This is a 3-hour exam. The exam is divided into four parts: several short answer questions, a short essay, a long essay and five multiple choice questions. Each part and or question is worth a different number of points. The value of the part and/or question is set forth at the beginning of that 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.

YOU MAY CONSULT THE COPY OF THE MODEL RULES OF PROFESSIONAL CONDUCT 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). ALL CELL PHONES AND OTHER ELECTRONIC DEVICES CAPABLE OF OBTAINING, TRANSMITTING OR RECEIVING INFORMATION OR MESSAGES MUST BE TURNED TO THE OFF POSITION, AND MUST BE PLACED WITH YOUR BELONGINGS IN THE FRONT OF THE ROOM. VIOLATION OF THIS PORTION OF THE EXAM RULES WILL RESULT IN A DEDUCTION OF NO FEWER THAN 25 POINTS FROM THE TOTAL OF YOUR EXAM, AND COULD RESULT IN REFERRAL OF THE MATTER TO MSL'S DISCIPLINARY COMMITTEE.

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 ID # Number ONLY!!! Please put your ID Number on the copy of the exam as well.
Instructions, page 2

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Please sign below in the designated place to confirm you have read and understand these instructions.

GOOD LUCK!!!
Short Answer

1. (5 points) Client is charged with armed robbery—stealing a valuable painting and jewelry. Client hires Lawyer to represent him in the case. While client is in jail unable to meet bail, lawyer sends investigator to the client's home to retrieve some papers that Client claims he needs. While searching for the papers, Investigator came across a Rolex in a box, which looked suspiciously like one taken in the robbery for which Client is charged. Investigator takes the Rolex and the box and brings it to Lawyer. What can and should Lawyer do that will not subject him to discipline?

2. (5 points) Wife wants to hire Lawyer to represent her in her divorce from her very wealthy husband. She and husband have been married 25 years and have 2 grown children. During the period of their marriage, Husband went from owning a modest financial advising business to operating a major hedge fund. His net worth is now in excess of $10 million. The problem is that Husband has had wife on a short financial leash. Although he has bought her everything she has wanted, she has no liquid assets of her own, and no access to his bank accounts in which all the money is held. The marital house in Weston, however, valued at in excess of $1M, is in her name alone. Wife offers to sign a promissory note in favor of Lawyer for $50,000, secured by an interest in the marital home, which she promises to sell when the divorce is final. Can Lawyer engage in this fee agreement without violating the Rules of Professional Conduct?

3. (10 points) Chief Officer (CO), had been President of a major international electronics firm ("Company") for more than twenty years. Throughout this time, Arnold Attorney had been in-house counsel and Vice-President of Company. CO and Arnold worked closely on many business issues over the years, and became close friends. CO even confided in Arnold concerning personal issues and personal legal matters in which he needed advice. Arnold rarely bought a piece of property or changed his estate plan without running the proposed conduct by Arnold, and Arnold frequently made substantive suggestions which CO instructed his personal attorney to follow, although Arnold never officially acted as CO’s lawyer in any matter. In 2008, the International Post conducted an investigation into alleged misuse of Company’s corporate funds. Seems CO had been using corporate monies and Company’s credit cards to finance trysts with various of his paramours. All the assignations coincided with his legitimate business trips and ventures, so he figured no one would find out. Boy, was he wrong.
Arnold arranged to have an outside law firm come in and investigate the alleged misdoings. Arnold urged CO to cooperate with the investigation, which CO did. Lawyers from the outside firm interviewed CO on numerous occasions. During these interviews Arnold acknowledged that he made or authorized many of the questioned expenditures, but claimed that CO’s Chief Financial Officer and certain Board Members had approved or ratified his virtually unrestricted use of corporate assets under these circumstances.

Arnold turned over all of the statements taken by the outside law firm to the United States Attorney’s office, which indicted CO for embezzlement, fraud and other criminal acts. At trial, the prosecutor called one of the outside counsel to the stand and offered the statements of CO given to her. CO’s attorney objected on the grounds of attorney-client privilege. How should the court rule and why?

Short Essay

(20 points) Client A sought to retain Lawyer to represent her in a criminal case arising out of a series of altercations that occurred during a party she hosted in her home. The party-goers had too much to drink and several guests assaulted each other. Client A sought to break it up, and in the midst, threw a punch at an off-duty police officer, who was attending the party as a guest of Client A’s cousin. During an initial consultation, Lawyer discovered that he had represented Client A’s mother and brother in their efforts to obtain guardianship of Client A’s then minor children. The representation occurred approximately 2 years prior, when Client A had been suffering from substance abuse and depression, and was unable to care for her kids, then 8 and 12. Shortly after the guardianship petition was filed, Client A’s mother and brother became embroiled in a family dispute about what to do with the minor children and they decided not to pursue the guardianship. However, the petition was never officially withdrawn and is still pending in the probate court.

Client A retained Lawyer, who charged a flat fee of $10,000 for defending the charge of A & B with a dangerous weapon on a police officer. The fee agreement stated that if Lawyer was able to keep Client A out of jail, whether or not there was a finding of guilty, Client A would pay Lawyer a $5,000 bonus. Client A was more than willing to do this (it was her idea, actually) because she was committed to raising her kids, something she could not do from jail. During the first pre-trial conference, Lawyer obtained the prospective witness list, and noted that two of the party guests listed as potential witnesses are or were also clients of Lawyer—Client A’s brother, and Witness, who Lawyer is defending on a cocaine possession charge.

Lawyer defended Client A at trial. Lawyer neglected to research the law on A & B on a police officer, which requires that, if the officer is not in uniform, the officer must be in the course of carrying out some legal responsibility or duty related to his or her employment. There was virtually no evidence introduced to prove these necessary
elements, but Lawyer did not move for a directed verdict on the issue. The jury returned a verdict of guilty.

Essay

(30 pts) Dave Dewey, Chris Cheatham and Harvey Howe, along with several other attorneys lease office space together in a small office building in City, a medium sized municipality located in State. The lawyers subdivided the space and each 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 and copying. Each maintains his or her files in a separate locked cabinet 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 costs for rent, utilities and other expenses such as library books, copier use and supplies. Each has his or her own phone number. Although they share two secretaries, each lawyer pays each secretary weekly based upon the total time that secretary works on that lawyer’s business. The three attorneys use the same stationery, bearing the letterhead: Dewey, Cheatham and Howe Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the letterhead. Each lawyer maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts. They all 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:

“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”

Candy Client retained Dave Dewey to bring a tort action against Ralph Restauranteur. Seems Candy slipped and fell on a step leading to the Ladies’ Room in Ralph’s restaurant, The Rock Lobster, and seriously injured her back. Dave filed suit in State’s Superior Court. Ralph’s insurance company obtained counsel to represent the restaurant. During discovery, Dave found out that Wanda Waitress, an employee of Ralph’s restaurant, witnessed the fall. Candy told Dave that as she was lying on the floor waiting for the ambulance, Wanda told her she had mentioned the dangerous step to Ralph many times, told him some day someone would get hurt. 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 and confirmed that the step was hardly visible in dim light.

During a settlement conference before discovery was complete, 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 Candy's damages would exceed the $250,000. Ira offered $15,000. Dave rejected it immediately, without a moment's hesitation, because Candy had more than $15,000 in medicals alone.

Needless to say, the case did not settle. The case was assigned for trial to Judge Judy. Because City is such a small community, Judy was familiar with Ralph's restaurant. She and her family had eaten there many times. When she got the assignment, she remembered that the last time she was in the restaurant she noticed that the step to the rest room was almost invisible.

Candy testified at trial that she suffered severe injuries to her back which have prevented her from working as a personal trainer, and, as a result, she has lost in excess of $100,000 in wages. Her medical records and testimony supported the conclusion that she would continue to be disabled and unable to return to work for at least another 18 months. The jury returned a verdict for Candy in the amount of $500,000. Ralph did not appeal. Several weeks after entry of the judgment, Dave was working out at a local gym, and saw Candy actively using much of the equipment. When Dave asked Candy how it was that she all of sudden seemed so fit, Candy winked, and said "it's a wonder what half a mil will do!!." Dave then realized Candy had not been truthful in her testimony about the extent of her injuries, and had probably lied to the doctors as well.

Discuss the ethical issues raised by the fact pattern.
Multiple Choice (1 pt. each)

1. Judge sits on a Trial Court. He has been assigned to hear a breach of contract case in which a company called Alsoran is being sued for failure to pay for a shipment of widgets sent by its widget supplier. Alsoran is defending, and has filed a counterclaim, alleging the widgets were defective, and it was forced to obtain substitute widgets on the market at a higher price. When Judge reviews the papers, she discovered that the firm representing Alsoran is one with which she was associated prior to her becoming a judge, and the attorney appearing on behalf of Alsoran is Lawyer, who was an associate at Judge’s firm during that time. Judge, who was a partner at all times that lawyer was affiliated with the firm, had little contact with the Lawyer while they were both in the firm. Alsoran was not a client of the firm while Judge was a member of the firm.

Is Judge subject to disqualification because of his affiliation with Alsoran’s counsel?

(A) Yes, because Lawyer and Judge were simultaneously members of the same firm.

(B) Yes, Lawyer was a partner in the firm currently representing Alsoran.

(C) No, because Alsoran was not a client of the firm while Judge was a member of the firm.

(D) No, because Lawyer and Judge did not have a close personal relationship.

2. Attorney A is a senior attorney in a 6-member firm comprised of 3 partners and 3 associates. Attorney A is a real estate lawyer and is responsible for supervising Paralegal A. Unbeknownst to Attorney A, Paralegal A has been falsifying closing documents, by indicating purchasers are not obtaining second mortgages on property when in fact they are. Paralegal A’s conduct constitutes fraud, and is in violation of numerous federal and state criminal and civil statutes.

Is Attorney A subject to discipline as a result of Paralegal A’s conduct?

(A) Yes, under the doctrine of respondeat superior.

(B) Yes, if Attorney A did not undertake efforts to ensure that Paralegal A complied with the Rules of Professional Conduct.

(C) No, because Paralegal A is not a lawyer.

(D) No, because Attorney A did not know about Paralegal A’s conduct.
3. Attorney A is a young lawyer in State, and has been a member of the Bar of State for three years. She was just consulted by a childhood friend who was terminated from her job, she claims, on account of her gender. Attorney A has no experience in employment discrimination law, although she took a course in law school that covered that topic. She is really not interested in added that subject to the kinds of law she practices, but things are tough, and it sounds like a good case that might produce some real money. Attorney A knows she cannot handle the case by herself, but she is reluctant to refer it to someone else and lose all the fees. Can Attorney A refer the case to another attorney and still get paid without violating the Rules of Professional Conduct?

(A) No, unless Attorney A works on the case, is paid in proportion to the work she actually performs, or she accepts responsibility for the case, and the client consents, confirmed in writing.

(B) Yes, as long as the client consents to the fee splitting before any work is done, and the agreement is in writing, signed by the client.

(C) Yes, because Attorney A is not competent to handle the case.

(D) No, because lawyers not in the same firm cannot share legal fees.
4. An executive of a New York publishing company, as well as the company itself, was sued for defamation arising out of the company’s publication of a tell-all biography of a famous starlet whose rock star life-style ended her in rehab and jail many times before she hit the age of 21. The executive hired a nationally known defense attorney to defend him and the company. The attorney explained that the representation would be very complex, and would absorb a great deal of his time. Given the attorney’s hourly rate of $750/hr, he estimated the total bill would be upwards of $500,000. The executive was short on cash, so he made the following proposal to the attorney: if attorney represented the executive and the publishing company in defending the defamation suit, the executive would publish the story of attorney’s more notorious cases. The attorney could choose what cases would be included in the work, have significant editorial control over the content, and would be entitled to 100% of the profits from the sale of the book.

Assume attorney received the necessary consent from clients who would be portrayed in the book, is the fee arrange above proper?

(A) No, because a lawyer must not acquire as a fee media rights to a story based upon the lawyer’s representation of a client.

(B) No, unless the fee agreement is memorialized in writing, signed by the client.

(C) Yes, if the ultimate amount paid is reasonable in light of the nature of the legal services performed.

(D) Yes, so long as the lawyer does not reveal any attorney-client confidences without the particular client’s written consent.
5. Lawyer was employed by the District Attorney’s office in State for 7 years. During that time, he began by handling arraignments, bail hearings and other minor motions, and rose through the ranks until he ultimately became a trial supervisor in a District Court. In that capacity, he assigned cases to subordinate Assistant DAs, based upon a summary of the case prepared by the arresting officer, and consulted with the Assistant assigned to the case concerning trial strategy and legal issues. He would also appear in court for the Assistant DA assigned to the case when that attorney was unavailable, so long as nothing of substance was at issue in the hearing.

While Lawyer was trial supervisor, he appeared and asked for a continuance of a pretrial conference in a case involving Danny Defendant—who was charged with possession of cocaine with intent to distribute. Lawyer was aware that Danny’s case was to be submitted to a grand jury under State’s criminal procedure rules, and if he was indicted, the case would be tried in Superior, rather than District, Court. Shortly after Danny’s case was transferred to Superior Court, Lawyer obtained a job in the law firm appointed to represent Danny in the drug case.

Is Lawyer subject to discipline if he works on Danny’s case?

(A) Yes, unless he receives Danny’s consent, in writing.

(B) Yes, because he is essentially switching sides on the same matter.

(C) No, if Lawyer’s involvement in the matter is not deemed personal and substantial.

(D) No, because conflict rules to not apply to government lawyers.
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.

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GOOD LUCK!!!
1. (30 points) Don Defensecounsel 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 Shoverolet 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 Coogle, 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..
LEGAL ETHICS
FINAL EXAM
SPRING, 2004
PROFESSOR RUDNICK

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GOOD LUCK!!!
1. (50 points) Tommy Top, Barry Bottom and Mary Middling, along with several other attorneys leased office space together. The lawyers subdivided the space and each has an individual office, although all the lawyers share one large reception area as well as a library/confrence 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 costs for rent, utilities and other expenses such as library 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 total time that secretary works on that lawyer’s business. The letterhead says Top, Middling and Bottom, Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the stationary. Each lawyer maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts. They all paid for an ad in the Yellow Pages, advertising under the name of “Top, Middling and Bottom, Attorneys at Law.” It was a nice ad. Very tasteful. Among other things the ad stated:

“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 retained Tommy Top to bring a tort action against Ralph Restauranteur. Although the two agreed on a contingent fee of 33 1/3 % plus costs, Tommy just hasn’t gotten around to getting Verna to sign the agreement. Seems Verna slipped and fell on a step leading to the Ladies’ Room in Ralph’s restaurant and seriously injured her back. Verna knew Tommy because he had represented her now-deceased mother, Mater (and subsequently Mater’s estate) when he was doing estate work at a previous firm. In fact, Tommy, who also had a real estate broker’s license, helped Verna sell her mother’s summer home on Nantucket. It was quite a good deal for Verna and the estate because Tommy charged the estate a smaller percentage commission than a Nantucket realtor would have charged.

Shortly after Verna hired Tommy, while Tommy was passing through the reception area of his office, Mary introduced him to one of her favorite clients---you guessed it---Ralph Restauranteur. Seems Ralph had retained Mary Middling to represent him when he purchased the restaurant one year ago. Mary hasn’t represented the business since the sale was completed, but she has continued to do some work for Ralph individually.

When Verna first came to see Tommy, she informed him that she had been at the restaurant with two friends, Connie and Diane. 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 told Verna that she had mentioned the dangerous step to Ralph many times, told him some day someone would get hurt, and offered to help Verna in any way she could. Tommy immediately made an appointment to talk to Wanda, although he was smart enough to conduct the interview away from the restaurant.
2. (35 points) Andy Attorney represented Dave Druggie, who was charged with trafficking in cocaine. The evidence is that Dave was living in a house leased to Tony Trafficker. 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 Tony’s house without a warrant and found Tony sitting in the living room. Upon questioning, Tony denied that drug trafficking was going on, and, believing that he had just sold the last bit of coke, consented to a search of his residence. Unfortunately, the police found drug paraphernalia under the bed in the room occupied by Dave, which Tony forgot about.

Attorney represented Dave at his bail hearing. Although the probation report reflected that Dave had no prior record, Attorney knew that Dave had a conviction for driving under the influence of a controlled substance, to wit: cocaine, which occurred in Maine. Dave had told Attorney about the conviction during their initial conference while Dave was still in the lock up. The judge refused to impose the exorbitant bail requested by the District Attorney on the grounds that the defendant had no prior record. Neither Dave nor Attorney was asked about his prior record.

Trafficker pleaded guilty to possession with intent to distribute to avoid a mandatory sentence. Druggie refused to plead guilty and insisted on going to trial. At Druggie’s trial, the jury was not told about Trafficker’s plea. The prosecutor called the officers who searched the house and arrested the two, to testify about Druggie’s and Trafficker’s conduct during the search and how he found the paraphernalia. During closing argument, the prosecutor made the following statement: “Now, why would Trafficker have consented to search his residence? Maybe the paraphernalia was placed under the bed by someone else and Trafficker didn’t know it was there.” Attorney objected, but the trial judge overruled the objection, stating the remark was “fair comment on the evidence.” Druggie was convicted and he fired Attorney following the sentencing.

Attorney sends you his file. Upon review, you discover the following:

1) Druggie’s fees were paid by a man named Ralph Ringleader on the condition that he remain anonymous and Druggie not know about the payment.

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

3) Attorney failed to file a motion to suppress the drugs. Seems that he believed that because Dave was not on the lease he had no right to claim an interest in the premises, which is required to bring a motion to suppress. Although that is the general
rule, Dave was not aware that the State Supreme Court 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.

Discuss the ethical issues raised by the fact pattern.

3. (15 points) Mike and Peter were associates in a large law firm that does primarily insurance defense work. Among the firm’s major clients was Infinite, a division of Japan 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 a number of SUV manufacturers, including Infinite. The plaintiff/car 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 they had only worked on a few automobile cases at their previous firm, and while they were products cases, none of them related to SUVs. Because of their inexperience, they knew they would have to do more work than a more experienced lawyer would, so they negotiated a 45% contingent fee agreement with the class members. They figured that should fairly compensate them for their time. The members agreed to the fee and signed the agreements.

Counsel for Infinite, Joe Devillen, has filed a motion to disqualify Mike and Peter in the SUV case.

Peter and Mike’s secretary checked the fax machine one night before he left, and discovered that Devillen’s office had sent them a copy of a letter Devillen had written to the client. Their secretary left the copy on Peter’s desk. He started to read it before he realized that this letter was not intended for them. In the part he read, Devillen made reference to a memo sent to an in-house Infinite lawyer in which an Infinite engineer acknowledged that the SUV’s design led to instability and rollovers.

Discuss the ethical issues raised by the fact pattern.
Tommy filed suit in the state Superior Court. During a settlement conference before
discovery was complete, Tommy asked Ralph’s attorney, Ira InsuranceDefense, about Ralph’s
insurance coverage. Ira told Tommy that Ralph 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 she didn’t believe that Verna’s
damages would exceed the $250,000. Ira offered $15,000. Tommy rejected it out of hand,
because Verna had more than $15,000 in medicals alone.

The day following the conference, Tommy called Verna to report what went on. He had
to call several times, because Verna was not at home. Turns out she was visiting Connie in the
hospital. Too bad. Connie is in a coma after being shot by a fellow law professor who had
cracked under the stress. The doctors do not believe Connie will ever come out of the coma.

Tommy believed the damages might exceed $250,000, and he told that to Verna when he
reported the results of the settlement conference. Verna asked Tommy what would happen if
they recovered more than $250,000. Tommy replied unless Ralph was found personally liable, or
they could in some way impose liability on Ralph, who personally held assets, she would collect
the policy amount and that would be it. Verna went ballistic. She insisted that Tommy sue Ralph
personally and get an attachment on his Macmansion in North Andover. Tommy did not believe
that there were legal grounds for such a strategy so he refused. Verna fired Tommy on the spot,
and, several days later, retained Sandy Successor. Sandy wrote to Tommy, requesting the file.
Tommy wrote back, refusing to send anything but the pleadings, claiming Verna still owed
$1250 in costs for a variety of medical reports.

Discuss the ethical issues raised by the fact pattern.
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 I tall, 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 Al soran is appealing a judgment against them for stealing a competitor’s employees. When you read the papers, you discover that the firm representing Al soran is one with which you were associated prior to your becoming a judge, although Al soran 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 Al soran, 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?
LEGAL ETHICS
FINAL EXAM
SPRING, 2008
PROFESSOR RUDNICK

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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 no where 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.
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.

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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 Restauranteur. 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.
This is a 3-hour exam. The exam is divided into three (3) parts. Part I is multiple choice. These answers must be entered on the scan-tron sheets. Part II is short answer, Part III is longer essay. Answers to questions in these parts go in the blue book. Each part or question is worth a different amount of points. The value of the part and/or question is set forth at the beginning of the part and/or 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. Notice that some of the parts or subparts of Part II ask you to respond to specific questions (that I have **highlighted in bold type**), which must be answered. In other words, direct your answers to the call of the question. 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 MSL 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!!!
Section I

Multiple Choice: 7 pts (1 point each)

1. Alan Attorney is a lawyer licensed in State A. He and his brother-in-law (Bill) also own a partnership licensed in State A that installs replacement windows in existing residences. More than a year ago, the business entered into a contract to install windows in a McMansion in City, located in State B, which shares a border with State A. Within weeks of the installation, McMansion’s owner (“Owner”) began complaining daily that the windows leaked, that they were not as represented by Bill, and that, contrary to other representations, they did not stand up to City’s climate. The owner demanded his money back, with interest. Bill refused, although Alan was willing to offer something to settle. Owner sued Bill and Alan individually as well as the partnership, and received a judgment in a court of State B for multiple damages against Bill and Alan and the partnership. The jury found that Bill and Alan had intentionally defrauded Owner by materially misrepresenting the quality of the windows.

The Lawyer Disciplinary Board of the State of A moved to suspend Alan’s license as a result of the jury’s finding of fraud.

Is Alan subject to discipline?

(A) No, because the conduct did not arise out of the practice of law.

(B) No, because the conduct occurred in State B.

(C) Yes, because the conduct involved fraud;

(D) Yes, because Alan is legally responsible the acts of his partner.
2. Alice Attorney was admitted to practice in State Z more than two years ago. Since then, she has attempted to establish a personal injury practice, but without much success. State Z has a large coastline along the Atlantic Ocean, and has consequently been hit by many hurricanes over the past several years. Alice’s office is located in City W, which is located more than 100 miles from State Z’s coast. In September, 2009, a category 3 hurricane made landfall in State Z, causing a great deal of property damage and some loss of life. Alice wanted to take advantage of the catastrophe, so she obtained the voting lists for every city and town which had reported damage as a result of the hurricane, and sent a letter to all the registered voters saying her services were available to pursue claims on behalf of homeowners or injured parties with insurance companies or any one else who might be liable for personal injury or property damage resulting from the hurricane.

Is Alice subject to discipline for sending letter?

(A) Yes, because the letter is a direct solicitation of business.

(B) Yes, because Alice’s office is not located within one of the cities that was hit by the hurricane.

(C) No, if Alice is competent to handle the cases.

(D) No, if Alice includes the words “Advertising Material” on the outside of the envelope.
3. Lenny Lawyer grew up in City, which is in State. He lived in a neighborhood in which everyone knew everyone else. He and his family were particular friendly with their next door neighbors, the Smiths, who had one child, a son, Sonny, close to Lenny’s age. Lenny and Sonny played together when they were young, went all the way through high school together, and played on the same community football team. Although they went to different colleges, they stayed in touch. Lenny, of course, went to law school. Sonny became a very successful accountant. Lenny’s and Sonny’s respective parents were always great friends, even after the boys grew up and left home. Sonny died tragically several years ago when he was run over during the running of the bulls in Pamplona Spain. Sonny’s parents were devastated by the loss of their only child.

After that, whenever Lenny went to visit his parents, which was fairly often, he made it a point to stop by Sonny’s parents’ house for coffee and a chat. Sonny’s parents were eternally grateful for Lenny’s continued attention to them. One day Sonny’s dad asked Lenny to draw up their wills. Lenny agreed and set up an appointment for them to come to his office. When Lenny asked Sonny’s parents how they wanted to dispose of their property, they both said, “You were always like a son to us Lenny. Before and after Sonny died. We want to leave you everything.” Lenny was flabbergasted. He knew Sonny’s parents were not rich, but their house was worth several hundred thousand dollars. And, Lenny knew that the parents’ siblings had all passed away, leaving only a couple of nieces and nephews to whom they were not close as next of kin.

So Lenny agreed, and drafted reciprocal wills, leaving everything to the surviving spouse, if any, and then to himself. They were witnessed in accordance with the laws of State by three disinterested persons.

Is Lenny subject to discipline for drafting the wills?

(A) No, because they were executed in accordance with the laws of State.

(B) No, because he did not solicit the gift.

(C) No, because Sonny’s parents had no other close relatives to whom they could leave the house.

(D) No, if the parents are considered someone with whom the lawyer maintained a close familial relationship.
4. Annie Attorney was consulted by Connie Client with respect to a possible suit against Sammy Swindler, who had induced thousands of wealthy clients to invest in derivatives, essentially betting that the mortgage industry would go down in flames. Connie also wants Annie to investigate whether there is a cause of action against any governmental regulatory agency responsible for oversight of Sammy’s activities. Although Annie is a well-known, successful and experienced business and securities litigator, she knows that there are loads of very complicated issues here that such litigation will take an extraordinary amount of time, and that suing the government is a very tricky business with all sorts of statutes of limitations and deadlines. At first, Annie declines the case. Connie, who makes it clear that she wants Annie as her lawyer, pleads with Annie to take the case. Annie reluctantly gives in, but insists that Connie agree, in writing, that she will not sue Annie for malpractice if she makes an error in the litigation.

If Annie incorporates that provision into the fee agreement, is she subject to discipline?

(A) Yes, because a lawyer cannot limit his or her professional liability.

(B) Yes, because Connie did not have independent counsel during the making of the agreement.

(C) No, if Annie advised Connie to consult independent counsel before executing the agreement.

(D) No, because Annie did not want to take the case in the first place.
5. Jason Judge was a member of the firm of Lawyer Judge and Attorney ("LJA"), a large and prestigious firm located in State. While Judge was a member of the firm, LJA had 20 partners and 40 associates. The practice was devoted to general business litigation, insurance defense and estate planning. Judge was in the estate planning section and had little contact with the litigation department, of which Lawyer and Attorney were members, except if and when an estate matter turned into litigation, in which case Judge would occasionally work with an attorney in that department if his expertise was needed. While Judge was a member of LJA, Lawyer represented Clarissa Client, who was sued for defamation when she wrote a steamy novel loosely based on the life of a famous politician. Judge had no involvement in the case. After Judge left the firm, Client hired Attorney to represent her in a breach of contract case with her publisher who reneged on an agreement to publish a sequel to the steamy novel, because, although she won the defamation suit, the book’s sales were lackluster and disappointing.

Judge was assigned to preside over Client’s breach of contract case, in which she is being represented by Attorney.

Should Judge be disqualified from sitting on the case?

(A) Yes, because Judge was a member of the firm while Client was a client of the firm.

(B) Yes, if Judge’s relationship with Attorney creates a personal bias or prejudice.

(C) No, because Judge was in a different department of the firm.

(D) No, because Judge did not work on Client’s cases.
6. Larry Lawyer has been representing Chuck Client in the sale of his business, Custom Classic Cars, as well as the land on which the business is located. The prospective purchaser, Resicorp, wishes to construct numerous residential townhouses and other multi-unit buildings on the property. Chuck has been assisting Resicorp in providing information necessary for Resicorp to obtain the necessary permits for construction, once title changes hands. As the date for the closing draws near, one of the outstanding issues, that is, whether there is any contamination on the site because it had been used for the repair and servicing of motor vehicles, was again raised at a meeting of Chuck, Larry, the purchaser’s representative and his lawyer. After the meeting, Chuck tells Larry confidentially that he had the property tested for hazardous substances, that there is oil in the ground, that he cannot afford to remedy it prior to the sale, and that he wants Larry to send falsified reports to the purchaser and his lawyer to settle that issue. He says by the time purchaser discovers the problem, Chuck will have enough money from the sale to cover the cost of remediating the land. Larry refuses to participate and tells Chuck that if he insists on proceeding in that manner, he will withdraw. Chuck says he will send the fabricated report with or without Larry.

Which of the following is correct?

(A) Larry must withdraw because continuing to represent Chuck will cause him to violate the Rules of Professional Conduct.

(B) Larry may withdraw if doing so will not prejudice Chuck.

(C) Larry may withdraw if he can find replacement counsel in time to meet the closing deadline.

(D) Larry may not withdraw without Chuck’s consent.
7. John Judge is presiding over a complicated airplane crash case. Judge is mulling over the defendant’s motion to dismiss for lack of jurisdiction on the grounds that the act that gave rise to the crash occurred in another state. Judge is not happy with the legal briefs that the parties submitted, so he wants to contact an old law school chum of his, who is a law professor at prestigious Hahvahrd Law School, where he teaches, among other classes, civil procedure and federal courts.

Can Judge contact the professor and ask for advice on the law?

(A) Yes, if the Judge believes that such advice is necessary for him to render a fair and impartial decision.

(B) Yes, if he first informs the parties, and gives them an opportunity to object and respond.

(C) No, unless no other judge on the court is knowledgeable on the subject.

(D) No, because a judge must decide a case on the record presented by the parties.
SECTION II

Short Answers (pts total)

1. (6 pts.) Danny Defendant was arrested for driving under the influence, while operating his 2009 Maserati Gran Turismo (that goes for a cool $125,000) on Rte. 95 at 1:00 AM. Danny is quite the man about town. Founder of a computer software firm, Danny had made his first million by age 25. Danny’s business takes him all over the globe. He recently had to go to London, where a UK company is bargaining for exclusive rights to one of his software programs. Unfortunately, Danny missed his flight home, which ordinarily would not have caused much problem, except that he had a court appearance on the DUI the morning after the plane was to land. But, never fear, Danny had an idea. He called his twin brother, Donny, and arranged for him to appear at court for him, pose as Danny, and ask his attorney, Larry Lawyer, to get a continuance. Danny believes no one will ever be the wiser.

   Larry met Donny at the appointed place and time before the hearing, and began to discuss with him possible defenses to the criminal charge. Larry began to get suspicious when Donny did not know certain facts about the arrest that Larry thought he should have. Larry knows Danny has a twin, but the two have never met. Upon questioning, Donny insisted to Larry that he was Danny. Larry calls you, an ethics expert, and asks what, if any obligations, he might have, given his concern that the wrong twin is in court.

   What advice will you give Larry?

2. (5 pts.) Lenny Lawyer was consulted by Able, Baker and Charlie ("incorporators") to represent them in incorporating their new specialty coffee shop, Java Joys. They also asked Lenny to negotiate contracts, licenses and the lease for their store, which was to be located in the small town of Bucolic. They wanted to sell food and drink to take-out and eat-in, such as coffee, bagels, pastries and the like. Lenny completed the work, got paid, and has had no further dealings with the company or the incorporators. After Java Joys had been operating for about one year, Lenny was approached by Eddie, Frank and George (E, F, and G), to perform the same legal services for their new coffee shop, Luscious Lattes, specializing in Italian and European coffee drinks. Lenny is fairly certain that Bucolic cannot support two specialty coffee shops—there simply will not be enough business, and one of these two businesses will not survive.

   Can Lenny represent E, F, and G and Luscious Lattes and perform the legal services they seek?
3. (6 pts) Dave Dewey, Chris Cheatham and Harvey Howe, along with several other attorneys leased office space together. The lawyers subdivided the space and each maintains 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 and copying. Each keeps his or her files in one or more 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 costs for rent, utilities and other expenses such as library 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 total time that secretary works on that lawyer’s business. The three attorneys’ all have the same letterhead that says: Dewey, Cheatham and Howe Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the letterhead. Each lawyer maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts. They all 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 states:

“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”

Discuss the ethical issues raised by the fact pattern.

4. (5 pts) Larry Lawyer and Concetta Client have been friends for years. They first met when their children, now teenagers, were in elementary school. Concetta is a very successful real estate developer. She has a keen eye for discovering property that is well-situated, and she designs and builds or renovates moderately priced but high class homes that are attractive even in this down market. Larry represents Concetta in most of her real estate transactions—purchasing and financing property, contracting with architects and contractors, and ultimately selling the homes. Concetta’s business is very lucrative for Larry, but nothing compared to what Concetta makes on the deals. So, when Concetta suggests that he invest in rehabbing a series of dilapidated row houses in an up-and-coming neighborhood that she wants to purchase, Larry jumps at the chance. Larry agrees that he will not act as counsel with respect to this particular project, but he will continue to represent Concetta in her other business endeavors.

Can Larry ethically invest in Concetta’s real estate proposition, and if so, under what circumstances?
5. (10 pts) You have been retained to represent Connie and Diane, both former employees of Monument Square Laboratories (MSL) in an age and gender discrimination suit against MSL. Although they were long-time employees, they were recently terminated and replaced by men younger and less experienced than they, but who would work for a lot less. Connie mentions to you that there are a number of current and former employees of MSL who would be willing to talk to you about the goings on at the company, and how many of the managers have expressed a preference to hire younger employees, who, though not as qualified as the employees they are replacing, are be willing to work for less. After all, it’s all about the bottom line.

Can you speak to the present and/or former employees? Why or why not? If so, under what circumstances?

SECTION III

Longer essays (40 pts. total)

1. (15 pts.) Angela Attorney, a graduate of Hahvahrd University and Hahvahrd Law School, is in-house counsel for Wendell’s Widgets (“the company”), a Massachusetts corporation that manufactures widgets, which are essential components of electric automobile motors. As a result, Wendell, President of the widget company, has become a multi-millionaire. He made his first million by age 25. Angela, who is primarily a business attorney, went to work for Wendell when he had just started out and she stuck by him through the lean times as well as now, when he is making money hand over fist. She has been handling patent, trademark, contracts and licensing issues for the company, which now supplies parts to Honda, Toyota and Ford, all of whom manufacture electric vehicles. Angela is licensed to practice in Massachusetts.

Wendell wishes to relocate his corporate headquarters as well as a major manufacturing plant to North Carolina, where the weather is warmer and labor is cheaper. He wants Angela to relocate with him as his Chief Counsel. She does, but Wendell’s family, which includes two high school aged children, is reluctant to leave Massachusetts, so the family decides that his wife, Winnie, and the kids, will remain in Weston, Massachusetts, until the youngest graduates high school in 2012. In addition to performing the same corporate legal duties she did when in Massachusetts, once Angela moved to North Carolina, she represents Wendell in the purchase of a one bedroom condo in North Carolina, one town over from the company’s new location.

You know what happens next. Wendell, whose wife is now 1200 miles away, and Angela, who never married, become romantically involved with each other. They decide they are in love, and after several months, Wendell announces wants a divorce. Winnie (his wife) knows that something fishy is going on, but she never suspects that the culprit is Angela, since the too worked together for years without any intimate relationship commencing. Winnie files for divorce in Massachusetts, and Wendell convinces Angela
to represent him in the action. Wendell is a little short on cash, so he agrees to give
Angela a percentage of the royalties from his already published book “How I Made My
First Million Before 25.”

Winnie is represented by Larry Lawyer (he gets around, doesn’t he???). Unlike Angela,
who has never done a divorce before, Larry is an experienced domestic relations lawyer.
Winnie tells him that she has no cash available to pay his (exorbitant) fees, but she will
pay him 30% of any assets she receives in the divorce, and he can secure payment by a
lien on the marital home, in which Winnie and the children are residing.

Discuss the Ethical Issues.

2. (25 pts.) Mike and Peter met when Mike was an associate in a large law firm that
did primarily insurance defense work, and Peter was an Assistant Attorney General in the
Consumer Protection Division of the Attorney General’s Office. Among Mike’s firm’s
major clients was Infinite, a division of Japan Motors, one of the largest car
manufacturers in the world. Mike and Peter met when the AG was investigating Infinite
for selling used cars as new, in violation of federal and state unfair consumer practices
laws. Ultimately, Mike and Peter decided to leave their respective employers and go out
on their own. They formed a firm and, within the first year, had been retained to represent
plaintiffs in a class action against a number of SUV manufacturers, including Infinite.
The plaintiffs/car 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 they had previously worked on only a few automobile cases, and although some
were products cases, none of them related to SUVs. Because of their inexperience on the
particular issues raised in the SUV class action, they knew they would have to do more
work than a more experienced lawyer would, so they negotiated a 45% contingent fee
agreement with the class members. They figured that should fairly compensate them for
their time. The members agreed to the fee and signed the fee agreements.

For the first year of the litigation, Mike and Peter employed Arthur Associate, a
recent law school graduate. Arthur worked on many cases in the office, including the
SUV class action. He was responsible for researching legal issues that arose, drafting
memoranda to the lawyers handling the case, and handling the discovery. One of the
assignments Arthur had was to review the first wave of document production from one of
the defendants. In the batch of papers, Arthur found a memo from Infinite’s lawyer,
Kalda Paulis, describing a meeting that she and other attorneys had with representatives
of the client, discussing possible defenses to the case. Arthur immediately turned the
document over to Mike, who stuck it in a drawer.

Mike and Peter also discovered that many potentially important e-mails that went
between Infinite’s insurer and Infinite’s Vice-President of Quality Assurance concerning
proposed post-accident/pre-litigation changes to the SUV designs had been deleted and
erased from the system pursuant to a standard document retention policy in effect at
Infinite. Infinite’s in-house counsel was cc’d on many of these e-mails.
After a year at the firm of Mike and Peter, Arthur left and went to work for Kalda Paulis’ firm as an associate. Both Paulis and Mike and Peter have filed motions to disqualify each other in the SUV case.

Discuss the ethical issues, including how the judge should rule on the reciprocal motions to dismiss.
This is a 3-hour exam. The exam is divided into three (3) questions. The first two are essay or essay type, and the third is comprised of five multiple choice 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.

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THE ESSAYS GO IN THE BLUEBOOK. YOU MAY NOT USE MORE THAN ONE BLUEBOOK. Use Your MSL ID Number ONLY!! THE MULTIPLE CHOICE ANSWERS MUST BE ENTERED ON THE SCANTRON CARDS PROVIDED. AGAIN, USE YOUR MSL ID #.

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GOOD LUCK!!!
(45 points) Dave Dewey, Chris Cheatham and Harvey Howe, along with several other attorneys lease office space together in a small office building on Nantucket. The lawyers subdivided the space and each 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 and copying. Each maintains his or her files in a separate locked cabinet 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 costs for rent, utilities and other expenses such as library 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 total time that secretary works on that lawyer’s business. The three attorneys use the same stationery, bearing the letterhead: Dewey, Cheatham and Howe Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the letterhead. Each lawyer maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts. They all 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:

“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 retained Dave Dewey to bring a tort action against Ralph Restauranteur. Although the two 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 to the Ladies’ Room in Ralph’s restaurant, The Rock Lobster, and seriously injured her back.

Shortly after Verna hired Dave, while Dave was passing through the jointly used reception area of his office, Harvey introduced him to one of his favorite clients—you guessed it---Ralph Restauranteur. Seems Ralph had retained Harvey Howe to represent him when he purchased the restaurant one year ago. Harvey hasn’t represented the business since the sale was completed, but he has continued 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. 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.

Dave filed suit in Massachusetts Superior Court. Ralph’s insurance company obtained counsel to represent the restaurant. During discovery, Dave found out that Wanda Waitress, an employee of Ralph’s restaurant, witnessed the fall. Verna told Dave that Wanda told her she had mentioned the dangerous step to Ralph many times, told him
some day someone would get hurt, 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 and confirmed that the step was hardly visible in dim light.

During a settlement conference before discovery was complete, 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 $15,000. Dave rejected it immediately, without a moment’s hesitation, because Verna had more than $15,000 in medicals alone.

Dave believed Verna’s damages might exceed $250,000, and he told that to Verna when he reported the results of the settlement conference. Verna asked Dave what would happen if they recovered more than $250,000. Dave replied unless Ralph was found personally liable, or they could in some way impose liability on Ralph, who personally held assets, she would collect the policy amount and that would be it. Dave went on to say that he had researched Ralph’s assets, and had discovered that all Ralph had was the restaurant, which is owned by a corporation. All the other assets were in his wife’s name, and these transactions had occurred so long ago that it would be virtually impossible to get to any of them to satisfy a judgement in excess of the policy. Verna went ballistic. She insisted that Dave sue Ralph personally and get an attachment on his Mcmansion in North Andover. Dave did not believe that there were legal grounds for such a strategy so he refused. Verna fired Dave on the spot, and, several days later, retained Sandy Successor. Sandy wrote to Dave, requesting the file. Dave wrote back, refusing to send anything but the pleadings, claiming Verna still owed him $1250 in costs for a variety of medical reports that she had agreed to pay for.

The case was assigned for trial to Judge Judy. Because Nantucket is such a small community, Judy was familiar with Ralph’s restaurant. She and her family had eaten there many times. When she got the assignment, she remembered that the last time she was in the restaurant she noticed that the step to the rest room was almost invisible.

Discuss the ethical issues raised by the fact pattern. Please address each issue separately, in sequence as it is raised by the facts.
Question II

(15 points) Anthony Attorney represented Donald Defendant in a criminal case in which Donald was convicted of involuntary manslaughter, and sentenced to five years in prison. Donald’s cell mate is Frank Felon, who you represented in a series of cases. Frank thinks you are the best defense attorney in the world, and has advised Donald to consult you about whether Attorney did the best job for him.

Donald 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 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.

Unbeknownst to Don, Cousin Mathilda, who recently won the lottery, calls you and agrees to pay you $15,000 to represent Don in an appeal or any post-conviction case. 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.
1. Alice Attorney was admitted to practice in State Z more than two years ago. Since then, she has attempted to establish a personal injury practice, but without much success. State Z has a large coastline along the Atlantic Ocean, which has consequently been hit by many hurricanes over the past several years. Alice’s office is located in City W, which is located more than 100 miles inland from State Z’s coast. In September, 2010, a category 3 hurricane made landfall in State Z, causing a great deal of property damage and some loss of life. Alice wanted to take advantage of the catastrophe, so she obtained the voting lists for every city and town which had reported damage as a result of the hurricane, and sent a letter to all the registered voters saying her services were available to pursue claims on behalf of homeowners or injured parties with insurance companies or anyone else who might be liable for personal injury or property damage resulting from the hurricane.

Is Alice subject to discipline for sending the letter?

(A) Yes, because the letter is a direct solicitation of business.

(B) Yes, because Alice’s office is not located within one of the cities that was hit by the hurricane.

(C) No, if Alice is competent to handle the cases.

(D) No, if Alice includes the words “Advertising Material” on the outside of the envelope.
2. Annie Attorney was consulted by Connie Client with respect to a possible suit against Sammy Swindler, who had induced thousands of wealthy clients to invest in derivatives, essentially betting that the mortgage industry would go down in flames. Connie also wants Annie to investigate whether there is a cause of action against any governmental regulatory agency responsible for oversight of Sammy’s activities. Although Annie is a well-known, successful and experienced business and securities litigator, she knows that there are loads of very complicated issues here that such litigation will take an extraordinary amount of time, and that suing the government is a very tricky business with all sorts of statutes of limitations and deadlines. At first, Annie declined the case. Connie, made it clear that she wanted Annie as her lawyer, pleaded with Annie to take the case. Annie reluctantly gave in, but insisted that Connie agree, in writing, that she will not sue Annie for malpractice if she makes an error in the litigation.

If Annie incorporates that provision into the fee agreement, is she subject to discipline?

(A) Yes, because a lawyer cannot limit his or her professional liability.

(B) Yes, because Connie did not have independent counsel during the making of the agreement.

(C) No, if Annie advised Connie to consult independent counsel before executing the agreement.

(D) No, because Annie did not want to take the case in the first place.
3. Louise Lawyer and Penny Psychologist were college roommates and classmates. Although they took different paths following graduation, they stayed in touch throughout graduate school and beyond. Louise became a divorce attorney and Penny went into family therapy. They would frequently consult with each other informally over issues encountered in their respective careers, and each concluded that the other was extremely competent in her chosen field. Whenever Louise felt that a client could benefit from counseling, she would give the client Penny’s name, and when Penny found her patients had reached an impasse, and there was no alternative but dissolution of the marriage, she would refer one of the patients to Louise. They ultimately decided that they would enter into a formal agreement to refer each other clients who needed the other’s services.

If Louise enters into an agreement to refer clients to Penny and vice versa, is Louise subject to discipline:

(A) No, if the agreement is not exclusive and the client is advised of the existence of the agreement.

(B) No, so long as Louise believes that Penny is competent to render the services.

(C) Yes, because a lawyer is giving something of value to a non-lawyer for referring a client.

(D) Yes, because Louise is essentially going into business with a non-lawyer.
4. Gary Governmentlawyer was employed as a supervisor in the office of a District Attorney in State. Gary's responsibilities included: overseeing performance of the assistant DAs in the courts within his jurisdiction, assigning cases to lawyers where special assignment was necessary, and consulting with the subordinate lawyers on applicable law and strategy if necessary. Barry Breakingandentering was charged with B & E, when he was caught inside a home belonging to Harriet Homeowner, carrying a laptop and ipad belonging to Harriet and her daughter. Because there was a question of whether there was an actual breaking (Barry had a set of keys to the house left from when he worked on a kitchen construction project, and Harriet never asked for them back, or changed the locks), Gary assigned the case to an experienced assistant, and consulted with her on the legal issues. Ultimately, Barry pled guilty and was sentenced to probation.

Gary left the DA’s office and went into private practice with Connie and Carol Counsel. After Barry’s the probationary period on the first case had ended, he got arrested again, this time for breaking and entering into his grandmother’s house. He wants to hire Barry to represent him.

If Gary agrees to represent Barry on the second B & E, is he subject to discipline?

(A) Yes, unless Barry gives informed consent to the representation.

(B) Yes, if Gary personally and substantially participated in the first case as a government attorney and the agency does not consent.

(C) No, because the two cases are not substantially related.

(D) No, because the first case has concluded.
5. Senior Attorney is a products liability lawyer. He has become particularly well known for handling drug and medical device cases, and he appears all over the country at seminars for lawyers interested in handling cases involving harm from drugs and medical devices. These cases are particularly difficult because they involve the introduction of expert testimony as well as scientific and engineering evidence. Senior frequently gets referrals from lawyers all around the country, and has become simply inundated with work. So he hired an associate who, although he had passed the bar just a year ago, had an undergraduate degree in chemistry and was a cum laude graduate from State University School of Law, where he specialized in civil litigation.

A few months after Associate joined the firm, Senior Attorney was just asked to represent a woman who had become partially paralyzed from taking a combination of prescription drugs. He agreed to take the case, but realized a few weeks later, as discovery was about to commence, that he was too busy to handle the case. So, he assigned it to Associate, because of Associate’s expertise in chemistry. Associate tried to get Senior’s advice on interrogatories and expert witness matters, but Senior was just too busy. He told Associate, “You are smart, you took courses in law school on civil procedure and discovery. You worked for a year in another PI firm. I have faith that you will figure out what to do.” Unfortunately, Associate failed to timely disclose the identity of the expert and the subject of his testimony, the court excluded the expert, and Senior’s client lost the case on summary judgment. Client sued for malpractice and recovered the amount she would have been awarded had she won the underlying products case.

Is senior subject to discipline?

(A) No, if Senior reasonably believed that Associate was competent (or could become competent) to handle the case.

(B) No, because Client suffered no harm as a result of Senior’s conduct.

(C) Yes, because Senior failed to supervise Associate.

(D) Yes, because Associate breached the duty of competence, and Senior is vicariously liable for Associate’s ethical violation.