

**LEGAL ETHICS
FINAL EXAM
SPRING, 2009
PROFESSOR RUDNICK**

This is a 3-hour exam. The exam is divided into two (2) parts, Question 1 and "Short Answer." The "Short Answer" portion is comprised of 4 questions, some with subparts. Question 1 is worth 50 points. The Short Answer portion is worth 25 points TOTAL. The remaining 25 points come from the quizzes. 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. If the result under the Massachusetts Rules would differ significantly from that using 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, but not all the rules, not all of which will be relevant. Comments are also provided. 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 your identification 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

(50 points) Dave Dewey, Chris Cheatham and Harvey Howe lease office space in a large downtown office building. Dave signed the lease with the landlord, and Chris and Harvey sublet from him. The landlord is okay with this arrangement. The lawyers subdivided the space so that each attorney has an individual office, although all the lawyers share one large reception area as well as a library/conference room and other common areas for storage of supplies and copying. Each maintains his own files in locked cabinets in his office, although the office manager, who is jointly paid by all lawyers, has keys to all the cabinets. Additionally, the lawyers jointly share costs for rent, utilities and other expenses such as library books, copier use and supplies. Each has his or her own phone number. Although the three share two secretaries, each lawyer pays each secretary based upon the total time that secretary works on that lawyer's business. Each attorney uses stationary bearing only his name on the letterhead. The sign on the door reads

Dave Dewey, Esq.
Chris Cheatham, Esq.
Harvey Howe, Esq.
Attorneys at Law

Each lawyer maintains his own malpractice insurance and each maintains his own operating and IOLTA accounts. They jointly paid for an ad in the Yellow Pages, advertising under the name of "Dewey, Cheatham & Howe, Attorneys at Law." It was a nice ad. Very tasteful. Among other things the ad stated:

"Three experienced attorneys with over thirty years' experience handling tort cases"

"We have recovered millions of dollars for our clients"

"You won't find more reasonable rates anywhere"

"Certified by the American Association of Litigation Attorneys"

Verna Virtue has retained Dave Dewey to bring a tort action against Ralph Restauranteur. Verna was referred to Dave by his law school classmate, Flee Bailey. Bailey asked for a mere 5% of Dave's fee, which Dave thought was reasonable because the case looked like a sure winner. Flee agreed to attend all meetings and other proceedings where Verna was going to be present, except the trial, because Flee and Verna are very close, and all agree that it will make Verna, who tends to be very anxious, calmer.

Although Verna and Dave agreed on a contingent fee of 33 1/3 % plus costs, Dave just hasn't gotten around to getting Verna to sign the agreement. Seems Verna slipped and fell on a step leading into the ladies' room in a restaurant belonging to Ralph Restauranteur, Elegant Edibles, (a Massachusetts corporation) and seriously injured her

back. She is permanently injured according to her treating physician, and is unable to work because she cannot sit or stand for any period of time.

Shortly after Verna retained Dave, while Dave was passing through the reception area of his office, Harvey introduced him to one of his favorite clients---you guessed it---Ralph Restaurateur. Seems Ralph had retained Harvey Howe to represent him when he purchased the restaurant one year ago. Harvey hasn't represented that business since the sale was completed, but he has continues to do some work for Ralph individually.

When Verna first came to see Dave, she informed him that she had been at the restaurant with two friends, Connie and Diane, lawyers and professors at a local law school. Although they were not with her at the time she fell, they rushed to her side almost immediately thereafter as she was still lying on the ground. Wanda Waitress, an employee of Ralph's restaurant, witnessed the fall. She visited Verna at the hospital and told Verna that she had mentioned the dangerous step to Ralph many times, told him some day someone would get hurt if he didn't fix it, and offered to help Verna in any way she could. Dave immediately made an appointment to talk to Wanda, although he was smart enough to conduct the interview away from the restaurant. She was very helpful. He took a statement from Wanda, who repeated what she had told Verna at the hospital.

Dave filed suit on Verna's behalf in Massachusetts Superior Court. After discovery was completed, Dave received a notice that trial would be on June 15. He began trying to locate his witnesses. Wanda's mother told him Wanda had run away to the Australian outback with her boyfriend, Alligator Andy, and could not be reached. Dave wished he had taken Wanda's deposition.

During a settlement conference held shortly before the trial date, Dave asked Ralph's attorney, Ira Insurancedefense, about the restaurant's insurance coverage. Ira told Dave that the business had a \$250,000/\$500,000 policy (\$250,000 per claim, a total of \$500,000 per incident) with a \$10,000 deductible. Ira did not disclose that there was an umbrella policy for up to \$1,000,000 in coverage, because he didn't believe that Verna's damages would exceed the \$250,000. Ira offered to settle the case for \$75,000. Dave rejected it immediately, because Verna had more than \$35,000 in medicals alone.

Trial began in the courtroom of the Honorable Julian Judge, who announced after reading the court papers that he is well familiar with Elegant Edibles, as it is located near his home and he has lunch there on many weekends. He assures the parties and their lawyers that he can be unbiased because he doesn't know the owner.

Discuss the ethical issues raised by the fact pattern.

SHORT ANSWER

1. (5 pts) You have been the family lawyer for elderly Mr. Geezer and 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 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. Several years ago, 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 gave up all of her independence to help the uncle, is kind and devoted, and dotes on her uncle, acquiescing in his every whim. He's just called you to his bedside, and instructed you to change the will, taking the niece out of the will except for a modest bequest of personal property, instead leaving his money to his cat, Fluffy. When you remind him about his promise to his niece, he replies, "I never intended to give her anything—I just wanted her to wait on me in my old age." 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 and loses all chance at happiness. He refuses. **Can you ethically call the niece and report Geezer's intent? Answer yes or no and explain why or why not.**

2. (5 pts) While a member of the prosecutor's office, Larry Lawyer was a trial attorney and the supervisor of junior ADAs in several district courts. One of the cases that was prosecuted during this period was State v. Defendant. Defendant was charged with armed robbery of the Somewhere Savings and Loan. Larry was responsible for the case while it was in the district court, however, because of the seriousness of the crime, after the arraignment, at which Larry appeared for the state and asked for high bail, which was granted, the only involvement he had was to request a continuance the probable cause hearing, because the Grand Jury was deliberating whether to hand down an indictment. While Defendant's trial was proceeding through the Superior and appellate courts of State, Larry left the prosecutor's office and joined the criminal defense firm of Mapp, Miranda & Gideon. Shortly after arriving there, he discovered that Mindy Mapp, the senior partner was representing Defendant in a drug case. **Can Larry work on the case? Can Mindy continue to represent Defendant? If so, under what circumstances?**

3. a. (3 pts) Connie Counsel is a member of the firm of Attorney and Lawyer and Counsel ("ALC"). While a member of that firm, Connie represented Worldwide Widgets, a Massachusetts corporation that manufactures widgets, component parts of certain automobile braking systems, in a number of products liability suits brought by persons who allege that they were injured in automobile accidents caused by defective widgets. During the discovery phase of these suits, Connie was assisted by Annabel Associate, a young lawyer in ALC. In the midst of the aforementioned litigation, Connie had a falling out with her partners and left ALC (which became A & L) joining Rumpole and Bailey

("R & B"), taking Worldwide with her as a client. Shortly thereafter, one of the plaintiffs in the products suit sought to hire Arnold Attorney, Connie's former partner. **Can Arnold take the case? If so, under what circumstances?**

b. (6 pts) Connie was so successful in her representation of Worldwide in the products litigation, that after it was concluded (trial over, time for appeal has run) Worldwide hired Connie as in-house counsel. The following events occur in the course of her new employment, and Connie wants to know what she may or must do under the circumstances.

i. Connie discovers that during the course of the litigation, one of the quality control inspectors lied in a deposition concerning whether he believed that certain widgets that were the subject of the lawsuit were not in fact manufactured according to specifications, could well have been defective, and could have caused the accident;

ii. Connie is asked to represent the son of the company president, who was caught driving a company car while under the influence;

iii. Connie is asked to represent the company when it purchases land for a new manufacturing plant in a state in which Connie is not licensed to practice law.

4. (6 pts) Discuss whether each of the following proposed methods for payment of legal fees violates or complies with the Model Rules of Professional Conduct.

A. A lawyer who represents the putative purchaser of land in an action for specific performance of a purchase and sale agreement will receive a 10% ownership interest in the land.

B. A lawyer who represents a spouse in a contempt action seeking to enforce a judgment for alimony due him entered as part of the decree of divorce will receive 33 1/3% of the amount recovered in the action.

C. A lawyer who represents a defendant in criminal case will receive a \$10,000 flat fee and a bonus of \$3,000 if the jury returns a verdict of not guilty following a trial. The defendant's mother has agreed to sign a note and grant a mortgage in favor of the lawyer for the full amount, and will be liable for any portion of the fee the defendant (her son) does not pay. She does not want her son to know about her securing the debt.