

Legal Ethics  
Algon



**MASSACHUSETTS SCHOOL OF LAW at ANDOVER**  
**Professional Responsibility**  
Final Examination – Spring 2009  
General Instructions

1. This is a three hour examination. It consists of four parts, to each of which a suggested time is given which reflects its relative value for grading purposes:

- I ..... 60 Minutes
- II ..... 30 Minutes
- III ..... 30 Minutes
- IV ..... 90 Minutes

All students must answer the questions in part I, all students must choose to answer the questions in either part II or III, and all students must answer all the short answer questions in part IV.

2. Question IV consists of 10 short answer questions, each of which requires (i) an answer and (ii) a brief explanation, preferably in one bluebook page (one side) or less. The following is a sample answer to suggest form only:

"Yes. The CPR prohibits sharing of legal fees with a non-lawyer; Smith is not a lawyer and the payment made constitutes a share of legal fees."

With respect to all questions, unless the question clearly indicates otherwise, assume that the applicable law is identical to the Model Rules of Professional Conduct.

3. This is an open-book test. You may use any materials you have brought with you: This means books, rule books, notes, and anything else except for a lawyer, paralegal, legal assistant or someone who plays one of these on T.V.

4. There are 6 pages in this examination, including this cover sheet. Make sure you have the complete test.

I  
(60 Minutes)

Lawyer agrees to represent Client in pursuing a personal injury claim against Tortfeasor arising out of a collision between Tortfeasor's car and Client's bicycle. Based on Client's property damage and medical expenses past and future, Lawyer estimates that (i) there is reasonable grounds for recovery against Tortfeasor, and (ii) \$40,000 is an appropriate amount of damages to claim. Client signs Lawyer's standard contingent fee agreement, which provides for a fee of \$1,000 due immediately on signing the agreement, plus 50% of Client'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 Lawyer, fees for court reporters at depositions and court sessions, copying expenses, secretarial assistance, legal research database access fees, and other reasonable expenses incurred by Lawyer in the course of the representation."

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

One month later Lawyer 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 Client asks for an explanation of this bill, Lawyer says (truthfully) that he pays his 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 Client; and that Lawyer 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 him \$100.

Before Client pays this bill, Lawyer receives a settlement offer from Tortfeasor's attorney in the amount of \$8,000, which (after Lawyer's fee) would give Client enough to cover his property damage and actual out-of-pocket medical costs (the part Client's medical insurance wouldn't pay for) and a little left over for his trouble. He transmits this offer to Client with the recommendation that he accept it, explaining that they could get more after more preparation but that it wouldn't be worth the extra time and expense. Client expresses deep disappointment in the offer, and tells Lawyer he is fired.

Client gets another attorney, and on the latter's advice now demands from Lawyer: (1) return of all files and materials provided to him by Client, and (2) return of the \$1,000 advance fee. Lawyer, in turn, demands payment of the \$175 bill, which Client refuses.

Answer each of the following questions concerning the above fact situation independently of the other.

(A) Assume that Lawyer has done no work on the matter other than writing the letter (which took 15 minutes) and doing the 1 hour of research on WEXIS. Assume further that Lawyer's normal hourly fee rate is \$100. Is Lawyer entitled to retain any part of the \$1,000 advance fee? If so, how much? Explain.

(B) Does Lawyer's conduct raise other ethical issues not covered in your answer to (A)? Explain.

II  
(30 Minutes)

Lawyer represents Husband in a marriage dissolution action brought by Wife. The action is tried to a judge and results in a decree against Husband. At the dissolution trial, when asked by Wife's attorney whether he was receiving any rental income from jointly-owned property, Husband denied any such income. During a recess of the trial, after Husband's testimony was completed, Lawyer asked Husband whether he had received rental income from that property, and Husband said that he had. The decree becomes final and Lawyer performs no further services for Husband.

Husband now files for bankruptcy, and does not list any rentals in his statement of assets attached to his petition. Lawyer's fee has not yet been paid, and this obligation is listed in Husband's petition as a debt which would be discharged in the bankruptcy (that is, it is listed as one of Husband's debts, and under the bankruptcy law he would be entitled to full or partial relief from the duty to pay it). The petition states expressly that this and other listed debts are acknowledged by Husband to be due and owing to the named creditors. Lawyer is notified of the bankruptcy petition with a copy thereof, and he checks to verify that renters are living in the property.

Lawyer then files a complaint in the bankruptcy court charging Husband with making a false statement of assets, reciting the fact of Husband's having received rental income without disclosing it on the petition, and asking the court to deny Husband the right to discharge his debts. Assume that (i) under the bankruptcy law denial of discharge would be a proper sanction for filing a false statement, if properly proven; and (ii) the denial would not be specific to Lawyer's fee but would extend to all of Husband's debts.

Has Lawyer acted properly on the above facts? Explain. In your answer, discuss only issues of professional responsibility and **do not discuss any issues of bankruptcy law that might be raised by the above statement of facts.**

III  
(30 Minutes)

Attorney Arthur has represented Sebastian Stevens in a number of matters over many years, including writing his will and representing him in his divorce; none of these matters is still pending. Arthur also represented Sebastian's sister Stephanie in her divorce, which resulted in a decree of dissolution requiring her ex-husband to pay her child support and giving him limited visitation rights. Stephanie's children are still in grade school and the decree is still in force.

Sebastian now asks Arthur to write a will for their dying father, who is widowed, has only the two children and has only two assets: a farm and a town house. According to Sebastian he wants to leave the farm to Sebastian and the town house to Stephanie. Sebastian takes Arthur to the father's nursing home and Arthur determines that the father, though terminally ill and bed-ridden, is alert and clear-minded. As he told Sebastian he would, Arthur asks Sebastian to leave the room so he can talk with the father in private. The father tells Arthur that he wants to leave the farm to Sebastian because he knows that Sebastian loves the farm and won't sell it; he wants to leave the town house to Stephanie because it is a comfortable place for her to raise her children. He believes the two parcels to be worth about the same and takes comfort in that. Arthur tells the father he will draft up a document for him to look at.

On the way back from the nursing home, Arthur asks Sebastian what he thinks the farm is worth. Sebastian answers: "About half a million, I guess, as a development property. I plan to subdivide it, and of course I'll want you to handle all of that for me. And don't worry about Stephanie; that's a nice house, and it's easily worth \$75,000, just right for her."

How should Arthur now proceed? Explain.

IV  
(90 Minutes)

Short Answer Questions (see Instructions para. 2)

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 superior 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 Superior Court of Essex 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 Rihannon 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 no state statute exists which is inconsistent with this rule. Is the rule valid?
6. Lawyers should not be required to withdraw from representation of criminal defendants who commit perjury. On the one hand . . . on the other hand.
7. Using some cases you might be familiar with, discuss the circumstances under which the United States Supreme Court has found that representing conflicting interests will amount to ineffective assistance of counsel in the criminal defense context. Start by setting forth the test that the Court will apply to such conflicted representation.
8. 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. On the one hand . . . on the other hand.

9. 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. On the one hand . . . on the other hand.

10. Explain why Model Rule 4.2 is too restrictive on lawyers' ability to interview employees of represented entities outside of the formal discovery process, and then explain why the rule is properly restrictive of lawyers' ability to do so. Cite relevant case law if you have some . . . hint, hint.