



The University of New Mexico

---

School of Law Library  
MSC11 6080  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-0939  
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

**NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Professional Responsibility Exam (Ethics 750)  
Fall 2002  
Three (3) credit hours  
Professor Sedillo Lopez

Wednesday, December 4  
9:00 a.m. – 12:00 p.m.

**Instructions**

You may use only a clean, unmarked copy of the New Mexico Rules of Professional Responsibility. You may use nothing else, including notes, the textbook, commercial outlines, treatises, or any other material.

Answer each question fully using the New Mexico Rules of Professional Responsibility, relevant case law, and relevant policy considerations. Do not simply express your opinion. Use the material we have covered this semester to analyze each problem thoroughly.

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

Clearly identify your answers in your bluebooks.

GOOD LUCK!

### Question 1 (60 minutes)

Bill Colby is a lawyer who specializes in criminal defense work. He has one associate, and contracts on a case-by-case basis with one or two different private investigators. He was recently hired by Christine Cruzan, a police detective with 16 years of unblemished service in the Albuquerque Police Department. Ms. Cruzan has been accused of killing a massage parlor owner, allegedly because the massage parlor owner refused to pay bribe money and threatened to inform on Cruzan and six other police officers who have been rumored (although not formally charged) of taking bribes from gamblers, prostitutes, and owners of so-called massage parlors, which are really houses of ill repute.

It appears that the District Attorney's evidence against Cruzan is the anticipated testimony of the deceased's employee, Bambi Bee, a woman who has been convicted for prostitution. She claims that Cruzan was in the deceased's place of business on the night of the murder, that Cruzan arrived at about 8:00 p.m., and that Bambi left while Cruzan and the deceased were engaged in a heated argument about Cruzan's demand for increased bribe payments. Scientific evidence, such as fingerprints, and hair and fiber identification indicates that Cruzan had been in the deceased's place of business, however, it is impossible to pinpoint the date or time. The murder weapon has not been recovered. The deceased died from a skull fracture due to a heavy blow to the side of the head.

Bill's initial interview with Cruzan went like this:

"Okay, Detective Cruzan, you're pretty familiar with my job as defense attorney."

"Yeah, I've been on the other side often enough."

"Tell me what happened"

"Is all I'm going to tell you privileged?"

"Yes."

"Well, I didn't kill that guy, although I would have liked to many times."

"Was he paying you off?"

"Of course, that part is true. But I never saw him that night. I've been to his place to collect a few times, but I was not there that night."

"Why do you think his employee is saying you were there?"

"I don't know, maybe she's protecting someone else. Maybe she's pissed because I raised the pay-off price last month. Who knows? But she's lying."

"Where were you that night?"

"I went to the movies and I saw *Frida*. I just love Salma Hayek."

"Did anyone see you at the movies?"

"Not that I know of--I had dinner at my father's. I left his house on Silver, went to the theater downtown, and then went back to his place to pick up something I forgot. Since it was late, I spent the night on his couch."

"Will he testify to that effect?"

"Sure."

A few days later, as Colby is preparing for trial, he is informed that Charley Cruzan, his client's father, a retired police officer is waiting to see him. The following is their conversation.

"Good to see you, Mr. Cruzan, I was planning to call you to discuss your testimony in your daughter's case."

"That's what I came to see you about. My daughter told me what she told you. It's not true. She never went to the movies. She was with me at my place all night. She slept over. I'll swear to it."

"Are you sure?"

"Yes, I want to testify."

Later, Colby confronted Cruzan with her father's story. "Why did you tell me you went to the movies if you had your father's story as an alibi?"

"Well," said Cruzan haltingly, "Dad has a heart condition, I didn't want him under the pressure of cross examination. I thought it might be too much for him."

"Look, I'm on your side--but I can't present perjured testimony. Were you with him that evening?"

"My father doesn't lie."

Bill Colby's investigator tells Bill that he thinks that the whole police department is going to cover up the bribe-taking scheme. An internal investigation is proceeding and various police officers are taking "early retirement" but because of what it will do to the department, no one is going to describe Cruzan's involvement in taking bribes. Of course, it is unlikely that the bribe payers are going to come forward. He has also learned that Cruzan has a long-time lesbian partner, but that they have never been open about the relationship. Further, he has learned that the District Attorney, Eva Lina is dating the Chief of Police.

At trial, Bill Colby uses the prior prostitution conviction to attempt to impeach the credibility of Bambi Bee, the state's chief witness. He makes an issue of Bambi Bee's potential motive to discredit the department, because of her prior involvement with the department when she had been arrested for prostitution.

As part of the defense's case, Cruzan gets on the stand and testifies that she was at her father's home all evening. Colby then asks whether she has ever been at the deceased's place of business. She replies that she has, but only for the purpose of trying to get information about pimps, prostitutes, pushers and other goings on in the neighborhood. On cross-examination the District Attorney, Eva Lina, asks Cruzan whether she has ever taken a bribe from the deceased. She replies "No. Absolutely not." The District Attorney looks over at the Chief of Police sitting in the spectator's seats and does not pursue any more questions about bribery.

Cruzan's father, Charley testifies in full support of Cruzan's alibi. The District Attorney does not cross-examine Cruzan's father.

Early the next morning when Colby was preparing to go to court, a distraught woman whom Colby recognizes as having been present at trial the previous day appears to see him.

Mr. Colby, I have to talk to you. My name is Sally English. I have been seeing Christine Cruzan for years. I'm really scared. I don't know what to do. I don't want to get in trouble."

"What's the problem?" asks Colby.

"They're both lying. I was at Christine's apartment the night of the killing. We were together until she left for awhile. She left about 7:30 and came back about midnight. I know. I spent the evening at the apartment waiting for her. She told me she had to work on a case."

"Are you sure it was that night?" Colby asked.

"I'm sure. I'm afraid that the District Attorney will find out and call me, and I don't know what to do."

A. Discuss the ethical implications raised by the foregoing.

B. What if the jury had already convicted Cruzan, and Ms. English told her story to Colby while the appeal was pending. What should Colby do at that point? Why?

C. What if the jury had acquitted Cruzan, and Ms. English told her story to Colby after the case was over. What should Colby do at that point? Why?

#### Question Two (40 minutes)

Nicole and Victor have been married for 20 years. Victor is a real estate developer who specializes in large-scale deals. Nicole owns a candy store. They have three children, ages five, fourteen and seventeen. Their marriage is rather rocky at the present time. They have agreed to see a lawyer, Harriette Wong, who has handled business dealings for Victor. They would like her to represent both of them. They trust her and they would like to save the legal fees involved in hiring two lawyers. They are in her office discussing the matter.

"I hate to see you guys break up. You have such a lovely family. Are you sure you can't work it out. Think of the children," says Wong.

"We would be a lot happier separated. I think that would be best for the kids. You know, if we were both happier." says Nicole.

"I'd like to work it out but Nicole is not interested." says Victor. "Anyway since you're such a good friend, we thought you could handle it without turning us into enemies for life."

"I see. Victor, do you realize that if I represent both of you I will have to tell Nicole everything I know about your business dealings?"

"I don't care. I have nothing to hide."

"We have already decided to divide our assets so that each of us keeps our business interests and then we'll split up everything else equally," says Nicole.

"I see," says Ms. Wong.

- A. Should Ms. Wong take the case? If she decides to take it, what steps should she take in undertaking the representation?
- B. Assume that Ms. Wong takes the case. Negotiations break down. Wong informs Nicole that because of her prior relationship with Victor. She will have to "let her go" as a client and continue to represent Victor. She recommends her long time lover, Stephan Powers. Stephan agrees to take the case, and during a long leisurely lunch with Harriette Wong (who enjoys two martinis at the luncheon) finds out that Victor has just entered into one of the biggest real estate deals of his life. Stephan tells Nicole about the deal. Nicole agrees to seek a greater share of the assets because of the deal. She also agrees to give Stephan a 20% share of the recovery on the deal or a 10% share of the alimony award whichever is greater. Discuss the ethical implications of the foregoing.

### **Question Three (50 minutes)**

On July 2, 1994, USAIR Flight 1016 left Columbia, South Carolina for a short trip to Charlotte, North Carolina with fifty passengers and a crew of five. As the DC-9 approached for a landing, the pilot attempted to deal with a sudden thunderstorm and executed a missed approach. The plane crashed in a wooded area, hit a house and burst into flames. Thirty-seven passengers were killed. Survivors were dragged from the flaming wreckage.

Joshua Quintana, a New Mexico personal injury lawyer watched the television as the USAIR crash was announced. He immediately called a law school buddy from his days at UNM, Benton Mussells, who lived in South Carolina. Benton was a solo practitioner, who did some personal injury work, but primarily specialized in domestic relations. Joshua told Benton that he would be interested in working on some of the cases that were likely to be filed as a result of the crash. He asked Benton if he would work with him on signing up some of the clients and then working on the resulting cases, as local counsel. Benton readily agreed.

Joshua called on a "runner" who had been previously employed by his firm. Betty White, is an African American woman. A middle-aged mother of three, and a high school graduate, Betty was eager to work, as she was unemployed. She is originally from North Carolina. Joshua asked her to contact all of the black families on the passenger list. Betty agreed to work for \$375 per day plus expenses. In addition, she was to receive \$10,000 as a bonus for each case she signed up.

Betty contacted various families. She would tell them she was an investigator hired, by Mr. Quintana. She would ask questions about the crash and then she would show a video of Mr. Quintana which contained testimonials from clients who had received multimillion dollar verdicts in cases he had handled for them. She would ask them if they had a lawyer and if they were happy

with their lawyer. If not, she told them how to fire their lawyer. She would then give them information about how to set up an appointment to meet with Mr. Quintana.

Betty paid a neighbor of Dorian Dushay, \$200 to introduce her to Mr. Dushay's parents. She gave them the video and information about how to contact Mr. Quintana and Mr. Benton. They called for an appointment. Within two days, Mr. Quintana and Mr. Benton came over to their home. Mr. Benton offered to make payments on Mr. Dushay's vehicle while he was in the hospital. The parents agreed and signed a retainer agreement with Mr. Quintana and Mr. Benton in which they agreed to pay forty percent of any recovery. The case was settled within three months for \$18.5 million dollars.

On another instance, Betty contacted Rodney Wills, a passenger who was recovering from substantial injuries in a hospital. She slipped in to his hospital room uninvited and found him in his room with a cousin. She gave him the video and asked him to watch it. Mr. Wills was angry at the intrusion and asked her to leave. As she left, she gave the cousin her card.

Benton contacted the newspaper in Columbia, South Carolina and told them about a press conference he was having to host an out of town expert in disaster litigation, Joshua Quintana. At the press conference Mr. Quintana warned the families not to negotiate with the insurance adjusters who were on the scene because they were offering minimal settlements. He urged them to contact an attorney to discuss their cases. He said, "Airlines just want to settle quick and cheap. Get a real evaluation of the value of your case."

Discuss the issues raised by the foregoing.

#### **Question Four (30 minutes)**

Which do you think is best for the image of the profession: the detailed conflicts rules we now have or the old canon, "a lawyer must avoid even the appearance of impropriety". Apart from the image issues, which do you think more effective in regulating attorney conduct?

**End of Examination**