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BAUM
FALL 2006

FINAL EXAMINATION
750-370 ETHICS

This is a three-hour examination. The exam consists of fifteen short answer questions and fifteen multiple choice questions. The short answer questions are worth a total of 225 points, fifteen questions at fifteen points each. The multiple choice questions are worth a total of 75 points, fifteen questions at five 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 best correct MPRE answer AND provide a brief explanation of the reasons for your choice—why that answer is the best and why the others are incorrect or not as good as the best answer. Your explanations must include the relevant Model Rule number(s). The correct answer choice is worth one point; the explanations for each answer option are worth one point each.

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.

SHORT ANSWER QUESTIONS (15 questions worth 15 points each) (Problems from casebook and *Moral Compass*)

For each short answer question, identify the ethical issue(s) and the applicable rule(s), apply the rule(s) and case law to the facts in the question, and explain all steps in your reasoning. Include discussion from the *Moral Compass*.

1. Your client has been arrested for armed robbery. She is out on bail. When she meets with you in her office, she hands you a gun and asks you to hold it for her. She tells you nothing about the gun or why she had it. What must you do with the gun? What duties do you owe your client?
2. You notice that one of your firm's messengers looks a lot like your client, a criminal defendant. Under the court's rules, your client must be in court for his trial but nothing requires that he sit at the counsel table. You decide to have your messenger sit next to you instead of your client. As you expected, the police officer identifies your messenger as the perpetrator, allowing you to put on evidence that your messenger was no where near the scene of the crime. When the judge and prosecutor learn what you've done, they both state that they are going to bring you up on disciplinary charges. Your defense is that you knew that you could not have *ex parte* communication with the judge. You also emphasize that it's not your fault that the prosecution couldn't prove its case. Are you subject to discipline?
3. Your boiler plate retainer agreement states that the client agrees not to sue you for malpractice and also agrees to arbitrate any fee disputes. Your form also states that you will receive 40% of any recovery in any case in addition to all fees. Does your agreement conform with the Model Rules?
4. You are approached by the buyer and the seller of a business. They want you to represent both of them in drawing up the documents of sale. Are you allowed to do this?
5. You are just starting out in practice and need to take every case you can to establish your reputation and pay your bills. Most of your practice involves plaintiff work in minor motor vehicle accidents and slip-and-fall cases. You take on a high volume of cases and settle them quickly for a fraction of their value. You always tell your clients about the settlement offers and talk with them about the pros and cons but they invariably decide to settle to avoid the headaches of a lawsuit. Are you violating any rules of professional conduct?
6. You work extremely hard on a difficult business transaction for your client. The client is very pleased with your work. She pays all of your bills without complaint. One day, you receive a \$50,000 check in the mail from your client as a special thank you. What must you do? What should you do?
7. You were general counsel for a family-owned business that consisted of two corporations, HER, Inc. and HER Fashions, Inc, jointly owned by two brothers, Henry

and Joseph. As general counsel, you handled the trademark registration for the business. The two brothers had a disagreement about clothing designs so they decided to split the business. Henry obtained ownership of HER, Inc. and Joseph obtained ownership of HER Fashions, Inc. You decided that you could not represent both businesses any longer because of the hostility between the brothers so you resigned as general counsel of HER, Inc. and continued as general counsel for HER Fashions, Inc. Even though the trademark had actually been issued to HER, Inc., both businesses had been using it and were continuing to use it after the split of the business. Henry and HER, Inc. sued Joseph and HER Fashions, Inc. to prohibit use of the trademark. You entered your appearance as attorney for HER Fashions. The new lawyer for HER, Inc. asked you to withdraw from representation of HER Fashions and told you that, if you did not, he would seek to have you disqualified from the trademark case. Was your continued representation of HER Fashions proper? Must you withdraw?

8. Maya specializes in immigration matters. One day she meets with Sol who tells her about Elena, the 20-year-old daughter of a friend of his who wants to emigrate to the U.S. Sol is a 60-year-old widower with grown children and a good job. Sol tells Maya, "Maybe I could marry Elena. She's a beautiful young woman, intelligent. She could stay in the U.S. and go to college." Maya explains that marrying a foreigner to avoid immigration quotas is a serious matter, all the while thinking that this would likely be a sham marriage. After deliberating, she decides that it's possible she's being judgmental and that, even if Maya is bothered that a man of sixty wants to marry a woman just out of her teens so she can stay in the U.S., it's not necessarily illegal. Maya explains all the issues that might arise with INS, including the factors the INS looks at to determine if the marriage is real or a sham and the separate interviews that will be held by the INS asking questions about daily life and where they were on various important days. When Maya finishes her explanation of the law, Sol turns to her, smiles and says, "Thank you, Maya, that's very helpful. Every day I'm more in love." Has Maya violated any ethics rules?
9. James Johnson recently graduated from law school. As a student, Johnson had been found guilty of violation of the law school's honor code for plagiarizing a brief in Advocacy. In addition, while attending a professional football game, Johnson had had more beer than usual and ran onto the field during the game. He was arrested and pled guilty to an ordinance violation in municipal court. Neither his arrest nor his guilty plea kept Johnson from continuing his role as President of the local "social" group called F.O.E., for "Friends Opposed to Europeans." The group and its literature spoke of their "hatred for people of all countries of Europe who opposed United States involvement in the activities of Middle Eastern countries." While the group's literature indicated that the members were non-violent in their hatred of Europeans, various members, including Johnson, were overheard saying the group would not be upset if "any European opposed to the war died in a tragic way." Johnson lists his honor code violation and his arrest history on his bar application.
 - a. Can Johnson be denied admission to the bar because of the plagiarism or the football game incident? Discuss the process for admission consideration and the burden of proof as well as the Model Rule(s) that address this issue.

- b. If the character and fitness committee learns of Johnson's involvement with and leadership of F.O.E., can his activities with this group serve as a basis for denying him admission to the bar?
10. Your good friend Pat Kurtis comes to you at your law office. She's shaking and pale. She says, "I'm so glad to see you. I really needed to talk to a friend and get some support so I can calm down and figure out what to do. I was just in a terrible car accident. I had a really bad day today so I stopped on Central for a few drinks. When I turned the corner on Girard, I guess I overcorrected my turn and I ran up on the sidewalk. I think I hit someone." Just then, the police walk in to your office, having followed the trail of dented parked cars, injured pedestrians, and downed light poles to catch up with Pat Kurtis. What can you tell the police? What must you tell the police?
11. While you were an associate at firm A, you represented a printing company called Ink, Inc. When you moved to firm B, Ink wanted to retain you as its lawyer so it moved its legal business to firm B. After you and Ink left firm A, firm A was approached by one of Ink's customers who had lost a significant amount of money because of Ink's printing error. After you arrive at firm B, you discover that firm B represents the wife of Ink's president in their ongoing child custody battles. Can firm A represent Ink's customer? If so, must any particular steps be taken? Can firm B continue to represent the wife of Ink's president and Ink, Inc.? If so, what steps must be taken?
12. Your office employs a part-time investigator to interview witnesses in upcoming cases. Your current client is charged with contempt of court for violating a protection order. He tells you that his ex-girlfriend lies and that he never threatened her. You want your investigator to talk with the ex-girlfriend to get her statement about what your client said and did to her so you can use any inconsistencies to impeach her testimony in court. You also want to get the ex-girlfriend's signature on a medical release form so you can obtain her medical records. Can your investigator talk with the ex-girlfriend? What, if anything, must the investigator tell the ex-girlfriend? Can the investigator tell the ex-girlfriend that she "must" sign the release form so you can get her records, possibly leading the ex-girlfriend to believe that she is obligated to sign as opposed to understanding that without her signature you can't get the records? What obligations does your firm have regarding the conduct of the investigator?
13. You are a criminal defense lawyer who just won a retrial for your client who had been convicted of neglecting her daughter. The prosecution had charged that your client should not have left her daughter in the care of a man she knew to be violent. Your client was found guilty and had served 18 months of a 20 year sentence before you won her appeal. You have just heard that the prosecutor has decided to have another trial. You've drafted the following letter to the editor of the local newspaper:

I thought that your readers would be interested to know that here in Clark County the prosecutor has elected to retry my client. My client's boyfriend murdered her daughter four years ago but my client was charged with neglect because she

allegedly knew that leaving her daughter with the boyfriend would endanger her life.

My client was sentenced to 20 years but her conviction was recently reversed by the Court of Appeals because it said that she didn't receive a fair trial due to the judge's refusal to allow her to present evidence that her boyfriend had battered her.

In the weeks preceding her daughter's murder, Alice was beaten and allegedly raped at knife point by the boyfriend. She reported the beating and rape to the police who, because they were friendly with the boyfriend, released him. The police gave my client a lie detector test, which she passed. She moved away from the boyfriend but she returned to him a week later when he promised her that he would get help. Two weeks later, my client's daughter was brutally murdered.

My client has spent the last 18 months in jail for a crime she did not commit. All too often, a battering victim accepts the batterer's words, even after a child has been injured, and they have trouble leaving their attackers. The decision to prosecute her is abominable. She has lost the dearest thing to her, and our citizens should voice their concern that she continues to be penalized for being a victim.

Should you mail the letter? Is so, what, if any, changes would you make to the letter before sending it?

14. You serve on your law firm's marketing committee. The committee is considering the following ideas for bringing in new clients.
- a. An ask-a-lawyer feature on the firm web site where people can write in with their legal questions
 - b. A direct mailing to all residences and businesses in the 87110 zip code describing the practice and inviting all to come in for a free consultation
 - c. A auto-dialer for calling potential clients describing the practice and inviting those you call to contact the firm for representation
 - d. Getting a booth at the Weems Art Fest and handing out business cards to everyone who walks by
 - e. Sending letters to all persons charged with DUI in Bernalillo County offering the firm's services

For each idea, answer the following: What ethical considerations arise from the idea? Can the firm implement the idea without violating any rules? If the idea as described violates any rules, what can the firm do to fulfill its obligations under the Model Rules?

15. Your corporate client has informed you that one of its employees has been dumping carcinogenic material into a landfill for the past ten months. When the corporate management found out about the activity, it made sure the dumping stopped and it set up classes for all employees on hazardous waste disposal. What must you do under the Model Rules? What can you do?

Multiple Choice (15 questions worth 5 points each)

These fifteen questions are taken from the MPRE practice exams on the PLI and NCBE websites. For each question, circle the BEST MPRE answer and also write the letter of the answer on the multiple choice answer sheet. On the answer sheet, provide a brief 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 5 points, one point for the correct answer and one point each for complete explanations with accurate statement of the rule of why the answer selected is best and why each of the other three answers were not the best answer. (NOTE: While some answers may just seem “silly” or “ridiculous,” those comments will not suffice as an explanation for not selecting an answer. You must indicate a particular reason for not selecting each of three remaining answers; for example, if you decide that the answer is not relevant it is not enough to say the answer is irrelevant—you must give a rationale such as “Answer X is irrelevant because rule xxx requires/does not require” and give a **specific** reason for irrelevance.)

1. Julie Junior Attorney was recently admitted to the Bar and began to work for Senior Attorney, whose practice solely focuses on landlord-tenant issues, especially trailer park and mobile home law. Her cousin referred her to Senior Attorney. Julie had interned for free during law school for her cousin. Her cousin has been in practice for the past 25 years defending white collar criminals. Julie has no other legal experience and does not know anything about landlord-tenant issues.

Julie was directed by Senior to prepare, draft, and sign all new leases for the next month while Senior went on vacation, even though Senior was aware that Julie did not have any experience in drafting leases. Upon Senior's departure, Senior said to Julie, "I know that you haven't drafted contracts before, but here is a stack of recent lease agreements to use as samples. Your cousin speaks very highly of you and I know you can do it." Senior then left on his long awaited vacation cruise through Alaska.

Is it proper for Senior to give Julie this responsibility?

- A. No, because Senior knows that Julie is not competent to draft lease agreements and Senior did not adequately supervise Julie's work even though Senior provided sample lease agreements.
- B. No, because Client did not consent before Senior instructed Julie to draft the lease agreements.
- C. Yes, since Julie had prior legal experience as an intern for her cousin.
- D. Yes, because Julie is an attorney since she was recently admitted to the Bar.

2. Associate is a newly admitted attorney. Following his admission, Associate began to work as a lawyer in the firm for which he had served as a law clerk for two years. During Associate's second month as a lawyer, Partner called Associate into Partner's office for a review of Associate's billing records. Partner pointed out that Associate was billing forty hours per week. Partner told Associate that Associate was expected to bill a minimum of fifty-five hours every week. Partner said "I think I can help you out here. You're only billing the time you actually spend on each item. A rule of thumb here is to bill for one and a half times the actual time you spend on each entry. If you spend an hour writing a brief, bill for an hour and a half. Our clients never review our bills that closely and they never question any of our time entries." Following Partner's advice, Associate billed sixty hours the following week.

Is Associate subject to discipline?

- A. Yes, for engaging in conduct involving dishonesty, fraud or deceit.
- B. Yes, unless he reports Partner to the appropriate authorities.
- C. No, since the manner of billing is accepted by the firm's clients.
- D. No, because Partner told Associate to change his billing method and Partner has the authority to tell Associate what to do.

3. 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.

4. 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.

5. Father and Daughter met with Lawyer regarding an employment discrimination case. Daughter, a recent business school graduate, applied for a job as a secretary with a large accounting firm. Daughter attended an interview with one of the firm's partners. As part of the interview, Daughter was required to take a dictation test. On Daughter's interview date, there were numerous candidates for the same position waiting to be interviewed. Daughter noticed that she was the only African-American candidate in the office. Daughter performed fairly well on the typing test. However, Daughter did not receive an offer of employment from the firm. Father believes it is possible that Daughter was not hired simply because of her race. Father advised Lawyer that he would be responsible for Daughter's legal fees since, although she is eighteen years old, she has not yet begun working and cannot afford to hire her own Lawyer.

Two days after the initial meeting, Lawyer contacted the director of the human resources department at the accounting firm. He was attempting to determine, if possible, what reason the firm had for failing to offer a position to Daughter. The human resources director stated that she had been quite impressed with Daughter's ability and felt Daughter would have made a fine secretary for the firm. However, Daughter had told the partner with whom she had interviewed that she had a change of heart and no longer wished to pursue a secretarial career and that she had

decided to return to her true passion of acting. Daughter further said that the only reason she had applied for the secretarial position was to appease her father. Lawyer immediately phoned Father and told him the reason Daughter had not been hired.

Is Lawyer subject to discipline?

- A. No, because Father is entitled to information because he is paying the bills.
- B. No, because Father will inevitably discover the truth when Lawyer does not file suit.
- C. Yes, because Daughter did not consent to the release of the information to Father.
- D. Yes, but only if Daughter specifically asked him not to divulge the information.

6. Attorney was retained to represent Client to pursue a contract claim. After a number of attempts at settlement of the case, Attorney concluded that the case could not be settled and would have to be tried. Attorney did not regard himself as a competent trial lawyer and believed that Client's best interests required the association of competent trial counsel. One week before the trial date, Attorney associated Trier, whom Attorney knew was a competent trial lawyer, to conduct the trial and a day before trial so informed Client. The total fee charged Client was not increased by the association of Trier.

Was it proper for Attorney to associate Trier?

- A. Yes, because Client's best interests required the association of competent trial counsel.
- B. Yes, because Client was informed of the association of Trier.
- C. No, if Client did not consent to the association of Trier.
- D. No, unless Attorney himself attended the trial with Trier.

7. Attorney Alpha was retained by Passenger, a passenger on a bus, who had been injured in a collision between the bus and a truck. Passenger paid Alpha a retainer of \$1,000 and agreed further that Alpha should have a fee of 25% of any recovery before filing suit, 30% of any recovery after suit was filed but before judgment, and 35% of any recovery after trial and judgment. Alpha promptly called the lawyer for the bus company and told him she was representing Passenger and would like to talk about a settlement. Alpha made an appointment to talk to the lawyer for the bus company but did not keep the appointment. Alpha continued to put off talking to the lawyer for the bus company. Meanwhile, Passenger became concerned because she had heard nothing from Alpha. Passenger called Alpha's office but was told Alpha was not in and would call back. Passenger was told not to worry because Alpha would look after her interests. After ten months had passed, Passenger went to Attorney Beta for advice. Beta advised Passenger that the statute of limitations would run in one week and, with Passenger's consent, immediately filed suit for Passenger. Alpha, upon Passenger's demand, refunded the \$1,000 Passenger had paid.

Is Alpha subject to discipline?

- A. Yes, unless Alpha's time was completely occupied with work for other clients.
- B. Yes, because Alpha neglected the representation of Passenger.
- C. No, because Passenger's suit was filed before the statute of limitations ran.
- D. No, because Alpha returned the \$1,000 retainer to Passenger.

8. Millionaire Melanie went to her doctor, Doctor, for a routine check-up. Upon physical examination, small lumps were discovered in her left breast. She was referred to a specialist and was subsequently diagnosed with breast cancer that had spread to her lungs. Unfortunately, Melanie had a poor prognosis and she was told that she only had a few months to live. Melanie sought Attorney's services to draft a will, and to file a lawsuit for medical malpractice against Doctor for failing to discover the cancer sooner. Melanie had acquired much wealth in her lifetime, personal and real property included. Because of the complexity of her finances and because of the potential of many lawsuits that could be filed should a dispute arise over the distribution of her wealth, Attorney drafted a special retainer agreement. The agreement provided for a nonrefundable retainer fee of \$2,000, which Melanie paid in cash at her first appointment with Attorney. Additionally, Attorney charged \$100 an hour for services rendered in connection with this matter. Attorney spent 10 hours reviewing Melanie's file, drafting the will, and investigating her medical malpractice claim. Attorney became convinced that she did not have a strong claim for malpractice and that she would not prevail in a lawsuit. The statute of limitations is about to run in the medical malpractice suit, and Attorney wishes to withdraw without filing suit. Melanie insists that Attorney at least file the medical malpractice complaint before withdrawing.

Is it proper for Attorney to withdraw without filing the medical malpractice lawsuit?

- A. No, if Melanie's rights are not adequately protected at the time Attorney withdraws.
- B. No, because Attorney had already accepted a retainer, and had already performed services such as drafting her will.
- C. Yes, because Melanie could always find another attorney to file the suit.
- D. Yes, since Attorney does not believe that Melanie has an adequate claim.

9. Attorney represents Temporary Employment Agency, Inc. in a wrongful termination lawsuit brought by Head Hunter Hal. Hal claimed that he was wrongfully terminated because he allegedly failed to meet his quota repeatedly for the past several months. Attorney sought the employment records from Temporary Employment Agency, Inc. These records included documents that indicated how many temporary employees were placed each month. Attorney discovered that not only did Hal meet his quota, he outperformed the other head hunters at Temporary Employment Agency, Inc. Thus, it is Attorney's belief that the Agency should accept liability and settle with Hal.

Attorney should:

- A. Notify Temporary Employment Agency, Inc. of all options with the recommendation that it settle with Hal, and continue to represent the Agency even if it decides to reject the settlement and pursue litigation.
- B. Notify Temporary Employment Agency, Inc. of all options with the recommendation that it settle with Hal, and withdraw from representation if the Agency decides to reject the settlement and pursue litigation.
- C. Withdraw from representation because Attorney believes that Agency does not have a case.
- D. Settle the case as quickly as possible.

10. Mayor was elected based on his campaign promise to reduce crime in City and to generally improve the quality of life of City's citizens. During Mayor's first term in office, he made good on his campaign promise to reduce crime and the crime rate in City dropped a remarkable 20 percent. After being elected to a second term, Mayor determined that he

needed to improve the general quality of life in keeping with his campaign promise. To further that end, Mayor initiated several ordinances designed to improve the quality of life for the citizens of City. Many of these ordinances met with little resistance, as City's citizens seemed happy to go along with whatever Mayor suggested. Eventually Mayor, citing a study sponsored by his administration, announced that hats worn by men on public streets seemed to generate hostility between wearers of hats and non-wearers. With this in mind, the Mayor announced he was proposing a new City ordinance, which banned the wearing of hats on public streets. Not wanting to oppose a popular mayor, the city counsel quickly passed the ordinance.

Client was required by his religion to wear a hat at all times when he was outdoors. Client phoned Lawyer and inquired as to what he should do with regard to his religious beliefs and the new ordinance, which did not make any exceptions for religious requirements. Lawyer replied "The Mayor has gone too far this time. If I were you, I would simply wear my hat and make them arrest you for adhering to your religious beliefs." Client followed Lawyer's advice and, although he was not arrested, he was issued a summons that required payment of a substantial fine for his violation of the ordinance.

Is Lawyer subject to discipline?

- A. No, because the ordinance was unconstitutional.
- B. No, because a lawyer may assist a client in a good faith test of the validity a law.
- C. Yes, if Client is found guilty and forced to pay the fine.
- D. Yes, because Lawyer advised his client to break the law.

11. Kid is an only child and lived with Father until Father's unexpected recent death from a rare form of cancer. Father's will read, "If I die before Kid is 18 years old, my estate should be placed in a trust for Kid until Kid reaches 18. In the meantime, the income generated by the trust must be used for Kid's daily living expenses until he reaches 18 years old. Upon Kid's 18 th birthday, the trust should be terminated and distributed in total to Kid." A trustee was never named in this will. Kid's only cousin sought appointment as trustee. At this hearing, the Court appointed Attorney as Guardian Ad Litem so that Kid's interest would be represented, and Cousin was appointed as trustee. Attorney agreed with such appointment and his duty as Guardian ended. On Kid's 18 th birthday, Cousin called Attorney and requested Attorney to represent him in an accounting hearing so the trust could be properly terminated.

Would it be proper for Attorney to agree to represent Cousin in the accounting procedure?

- A. No, unless Attorney is paid by Cousin from Cousin's personal funds and not from Kid's estate.
- B. No, because Attorney acted as Guardian Ad Litem in the appointment proceeding at which time he represented Kid's interests.
- C. Yes, because Attorney's appointment as Guardian Ad Litem ended after the appointment proceeding.
- D. Yes, if Kid gives informed consent to Attorney's representation of Cousin, confirmed in writing.

12. Attorney represents Defendant in a criminal prosecution for drug trafficking. At his initial meeting with Attorney, Defendant stated that the government had seized all of his liquid assets. The only asset the government had not seized was Defendant's house, which he had inherited from his parents. The government alleged all of Defendant's other assets were income derived from his illegal activities. Defendant assured Attorney that he was innocent and the government would have to release all of his funds at the end of his trial.

Defendant offered to allow Attorney to assert a lien against Defendant's home sufficient to cover Attorney's fees and expenses. It was agreed that Attorney would assert such a lien. Defendant was tried and acquitted of all charges and when his seized assets were released, Attorney was paid in full.

Is Lawyer subject to discipline?

- A. Yes, for assuming a proprietary interest in the subject matter of litigation.
- B. Yes, for entering into a business arrangement with a criminal defendant.
- C. No, since the lien was to secure Attorney's fee and expenses.
- D. No, since Defendant was acquitted.

13. For several years, Attorney has acted as lead counsel on behalf of State. A class action asbestos lawsuit had been filed against State by employees who allegedly received injuries as a result of working in State Agency. Attorney successfully defended State and the Appellate Court recently affirmed the judgment. A few months after the Court of Appeal's ruling, Attorney decided to pursue private practice. While in private practice, he was approached by Employee Ernie, who was one of the individuals who brought the class action suit against State. Ernie informed Attorney that State was about to file charges against him for embezzlement and requested Attorney to defend him in that action. The embezzlement allegedly took place during the same time period as when Attorney acted as lead counsel on behalf of State.

Is Attorney subject to discipline if he represents Ernie in this action?

- A. No, unless State consented to Attorney's representation of Ernie.
- B. No, because the second representation involves a different matter.
- C. Yes, because Attorney would not be able to remain objective in the embezzlement case if Attorney discovered discrediting information about Ernie in the asbestos case.
- D. Yes, because Attorney acted as lead counsel in the asbestos lawsuit while employed by State.

14. Attorney represents Defendant Dave who has been charged with the first-degree murder of Vicki, a ten-year-old girl. The defense hinges on the fact that the murder weapon is missing. Trial is scheduled to begin at the beginning of next month. One day, while Attorney was preparing for trial, he received a phone call from Bob, Dave's best friend. Bob informed Attorney that he saw the knife allegedly used in the murder, but that the knife no longer exists. Attorney thanked Bob for the information and directed Bob that he should take a European vacation for the next month. Bob took Attorney's advice.

Is Attorney subject to discipline?

- A. Yes, so long as Dave was on the witness list for testimony at trial.
- B. Yes, because Attorney suggested that Bob conceal himself during Dave's trial.
- C. No, because Attorney did not actively conceal Dave's testimony by financing Dave's vacation.
- D. No, because Attorney did not coerce Dave to leave the jurisdiction.

15. Attorney is in the private practice of law, conducting a general practice. Attorney frequently has clients who need psychological counseling. Psy is licensed by the state as a clinical psychologist and maintains a private practice as a marriage counselor. In his practice, Psy sees many individuals whose marriages are, in Psy's judgment, irretrievably broken. Psy has many clients who are unable to pay any fee. Psy has been represented by

Attorney in both his business and personal affairs, and Psy has confidence in Attorney's ability. Attorney proposed to Psy that Attorney would refer to Psy any clients needing psychological counseling and Psy would refer all of his clients who want a divorce to Attorney. Attorney would represent them for a reasonable hourly rate. Psy agreed.

Is Attorney subject to discipline?

- A. Yes, because Attorney and Psy agreed to refer clients to each other.
- B. Yes, unless Psy agrees not to attempt to influence the exercise of Attorney's independent professional judgment.
- C. No, if Attorney does not pay Psy a monetary reward for referring clients.
- D. No, if Psy's clients are fully informed of Psy's arrangements with Attorney and are given an opportunity to consult other lawyers.

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. _____

12. _____

13. _____

14. _____

15. _____