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750 Ethics  
(Professional Responsibility)

Semester I , 1999-2000

UNM School of Law  
Final Examination  
Three Credits

Professor Sedillo Lopez  
Dec. 9 or Dec. 18  
9:00 a.m. to 12:00 noon

**INSTRUCTIONS**

THIS IS A CLOSED BOOK EXAM. YOU MAY NOT TAKE ANY MATERIAL WITH YOU INTO THE EXAM ROOM AND YOU MAY NOT CONSULT ANYTHING DURING THE EXAMINATION.

Answer each question fully. Use the Rules of professional Responsibility, relevant case law, and relevant policy considerations to analyze each problem thoroughly. Do not simply express your opinion.

The time suggested for each question roughly reflects its weight in grading. Note that the time suggested adds up to three hours exactly. You do not have extra unallocated time.

Clearly identify your answers in your bluebooks.

GOOD LUCK!!!

**END OF INSTRUCTIONS**

[EXAM BEGINS ON NEXT PAGE]

QUESTION ONE  
(45 minutes)

A recent graduate of the University of New Mexico, Victor F. has just begun work as a criminal defense attorney after a very brief stint with the district attorney. While he has handled a few misdemeanors, he has never handled a felony case. Another criminal defense attorney who told Victor that he is too busy to handle the matter has referred Peter C. to him. Before meeting with the client, Victor obtained copy of the indictment charging that Peter had robbed the First State Bank on High Street, a felony.

At their first meeting, Peter told Victor that, at the time of the robbery, he was watching television at his girlfriend's home on Low Street, fifteen miles away from the First State Bank.

The prosecutor, Graciela R. turned over the evidence she had against Peter including some photographs taken by the bank security cameras. None of the photographs clearly depicts the robber's face. However, Graciela is having the photographs blown up to determine whether there are distinctive clothing or other markings that would indicate that Peter committed the crime. She did not mention this to Victor (who she knows fairly well because she supervised him in his work in the D.A. Clinical Law Program).

While Victor was reviewing the evidence, he noticed that one of the photographs shows the robber wearing an earring on the right ear, the shape was not very clear because of the small size of the photo. Later during a meeting with Peter, he noticed that Peter was wearing an earring in the shape of a key on his right ear. Victor mentioned the earring and the bank photograph. Peter replied:

"So what? Lots of people wear earrings," said Peter.

"Not everyone wears an earring in the shape of a key," replied Victor.

"You can't tell from the picture whether that earring is the shape of a key," said Peter.

"If they blow it up, they might be able to see the shape," said Victor.

Peter reached up and took off the earring and Victor never saw it again.

On the eve of trial, Peter asked Victor what he should do if the prosecutor asks him whether he has an earring in the shape of a key.

"You must tell the truth. However, you do not need to volunteer information," said Victor.

At the trial, Graciela presented the photographs and testimony from an acquaintance of Peter's. This acquaintance said Peter had told him that Peter had robbed the bank. The acquaintance offered his testimony in exchange for a reduced sentence in an unrelated crime.

She also presented receipts from various department stores showing that Peter had spent quite a bit of cash within a few days of the bank robbery.

As part of the defendant's case, Victor called Peter's girlfriend, Monique S., to the stand. Monique testified that Peter was at her home the day of the robbery. On cross-examination she testified that Peter did not leave her home the entire day. The prosecutor, Graciela R. asked her if Peter ever wore an earring. Monique testified that she could not recall whether he ever wore an earring but that he did not currently wear an earring.

Peter testified on his own behalf and stated that he was at this girlfriend's home the entire day of the robbery. On cross-examination, Graciela asked him, "do you own an earring that is shaped like a key."

Peter replied, "When I was a senior in high school, I pierced me right ear. Some time ago I quit wearing an earring. I do not know is the ear is still pierced or if it has healed over."

The night before closing arguments were scheduled to begin, Peter paid Victor the rest of his attorney fee in forty \$100.00 bills. Victor noticed that the serial numbers on 5 of the bills were the same as those of the bills taken from the bank. (The serial numbers of the bills had been introduced as evidence in the case). Victor returned the bills to Peter and told Peter to bring an equivalent amount in other denominations. Peter brought ten \$50.00 bills to Victor's office the next morning.

In her closing argument, Graciela argued the physical similarity between the bank robber and the defendant and the fact that the defendant had not explained how he had gotten the large amount of cash he had spent shortly after the robbery.

In his closing argument Victor urged the jury to believe Monique's alibi testimony. He also noted that the perpetrator of the crime wore an earring and that the prosecutor had established that Victor did not wear an earring.

- 1) Discuss all issues raised by the foregoing.

[EXAMINATION CONTINUES ON NEXT PAGE]

QUESTION TWO  
(45 Minutes)

Ada and Al, a husband and wife with a very serious problem have contacted you. Ten days ago Ada gave birth to a child who was born with severe impairments, both mental and physical. In addition, the child suffers from a lesion in his intestinal tract. This lesion blocks the digestive system but can be repaired with a simple and common surgical procedure. If the operation is not performed fairly soon, the child will die because he cannot retain fluid or food. Ada and Al do not want to give consent to the operation (consent is required by state law). They would like advice on this situation. The hospital administrator has indicated that it will not perform the operation unless the parents give consent. The child's life expectancy without the operation is only a few weeks; with the surgery, it is between 30 and 40 years.

1. Would you take this case? Suppose Ada and Al tell you that five other lawyers have turned them down. Would this make a difference? What conditions (if any) would/could you impose?

Notwithstanding your previous answer, assume that you have agreed to represent Ada and Al. Assume that your research reveals that their refusal to give consent to the surgery will not subject them to criminal or civil liability. However, it appears that a court could order the operation if the Hospital petitions the court alleging that the child is suffering from medical neglect. In two cases in your jurisdiction a child's operation was so ordered.

In dealing with the Hospital administrator it seems that he is not aware that the hospital could file a petition and that he believes that he has no power to act in the absence of consent. Ada and Al are more strongly committed than ever to let the child die.

2. What advice would you give Al and Ada? Would you inform the hospital administrator of his legal options?

Notwithstanding your previous answers assume that the hospital staff begins to put pressure on Ada and Al. Al comes to you indicating he has changed his mind and wants to do what he can to have the operation performed. Contrary to the applicable law, the hospital administrator believes that both parents must consent to the surgery.

3. What do you do?

[EXAMINATION CONTINUES ON NEXT PAGE]

QUESTION THREE

(30 minutes)

An associate in your firm represents an employee pro bono in a wrongful discharge case against a large manufacturer. After she files a complaint, it becomes obvious that the employee's claim is not overwhelming on the merits because of evidentiary problems, but that it may produce a modest settlement. While discovery in the case is proceeding, a group of manufacturers including the defendant employers approaches your firm about the possibility of representing the coalition in a challenge to Occupational health and Safety regulations.

- 1) Can your office take the case? If the employee refuses to settle her claim can the firm withdraw from the pro bono matter and take the larger case? Can both sides consent to the representation? Explain your answers.
  
- 2) Suppose the sequence of events were reversed and the manufacturers group had approached the firm first. If the group had discussed any labor problems and later decided not to hire the firm, would acceptance of the pro bono matter be permissible?

[EXAMINATION CONTINUES ON NEXT PAGE]

QUESTION FOUR  
(30 minutes)

You are the prosecutor in a busy office. Defense counsel is not providing what you consider to be adequate representation. Under what, if any circumstances, do you have an ethical obligation to intervene? What form of intervention is appropriate? Consider the following possibilities.

1. Court appointed defense counsel make no effort to mount an affirmative defense despite obvious weaknesses in your case. He also seems to lack trial skills.
2. The public defender assigned to the case appears to be under the influence of alcohol. Her cross-examinations are totally ineffective and she has failed to make relevant evidentiary objections. Her speech is slurred and she seems sleepy. The trial judge, known for his pro prosecution stance, seems not to notice any problems with performance.
3. The court appointed defense counsel's trial skills seem satisfactory and it seems as though he has mounted a defense. However, he has not investigated the facts or filed what would likely be a successful motion to suppress evidence. Prior dealing with this attorney suggest that he accepts far to many appointed cases to prepare adequately for trial.
4. Same facts as in Number 3. But the attorney has been privately retained. Since the defendant is quite poor, you believe that someone whose interests are not consistent with the defendant's is paying the attorney fees.

QUESTION FIVE  
(30 minutes)

Use three examples from the cases presented in the book to illustrate **one** of the following theses:

- 1) The legal profession has gone down hill. Attorneys were much more ethical in the past. They had no need for detailed ethical codes.
- 2) Attorneys in the past had their ethical lapses. That is why we need a detailed ethical code. Now that we have more extensive rules of professional responsibility, attorneys comply with the rules and the profession is better for it.
- 3) Your own thesis about the nature of the profession in the past compared to the profession in the present.

**[END OF EXAMINATION]**