LEGAL ETHICS
FINAL EXAM
SPRING, 2006
PROFESSOR RUDNICK

This is a 3-hour exam. The exam is divided into two (2) questions. Each question is worth a different amount of points. The value of the question is set forth at the beginning of the question. You might want to allocate your time in accordance with the weight of the question. Assume that you are in a jurisdiction in which the Model Rules apply; however, if the Massachusetts Rules differ significantly from the Model Rules, you must discuss how the issue would be handled/resolved differently in Massachusetts. When you discuss issues, discuss both sides.

YOU MAY CONSULT THE COPY OF THE MODEL RULES PROVIDED TO YOU BUT DO NOT WRITE ON OR MARK UP THESE RULES. WE WILL BE USING THEM AGAIN FOR OTHER STUDENTS. Please note that we are providing many rules, not all of which will be relevant. 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, one side of the page ONLY for the entire exam. Because of this restriction, I advise you to outline your answers before you begin writing so that you do not needlessly waste space. You may 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 that violate these instructions, and/or exceed the page restrictions. Keep in mind the relative value of the questions when apportioning your time.

GOOD LUCK!!!
QUESTION ONE
60 POINTS

Don Defendant and Charlie Coconspirator were charged with armed robbery of a large liquor store. Don and Charlie met at an Alcoholics Anonymous meeting, which they both attended during a brief period of sobriety in 2004. Unfortunately, they both relapsed following the re-election of George Bush in November of that year, and they have been drinking ever since. Their alcoholism is so severe that both have been known to black out on occasion. The police were turned on to Don and Charlie as suspects by an informant. Don has been living in a house owned by Charlie. After they received the tip, the cops placed the premises under surveillance, and they followed Don for several days, during which they observed him making frequent purchases in upscale, high-end retail stores in town. Thinking that Don was unemployed, the police assumed that he was spending the proceeds of the robbery. One day, they observed Don putting a large suitcase in the trunk of a vehicle parked in the driveway of Charlie’s house. Several officers immediately entered the house without a warrant and found Charlie sitting in the living room. Upon questioning, Charlie denied that he or Don was involved in the robbery. Believing that Don had gotten rid of the gun used in the robbery as well as all the cash, he consented to a search of his residence. Unfortunately, the police found a firearm and several hundred dollars in cash stashed under the floorboards in the den. Charlie was arrested on the spot, and Don was arrested minutes later by the car, where he had been detained for questioning.

Anthony Attorney was retained to represent Don and Charlie at the joint bail hearing. Although the probation report reflected that Don had no prior record, Attorney knew that Don had a conviction for breaking and entering in Maine, several years earlier. He was sentenced to probation in that case, which he had successfully completed. Don had told Attorney about the conviction during their initial conference while Don was still in the lock up. The judge refused to impose the exorbitant bail requested by the District Attorney on the grounds that the probation papers reflected that the defendant had no prior record. Neither Don nor Attorney was asked about his prior record. Charlie, who had a prior conviction for armed assault on a dwelling, was held on $100,000 bail. Shortly after the bail hearing, Charlie retained a new lawyer.

Charlie pled guilty in return for a recommendation of a lesser sentence, as well as an agreement that he would testify against Don, which he did. Don was convicted at a jury trial at which he was represented by Attorney.

Don asks that you review the file to see if there are any post conviction remedies or appealable issues. At first, Attorney says he will not send you the file until he is paid the remainder of his fee. However, he gives in after you threaten to report him to the state disciplinary board. Upon review, you discover the following:
1) Defendant had been referred to Attorney by an attorney named Ralph Ringleader on the condition that Attorney remit to him 10% of the agreed upon fee.

2) Although there is no written fee agreement in the file, a note says Don agreed to pay Attorney $10,000 plus 30% of the proceeds from a book he is writing on how alcoholism ruined his life.

3) Attorney seemed concerned about Don’s mental state (too much alcohol affected his brain cells). In fact, Attorney wrote a note in the file stating that he was so concerned that he wanted Don examined for competence and a possible insanity plea. That note reflects Don flatly refused, insisting there was nothing wrong with him and he’d never go to a shrink.

4) Attorney failed to file a motion to suppress the gun and cash. Seems he believed that because Don was not on the lease he had no right to claim an interest in the premises, which is required to even bring a motion to suppress. Although that is the general rule, Don was not aware that the Supreme Court in the state in which Don practices had just held that if the individual is charged with a crime involving possession, no proof of an interest in the premises searched is necessary to bring the motion.

5) Don apparently told Attorney that at the time of the robbery, he was with his cousin, Mathilda, an exotic dancer, at a movie, and that she would provide an alibi for him. Attorney met with Mathilda early one morning, and, while she confirmed Don was with her, she looked extremely intoxicated, and Attorney was skeptical about her testimony. Attorney apparently took no further action with respect to the cousin.

Unbeknownst to Don, Cousin Mathilda, who recently won the lottery, calls you and agrees to pay you $15,000 to represent Don. She insists she doesn’t want Don to know, because he is very proud, and will turn down her generous offer. And, she knows he cannot pay you what you need to represent her cousin. She sends you a check for $5,000 as the first installment. It arrives just in the nick of time, as the final payment on the loan you took for your Hummer is due and you’re short of cash. You deposit the check in your personal account and write a check to Hummer, Inc. for $2,500 final payment on your Hummer loan.

Discuss the ethical issues raised by the fact pattern.
PART II
30 PTS
5 pts each

ANSWER YES OR NO TO EACH QUESTION, THEN EXPLAIN YOUR ANSWER.

A. You are an attorney representing Eddie Employee in litigation against his former employer, Endrun Corporation, for wrongful termination and age discrimination. Eddie tells you that he has just spoken to Know Itall, a present Endrun employee, who has information concerning Eddie’s case which should be helpful, and Know is eager to talk to you. Can you interview Know?

B. You are a judge on an Appellate Court. You come to work one morning and see that you have been assigned to hear a case in which a company called Alsonan is appealing a judgment against them for stealing a competitor’s employees. When you read the papers, you discover that the firm representing Alsonan is one with which you were associated prior to your becoming a judge, although Alsonan was not a client while you were in the office. May you continue to sit on the panel hearing the appeal? Why or why not? What if your wife owns several shares in publicly traded Alsonan, listed on the New York Stock Exchange?

C. The American Society of Criminal Lawyers runs an intensive month-long trial advocacy seminar, which uses as instructors some of the most renowned criminal lawyers in the United States. Enrollment is very competitive, and you have to be “accepted” into the program. At the conclusion, there is a written exam, as well as a practical skills exam in which you try portions of an actual case. If you pass both parts, you become a “Certified Criminal Defense Specialist.” Can you use this designation on your letterhead? Could you advertise that your “Practice limited to Criminal Law?”

D. You have been the lawyer for Mr. Geezer and his family for many years. During that time you have come to tolerate him, although you aren’t really fond of the crotchety old guy. You know that some years ago, he induced his unmarried niece to come and live with him and take care of him (probably because his kids had no use for him, even with all his millions), promising she would be his primary heir when he died. You drafted a will for him leaving the bulk of his fortune to her. You have had many dealings with her since she went to live with Geezer, and you find her to be a remarkable young woman. She is kind, and dotes on her uncle, acquiescing to his every whim. He’s just called you to his bedside, and instructed you to change the will, leaving his money to his cat Fluffy. When you ask what about the niece. He replies, “That bitch? She doesn’t deserve anything.” You implore him to change his mind. He will not. You beg him to at least tell his niece so she can get out of the house before she turns old and gray. He refuses. Can you ethically call the niece and report Geezer’s intent?
E. You have just been appointed to represent Donald Defendant, who is charged with armed robbery and assault with intent to murder. At arraignment, Donald was held on bail. He gave you his leather overcoat to hold and return to his mother, since he did not want to risk its being stolen or lost at the jail. When you return to your office, you check the pockets and find an expensive looking wristwatch in the right one. You replace the watch and hang the coat in the closet at your office, forgetting about it until several weeks later, when you are reading the police report. In it, the victim reports having been relieved of an expensive wristwatch during the assault, and, lo and behold, the description matches the watch in the coat pocket. Do you have an obligation to turn over the watch to the authorities? If you do, and are called to testify about how you came to possess it, what are you ethically required to say?

F. Larry Lawyer has represented a Danny Developer, a successful real estate developer for many years. On many occasions Danny has asked Larry if he wanted to invest in his developments, but Larry either didn’t have the money or wasn’t wild about the plan. Last week, however, Danny came to Larry with a very attractive proposal. Larry has an opportunity to purchase a large tract of land in Overand, an upper-middle class suburb of Big City. He wishes to construct a housing project that would include low and moderate housing, and would qualify for governmental subsidies and other benefits. However, this time it’s Danny with the cash shortage. He proposes that in lieu of a fee for Larry’s services with respect to the purchase of the land and the construction and sale of the dwellings Danny proposes to construct, Larry will take an interest in the land and the development project. Can Larry ethically agree to those terms? What if Larry agrees to invest in the land and project, but not to act as Danny’s lawyer?