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

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

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

Student Social Security Number:

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

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

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

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

4. You should next explain what policy considerations might support the application of the rule in a particular way. On the other hand, what policy considerations might support the application of the rule in another way.
Next, you should conclude. Although this is the least important part of developing a high-scoring IRAAC answer, you should devote at least a couple of lines to predicting what you think the outcome is likely to be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Part B - Short Answer Questions (1 Hour)**

**Answer all ten, (40 points).**

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

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

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

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

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

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

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

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

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

9. The Bar Association of the State of Jefferson is a private organization of Jefferson lawyers, of which approximately 90% of all lawyers admitted in the state are members. The leadership of the
Association argues in various public forums that there are too many lawyers in the state for the amount of available business, and that there should be a sharp limit put on new admissions. At the annual meeting the general membership overwhelmingly approves a recommendation to the State Supreme Court to adopt a revised admissions rule specifying that only the top 40% of scores on the bar examination be admitted (the current pass rate is about 80%). The Court, with a newly appointed Chief Justice who is a past president of the Association, adopts the proposed rule by a vote of 3-2. Disappointed takers of the next bar exam sue the Association in an appropriate federal court for combining in restraint of trade in violation of the federal antitrust laws, alleging the above facts. The Association moves to dismiss for failure to state a claim, and the motion is denied. Did the court err?

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

That’s All Folks!!!

Have a fun summer!