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

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 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 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 **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.
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 Chargogagogmanchaugagogchubunagungamog. 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. SJC.

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 this through conversation with Samantha’s husband, Harrison, a lawyer with the law firm that represents Hogan. 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.

While she was discussing representation with both Hogan and Nickel, Samantha got a call from John Worthington. After some investigation, Samantha learned 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 or False?” Then follow that answer with no 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 serious 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, “Damn 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 said, “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.)