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Examination No. _____

750 ETHICS

Semester I, 1995-96

UNM School of Law
Final Examination
Three Credits

Professor Elizabeth Rapaport
Wednesday, December 13, 1995
9:00 a.m. to 12:30 p.m.

INSTRUCTIONS

This is a three and one-half hour exam. The questions are designed to be answered in three hours. There is an additional one-half hour for organizing and preparing your answers.

In preparing your answers, you may consult any class materials, including casebook and rules pamphlets, and notes or outlines prepared by you or your classmates, and any treatise or hornbook; you may not consult commerical outlines.

Assume that the Model Rules of Professional Responsibility (or New Mexico Rules) are in force. There are two parts to the exam: In answering the questions in **Part I** (Essays), you should make reference to the rules where relevant, and give an analysis of the problems under the rules. You should also feel free to criticize the rules and to employ other perspectives, if the rules do not provide solutions you find adequate. Treat **Part II** (Multiple Choice), however, purely as an exercise in the rules; answer each question based only on the Model Rules (or New Mexico Rules).

The time suggested for each question roughly reflects its weight in grading.

Please write legibly, in ink, on one side only of each bluebook page, and please write only on every other line.

GOOD LUCK!

[Examination begins on next page]

Part I. Essays

Question 1. (1 hour, 10 minutes)

The firm of Best & Brightest (B&B) is among the largest Southwestern law firms, and has achieved this position as a result of the spectacular growth of its client, Coyote Computer. In the last ten years Coyote has risen to be a leading manufacturer of personal computers. Coyote's ascendancy in the computer world began when Boy Genius, the nephew of Coyote's founder Eugene Genius, quit law school to go into what was then a closely held corporation. In 1990 B&B took Coyote public, and the rest is history. Peter Partner is the B&B rainmaker responsible for bringing Coyote to B&B and keeping Coyote happy. Peter and Eugene Genius have been friends since college days; Peter has always represented Eugene in his personal affairs as well as representing Coyote Computer, and has indeed shepherded Eugene through three marriages, two divorces, and more drug charges against petulant teenage Geniuses than either of them would care to remember.

Anne Associate is a third year associate on a fast track to partnership on the strength of her work on Coyote Computer matters under the supervision of Peter Partner. One day Peter calls her into his office and tells her that there are big doings at Coyote. Eugene, who has been recently diagnosed with Alzheimer's disease, has disclosed the diagnosis to the inner circle at Coyote, and announced that he will step down from his position as Chief Executive Officer (CEO) effective immediately and also resign from the board of directors. His memory is already fading, and he fears he cannot discharge the duties of CEO for even a few more months. "Boy is bound to succeed Eugene as CEO," Peter tells Anne, "and that has its positive and negative aspects. On the one hand, Boy is a technical wizard; Coyote (and B&B) are bound to benefit enormously with Boy at the helm. On the other hand, Boy wouldn't know a moral scruple if it hit him on the head. He is one ruthless puppy." "No wonder Boy couldn't hack law school," Anne answers.

Eugene owned a large parcel of land just north of La Cuidad del Duque near where the Coyote manufacturing plant was located. Four months after he retired, he sold it to Peter. Peter was careful to tell Eugene that he, Peter, was not undertaking to act as Eugene's attorney in the land transaction. "Don't worry about me, old friend," replied Eugene. "I trust you implicitly. Or do I mean, 'explicitly'? My mind is not quite what it used to be, you know."

The following week Peter sold the land to some developers who were planning new subdivisions for the anticipated influx of

Coyote employees. It was well known in the Southwestern business community that Coyote had launched a very ambitious expansion program as soon as Boy took control of the company.

It is now six months since Boy was installed as CEO. Anne discovers that he has engaged in some creative financing. He borrowed heavily using nonexistent corporate assets as collateral; he has also used genuine assets to secure loans from several lending institutions, not disclosing that the same collateral was used to secure loans from the different lenders. Anne reports the matter to Peter, who happens to be sharing a brown bag lunch with Eugene. "And Peter," she adds, "we wrote letters to these institutions assuring them of the adequacy of Coyote's posted collateral."

Eugene gets red in the face. He demands that Peter expose Boy: "Not only the reputation and long term health of Coyote, also the reputation and financial future of the Genius family, at stake," he yells. "These revelations will hurt the company, but we will weather it. That psychopathic nephew of mine will either learn how to do business in a disciplined, ethical manner or he can go back law to school."

Peter begs his old friend to calm down before he adversely affects his health. He tells Anne, "Coyote profits the last quarters are through the roof. If we just keep this matter quiet for a few weeks, I believe Boy and Coyote can pull off this capitalization manoeuvre successfully, with no harm done and I am one the wiser. In Anne's view, Peter is overly optimistic about the chances of toughing it out successfully. She thinks that Eugene has a better grasp of the consequences of "toughing it out." Anne tries to outline the situation for him, but he interrupts her. He says, "Kid, I think you had better bow to wisdom and experience on this one. Now leave me alone with Eugene for a few minutes so that I can calm him down and get him on board. Honestly, Anne, you presumably don't have Alzheimer's. I shouldn't have to teach you the facts of corporate life."

The week before, Eugene's cousin, Quirky Genius, returned to La Cuidad del Duque flat broke, with barely the shirt on his back, after an absence of 20 years. He had been prospecting gold in Alaska, and had no idea that Coyote had prospered so dramatically. When he left for Alaska, he had been flush from a previous highly successful mining venture; He had made a loan to Eugene, which had been the stake that allowed Eugene to found Coyote Computer, and Eugene had promised to give Quirky 15% of any stock in Coyote Eugene acquired if the company made a go of it. He has told Eugene, waving the tattered IOU Eugene had signed, that unless he receives a prompt and fair response, he will sue him for 15% of his Coyote stock. "Peter," says Eugene

over drinks at their club, "there has been a lot of water under the bridge since Quirky and I struck that deal and he left for Alaska. Now I am rich and he is poor. Plead the statute of limitations. I can't be expected to support every two-bit Genius in the West."

Peter was very uncomfortable with Eugene's instructions. He mused about what he should do. "I've got it," he says with a grin. He picks up the phone, calls Anne, and instructs her to plead the statute of limitations as a defense to Quirky's claim to Eugene's Coyote stock.

Anne comes to you for advise. 1) She asks you whether her mentor Peter Partner has behaved properly in the course of the events recounted. 2) She asks you whether she herself has, to this point, committed any ethics violations. 3) She asks you what she can or should do now in order to discharge her ethical responsibilities. What do you tell her in response to her questions?

Question 2. (35 minutes)

The following question is based on a true story, but the name of the lawyer has been changed and some facts added. Please note that there are two parts to question 2., A and B; please answer both.

In 1963 a lawyer named John Champion was working at the NAACP Legal Defense and Education Fund, which was acting as counsel to Dr. Martin Luther King, Jr. Dr. King began working with Dr. Robert Hayling, a black dentist in St. Augustine, Florida to organize some sit-ins to challenge some criminal statutes in Florida that required racial segregation in certain public accommodations (privately owned places that offer goods and services to the public), and provided penalties for blacks who entered "whites only" establishments. Champion and his clients believed that those laws were unconstitutional.

Dr. King travelled to St. Augustine to meet with Hayling. Champion also went to St. Augustine to attend their meeting, because he needed to understand what conduct was contemplated, how many people would be likely to be arrested, and what the charges would likely be. This would enable him to arrange legal representation for the participants.

A. Assume that at the meeting Champion listened to the plans made by King and Hayling, answered questions about the possible penalties and the likely duration of the post-arrest detention, and advised them as to how to structure the sit-ins to set up clear challenges to the segregation laws.

Assume, contrary to the fact that the Model Rules did not yet exist, that Champion was bound by the Model Rules of Professional Conduct.

Was Champion in violation of the Model Rules? Identify the Rule(s), and if applicable, Comment(s), relevant to answering this question in the course of developing your analysis.

B. It is now thirty years later. Champion wants to publish a memoir of his work with Dr. King. May he disclose that he represented Dr. King? Can he write about what happened at the meeting? Assume again that the Model Rules are in force.

Question 3. (30 minutes)

You represent John Keats, who is charged with theft of a grecian urn. Samuel Coleridge, the victim, testifies at the preliminary hearing that the urn was removed from his garden on the afternoon of Tuesday, November 6th.

After the prelim your client tells you that he did indeed commit the theft, but he did so on the morning of Monday, November 5th. "Although Sam, won't admit it," Keats chuckles, "his opium addiction is getting the better of him. I am surprised he knew in what week the urn was taken. Let's call Wordsworth and Shelley as witnesses. They can truthfully testify that we spent all afternoon together on November 6th."

Keats will not testify at the trial. Should you subpoena Wordsworth and Shelley to testify at the trial?