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Exam No. _____

750-001 Ethics
Spring 2012

UNM School of Law
Final Examination

Professor W. Slease
M: April 30, 2012 &
M: May 7, 2012
8:30-11:30 a.m. (180 mins.)

Examination Format: Essay

Professor's Instructions

This is a **three-hour examination**. The exam consists of **five (5) essay questions**. **IF YOU DON'T HAVE ALL FIVE QUESTIONS, ATTACHED, PLEASE NOTIFY THE PROCTOR IMMEDIATELY**. The total number of points possible on the exam is 75. Each essay is worth 15 points – in other words, each question is of equal weight so time yourself accordingly.

This is a **Limited Open Book** examination. 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 Student Code of Conduct (Honor Code) applies to this exam.

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.
- WAIT!**
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:

- 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.
- 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 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:

- 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.
- 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.

Attorney Smith has spent the last twenty one years practicing exclusively in criminal defense, representing persons charged with both misdemeanors and felonies. Smith is quite adept at criminal law and procedure and is generally considered one of the better lawyers in the criminal defense bar. Smith recently agreed to represent Adam Axe who has been charged in connection with the disappearance of his girlfriend and her young child, neither of whom have been seen for almost three months. Axe is well known in the local community. He has a lengthy criminal record involving crimes of violence, and routinely fights with law enforcement officers during their encounters with Axe. In the first meeting Smith had with Axe, Axe spent most of the time avoiding questions about his girlfriend and her child, instead talking about the beating inflicted upon him by the two officers who arrested and questioned Axe in his latest arrest. Indeed, Axe's appearance confirms that the officers used physical violence against Axe. Smith has heard from friends that the two officers are notorious for using heavy-handed techniques with suspects. He has also heard that a civil rights action can be a "gold-mine." Smith has wanted to expand his practice and agrees to take Axe's civil rights claim on a contingent basis. He takes a \$5,000 retainer for costs and confirms the representation by a letter to Axe with no other paperwork. Smith deposits the \$5,000 in his operating account planning to later use it to hire an expert.

Smith sits on the civil rights lawsuit until the day before the statute of limitations runs, and then files it against the City that employs the officers. He does not name the officers. The lawsuit is filed in Federal Court. Smith was unaware of the mandatory pretrial reports, scheduling orders, expert deadlines, and related procedures in Federal court and, as a result, misses several key deadlines. Consequently, he names no experts in use of force or police practices, takes no depositions, obtains no written discovery from the defendant, and pleads a theory of "respondeat superior" against the City that employs the officers, not realizing that the applicable law does not allow such a theory. Axe's lawsuit is promptly dismissed with prejudice by the Court. Smith takes no steps to set aside the judgment or timely appeal. Because Smith is afraid of Axe, he does not tell him about the dismissal despite Axe asking on several occasions how the lawsuit is progressing. Axe learns about it when one of the arresting officers sees Axe in the jail, one day, and taunts him about his lousy lawyer.

Axe is furious and files a disciplinary complaint against Smith. The applicable disciplinary authority uses the Model Rules of Professional Conduct. What Rules is Smith likely to be charged with violating and why?

[Question 2 begins at the top of the next page]

Question 2.

After Adam Axe fired Attorney Smith (above), Axe hires Attorney Samuels to represent him in the pending criminal matter involving his girlfriend and child who have been missing now for over three years. During Axe's and Samuel's first meeting, Axe confesses to Samuels that the child had a diagnosed congenital heart defect and died unexpectedly one night while sleeping. Afraid that they would be charged with murder, Axe and his girlfriend buried the child. The girlfriend subsequently fled, but Axe knows where she is living. Assume that the death by natural causes can still be proven if the child is found.

The child's real father has spent the last three years searching for his missing child, openly grieving in his on-air media pleas for the return of the child. The stress of not knowing has literally driven the father crazy, and he now worships some undefined deity whom he believes will return his child if properly appeased. In that regard, when the father's financial rewards failed to achieve the child's return, the father made a bizarre and morbid announcement in his latest media release: "Please return my baby before May 31, 2012, or I will take my own life as a sacrifice to substitute my life for my child's." Of course, he has made at least three similar threats in the past but has never followed through, finding a reason at the last minute to "extend" the sacrifice deadline.

On today's date, April 30, 2012, Axe tells Samuels that Axe is willing to reveal the location of the child and the girlfriend provided Samuels can work out a deal for him. Samuels wants to know what Axe had in mind. Axe responds that he is willing to plead to the failure to notify the proper authorities about the death, the improper burial of the body and obstructing the investigation into the disappearance. But, Axe wants the deal written so that "any and all" crimes related to the child's death are included in the plea. Axe is insistent on this because Axe confesses to Samuels,

You see, the child's real father had heavily insured the child and made girlfriend the beneficiary, a fact he apparently forgot about in the midst of his grief. And the girlfriend knew nothing about it. I found the paperwork when I was cleaning up the place after she left. So, I figured since I stayed behind to take the risk, I was entitled to some payment and maybe engaged in a little insurance fraud. I collected the life insurance money. I completed all the paperwork posing as the girlfriend and forged her endorsement on the life insurance check. I want to keep that dough and not worry about any charges later.

The prosecutor called Samuels today and wants to work a deal. The prosecutor wants this off his desk and wants to get the real father some closure to avoid any possibility that he will follow through on his bizarre sacrifice idea, whether this time or any time in the future. What can you tell the prosecutor, if anything 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). While Attorney Samuels and the prosecutor in the Axe case are haggling over a possible plea deal for Axe, whom Samuels still represents, Samuels receives a call from Ima Live, Axe's girlfriend. Live now realizes that she should not have panicked and allowed the authorities to confirm that her child's death was from natural causes (assume that can be proven). She realizes, however, some charges might still be sought for her failure to report and the burial of the body. Live wants Samuels to represent her in connection with any criminal charges associated with the death and disappearance of her child, to investigate whether she is entitled to any type of death benefits for the child, and to obtain those benefits from whatever sources are available. Can Samuels represent Live while still representing Axe without violating the Rules of Professional Conduct? Why or why not, and if so, how?

[Question 4 begins at the top of the next page]

Question 4.

You practice law as an associate in a large law firm. Recently, the firm undertook the representation of a man named Allen Freed. Freed claims he was in an auto accident with a city dump truck and that he was significantly injured. One of the partners in the firm, Jane Geizer, filed a complaint against the city and the dump truck driver and then assigned the case to you. Diligently, you pour through the file which includes photographs of Freed's car and the dump truck, medical reports, a police report, and photos of Freed's post accident injuries. There is also a letter in the file from Freed's employer attesting to Freed's lost wages, and an affidavit from a witness to the accident.

As you dig into the file more, however, you start discovering serious discrepancies. There are photos of the truck and Freed's car, but not showing them in the same frame or showing the accident itself. In fact, the background is different in several photographs. The medical reports appear to have white out in some of the critical diagnosis and date areas, as does the police report, and the photos of Freed curiously never show his face. When you call the police department, you learn that while there is a record of an accident on the date in question involving Freed and a City dump truck, the damage listed on the report was "minor." Your report says it was "major." You also learn that Freed was not seen by or transported by fire rescue from the accident scene. When you attempt to reach Freed's employer, the person at the number you call states she has never heard of that company or of anyone named Freed. You also cannot find any contact information for the witness who signed the affidavit. You learn from another associate that Freed is actually Geizer's brother, and this is his third personal injury claim in as many years, all of which Geizer originally handled. You also learn that the "eyewitness" is Geizer's son-in-law and has conveniently been the "eyewitness" in all prior accidents in which Freed was supposedly involved. You also learn that the "eyewitness" was away at college on the day this accident happened and could not possibly have witnessed what is recited in the affidavit.

So, you gather your courage and ask Geizer about the "discrepancies." Geizer responds: "Don't worry about it kid. So we are "embellishing" a bit. The City knows there was an accident that day, they are overworked and underpaid in the City Attorney's Office, and they are always good for a few bucks on these types of claims. They won't do any discovery and when they see the motion for summary judgment that I filed today with the Court using the witness affidavit on file, the City will offer us plenty of money to make this go away."

What Rules of Professional Conduct are implicated by Geizer's acts and what duties, if any, do you have under the Rules at this point?

[Question 5 begins at the top of the next page]

Question 5.

Attorney Rees represents a man, Greg, in a divorce, custody and support proceeding. During the marriage, Greg did not work outside of the house, allowing Greg's wife, LeeAnn to earn the household income. LeeAnn operated numerous businesses during the marriage, the most recent being a residential landscaping design business called Yards. LeeAnn also owned several rental properties that she rented out for profit. LeeAnn is represented by Attorney Doe in the proceedings. Through discovery, Rees learns that LeeAnn claims to have sold Yards and her real property and is supposedly living off of a meager trust fund left to her by her grandmother. Therefore, LeeAnn claims that she has limited income to contribute to the support of the couple's child, who remained in Greg's custody. Greg has been out of the workforce for years and has had little success finding a job and counts on income from LeeAnn to make ends meet.

Greg tells Rees that despite appearances, LeeAnn is still really operating Yards and performs most of the work associated with the business herself. Greg also claims that LeeAnn still takes all the profit from the real property, but that all of this is filtered through LeeAnn's brother who now purportedly owns the business and the real property. Determined to prove LeeAnn is hiding assets and income, Rees called the number listed for Yards and spoke with the woman who answered, but did not identify herself. Rees did not identify herself and had blocked her caller id. Rees simply asked if Yards was still in business and available for consultation for a landscaping design. The unidentified woman said "yes" to both and a "specialist could arrange a time to provide an estimate." When the unidentified woman asked for a good time, Rees responded she would check her calendar and call right back to arrange the estimate.

After Rees hung up the phone she called her sister, and asked her sister to call Yards, tell them she was the woman who just called and wanted to arrange the estimate. Rees instructed her sister to specifically ask to speak to LeeAnn and tell LeeAnn that the word on the street was LeeAnn was the best in the business. Assuming LeeAnn answered, Rees instructed her sister to ask LeeAnn if she was still involved in the business, because there was some rumor about that she was not, and if she was, whether she would do the work herself.

Rees' sister did what Rees requested and had a long conversation with LeeAnn in which LeeAnn admitted she still "ran" the business, she did all the design work herself and her brother was just the owner "in name" for some complicated legal reasons. Excited she now had evidence to use in the divorce, Rees thought she would press for even more and called Yards herself, asking for LeeAnn. When LeeAnn answered, Rees said she was referred to LeeAnn by a former tenant of one of her properties and she was wondering if LeeAnn was still in the rental business. When LeeAnn said yes, Rees hung up, believing she had surreptitiously recorded the conversation. Unfortunately, her recorder had malfunctioned.

What Rules of Professional Conduct are implicated by Rees' actions? Assuming the Judge in the case is sufficiently outraged by LeeAnn's behavior and allows evidence of her operation and ownership of the business and rental property, may Rees testify about her conversation with LeeAnn, and why or why not?