or False?*** (Remember, you should first indicate if the statement is True or False and then follow that with no more than four sentences, but in no case more than 8 lines of explanation).

4-5--Tonya Harrison had Lasik eye surgery performed by Dr. Theodore Able. Harrison now alleges that as a result of a calculation error, surgery was performed on the wrong axis of her cornea and that, as a direct result, Tonya Harrison has suffered significant damage. Tonya hired the law firm of Albertson and Reagan, a 75 person law firm, to represent her. When the lawyers at Albertson and Reagan filed a malpractice action, it was randomly assigned to Judge Julia Walton, a state court trial judge. Judge Walton's husband, Harold, is an associate at Albertson and Reagan, but has had, and will have, nothing whatsoever to do with the *Harrison v. Able* lawsuit. Harold Walton will not appear in court in front of his wife. **Judge Julia Walton must be disqualified from this case because of the provisions of Canon 3(E) of the Code of Judicial Conduct.** ***Is this statement True or***

False? (Remember, you should first indicate if the statement is True or False and then follow that with no more than four sentences, but in no case more than 8 lines of explanation).

QUESTION FIVE

[Special Instructions for Essay Question 5: You should assume that the non-professional responsibility laws of the hypothetical state are correctly described in the fact pattern outlined below. In other words, you can assume that all of the statements regarding driving while intoxicated and consent to withdrawal of blood for blood alcohol tests are accurate.]

Pamela Partner, a partner in a medium-sized firm with offices near the Interstate Mall on the outskirts of Terryville (population 35,000), conducted a meeting in her office to discuss strategy for an upcoming personal injury case with her client in the case, Ben Betteroff, and an associate, Ann Anderson. During the meeting, at 3:00 p.m., the firm receptionist's voice came over the speaker device on the telephone in the office, saying, "Pam, Tom Trouble is on line three for you." Although Pam had represented Tom regarding several business disputes that went to litigation, she responded by saying, into her speaker phone, "Rhonda, please take a message for me. I'm busy at the moment." The receptionist answered, "Pam, I really think you need to talk to Tom now. He seems pretty wound up, and he also sounds like he's been drinking again."

Pam then picked up the telephone and said, "Tom, what's up?" After a few seconds, she said, "Darn it, Tom. How much?" After a brief pause, she stated, "Tom, this is big trouble. Hang on for just a moment." She then pulled the mouthpiece of the phone away from her lips, covered it, and whispered, "Ben, can you please excuse us for a moment?" As Ben started to leave the office, Pam hit the speaker button on her phone, which reactivated the speaker phone system. Just before Ben left the office, he heard the male voice on the speaker phone say, in a distraught tone, "Am I going to go to jail over this?" He then shut the door behind him and walked out of the office, telling the receptionist that he would call Pam the next day.

After Ben shut the door, Pam and Ann continued to talk with Tom via speaker phone. Pam responded to Tom's question by saying, "Tom, try to cool down a little. Ann Anderson is in the office with me. She joined our firm two months ago, after spending several years in the State Attorney General's Office. Fortunately for us, she spent most of that time working on cases involving driver's license revocation for driving over the legal alcohol limit. She knows these cases inside out. Now tell her the situation."

Tom responded by saying, very quickly, "I was heading down Broadway, crossing Ninth Street, and a guy in a pizza delivery car came blasting across Ninth. I couldn't stop, and we had a heck of a crash. And I've been drinking. Not that much, though, just about half of a bottle of wine. The problem is, the other half of the bottle is in the trunk, so the cops will find it if they impound my car. There are lots of people around the pizza car, because the guy in there looks like he is pretty badly hurt, so I am calling you on my cell phone. What should I do?"

Pam asked Tom, "What kind of pizza delivery car?" Tom says, "I don't know. Maybe a Toyota." Pam responded by saying, "No. I mean what kind of pizza place." Tom answered, "Oh. I'm not sure. I can hardly see the car anymore. I'll tell you this, though, I think he may have run a red light, because I think my light was still yellow. Hey, I need to know what to do. I don't want to go to jail!"

Pam looked at Ann and said, "Ann, you are the expert here. Tell him what to do." Ann said, "Tom, you need to calm down. The wine will relax you. Get out of the car, get the bottle of wine, and start drinking it fast."

Tom yelled, "Are you nuts? I said I don't want to go to jail. Pam, whoever this lady is, she doesn't know what she's talking about. She's not my lawyer anyway, you are. You tell me what to do." Pam replied, "You do what she tells you to do. I am sure that she knows what she is doing. Get out of that car, and drink that wine. You need to calm down."

"One more thing," said Ann. "When the police get there, they may want you to consent to them taking a blood sample for a blood alcohol test. Under the state statute, you have a right to consult an attorney before you decide what to do. So call us before you consent, and do not consent until you talk to us. Have you got that?" Tom responded, "I guess so." Ann then said, "There's no 'I guess so' about it, Tom. Get out of the car. Drink the rest of that wine. And do not consent to anything until you talk to Pam and me."

After she hit the button disconnecting the phone call, Pam turned to Ann and said, "I sure hope you know what you are doing. What was that all about?" Ann responded by explaining that her previous experience in license revocation cases taught her that any post-driving consumption of alcohol made it difficult for the state to prove the blood alcohol content at the time the vehicle was being driven. "This guy is in serious trouble, Pam," Ann said. "He is facing possible license revocation, maybe a criminal action for driving while intoxicated or possibly even vehicular manslaughter, perhaps a civil action by the pizza delivery guy, and conceivably even an action by the pizza joint against him for property damage and recovery of worker's compensation benefits they pay to the delivery guy. He is almost certainly over the legal blood alcohol content. Two things can help him out–consuming alcohol and delaying that blood alcohol test as long as he can. When I was with the Attorney General's Office, the state toxicologist was working on a study that suggested that blood alcohol tests taken more than half an hour after driving did not accurately report the blood alcohol level at the time of driving, if a significant amount of alcohol was consumed in the interim."

Pam said, "I knew you were brilliant when we hired you. Now what do we do?" Ann replied, "We get out of here. Let's take a ride to Ninth and Broadway, Ann, but let's not be in too big of a rush to get there. Cops in this state will let a driver have a fair amount of time to try to contact an attorney." As the two of them strode past the receptionist, she asked, "Where are you two going?" Pam responded, "Out. We'll be back in a while. And don't try to call us on my cell phone, because its battery is being charged back in my office. And do not forward our calls to anyone else in the office." As the receptionist's phone rang, the two attorneys closed the door to the stairwell and started walking down the stairs from their third floor office. When they reached the ground floor, Ann said, "I think it would be a good idea for us to use the restroom before we go."

After spending several minutes in the restroom, the two walked to Pam's car and entered it. Pam drove out of the parking lot and toward the downtown location of the accident. Although she knew that Ash Street was under construction, with one-way traffic only, she nonetheless took this street on her way to the accident scene. After maintaining speeds under the posted limits and stopping at several yellow lights, they arrived near the accident scene, which was three miles from their office, at 3:25 p.m. They noticed several cars, an ambulance, and three police cars at the intersection. "Let's make sure we get a legal parking spot," said Pam. After driving around several blocks, past several parking garages, they pulled into a street parking spot and put money into its meter. They then walked to the accident scene.

When they arrived, Tom turned toward Pam and said, "Where have you been? I have been trying to call you!" Pam looked at the police officer who was with him, and then said, "Tom, we came straight here after we talked to you, but we had some traffic trouble getting here." She then looked at the police officer and said, "We represent Mr. Trouble. Can we help you?"

The police officer replied, "Well, you may be able to help your client, because if he does not consent to this blood alcohol test right now, we are going to pull his driver's license." Pam then said, "Show me the consent form." When the officer showed it to her, she said, "Now, Tom, I am eventually going to advise you to sign this consent form, but I want you to understand it first, so I am going to read it to you." She then read each of the provisions of the form to Tom, asking him if he understood each one. She then advised him to sign the form, and told him, "Next to your signature, please note that it is now 3:42 p.m. Is that what your watch shows, Officer?" The police officer said, "Whatever, lady." He then took the form and took a sample of Trouble's blood, following the procedures outlined in his training course for the taking of blood samples. He then notified Trouble that he was arresting him for driving while intoxicated. Pam told Trouble not to say anything more to anyone, then went to the police station and arranged for Trouble to post bail. Trouble's wife drove him to his home.

As Pam and Ann drove back to the office, she said, "I almost forgot. Did you notice what kind of pizza the guy was delivering?" Ann answered, "I think I saw a Snakearrow's Pizza sign on the car." Pam and Ann knew that Snakearrow's Pizza was located at Ninth and Elm, three blocks south of the accident scene. When she returned to the office, she stopped by the office of her partner, Hal Headguy. She asked, "Hal, do you still have that civil case where you are defending Snakearrow's Pizza against the allegation that they pressure their drivers to drive too fast when they make deliveries?" Hal responded, "Technically, yes, but we agreed to a settlement at a mediation last week. We just need to do the paperwork and agree on the details of the settlement."

When Pam received the accident report from the police department the next day, she confirmed that the delivery car was indeed a Snakearrow's Pizza vehicle. Three weeks later, the settlement agreement on the case against Snakearrow's Pizza was finalized and signed, the settlement check was forwarded to the plaintiffs, and the case was formally dismissed by the court.

Two months later, Pam and Ann defended Tom Trouble in a driving while intoxicated jury trial. Although Tom very much wanted to testify, his two attorneys strongly advised against it. They called several fact witnesses who testified that Tom drank wine after the accident. They introduced the empty wine bottle into evidence. They also called the state toxicologist as an expert witness. She testified about her study, which had been finalized and published two weeks before trial. Following this testimony, Pam turned to Tom and said, "We are going to rest now, Tom." Tom said nothing. Pam announced that the defense was resting. The prosecutor then called Pam and Ann as rebuttal witnesses, but both refused to testify on attorney-client privilege grounds. Ann then presented a closing argument saying, in part, "There is absolutely no evidence establishing that Tom Trouble had anything at all to drink before this accident."

PART B (20 points total)

Choose ONE (and only ONE) of the following statements and write ONE short essay taking a position on the policy issue(s) the question raises:

(1) Lawyers should not be required to withdraw from representation of criminal defendants who commit perjury.

(2) The ABA Model rules should be amended to prohibit defendants from requiring lawyers to waive their claim for attorneys fees as part of a settlement agreement.

(3) Law firms are growing so large that it is becoming impossible to do the conflict-of-interest checks expected under the Model Rules. Accordingly, Model Rules 1.7 and 1.10 should be amended to provide that a lawyer working for a particular law firm should not undertake representation of a client if the representation of the client will be directly adverse to another current client of another lawyer in the same law firm only if the two lawyers are working for the SAME OFFICE of that law firm.

(4) Comment 2 of ABA Model Rule 4.1 should be deleted because lawyers should have the same duties of truthfulness in negotiations as in any other context.

(5) It is infeasible to develop international ethical standards for law practice because the conditions, history, traditions and rules for law practice in different parts of the world are too diverse.

(Remember: Choose ONE of the preceding statements for a short essay response.)

ETHICS 2004
Professor Olson
FINAL EXAM - - MAY 18, 2004

Student Social Security #:_____

INSTRUCTIONS

1. **This exam is "OPEN BOOK."** You may consult ONLY the Rotunda Rule Book, the Rotunda textbook, and any notes or outlines you have prepared. You may not consult any commercial outlines or case notes.

2. You must write your social security number on the line provided above, and you must write it on the front cover of any blue books. You may not use more than two (2) bluebooks to complete the exam. You may have one additional bluebook for scrap purposes only.

3. You must also write your class section on the front covers of your bluebooks: If you attended class on Tuesday & Thursday at 7:30 p.m., write "Evening Section" on your bluebooks; if you attended class on Mondays at 4:30 p.m., write "Day Section" on your bluebooks.

4. Write on ***only*** one side of each sheet in each bluebook.

5. When you have completed the exam, insert this test booklet inside one of your bluebooks and then insert the bluebook inside your other bluebook. If you use only one bluebook, insert this test booklet inside the bluebook. Hand the completed package to the instructor, and **HAVE A WICKED NICE SUMMER!!!**

LONG ESSAY QUESTIONS (50 points each)

*(Choose **only** one of two.*
Suggested time: 1 hour, 30 minutes)

To obtain the most points possible for your essay answer, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does **not** mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the **facts** in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the **facts** in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote a couple of lines to predicting what you think the outcome is likely to be.

6. Finally, if any of the fact patterns contain any conflicts situations, you should refer to the Conflicts Typology handout. A good way to score points with judges is to use language from their opinions; a good way to score points with ethics instructors is to use language from their handouts. In fact, in the latter case, it is really the only sure way to score points.

QUESTION ONE

Adam is a plaintiff's personal injury attorney in Lawrence, Ma. Since graduating from Mass. School of Law, he has never engaged in any other form of practice. One day earlier this year, his friends Bob and Carol, a married couple, came to him with a business proposition they wished to organize. Bob and Carol wanted to form a tax-sheltered

limited partnership to own and trade commodities futures in an offshore commodities market from which the commodities would later be imported into the United States. In this case, the market concerned was located in the Cayman Islands. Adam agreed to represent Bob and Carol in doing the legal work to set up the partnership and establish and document it and, thinking this was going to be a marvelous investment, also agreed to put $50,000 of his own money into the deal as an investor. (His practice had been doing very well.)

In fact, Adam thought so highly of the deal that he suggested to his friend, Doug, another plaintiff's personal injury attorney, that Doug ought to invest too, and also ought to help Adam prepare the necessary partnership papers. Adam wanted Doug's help because Doug had recently done his first such deal and Adam had never done one at all.

After reviewing the information Adam had obtained in his meeting with Bob and Carol, and especially the financial arrangements Bob and Carol wanted to make, Doug began to suspect that the "commodities" Bob and Carol wanted to buy and import included the dread cannabis sativa (marijuana). Although Doug did not convey his suspicions to Adam, he told Adam that before Adam or he got involved, they should ask Bob and Carol for a substantial advance retainer – $15,000 – for Adam and Doug's time, expenses and costs. They did so, and shortly thereafter a man identifying himself as "Earl" appeared in Adam's office carrying a suitcase. Earl handed the suitcase to Adam, saying "This is for Bob and Carol." Adam opened it to find $15,000 in $100 bills. Adam deposited the money in his trust account and on his office accounting records opened an account card in Bob and Carol's names, showing a $15,000 credit to them. Adam also mailed them a receipt for the $15,000.

Adam and Doug prepared the partnership papers and Bob and Carol went into business offering to potential investors limited partnerships in "Caribbean Commodities Ventures, Ltd." for $100,000 each. Adam became one of the limited partners but Doug never did invest in the deal. Adam and Doug billed Bob and Carol $15,000 in fees, expenses and costs, took the money out of Adam's trust account, and split it between the two of them. Doug spent

his $7,500 on gambling and parties; Adam used his to make the down payment on a condominium in Florida.

When Bob and Carol first started selling the partnerships, some of the investors asked them about the partnership's assets. Bob showed them an uncertified list of assets prepared by his accountants from information he had furnished them. Bob said these assets were owned by the partnership, including a gold mine in Ecuador. One of the documents supporting his stated value for the gold mine was a report from a mining engineer on the value of the gold ore lode available to that mine. These investors asked for an opinion of counsel regarding this list of assets; Bob asked Adam for such an opinion and Adam, relying on Bob's good faith, prepared a letter stating that in his opinion the assets of the partnership were worth what Bob said they were and further stating that he himself had relied on these representations of value in buying his own partnership interest.

Bob left with Adam the file supporting this list of assets, including his accountants' workpapers, correspondence and memos to and from him and the accountants, and to and from him and the engineer, and the engineer's report. Adam put this file in his case file on the partnership's organization.

The Drug Enforcement Administration has arrested Bob and Carol. The U.S. Attorney has obtained from the Federal Grand Jury an indictment for conspiracy to import marijuana, naming Bob, Carol, Adam and Doug as co-conspirators. The indictment also charges criminal RICO violations and seeks the seizure and forfeiture of all proceeds of the criminal enterprise. The U.S. Attorney has subpoenaed Adam to produce all records of his employment contract, retainer and payments by Bob and Carol. The State Commissioner of Financial Institutions had initiated an investigation of Caribbean Commodities and has obtained a court order directing Adam to turn over all records showing any assets held or claimed to be held by the partnership.

Adam and Doug have come to see you (another attorney in Lawrence) for advice concerning their situations. Adam tells you during this meeting that he never knew of any criminal wrongdoing. He believes that the file on Bob and Carol in his office will show that he was never informed of and never had any reason to suspect any illegalities. Doug,

also during that meeting, tells you that from the beginning he did suspect that Bob and Carl were dabbling in smuggling but that he never told Adam about this.

What should you do or say? Advise Adam and Doug.

QUESTION TWO

James Smith is licensed to practice law in the state of Massachusetts. During his ten years in Brighton, he built a lucrative plaintiffs' personal injury and consumer bankruptcy practice.

Many of his personal injury clients were referred to him by his cousin, Karen Chap, who works as an emergency medic for AMCARE, a private ambulance service jointly owned by Smith and his wife. When Chap rendered aid at the scene of an auto accident involving substantial personal injuries she would telephone Smith, who promptly sent Snoop, Smith's investigator, to take photos and interview witnesses. Several days later, Smith would write offering to represent the party whom the investigator deemed the victim with a legal claim against another. The letter would state that, based on Smith's preliminary investigation into the accident, he believed that the other party was legally responsible for the resulting damages, "which could amount to a substantial recovery for you. Do not let the insurance company tell you what your claim is worth. The insurance adjuster's primary interest is getting you to settle for peanuts. You pay no fee if no recovery is gained for you." Smith kept track of the clients referred to him in that manner, and gave Chap generous birthday presents reflecting the value of those cases. Last year, Smith gave Chap an all-expense-paid trip to Hawaii for her birthday.

Beth Mulnick was seriously injured when a car driven by Driver struck her while she crossed Robinson Street in downtown Brighton with her friend Patti Kibel. When interviewed by Snoop at the accident scene, Kibel said the women were hurrying back to work after a long lunch, and began crossing the street outside the crosswalk to catch the walk light; she believed they were just outside the crosswalk at the time of impact. Snoop diagrammed the intersection showing point of impact within the crosswalk, and inaccurately summarized Kibel's statement as reflecting that they were at the outer edge of the crosswalk when Mulnick was hit.

Mulnick contacted Smith to represent her, and signed an agreement agreeing to pay 1/3 of any recovery before trial, 40% if the case went to trial, and 50% if recovery occurred and an appeal was filed. Because Mulnick's injuries prevented her from working, she was tightly strapped for money. The retainer agreement provided that Smith would arrange with Mulnick's physicians to insure they would be paid for her medical expenses directly from any recovery. It also provided that Smith would advance any litigation expenses, and gave assurance that Mulnick would only have to reimburse him in the event of recovery.

Shortly thereafter, Smith filed suit on Mulnick's behalf against Driver. Driver's insurance carrier, ALCOV, retained Susan Leeson, who concentrates her practice on insurance defense work. Leeson scheduled a deposition of Kibel.

A few days before the scheduled deposition, Smith invited Kibel to his office to discuss her testimony. She accurately stated what she told Snoop during the interview at the time of the accident. Smith suggested her memory may have faded over time, and showed her Snoop's report, which clearly stated they were in the crosswalk. Smith then explained to her the law of negligence, and that Mulnick's recovery would be reduced because of her comparative negligence if she were outside the crosswalk. After some discussion, Kibel agreed to testify that Mulnick was crossing the street with the light and within the crosswalk at the time of impact. Kibel did testify to that effect, and proved to be a very credible witness.

Following the deposition, Leeson made a settlement offer of $70,000. Without contacting Mulnick, Smith rejected the offer and demanded $120,000. Smith accepted when Leeson agreed to pay $100,000. Smith telephoned Mulnick to advise her of the settlement when the check and release arrived, and arranged for her to come into the office to sign the release and receive disbursement. He promptly deposited the settlement check in the client trust account, and withdrew $38,333 for his fees and expenses which he deposited into his office account. When Mulnick visited the office, Smith presented her with a written statement of how the money was disbursed:

$5,000 expenses (copying, deposition transcript, secretarial and investigation costs, photographs, overhead);

$12,000 payment to Mulnick's physician and physical therapist;

$33,333 attorney's fees;

$49,667 to Mulnick.

Mulnick questioned the expenses and the attorney's fees, which she considered excessive given that Smith only worked on the case for six weeks before reaching settlement. Smith conceded he hadn't worked more than 100 hours on the case, but nevertheless insisted on his contract right to the contingent fee. Smith refused to release any payment to Mulnick unless she signed the disbursal letter indicating approval of the payments. It is now six months later and neither Mulnick nor her health care providers have been paid.

For about one year Smith has been under investigation by the Justice Department for alleged collusion with insurance defense counsel, whereby they reached "friendly agreements" to pay inflated medical and personal injury claims, with Smith making secret payment for the defense lawyer's cooperation. Wiretaps on Smith's office phone produced evidence that the lawyers involved would arrange for face-to-face meetings in a local restaurant, and after reaching agreement on the settlement amount, would complete the transaction through correspondence that, on its face, appeared customary.

Smith's consumer bankruptcy practice picked up dramatically when he placed an ad in the Greater Boston Yellow Pages. The ad featured an American flag with the following words in large print (actual size shown):

BANKRUPTCY

Keep Everything!

(Under state exemptions)

Pay Back Nothing!

(In most instances)

Same Day Service!

Payments!!

FREE VISIT James Smith

669-4357 (NOW-HELP) 3131 Soldiers Field Road, Brighton

Within three months after the new directories were distributed, 250 new clients retained Smith. Smith would meet with each new client for approximately fifteen minutes, and then would have Marilyn Jones, his secretary, gather basic information about the client's assets and debts. He instructed Jones routinely to prepare a Chapter 7 bankruptcy petition listing all personal assets as "exempt" under state law, without Smith independently evaluating whether specific items fairly fit within the state exemption system. (Chapter 7 of the Bankruptcy Code distributes all non-exempt assets to the outstanding creditors. In a "no asset" case, where there are no non-exempt assets, the creditors receive nothing and the debtor is discharged from any obligation to pay the debts listed. Bankruptcy Rule 9011 parallels F.R.C.P. Rule 11.) At the end of each day, Smith would quickly review and sign the petitions Jones prepared for that day's new clients. Each client paid $250 for Smith's services in filing the petition, attending the meeting of creditors, the discharge hearing, and other incidental matters arising in the case.

Smith hired Jones both for her superb clerical and administrative skills, and for her beauty. Shortly after hiring Jones, Smith began asking her out. She dined with him once. He then pursued her actively, making suggestive comments at work, and leaning against the wall in the narrow office hallway so that she was forced to brush up against him in order to pass by. Several times, he stood behind her desk chair, ostensibly to supervise her preparation of a bankruptcy petition. On those occasions, he leaned over her and placed his hands on her desk in such a way as to press his torso onto her back. Jones asked him to stop this behavior. When it continued, she resigned her employment and filed a complaint with the Equal Opportunity Commission alleging unlawful sexual harassment. Since then, Marilyn has received numerous phone calls in which a disguised voice makes obscene or threatening comments. A

tracer by the telephone company has determined that the calls were made from phone booths near Smith's home, office and country club. One call originated from his home telephone. Her teenage daughter received a sexually suggestive birthday card in the mail with a condom enclosed. She then filed a complaint with the local police and with the Massachusetts Board of Bar Overseers.

Meanwhile, the federal investigation continued. Mole, a good friend from law school employed as a staff attorney in the Justice Department, warned Smith of the federal investigation and provided him with a copy of the confidential report summarizing the evidence obtained thus far. Smith quickly referred all of his outstanding tort cases to Wesson, another law school friend who just left a large firm to become a sole practitioner. Wesson was an experienced criminal defense lawyer, but had relatively little experience with personal injury matters. By written agreement, Wesson agreed to pay Smith one-third of all fees she received on behalf of the referred clients. Smith also retained Wesson to represent him in any criminal charges that might be filed, paying $10,000 in cash as advance payment of fees. To that end, he gave Wesson possession of all his office files on closed cases for safekeeping, and the confidential Justice Department memo.

Smith then left the jurisdiction, telling no one but Wesson that he was going to Florida. He laid low for six weeks, then discreetly opened a law office, handling minor business matters for local merchants, and a few personal injury cases. When he needed to represent a client in court he would file an application for admission *pro hac vice*. Periodically, he would call Wesson from a pay phone to get a status report on the criminal investigation, and tell Wesson where to wire his share of the attorneys' fees on referred cases. The Justice Department does not know his current whereabouts and demands that Wesson disclose this information. It also has obtained a subpoena to examine all files in Wesson's offices that had any connection to Smith. Wesson is challenging the subpoena in federal court. She had not yet been formally charged with any crime.

Briefly discuss all issues raised by the fact pattern, using the method described above.

SHORT ESSAY QUESTIONS (30 points each)

(Choose **only** one of three.
Suggested time: 1 hour)

QUESTION THREE

Mega Corporation is a publicly-traded clothing manufacturer. Its Board of Directors, as is usual for a large public corporation, includes persons who are executives in other, unrelated, businesses. Two of Mega's outside directors are Michael Chadwick and Harry Borne. Chadwick is a senior executive with McCorkle Investments. Borne is President of Sigma Partners. Chadwick and Borne serve on Mega's Internal Audit Committee.

Two years ago, Mega Corporation was pushed into bankruptcy proceedings by an internal accounting scandal. At that time, the highly-experienced bankruptcy department of ABC Law Firm was hired by a committee of Mega Corporation's outside directors to investigate the accounting irregularities in the company. ABC's report after investigation resulted in the firing of two senior Mega officials and the reversal of $50 million in the company's stated earnings.

Since then, a team of ABC's lawyers has represented Mega Corporation in the bankruptcy proceeding. On the team is senior associate Kenneth, who came to ABC from a clerkship with U.S. Bankruptcy Magistrate Haynes.

Also on ABC's client list are McCorkle Investments and Sigma Partners. Neither company has been in bankruptcy, but ABC's trial department has represented McCorkle and Sigma in a number of suits against the companies by investors.

The U.S. Trustee in bankruptcy, on the basis of complaints from some of Mega's creditors, has filed a motion to disqualify ABC from representing Mega Corporation in the proceedings. The Trustee states that ABC failed to disclose conflicts of interest, as required by the Rules of Professional Conduct. The motion will be heard by Magistrate Haynes; senior associate Kenneth will be involved in drafting the motion papers but will not argue the matter on behalf of ABC.

ABC responds that no conflict exists because neither McCorkle nor Sigma are creditors, shareholders, or

otherwise parties in interest in the bankruptcy proceedings. ABC also points out that the creditors who made the original complaints have since sold their interests to others (who have taken no position on ABC's representation). ABC argues that disqualification at this point would irreparably harm Mega Corporation and its existing creditors. At stake in the result are an estimated $5 million in attorney's fees.

What are the considerations that the Bankruptcy Court Judge should take into account? What questions would you want answered? What should be the decision on the Trustee's motion? Has ABC violated any Rules of Professional Conduct? If so, which ones (you need not refer to them by number)? Discuss.

QUESTION FOUR

In 2001, Client George hired Attorney Kate to represent him in a breach of contract case. George paid a retainer fee of $500, and agreed to pay Kate a 30% contingent fee on any recovery. Kate filed suit, but then refused to do anything more unless the fee agreement were converted to a straight hourly rate. George agreed to the change.

Six months later, Kate moved offices and failed to notify George of her new location. George was able to send a message to Kate through her daughter, but Kate refused to disclose her new address, telling George he could continue to communicate with her by leaving messages with her daughter.

Between 2001 and 2003, Kate continued her activity in the case, and George paid an additional $23,000 in fees. During that time, there were numerous occasions on which George left messages for Kate asking for information on progress of the case. He received a response to about one of every three messages he left, and he was never clear on exactly what Kate was doing. George did receive copies of the various documents Kate and her associate generated. The file indicates the following: (1) that three of the four original claims in the complaint were dismissed by the court for failure to state a cause of action; (2) that Kate had been sanctioned after a motion to compel answers to interrogatories by the defendants; and (3) that the court had ordered Kate personally to pay $3,000 for deliberately

violating discovery rules and not to pass this cost on to her client.

Trial was set for September 2003, and in late August, Kate asked for an additional $15,000 in fees before she would commit to representing George at trial. George paid the $15,000. At trial, judgment was granted for the defendants, primarily because Kate could not rebut the defendants' interpretation of the contract's terms.

George has complained to the Massachusetts Board of Bar Overseers. You have been assigned to investigate the matter. What are the potential issues that you see? What Rules of Professional Conduct might be involved (you need not state the rule numbers)? What potential remedies are available to George? Discuss.

QUESTION FIVE

You are a criminal lawyer. Sam Adams is a prominent lawyer in town. He calls you one day and wants to retain you to represent his 16 year old son, Jack, who has been arrested for possession of 2 ounces of marijuana. Jack had been stopped for running a red light, and, while Jack was going through the glove compartment to find the car's registration, the bag of marijuana had fallen out into plain view. Sam explains that his son is a star student with a bright future and wants you do your best to keep him out of jail, but to make sure that Jack is taught a lesson.

You take the case and Sam sends you a retainer to cover your fee. It should be easy enough to keep Jack out of jail, but he will probably have a conviction on his juvenile record. While you are interviewing Jack, he asks if he will have to testify. You tell him that he does not have to testify and that you recommend that he not take the stand.

"Good," says Jack. "I was afraid if I had to testify, I'd have to tell the truth and explain that the dope belonged to my father. I don't mind taking the fall for this, because I know I'll get off easy. But my Dad is an ethics professor. If the truth came out it would ruin him.

What ethical problems do you see in this hypothetical, and how should you handle them?

ETHICS 2003 - Professor Olson
FINAL EXAM - - MAY 20, 2003
ESSAY QUESTIONS (Choose 2 of 5)

Write your social security number (and only your social security number – no names please) in the space provided below and on the front covers of your bluebooks. I will deduct one point for each miscue in this regard. When you have completed the exam, insert this exam into the middle of your bluebook. If you use more than one bluebook, insert subsequent bluebooks into the middle of book one.

Student Social Security Number: _____

To obtain the most points possible for your essay answers, use the following as a guide:

1. Follow the IRAAC method in constructing your answer. This means you should begin by identifying the first issue (each fact pattern will contain at least 8 separate issues) that the fact pattern suggests.

2. You should next identify the applicable rule. This does <u>not</u> mean that you should write rule numbers unless you're absolutely sure you've identified the correct one. If you are wrong about the rule number, you can lose points.

3. You should then explain how the facts in the fact pattern relate to the rule you've identified. In other words, what would be the result if a disciplinary authority or a court decided to apply the rule to the facts in a particular way. On the other hand, how might a court or disciplinary authority apply the rule if the decision maker decided to apply it in a different way. Always consider . . . "on the one hand" and "on the other hand."

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.

5. Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

6. Finally, if any of the fact patterns contain any conflicts situations, you should refer to the Conflicts Typology handout. A good way to score points with judges is to use language from their opinions; a good way to score points with ethics instructors is to use language from their handouts. In fact, in the latter case, it is really the only sure way to score points.

QUESTION ONE

Boris Silverlinings ("Boris"), partner in the Massachusetts law firm of Phony, Eagles, and Silverlinings ("PES") has landed in a heap of trouble. Clients from the Far East to East Boston are clamoring for their dough; most claim that Boris has defrauded them in one way or another over the course of the last twenty years. The PES firm's other partners, meanwhile, are ducking for cover, trying to avoid having to pay for the indiscretions of their partner. Much to the partner's chagrin, it turns out that because Boris's malpractice policy only covers a certain amount of malfeasance, many clients may never recover all their funds unless they can also impose liability on the firm and the partners.

It was not always thus for our hero, Boris. In fact, during the 70's and 80's, he was riding high. He numbered among his clientele such high-profile players, movers & shakers, and high rollers as the "Buck-Naked I" and the "12:15 Lounge," (two adult entertainment complexes located in Boston's now-defunct "Combat Zone"), the Whatwecare South Corporation (owner of Boston's professional hockey franchise and its formerly venerable home, the Feet Center), and former Massachusetts Governor Arnicott "Bub" Limabeanbody.

Ironically enough, Boris's problems began innocently enough. Bret Phony, one of Boris's partners, began commuting from Pumpernickel Beach, New Hampshire just last year. Phony learned that a neighbor had a son who was nabbed by the N.H. State Police on Route 95; the neighbor's son, Shrub, had a blood-alcohol level of 2.2, his trunk contained a large quantity of cocaine, and his glove box contained a .45 caliber handgun for which the Shrub had no license. When Phony told Boris this tale, Boris immediately volunteered to help out. He learned he needed to associate local counsel in New Hampshire to be admitted pro hac vice, so he called an old law school buddy, Phyllis. Boris also put one of the paralegals in the firm's offices (Rich) to work on researching all the relevant law.

Things started to turn sour for Shrub almost from the outset. Because PES always handled transactional matters for large corporate clients like Deufus Bank and Jerry Pancock, Inc., none of the partners, including Boris, had any experience in handling criminal law matters. Boris, ever the arrogant shyster, never took the time to learn anything about such matters. Boris also relied on Rich to make all the necessary document requests from the county attorney in New Hampshire; although such requests were made in a timely manner, the county prosecutor failed to turn over all the documents requested. When Rich told Boris about his suspicions that the county attorney was not being completely forthcoming, Boris said not to worry about it. When Rich did the research on the relevant law, he checked into the federal standard for motions to suppress but failed to investigate the New Hampshire constitutional provisions.

Unfortunately for Shrub, Phyllis was doing her best to keep on top of the developments in the case, but Boris kept messing things up. When Phyllis called Boris to say that a status conference was coming up and to tell Boris that he should be there, Boris said he'd make it: "You can count on me for this one, Phyllis." Boris didn't show up because he had a prior engagement watching polo at the Myopic Hunt Club in Waverly Farms.

When Phyllis asked Boris if he intended to turn over the list of witnesses he planned to call at Shrub's trial, he said, "Yeah, I'll give 'em a list, but we won't include Shrub's alibi witness." When Phyllis gave the county attorney the list, she did not include the alibi witness's name, and she did not inform the county attorney that there would be an alibi witness at the trial. Phyllis, an experienced criminal law practitioner, knew the Rules of Court required defense production of the names of any alibi witnesses.

After Shrub's conviction, Shrub filed a malpractice lawsuit against Boris and Phyllis, he filed a complaint with the New Hampshire Bar Association requesting that they censure Phyllis and report Boris's actions to the Massachusetts and Florida bars (the two jurisdictions where Boris is currently admitted to practice), and he filed a notice of appeal, requesting that the New Hampshire Supreme Court overturn his conviction based on Boris's many failings in both preparing and trying his case.

Once Massachusetts authorities got wind of what was going on in the Commonwealth's northern neighbor, all hell broke loose for Boris. First off, disciplinary authorities discovered he sold a Grodin sculpture to a group of investors. To finance the initial purchase of the Grodin, he sought and obtained financing from a huge Hong Kong conglomerate. He put the proceeds of the letter of credit from Hong Kong in his personal checking account; later that same day, he purchased the newest, sharpest Jag. Boris never bothered to tell representatives of the Hong Kong conglomerate that he never had title to the Grodin; in fact, it had been sold by one of Boris's other contacts weeks before Boris made his deal.

Disciplinary authorities also discovered that Boris recently began representing the Myopic Hunt Club in their plans to build a new stadium under the Big Dig; this new stadium will directly compete with the Feet Center. The PES firm still represents Boris's other client, Whatwecare South Corp., the owner of the Feet Center. Furthermore, Limabeanbody's will, which was prepared by Boris ten years ago, contains a provision naming Boris as the beneficiary of a huge ocean front lot on Martha's Vineyard. The ocean erodes more of the property daily, but it could still be a nice walk on the beach. Lastly, Dick Eagles, Boris's other partner, has recently become involved in an amorous relationship with Dottie Heimlich, a former dancer at both the adult entertainment complexes Boris formerly represented. Heimlich has approached Boris about filing suit against some of the wise guys who ran the "Combat Zone" clubs and who currently run complexes in a certain city in Rhode Island. In the retainer agreement which Dottie signed, Boris included a clause stating the following: in the event of a dispute about the results obtained, Client agrees to accept no more than $25, 000 in settlement of all claims against Boris Silverlinings.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on page one of the Essay section.

QUESTION TWO

You are the junior partner at a firm in Massachusetts working on the defense of a sex harassment case. At issue is the conduct of several male supervisors in one of your client's automobile factories. These supervisors allegedly made sexually explicit comments to female subordinates, questioned these women about their sex lives, referred to them in lewd graffiti, and left magazines with nude centerfolds in work areas. The disputed issues in the case are whether the conduct was so pervasive and offensive as to adversely affect working conditions, whether female employees made sufficiently clear that all sexual comments were unwelcome, and whether they suffered substantial damages.

The senior partner has developed a line of deposition questions that she believes might encourage the plaintiffs to accept a modest settlement rather than risk a public trial. For example, she proposes to ask them whether they have ever read sexually explicit magazines or watched sexually explicit movies; whether they have had extramarital affairs or told a sexually explicit joke at work; and whether they are having difficulties in intimate relationships that might contribute to the psychological damages they are claiming. One of the plaintiffs is from a quite traditional Asian-American family, and you believe she may find such questions particularly intrusive. Another has a

history of therapy from problems that are likely to be painful to discuss at a deposition or trial. Are you willing to pursue such inquiries if they might yield evidence relevant at trial?

Assume you schedule one of the depositions and the lawyer for the plaintiffs constantly advises his client not to answer questions, requests that the court reporter go off the record and then hurls racial and sexist slurs at you and your clients, and calls for breaks at odd times during which you suspect he is coaching the witness. How would you handle this deposition and any subsequent ones you may have with this particular lawyer?

You have learned that the senior partner has told the magistrate supervising depositions in this case that the other side has unlawfully withheld documents from perfectly appropriate document requests. The only problem is that you know the other side has fully complied with all document requests. What do you do?

You have learned that a memo was sent in error by one of the plaintiff's attorneys; this memo suggests that the Asian-American plaintiff mentioned above may have fabricated some of her responses to interrogatories. The secretary who received the memo has not yet shown it to the senior partner, but she is asking for your advice as to what to do now. What do you suggest she do with this memo?

You later learn that you opponent's key witness is about to leave for a long-planned vacation that will extend until the trial begins. You suspect that your opponent often makes arrangements with expert and other witnesses to be out of the jurisdiction at key points in litigation. In this case, the expert's deposition, already rescheduled once because of opposing counsel's "illness," is currently set for just before the expert's departure. If you suddenly become unable to make that date and insist on rescheduling during the expert's vacation (to make a point and to get back at the opposition), you suspect that she will drop out of the case. May you arrange your calendar to require rescheduling? Is there anything you can do to deal with the other side's tactics with respect to witnesses, especially when you learn from knowledgeable sources that your opponent often pays expert's fees contingent on the amount of settlement?

When you get to trial, you are second chair for your senior partner. During the highly publicized trial, a reporter asks the senior partner about her midafternoon naps; she replies that the trial is "boring." You suggest to the reporter that you hope these sleeping habits will make the jury feel sorry for your clients. By your own account, you have spent between 60 and 70 hours preparing this case. The senior partner has seemingly not read the case file. How should you handle your frustrations about the senior partner's sloth?

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on page one of the Essay section.

QUESTION THREE

You practice law out of an office building in Lawrence, Massachusetts. Since you are newly admitted to the bar of the Commonwealth of Massachusetts, you have experienced the anxieties typical of any young attorney: how to pay the rent, how to purchase copy machines, how to pay the secretary (can I afford to hire a secretary?), and how to get clients. Luckily, you solved the first of these problems (how to pay the rent) by entering into a space-sharing arrangement with a few other recent law school graduates and by reaching an agreement with the building's landlord. The arrangement with the other graduates includes a provision mandating that the names of all the grads (Williams, Morrison, Blake, Arsenault, Jennings and Palmer) will be listed on a sign on the outside of

the building; the sign will simply say "Law Offices" with the names listed beneath this introduction. The agreement with the building's landlord dictates that you and the other recent grads will do the lease work for the landlord while you will pay a reduced rent. Since the landlord feels she is getting the better part of the bargain, she has agreed to recommend your services to her friends and relatives while you have agreed to market the available office space to persons in need of space.

Like any neophyte in the legal field, you've struggled to get and keep clients. You've tried a number of methods to try to attract clientele, including: a radio advertising campaign on Massachusetts and New Hampshire public radio (the campaign features spots in which you advise callers who dial up your number looking for advice on varied legal topics); a series of seminars at your office building for accident victims, for persons who may have been the victims of medical malpractice, and for tenants seeking help with problems with their landlords (both you and the persons with whom you share office space have occasionally spoken directly with the attendees at these seminars attempting to drum up business), and a web page on which you tout your success in getting favorable plea bargains for most of your criminal clients. You also joined the Essex County Bar Association; as part of your membership duties, you've offered your expertise at conferences where you've spoken to other attorneys on subjects like recent developments in criminal law, family law and basic estate planning.

So far, most of your clients have needed assistance with criminal matters; your most frequently encountered difficulty is getting paid. However, some other issues have also arisen. Your client, Bill Smith, is a defendant in a robbery prosecution - - weapons were allegedly stolen from a federal facility. Smith told you that he would like to be called as a witness in order to present an alibi defense. After you reminded him that he had never mentioned an alibi defense before, Smith said that his girl friend had now agreed to lie for him and testify that he was at her house at the time of the robbery. Smith told you that he would like to take the stand to confirm his girlfriend's story.

You told Smith, "I can't be a party to any perjurious testimony." Smith retorted, "I have a right to take the stand and testify," but you were reluctant to let Smith do so. Smith assured you, "The last thing I would want you to do is to be unethical. Put me on the stand; I will have to tell the truth." You're a trifle concerned about this matter because Smith has told you that the stolen weapons *might* be stored at his girlfriend's cabin in Coos County New Hampshire.

Prior to trial in this matter, as part of the discovery process, you learned that Assistant U.S. Attorney Meeldeer had sent a confidential informant to discuss the purchase of the stolen weapons. Supposedly, the CI uncovered very helpful material during his conversations with Smith. You are concerned that such material will prove very damaging to Smith's case; you have wracked your brain trying to figure out a way to exclude such material from evidence.

Similarly, Assistant U.S. Attorney Meeldeer has called on a number of occasions to discuss a deal for your client. You have never spoken with Smith about these conversations because you consider them to be in the nature of preliminary negotiations. In fact, during the last conversation Meeldeer told you he would be willing to offer Smith six months jail time and 5 years probation if he would agree to testify against his co-defendant, Jackson. Jane Palmer, one of your fellow recent graduates, represents Jackson. You're thinking seriously of having a conversation with her relative to some deals you might broker to come up with the best deal for both your clients.

Lately, you've given serious thought to spending more time with your family because the helter-skelter nature of legal practice has got your head in a spin. You've done quite a bit of work in the family law area; in fact, you're currently representing a couple in negotiating their divorce settlement agreement (the Watsons). You've had a number of conversations with them, both individually and collectively; during these conversations, you've worked hard to consider the needs of

both and the best interests of the children. What's making this case especially difficult are a couple of conversations you've had with Jane and Mark Watson. During a meeting with Jane Watson, she informed you that her daughter Melissa, 13 years old, has told her that her father, Mark Watson, has been touching her in unwanted and inappropriate ways for the last six months. During an individual conversation with Mark Watson, he informed you that he contracted Acquired Immune Deficiency Syndrome (AIDS) approximately two years ago. He has told neither his wife nor his mistress about his condition.

Recently, a friend at the Essex County Probate Court - - Family Division has offered you a way out of legal practice. She says you can cut back on the irritating part of lawyering, make good money, and live a more fulfilling life by becoming a Family Law Mediator. You've told her you'd like to give this a try, and because you know a great deal about the Watson matter, you'd like to help them save money and save the court's time by mediating their divorce.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on page one of the Essay section. You will also receive credit for discussing approaches you might take in dealing with your clients in this fact pattern.

QUESTION FOUR

You are a recently-admitted attorney, and you have gone to work for a medium-sized law firm, the Billabong Firm, in Haverhill, Massachusetts. One of the firm's senior partners, Joshua Lambert, has recently come to you explaining that a new client, Susan Quimby, came to the firm seeking to prosecute a class action involving construction of a standard life insurance policy. Quimby has asked the firm to file a class action. The firm would need to advance the needed funds, and Quimby agreed to remain liable for all costs of the litigation; that is, Quimby will pay for all costs out of any recovery. However, if the litigation were unsuccessful, and there is no recovery, Quimby would not have sufficient funds to repay the firm. If the firm finances the law suit, what issues might arise? How would the situation change if Quimby were a legal secretary employed by the law firm?

The Billabong Firm also represents the CanDo Corp as outside counsel. The Government is investigating CanDo for alleged violations of the criminal law. Steve Toil, the executive vice president of CanDo, has come to you to complain that the Government is interviewing CanDo's agents and employees without first obtaining the permission of the general counsel of CanDo. Some of the agents and employees of CanDo are hourly employees. Others are salaried. Some are independent contractors. None have personal counsel. The Government has brought suit only against the corporate entity.

After Lambert told you to sit down with Toil, you had a lengthy conversation with him about various matters. First, he told you that he had been negotiating agreements with other corporations in their industry in which they would all agree to ratchet prices up or down depending on market conditions and the corporations' financial needs. These agreements would lead to a strengthened market position for CanDo. Second, he told you that he had never informed any of his superiors about the negotiations he had been having. Third, he told you that he had been embezzling funds because he desperately wanted to build a mountain retreat in the White Mountains. Lastly, he wanted to know if you wanted to leave your associate's position and come to work for him. He told you he was thinking of forming his own corporation, and he would need a savvy young business lawyer as general counsel.

Subsequently, you had two conversations about your talk with Toil. While casually sipping the third of your three martinis at the China Dragon restaurant after lunch, you told the other three members of your golf foursome that you couldn't believe the things you'd learned about the CanDo corporation. You then related all the things Toil had told you in minute detail. You told them you didn't know what to do next, but you were thinking about taking Toil up on his offer to depart the Billabong firm and go to work for Toil.

Then you had a conversation with Senior Partner Lambert. Although you didn't share Toil's offer of employment or your thoughts of leaving the Billabong firm with Lambert, you did tell him everything else Toil had told you. After sharing this information, you asked Lambert for his opinion on what you should do next. Lambert told you to forget about the whole conversation – make believe it had never happened. Then he told you to call Toil to tell him to keep his trap shut; together the three of you would stonewall the Government. He also said that if Toil needed independent legal assistance, he could count on you and him to provide competent help at a reduced rate. Lambert said he would accept a $15,000 non-refundable retainer in unmarked bills in a brown paper grocery sack. He said that although he mostly handled family law matters for the Billabong firm, he'd ask one of his friends from another firm to help with the criminal and corporate matters.

At the end of the meeting with Lambert, he told you that he had one other matter to discuss with you. He said that he was representing a husband, Charles, in a divorce action. He said that Charles had filed a claim for joint custody. Lambert explained that prevailing legal standards base custody decisions on the best interest of the child and give preference to the "friendly parent" – that is, the parent who has demonstrated the most willingness to share custody or grant extensive visitation rights. The wife, Celia, told her lawyer that she wouldn't agree to joint custody but that she might make other concessions to spare herself and the children an acrimonious battle. Lambert told you that he had anticipated such a response; he had subsequently told Charles to contact Celia directly offering to withdraw the custody claim if Celia would relinquish claims to spousal support and to certain jointly owned property. Lambert said that he knew that Charles did not in fact want joint custody, and he knows that such an arrangement would not be in the best interests of the children.

Fully discuss all the issues you can in the time allotted; remember to follow the approach suggested in the instructions on page one of the Essay section. You will also receive credit for discussing approaches you might take in dealing with your clients in this fact pattern.

QUESTION FIVE

Alicia is a licensed lawyer in the Commonwealth of Massachusetts. Massachusetts requires applicants to the state bar to furnish the admission authorities with recommendations from currently licensed lawyers. Alicia has recently been contacted by her former college roommate, Sarah, and has been asked if she will provide a recommendation for Sarah's son, Mark, who is applying to the state bar. Alicia has never met Mark and knows nothing about him other than what his mother has told her. Alicia would like an ethics opinion from you on what she should do.

Alicia is also planning to defend Charlene against criminal charges. Charlene is suffering financial difficulties in addition to her criminal problems, and Alicia considers agreeing to do the work pro bono. Later in the week, however, her brother calls and offers to pay your fee. Alicia wants to know how she should proceed.

Alicia also represents a man in a slip and fall incident that occurred in a local bar. One evening, Alicia goes to the bar and sits with a few of the regulars, the waitresses, and the bartender. They talk for a while, and Alicia asks them questions, such as whether the waitresses often spill beer and make the floor slippery. Alicia does not identify herself as an attorney, but she does not affirmatively lie and give another reason for her curiosity. Alicia wants to know if she might have gotten herself into some kind of trouble with the BBO (Board of Bar Overseers).

One week Alicia faces an emergency situation. A family problem has come up, and she is required to leave town quickly. However, she has a motion argument in two days, and she is not even halfway through preparation for it. Without thinking she grabs the phone and calls the judge at home. She explains her emergency situation and tells the judge that the motion is critically important to her case. He agrees to push the hearing date back by a week. Alicia would like to know if she has gotten into some kind of trouble with the BBO.

Alicia, after deciding to leave her not-so-lucrative solo practice, goes to work for a small firm in her hometown of Brockton. She was recently assigned a secretary. Soon, Alicia became involved in a contentious case with an older, experienced attorney who succeeds in intimidating her every chance he gets. One day the older attorney phones and begins yelling that his request for production of documents did not yield what he had been looking for. Terrified, Alicia quickly handed the phone to her secretary, instructing her to tell the older attorney that no such documents exist. Actually, Alicia had found the documents past the deadline and was too afraid to turn them over late. Alicia feels bad for putting her secretary on the spot. Despite Alicia's fragile emotional state, would the BBO have any interest in investigating these events?

Alicia represented Carl in a medical malpractice action against Doctor Sweeney. After a flurry of pretrial discovery, Alicia and Carl concluded that there was little or no chance of proving Sweeney's liability. They therefore agreed to let the case lie dormant for a time to see if Sweeney's insurance carrier might offer a modest sum in settlement. Through a clerical error, Alicia had failed to ask for the smoking gun document which would have established liability. Alicia had arguably failed to fully investigate Carl's claims before filing suit. Ultimately, Sweeney moved for summary judgment, won the motion, and had the case dismissed. Doctor then sued Alicia for malpractice, claiming that Alicia had brought a baseless lawsuit against him, thereby injuring his reputation in the community and among members of the medical profession. Alicia wants to know if anything she did or didn't do might spark the BBO's interest, and she also wants to know her chances of successfully defending the malpractice action.

Alicia is also representing an accused drug dealer, Demitrius. She has been over her Demetrius's story many times and doesn't think that it rings true. There are no glaring inconsistencies and her investigation has not revealed any directly contrary evidence; she simply thinks that her past experiences with clients makes her able to read them well enough to suspect when a client is lying. Alicia still has no evidence to the contrary, however, and decides that her Demitrius's best strategy is to testify. Alicia puts Demitrius on the stand. Will the BBO come calling on Alicia?

Alicia defended Fred in a criminal assault charge arising out of an altercation between her client and another man. The jury acquitted Fred despite the other man's grave injuries because they apparently believed (on the strength of Fred's testimony) that Fred was a relatively innocent bystander who was unwillingly pulled into the fight. Several days after the verdict, however, Alicia overheard Fred laughingly describe how he had lured the victim into the fight. Alicia has come to you to find out if he must reveal Fred's perjury.

MASSACHUSETTS SCHOOL OF LAW
ETHICS 2002 - - FINAL EXAM
Professor Olson
May 21, 2002

You **must** write your social security number on the line provided below. You **must** also circle your class section. If you do not do so, I **will** deduct points.

Student S.S.#_____

Class Section (**circle one**): 4:30 p.m.
7:30 p.m.

You **must** also write your social security number and your class section on the front cover of your blue book(s). If you do not do so, I **will** deduct points.

SHORT ANSWER QUESTION. (ALL STUDENTS MUST ANSWER THIS QUESTION.)

Bill walks into a movie theatre in Lawrence, Massachusetts which is showing the new Hollywood feature entitled *Law Students Who Whine and Complain* (Subtitled: *It's Not About Me*). He notices his lawyer, Vagira, sitting in the back row. Although Vagira is prattling on endlessly with her friend and fellow professional Querelus, she suspends her conversation (to the great relief of her fellow moviegoers who paid to see and hear the show) to look up to see Bill gazing at her somewhat wistfully.

Scrutinizing Bill with the trained eye of a lawyer, Vagira intones, "Why Bill, it's been so long since I've seen you. How's it been going?"

Bill then positions himself very close to Vagira, leans down close to her ear, and whispers so softly as to be almost imperceptible to those around them, "When the show is over, I plan to find Joe and stab him in the eye with a sharpened pencil. When I'm finished, I'm going to tell his venture capital group he doesn't balance his checkbook, he buys gas from Shell, not Haffner's, and he gambles on hamster races."

Bill then walks away in a huff, takes a seat in the front row of the theatre, and starts munching popcorn, Goobers and Twizzlers at a frenetic pace. Vagira, not sure whether Bill was serious, nervously tells Querelus what Bill had told her.

Discuss any evidentiary issues or ethical duties raised by this exchange. Use the IRAAC method to compose your answer (Issue, Rule, Application, Application [Policy] and Conclusion). You can refer to the players in shorthand form: "V," "Q," and Bill. Remember to consider any local exceptions to the Model Rules in your answer.

ESSAY QUESTIONS
(ALL STUDENTS MUST ANSWER TWO OF FIVE.)

1. John Wilson has recently moved into Massachusetts and has been admitted to practice. Prior to moving here, Wilson was a plaintiff's personal injury attorney for 15 years in California. Wilson has opened his own office and has run the following advertisement in the yellow pages:

John R. Wilson
Attorney at Law
1438 Washington St.
Harbortown, Massachusetts
781-555-1212
15 years specializing in personal injury practice

Wilson also plans to have the advertisement printed and distributed by teenagers at shopping centers.

A few days ago, Wilson learned about a train derailment in which a number of passengers were injured. Wilson was able to obtain the names of several of the victims through public records. He has written each of the victims a letter. The letter is very brief and simply informs the victims that Wilson is available to handle their cases if they wish to call for an appointment. The envelope containing the letter states: "Important legal information. Please open immediately."

Unsure whether the letters will have the desired effect, Wilson also directed a number of the teenagers on his payroll to call the victims at their hospital rooms or at home to try to schedule interviews with them.

Wilson also represents the plaintiff in a products liability action against the Doven Corporation. Doven is represented by Alice Munson. Mary Haskell is the chief engineer in charge of product design for Doven, and Russ Finegold works in the Human Resources Dept. for the company. After filing suit, Wilson calls Haskell and asks for an appointment to discuss Doven's procedures for product design. Wilson also calls Finegold to schedule an appointment. Haskell refuses to meet with Wilson because Munson has instructed her not to give any information about the case to Wilson. Finegold never spoke with Munson about the case; he schedules an

appointment with Wilson after Wilson tells him he would like to discuss placement opportunities for lawyers in Doven Corp.

Wilson has filed various discovery requests including a request for all documents relating to the design of the product. In reviewing documents to prepare a response to this discovery request, an associate in Munson's firm, Marcy Williams, discovers a report by a product engineer that questions the safety of the product. Williams informs Munson of this document and asks whether it needs to be produced. Munson directs Williams not to produce the document. Munson tells Williams in her opinion the document does not "relate" to the design of the product because the product was redesigned based on the concerns of Haskell and others. **Discuss the issues of professional responsibility (and potential malpractice claims or evidentiary issues), using the IRAAC method.**

2. Al Meyers asks Marcie Jansen, a young attorney, to handle a complex tax claim. Jansen, who has been practicing for three years as a public defender, has just opened her own office. She has never handled any tax matters and only took the basic tax course in law school. However, she was very anxious to keep this new client because Meyers had offered her a generous fee and her new practice had few paying clients at this time.

Jansen rented office space from Bill Withers, an experienced tax and business lawyer. The sign outside their building reads as follows:

Bill Withers, Esq. & Associates

Marcie Jansen, Esq.

Counselors at Law

During lunch with Withers, Jansen discussed Meyers's problem in detail and asked Withers's advice. Subsequently, Jansen spent a few hours researching the tax code, but she still did not feel comfortable with some of the more complicated provisions. She concluded that she could not handle the matter alone, and she asked Withers if he would associate with her for a fair portion of the fee. Withers accepted, and without Meyers's knowledge, advised Jansen throughout the representation. Meyers's claim was eventually denied by the IRS.

In another matter, Withers was asked by Ron Brown, an important client, to represent him in a criminal fraud matter arising out of Brown's business activities. Withers initially declined to take the case because he had never handled a criminal matter before and had no desire to learn how to do so. Brown insisted that Withers represent him, and he threatened to withdraw his business from Withers's firm if Withers refused.

Withers reluctantly agreed to handle Brown's criminal case but only after Brown agreed to sign a retainer agreement which provided that Brown would not sue

Withers for malpractice arising from the representation. Withers then diligently sought to inform himself so that he could handle the matter.

As it later developed, important evidence used by the prosecutor had been illegally seized. Furthermore, Brown brought some incriminating documents to Withers's office for safekeeping. Despite Withers's due diligence in preparing the case, his inexperience proved costly for Brown. Withers did not investigate the circumstances surrounding the seizure and subsequently failed to move to have the illegally seized evidence suppressed. The authorities also issued a subpoena for the documents held by Withers, and Withers refused to turn them over. Brown was eventually convicted. **Discuss the issues of professional responsibility (and potential ineffective assistance claims/evidentiary issues), using the IRAAC method.**

3. International Equity, Inc., a publicly held company listed on the New York Stock Exchange, is about to borrow a large sum of money from a bank. The company, to induce the bank to lend the money, has given the bank glowing reports about its prospects.

The strength of the company has been based on its reputation for vigorous research, which thus far has resulted in a series of patents for energy saving devices. The new product, production of which will be financed by the loan, will be another patented device. All the reports that the company has shown the bank suggest glowing prospects for performance of the device. The company's auditors have issued a report showing International Equity to be in outstanding financial health. The current draft of your firm's opinion letter indicates new knowledge of material facts inconsistent with that optimism.

You had lunch today with your good friend, the head of research and development section of International Equity. "A great company is in real trouble," he told you. "When our former president retired, a sense of integrity retired as well." Your friend and his scientist colleagues (all of whom would like you and your firm to represent them in any civil or criminal actions which might arise from these facts) have great concern that the new product described in the documents given the bank has not been sufficiently tested and that its reliability and performance have been overrated.

In addition, your friend told you that the production facility for the new product was recently purchased from a shell corporation owned by the company's new president. He said the price paid by the company was outrageously high. The auditors did not catch the problem, and thus their audit did not footnote the fact that the purchase was from a corporate officer. As a result, the balance sheet of the corporation looks significantly better than it would if the facility were carried at its true value.

Your friend has also told you that he is dying of cancer. He has not yet told most of his friends and would like the information kept confidential. Throughout his tenure with the company, his reputation as a creative engineer has been such that investors pay a premium for the company's stock.

As if this is not enough to give you indigestion, you also regularly represent Ocean Receipts, Inc., the defendant in a case charging price fixing, a criminal violation of the federal antitrust laws. Steve Jocelyn, manager of the sprocket division at Ocean Receipts, is accused of conspiring with Lucy Mills, his counterpart at Sproktech, Inc., a major competitor. In your first interview with Jocelyn, Jocelyn told you he was unrepresented and asked you to represent him. Jocelyn told you that Ms. Mills also needed a lawyer and thought it would be best if you represented her as well. Sproktech, Inc. has in-house counsel and you have already been meeting with him to share information and develop a joint defense.

You confirmed Mills's interest in retaining you, and you have now entered an appearance on behalf of Ocean Receipts, Jocelyn and Mills. The U.S. Attorney, Martin Aboud, is interested in demonstrating his commitment to consumers because he plans to run for Governor next year. Thus, he is determined to obtain convictions, although he doesn't care who takes the fall. He contacts the press, identifies the defendants, and says that he knows Ocean Receipts has been engaged in some shady practices. He also said he didn't know what individuals might be guilty of wrongdoing, but he knows Jocelyn can't be trusted and Mills has been described by her husband as a conniving philanderer.

Aboud proposes to you that you get Jocelyn and Mills to plead guilty to charges for which he will recommend no jail time. In exchange, he will drop the felony charge against Ocean Receipts. Because this will reduce the chance of subsequent treble damage actions against the corporation, you find the proposal attractive. You recommend that Jocelyn and Mills accept it, accurately telling them that if they were found guilty after a trial, their sentences could be more severe. **Discuss the issues of professional responsibility (and evidentiary issues), using the IRAAC method.**

4. You are a member of a prestigious, 100-person downtown Boston firm (B & S, P.C.) with a national clientele. Your firm's long-time client, Joe Ferguson, recently came to your office to tell you that he expects to be sued by the person who bought his house. He had told the buyer that the house had a dry basement. Although the basement had never flooded in the five years he had lived there, Ferguson had been told by a prior owner that the basement regularly flooded after a heavy rain. There was such a rain this year, and the buyer's furniture suffered major damage.

Shortly before his death, you were able to interview the prior owner of the house, who told you what he had told Ferguson about the tendency to flood. You have notes of that interview in which you comment on the former owner's likely credibility at trial. In addition, while at a party at a friend's home, Ferguson's banker let slip that Ferguson is in bad financial condition. You mentally filed that away as important to your settlement posture in case Ferguson is sued.

The buyer has now filed suit against Ferguson. The buyer has subpoenaed you to give a discovery deposition in the case. You expect to be asked what Ferguson told you about whether his house tended to flood. You have also been asked to produce

your notes of the statement of the prior owner. Someone else has asked you informally if the rumors that Ferguson has suffered financial reverses are true.

In another venue, your firm has a wide reputation for your success in handling medical malpractice cases for plaintiffs. Your firm is in great demand and is rightfully feared by defendant doctors.

Recently, Sandy Crane came to you with a claim against Dr. Cary Sharon. You investigated the facts, found they seemed sound, and proceeded to go to work on the matter. Until you had worked on the matter for about 90 days, you had not recalled that about five years earlier, you had represented Dr. Sharon in the routine adoption of his wife's children.

You might have forgotten Dr. Sharon, but he had not forgotten you. "How could you of all people – my own lawyer – sue me?" More to the point, he had his malpractice defense counsel move to disqualify you from handling Crane's claim.

Lastly, your firm represents Willy Wonka Container Corp. in many matters, one of which is a suit by National Widget against Wonka Container for contribution in a products liability case. The case is to be tried in New Orleans, and B & S is cooperating with Jeeves & Ransom (J & R), the law firm that Wonka uses as local counsel in New Orleans.

Jeeves of J & R is the only lawyer actively working on the case. His only role is to file papers, motions, and other pleadings forwarded to him by you. National Widget has now moved to disqualify both B & S and J & R from acting as Wonka's lawyers because Jeeves (while he had been in solo practice before forming J & R) had represented National Widget in various product liability matters arising out of the same facts that led to the present suit. Jeeves learned confidential information that, if disclosed, would be useful to Wonka's defense of the present suit. B & S has never represented National Widget. **Discuss the issues of professional responsibility and malpractice using the IRAAC method.**

5. Tom Arnold is the son-in-law of Harry Speight. Tom rented an apartment in one of Harry's apartment complexes. Harry has a liability insurance policy with the All-Mutual Company covering all accidents in the apartment complex up to $100,000. One cold evening in January 1999, Tom injured himself when he slipped on some ice just outside the main entrance. Harry saw the accident and rushed to help Tom, but Tom said he would "be all right." Thus, Harry did not report the accident to All-Mutual. Unknown to Harry, Tom took several weeks off from work claiming back injuries. In June 1999, Tom sued Harry, his father-in-law, for $175,000 for his alleged pain and suffering and expenses in connection with the resulting back injury.

All-Mutual's liability insurance policy has several standard clauses. First, a "Notice of Accident" clause requires the insured to notify the carrier promptly of any accident for which it will expect coverage; failure to so notify is said to be a waiver of coverage. Second, the policy requires All-Mutual to provide for and to pay for a

lawyer to defend the insured from any claim arising under the policy and to pay any claim within the monetary limits of the policy. Third, the policy requires the insured to cooperate with All-Mutual in defending against any claims.

After Tom filed suit, Harry notified All-Mutual, and All-Mutual retained Sally Lund to investigate and prepare the defense. All-Mutual also wrote Harry that it "was not waiving any defenses under this policy." Lund interviewed Harry and Tom but was unable to find any other witnesses who had a clear recollection of the accident. Both Harry's and Tom's versions of the events were almost identical and were very favorable to Tom. Lund, on the other hand, has wondered how Tom could be so careful and suffer such severe injuries, and yet have an immediate reaction that he would "be all right." Moreover, because Harry and his son-in-law seem to be on good terms, she has wondered why Tom neither told Harry of the alleged "serious complications" nor, at least prior to filing, that Tom was going to bring a lawsuit.

Ms. Lund also has concerns about Tom's lawyer, Sy Shyster. Lund has known Shyster for a number of years and has always had reservations about his unethical conduct. She suspects Sy may be colluding with Tom to defraud All-Mutual. For his part, Sy took the case after it was assigned to him as part of the court's lawyer for the day program. He was really too busy to take the case, but he felt he couldn't decline. While he hasn't done much investigation, he never really considers that to be a necessary part of a lawyer's job. He went ahead and filed suit at Tom's behest.

Tom has offered to settle for $50,000, and Harry has told Lund that he would prefer All-Mutual's agreeing to that amount rather than going to trial and placing Harry at risk for the $75,000 in excess of policy coverage.

Lund believes that Harry's failure to notify All-Mutual about the accident at the time it happened has so hampered factual development of the case that All-Mutual should deny coverage under its prompt notice clause. She has not told either All-Mutual or Harry of her opinion. After several vain attempts to reach Shyster on the phone, she stopped trying and called Tom directly. She told Tom she'd recommend that All-Mutual pay $25,000 to dispose of the matter.

Lund also believes that Harry is not cooperating, although she also has not said this to All-Mutual or Harry either. During one interview, Harry told Lund: "Just between you and me, my son-in-law and I remain the best of friends, but I wouldn't want All-Mutual to know that." **Discuss the issues of professional responsibility and civil procedure, using the IRAAC method.**

MASSACHUSETTS SCHOOL OF LAW

ETHICS 2000 - - FINAL EXAM

Professor Olson

May 23, 2000

Student S.S.#_____

Please also write your social security number on the front cover of your blue book(s).

ESSAY PORTION

All students **must** answer two essays: all students **must** answer three of five of the questions (a-e) dealing with the ethical problems confronting the New Hampshire Supreme Court, and all students **must** answer one essay from the collection of six optional essays. You may write on both sides of the pages in your blue books, but please strive to write legibly. I can't give you credit for material I can't read.

REQUIRED ESSAY

(one hour maximum)

Over the last six months to a year, one of the nation's smallest states has witnessed an extraordinary passion play involving what some would label arrogance on the part of certain state supreme court justices, questionable enforcement actions on the part of the executive branch and a power struggle among the three branches of government. This whole affair, sparked by the ethical lapses of one state supreme court justice, Stephen Thayer, has led some to question the integrity of some members of the New Hampshire Supreme Court. In recent years many had considered New Hampshire's Supreme Court to be a progressive court, dispensing justice in an even-handed manner to all litigants who appeared before it. Because of the recent developments, some citizens of New Hampshire feel that their suspicions about the conduct of certain members of the state's highest court have been confirmed.

(a) Stand in the shoes of **any two** of the following individuals in this passion play:

Attorney General Philip McGlaughlin
Chief Justice David Brock
Justice Stephen Thayer
Justice John Broderick

What ethical/moral considerations do you think entered into their thinking in taking the actions (or failing to take actions) which they took? Be sure to discuss the competing ethical/moral considerations which informed their ultimate decisions to act or to fail to act as they did.

Was their behavior beyond reproach? Why or why not? Be sure to discuss how you think they justified the decisions in their own minds.

(b) The New Hampshire Constitution contains a number of articles dealing with issues relating to the judiciary. These include the following:

> **Article 35**: It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their office so long as they behave well. . .
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> **Article 8**: All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

Assume for a moment that you are a disappointed litigant - - six months ago you lost the appeal of your divorce decree before the New Hampshire Supreme Court - - and you are now considering your options. What ethical and/or moral arguments would you raise in an effort to have the judgment in your case overturned? What ethical and/or moral arguments would you anticipate that the opposition would make in the same case? Refer to Articles 35 and 8 in answering these questions.

(c) Attorney Zibel, Clerk of the New Hampshire Supreme Court, essentially blew the whistle on the activities of Justice Stephen Thayer and some of his brethren. In the memorandum he wrote on February 11, 2000, Zibel quoted language from the New Hampshire Revised Statutes Annotated, as follows:

> A person is guilty of a class B felony if he: . . . (b) Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument, or other communication with the purpose of influencing that discretion on the basis of considerations other than those authorized by law; or (c) Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of subparagraph (a) or (b) hereof.

In making his decision on whether to reveal what he knew, Zibel was obviously torn by

several different ethical considerations.

1. Briefly discuss what those different considerations might be.

2. Briefly describe the different actions taken by Justices Thayer and Broderick and Chief Justice Brock; what, if any, actions do you think would rise to the level of class B felonies as defined in the statute above? Give reasons for your answers based on the statutory language.

3. Do you think the "plea bargain" taken by Justice Thayer was just? Should Justice Thayer "do time" or possibly be disbarred for his indiscretions, or is it enough that he was forced to resign?

(d) Attorney Zibel also quoted Thomas Jefferson in his memorandum, writing, "man can not be trusted with the government of himself." When it comes to the New Hampshire Supreme Court, do you agree or disagree with Jefferson's statement (fully explain what makes you agree or disagree)? In a small state where the members of the practicing bar and the judges and justices generally know each other well, how would you solve the problem of the public's perception that the Court can not govern itself?

(e) Have developments in the last two months made citizens of New Hampshire more or less confident that questions about the Supreme Court will soon be behind them? Explain what has happened over the last two months, and indicate whether you think these developments bode well or ill for the Court's future.

OPTIONAL ESSAYS
(one hour maximum)

1. Georgia Palmer was employed as an assistant general counsel of the National Insurance Company until she was discharged last year. Palmer claims that her discharge resulted from her refusal to give in to sexual advances made by her immediate supervisor, Alan Sindel. Sindel claims that Palmer was let go because she failed to help the company in establishing a division which currently offers life insurance coverage and pre-paid legal insurance in one attractive package. Palmer has brought an employment discrimination and wrongful discharge action against Sindel and National. Dena Landers represents Palmer. Henry McAlpine represents Sindel and National.

McAlpine took Palmer's deposition during discovery. At the deposition, McAlpine asked a variety of questions about Palmer's sex life, including whether she had ever had an affair with a married man or woman. Palmer answered "no" to this question. A few days after the deposition, Palmer called Landers and told her that she needed

to tell her something about the deposition. She said that when she was in graduate school, she had had an affair with the professor who supervised her master's thesis. When she broke off the affair, the professor insisted on continuing the affair. She finally contacted the dean and was assigned another professor as her advisor. She says that she didn't mention the matter during the deposition because she never brought formal charges, because it was embarrassing, and because she didn't want to harm the professor, who is married.

During a conversation between McAlpine and Sindel, Sindel admitted that other he has approached other present and former employees about sexual favors. Some have accepted and others have rejected his advances. Sindel doesn't know whether this information will have a harmful affect on McAlpine's representation of National, but he wants to make sure that he will be protected.

After discovery was completed in the case, the parties engaged in substantial settlement negotiations. Defendants mad a case settlement offer that Landers considered to be very favorable. Palmer, however, found the offer unacceptable. Palmer insisted that she would not accept a settlement offer that did not include reinstatement in her job and that did not provide for Sindel's discharge. Landers told Palmer that National was unlikely to offer Palmer her job back. She said that Palmer might be able to obtain reinstatement to her job if she was successful at trial, but that she would not be able to obtain relief that involved Sindel's discharge. Palmer, however, insisted on pursuing these issues. The case has been scheduled for trial, but Landers has just learned that the judge who has been assigned the case was a member of the law firm that represented National Insurance until the judge was appointed to the bench 18 months ago.

Discuss the issues of professional responsibility; make sure to discuss both the pros and cons of the various parties' positions.

2. Ellen Grady of the firm of Genuflect, Mumchantz, & Regurge is outside counsel representing Swindel Automotive Associates. Swindel owns and manages more than 50 automobile dealerships in several states. Swindel's treasurer, Marcus Aurus, came to Grady and told her that he had learned that Dick Swindel, the company's CEO and a major shareholder, had been paying bribes to officials of several automobile manufacturers to obtain favorable treatment in distribution of vehicles. Aurus asked Grady's advice. Grady told Aurus that he must not become involved in any bribery and must not engage in any misreporting of Swindel's finances.

Swindel's bribery has now been exposed, and the automobile manufacturers have brought suit against Swindel Automotive and Swindel personally. Martha Peterson is class counsel for the manufacturers. After filing suit, Peterson calls Aurus and asks for an appointment to discuss Swindel Associates' procedures for obtaining exclusive

dealerships. Aurus refuses to meet with Peterson because Grady has instructed him not to give any information about the case to Peterson or anyone else.

Peterson has filed various discovery requests including a request for production of all documents relating to the dealerships. In reviewing documents to prepare a response to the discovery request, an associate in Grady's firm, Brenda Norton, discovers a memorandum by an outside accountant that questions some of the procedures followed by Swindel Automotive in attempting to obtain dealerships. Norton informs Grady of this document and asks whether it needs to be produced. Grady directs Norton not to produce the document. Grady tells Norton that in her opinion the document does not "relate" to the dealership issue because it was prepared by an outside accountant who was hired to do an independent audit for IRS purposes.

Swindel has now retained his own attorney. The manufacturers have taken Aurus's deposition and learned that he had informed Grady that Aurus knew of Swindel's bribery. The manufacturers have informed Grady that they are considering adding her as a party to the case, claiming that she should have disclosed to the manufacturers her knowledge of Swindel's fraud.

Discuss the issues of professional responsibility with respect to all the parties and counsel.

3. Marilyn Anderson came to you for legal help. "They have taken away my children," she told you bitterly. "I have a right to them, don't I? I am a good mother, but the welfare department has put my babies in a foster home."

You were moved by Mrs. Anderson's sincerity and agreed to take the case. In the course of your subsequent investigation, however, you discovered that Mrs. Anderson had not told you all the facts. The children, Mary, age 7, and Billy, age 3, were removed from the home based on a finding of both abuse and neglect. Social workers at Mary's school became suspicious when the little girl appeared bruised and malnourished after several days' absence. The social worker's questioning of Mary revealed that Mrs. Anderson sometimes hit the children and sent them to bed hungry. Mrs. Anderson also often left them at home for hours at a time leaving no adult to care for them.

But that was only the beginning of the story. Mrs. Anderson herself told you that her husband, John, has frequent violent episodes during which Mrs. Anderson sometimes leaves the house and the children because she literally fears for her life. John has a job, but he is paid in cash and the family cannot rely on how much will be left in the pay envelope after he gets home. Mrs. Anderson had been employed as a hospital aide before Mary was born, but she has enjoyed staying home with the children.

A particular irritant in the Andersons' relationship has been the situation of Mrs. Anderson's mother. She is alert and lives in her own house, but she is lonely. Marilyn wants to invite her to come live with the family, but whenever she suggests it, John flies into a violent rage.

You wonder whether or not Marilyn Anderson should win the upcoming custody hearing. Although you sympathize with her situation, you hesitate to use all the skill and resources at your command to overwhelm the overworked counsel for the Department of Children and Family Services. If you do restore custody to Mrs. Anderson, you worry about the children's future.

(a) How should you see your role on behalf of Marilyn Anderson in this case?

(b) What can you as a lawyer do to help Mrs. Anderson? How about as a person?

(c) Are there limits on the advice a lawyer may give? Should a lawyer be permitted to give advice to a client knowing that the client will use the advice to commit a crime or fraud or to try to avoid punishment for doing so?

(d) What creative solutions can you come up with to deal with Marilyn Anderson's family situation?

(e) Should the lawyer's bottom line simply be that the lawyer will do what the client directs, regardless of the wisdom of the action?

(f) Now, focusing directly on the custody matter, if Marilyn Anderson has rejected your advice and you have concluded that she should lose the custody hearing for the good of the children, what may and what should you do?

4. Martha Heath has a wide reputation for her success handling medical malpractice cases for plaintiffs. She is in great demand and is rightfully feared by doctor defendants.

Recently, Linda Parker came to Heath with a claim against Dr. Charles Abraham. Heath investigated the facts, found they seemed sound, and proceeded to go to work on the matter. Until she had worked on the matter for about 90 days, Heath had not recalled that about five years earlier, she had represented Dr. Abraham in the routine adoption of his wife's children.

Heath might have forgotten Dr. Abraham, but he had not forgotten her. When he learned through the grapevine that Heath was considering filing a complaint, he called her and screamed, "How could you of all people - - my own lawyer - - consider suing me?"

Feeling a trifle conflicted and overworked, Heath instructed an associate to file the complaint with the court. However, she did not instruct the associate about the necessity of obtaining and serving the defendant with a summons to properly effect service.

Abraham's lawyer has now told his malpractice defense counsel to move to dismiss the complaint based on failure to effect service; furthermore, he has had his new counsel move to disqualify Heath from handling Parker's claim.

Discuss the issues as they relate to the various parties. Remember to consider the different potential bases for dealing with attorney misconduct in your discussion.

5. You are the lawyer in a private firm. Morris Cannell, an elderly man whom you had never met before, came to you complaining about the handling of his investment account by a local broker. Cannell told you that the broker invested over $200,000 of Cannell's pension money in speculative stocks and the account's value has now been reduced to less than $20,000. Cannell claimed that the broker engaged in a great deal of buying and selling of stocks, with the result that the broker made a lot in commissions while the client sold when the stocks were low and purchased when they were high. Cannell told you in no uncertain terms, "I want you to throw the book at my broker. He showed me no mercy and I don't want you to show him any."

Subsequent to this conversation, you have learned that the broker, Snidely Woebegone, is both a licensed dealer-broker and a licensed attorney. You have also learned that his firm engages in a wide range of services; the firm employs accountants, investigators, broker-dealers, an annuity sales force and a number of other attorneys.

Before deciding whether to take the case, you spent 22 hours researching the problem; you had no previous experience dealing with the sometimes arcane world of securities. During your research, you developed several theories including: the broker engaged in illegal churning (excessive buying and selling), and that he violated federal rules relating to an investor's suitability (what stocks are suitable to meet a given investor's objectives, here safety and income). With respect to both theories, you planned to focus on Cannell's lack of sophistication and thus his reliance on Woebegone.

When you told Cannell the results of your analysis, however, he was angry and

wanted you to more. "He must have a license," Cannell said. "Do everything you can to get him suspended. See what you can do to tie up his bank accounts, and see what you can do about bringing in his firm - - they must be doing something wrong. The statute of limitations was about to run on all state and federal claims, and you told Cannell you would only represent him if you would be required to raise no more than the churning and suitability issues. You refused to seek to suspend him or to seek to harass him financially. You informed Cannell that you lacked the resources to take Woebegone's entire firm. Cannell reluctantly agreed and signed your retainer agreement.

You entered an appearance as Cannell's attorney and filed suit on his behalf. Now, however, after several months, you have grown tired of dealing with Cannell and want to withdraw from the case.

(a) How is the lawyer-client relationship formed? Was there a magic moment when Cannell became your client?

(b) Were you within your rights in refusing to take the case unless Cannell agreed to limit the issues you would raise in representation?

(c) In the course of the representation, what issues are for the client and what issues are reserved to the attorney?

(d) May the lawyer withdraw when the client becomes a pain in the neck; or, if not, what is required?

(e) What issues do you see raised with respect to Woebegone's firm? Discuss these in a global context.

6. Base most of your answers (you will need to include some material based on your own knowledge of the Model Rules of Professional Conduct) to this question on the material contained in the two videos from MSL's *Question of Law* television program (dealing with morals/ethics in the law and the attorney/client privilege).

Assume that a client, Bob Newton, has called you for advice on estate planning for a friend of the family. You have provided legal representation for Newton on a number of matters in the past, including establishing a corporation for him and pursuing a remedy for a wrongful discharge.

Newton comes to your office on a recent Monday morning and tells you the following: "My family's friend, Walter Mitchell, lost his wife after a long illness this past weekend. My family's friend would like to leave his entire estate to me when he passes - - including real property and other assets, it is probably worth more than

$500,000. Walter has relatives of his own, but they live in other parts of the country and he says they have never treated him very well. I would like you to draw up Walter's will, naming me as the sole beneficiary."

You tell Bob you don't think you should be drawing up Walter's will, but you suggest a friend of yours who does a lot of estate planning work and who also happens to live in the same part of the state as Walter. Your friend's name is Margo Atwater. Bob agrees that you can call Atwater to see if she would be willing to draw up Mitchell's will.

Atwater agrees, and she goes to meet with Mitchell on Wednesday. When Atwater calls you back, she tells you she has already received two telephone calls from Newton asking her about the conversation she had with Mitchell. She wants to know if Newton is always this inquisitive, and she tells you she doesn't feel comfortable sharing this information with Newton (So far, she has refused to reveal any part of what she and Mitchell discussed.) Meanwhile, Newton has also been calling you, instructing you to put pressure on Atwater to get Mitchell to sell his house, to file for bankruptcy, to get him declared incompetent to handle his own affairs and to quickly draft the will naming Newton as sole beneficiary.

Atwater also tells you that when she arrived at Mitchell's residence, she detected the strong odor of gas upon entering the house. She asked Mitchell about this, and he told her he had been thinking about suicide. He said he had turned on the gas for the oven, but he had intentionally not lit the pilot. He said he had been planning on sitting in the kitchen with all the windows and doors closed; he would then await the inevitable. When Atwater asked Mitchell why he had done this, he replied that he was depressed about the death of his wife and about the pressure Newton had been putting on him to sell his house, declare bankruptcy and quickly draft a will naming Newton as sole beneficiary.

After about a week passed, Atwater called you back to say that Newton had been besieging her office with telephone calls, wanting to know if she had been able to convince Mitchell to file for bankruptcy, if she had been able to convince him to sell his house, and pressuring her to complete the will drafting.

Discuss the following:

(a) How much information should you give to Atwater about your communications with Newton? Which should take precedence - - your own moral world view, or the constraints of the attorney/client privilege?

(b) How much information should Atwater share with you about her

conversations with Mitchell? Will the answer be the same under both Rule 1.6 of the ABA model rules and your own understanding of the attorney/client privilege? Should Atwater reveal any of Mitchell's confidences with Newton?

(c) Should Atwater attempt to communicate with Mitchell's relatives - - if so, how much information should she share with them?

(d) Based on your understanding of the moral/ethical issues surrounding this problem, how would you proceed? Should you honor Newton's requests to be continuously updated on Atwater's progress?

(e) Would your answer to question (d) change depending on your own moral sense as opposed to what you consider to be the correct ethical answer? Should the ethical rules place any limits on your pursuit of your client's goals (remember that Newton has been one of your best *paying* clients)?

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