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Institution **University of New Mexico School of Law**  
Course **F12 Ethics Slease**

Instructor **NA**

Exam Mode **Closed**

Exam ID

Count (s)	Word(s)	Char (s)	Char (s) (WS)
Section 1	<b>1077</b>	<b>5323</b>	<b>6395</b>
Section 2	<b>459</b>	<b>2285</b>	<b>2741</b>
Section 3	<b>517</b>	<b>2652</b>	<b>3169</b>
Total	<b>2053</b>	<b>10260</b>	<b>12305</b>

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Answer-to-Question-\_\_1\_\_

(1) Edison and Smith do have a problem. In representing Loopy previously and now working for a firm that represents Happy, Edison is involved in a conflict. Furthermore, she has imputed that conflict to the entire Nuvo firm. Now, Edison and the rest of the firm must determine whether they can waive that conflict and continue to represent Happy.

First, we need to determine whether Loopy was a client of Edison's. Even though Loopy hired Edison's previous firm for the sole purpose of dealing with the jurisdictional issue, thus limiting the scope of representation, Loopy was clearly a client of the firm. Furthermore, Edison worked on Loopy's case directly on the jurisdictional issue and was also present for discussions related to the contract issue. Also, Happy is clearly a client of the Nuvo firm. Each of these two organizations acts through their authorized constituents, which would include Moth (as the president of Loopy). Thus, his communications on behalf of the company are implicated here.

Next we must analyze whether a conflict exists. Rule 1.7 and Rule 1.9 are applicable here, because Happy is a current client of Edison's firm and Loopy is a former client of Edison's. In this case, Happy and Loopy's interests are directly adverse to one another, because they are opposing parties in the same litigation. Thus, there is a conflict under 1.7(a)(1). There may

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also be a conflict under (a)(2), since Edison was present for discussions related to the contract issue, even though she didn't work directly on that issue. Any information she learned at that meeting would not be available for use on behalf of Happy, which would present a significant risk that the representation would be materially limited.

Under 1.9, which deals with duties to former clients, Edison has a conflict as well. 1.9(a) states that a lawyer who has formerly represented a client in a matter shall no thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client. 1.9(b) also states that a lawyer shall not represent a person in the same or substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person and about whom the lawyer acquired information protected by 1.6 and 1.9(C) that is material to the matter. As discussed, because Edison was present at a discussion related to the current contract claim, any information she learned there would fall under this category. In conflicts issues, questions of confidentiality under 1.6, diligence under 1.3, and competence under 1.1 are indicated as well. Edison's representation of Happy would be less vigorous, because she would not be able to use or disclose any confidential information previously learned, which would in turn decrease her ability to provide competent and diligent representation. She also needs to

be concerned about the attorney-client privilege, since most of her information would have been received directly from the client (through Moth).

Under Rule 1.10 when any one lawyer in a firm could not represent a client when acting alone, none of the other lawyers may do so either. Thus, if there is a conflict and Edison could not represent Happy in its case against Loopy, neither may anyone in the Nuvo firm.

(2) In order to avoid this problem in advance, Nuvo or Smith should have made sure they had a system in place that would avoid (or at least advise them of) such potential conflicts ahead of time. Because they clearly failed to do so, rule 5.1 is implicated here. This requires the partners and managers to make reasonable efforts to ensure that the firm has in effect reasonable measures to ensure that all lawyers in the firm conform to the rules of professional conduct. Edison's resume would have revealed that she previously worked for Garcia and Walker, and the case was well-known. It should have been fairly simple for Nuvo to make sure these conflicts could be avoided.

(3) Since there is a conflict, in order to solve this problem without running afoul of the rules, now we must determine whether it is a conflict that can be waived. Under 1.7, in order to continue representation of Happy, Nuvo must provide notice of the conflict to Happy and get informed consent. This is a conflict that has arisen after representation of Happy by Nuvo had already been undertaken. Thus, according to comment 4 to Rule

1.7, the firm must either withdraw or obtain informed consent consistent with 1.7(b). Since this is a successive conflict, we also look to 1.9. First, the firm must reasonably believe that it can provide competent and diligent representation to Happy. The other lawyers in the firm have been doing so all along, so I would think they do. Next, the representation doesn't appear to be prohibited by law for any reason. The representation does, however, involve the assertion of a claim by one client against another in the same litigation. Loopy is a former client, though, so it is not a concurrent representation.

Under 1.9, Edison may also have to get the informed consent of Loopy. According to comment 5, however, this applies only if she acquired actual knowledge of protected information. As she did not really pay attention, she may not have. If so, however, as Loopy seems upset about it already, getting consent may be difficult. In either case, she will have to be screened from the case under 1.10. This will involve keeping her from any involvement with the case, not allowing her to receive any fees earned from the case, written notice to Loopy including a description of the screening procedures used and a statement of the firm's and Edison's compliance with the rules and that review may be available before a tribunal, and an agreement to respond to any inquiries or objections.

(4) Wanda Jones may also need to be concerned, because she is a managing partner. Thus, under 5.1, she, along with Smith, would both be responsible for not having a reasonable system in place

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to avoid conflicts as well as any of Edison's violations of the rules if they ordered or had knowledge or ratified any such conduct. Jones (and Smith) would also be responsible if she knew of the conduct but failed to correct it when she had a chance in order to avoid the consequences.

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Answer-to-Question-\_\_2\_\_

The disciplinary authority can charge Rome with several violations in this case. First, Rome has violated several duties to his client, Anna. Rome failed to take precautions to ensure that he knew the proper statute of limitations could violate rule 1.1. He did not provide competent representation and failed to make inquiry into something that any reasonable attorney would know they needed to check into, especially given his experience in personal injury. His procrastination in filing can also violate 1.3. When he did learn of the issue with the statute of limitations, he failed to communicate this to his client, also violating 1.4. Moreover, he failed to promptly communicate the settlement offer to her, also violating rule 1.4. The fact that he accepted the settlement without consulting her also violated rule 1.2, because whether or not to settle is a decision that belongs to the client. She did, however, advise him to get what he thought was right. I still don't think that he should have taken a settlement offer without her consent, but the comment 3 states that the client may authorize the attorney to take specific action without further consultation. So, whether 1.2 was violated would depend on whether her blanket statement to him would constitute prior authorization. Rome also failed to get her



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approval or consent before signing a letter of protection on her behalf. That payment would come out of her portion of the recovery, so this could implicate rules against his protection of her property and money.

Next, Rome violated duties to the court. First, he violated rule 3.1 by filing claims that he knew lacked merit. He was aware that the SOL had already passed, but filed the complaint anyway. The fact that he had his assistant does not save him, because under 8.4, an attorney cannot use another to violated the rules when he cannot. He also violated 3.4, because he knew that there was authority directly contrary to his client (the SOL) and did not disclose this to the court. By pursuing these frivolous claims, he wasted the court's resources and time.

Rome also violated his duties to others. He violated 4.4 by using the cost associated with filing a motion to dismiss to harrass opposing counsel and to essentially strongarm him into a settlement.

Rome's use of his assistant to file a frivolous compliant also violated rule 5.3, because ordered her to engage in conduct that was a violation of rule 3.1.

Rome also generally violated 8.4 by engaging in conduct that was dishonest and deceitful (to his client, the court, and counsel) as well as prejudicial to the administration of justice.

The only thing Rome appeared to do correctly was have Anna sign the detailed contingency fee agreement under 1.5.

-F.-12-9\*

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Exam Mode **Closed**  
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Answer-to-Question-\_\_3\_\_

(1) First, Rome failed to provide Anna with a written statement of the outcome of the matter showing the disbursement of the recovery (both the first time and when he redid the checks). This violates 1.5(c), because it was a contingency fee case. Next, when Anna disputed the apportionment of fees, Rome should not have written himself a check for any of the fees. If he felt that he still deserved money from the recovery, he should have sent Anna the \$758 and retained the disputed amount (\$1242) until the two somehow resolved the issue.

His failure to pay the insurance company was a violation of 1.15, because they were entitled to that money pursuant to the earlier letter of protection. When Rome then lied to the insurance company about not recovering money to pay it, he also violated his duties under 4.1 by lying to a third person and 8.4 by engaging in dishonest conduct.

When he was confronted by the insurance agent, Johnson, Rome's disclosure of information Anna had told him about drinking before the accident violated rule 1.6 and rule 1.9 as well as the attorney-client privilege. Although Rome no longer represents Anna, it is his continuing duty to keep her confidences after the representation has concluded. This information related to his

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representation of Anna, was gathered from Anna herself (not generally known), and there is no indication that she has waived either her confidentiality or her A-C privilege. Also, this information is clearly contrary to her interests and is being used by Rome to her disadvantage in violation of 1.9(c).

(2) Rome's conduct when speaking with Johnson revealed that Rome had intentionally not paid the insurance company money to which it was entitled, lied about it, revealed his client's confidences, acted in a manner contrary to her interest, and was intoxicated. Under these circumstances, Johnson has a duty to report under 8.3. This rule requires that a lawyer who knows that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the appropriate professional authority. Here, Johnson has actual knowledge of this information - he learned it himself directly from Rome. Furthermore, Rome's conduct raises a substantial question as to his honesty and trustworthiness. Misappropriating your client's money is a huge problem, as is violating her confidentiality (especially in a manner contrary to her interests like this). Rome's drinking while on the job also raises issues with his competence and diligence as an attorney. Violations against clients such as those present in this case are especially important, so Johnson must report what he knows to the disciplinary agency.

Additionally, Johnson should probably report the drinking issue

to a Lawyer's assistance program. Although this is not required under the rules and is only a moral obligation, since Johnson has first-hand knowledge of Rome's drinking on the job, he may want to report it so that the program can attempt to help Rome. He can do so confidentially if he is concerned about Rome's reaction.