750-001 Ethics
Fall 2012

UNM School of Law   **Professor W. Slease**
Final Examination   **W/T: December 5/11, 2012**
                                                     8:30-11:30 a.m. (180 mins.)

Examination Format: Essay

<u>Professor's Instructions</u>

This is a **three-hour limited open book** final examination. The exam consists of **3 essay questions and ends with the words "END OF EXAM." IF YOU DON'T HAVE ALL THREE QUESTIONS, AND ALL PAGES OF THE EXAM, ATTACHED, PLEASE NOTIFY THE PROCTOR IMMEDIATELY**. The total number of points possible on the exam is 75. Each essay is worth 25 points – in other words, each question is of equal weight so, time yourself accordingly.

You **may** refer to the ABA Model Rules of Professional Conduct as set forth in the supplement used in class; i.e. Gillers, Simon & Perlman, *Regulation of Lawyers: Statutes and Standards*, whether the full or concise edition. If you have a separate codification of the Rules, you may use that instead. Make sure it is up to date. You may tab and annotate the Rules. You may also use an outline prepared by you and your class notes. You may **not** use any commercial outlines, hornbooks, flashcards or any other print or electronic materials or databases. You may **not** use any materials prepared by anyone other than you, including the TWEN PowerPoint slides I have posted. You **can** prepare your own outline or notes using the TWEN PowerPoint slides; you just **cannot** print the slides and use those as your own notes during the exam. You may not use your fellow students to help you during the exam.

Your answers should apply the ABA Model Rules of Professional Conduct, including any comments or cases you deem relevant, and you should demonstrate your reasoning to support your conclusions.

Full credit for any answer to a question requires that you identify the correct rules applicable to the question, offer relevant language from the Rules and any comment or case upon which you rely, state a definite conclusion or answer and support your conclusion/answer with a complete analysis, including your reasoning in reaching the conclusion/answer. Answers should be thorough, but concise and related to the question or fact pattern provided. RESPOND TO THE CALL OF THE QUESTION.

If needed, Bluebooks will be provided by the proctor. For Bluebook use, see the essay technical instructions below.

The UNM School of Law Honor Code applies to this exam.

For exam formatting details, see "Essay Technical Instructions" beginning at the top of the next page.

Essay Technical 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. Start the Exam4 program.
3. Make sure **"Prepare to start new exam"** is marked and click, **"Next."**
4. Enter your **"Exam ID"** number and confirm it.
5. Click the drop box next to **"Course"** and select your course and professor and confirm. Click, **"Next".**
6. Optional choices screen: If you choose to change these options please do so. If not, click **"Next".**
7. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked **"Got it"** and click, **"Next".**
8. Type **"Closed"** for exam mode, check the box below that to confirm and click, **"Next"**
9. At this point Exam4 will indicate **"Wait!"** in the lower right side of the screen.
<div align="center">WAIT!</div>
10. The proctor will tell you when to click **"Begin Exam."**
11. 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.
12. 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:
- o 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 connect to Lobo-Guest, Lobo-WiFi, or Lobo-Sec.
  - ▪ Authenticate using your browser as appropriate.
- o Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- o You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- o Exit the exam by selecting **Exam4 Save Options, Exit**.
- o If the exam **did not submit electronically**, reconnect to either Lobo-Guest, Lobo-WiFi, or Lobo-Sec network, making sure you authenticate as appropriate (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:
- o 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**.
  - ▪ Connect to either Lobo-Guest, Lobo-WiFi, or Lobo-Sec network, making sure you authenticate as appropriate (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.
- o Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- o 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

Attorney Edison is an associate at a three-lawyer law firm named Garcia & Walker, a firm known for its excellence in handling federal court matters. Edison is well known for her research and writing skills and is particularly good at federal and state court jurisdictional issues. Her firm was recently retained by Loopy Links Miniature Golf ("Loopy") to represent Loopy in connection with a contract dispute between Loopy and Happy Times Windmills ("Happy"), a supplier of props for miniature golf courses. Happy filed suit in Federal Court but Loopy believes that federal court lacks jurisdiction to hear the matter. Loopy hired Garcia & Walker for the sole and limited purpose of trying to have the case remanded from Federal Court to State Court. Ron Garcia, one of the two partners at Garcia & Walker asked Edison to work on a Motion to Remand on behalf of Loopy to get the case sent back from Federal Court to State Court. In the course of preparing the Motion, Garcia and Edison meet with Loopy's president, Alex Moth, to gather factual information bearing on the Motion to Remand. During the course of their meeting, in which Garcia made it clear that he was the "lead counsel" on the case, Moth talked about a variety of things related to the jurisdictional issue. Despite the fact that Garcia & Walker would not be handling the actual merits of the contract dispute, Moth also talked about the facts of the contract dispute generally, sharing his insights on the good and bad aspects of the claim and his own perceived problems with succeeding in defense of the claim. Edison was present for some, but not all of the discussion and generally ignored the conversation if it seemed off-topic for her jurisdictional challenge.

Being the star that everyone knew she was, Edison's Motion to Remand was granted and the case was sent back to State Court and is now known as the "Happy v. Loopy State Court Lawsuit." At that point, Garcia & Walker orderly terminated its representation of Loopy.

Because of her legendary skills, Edison was frequently recruited by other law firms. One such firm was the Nuvo Law Firm. Nuvo's two senior, managing partners are Jim Smith and Wanda Jones. Nuvo eventually made Edison such a good job offer that Edison decided to go to work for Nuvo. Upon arriving at the Nuvo Firm, on her first day and looking at a case list, Edison discovered that Nuvo represented Happy in the now remanded Happy vs. Loopy State Court Lawsuit and that Smith was the lead attorney on the case. Edison had not seen the file nor done any work on it at Nuvo and no one had spoken to her about the case. Oddly, no one had asked her about it when she interviewed for the job, nor when she started. While sitting in her office several days later, contemplating what to do, Edison got a call got a call from Alex Moth who said "how dare you go to work for those sharks at Nuvo. Have you told them I'm your client?" Edison promptly went into Smith's office and said "We might have a problem."

Do they have a problem? Please discuss what Rules of Professional Conduct are implicated or which Edison and/or Smith might have or will run afoul of as a result of Nuvo's representation of Happy in the Happy vs. Loopy State Court Lawsuit.

What should Nuvo or Smith have done in advance to avoid this problem and if they failed to, what Rules of Professional Conduct are implicated?

Using the Rules of Professional Conduct as their guide, how might Nuvo, Smith and/or Edison try to solve any problem that might exist and can they in a way that does not result in a violation of the Rules of Professional Conduct?

What about Wanda Jones? Does she have any Rules of Professional Conduct to consider in light of the above facts?

Question 2

Attorney Lawrence Rome has operated a successful plaintiff's personal injury practice for many years. He specializes in taking low damage, sure liability cases and resolving them quickly by settlement. Anna Luckless paid a visit to Rome's office and explained that she had been in accident involving a City of Las Cruces fire engine. The fire engine ran a red light but not on the way to an emergency call and struck Anna's car. The accident was low speed and no one was taken from the scene by ambulance. The fire engine driver was cited for failing to yield. The accident happened on December 4, 2009, almost nine months before Anna retained Rome on September 1, 2010. After discussion, including an inquiry from Anna whether the fact that she had consumed a glass of wine just before the accident was important, Anna retained Rome to represent her against the City and its driver telling Rome "you're the expert, do what you think is best to get this resolved for whatever you think is right."

Rome had Anna fill out and sign the usual forms, including a medical records release, an employment records release and a detailed contingency fee agreement that detailed the method by which and the percentage of Rome's fees to be taken out of any recovery (33%), as well as what costs were to be paid and how and when, including whether they would be taken out of the gross or net recovery.

Rome sent Anna's medical release to all of her care providers and her employment release to her employer to determine her potential damages. Upon receipt of the records Rome learned that Anna had seen her primary care physician and that her total medical expenses were $1,500 with, in the physician's opinion, no further care or treatment indicated and no permanent injury or medical condition resulting from the accident. Anna paid this bill herself. From Anna's employer, Rome learned that Anna had missed two days of work related to the accident and used sick leave that was valued at $350 and the employer did not expect repayment of this benefit. The damage to Anna's car was also repaired and the bill for the repair was $1,000 which Anna's own insurance company, ABC Insurance, paid. ABC's adjuster notified Rome that ABC had a contractual right to seek repayment of the car repair cost from any money recovered by Anna from the City or its driver. Rome agreed, in a "letter of protection" which is a binding promise to pay a third party from funds recovered for a client, that he would honor that repayment if money was recovered. Rome totaled up Anna's damages as $2,850.

As he often did, Rome waited to file the complaint until one day before what he believed was the applicable statute of limitations; i.e. three years. However, Rome failed to recognize that a tort claim for an auto accident against a public entity and its employees in New Mexico is barred by a two year, not three year, statute of limitations. When, on December 3, 2012, Rome handed the Complaint to his new assistant, who worked for the legal department for a county before taking this job, Rome was surprised to learn from the assistant that his complaint, if filed, would be almost one-year late. "File it" Rome commanded. "I'll figure something out."

As soon as the Complaint was served on the City Manager Louise Paris, Paris called Rome and said, "You're out of luck, your statute ran a year ago." Rome responded, "So file a motion to dismiss. That'll cost you what, about $5,000?" Paris knew that Rome was right and that the City would have to pay at least $5,000 to its own attorney to get the case dismissed, even on a statute of limitations motion. The City had already told Paris to save money on claims, even if they were defensible, so Paris said "Look, I'll give you $3,000 to settle this today; non-negotiable." Rome agreed and said, "Send over the release."

When Rome called Anna to tell her the "good news," Anna was furious. "The fire truck driver laughed at me and called me names. Plus, I think he was drunk. Can't we get punitive damages?" Anna asked.

"No, we can't" Rome said, not against a City or its employees." (which was a correct statement and something Rome learned from his new assistant). "Besides, your damages are low. Just take the settlement and be done with it." Rome thought it best to omit mentioning the statute of limitations problem.

Anna was not satisfied. "At $3,000 and after your fees and ABC, I won't even make up my medical bills. Forget you. I'm filing a disciplinary complaint."

Based just on what you know so far, what Rules of Professional Conduct will the disciplinary authority consider charging Rome with violating and why?

[Question 3 begins at the top of the next page]

Question 3

(Recall the relevant facts in question 2, above, when considering this question). Poor Anna. She really wanted more than $3,000 to settle her case. Alas, when she tried to back out, the City filed a Motion to Enforce and the Judge in the case enforced the settlement. Thus, after Anna was forced to sign a release, the City mailed a check for $3,000 made payable to "Lawrence Rome as attorney for and for the benefit of Anna Luckless." Rome deposited the money in his trust account and then wrote three checks from the trust account: (1) a check in the amount of $1,000 to Anna's insurance company, ABC, to repay the amount it paid for Anna's car repair; (2) a check in the amount of $1,242 to Rome for his fees, gross receipts taxes and costs; and (3) a check in the amount of $758 payable to Anna as her net recovery. Rome then called Anna and told her that her check for $758 was on the way. He explained to her how he arrived at that number but, unsurprisingly, she was not satisfied. Instead, while she agreed that her insurance company should be paid, she loudly demanded that Rome cut all of his fees and costs and pay her the entire balance remaining after paying the insurance company; i.e. $2,000. "If not," she threatened "get ready to deal with disciplinary counsel again." Rome agreed.

When he hung up the phone, however, Rome decided that it was unfair that he should not be paid anything for his services. However, he did not relish another disciplinary complaint. So he devised a plan. He voided the first three checks and issued the following two checks: (1) a check in the amount of $2,000 to Anna; and (2) a check in the amount of $1,000 to Rome. He then mailed Anna her check, without any cover letter or other documentation, deposited his check in his operating account and called Anna's insurance company, ABC, and said, "Bad news. We did not recover money to repay you."

Two weeks later, Anna's policy with ABC was due to be renewed. In anticipation, and unfamiliar with insurance laws, Anna called ABC and eventually spoke with Alex Johnson, a coverage lawyer at ABC. "I assume my premium will not go up since ABC was repaid for my accident with the fire truck, right?" Anna inquired. Johnson pulled the claim up and discovered that, in fact, no payment had been made. Moreover, the adjuster's notes indicated that Rome had said there was no money for ABC. Johnson told Anna he would get back to her and then called Rome. "Damn right I took the money" Rome, who was obviously intoxicated, defiantly told Johnson. "You insurance demons are always trying to squeeze every dime out of the little guy. Well guess what pal, you ain't getting a dime from me. Besides, I got a tip for you that'll save you some money in the long run."

"What are you talking about?" Johnson asked. "Hey, maybe you should think twice before rewriting that little tattletale Anna's policy," Rome replied, "I bet she didn't tell you she was drinking before the accident. Take it from me, pal, if she's a drinker it's just a matter of time before she's a wrecker; ha ha ha. She's going to cost you big some day."

What Rules of Professional Conduct and other duties might Rome now be accused of violating and why?

What duties, if any, does Johnson have when he discovers what Rome has said and done?

END OF EXAM