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**750-001 Ethics  
Fall Semester 2004**

**UNM School of Law  
Final Examination  
Three Credits**

**Professor Elizabeth Rapaport  
Wednesday, December 8, 2004  
9:00 a.m. – 12:30 p.m. (3 ½ hours)**

**Examination Format**

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, & date of exam. Make sure to number each bluebook in order.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

**Professor's Instructions**

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

You may have with you and consult any class materials, notes or outlines prepared by you or you working with classmates, and any treatise or hornbook. You may not use any commercial outline or outlines that were prepared by other classes.

Assume for the purposes of all questions that the ABA Model Rules of Professional Conduct are in force. There are two parts to the exam: In answering questions in **Part One**, you should make reference to the rules where relevant, and analyze the problems under the rules. You should also feel free to criticize the rules and to employ other perspectives, if the current model rules do not provide solutions you find adequate. Treat **Part Two** purely as an exercise in the rules; answer each question based only on the Model Rules.

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

**GOOD LUCK!**

## **PART ONE**

### **Question 1 (55 minutes)**

Melissa Smith was discharged from her job as assistant vice president for sales at the Coyote Computer Company last summer. She claims she was fired because she resisted the sexual importuning of her boss, Ben Affleck, the vice president of sales. Smith has brought an employment discrimination and wrongful discharge action against Affleck and Coyote. Smith is represented by Maria Tall Chief. Affleck and Coyote are represented by Bill Williams.

Bill Williams had given careful consideration to whether he should represent Affleck and Coyote before agreeing to do it. He had two other major projects at the time. One was the representation of Kokopelli Computer Company in its efforts to acquire Zia Electronics. The second was his participation as a member of the board of the American Luddite Foundation. The Luddite Foundation is a major force behind such movements as slow food and walking and bicycling to work. Most radical was its “Turn your computer off” campaign, which urged people to get out from behind their screens to, e.g., ride a bike, write a letter, and generally make a connection with the real rather than the virtual world. Bill mused on these commitments, and decided to accept the Affleck and Coyote representations.

Williams took Smith’s deposition during discovery. At discovery Williams asked Smith a number of questions about her sex life, including whether she had ever had a sexual relationship with a boss or co-worker during the course of her working life, and whether she had ever had an affair with a married man. Smith replied in the negative to these questions. Several days after the deposition, Smith called Tall Chief, and told her that when she was in business school she had an affair with the professor who supervised her master’s thesis. The professor persisted in pursuing her after she broke off the affair. She eventually asked the dean to assign her another supervising professor. She tells Tall Chief that she didn’t mention the matter during the deposition because she never brought formal charges, she was embarrassed, and because she did not wish to harm the professor, who was married.

After discovery was completed, the parties engaged in settlement negotiations. Defendants made a cash settlement offer that Tall Chief considered quite favorable. Melissa Smith was not impressed. “I want my job back and I want that skunk Affleck fired,” she said. Tall Chief explained that while reinstatement might be obtained if she went to trial and was successful, she should abandon the unrealistic idea of getting Affleck fired. Smith insisted on going to trial in pursuit of reinstatement in her job and the firing of Ben Affleck.

During the course of settlement negotiations, Bill Williams was bowled over one morning when Maria Tall Chief rode up to a scheduled meeting on her bicycle. Williams and Tall Chief started dating. To the delight and surprise of both, it soon became obvious to them that they were headed for marriage. Before negotiations reached the point described above, Bill proposed and Maria accepted.

Discuss the issues of professional responsibility that arise for both attorneys in the above account.

### **Question 2 (45 minutes)**

Harold Pinter interviews a new client and agrees to represent her in a products liability action against InterGalactic Corporation. The client claims she was injured while using an InterGalactic robotic vacuum cleaner in the correct and normal fashion. Before agreeing to take the case, Pinter had done a

conflict of interest check. He discovered that two years ago his law partner, Archibald MacLeish, had represented the vice president in charge of InterGactic's Robotics Division when that executive sued the driver of a car that had struck his Porsche.

InterGalactic is represented by Lillian Hellman. Arthur Miller is the chief engineer at InterGalactic. After filing suit, Pinter telephones Miller and asks for an appointment to discuss InterGalactic's procedures for product design. Miller refuses to meet, acting on instructions from Hellman not to give any information to Pinter.

Pinter has filed discovery requests, including a request for production of all documents relating to the design of the Robo-Cleener. In reviewing documents to prepare a response to this discovery request, a second year associate attorney, Tony Cushner, discovers a report by a product engineer that questions the safety of the product. Tony asks Hellman whether InterGalactic needs to produce the report. "No," answers Hellman, "In my opinion this document does not 'relate' to the design of the Robo-Cleener because the Robo-Cleener was redesigned based on the concern expressed by the author of this report and other engineers working on Robo-Cleener product development."

Discuss the issues of professional responsibility that arise for the lawyers in the above account.

### **Question 3 (35 minutes)**

Attorney Jason Alvarez had many high profile clients, one of whom was very much in the public eye of late. Mamie Sinclair, known as "the Doyenne of Santa Fe Style," sits across from Jason in his law office in Albuquerque one Monday morning in December 2004. Sinclair is CEO of Sinclair Enterprises, Inc., purveyors of a wildly successful line of home furnishings and kitchenware marketed under the brand, "Mamie Olé." Sinclair is facing the possibility of indictment for insider trading and other securities violations in connection with the sale of some stock she had held in Fat Cat Shenanigans, INC, a corporation controlled by her friend, Harry Jones.

"Jason," says Mamie, "I did nothing wrong. Besides, I only made a piddling \$60,000. on this transaction. I could personally name half a dozen business leaders in this state who have been involved in multi-million dollar questionable transactions this year alone. It's really common knowledge in the business world. I don't understand why the U.S. Attorney is singling me out. Or maybe I do. A woman who rises as high as I have attracts a lot of resentment." Holding up a charming, slim, gold embossed diary, Mamie asks Jason, "What should I do with this diary? If it fell into the wrong hands, some entries might be read as admissions that I had inside information that the stock would drop before I sold."

That same Monday morning, U.S. Attorney Jim Cooper is meeting with key staff to determine whether to seek an indictment of Mamie Sinclair for securities violations.

Earlier Cooper had met with federal investigators who reported that Sinclair's assistant, Brian Robinson, had told investigators that on the day of the sale of her Fat Cat stock, Sinclair had asked Robinson to erase a phone log entry stating that her broker had called to tell her that Fat Cat stock was going down, and change it to read simply "Re: Fat Cat," but had later asked him to change it back to the original message. FBI agent Maria Torres also reported to Cooper about the fruits of a search of Harry Jones' home. Jones had been indicted. Torres showed Cooper some correspondence between Jones and

Sinclair relating to the sale of Sinclair's Fat Cat stock. The correspondence did not reveal that either Jones or Sinclair had information that the stock would decline.

Discuss the issues of professional responsibility that arise for Jason Alvarez and Jim Cooper.

## **PART TWO**

### **Question 4. (45 minutes)**

Question 4 has 8 subquestions, some of which have subparts in turn. Please answer each question or subpart with a sentence or two, a paragraph, or at maximum a page. Be guided by how much you need to say to give a complete answer. Please answer only as the Model Rules of Professional Conduct require, rather than also consulting your own views on legal ethics.

- a. Maria Torres is one of the five lawyers in Milltown, New Mexico. She represents octogenarian Bill Millhand, who is being sued by Dr. Greatheart. Dr. Greatheart seeks to collect \$413. in overdue medical bills. Last week Bill and his girlfriend Sally Weaver were arrested trying to break into a hardware store and were charged with the felony of attempted burglary.
  - i. Sally is being represented by a Public Defender, but he has declined to represent Bill as well. Is his position sound?
  - ii. The court has asked Maria to defend Bill in the felony case. How should she respond to the court's request?
- b. Two years ago, Maria Torres represented Mr. Smith in setting up a closed corporation for his business and for certain personal investments. The work was completed over a year ago, and she has done no work for Mr. Smith since. Now Mrs. Smith has asked Maria to represent her in divorce proceedings against Mr. Smith. The Smiths disagree sharply about the division of property, child support obligations, and alimony. Assume the jurisdiction does not have community property. Under what circumstances, if any, may Maria represent Mrs. Smith?
- c. Jane and Joe Baker, a married couple, and Phil Cook, were riding in a car driven by Bob Robinson when the car was hit head-on by a Galactic Express truck driven by Margie Sims. The Bakers, Phil Cook, and Bob Robinson have asked Tom Tureen to represent them in a suit against Sims and Galactic Express. Under what circumstances, if any, would it be possible for Tom to represent the four plaintiffs in this case?
- d. The County Association of Real Estate Dealers is a trade association composed of all licensed real estate brokers and dealers in the county. The Association provides its members with standard forms of legal documents for use in routine real estate transactions. Last year the state passed a statute requiring all legal documents affecting consumers to be expressed in "clear, simple English." Any document that does not comply is void. The Association hired attorney Owen Flanagan to draft a new standard form apartment lease to comply with the new statute. Flanagan did so, and the form was distributed to the Association's members. Acme Reality used

one of the forms to lease an apartment to Betty Williams. Betty wants Owen Flanagan to represent her in a lawsuit against Acme to have the lease declared void. Betty tells Owen that two crucial paragraphs of the lease are completely incomprehensible to the average person. Owen examines the language of the paragraphs and concludes that Betty is correct. May Owen represent Betty in the lawsuit?

- e. From 1992 until 2001, attorney Grace Johnson was with the Adams & Baker firm. Adams & Baker practice primarily insurance defense work. While at Adams & Baker, Johnson worked on numerous matters for Big Brother Insurance Company. In 2001, Johnson left Adams & Baker for the Curtis firm where she also does insurance defense work, including on matters in which Big Brother insureds needed separate counsel because Big Brother reserved its rights to contest coverage of the claims. Curtis represents Southwest Development, a real estate developer being sued by buyers of several hundred Southwest-built homes for alleged construction defects. Southwest has various insurance policies with Big Brother that it contends cover the defect claims. Big Brother disputes coverage and has sued Southwest for a declaration that it is not liable for the buyers' claims. Adams & Baker represents Big Brother and Curtis represents Southwest in the declaratory relief action. Big Brother has moved to disqualify Curtis from the representation based on Johnson's former association with Adams & Baker.
  - i. Should Grace Johnson personally be disqualified from representing Southwest in Big Brother v. Southwest?
  - ii. If Johnson is disqualified, must the entire Curtis firm be disqualified?
- f. Attorney David Price's law practice consists primarily of insurance defense work. Big Brother has hired him to defend their insured, Silas Marner, in a negligence case. The plaintiff alleges that Silas negligently plowed his fields so that great quantities of water escaped into plaintiff's adjoining fields and rotted his tomato crop. Plaintiff demands \$125,000. in damages. Marner's policy has a top liability coverage of \$100,000. Six weeks before trial, plaintiff's lawyer called Price and offered to settle for \$90,000. What are Price's ethical obligations in this situation?
- g. Molly Maguire has a solo practice in Taos New Mexico. She wants to buy a ranchette in the mountains, but has been unable to find one at the right price. James Wilbur has retained Molly to help him find a way out of his financial distress. Among his few assets is a lovely ranchette property. Wilbur has been unable to pay the taxes on the property. Molly has advised him to put the property up for public auction, so that he can pay his taxes and get some cash with which to pay some of his creditors.
  - i. At the auction, may Molly have her brother bid for her as undisclosed principal?
  - ii. Under what, if any, circumstances may Molly simply agree to buy the property directly from Wilbur, subject to his tax debt?
  - iii. May Molly lend Wilbur enough money to pay off the back taxes on his property? Under what circumstances, if any, would this be proper?

- g. Lawyer Bill Davis is walking down the courthouse hall after a hearing, and comes upon an anxious, confused, and lost looking young woman holding a crying infant. Bill asks if he can help her, and the woman, Luz Diaz, hands him a paper, and asks in halting English where she is supposed to go. The paper is a summons to appear that same day in an unlawful detainer action filed by her landlord. Bill replies in Spanish, and Luz immediately relaxes and smiles. Continuing in Spanish, Bill explains the nature of an unlawful detainer hearing, and asks if Luz has a lawyer. When Luz replies that she does not, Bill offers to represent her for a modest fee. Is Bill's offer proper?
- h. Larry Evans successfully took the bar examination in the summer of 2004 and opened the doors of his solo practice in November of that year.
- i. Is it permissible for Larry to send invitations to attend an opening reception at his law offices to his law school classmates, college friends, neighbors and family, stating that Larry Evans invites them to celebrate the opening of his law offices, and also stating that he is joining the legal community as a general practitioner of civil and criminal law?
- ii. Larry's first client is an old college friend, Mary Ellen Smith. She wants help divorcing her husband. The desire to divorce is mutual; both spouses want out of the marriage. During their initial consultation Larry establishes that there are no children of the marriage, that both parties work and have adequate incomes to support themselves, and that the couple have few assets and have already made a reasonable agreement about their distribution. Mary Ellen wants Larry to agree to take the case on a contingent fee basis. She tells him, "Larry, I have always admired your intellect, but lets face it, you've never done a divorce before, or for that matter, any other legal work, so I think it is fair to ask that I will pay you only if you are successful in bringing my matter to a successful conclusion." May Larry agree to this arrangement?