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Instructions

This is a closed book exam. You may not use any material to assist you with this examination.

On the multiple-choice questions, give the best answer. If you believe there are no correct answers or that there is more than one correct answer, or that the question is otherwise ambiguous, you may explain why in your blue book. Partial credit may be given in the event your explanation is correct. However, if the explanation is incorrect, points will be deducted.

On the essay portion, 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.

On the policy question, I will be looking for originality of thought, clarity of expression, and a thoughtful demonstration of familiarity with the "big picture" issues presented by the material we studied.

The time suggested for each question roughly reflects its weight in grading. I suggest you allocate your time accordingly.

Clearly identify your answers in your bluebooks. **Turn your examinations in with your blue books, you may not take a copy of the examination with you.**

GOOD LUCK!

Part Two

Essay Question (1 and a half hours)

Until recently, Audrey Hep was an associate with Tonto and Taylor (T&T), a large law firm in general practice. During her four years with the firm, Hep had developed a rather narrow specialty. She specialized in the tax aspects of separation agreements and divorce settlements, which did not provide a lot of contact with the clients. In many cases she simply responded to a request from a partner for tax analysis of some proposed provision in an agreement. Hep did not find her work with the T&T firm very satisfying, and about 6 months ago she began looking around for other opportunities.

Bob Bird is a prominent divorce lawyer in the area. He is reputed to be both tough and creative, particularly on behalf of spouses of successful professionals and business executives. Some time ago Bird saw an item in a gossip column in a local newspaper to the effect that Sam Sosa, one of the wealthiest individuals in the community, was seen with a woman, not his wife, at a charity benefit. Although Bird did not know Mrs. Sosa, he has a cousin who was a friend of hers. Since this seemed to him like his kind of case, Bird asked his cousin to speak to Mrs. Sosa and let her know that Bird would be happy to represent her in dealing with any legal issues she might be confronting. When Bird was advised by his cousin that Mrs. Sosa was quite difficult to reach, Bird decided to call Mrs. Sosa himself, introduce himself by reference to his cousin, and then offer to be

of service. His various attempts to call got him only to Mrs. Sosa's message machine. Bird left a message on the tape and invited Mrs. Sosa to call. Part of his message stated, "I want you to know that I would discount my fee for you because I do not like to see women tossed aside by successful men."

Two months ago Mrs. Sosa decided to seek a divorce and retained the T&T firm to represent her. Mrs. Sosa came in to see name partner, Tonto several times in the next few weeks and on one of those visits Tonto introduced her briefly to Hep, whom he described as "the tax brain of our outfit". At that meeting there was general discussion as to what type of business holdings Mr. Sosa might have, and what kind of tax problems might be encountered if such property were being divided. Shortly thereafter Hep prepared a memo for Tonto, reviewing generally the kinds of tax issues Tonto should keep in mind in his discussions with Mrs. Sosa but had no details about the specifics of Sosa's assets.

At about that time Hep got a call from Bird, who was one of the several lawyers Hep had interviewed with earlier about the possibility of a position. Bird had just lost an associate, and he offered Hep a job at a much higher salary than she was then receiving, provided she could start promptly. He also promised to help Hep develop her skills as a family law attorney doing much more than merely tax work. Hep was delighted with the opportunity; she gave the T&T firm two weeks notice, and started her new position with Bird's office two months ago.

About a month later, Bird was approached by Mr. Sammy Sosa about representing him in the divorce proceeding. Sosa had been using the large firm that handles his business affairs, but he had decided that he would be better off with a family law specialist. Bird's delight at such a desirable new client was somewhat tempered when Sosa made it clear that he thought lawyers charged too much, particularly for people known to be well off, and so he wanted a commitment that Bird would reduce his normal hourly charge by twenty percent. Bird decided to agree graciously, and even told Sosa that he was an important client, worthy of an exception. However, Bird intended to make up as much of the difference as possible by charging a higher hourly rate for his new tax associate, Hep, than he originally intended, or than he was likely to charge to other clients until Hep had been with the office for a good deal longer. Of course, Bird knows that Hep came from the T&T law office. He told Hep to avoid any personal contact with Mr. Sosa and suggested that she not work on the Sosa matter.

Bird has had a couple of meetings with Tonto in an effort to arrive at some tentative agreement as to the nature and value of Mr. Sosa's holdings. One holding of particular interest to Mrs. Sosa is a 200-unit apartment property where Mrs. Sosa's parents reside. Mrs. Sosa is quite anxious to obtain this property as part of her settlement, and Mr. Sosa and Bird have been seeking to take full advantage of that desire by insisting upon valuing the building at \$2,000,000, which is, to say the least, at the very top of any reasonable range of fair market value for that property (thereby maximizing the credit Mr. Sosa would get for giving up that property in any settlement). Bird and Sosa decided they would do better on this issue if they could deal with Mrs. Sosa without Tonto; therefore, after talking over with Bird how best to present it, Mr. Sosa called Mrs. Sosa and told her that unless the value of \$2,000,000 was accepted, Mr. Sosa would keep this property.

Not long after the meeting between Mr. and the soon to be ex- Mrs. Sosa, Bird got a letter

from Tonto reluctantly accepting the 2,000,000 figure. However, the letter went on to misstate the amount of the mortgage on the building as \$1,000,000 when it is actually \$1,100,000. Mr. Tonto's net figure accordingly overstates by at least \$100,000 the net value of the property and hence the credit Mr. Sosa would legitimately be entitled to if he lets Mrs. Sosa have that building. Bird is certain that neither he nor Mr. Sosa is the source of the erroneous mortgage figure used by Tonto. Rather it appears to have been a straightforward computational error made by Tonto (or maybe Mrs. Sosa), perhaps caused by the fact that the apartment building was completed in three sections and so these are three separate mortgage amounts that must be added together to get the total.

When Bird informed Sosa about this error, Sosa saw it as a stroke of luck and something that he could use for his benefit. At first Bird was concerned about whether in any further negotiation exchanges, he could properly just adopt the erroneous mortgage figure used by Tonto. Then it occurred to Bird that he could probably avoid the problem simply by not referring separately to a mortgage figure at all but by referring to the "net value of the property as agreed upon by parties".

Analyze the professional responsibility issues and choices raised by the foregoing. How should they be resolved?

Question Two (30 minutes)

appropriate authorities Billy Blue is practicing criminal law as a student of the UNM Clinical Law Program. He has been appointed to defend Charlene "Chippy" Gilbert who is charged with the murder of her husband George "Georgie" Gilbert III by putting rat poison in his Bloody Mary cocktail. During Brown's first meeting with Chippy at the County jail where she is being held without bail she asked him if what she said to him is confidential. Blue told her he can't reveal anything she tells him. At this point Chippy told Blue that "I knocked off the old coot for his dough -- he was loaded." She then told him that "this ain't the first one -- I knocked off my first husband on a trip to Mexico 10 years ago but hey never caught me." Chippy then told Blue that "I know you student lawyers don't make much dough -- but don't worry -- you get me off and I'll give you \$100,000 under the table from the dough I took from Georgie's safe, a cool million, which I'm keeping in a safe deposit box -- no one knows about that money." Blue asks your advice on this matter.

Advise him.

Part Four: Policy Question (30 minutes)

As you know, the rules of professional responsibility and the rules governing the practice of law are passed by each state supreme court. The American Bar Association has taken a lead in drafting uniform model rules, which are then considered by each state supreme court and any task force or other mechanism for receiving input that the state supreme court chooses. While at one point in history there was a great deal of uniformity among the states, with each new draft of model rules promulgated by the American Bar Association, states seem to reflect more

and more divergence in the rules governing lawyers licensed to practice in each state. Do you think increased diversity in state approaches to regulation is desirable or do you think it more desirable for each state to promulgate unique approaches to regulating the lawyers who practice within its borders? Explain your position thoroughly.

End of Examination