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Exam No. _____

**750 Ethics
Spring 2010**

**UNM School of Law
Final Examination
Three Credits**

**Professors Sanders/Stout
W: May 12, 2010
8:30-11:30 a.m. (3 hrs)**

Examination Format: Essay

Professor's Instructions

This is a three-hour examination. The exam consists of six essay questions. The total number of points possible on the exam is 85. Each essay is worth 14 points—in other words each question is of equal weight so be sure to time yourself accordingly. You get one point for putting your exam number down correctly.

This exam is OPEN BOOK. You may refer to any print materials including your casebook, your rules book, your class notes, and your course outline. You may NOT use electronic databases.

In your answers, you are to apply the Model Rules and comments, cases, and ethics opinions to the facts and to provide references to and analysis of relevant provisions of the Model Rules and relevant case law and ethics opinions to demonstrate your reasoning and to support your conclusion. You may refer to the Restatement as you deem appropriate. Issues relating to attorney client privilege and/or attorney work product should be discussed with their pertinent authorities.

To receive full credit for each question, you must identify the correct rule and offer relevant language or a paraphrase of language from the rule or the rule comments, state a definite conclusion or answer, and support your conclusion/answer through complete presentation of all steps in your reasoning and reference to relevant authority. References to case names and base rule numbers are sufficient as citation; reporter cites and rule subsections are not required. If you do not recall a rule number, you must specify the subject matter of the rule. In grading the exam we will also be looking for good organized analysis and presentation.

Your answers are to be concise and directly relevant to the question asked or fact pattern provided. Rambling and imprecise answers will not receive full credit. **Be sure to respond to the call of the question.**

Please use the following formatting for your answers. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages. You are to return your exam questions with your answers.

Essay Instructions

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS**

Laptop for typing:

1. Log off all programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "**Prepare to start new exam**" is marked and click, "**Next.**"
5. Enter your "**Exam ID**" number and confirm it.
6. Click the drop box next to "**Course**" and select your course and professor and confirm. Click, "**Next**".
7. Optional choices screen: If you choose to change these options please do so. If not, click "**Next**".
8. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked "**Got it**" and click, "**Next**".
9. Type "**Closed**" for exam mode, check the box below that to confirm and click, "**Next**".
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "**Begin Exam.**"
12. A "**Security Check**" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. Use the Tools menu above and select "**Insert Answer Separation**" for a page break.

ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write them on the exam and do not sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Proctor or the Registrar's Office (William or Ernest) at 277-2146/2147 or jackson@law.unm.edu or tafoya@law.unm.edu

You may not make/keep a copy of this exam! You are required to return this exam with your answer.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, **STOP** immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books, and gather up any materials. If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically** and follow either the Mac or Windows user directions below:

Mac users only:

- Wait for the airport icon to indicate you have reconnected to the wireless network.
 - If the “Check Network Connection” screen displays, select OK.
 - Use your Airport to reconnect to Lobo-Sec.
 - Reauthenticate using your browser.
- Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- Exit the exam by selecting **Exam4 Save Options, Exit**.
- If the exam **did not submit electronically**, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code
 - Click **Quit** to exit Exam4.
 - If the exam still did not submit electronically, contact an IT proctor

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Windows users only:

- If the Status” window indicates a problem with submitting electronically (usually Error 12: No response), close the window with the Red X and select File and Save Options. Select Exit (don’t worry...the completed exam is saved to your hard drive). “Check Network Connection” screen displays, select OK
 - Exit the exam by selecting **File and Save Options, Exit**.
 - Reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
- Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- If the exam still did not submit electronically, contact an IT proctor.

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

[Exam begins on the next page]

Question 1

Client comes to visit with you about her case, a personal injury claim arising from an automobile accident. You are running behind and unable to complete your discussion of the case in part because the client insisted on telling you about the problems she is having with her teenage son selling meth out of her garage. You suggest going to lunch to finish talking about the case. You go to a restaurant and find a booth in the back of the restaurant. The restaurant is crowded and a little noisy, so you have to both speak up in order to hear each other. You discuss the case and some unrelated matters about your client's business. Coincidentally, an expert witness you are using in another case happens to come into the restaurant and you invite her to join you. You continue to discuss your client's case and then, when lunch comes you talk to the expert about her upcoming testimony. While waiting for the check, your client hands you a set of photos that were taken of the accident scene the day after the accident. Discuss each communication in light of what privileges or rules apply, if any.

Question 2

Four months have passed since your first dinner with Anna, and you are on your way back to Chez Francois for another good meal and chance to talk about your lives. You spent the whole day reading and summarizing documents that might be submitted in connection with the latest periodic report to the Food and Drug Administration (FDA) from one of your firm's clients, Twenty-First Century Foods. The files that you were reviewing pertain to that agency's review of the client's latest diet soda, called Diet Kola.

Diet Kola uses a new sweetening ingredient. When the FDA first approved this sweetener all tests showed that it was risk-free. Nevertheless, the FDA required the company to continue testing to check for any long-range adverse effects of the product. You have been reviewing the latest test on laboratory animals. The recent testing suggests that when female rats are given high concentrations of the sweetener, the rate of limb deformities in their offspring increases by 10 percent. This could be a statistical fluke. The company wants the firm to help persuade the FDA to take no action until more test results are available. There is also some data showing that pregnant women who used a medication that contained a substance chemically similar to the sweetener in Diet Kola had miscarriages. This data is too limited to be statistically significant.

Anna is waiting for you when you arrive. She is reading a magazine and drinking a glass of Diet Kola. You are struck by the coincidence.

"Hey, Anna. It's been too long. You look great!"

"Thanks. You too."

"Want to order some wine?"

"No wine for me tonight," says Anna. "I'm sticking with Diet Kola. No more alcohol for a while, just Diet Kola and milk." She smiles knowingly.

"You mean . . ."

"I just learned last week --- I'm almost two months pregnant!" She takes another sip of her drink.

Discuss whether you can say anything to Anna about the information you have

Question 3

You are involved in the investigation of a potential employment discrimination case against xyz corporation, your client's former employer. Part of the case involves general employer practices of xyz corporation and part of the case involves specific treatment of your client. Your client gives you the names and phone numbers of some people she worked with both in and out other department. She also has an organizational chart in her employee manual that identifies the hierarchy in her department and in the company. You learn that a supervisor in another department has left the company. You want to interview her co-workers that were in the same department who are still employed with xyz corporation about what happened in that department to your client. You also want to interview the former supervisor from the other department about general employer practices of the company. Analyze whether the disciplinary rules permit you to contact and interview these witnesses and what restrictions might be placed on your questioning.

Start by analyzing each of the two categories of witnesses.

Question 4

You have bounced between jobs since graduating from law school. Initially you worked as an attorney at the Children Youth and Family Department (CYFD). Your immediate supervisor was the Secretary of CYFD and he remains a very good friend of yours. Your job at CYFD was to bring suit on behalf of the State against deadbeat parents of children on welfare who were not providing child support to their children. Under particular statutes the State was able to sue for reimbursement of the money paid by the State to the custodial parent for the benefit of the children. While employed at CYFD you drafted and lobbied for legislation which allowed the State to revoke any commercial driver's license for those who were behind on the judgments obtained by the State for that type of reimbursement. You stayed at CYFD for two years then went to practice at a large firm in the same city. You have been there for three years.

Recently you met with two individuals who want to bring a class action against the State for wrongful revocation of commercial driver's licenses. Apparently the State accounting system software was programmed incorrectly so licenses of many individuals who were not actually behind in their payments were revoked when they should not have been. Under the procedural and substantive laws of the State, the defendants would have to be CYFD and your former supervisor.

Can you or your firm represent these two individuals in the law suit against CYFD and your former supervisor without violating the Rules of Professional Conduct?

Question 5

Sara comes to you for representation. She wants to file a complaint for breach of contract on the sale of a coal-fired pizza oven that she sold to John. The action for breach of contract appears marginal if not frivolous from a substantive legal standpoint. Sara tells you that she knows that John's finances are stretched thin and that he will not be able to afford a lawyer, that his business is on the brink of collapse. Sara believes that John will be willing to settle quickly using a piece of property he owns that she wants. Sara believes that in order to keep his business and the pizza oven he would be willing to sign over title to the property. Sara wants you to represent her and is willing to give you a contingent fee on the sale of the property or a 1/3 interest in the property. Please discuss what Model Rules are implicated by these facts.

Question 6

You are in private practice. You do some criminal defense work and some civil work. ABC Corporation is a local business which employs about 300 people in your city. It has no attorneys within its organization so you do quite a bit of work for ABC on all types of matters. Among other things, ABC sells paper products to the local courthouse. The sales representative on the courthouse contract is Sam Smith. Sam is the best friend of Andrea, the President of ABC Corporation.

Recently Jose Morales, who is another ABC sales representative, came to you and told you that he learned Sam has become "very good friends" with Judge Royal because of ABC's sales to the courthouse. Jose recently got arrested for reckless driving and for not having auto insurance. He has hired an attorney to represent him on those charges. Then Jose told you what had happened recently at work. On the Monday after the arrest Sam came to Jose's office and told him that he could get the charges to go away if Jose gave Sam a \$1000 for Judge Royal and another \$250 for Sam. Jose had no idea how Sam even knew Jose had been arrested. Although Jose was worried about the charges and the effect on his insurance premiums in the future, Jose told Sam to get out of his office. As Sam was leaving he apparently said, "You better keep your mouth shut. Andrea will be very upset if you rat me out. How do you think we keep that damn court contract anyway?"

What should you do?