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 a little longer.

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

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

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

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

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

Before Thompson pays this bill, Thompson receives a settlement offer from Spring's attorney (Barney Rothstein) in the amount of $8,000, which (after Sheehan’s fee) would give Thompson enough to cover his property damage and actual out-of-pocket medical costs (the
part Thompson's medical insurance wouldn't pay for) and a little left over for his trouble. Thompson transmits this offer to Sheehan, explaining that he would like to get more money before accepting. Sheehan calls and tells him that he should accept this offer because trying to get more probably won't be worth the trouble or expense. Thompson expresses deep disappointment in the offer, and tells Sheehan she is fired.

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

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

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

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

What issues are raised by this fact pattern?

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

Your office is located in a small house that has been converted to business uses. You have been renting the house for five years and your yearly lease has three months to run. The owner of the building has informed you that he will not renew the lease. In fact,
the owner will put the building on the market next week. A client, John Martin, with whom you have built a friendship, has offered to loan you money at a very favorable interest rate to purchase the building. Owning your own building has been your dream from the beginning and this location is perfect for your needs. The price is a good one, given the increasing rise in area prices generally.

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

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

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

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

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

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

(C) You have represented Robert on a number of occasions. He has come to rely on you not just as a lawyer but also as an advisor and counselor. Last week Robert came to see
you. It seems that Robert’s physician had diagnosed Robert as having an advanced stage of pancreatic cancer. Pancreatic cancer is incurable. The diagnosis was confirmed when Robert went to the Mayo Clinic.

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

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

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

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

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

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

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

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

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

Discuss all the legal issues this fact pattern raises.

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

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

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

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

Over a couple of Laiphroigs across the street at Brendan’s Bar & Grille, Ned conceded that the evidence against Tommy was relatively weak, and he wasn’t actually sure that Tommy had actually done anything at all. But Yolanda was pressing hard for him to pursue the case and Ned thought the evidence was enough to give him a reasonably good
shot at convincing a jury. Under the circumstances, it would be difficult to even consider dropping the charges, especially since the chief prosecutor (Ned’s boss) had recently adopted a hard line on domestic violence cases. Ned offered a fairly generous plea deal.

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

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

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

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

Prior to trial, Ned’s supervisor, distraught over the increase in domestic violence incidents in the city, called Ned into his office to tell him that he should contact the local court beat reporter. He said that Ned should tell the reporter that the DA’s office considered Tommy to be guilty as hell. He also told Ned to tell the reporter that DNA evidence would suggest that Tommy was the guilty party; he had allegedly cut himself on a rusty nail near Yolanda’s window, and the dried blood provided all the evidence they would need to convict him. He also told Ned that anyone with any other information about the crime should contact the authorities as soon as possible; a substantial reward for any information contributing to Tommy’s conviction would be offered. Ned’s supervisor told him that all these comments would comport with local ethical rules.
After the judge instructed the jury on the law, the jury returned a guilty verdict. The judge then sentenced Tommy to the mandatory minimum sentence. Though Fisher felt this was a miscarriage of justice, he decided not to appeal the jury’s verdict. Instead, he contacted a book publisher, received a substantial advance, and wrote Tommy a disengagement letter telling him that he regretted the outcome and his decision not to pursue an appeal. However, he was now moving to Los Angeles to pursue his writing career and to attempt to sign a movie contract/screenwriting deal.

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

What issues does this scenario present?

**Part B – Short Answers (1 Hour)**

**Answer all ten short answer questions**

**Each is worth 4 points.**

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

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

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

4. Steve Wilson is an attorney who is representing a corporate defendant in a securities fraud case that has been filed as a class action. The class has not yet been certified. Steve would like to contact people who may become members of the class to see what representations, if any, were made to these individuals about the securities in question. Under the Model Rules of Professional Conduct, may Steve contact these people without the consent of counsel for the plaintiffs?
5. Bonnie Rastnick is an attorney who represents the plaintiff in a bitter lawsuit over a failed joint venture. Connie's client loathes the opposing party and that party's lawyer. Connie's client has instructed Connie to litigate this case as vigorously as Connie knows how and to make it as unpleasant as possible (within rules of procedure) for the opposing party and the opposing lawyer. What are Connie's obligations under the Model Rules of Professional Conduct with respect to these instructions from the client?

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

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

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

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

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