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 Storr 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.