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Exam No. _____

**750 - Ethics
Summer Term 2006**

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

**Professor Baum
Thursday, July 6, 2006
4:00-7:00 p.m. (3 hours)**

**Examination Format
Essay Answers**

1. **Laptop** computer users: Start the Secureexam 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.

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

This is a three-hour examination. The exam consists of **one essay question, five short answer questions, and ten multiple choice questions**. The essay question is worth 200 points. The short answer questions are worth a total of 50 points, five questions at ten points each. The multiple choice questions are worth a total of 50 points, ten 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 given 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 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 explanation 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.

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 and skip every other line. 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.

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QUESTION ONE

(200 points) (Adapted from exam by Professor Stephen Easton)

[In the following fact pattern, assume that the non-professional responsibility laws of the hypothetical jurisdiction are correctly described. In this jurisdiction, the ABA Model Rules as currently formulated are in force and all materials from your casebook would be relevant.]

Pamela Partner, a business law and civil litigation partner in a medium-sized law firm, conducted a meeting in her office to discuss strategy for an upcoming personal injury case with her client in the case, Ben Betteroff, and a new associate of the law firm, Ann Anderson. This was Pam's third meeting with Betteroff in the past month. In addition to the meetings with Betteroff, Pam had performed several pre-trial functions. So far, Pam had spent 15 hours on Betteroff's case.

This was Ann's first meeting with Betteroff. At the start of the meeting, Pam explained that Ann would be taking on some of the preparation work for the trial but that Pam would continue to supervise the case.

Pam also had the contingency agreement ready for Betteroff to sign. On his first visit to the firm, Betteroff had paid \$2500.00 that he was told was to cover expenses.

At 3 p.m., during the meeting with Betteroff and before the financial details of Betteroff's representation had been finalized, the firm receptionist's voice came over the speaker phone in Partner's office, saying, "Pam, Tom Trouble is on line three for you." Pam had represented Trouble's business in several disputes that went to litigation. Pam responded by saying into her speaker phone, "Rhonda, please take a message for me. I'm busy at the moment." The receptionist answered, "Pam, I really think that you need to talk to Tom now. He seems pretty wound up, and he also sounds like he's been drinking again."

Pam picked up the telephone receiver, turning off the speaker phone, and said, "Tom, what's up?" After a few seconds, she said, "Damn it, Tom. How much?" After a brief pause, she stated, "Tom, this is big trouble. Hang on for just a moment." She then pulled the mouthpiece of the phone away from her lips, covered it, and whispered, "Ben, can you excuse us for a moment?" As Ben started to leave the office, Pam hit the speaker button on her phone, reactivating the speaker phone. Just before Ben left the office, he heard the male voice on the speaker phone say, in a distraught voice, "Am I going to go to jail over this?" Ben then walked out of Pam's office, shutting the door behind him. On his way out of the firm's offices, Ben told the receptionist that he needed to leave and asked her to have Pam call him the next day. Rhonda immediately got another urgent call for another partner and forgot to write a note to Pam about Ben's request for a call.

After Ben had shut her office door, Pam continued talking with Tom via speaker phone. Ann Anderson was still in Pam's office listening to the full conversation. In response to Tom's question, Pam said, "Tom, try to cool down a little. Ann Anderson is in the office with me. She joined our firm two months ago, after spending several years in the State Attorney General's Office. Fortunately for us, she spent most of that time working on cases involving driver's license revocation for driving over the legal alcohol limit. She knows these cases inside and out. Now tell her the situation."

Tom responded by saying, very quickly, “I was heading down Central, crossing San Mateo, and a guy in a pizza delivery car came crashing across Central. I couldn’t stop, and we had a heck of a crash. And I’ve been drinking. Not that much, though, just a half a bottle of wine. The problem is, the other half of the bottle is in the trunk, so the cops will find it if they impound my car. There are lots of people around the pizza car because the guy in there looks like he’s pretty badly hurt, so I’m calling you on my cell phone. What should I do?”

Pam asked Tom, “What kind of pizza delivery car?” Tom replied, “I don’t know. Maybe a Toyota?” Pam responded by saying, “No. I mean what kind of pizza place.” Tom answered, “Oh, I’m not sure. I can hardly see the car anymore. I’ll tell you this, though, I think he may have run a red light, because I think my light was still yellow. Hey, I need to know what to do. I don’t want to go to jail!”

Pam looked at Ann and said, “Ann, you’re the expert here. Tell him what to do.” Ann said, “Tom, you need to calm down. The wine will relax you. Get out of the car, get the bottle of wine, and start drinking it fast.”

Tom yelled, “Are you nuts? I said I don’t want to go to jail. Pam, whoever this lady is, she doesn’t know what she’s talking about. She’s not my lawyer anyway; you are. YOU tell me what to do.” Pam replied, “You do what she tells you to do. I am sure that she knows what she is doing. Get out of that car, and drink that wine. You need to calm down.”

“One more thing,” said Ann. “When the police get there, they may want you to consent to them taking a blood sample for a blood alcohol test. Under the state statute, you have a right to consult an attorney before you decide what to do. So call us before you consent, and do not consent until you talk to us. Have you got that?” Tom responded, “I guess so.” Ann then said, “There’s no ‘I guess so’ about it, Tom. Get out of the car. Drink the rest of the wine. And do not consent to anything until you talk to Pam and me.”

After she hit the disconnect button on the phone, Pam turned to Ann and said, “I sure hope you know what you’re doing. What was that all about?” Ann explained that her previous experience in license revocation cases taught her that any post-driving consumption of alcohol made it difficult for the state to prove the blood alcohol content at the time the vehicle was being driven. “This guy is in serious trouble, Pam,” Ann said. “He is facing possible license revocation, maybe a criminal action for driving while intoxicated or possibly even vehicular manslaughter depending on how badly the pizza guy is hurt, perhaps a civil action by the pizza delivery guy or his family, and conceivably even an action by the pizza joint against him for property damage and recovery of worker’s compensation benefits they have to pay to the pizza delivery guy. He is almost certainly over the legal blood alcohol limit. Two things can help him out—consuming alcohol and delaying the blood alcohol test as long as he can. When I was with the AG’s office, the state toxicologist was working on a study that suggested that blood alcohol tests taken more than half an hour after driving did not accurately report the blood alcohol level at the time of driving, if a significant amount of alcohol was consumed in the interim.”

Pam said, “I knew you were brilliant when we hired you. Now what do we do?” Ann replied, “We get out of here. Let’s take a ride to San Mateo and Central, but let’s not be in too big of a rush to get there. Cops in this state will let a driver have a fair amount of time to try to contact an attorney.” As the two of them strode past the receptionist, she asked, “Where are you two going?” Pam responded, “Out. We’ll be back in a while. And don’t try to call us on my

cell phone, because its battery is being charged back in my office. And do not forward our calls to anyone else in the office.” As the receptionist’s phone rang, the two attorneys closed the door to the stairwell and started walking down the stairs from their third floor offices. When they reached the ground floor, Ann said, “I think it would be a good idea for us to use the restroom before we leave.”

After spending several minutes in the restroom, the two walked to Pam’s car and entered it. Pam drove out of the parking lot and toward the location of the accident. Although she knew that Washington was under construction, with only one-way traffic, she nonetheless took this street on her way to the scene. After maintaining speeds under the posted limits and stopping at several yellow lights, they arrived near the accident scene, which was three miles from their office, at 3:25 p.m. They noticed several cars, an ambulance, and three police cars at the intersection. “Let’s make sure we get a legal parking spot,” said Pam. After driving around several blocks, they pulled into a street parking spot and put money into the meter. They then walked to the accident scene.

When they arrived, Tom turned to Pam and said, “Where have you been? I’ve been trying to call you!” Ann paused for a moment after she saw Tom Trouble. While she hadn’t recognized the name, she did recognize him as a defendant from an administrative hearing regarding license revocation from her previous government position.

Pam looked at the police officer who was with Tom, and then said, “Tom, we came straight here after we talked to you, but we had some traffic trouble getting here.” She then looked at the police officer and said, “We represent Mr. Trouble. Can we help you?”

The police officer replied, “Well, you may be able to help your client, because if he doesn’t consent to the blood alcohol test right now, we’re going to pull his driver’s license, right, Ann?” Ann took a second look at the police officer and realized that they had worked together on driving while intoxicated cases when she was in the AG’s office. She said, “Officer, I guess you haven’t heard. I’ve moved into private practice. I’m here representing Mr. Trouble.”

Pam then said to the officer, “Show me the consent form.” When the officer showed it to her, she said, “Now, Tom, I am eventually going to advise you to sign this consent form, but I want you to understand it first, so I am going to read it to you.” She then read each of the provisions of the form to Tom, asking him if he understood each one. She then advised him to sign the form, and told him, “Next to your signature, please note that the time is now 3:42 p.m. Is that what your watch shows, Officer?” The police officer said, “Whatever, lady.” He then took the form and took a sample of Trouble’s blood, following the procedures outlined in his training course for the taking of blood samples. He then notified Trouble that he was arresting him for driving while intoxicated. Pam told Trouble not to say anything more to anyone, then went to the police station and arranged for Trouble to post bail. Pam instructed Trouble to come to the office the next day to make fee arrangements and to discuss the case.

As Pam and Ann drove back to the office, Pam said to Ann, “I almost forgot. Did you notice what kind of pizza the guy was delivering?” Ann answered, “I think I saw a Snakearrow’s Pizza sign on the car.” Pam and Ann both knew that Snakearrow’s Pizza was located a few blocks south of the accident scene.

When she returned to the office, Pam stopped by the office of her partner, Hal Headguy. She asked, “Hal, do you still have that civil case where you are defending Snakearrow’s Pizza against the allegation that they pressure their drivers to drive too fast when they make deliveries?” Hal responded, “Technically, yes, but we agreed to a settlement at mediation last week. We just need to do the paperwork and agree on the details of the settlement.”

When Tom Trouble came in to discuss fees, Pam asked him to describe the accident in detail. When Tom again said that he thought his light was yellow so the other light had to be red, she told him to be confident about the facts. Pam also said, “We’ve gotten the accident report from the police. It was definitely a Snakearrow’s Pizza vehicle that was making that delivery. You know, the company that is reported to pressure its drivers to drive too fast.” Tom then remarked, “Oh, yeah. I remember now. I’m sure my light was yellow. The delivery driver was definitely speeding and ran a red light.”

As they discussed fees, Pam noted that her hourly rates were \$250.00 per hour/\$450.00 per hour for court appearances. She noted that she had never handled a criminal action before but that she was confident of her abilities as a litigator. She also informed Tom that she would be using the services of Ann Anderson, her associate who had experience with driver’s license revocations. Pam had prepared a retainer agreement for Tom’s signature as follows:

For services rendered by Pam Partner and firm in defense of any criminal charges against Tom Trouble resulting from the auto accident on YESTERDAY, THIS YEAR, Tom Trouble agrees to pay hourly charges and all expenses, including court costs and office expenses such as phone charges, fax fees, photocopying and mailing expenses. Tom Trouble will provide an initial non-refundable retainer of \$5000. Pam Partner’s hourly rate is \$250.00 per hour with an increase to \$450.00 per hour for all court appearances. Once the initial retainer falls below \$2500, Tom Trouble will replenish the retainer account to the original \$5000 level. Pam Partner and firm’s representation of Tom Trouble is limited to the pretrial negotiations and trial phase of the criminal defense.

As she presented this form to Tom, Pam stated, “You know, Tom, if we can prove that the accident was Snakearrow’s Pizza’s driver’s fault and put responsibility on Snakearrow’s Pizza for their pressure on employees, you might get a settlement out of it. If you want to pursue that action using our firm to represent you and we win, I would lower my rate for the criminal defense work in exchange for a higher percentage of your civil damages. Just something to keep in mind.”

Three weeks later, the settlement on the case against Snakearrow’s Pizza that Headguy had worked on was finalized and signed, the settlement check was forwarded to the plaintiffs, and the case was formally dismissed by the court.

A month after Ben Betteroff’s meeting with Ann and Pam in Pam’s office, Ann contacted Betteroff to let him know that they had received a settlement offer in his personal injury suit. She apologized for not returning his many phone calls in the past month but she wanted to let him know the status now that things were moving along in his case. She announced in a joyful voice, “I know you’ll be happy with this settlement we worked out. I know you wanted to recover all of your expenses and we almost achieved that. The defendant has offered \$100,000, which would cover your medical expenses and some of the lost wages. Of course, we’ll receive

a third of that so your recovery will be less than you owe but it is a good deal. I already told the other side that I was sure that you'd take it. So, how about it?" Ben angrily replied, "I haven't heard from you in a month. I've seen in the papers how this case with Tom Trouble is taking all of your time. I have half a mind to tell the DA that I heard Trouble confess that he was drunk. I bet that would take the wind out of your sails. And, by the way, you're fired. I found a better firm to handle my case; that's what all my calls were about. You'll be getting a formal request from them to get all of my case files. And, I want my \$2500 retainer back. I don't care that you called it non-refundable when I paid it. GOODBYE!"

Two months later, Pam and Ann defended Tom Trouble in a jury trial on the driving while intoxicated charges before Judge Little. Pam's firm had been active in the campaign for the opposing candidate in Little's last election. Pam's former partner, Sam Spade, had dug up some dirt on Judge Little's husband and had sent it to Judge Little, suggesting that Judge Little should step down from the bench. Sam Spade was suspended from practice for this behavior and has left the law firm. However, concerned about the impact of the incident, Pam requested that Judge Little recuse herself from Trouble's case. Judge Little denied Pam's motion.

During all trial preparation meetings,—Tom had consistently told his lawyers that he wanted to testify but both Pam and Ann always advised against it. At trial, several fact witnesses testified that Tom drank wine after the accident. The empty wine bottle was introduced into evidence by defense counsel. Pam and Ann also called the state toxicologist as an expert witness to testify about her study, which had been finalized and published two weeks before the trial started.

Following this testimony and presentation of evidence, Pam turned to Tom and said, "We're going to rest our case now, Tom." Tom looked unhappy but said nothing in response. Pam then announced to the court that the defense was resting.

The prosecutor called Pam and Ann as rebuttal witnesses, but both refused to testify on attorney-client privilege grounds. Ann then presented a closing argument saying, in part, "There is absolutely no evidence establishing that Tom Trouble had anything at all to drink before this accident."

Identify and discuss all professional responsibility issues that are raised by this fact pattern. For each issue identified, you are to set out the relevant rule(s) (by number and description) and apply the rule, case law, ethics opinions and other relevant authority DIRECTLY to the facts presented. Your answers must fully explain the issues and fully discuss the rules and must set out your detailed reasoning and arguments on each side with clear support for your stated conclusions. Conclusory statements without supporting discussion, vague or sketchy analyses, and generalized overviews of the rules will not receive credit.

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SHORT ANSWER QUESTIONS

(5 questions worth 10 points each) (Problems from Devine casebook)

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 were hired by Client to pursue a personal injury claim against Defendant. At the outset of the representation, you and Client agreed to a contingent fee arrangement of 40%. You begin to investigate the case and, with the consent of your client and the attorney for Defendant, enter into settlement negotiations with Defendant's attorney and insurance adjuster. Client gave you the names of two "eyewitnesses" to the incident which caused Client's injuries. Client insists that those witnesses be allowed to testify. You have interviewed both witnesses and reviewed the facts and are convinced, beyond any possible doubt, that the witnesses were not present at the scene. After you confer with Client, who again insists that these witnesses be allowed to testify, you immediately withdraw from the case. Have you acted properly?
2. 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?
3. Joan Smith makes an appointment with attorney Harriet Madison, for herself and her husband Walter, to discuss a farm boundary dispute between them and their neighbor Norman Adams. The dispute relates to a 20-acre tract of woods which Adams now plans to clear and plant. Due to a previously unrecorded deed, title is unclear but Smith is adamant that the woods are his. When she makes the appointment, Mrs. Smith indicates concern that her husband has been violently angry over the matter.

At the interview, Walter Smith begins with an agitated narrative of the arguments he's had with Adams. As they discuss the situation with Madison and Madison offers legal

opinions, Smith flies into a rage, shouting that, if Adams doesn't back off, he'll burn his house down. Smith storms out of the office. Before she follows him, Mrs. Smith tells Madison that she's afraid her husband, who has had ten years' experience as a fire inspector, will follow through on his threat.

- a. May Madison warn Adams or the police?
 - b. If Madison says nothing and Smith in fact burns Adams' house down, is Madison subject to discipline?
4. You are retained by John Smith Gun Company in defense of a product liability action. Smith Guns makes handguns that can be customized so that the trigger mechanism will respond more quickly, giving guns what is known as a "hair trigger." The plaintiff in the action used the customizing feature to create a "hair trigger" mechanism on one of Smith's guns and then promptly shot himself with it. In defense of Smith Gun Company, you will argue that the plaintiff is substantially at fault and that your client cannot be held liable for idiots like the plaintiff.

Because you have become something of an expert in handgun cases due to your work on the Smith Gun Company case, you are also retained by Angela Hartwig, who purchased a handgun, made by a different manufacturer, customized the trigger mechanism to a "hair trigger" level, and then promptly shot herself. In this case, you will argue that the customizing feature is a design defect and, additionally, gun manufacturers should be held strictly liable for injuries to consumers as a result of such defects. Under the applicable jurisdiction's law, holding the gun manufacturer strictly liable would prevent the manufacturer from arguing either contributory or comparative negligence of the plaintiff. If you are successful in this action, you expect a multi-million dollar settlement with a hefty fee for yourself and the potential for a large number of new consumer clients.

Following your discussions with Hartwig, you decide to lobby on your own time for legislation that would make the customizing features illegal and would require gun companies to modify their current trigger mechanisms to make customizing impossible and to make future modifications as any new customizing kits are designed. If companies did not make the modifications, they would be held strictly liable by statute.

- a. Can you represent both Smith Gun Company and Angela Hartwig? If not, who will you represent and how will you decide?
 - b. Do your lobbying efforts violate any rules of professional conduct?
5. Hamilton Holmes is a retired high school math teacher whose pension and social security payments barely meet his normal living expenses. An inveterate tinkerer in his basement workshop, Holmes has invented a new puzzle which he believes will be a substantial money-maker. He goes to the office of James Jorgensen, an attorney in general practice who has acquired some expertise in patent law through a graduate program but who has no previous patent law experience and no background in science or engineering, for advice on how to exploit the invention. Holmes offers Jorgensen a one-third interest in the enterprise in exchange for Jorgensen's doing the legal work in obtaining a patent, establishing the appropriate corporate structure for a marketing company, etc. What issues of professional responsibility may arise in this situation?

Multiple Choice

(10 questions worth 5 points each)

These ten 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 provided. - In addition, 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.

Lap topers: Follow the instructions above. However you can type your answer. Make sure to number each question and to clearly type in you answer choice before explaining why you chose that answer and why the other choices are wrong 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 was 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. To get full points, you must indicate a particular reason for not selecting each of the 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.)

Questions

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. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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. _____

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9. _____

10. _____