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BAUM  
SUMMER 2005

FINAL EXAMINATION  
750-370 ETHICS

This is a three-hour examination. The exam consists of two long essay questions, six short answer questions, and fifteen multiple choice questions. The essays are worth a total of 225 points, 125 for question one and 100 for question two. The short answers are worth a total of 30 points, six questions at five points each. The multiple choice questions are worth a total of 45 points, fifteen questions at three points each.

This exam is CLOSED BOOK. You may NOT refer to any print materials including your casebook, your class notes, and your course outline. You may NOT use electronic databases or other research materials.

In your answers, you are to apply the Model Rules and comments, cases, and ethics opinions to the facts and to provide specific citations to and analysis of relevant provisions of the Model Rules and relevant case law and ethics opinions to demonstrate your reasoning and to support your conclusion. Where appropriate, you should also bring in material and concepts from Moral Compass of the American Lawyer.

To receive full credit for each question, you must state the correct rule number, state your conclusion or answer, and support your conclusion through complete presentation of all steps in your reasoning and citation to relevant authority. References to case names and base rule numbers are sufficient as citation; reporter cites and rule subsections are not required.

For the multiple choice questions, you are to indicate the correct answer and provide a brief explanation of the reason for your choice—why that answer is the best and why the others are incorrect or not as good as the best answer. Your explanation must include the relevant Model Rule number(s). The correct answer choice will be worth one point; the explanation for the answer will be worth two points.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

Your answers are to be concise and directly relevant to the question asked or fact pattern provided. Rambling and imprecise answers will not receive full credit.

Please use the following formatting for your answers. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.

You are to return your exam questions with your answers.

QUESTION ONE (125 points) (Fact pattern loosely based upon movie “And Justice for All”)

You are a criminal defense attorney sharing office space with two other lawyers, Smith and Wesson. You sometimes refer clients to each other if you have a conflict or a workload problem. Your office is set up with three secretaries, one for each of you, and one receptionist who answers the phone and takes messages for all three of you. Your door sign reads, U, Smith and Wesson, Attorneys at Law.

You are representing Sammi, a first-time offender who was the driver of the get-away car when his friend held up a liquor store. He’s terrified of going to prison because he has extreme claustrophobia. You have the paperwork from pretrial that incorrectly states that this is not his first offense; they have him confused with someone else. You need to clear up this misinformation at the sentencing hearing tomorrow. Sammi is counting on you to be there tomorrow and you have assured him that you will be in court for him.

You also represent Gill who was arrested for murder following a routine traffic stop. His first lawyer didn’t believe that this Gill was not the same Gill who committed the murder and didn’t advocate very hard to get him acquitted. You have taken on the appeal and gathered all of the information to prove that they have the wrong person. Unfortunately, because of another case you were working on, you turned in the paperwork for the appeal two days late and the court has thrown out the case.

Another regular client of yours has called about a DWI arrest and wants you to be in court with him tomorrow at the same time as Sammi’s hearing. This client’s legal problems are the “bread and butter” of your practice and his fees pay most of your overhead. So, you arrange with Smith for her to handle Sammi’s sentencing hearing tomorrow. You tell her that it’s an easy two-minute appearance and that all she needs to do is present the new information to amend the pretrial report and you’ll split your fee with her.

While you are in court with your other client, Smith appears in court but doesn’t bother to read the file you gave him. When Sammi asks Smith who she is and what is happening, Smith tells him not to worry and dismisses his concerns. Sammi didn’t know that you wouldn’t be there. When asked by the court if there are any changes to the pretrial report, Smith says “No.” Based on the pretrial report, Sammi is sentenced to four years in prison.

Meanwhile, Wesson is embroiled in a big murder case. His client, Garrow, has admitted to Wesson that he killed six children and buried them in a remote spot where no one would find them. The evidence against Garrow is weak and Wesson is pretty sure that he can get Garrow acquitted. The prosecutor is offering a deal if Garrow will tell where the bodies are; Wesson is scared of Garrow and would love to see him in jail. However, he passes along the plea offer to Garrow and tells Garrow that the prosecution’s case is weak. Garrow says that he wants to testify and deny everything. Wesson isn’t sure what he should do so he turns to a friend of his for advice. At lunch at the local court hangout with prosecutors all around, Wesson has a few too many drinks and tells his friend everything that Garrow has told him. After he’s spilled everything, he tells his friend to keep everything secret. A prosecutor overheard the entire conversation and relays the information to his colleague who is handling the case.

All of the pre-trial publicity has increased Wesson's visibility. When the press calls about the case, Wesson explains that his client will be testifying as to his innocence and that he is sure that the jury will find him convincing.

You've received a call to go see a very powerful lawyer and political figure, Mr. Big, who's been arrested for rape. You have some bad history with Big and can't believe that he's calling on you to represent him. When you meet with Big (with his sidekick, Little, in the room), Big tells you that you will take the case and that you will do what he tells you in representing him. He also tells you that he didn't do it. You decline the case but Mr. Big says he can pull some strings and get Gill a hearing on the new evidence so you change your mind and take the case to help your other client.

As you prepare Big's defense, you discover evidence that incriminates Mr. Big and confront him with it. He tells you that it's not true and has an explanation for the evidence that sounds credible. His plan is to testify and convince the jury of his fine reputation and stellar character. As the trial date nears, a source provides you with documentation that proves that Big is guilty. And, he never pulls the strings to get Gill a hearing and Gill is killed in prison. You are so upset that during opening statements, you can't get the words out to defend your client. Instead what comes out is, "The prosecution has told you that today they are going to get that man, the defendant, Mr. Big. But, they're not going to him. I'm going to get him. He's a lying, murdering scum bag who did every dirty thing he's accused of and more." The court declares you to be out of order and declares a mistrial.

What ethical issues arise from the behavior, actions or statements of the lawyers in the above scenario and how should they be resolved? Be sure that you identify the relevant Model Rules for each issue, apply the rule to the fact pattern, explain your reasoning completely, and include case law and ethics opinions that support your conclusions.

## QUESTION TWO (100 points)

You are the judge in the case of Clark Capital Management Group v. Annuity Investors Life Insurance Company, docket no. 00-CV-1959. In your jurisdiction, the Model Rules of Professional Conduct are the reigning authority on issues of disqualification. Based on the facts set out below, you are prepared to issue your decision. In addition to your holding, you of course will state all issues presented and all rules relied on and will explain all steps in your reasoning.

### STATEMENT OF THE CASE

Defendant Annuity Investors Life Insurance Co. ("Annuity") moves for the disqualification of Stephen L. Friedman ("Friedman") and the firm Dilworth Paxson LLP ("Dilworth"), as co-counsel for plaintiff Clark Capital Management Group ("Clark Capital"). Friedman has submitted an opposition to this motion.

### **I. Factual Background**

On April 14, 2000, Clark Capital filed a complaint against Annuity alleging trademark infringement. Attorneys with the firm of Woodcock Washburn Kurtz Mackiewicz & Norris LLP have represented Clark Capital from day one of this case. In the fall of 2000, Annuity retained Donald E. Frechette with the firm of Edwards & Angell LLP.

Acting on Annuity's behalf, in the Fall of 2000, Frechette contacted by telephone Thomas S. Biemer ("Biemer"), a partner at Dilworth, to inquire into Biemer's interest and availability to be retained as co-counsel for Annuity in the present action. Frechette submitted two sworn affidavits describing this communication. Frechette asserts in his first sworn affidavit that he spoke with Biemer by telephone on three occasions. He states that they first spoke on October 26, 2000 for approximately ten minutes. Frechette asserts that, during this conversation, he discussed with Biemer "the background facts of this case, the capabilities of opposing counsel, Mr. Biemer's firm's experience and familiarity with opposing counsel and the trial judge, the nature of [Annuity's] defenses, the relative merits of each party's case, and potential weaknesses in plaintiff's case." Frechette further states that he described how the case had been handled to date.

According to Frechette, he again spoke with Biemer by telephone on November 6, 2000, for approximately ten to fifteen minutes. He states that, in this conversation, Frechette provided Biemer with additional information relating to specific aspects of the case and Annuity's view of the strengths and weaknesses of these aspects. Frechette also recalls that they discussed one legal theory that might be employed in Annuity's defense. Frechette asserts that he spoke with Biemer for a third time on November 6, 2000, for three to four minutes about a matter of procedure and timing. Finally, Frechette asserts that he believed that any confidential information about the case, disclosed to Biemer during these several conversations, would be kept confidential. Biemer submitted a sworn affidavit in response to Frechette's affidavit. Biemer states that he recalls the first two conversations described in Frechette's affidavit, but not the third conversation. Biemer agrees that the two attorneys discussed the nature of the case, plaintiff's counsel, and the court. He asserts, however, that he has no recollection that any confidential information was disclosed by Frechette. Biemer recalls only that Frechette informed him that

Annuity was claiming the "usual affirmative defenses," which had already been pled and of public record. Biemer states in his affidavit that he has no recollection of any discussion of Annuity's perception of strengths and weaknesses in the case or of possible defense strategy.

On June 12, 2001, when contacted by the court during a conference in this case in which Annuity first raised an objection to Friedman's participation in the case, Biemer stated over the telephone: I don't recall, specifically, discussing the merits of the case, other than that it involved something that was named Navigator, it was a trademark case.... I don't remember specifically discussing any affirmative defenses, but it's possible we did, I just don't recall, it was a while ago.

In addition, Biemer's affidavit states that he told Frechette during the first conversation that, before Dilworth could agree to represent Annuity, he would have to run a conflict check. Biemer avers that it was not until the second conversation that Frechette asked Biemer to run a conflict check, "if Dilworth was interested in serving as local counsel." Biemer also states that Frechette asked him to send Frechette any relevant information materials about Dilworth. Following the November 6, 2000 telephone conversation, Biemer had no further communications with Frechette about this case, and an offer of retention was never made.

Frechette's second affidavit was submitted in response to Biemer's affidavit. In this affidavit, Frechette asserts that the issue of a conflict search was not discussed during the telephone conversations. He states that Biemer mentioned a conflict check for the first time in a letter dated November 7, 2000. Frechette further states:

I certainly assumed that Attorney Biemer would not undertake a matter without performing a conflict check and, accordingly, felt no need to specifically inquire as to the matter further.

Annuity never retained Dilworth. On June 11, 2001, Friedman, a Dilworth attorney, entered an appearance on behalf of Clark Capital.

SHORT ANSWER QUESTIONS (5 points each for a total of 30 possible points)

For each short answer question, identify the ethical issue(s) and the applicable rule(s), apply the rule(s) to the facts in the question, and explain all steps in your reasoning.

1. You have just passed the bar and are in the law library celebrating. A person comes up to you and says, "Hey, man. Are you a lawyer? I can't figure out what's going on in this place. You seem to know what you're doing when it comes to finding out the law. Could you help me figure out how to sue my boss for discriminating against me?" She doesn't look like she can afford a lawyer but you don't have time to help her right now so you pull over your friend Troy, who is a second year law student, to help the woman.
2. As an associate working on the most important case in your firm's history, you have been instructed to help prepare 400 boxes of papers to be delivered to the plaintiff. The papers were cataloged and a printout provided. The "smoking gun" is document 4956. The partner told you she transposed the numbers on the list from 4956 to 4596 and put the document into box 257 instead of into box 211 as shown on the printout that plaintiffs will receive. When you go to supervise the delivery, you doublecheck the printout and see that where item 4596 should be listed, there is a blank line. Neither 4596 nor 4956 appear on the plaintiff's printout. The document was not delivered.
3. You have gone into solo practice after five years as an associate at a local firm. In your first client interview, you learn that your prospective client is in a dispute with her landlord over the building heating and AC. The landlord was a client of your old firm but you never handled any of his rental property issues; you only handled his divorce.
4. Discuss the following statement: The adversary theorem requires that, to act within the rules of professional conduct, lawyers must advocate zealously for their clients. Zealous advocacy allows – no, requires - lying, misrepresenting, and obfuscating.
5. Discuss the following statement: The study of legal ethics is the study of what we can get away with as lawyers.
6. You are representing Sally Sweet in a real estate deal. As the deal proceeds, you realize that Sally is trying to sell worthless land in the Arizona desert to retirees from New York. The documents that you've prepared are being provided to each potential purchaser. Sally has paid you a retainer of \$50,000. You've worked on the representation for 100 hours at your normal hourly rate of \$200.00.

## Multiple Choice

These fifteen questions are taken from the MPRE practice exams on the PLI and NCBE websites. For each question, circle the BEST answer and also write the letter of the answer on the multiple choice answer sheet. On the answer sheet, provide a one or two sentence explanation for your choice, including a statement of the applicable Model Rule number(s), an explanation of why your choice is correct and why the other possible answers are incorrect or not the best answers. Each question is worth 3 points, one point for the correct answer and two points for a complete explanation with accurate statement of the rule and its application.



**1. Attorney represented Husband and Wife in the purchase of a business financed by contributions from their respective separate funds. The business was jointly operated by Husband and Wife after acquisition. After several years, a dispute arose over the management of the business. Husband and Wife sought Attorney's advice, and the matter was settled on the basis of an agreement drawn by Attorney and signed by Husband and Wife. Later, Wife asked Attorney to represent her in litigation against Husband based on the claim that Husband was guilty of fraud and misrepresentation in the negotiations for the prior settlement agreement.**

**Is it proper for Attorney to represent Wife in this matter?**

- A. Yes, if all information relevant to the litigation was received by Attorney in the presence of both Husband and Wife.
- B. Yes, if there is reason to believe Husband misled both Wife and Attorney at the time of the prior agreement.
- C. No, because Attorney had previously acted for both parties in reaching the agreement now in dispute.
- D. No, unless Husband is now represented by independent counsel.

**2. Law Firm, a professional corporation with five lawyer shareholders, employs twenty-five additional lawyers.**

**Which of the following is(are) proper?**

**I. Employees who are members of the bar are not made shareholders until they have been with Law Firm ten years.**

**II. Manager, who is the office manager but not a member of the bar, is executive vice-president of Law Firm.**

**III. Widow, whose husband was a lawyer shareholder in Law Firm until his death two years ago, continues to hold husband's shares in Law Firm, distributed in his estate, until their child completes a law school education.**

- A. I only
- B. I and II, but not III
- C. I and III, but not II
- D. I, II, and III

**3. Lawyer has represented Client in numerous matters over the course of twenty years. Currently, Lawyer represents Client in connection with a wrongful death suit against Client's former son-in-law. In a highly publicized criminal trial the son-in-law was acquitted of the murder of Client's daughter. This acquittal came despite what many considered to be irrefutable evidence of his guilt. Client has also completed a book detailing his experiences with the criminal justice system as it related to his daughter's murder. Client has not yet found a publisher for the book and Lawyer is serving as Client's agent. Client approached Lawyer and advised Lawyer that he had exhausted all of his money in his pursuit of the man he believes to be responsible for his daughter's death, namely her former husband. Lawyer suggested Client accept a loan from Lawyer to help him meet expenses until his book is sold and Client receives his first check from the publishing company. Lawyer is convinced Client's book will be a best seller. Lawyer advises Client that the loan, which will be paid back out of the first check from a publishing company, will be interest free. Client agrees to accept the loan and Lawyer drafts the appropriate documents and recommends in writing that Client have them reviewed by an attorney. Client declines review and signs the documents.**

**Is Lawyer subject to discipline?**

- A. Yes, because he entered into a prohibited transaction with a client.
- B. Yes, because he drafted the loan documents himself.
- C. No, if the terms of the loan are fair and reasonable.
- D. No, because Client was desperate when he approached Lawyer.

**4. Lawyer is special counsel to Defendant, a ski resort. For years, Lawyer has relied on State's downhill ski statute which provides immunity for resorts like Defendant against some personal injury claims. Lawyer recently argued before State's highest court that immunity should apply when a plaintiff alleges his injuries were caused by negligent operation of a chair lift. In that case, the plaintiff's attorney argued that a chair lift was a common carrier and its owner was subject to liability as such. The court agreed with Plaintiff's attorney and held that injuries which were caused by negligent operation of a chair lift were compensable, and that it would be for a jury to decide if the lift was, in fact, operated negligently. Lawyer was advised of this decision by State's highest court late one afternoon. The following day, Lawyer was in court at the trial level in another case involving alleged negligent operation of a ski lift. Lawyer made the same arguments that had been unsuccessful before State's highest court. Apparently neither Plaintiff's counsel nor the judge was aware of the very new decision of the highest court. The judge ruled in favor of resort and Plaintiff's complaint was dismissed.**

**Is Lawyer subject to discipline?**

- A. No, since Lawyer's adversary was responsible to discover the new law on his own.
- B. No, since Lawyer truly believed the highest court had erred in their decision.
- C. Yes, for failing to reveal controlling legal authority to the tribunal.
- D. Yes, but only if the judge asked if Lawyer was aware of any new law relevant to the arguments made.

**5. Attorney Anderson is a successful tax attorney and owns his own law practice. He is particularly busy during the winter months meeting with clients about their tax situation. His practice is so successful that he only has time to meet with the client, and does not have any time to complete the paperwork. For this reason, Anderson hired several secretaries to fill in the legal forms based on Anderson's meeting with each client.**

**Is it proper for Attorney Anderson to allow his secretaries to perform such tasks?**

A. No, because Attorney Anderson hired the secretaries to perform such tasks that would be considered the practice of law.

B. No, unless the secretaries are certified law students.

C. No, unless there is a specific statute that allows secretaries to perform such tasks in that jurisdiction.

D. Yes, as long as Attorney Anderson supervises the delegated work and retains responsibility for their work.

**6. Alpha is a member of the bar in State First and is also licensed as a stockbroker in State Second. In his application for renewal of his stockbroker's license in State Second, Alpha knowingly filed a false financial statement.**

**Is Alpha subject to discipline in State First for so doing?**

A. Yes, because his actions involve dishonesty or misrepresentation.

B. Yes, but only if he is first convicted of a criminal offense in State Second.

C. No, because his action was not in his capacity as an attorney.

D. No, because his action was not in State First.

**7. Attorney Alpha represents Client, the plaintiff in a medical malpractice case. Alpha's contract with Client provides for a contingent fee of 20% of the recovery by settlement and 30% if the case is tried, with a total fee not to exceed \$50,000. Alpha associated Attorney Beta, a sole practitioner, in the case, with Client's written consent and after full disclosure of the fee agreement between Alpha and Beta. Beta is both a medical doctor and a lawyer and is well qualified by experience and training to try medical malpractice cases.**

**The fee agreement between Alpha and Beta reads as follows:**

**"The total fee in this case is 20% of recovery by settlement and 30%, if tried, with a maximum fee of \$50,000. Alpha will help with discovery and will be the liaison person with Client. Beta will prepare the case and try it if it is not settled. Alpha and Beta will divide the fee, 40% to Alpha and 60% to Beta."**

**Are Alpha and Beta subject to discipline for their agreement for division of the fee?**

- A. Yes, unless Client's consent is in writing.
- B. Yes, because Alpha will not try the case.
- C. No, if the division of the fee between Alpha and Beta is in proportion to actual work done by each.
- D. No, because the total fee does not differ from that contracted for by Alpha with Client.

**8. After 10 years of training, Attorney was ready to hike Mount Everest. He boarded the six-seater plane with the other hikers, including A, and was air lifted to base camp where they spent the night. They began their ascent early the next morning when suddenly a white-out occurred. Attorney, A, and the others found shelter in a make shift igloo. Believing that he was going to die, A asked Attorney to prepare a will on his behalf. Attorney informed A that Attorney has never drafted a will, but would throw one together based on his knowledge from law school. Attorney then wrote out the will on A's backpack. A signed it, and two others hikers acted as witnesses.**

**Was it proper for Attorney to draft A's will?**

- A. No, because Attorney has never drafted a will.
- B. No, unless A agrees to waive Attorney's liability for professional malpractice.
- C. Yes, because Attorney performed a legal service that was reasonable under the circumstance.
- D. Yes, unless it is discovered that the will does not meet the technical requirements to be valid.

**9. Attorney Alpha currently represents Builder, a building contractor and the plaintiff in a suit to recover for breach of a contract to build a house. Builder also has pending before the zoning commission a petition to rezone property Builder owns. Builder is represented by Attorney Beta in the zoning matter.**

**Neighbor, who owns property adjoining that of Builder, has asked Alpha to represent Neighbor in opposing Builder's petition for rezoning. Neighbor knows that Alpha represents Builder in the contract action.**

**Is it proper for Alpha to represent Neighbor in the zoning matter?**

- A. Yes, if there is no common issue of law or fact between the two matters.
- B. Yes, because one matter is a judicial proceeding and the other is an administrative proceeding.
- C. No, because Alpha is currently representing Builder in the contract action.
- D. No, if there is a possibility that both matters will be appealed to the same court.

**10. Client contacted Attorney in response to a television advertisement. In the advertisement, Attorney truthfully stated that he had more than twenty years experience as a personal injury litigator, and that in those twenty years he had obtained millions of dollars on behalf of injured clients. In the advertisement, Attorney pointed out that each case is different and that a potential client recovery, if any, would be subject to any applicable laws. Client met with Attorney to discuss the facts of his particular case. At that meeting, Client was told that Attorney would be personally responsible for the handling of Client's matter from beginning to end.**

**One week after the initial meeting, Client received a call from Attorney. Attorney advised Client that he had suddenly taken ill and did not expect to be able to work full time for several months. Attorney advised Client that it was Attorney's intention to refer some matters, including Client's, to Lawyer, a long time colleague of Attorney. Attorney arranged a meeting between himself, Client, and Lawyer. Finally, Client was advised that Lawyer would be handling the day-to-day aspects of the representation of Client, including discovery, settlement negotiations, and preparation for trial as well as the actual trial should that prove necessary. Client orally agreed to allow Lawyer to become involved in the matter and Client further orally agreed that Lawyer would receive one-sixth of any recovery obtained on behalf of Client and that Attorney would also receive one-sixth.**

**Is Lawyer subject to discipline?**

- A. No, because Client agreed to Lawyer's involvement in the representation.
- B. No, because Lawyer is accepting less than he was originally entitled to receive.
- C. Yes, because Attorney is receiving a disproportionate share of the fee.
- D. Yes, because Lawyer is not a member of Attorney's firm.

**11. The Statute of Limitations for a professional malpractice action in the State of Confusion is three years. State law allows parties to either shorten or lengthen the Statute of Limitations period regarding malpractice actions, as long as the parties are competent during the relevant period. Cloe Client retains Attorney to represent her in a personal injury suit. During Cloe's first consultation with Attorney, Attorney handed Cloe her retainer agreement. In this agreement, there is a clause which states that any malpractice actions arising out of the representation must be brought within one year of the date the cause of action occurred. Attorney did not advise Cloe that she could consult independent counsel before she signed the retainer agreement.**

**Is Attorney subject to discipline for including the one-year limitation in her retainer agreement?**

- A. No, because Cloe could have retained another attorney who does not have such a clause in their retainer agreement.
- B. No, because the law in the State of Confusion allows the parties to shorten the statute of limitations period provided that the parties are competent during the relevant period.
- C. Yes, because such a clause in a retainer agreement is a limitation on the client's right to sue Attorney for malpractice.
- D. Yes, unless Attorney explains the effects of the provision and the client consents.

**12. Lawyer represented Client in a defamation action in which Client was the plaintiff. Defendants, a newspaper and reporter, had published a story which alleged Client, a local businessman, had seven years earlier operated an illegal gambling operation of which the police were well aware. According to the story, the operation was frequented by numerous unnamed high-ranking police officers. The reporter concluded that the police officers protected Client from prosecution. At trial, the paper and reporter relied on truth as their defense. Lawyer called numerous police officers as witnesses, all of whom testified that Client, among other businessmen, had been investigated with no finding of any wrongdoing. The confidential informant upon whom Reporter had relied did not testify and the jury returned a verdict in favor of Client, awarding several million dollars in damages. Two days after the verdict, Client came to Lawyer's office. He thanked Lawyer and said, "Between you and me, we ran a huge operation back then. The paper had the story exactly right." Lawyer advised the judge who presided over the trial about Client's fraud.**

**Is Lawyer subject to discipline?**

- A. No, because Lawyer was required to advise the court of the fraud.
- B. No, because Client's admission was not made during the course of Lawyer's representation.
- C. No, because the duty of confidentiality ended when the litigation ended.
- D. Yes, because Lawyer violated the duty of confidentiality owed to Client.

**13. Lawyer has been retained to represent Client, who has been charged with possession of narcotics with intent to distribute. Client was pulled over on a routine traffic stop when the investigating officer noticed the smell of marijuana coming from the car. The officer's search of the car revealed a large quantity of marijuana stored in the trunk. Although Client is eighteen years old, Client's mother advised Lawyer that she will pay all of Client's legal fees and has, in fact, already paid Lawyer's required retainer. Client has told both his mother and Lawyer that the marijuana in the car was, in fact, his. He only wishes for Lawyer to arrange for him to be sentenced to the statutory minimum sentences in jurisdiction.**

However, at a meeting in Lawyer's office at which Client's mother was not present, Client confided to Lawyer that the drugs were not his, but that they were his brother's. Client knew that if his mother found out that his brother was involved with drugs, it would break her heart. Later that day, Client's mother phoned to speak with Lawyer. Lawyer suggested that Client's mother attempt to convince Client not to plead guilty but to mount a defense to the charges. Client's mother replied that Client had always been trouble and she wishes he were more like his brother. Lawyer then advised Client's mother of what Client had revealed, namely that it was Client's brother who was responsible for the drugs being in the car.

**Is Lawyer subject to discipline?**

- A. Yes, for violating the duty of confidentiality.
- B. Yes, for allowing someone other than a client to pay the client's legal fees.
- C. Yes, because allowing Client to plead guilty to a crime he had not committed would be perpetrating a fraud on the court.
- D. No, since Client's mother is paying Client's legal fees, she is entitled to know what strategy Lawyer has in mind.

**14. Attorney represented Client in a complex business transaction. Attorney's fee agreement provided that Client pay Attorney a \$1,000 refundable retainer, in addition to \$100 per hour for services rendered. Client paid Attorney \$1,000. To date, Attorney has spent a total of 5 hours reviewing Client's case, researching applicable law, and investigating the facts. Settlement negotiations between the parties had recently commenced when suddenly Attorney fell ill. Attorney was rushed to the emergency department whereupon it was discovered that Attorney had suffered a stroke. Attorney was left mentally impaired, with only a slight possibility of improvement over the next couple of years.**

**Attorney:**

- A. May associate with other competent counsel to assist in the negotiations.
- B. Must withdraw from the representation and refund Client \$500.
- C. Must withdraw from the representation and refund Client nothing.
- D. Must withdraw from the representation, but keep Client's retainer in an interest bearing trust fund account since there is a slight possibility that Attorney may recover from the stroke in the distant future.

**15. Attorney Stark has maintained his business for the past ten years representing criminal defendants. Most of his business comes from referrals, and on occasion, he receives an appointment by the court to represent indigent clients. Stark recently received an appointment by the court to represent Dave the Defendant. Dave allegedly burned down the local church and defaced its adjoining cemetery where all the past clergy had been buried. Stark, a religious man, knew he could adequately defend Dave, yet found it difficult to represent a person who would commit such a negative act upon church property.**

**Would it be proper for Stark to avoid this appointment?**

- A. No, because Stark does not have a compelling reason why he should not accept such representation.
- B. No, because it is obvious that Stark's feelings and emotions would prevent him from providing adequate legal services.
- C. Yes, unless Stark was the only attorney available to represent Dave.
- D. Yes, because Stark should be able to turn down appointments whenever possible.



EXAM NUMBER \_\_\_\_\_  
MULTIPLE CHOICE ANSWER SHEET

After each question number, write in the letter of the best answer to that question. In the space provided following each question number, set out the Model Rule number(s) applicable to the question and explain both why the answer selected is the best answer and why the other three answers are incorrect or not the best possible answer. If you need additional space for your explanation, continue your answer on the back of the page.

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_

11. \_\_\_\_\_

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