LEGAL ETHICS
FINAL EXAM
SPRING, 2008
PROFESSOR RUDNICK

This is a 3-hour exam. The exam is divided into two (2) questions. The value of each 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. When you discuss issues, discuss both sides. There are many issues raised by the fact pattern which are arguable either way, and you must do so.

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 1

60 pts

Tom, Dick and Harry were classmates in law school. Following graduation, Tom went to work for the DA's office, Dick for a tax firm (he had worked for the IRS before going to law school) and Harry for a mid-sized firm specializing in civil litigation. They each stayed in their respective jobs for five years, but none of them were very happy. By chance, they met at their five year law school reunion, and decided to discuss seriously practicing together. They tried to work out a formal partnership, but there was too much disagreement over capital investment and how to share the profits, so they decided, in the beginning, to just share space. They rented space in a nice, mid-sized office building in Boston that was comprised of a waiting room/reception area and four offices. Each lawyer would have one of the offices; the fourth would serve as a conference room and library. They hired one secretary/receptionist, who had worked for Harry, and who he knew would be able to handle the workload of three lawyers, at least in the beginning.

They decided to call the firm Harry and Associates, because Harry put in the largest initial capital investment, and that gave the impression that the firm had substance. The sign on the door read:

Harry and Associates
Counselors at Law
   Harry
   Tom
   Dick

Within the office in general, each lawyer had his own office with a name plate on the wall aside of the door, separate file cabinets, separate computers and printers and fax machines (with separate numbers). Only the individual lawyer had access to the cabinets, computers, fax machines, and voice mail, although they shared the main phone number. All the stationary bore the letterhead "Harry and Associates" although each had his own stationary that had only his name on the left side. The three attorneys were listed individually in the yellow pages, and in the lawyer's diary, and their business cards reflected only their individual names.

Each had his own IOLTA account, although joint office expenses (including, but not limited to: rent, secretarial fees, telephone, some office supplies) were split equally among the three and paid out of an operating account in the name of Harry and Associates.

Tom, the former DA, decided to continue doing mostly criminal defense work. He became a CPCS private counsel, taking appointments first in district, then in superior court. And once his name got out there, he even got private clients, both in state and federal courts. Dick did mostly tax, trusts and estates work, and Harry continued as a civil
litigator. The three entered into an agreement that if ever one of their clients needed an attorney in one of the other fields practiced by their colleagues, they would refer the client to the appropriate attorney, and get 10% of the fee received by that lawyer.

One of Dick’s tax clients got into trouble with the IRS and was indicted for money laundering in connection with drug dealing. Although Tom had not done a money laundering case in federal court, he had recently handled several sizeable drug cases when clients he had represented previously in state court stepped up their enterprise and got caught by the feds. So Dick felt comfortable in asking Tom to represent the client (“A”), in return for the usual 10%. Tom’s had been representing A for several months when he learned that one of the primary witnesses against the client was a local drug dealer who he had prosecuted as a DA more than 5 years before. The witness/former defendant was prosecuted for his role in a cocaine deal involving many of the same individuals whose names had arisen with respect to A’s federal case. Tom thought the witness was still in jail, but, in fact, he had been released after serving three years when he was awarded a new trial based on prosecutorial misconduct (in closing, Tom injected his personal belief as to the defendant’s guilt and commented on his failure to corroborate his alibi for where he was at the time of the drug buy), and the main witnesses were nowhere to be found.

Harry was hired by one of Dick’s rich tax clients when he was sued for non-payment by the developer/contractor building his multi-million dollar McMansion in Marblehead. The client (“B”) claimed that the contractor made a mess of a number of things that he has had to fix at substantial increased cost (they call that a counterclaim). Harry became uncomfortable when he learned that the contractor was a client of his former firm, whose cases Harry had worked on. The contractor’s prior cases involved difficulties he had encountered on other residential development/construction projects. Harry thought to himself that history certainly does repeat itself. Harry had not recognized the plaintiff’s name at first, because he developed B’s property under a d/b/a different from the corporate name he used while a client of Harry’s former firm.

Matters went from bad to worse when Dick mentioned to Harry that he had spoken to B about his case, B had told him about its progress, and mentioned the name of the plaintiff’s expert witness on damages. Dick told Harry the expert was another contractor who was still one of his tax clients.

Tom decided that his prestige in the community, and potential client base would be enhanced if he joined a well-known nation-wide association called The American Society of Criminal Lawyers. The Society makes available all kinds of resources, and 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.” Tom just successfully completed the course, and is contemplating putting his new designation on his stationary and business card.
Discuss all the ethical issues raised by the above fact pattern.

**QUESTION 2**

30 points Andy Attorney represented Don Defendant, who was charged with trafficking in cocaine. The evidence was that Don was renting a room in a house leased to Connie Coconspirator. The cops had had the premises under surveillance for several days, during which they observed the usual heavy short term traffic coming in and out of the residence, consistent with drug dealing on the premises. One day, after seeing the usual foot traffic, several officers entered the house without a warrant and found Connie sitting in the living room. Upon questioning, Connie denied that drug trafficking was going on, and, believing that she had just sold the last bit of coke, consented to a search of her residence. Unfortunately, the police found drug paraphernalia, including a scale and plastic baggies, and several ounces of high grade cocaine under the bed in the room occupied by Don, which Connie forgot about. Don was found in the basement, working on his model railroad.

Attorney represented Don at his bail hearing. Connie got her own attorney. Since the stuff was found in the room occupied by Don, and Connie had no prior record, she was released on her own recognizance.

Although the probation report reflected that Don had no prior record, Attorney knew that Don had a conviction for driving under the influence of a controlled substance, to wit: cocaine, which occurred in Maine. Don had told Attorney about the conviction during their initial conference while Don was still in the lock up. The judge asked probation for its report, which the judge reviewed, neither Attorney, the District Attorney nor Don was asked about the latter’s prior record. The DA asked for $100,000 bail arguing that the quantity and purity of the drugs, coupled with the paraphernalia found in Don’s room indicated Don was involved in trafficking. The judge set bail at $25,000 noting that the defendant had no prior record.

After the prosecution dug around, they found that Connie was indeed more than an innocent bystander. She pled guilty to possession with intent to distribute to avoid a mandatory sentence. During her plea colloquy, she admitted the cocaine was hers. Nonetheless, the DA insisted on going forward with Don’s case when Don refused to plead guilty. At Don’s trial, the jury was not told about Connie’s plea. The prosecutor called the officers who searched the house and arrested the two, to testify about the conduct of Defendant and Coconspirator during the search and how they found the paraphernalia under the bed in his room. During closing argument, the prosecutor made the following statement: “Now, why would Coconspirator have consented to a search of her residence? Maybe the paraphernalia was placed under the bed by someone else and Coconspirator didn’t know it was there.” Attorney objected, but the trial judge overruled
the objection, stating the remark was "fair comment on the evidence." Defendant was convicted and he fired Attorney immediately following the sentencing.

Don asks that you review the file to consider taking the case on appeal, and to see if there are any other remedies available. Attorney sends you his file. Upon review, you discover the following:

1. Don agreed to pay Attorney $100,000 to represent him in the drug case. Don's mother paid Attorney $50,000 by check, and she gave Attorney a promissory note for the remaining $50,000. The note was secured by a mortgage on Mother's house. Mother insisted that Don not know about the mortgage because he would be angry that she had had to put up her house as security, and she would have to explain what had happened to the $1 Million left to her by his father's death. By the way, she reluctantly admitted she had frittered it away at Foxwoods.

2. Don also had trouble making bail, so Attorney loaned Don the $2,500 for the surety to the bail bondsman, taking as security a mortgage on Don's 2007 BMW.

3. One day, before he made bail, while Don was in the lock up waiting for Attorney to stop by, the District Attorney and a police officer from the Drug Task Force dropped by to chat. The DA asked Don about other drug deals in which he was involved, and suggested that if Don were willing to divulge his source, they might recommend significantly reduced jail time. Don told the DA what he told Attorney—it was not his stuff.

In your first meeting with Don, he also tells you that he wanted to testify, but Attorney would not let him do so, saying that Don made a not very credible witness (maybe it was all the tattoos and the piercings), and besides, he had that prior conviction that could be introduced and would damage whatever credibility he had.

Discuss all the ethical issues raised by the above fact pattern, including those raised in the body of the question as well as in the numbered paragraphs.