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 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.

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, areducking 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 girlfriend 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 Meeldear 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 Meeldear 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 Meeldear 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, Demetrius. 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 Demetrius’s best strategy is to testify. Alicia puts Demetrius 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.