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Exam No. _____

750-001 Ethics Law
Fall Semester 2005

UNM School of Law
Final Examination
Three Credits

Professor Rapaport
Saturday, December 10, 2005
Thursday, December 15, 2005
3 ½ hours

Examination Format

Essay Answers

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.

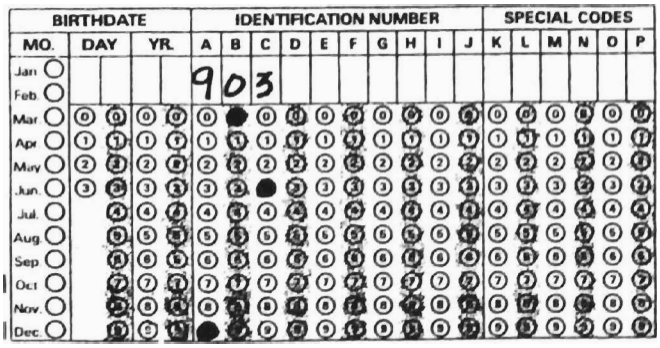
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

Scantron (Bubble Sheet) Instructions

Multiple Choice or True/False Questions

All answers must be marked on the answer sheet provided. Only one answer is correct for each question. Mark your answer using a pencil provided by the proctor. Use side one of the answer sheet. **Mark your examination number on your answer sheet in the manner shown in the example below. Do not use the sample examination number!**

(Please do not use the sample examination number.)



[INSTRUCTIONS CONTINUE ON NEXT PAGE]

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

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

Professor's Instructions

The exam consists of three essay questions and 30 multiple choice questions. If no answer to a particular multiple choice question seems correct to you, you may explain your reservations, duly noting the number of the multiple choice question, in a blue book or in typescript. (Do not strain to make this happen.) Answer all questions under the current ABA Model Rules of Professional Conduct (provided in your course materials supplement).

This is an open book exam. You may consult your casebook, rules pamphlet, and any notes or outlines prepared by yourself or yourself in concert with other members of this class. You may not use commercial outlines or stale outlines.

Question 1. (ten points)

When James Hamm was 26 years old he shot a man to death, execution style, as a result of a drug deal gone bad. He was at that time a drifter and a petty drug dealer. He was sentenced to life imprisonment, but was paroled after serving 17 and 1/2 years. He was a model prisoner while incarcerated, and has led a blameless life since his release. He was admitted to law school and graduated with a fine record in 1997. (Hamm graduated from college while in prison.) Since his graduation from law school, he has worked as a paralegal and has done thousands of hours of service dedicated to improving the lives of incarcerated individuals. He was released from parole in 2001. In 2004, he applied for admission to the bar. If you were a member of the Bar Association's Character and Fitness Committee in his state, Arizona, would you have voted to admit James Hamm to the bar? Why or why not?

Question II. (20 points)

You are representing Mabel Dodge, an executive, in her divorce. She and her husband have two children, 10 -year -old Jane and 4 –year- old Linda. Currently, your client is romantically involved with another man, Wallace. Your client tells you that she does not want custody of her children because Wallace wants to start his own family. Nevertheless, she has asked for custody, partly because she believes that mothers are expected to do so, and partly in order to use the custody issue as a bargaining chip to obtain a more favorable financial settlement. You have negotiated a temporary joint custody arrangement pending the final divorce settlement. Mabel asked for temporary joint custody after you explained that otherwise her request for permanent custody would lack credibility.

For the past few weeks, Mabel has had the children while her husband is out of town caring for his elderly mother who has had a stroke. Mabel does not seem particularly happy about the arrangement, although you have assured her that caring for the children buttresses the credibility of her custody claim.

Ten days ago, you telephoned Mabel at home to discuss the ongoing divorce negotiations. Her ten- year- old daughter answered the phone and said her mother was not home. To your dismay, you learned that her mother had left her and her younger sister alone for more than 24 hours, while their mother stayed with Wallace. You immediately phoned Mabel at Wallace's, and explained to her that leaving small children alone as she had done may constitute neglect. Not only could it harm her custody request --neglect is a criminal violation – to say nothing of the danger of leaving the children unaccompanied. Your client explained that 10-year-old Jane is exceptionally mature and capable, and that she had left meals for the children. She nevertheless assured you that it would not happen again.

This week, however, you telephoned Mabel's home at 7 a.m., hoping to reach her before she left for the day, because she needed to sign some documents. Once again Jane answered the telephone and told you that her mother was not there. You asked again whether she was at Wallace's, and the child replied that her mother had said that she mustn't ever tell anyone when mommy was at Wallace's. Alarmed at the possibility that Mabel had again left her children alone overnight, you phoned Wallace's apartment. Mabel answered, and admitted that she had spent the night at Wallace's. She explained that he had stomach flu, and she was taking care of him. She did not bring the children because she did not want them exposed to the virus. You

warned her that leaving the children unattended is neglect even if her motives were commendable.

Today, you received a call from Mabel, who informed you that the four-year-old had been treated for minor burns she received while being bathed by her sister. Running the bath, Jane had turned on the hot water tap before the cold and scalded the younger child. You asked your client bluntly whether she was home at the time. Instead of answering, she became angry, and told you to mind your own business. She has called you, she said, only to ask you how much she had to tell her husband and his attorney about the burns-not to get a lecture from her own lawyer about how to live her life.

In your state, child neglect is a misdemeanor punishable by fine or up to a year in jail. The statute defines criminal neglect as "knowing failure to provide ordinary and proper care and attention" to a child. Furthermore, the state has enacted a Child Abuse and Neglect Reporting Act (CANRA). CANRA requires any person other than a health practitioner "who has reason to believe that a child has been subject to abuse or neglect" to report the evidence to the Department of Child Welfare. However, CANRA specifically exempts from this obligation anyone who "would be (a) disclosing matter communicated in confidence by a client to the client's attorney or other information relating to the representation of the client; or (b) violating the attorney-client privilege."

What are your obligations under CANRA? In upcoming settlement negotiations with the husband's lawyer? In future dealings with the court?

Question 3. (20 points)

Maria Torres landed a job at the elite law firm of Blue Chippe & Salsa (BC & S) right after graduation from UNM. The firm was eager to obtain the services of one of Professor Rapaport's crackerjack ethics students. On her first day on the job, the managing partner tells her, "Some of my more ruminative partners think we need an ethics counsel, Maria, and that is going to be your primary assignment. Write me a memo by lunchtime with your analysis of the firm's duties or exposure in its representation of our client Integrated InterGalactic, Inc. (IIG). You can fill me in over lunch at my club, the Very Big Time Club."

I. IIG is planning hostile takeover attempts of Coyote Technologies and also of Southwest Industries. One of the crucial decisions in a hostile takeover is how much to offer stockholders of the target for their shares; the amount must be large enough to induce them to sell, but not so large that acquiring the target becomes unprofitable. To set the share price of the tender offer, corporate raiders carefully evaluate the profitability of the target, a task for which information about the target is crucial.

BC & S has some history with both Coyote and Southwest.

Coyote has a unionized workforce, and several years ago BC & S represented Coyote in negotiating a labor contract with the union.

Several years ago, Southwest fended off another hostile takeover by a company unrelated to IIG. Southwest brought in BC & S (a different law firm had handled Southwest's takeover defense) to draft a petition for certiorari to the US Supreme Court after Southwest had lost on an intricate choice of law issue. No BC & S lawyer acquired confidential information from Southwest in connection to the cert petition work for Southwest.

Also, several years ago BC & S drafted poison pill anti-takeover bylaws for Southwest. No lawyer in BC & S acquired confidential information from Southwest in doing the drafting assignment. Several months ago Southwest came to BC & S for advice on legal aspects of a contemplated expansion in Central American markets. No BC & S lawyer acquired confidential information from Southwest in giving this advice. Southwest executives stated that they would continue to use our firm if they decided to proceed with the Central American expansion. Since then, there has been no further contact between Southwest and our firm. The *Wall Street Journal* reports that Southwest has put its Central American expansion on hold.

Please advise whether we can represent IIG in the following situations:

a) Can BC & S represent IIG in its takeover bid of Coyote?

b) BC& S is representing Southwest in a minor piece of trademark infringement litigation. We expect to generate less than $100,000 in fees from this work, while the IIG takeover would bring in millions. May we withdraw from the trademark case in order to represent IIG? The trademark work is at an early enough stage that withdrawal would not obviously affect trial preparation or expense. We suspect that Southwest retained us for the trademark litigation only because it anticipated a hostile takeover attempt, and wanted to create a conflict that would prevent us from representing corporate raiders. Their general counsel "planted" the trademark case with us to neutralize us, we suspect. Should that affect our decision about the representation of IIG in the takeover bid?

c) When Southwest engaged BC & S for the trademark case, the retainer agreement included a clause in which Southwest waived any conflicts of interest with "existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse." Does this permit us to represent IIG in its bid to takeover Southwest?

II. BC & S has another decision to make where we need your input as ethics counsel.

We have a client, EcoClean, an environmental disaster-control firm that derives much of its income from cleaning up oil spills by conventional methods. We also represent a small biotech company, New Kid, Inc, in its challenge to a federal regulatory decision. The decision prevents the company from marketing a new product, a genetically engineered micro-organism that "eats" oil slicks, breaking them down into environmentally harmless components. Ecoclean's president sees a conflict of interest and wants us to drop our representation of New Kid, because if the biotech company succeeds in bringing its product to market, EcoClean may lose millions of dollars and may be put out of business. Do we have a conflict of interest here?

30 Multiple Choice Questions **(60 points)**

1. When law student Sabrina was 17-years-old, a juvenile court, in State A convicted her of shoplifting a $2,500 fur coat. She served eight months in a juvenile correction facility and thereafter was under the supervision of a parole officer for one year. After her parole, she completed high school, college, and law school, and she led a totally law abiding life. When Sabrina applied for admission to practice law in State B, she was required to fill out a questionnaire. One question asked her to disclose "all convictions, including juvenile convictions." In answering that question she put "not applicable," on the theory that her juvenile offense in State A was irrelevant to her present moral character. The bar of State B did not learn about her State A conviction until six months after she had been admitted to practice in State B. is Sabrina *subject to discipline*?

    A. Yes, because she withheld a material fact when she answered the questionnaire.

    B. Yes, because a person who has committed a crime involving dishonesty or false statement is disqualified from practicing law.

    C. No, because her prior juvenile conviction was not relevant to her moral character at the time of her application to the bar.

    D. No, because State B's questionnaire is an unconstitutional invasion of privacy.

2. Client Cathcart hired lawyer Garcia to prepare an estate plan. In connection with that work, Cathcart told Garcia in strict confidence about a criminal perpetrated by Cathcart's former lawyer, Foreman. Garcia urged Cathcart to report Foreman's conduct to the state bar. For unstated reasons, Cathcart refused to do so and refused to allow Garcia to do so. What is the proper course of conduct for Garcia in this situation?

    A. To keep the information in confidence, as Cathcart has instructed.

    B. To speak with Foreman in confidence, to inform him what Cathcart said, and to urge Foreman to rectify his fraud.

    C. To report the information to the state bar, despite Cathcart's instruction not to do so.

    D. To write an anonymous letter to the state bar, relating the facts disclosed by Cathcart.

3. Jason P. Worthington III is among the wealthiest men in State of Enchantment society. When his son was arrested for selling illegal drugs to his prep school classmates, Worthington sought the legal services of the prestigious old firm of Bluechip & Salsa. The Bluechip firm practices almost nothing but securities and banking law. For which of the following reasons *may* the Bluechip firm decline employment in the case?

I. That Worthington is not among the firm's regular clients.

II. That the firm is not experienced in criminal litigation.

III. That Worthington can obtain better service at lower fees from lawyers with more experience in criminal litigation.

IV. That the firm does not want to take time away from its regular work for a matter such as this.

A. All of the above.

B. None of the above.

C. III only.

D. II only.

4. When attorney Hodges graduated from law school three years ago, she opened a solo practice in a small rural community close to the state's major prison. Her primary interests are family law and real estate law. Her practice is growing very slowly, despite her long work hours. She is barely able to make financial ends meet. The presiding judge of the local State District Court has asked her to serve as court-appointed counsel in a civil action that was originally filed *in propria persona* by an indigent inmate of the prison. From the roughly drawn complaint, the presiding judge believes there may be some merit in the inmate's allegations of brutality by some of the guards and gross neglect on the part of the warden. State law allows attorney fees to be awarded to a plaintiff in a civil action of this type, but only if the plaintiff is victorious. Attorney Hodges realizes that she will not be paid for her work if she loses the case, and she is very concerned about the financial loss she may suffer if she takes the time away from her regular practice. Further, she is worried about harming her reputation because the warden and many state employees form the nucleus of her community. Which of the following statements are correct?

I. She *may* decline to serve on the ground that her practice is primarily in the fields of real estate and family law.

II. She may decline to serve if she believes in good faith that she cannot reasonably take the financial risk involved.

III. She may decline to serve if she believes in good faith that to serve would seriously injure her reputation in the community.

IV. She may decline to serve if she believes in good faith that some of her present clients will be offended if she takes the case.

A. All of the above.

B. None of the above.

C. II only.

D. I, II, and IV only.

5. Lawyer Romero has been retained by the officers of Amalgamated Finishers and Patternworkers Union, Local 453, to draft a new set of bylaws for the local. Romero strongly disagrees with one of the provisions the officers want included in the new bylaws. The provision would deny members of the local the right to vote on some issues that involve the expenditure of union funds. Although Romero believes that the provision is lawful and consistent with the national union charter, she believes it would be unwise and inconsistent with the best interests of the members of the local. If the union can obtain other counsel without serious loss, *may* Romero withdraw from the matter?

   A. Yes, but only if she obtains the consent of her client.

   B. Yes, because her client is asking her to do something that is against her best judgment.

   C. No, because she is obliged to carry out the lawful objectives of her client.

   D. No unless her client has breached the agreement under which she agreed to perform the work.

6. Mark Norris is a newscaster for the local television station. Every weeknight, following the evening news, he presents a ten-minute segment entitled "This Funny Town." It is patterned on an old-fashioned newspaper gossip column. Most of it concerns the private lives and peccadilloes of the prominent and would-be prominent citizens of the community. Judges and lawyers are among Mr. Norris's favorite subjects. He and attorney Smith have arrived at a tacit arrangement. Whenever Smith hears a piece of juicy gossip about a local judge or lawyers, he passes it along to Norris. In return, Norris frequently recommends Smith's services in his broadcasts. For example, Norris calls Smith "a fearless courtroom ace," or he states opinions such as: "if you want to win your case, hire Smith." Is Smith *subject to discipline*?

   A. Yes, because Smith is providing something of value to Norris for recommending his services.

   B. Yes, because a lawyer can be disciplined for demeaning other members of the legal profession.

   C. No, unless he gives false or privileged information to Norris.

D. No, because Smith's conduct is a protected form of speech under the First and Fourteenth Amendments.

7. Attorney Anton advertised on the local television station. His advertisement stated in relevant part: "The most I will charge you for any type of legal work is $100 per hour, and if your problem is not complicated, the hourly fee will be even lower." Which of the following propositions are correct?

   I. Anton *may* advertise on the local television station so long as his advertisement is not false or misleading.

   II. If Anton charges $125 per hour for complicated legal work, he will be subject to discipline for using a misleading advertisement.

   III. If Anton's advertisement fails to state that some other lawyers in the community charge substantially lower fees, he will be *subject to discipline*.

   A. Only A is correct.

   B. Only I and III are correct.

   C. Only I and II are correct.

   D. Only II and III are correct.

8. Lawyer Del Campos practices in a town in which 25% of the people are Mexican-American and another 20% have recently immigrated to the United States from Mexico. The bar of his state does no certify specialists in any field of law nor does it approve private organizations that certify legal specialists. However, Del Campos has been certified as specialist in immigration law by the American Association of Immigration Attorneys, a private organization accredited by the ABA. Del Campos wants to put an advertisement in the classified section of the local telephone book. Which of the following items of information *may* he include in his advertisement?

   I. That he "serves clients who are members of the Continental Prepaid Legal Plan."

   II. That he "speaks Spanish."

   III. That he has been "certified an immigration specialist by the American Association of Immigration Attorneys.

   IV. That he can "arrange credit for fee payments."

   A. All of the above.

   B. None of the above.

   C. I, II, and IV only.

D. I and III only.

9. Attorney Salmon published a brochure entitled, "What to Do When You Are Injured." It contains accurate, helpful information on obtaining medical treatment, recording details of the event, notifying insurance companies, not making harmful statements, and the like. The cover of the brochure identifies Salmon as a "Personal Injury Attorney" and gives is office address and telephone number. One afternoon Salmon was standing in a crowd of people that saw a pregnant woman knocked down in a pedestrian crosswalk by a speeding car. A few days later, Salmon mailed the woman a copy of his brochure, together with a letter stating that he had witnessed the accident and was willing to represent her for a reasonable fee should she wish to sue the car driver. The outside envelope stated that the envelope contained "Advertising Material." The bar in Salmon's state does not have a 30-day waiting period of the kind involved in *Went For It, Inc.*

    A. Salmon is *subject to discipline*, both for sending the woman the brochure, and for sending her the letter.

    B. Salmon is *subject to discipline* for sending the woman the letter, but not for sending her the brochure.

    C. Salmon is *subject to discipline* for offering his legal services, for a fee, to a person who was not a relative, client, or former client.

    D. Salmon's conduct was *proper*.

10. Attorney Gresler offered a free half-day seminar for nurses, hospital attendants, and emergency medical personnel on personal injury law as it relates to accident victims. During the seminar, he told the group about the importance of preserving items of physical evidence, keeping accurate records of medical treatment, accurately recording statements made by the victim and others about the accident, and the like. At the close of the seminar, he passed out packets of his professional cards and invited the members of the group to give them to accident victims. Was Gressler's conduct *proper*?

    A. Yes, because a lawyer has an ethical obligation to help non-lawyers recognize legal problems and handle those problems correctly.

    B. Yes, because his conduct is protected by the Free Speech clause of the First and Fourteenth Amendments.

    C. No, because he invited members of the group to hand out his professional cards to accident victims.

    D. No, because he dispensed legal advice to people with whom he had no prior professional relationship.

11. After graduating from law school, three young women formed their own new firm dedicated to the law of women's rights in the workplace. They established an attractive site on the World Wide Web. Their Web site includes very specific biographical information about each of them, including information about their families, their hobbies, and all the academic and athletic honors they received in college and law school. The

site also includes detailed, thoroughly researched position papers they have written on current legal issues in their field of law practice. The position papers are written so they can be understood by a lay audience. The Web site includes an e-mail link that allows site visitors to ask legal questions of the three lawyers. The question form requires the questioner to supply enough information about him or herself to permit the lawyers to do a conflict of interest check before responding to the questions. The questioner supplies a credit card number, and the lawyers charge a small fee for e-mailing an answer to the question. The lawyers do not answer questions from site visitors who live outside the state in which the lawyers have their office. If a question is too difficult to answer competently by e-mail, the lawyers invite the questioner to come to their office for a free initial consultation. Is the conduct of the three lawyers *proper*?

A. No, because their Web site includes personal information about the three lawyers that is not relevant to the potential client's selection of a lawyer.

B. No, because the e-mail feature permits the three lawyers to dispense legal advice to people they have never met and with whom they have never established a lawyer-client relationship.

C. Yes, but only if the fee for e-mailing an answer to a question is not unreasonably high

D. Yes, but only if the position papers are on non-controversial legal issues that do not require a specialized knowledge of women's employment law.

12. Criminal defense layer Lenox agreed to represent defendant Denmon at Denmon's trial for arson. Lenox and Denmon orally agreed on the following attorney fee arrangement. If Denmon was acquitted, the fee would be $25,000. If Denmon were convicted of any lesser included offense, the fee would be $5,000. If Denmon were convicted of arson, the fee would be $500. Lenox further agreed to advance all litigation expenses, subject to Denmon's promise to repay Lenox whatever the outcome of the case. Which of the following statements are correct?

A. Only I, II, and IV are correct.

B. Only I and III are correct.

C. Only II and IV are correct.

D. All of the statements are correct.

13. Attorney Kimberly represented client Marsha in a divorce proceeding in a non-community property jurisdiction that has a no-fault divorce law. Marsha was married for 25 years, and during the marriage her husband became a very wealthy business executive. The two children of the marriage grew up and left home. Marsha had a savings account of her own, but she was not wealthy, and she had no marketable job skills. Kimberly convinced Marsha to sign a contingent fee agreement, in which Kimberly's fee would be 25% of whatever property settlement Marsha would get in the divorce decree. The

divorce court awarded Marsha a $10 million dollar property settlement. Marsha refused to pay Kimberly the $2.5 million fee due under the fee agreement, saying that it was unreasonably high. After trying without success to settle the fee dispute amicably, Kimberly sued Marsha to collect the fee. *May* the court award Kimberly less than $2.5 million?

A. No, because Kimberly took the risk of not being paid anything when she took the case on contingency, and she is entitled to be compensated for that risk.

B. Yes, because Kimberly acted improperly in using a contingent fee agreement in a divorce case, where the amount of the fee was controlled by the amount of the property settlement.

C. No, because a contingent fee agreement is permissible in a divorce case, except where the contingency is the granting of a divorce.

D. Yes, because it is unethical for a lawyer to sue her own client to collect a fee.

14. Client Fujitomi entrusted lawyer Lee with $10,000, to be used six weeks later to close a business transaction. Lee immediately deposited it in her client trust account; at the time, it was the only money in that account. Later that same day, the local bar association called Lee and asked her to rush out to the Municipal Court to take over the defense of an indigent drunkard, Watkins, who was being tried for violating an obscure municipal statute. Because of the chaos in the Public Defender's Office, Watkins was being tried without benefit of counsel. By the time Lee arrived, the judge had already found Watkins guilty and sentenced him to pay a fine of $350 or spend 30 days in jail. Under a peculiar local rule of court, the only way to keep Watkins from gong to jail was to pay the fine immediately and to request a trial *de novo* in the Superior Court. Therefore, Lee paid the fine with a check drawn on her client trust account, and Watkins promised to repay her within one week. Which of the following statements is correct?

A. Lee's handling of the Watkins matter was *proper*.

B. Lee would have been *subject to litigation sanction* if she had allowed Watkins to go to jail.

C. If Lee had paid Watkins' fine out of her personal bank account, that would have been *proper*.

D. Lee would be *subject to discipline* for handling the matter in any manner other than she did.

15. Attorney Ayers represents client Canfield as plaintiff in a suit to compel specific performance of a contract. Canfield contracted to purchase Thunderbolt, a thoroughbred race horse, from defendant Dennis in exchange for $1,500,000 worth of corporate bonds owned by Canfield. Canfield transferred the bonds to Dennis, but Dennis refused to deliver Thunderbolt. Two months late before the scheduled trial date, Canfield gave Ayers the following instructions: "I am leaving tomorrow on a six-week sailing trip

through the South Pacific, and you will not be able to reach me by any means. If Dennis makes any reasonable settlement offer before I return, please accept it, but try to get the horse if you can." A week later, Dennis's lawyer called Ayers and said: "Dennis wants to capitulate. He will either return the bonds, or he will turn over Thunderbolt. He insists on an immediate response, so call me back this afternoon." Ayers believes in good faith that Thunderbolt is a tired nag, worth far less that $1,500,000. Further, Ayers discovers that it will cost nearly $1,000 to keep Thunderbolt in a safe, bonded stable until Canfield's return. What is the *proper* course of action?

A. Get the bonds and put them in a safe deposit box until Canfield returns.

B. Tell Dennis's lawyer that he cannot respond until Canfield returns.

C. Get Thunderbolt and house him in the safe, bonded stable at Canfield's expense until Canfield returns.

D. Get Thunderbolt and turn him out to pasture on Ayers' farm until Canfield returns.

16. For many years attorney Lovato has done all of the routine business law work for Carmondy Corporation. Now Carmondy has asked him to represent it in negotiating a contract to supply electronic components to the U.S. Navy. Lovato knows nothing about government contract law except that it a highly specialized field governed by a mass of technical regulations.

Which of the following would be *proper* for Lovato to do?

I. To decline to represent Carmondy and to charge Carmondy a nominal fee for finding Carmondy a lawyer who specializes in government contract law.

II. To agree to represent Carmondy, provided that Carmondy will consent to the association of a lawyer who specialized in government contract law.

III. To agree to represent Carmondy, and then to subcontract the substantive legal work to a lawyer who specializes in government contract law

IV. To agree to represent Carmondy, intending to master the field of government contract law with reasonable speed and efficiency.

A. All of the above.

B. None of the above

C. II and III only.

D. I, II, or IV only.

17. Solo practitioner Pearce hired non-lawyer Nelson to serve as her secretary and all-purpose assistant. Pearce put Nelson in charge of her client trust account and her office account and instructed her about how the accounts were to be handled. Several months later, Pearce learned that Nelson had a criminal record, including two prior convictions for embezzlement from a former employer. Since Nelson appeared to be handling the accounts properly, Pearce decided to leave well enough alone. After several more months, Pearce noticed that $1,500 was missing from the office account. Nelson explained that she had borrowed the money to pay her mother's funeral expenses and that she would repay it out of her next paycheck. Nelson did repay the money, and Pearce decided to let Nelson continue to manage the accounts. Then, a year later, Nelson disappeared along with $30,000 from Pearce's client trust account. The clients whose money was taken sued Pearce for negligence and breach of fiduciary duties. Which of the following propositions are correct?

I. Pearce is *subject to discipline* for allowing a non-lawyer to handle her client trust account.

II. If Pearce did not adequately supervise Nelson's handling of the client trust accounts, then Pearce is subject to discipline.

III. Pearce is *subject to civil liability* for malpractice to the injured clients if she was negligent in allowing Nelson to handle the client trust account.

IV. If Pearce had a subjective, good faith belief that Nelson was trustworthy, then Pearce is not *subject to civil liability* for malpractice to the injured clients.

A. II and III only.

B. I, II, and III only.

C. IV only.

D. II and IV only.

18. Supervising lawyer Liggett assigned paralegal Prentice to search through the massive business files of Liggett's client to find documents responsive to a federal court order for production of documents. After several months' work, Prentice ended up with 170 large cartons full of documents that were responsive to the court order. Most of the documents were harmless, but a few were quite damaging to the legal position taken by Liggett's client. Instead of arranging the documents in the same logical order in which she found them in the client's files, Prentice intentionally jumbled the order of the documents. Her purpose was to make it exceedingly difficult, if not impossible, for the adversary to find the damaging documents and to understand their significance. Before the documents were produced for the adversary, Prentice told Liggett what she had done. Liggett responded: "Good — that ought to slow the bastards down. In the future, however, don't do anything like that without checking with me first; we might get in trouble otherwise." Which of the following statements are correct?

I. Since document production requires the skill and judgment of a lawyer, Liggett is *subject to discipline* for delegating the task to Prentice, even if he had adequately supervised her work.

II. Liggett's conduct was *proper* since he admonished Prentice and instructed her not to engage in similar conduct in the future.

III. Assuming that all responsive documents were produced, Liggett's conduct was *proper*, since the adversary has no right to insist that the documents be arranged in any particular order.

IV. Even if all responsive documents were produced, Liggett is *subject to discipline* because he failed to take steps to mitigate the consequences of Prentice's misconduct.

A. II only.

B. I and IV only.

C. IV only.

D. II and III only.

19. In which of the following situations would the information received by the attorney be covered by *both* the attorney-client privilege and the ethical duty to preserve the client's confidential information?

I. Lawyer L is defending client C in a tax fraud case. With C's consent, L hires a tax accountant to examine C's records, to talk with C, and to prepare some worksheets for L to us in defending the case. The accountant turns the worksheets over to L.

II. L is representing C in a boundary line dispute with C's neighbor. When combing through the county land records, L discovers that C's grantor apparently had no legal title to the land he purported to grant to C.

III. L is defending C in a first degree murder case. In the course of her investigation, L talks to a taxi driver who tells L that he remembers that on the night in question C rode in his taxi to an address near the scene of the murder.

IV. L represents C in an action for breach of an oral contract. When preparing the case for trial, L stumbles across an old newspaper clipping, reporting C's conviction of a felony in a distant state 15 years ago.

A. All of the above.

B. I, III, and IV only.

C. I only

D. III only.

20. Client Christenson asked attorney Alder to prepare some legal papers in connection with Christenson's dissolution of marriage proceeding. In the course of conversation, Alder learned that Christenson intended to develop some beachfront property into condominiums. State law requires the filing of certain environmental impact statements with the State Commissioner of Real Estate and Development as a prerequisite to any development efforts, including advertising and zoning variances. Later Alder learned that Christenson was proceeding with the project and had not yet filed the required statements. Which of the following items are correct?

I. Alder *must* contact the State Commissioner of Real Estate and Development and reveal Christenson's intentions.

II. Alder *may* contact the State Commissioner of Real Estate and Development and reveal Christenson's intentions.

III. Alder *may* contact Christenson and urge him to take appropriate steps to rectify his wrong.

IV. It would be *proper* for Alder not to tell any outsider about his communications with Christensen.

A. I, III, and IV only.

B. II, III, and IV only.

C. III and IV only.

D. IV only.

21. Lawyer Martinez represents client Cramer in a complex business case. The defendant had demanded production of a mass of Cramer's records that contain vital, confidential business information. The defendant has agreed to a protective order that prohibits it from misusing the information, and it has agreed to accept xerographic copies in lieu of the original records. Martinez's office does not have a copying machine big enough to do the job efficiently. In these circumstances:

A. Martinez *must* do the copying job herself on the small, slow office machine.

B. Martinez *must* tell Cramer to make the copies himself, using his own facilities.

C. Martinez *may* select a trustworthy copying firm to do the work, provided that she makes sure the firm's employees preserve the confidentiality of the records.

D. Martinez *may* select a trustworthy copying firm to do the work, provided that she is personally present to supervise the work.

22. Attorney Aquino defended Dempsey in a criminal assault case. Before trial, Dempsy told Aquino in confidence that he beat up the victim without provocation. Due to Aquino's hard work, coupled with a stroke of luck, the jury found Dempsey not guilty. Then Dempsey refused to pay Aquino's fee. Aquino wrote to Dempsey as follows: "The jury found you not guilty, but your victim can still sue you for civil damages. If you do not pay my fee, and if I have to sue you to collect it, I will have to reveal the whole truth in open court, to explain why the amount of me fee is reasonable. Think this over carefully. I hope to receive your check by return mail." Which of the following is most nearly correct?

A. Even though heavy handed, Aquino's letter was *proper* because he was simply explaining to Dempsey the consequences of refusing to pay the fee.

B. If Aquino sues Dempsey to collect the fee, Aquino will be *subject to discipline* because a lawyer is prohibited from using a civil suit to collect a fee.

C. Aquino's letter was *proper* because a lawyer is required to settle fee disputes amicably if possible.

D. If Aquino sues Dempsey to collect the fee, Aquino *may* reveal Dempsey's confidential communications, but only to the extent necessary to establish his claim against Dempsey.

23. Lawyer Ling represented clients Clark and Craddock who were the sole partners in a business joint venture. In that connection, Clark and Craddock met frequently with Ling to discuss confidential matters relating to the business. One day Clark came alone to Ling's office. Before Ling could stop him, Clark disclosed that he had usurped a business opportunity that properly belonged to the joint venture. Ling informed Clark that she could not advise him on that topic. Further, Ling promptly withdrew as counsel to Clark and Craddock. Ultimately Craddock sued Clark for the usurpation. Craddock's lawyer subpoenaed Ling to testify at a deposition about the statements Clark made to Ling. At the deposition, Clark's lawyer asserted attorney-client privilege on Clark's behalf. Ultimately the court ordered Ling to disclose what Clark said. Which of the following is most nearly correct?

A. It was *proper* for Ling to withdraw as counsel to Clark and Craddock. Further, Ling *must* disclose what Clark said.

B. It was *proper* for Ling to withdraw as counsel to Clark and Craddock. However, Ling will be *subject to discipline* if she discloses what Clark said.

C. Ling is *subject to discipline* for withdrawing as counsel to Clark and Craddock. Further, Ling will be *subject to discipline* if she discloses what Clark said.

D. Even if Ling believes that the court order is correct, she *must* refuse to disclose what Clark said.

24. Inventor Ivan and marketing genius Gene want to form a new corporation to market Ivan's new design for motion picture projectors. They want to hire attorney Arnold to help them to do the necessary legal work and to help them find venture capital. Because they have almost no hard cash at present, they have to ask Arnold to do this work for them in exchange for 4% of the capital stock of the new corporation. The remaining 96% will be divided equally between Ivan and Gene and their respective families. *May* Arnold agree to their proposal?

    A. No, because a lawyer must not acquire a personal interest in the subject of the representation.

    B. No, because a lawyer must not enter into a business transaction with clients.

    C. Yes, but only if the 4% would not make the fee unreasonably high, and the transaction would be fair to the clients, and the terms are fully disclosed to the clients in an understandable writing, and the clients are given a chance to consult outside counsel, and the clients are advised in writing of the desirability of seeking outside counsel and given a chance to consult such outside counsel, and the clients consent in writing.

    D. Yes, but only if Ivan and Gene give their informed consent and Arnold promises that he will never vote his stock or otherwise attempt to influence the governance of the corporation.

25. Lawyer Lenschell has recently opened his new law office. Timothy came to Lenschell's office and introduced himself as the "boyfriend" of Tina, a young woman who was just arrested on a prostitution charge. Timothy retained Lenschell to represent Tina and paid him an appropriate fee in advance. Timothy, who, despite being a layperson, was well versed in sentencing practices with respect to prostitution, explained to Lenschell that in prostitution cases in this district a guilty plea usually results in a $500 fine, but no jail sentence. But if the defendant pleads not guilty, goes on trial, and is found guilty, the judge usually imposes a jail sentence. Timothy further explained that Tina did not want to go to jail, that he would pay her fine for her, and that Lenschell should advise her to plead guilty. Lenschell met Tina for the first time at the courthouse, shortly before her case was to be called on the criminal calendar for entry of her plea. In their hurried conference, Tina told Lenschell that Timothy was her pimp, not her "boyfriend." Further, she said that she wanted to escape from Timothy and from her life as a prostitute, and that she wanted to plead not guilty, thus risking a jail sentence, rather than become further indebted to Timothy. What is the *proper* course of conduct for Lenschell to follow in this situation?

    A. To adhere to the instructions given by Timothy, and to advise Tina to plead guilty.

    B. To give Tina whatever legal assistance she needs in entering her plea of not guilty.

C. To withdraw from the matter promptly, without advising Tina one way or the other on what plea to enter.

D. To telephone Timothy and ask for further instructions in light of Tina's unwillingness to plead guilty.

26. Lawyer Lattimer is on the in-house legal staff of Centennial Corporation, a major manufacturer of steel shipping containers. She regularly provides legal advice to Vice-President Markler, the executive in charge of sales and marketing. In the course of a routine preventive law project, Lattimer discovered that Markler had participated in a series of telephone conferences with his counterparts at the company's two main competitors. Further, she discovered that each such conference was promptly followed by an increase in the prices charged by the three companies. When Lattimer took this up with Markler, she first reminded him that she was not his personal lawyer, but rather the corporation's lawyer. Then she said: "If you have been discussing prices with our competitors, we may be in deep trouble. Your telephone conferences may violate the Sherman Antitrust Act, and that could mean civil and criminal liability, both for you and for the corporation. And, as you know the corporation has a rule against rescuing executives who get in antitrust trouble." Markler responded as follows: "Ms. Lattimer, I know you're a good lawyer, but you don't know much about the real world. You can't run a business these days if you try to trample on your competition. Now don't worry yourself about my telephone conferences, because I'm sure you have better things to do with your time." If Markler remains uncooperative, which of the following expresses the *proper* course for Lattimer to take?

    A. Draft a careful, complete memorandum about the matter for her own files, and maintain her conversation with Markler in strict confidence.

    B. Describe the relevant facts in a carefully drafted letter to the Antitrust Division of the United States Department of Justice, and request an advisory opinion on the legality of the described conduct.

    C. Describe the entire matter to Markler's immediate corporate superior, the Executive Vice-President, and advise him to put a stop to Markler's telephone conference.

    D. Describe the relevant facts in a memorandum to the corporate Board of Directors, and advise the Board that she will resign unless something is done to stop Markler.

27. Attorney Tillis is a partner in the 138 person firm of Dahlberg & Sneed. The Citizens' Alliance for Coastal Preservation has asked Tillis to represent the Alliance in a public interest lawsuit against Vista del Oro, Inc, a real estate developer. Vista del Oro owns several thousand acres of beautiful coastline, about an hour's drive from the largest city in the state. It is building vacation homes to sell to the public. When the project is complete, the entire area will be fenced off to prevent access by non-owners. The Alliance seeks to force Vista del Oro to provide access paths across the property, so that members of the public can get from the state highway to the public beaches. Attorney Prentice is also a partner in Dahlberg & Sneed. He is a member of the Board of Directors of Vista del Oro, and he owns seven of the vacation home sites as a personal investment. No Dahlberg & Sneed lawyer has ever represented Vista del Oro, and none will do so in the present case. After careful consideration, Tillis has concluded that his representation of the Alliance would not be adversely affected by Prentice's interest. Which of the

following conditions must be met if Tillis is to avoid being *subject to discipline* for representing the Alliance?

I. The Alliance consents after full disclosure.

II. Vista del Oro consents after full disclosure.

III. Prentice resigns as a director of Vista del Oro.

IV. Prentice sells his seven home sites.

A. All of the above.

B. III only.

C. I and II only.

D. I only.

28. A statute of State X requires prison inmates to be provided "sanitary living conditions, suitable education and recreation facilities, and competent medical treatment." The statute authorizes inmates who are deprived of these benefits to sue the State Commissioner of Prisons for equitable relief. The statute also permits (but does not require) the courts to order State X to pay the attorney fees of successful inmate plaintiffs. At the request of the local bar association, private attorney Andrate agreed to represent a group of indigent inmates who were allegedly being deprived of proper medical attention at a State X prison. After extensive discovery proceedings, the State Commissioner of Prisons offered to settle the case by entering into a consent decree that would give the inmates all the equitable relief they could ever hope to receive, provided that Andrate would not request an award of attorney fees. Which of the following would be the *proper* thing for Andrate to do with respect to the settlement offer?

A. Explain it to his clients and let them decide whether to accept it or reject it.

B. Reject it on behalf of his clients because it does not provide for an award of attorney fees.

C. Accept it on behalf of his clients, even though it does not provide for an award of attorney fees.

D. Reject it on behalf of his clients because to do otherwise would discourage private attorneys from representing indigent inmates in future case.

29. After they graduated from law school, Cheryl and Dennis were married and went to work for separate law firms in a large city. Cheryl's practice is primarily trademark litigation, and Dennis's practice is primarily general business counseling; only rarely does he become involved in trial work. One of Dennis's regular business clients sued a major corporation for trademark infringement. Dennis and his law firm appeal on the pleading as counsel for plaintiff, but, in fact, all of the trial work is being done by another firm that

specializes in trademarks. The defendant's lead counsel died suddenly, and his firm withdrew from the case. Now the defendant has asked Cheryl and her firm to take over the defense. Which of the following is most nearly correct?

A. If Cheryl and her firm agree to represent the defendant, then Dennis and his firm will be *subject to discipline* if they do not seek their client's permission to withdraw.

B. Cheryl and her firm will be *subject to discipline* if she agrees to represent the defendant, since to d so would create an appearance of impropriety.

C. If the respective clients consent after full disclosure of the situation, then Cheryl and Dennis *may* participate on opposite sides of the case.

D. Cheryl and Dennis *may* participate on opposite sides of the case, since the mere fact that they are married creates neither an actual nor an apparent conflict of interest.

30. R, S, T, and U are four sellers of high-speed photoimage reproductor disks. U falsely advertises its disks, and U's false statements injure R, S, and T by causing some of their customers to buy instead from U. But R, S, and T are not sure of the precise amount of business each lost. The three of them hire Attorney A to represent them in a suit against U for an injunction and damages, and A agrees to take the case for a 30% contingent fee. After extensive discovery, U's attorney calls A with a settlement offer: U will consent to a court order enjoining U from using the allegedly false statements in future advertising, and U will pay a total of $100,000, in return for a full release of all claims by R, S, and T. In A's opinion, the consent order would adequately protect R, S, and T from future harm, but A believes in good faith that $100,000 is ridiculously low and would not compensate R, S, and T for their past losses. Which of the following is most nearly correct?

A. A will be *subject to discipline* if he accepts U's settlement offer, because he does not believe in good faith that $100,000 would sufficiently compensate R, S, and T for their losses.

B. A will be *subject to discipline* if he does not let R, S, and T decide what to do about U's settlement offer, even though he represents them on a contingent fee basis, and even though he believes that $100,000 is not enough to compensate R, S, and T for their past losses.

C. A *may* accept U's settlement offer, provided that he takes no more than 30% of it as his fee, and that he distributes the remainder equitably among R, S, and T.

D. A *may* reject U's settlement offer, since he does not believe in god faith that $100,000 would sufficiently compensate R, S, and T for their past losses.

31. Tillingham, Wadsworth & DePew is a sprawling corporation law firm with 200 partners, 600 associates, and branch offices in eight major cities. Reynard DePew is the senior partner in charge of the firm's Washington, D.C. branch office. A year ago, he was retained by Transpac Oil Company to prepare some Transpac executives to testify before

a Senate committee in opposition to proposed antitrust legislation that would require all integrated oil companies to divest themselves of their retail service stations. In connection with this work, DePew received truckloads of confidential documents from Transpac concerning competitive conditions in the retail end of the oil industry. DePew did not share this confidential information with anyone in the firm's Denver branch office, nor did he ever discuss the matter with anyone in the Denver office; indeed, no one in the Denver office even knew that DePew was working on the matter. Eight months after the matter was concluded, the Independent Service Station Dealers of America asked the firm's Denver office to represent it as plaintiff in an antitrust action against nine major integrated oil companies, including Transpac. *May* the Denver office accept the case without Transpac's consent?

A. No, because the case is substantially related to the work DePew did for Transpac.

B. Yes, provided that the Dealers Association consents after full disclosure.

C. Yes, provided that the firm concludes that it can effectively represent the Dealers Association and that DePew is screened off from the case and does not share any fees earned in the case.

D. Yes, because the Denver office never received any of Transpac's confidential information from DePew.