LEGAL ETHICS
FINAL EXAM
SPRING, 2000
PROFESSOR RUDNICK

This is a 3 hour closed book exam. The exam is divided into five (5) questions. Each question is an essay, worth various amount of points. The amount of points is noted at the beginning of the question. Assume that you are in a jurisdiction in which the Model Rules apply, however, if the Massachusetts Rules differ from the model rules, you must discuss how the issue would be handled/resolved differently in Massachusetts. When you discuss issues, discuss both sides.

THIS IS A CLOSED BOOK EXAM-Do not start until told to do so. You may have nothing with you in this exam except writing implements. Please place all books, coats, jackets, pocketbooks, knapsacks, etc. at the front of the room. You may have access to them during the exam only with the proctor's permission. (you may keep valuables atop the desk in front of you if you choose)

YOU HAVE THREE HOURS FOR THIS EXAM.

IF YOU USE MORE THAN ONE BLUE BOOK, NUMBER THEM IN THE FOLLOWING MANNER: 1 of 2; 2 of 2. Use Social Security Number ONLY!!!

There is a page limit of two bluebooks total, single spaced for the entire exam. Because of this restriction, I advise you to outline your answers so that you do not needlessly waste space. Please write on only one side of the page and leave some margin on at least the left hand side. No credit will be given for illegible writing or for answers which violate these instructions, and/or exceed the page restrictions. Keep in mind the relative value of the questions when apportioning your time.

GOOD LUCK!!!
1. (30 points) Don Defense counsel represent Dave Druggie, who has been charged with trafficking in cocaine. The evidence is that Dave was a passenger in a vehicle driven by Tony Trafficker. They were stopped for speeding on the Turnpike and Tony consented to a search of the trunk. The cocaine was discovered in the spare tire well in the trunk, in with the jack and tire tools. Prior to trial, Tony pleaded guilty to possession with intent to distribute to avoid a long mandatory sentence. At trial, the prosecutor called the trooper who stopped the car to testify about Dave’s and Tony’s conduct during the stop. During closing argument, the prosecutor made the following statement: “Now, why would the driver consent to search? Maybe those boxes were put in the trunk by someone else and he didn’t know what was in them.” Don objects, but the trial judge overrules the objection claiming the statement was “fair comment on the evidence.”

Following the trial, Dave calls you from prison and asks you to review the file. You discover the following that concern you:

1) Dave’s fees were paid by a man named Ralph Ringleader and Dave was aware of the payment.
2) Don seemed concerned about Dave’s mental state. In fact, Don wrote a note in the file that he was so concerned that he wanted Dave examined for competence and a possible insanity plea. Dave positively refused claiming that he’d never go to a shrink.
3) Don failed to file a motion to suppress the drugs found in the trunk. Although you are not certain that the motion would have been successful, you believe that it would have had a chance, and the drugs were the only evidence against Dave.

You have a conversation with Don, who is irate that you are contemplating bringing an ineffective assistance of counsel claim. He threatens to testify that Dave told him it was his stuff.

Discuss the ethical issues raised by the fact pattern.

2. (20 points) Tommy Top, Barry Bottom and Mary Middling, along with several other attorneys leased office space together. Because of their financial stability, only Top and Bottom are named on the lease. The lawyers subdivided the space and each has an individual office with one large reception area. They share a library/conference room and other common areas for storage and copying. Each maintains his or her files in locked cabinets in his or her office, although the office manager, who is jointly paid by all lawyers, has keys to all the cabinets. Additionally, the lawyers jointly share expenses for rent, utilities and other expenses such as books, copier use and supplies. Each has his or her own phone number. Although they share two secretaries, each lawyer pays each secretary based upon the amount of work given to that secretary. The letterhead says Top and Bottom, Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the letterhead. Each maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts.

On March 26, Verna Victim consulted Tommy Top regarding a breach of contract suit.
The following day, Annie tells Susan what she observed at Susan’s home. Susan claimed that the kid doesn’t know what she’s talking about, she was in the cellar and the cleaning man was sick, that’s why the house looks like that. Annie is concerned because the situation at home certainly appears problematic at best.

What ethical issues does the fact pattern raise, and, if Annie asked your advice as to what she should do, what advice would you give her?

4. (20 points) Mike and Peter were associates in a large law firm that does primarily insurance defense work. Among the firm’s major clients is Shoverolet, a division of Major Motors, one of the largest car manufacturers in the world. After three years with the firm, Mike and Peter decided to go out on their own. They formed a firm and, within the first year, had been retained to represent a class action against SUV manufacturers, including Shoverolet. The owners claim the vehicles are unsafe because they are prone to tipping over at certain speeds. Mike and Peter felt quite capable of representing the class, even though the number of automobile cases on which they had worked at their previous firm were few, and while they were products cases, none of them related to SUVs.

Several of the members of the class sustained injuries when their Shevroleet SUV tipped over when turning corners at what most would say was a not so excessive rate of speed. One was severely injured, and, to make matters worse, was permanently disabled as a result of the negligence of certain members of the hospital staff. Mike and Peter referred that case to their friend, Tom Coggle, who specialized in medical malpractice cases.

Initially, Tom sued the hospital, several nurses and two doctors who were believed to be involved in the surgery which went awry. He was not certain about the role one physician, Dr. Strangelove played in the whole scenario. The medical records were not clear—much of the operative notes are illegible. Even the nurse who Tom uses as an expert to review files couldn’t decipher the scribbles. He obtained Strangelove’s name from the client’s wife, who was told by a nurse that Strangelove would have been on call that evening.

Connie Cheapskate, noted insurance defense lawyer, was retained to defend most of the defendants, including Strangelove. She filed an answer denying that Strangelove was involved in any way with the procedure. During the mandatory pre-trial conference Connie told Tom that Strangelove was simply not involved, and that his name was erroneously mentioned in the notes. Tom agreed to dismiss the case against Strangelove. Stupid Tom. Never listen to an insurance lawyer. Turns out Strangelove was called, but neglected to answer his page, as he was in a deep sleep in the doctor’s lounge.

Discuss the ethical issues raised by the fact pattern.

5. (10 points) Eddie Ethical, a member of the bar and a certified public accountant, is contemplating opening a “full service law firm.” That is, he desires to “loosely associate” with
some financial planners and accountants, to provide all these services to wealthy clients and corporations. He proposes to call the entity "Professional Services Group," which will appear on the letterhead, and include a list of all those individuals associated with the group, and their respective titles, CPA, CFA, Attorney-at-law, etc. All clients of the group will pay the Professional Services Group, which will maintain a client's fund account in accordance with the Rules Of Professional Responsibility. Fees will be disbursed to the group members based upon an hourly rate times the number of hours worked.

Is what Eddie plans a violation of the Rules? Explain why or why not.