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BAUM
FALL 2007

FINAL EXAMINATION
750-370 ETHICS

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

To receive full credit for each question, you must identify the correct rule and offer relevant language or a paraphrase of language from the rule or the rule comments, state a definite conclusion or answer, and support your conclusion/answer 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. If you do not recall a rule number, you must specify the subject matter of the rule.

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 explanation must include the relevant Model Rule number(s) or an accurate description of the subject matter of the rule. 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. 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 (225 points)

You are a lawyer who serves as the director of the Association of Retired Persons (AARP) legal services office in a state that has adopted the ABA Model Rules of Professional Conduct without change. The legal services office for AARP is funded by the membership dues of AARP members. AARP members can contact the office for legal advice.

The staff in your office consists of two other lawyers, three paralegals, two social workers, and one licensed psychologist. The psychologist primarily works on drafting mental health assessment reports in connection with guardianship proceedings. All office decisions about the cases to accept and the resources to devote to particular cases are made by consensus in weekly meetings of the full legal services office staff.

Cases and clients come into your office as the result of a multi-step intake procedure. Under the procedure, the paralegals hold regular intake sessions. Some of the intake sessions are held in the office and some in nearby community senior citizen facilities. During these sessions, the paralegals interview potential clients, provide them with basic legal information contained in brochures your office has drafted, and then write up reports about the interviews. These reports form the basis for the later decision about accepting new clients made in weekly staff meetings as described above.

At the interviews, the paralegals are supposed to explain that a committee will determine if the legal services office will assume representation of the potential client and that the interview does not establish an attorney-client relationship. The paralegal is also to explain the rules of confidentiality to the potential client to be sure that the potential client is aware of the responsibilities of the attorney to maintain confidentiality and the limitations of the client confidentiality rules.

Last week, one of the paralegals came to you with a thorny problem. She had interviewed a potential client, Mr. Un Clare, who was a resident in a nearby assisted living facility for senior citizens. Clare told the paralegal that his daughter, Debbie, was seeking to have him declared incompetent and to have herself appointed as his guardian. Clare was seeking AARP's representation in opposing the appointment of his daughter as his guardian. Clare told the paralegal that he recently had a stroke that makes it difficult to retain information in his short term memory, but that he believes that he is still competent to make his own decisions. Moreover, Clare believes that his daughter is conspiring with his former wife (his daughter's mother) Wanda to obtain a change in his will so that his assets will go to Wanda rather than to the charities to which Clare has willed his entire estate.

After conducting Clare's intake interview, the paralegal ran a conflicts check in the AARP database, which revealed that AARP represented Wanda in a landlord-tenant matter several months ago. Wanda's landlord had sought to evict her from her apartment so that he could convert it to a condominium, but AARP was successful in using a state

tenant protection statute to forestall the eviction for one year, after which Wanda will be given first rights to purchase her apartment as a condo if she chooses to do so.

The final entry in Wanda's case file memorializes a conversation between one of the attorneys in your office and Wanda, in which Wanda stated that she is seeking financial resources to enable her to purchase her apartment, and that Wanda will contact AARP if she desires representation in connection with this matter in the future.

The paralegal asks you whether she should present Clare's case for assessment at the next weekly staff meeting. She tells you that she found Clare's explanation of this situation a bit difficult to follow at times; he seemed to be having some difficulty retaining his train of thought. He also at times seemed confused about who she was and, at one point, seemed to mistake her for his daughter. When the paralegal pointed out that she was not Clare's daughter, but an intake worker for AARP, Clare seemed to realize his mistake. He seemed very clear on his desired objective of avoiding the appointment of Debbie as his guardian. He also wanted AARP legal services to review his will to make sure that it would stand up to any challenges Wanda might mount against it. Finally, he appeared very concerned that Wanda and Debbie were conspiring against him in other ways as well, even expressing the belief that they were trying to poison his food. The paralegal has noted all of this information in Clare's intake paperwork. The paralegal also tells you that she is not sure that Mr. Clare understood her explanation about the lack of attorney-client relationship and the limits of confidentiality.

One of the other lawyers in the office brings you the following email message sent to him from an AARP member who found the lawyer's email address on the AARP website. The email reads:

I am an AARP member who needs an answer to a quick and easy question about the law. I'm not seeking legal advice but I need to know the answer to this question so I can sue my neighbor. My neighbor has a teenage daughter who keeps running her motorcycle across my lawn. That's trespassing, right? I can get them to replace the sod? Thanks for your help. Signed, Frustrated AARP Gardening Buff

The AARP website describes the legal services that are available from the AARP member-funded legal services offices. Management has refused to put up the disclaimer that you have requested because it might discourage members who were in need of services. You have tried to explain the need for an intake system for members coming to the office via the web site but management is not interested. Management has also told you and says on the web site that the legal services office will represent any AARP member on any matter.

- A. In preparation for the staff meeting, you are to draft a memo analyzing and resolving the ethics issues you determine are raised by the intake interview with Mr. Clare. Be sure to reference the specific Rules of Professional Conduct and any other relevant legal precedents studied during the course.**

Be sure also that you state definite conclusions about the course of action to take along with your reasons for those conclusions. (100 points)

- B. You have decided that you need to draft a short statement for the intake sessions that clearly explains the establishment of an attorney-client relationship as well as the confidentiality rule and its limitations.**
- 1. In no more than one double-spaced typed page or three single-sided bluebook pages on which you skip every other line, prepare a statement suitable to be read to a potential client in an intake interview. (25 points)**
 - 2. In a separate document, you are to explain the rules and the reasoning that led you to your statement as well as the purpose to be served by providing such a statement to your intake staff. (25 points)**
- C. You need to handle the email question and the web site description of services.**
- 1. You are to draft a brief email response to Frustrated AARP Gardening Buff. Your response must be understandable to a non-lawyer. (15 points)**
 - 2. Along with the response to the AARP member, you are to prepare a memo for your files regarding any problems you see with the web site and your specific suggestions on the best ways to handle those problems. If you think any particular language should be placed on the web site to ensure compliance with the rules and/or to protect the public, you are to set out the language. Be sure to reference the specific Rules of Professional Conduct and any other relevant legal precedents studied during the course. Be sure also that you state definite conclusions about the course of action to take along with your reasons for those conclusions. (50 points)**
- D. Identify, discuss and resolve any other issues you noted in the above problem. Be sure to reference the specific Rules of Professional Conduct and any other relevant legal precedents studied during the course. Be sure also that you state definite conclusions along with your reasons for those conclusions. (10 points)**

MULTIPLE CHOICE (WITH EXPLANATION) (30 points)

For the following six 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 explanation must include the relevant Model Rule number(s) or an accurate description of the subject matter of the rule. The correct answer choice is worth one point; the explanations for each answer option are worth one point.

To ensure that your answers are easily understood, in your bluebook or your laptop answer, provide the following information for each question: the question number, the letter for the answer you selected as the correct answer, and your explanation for each possible answer (A-D) being correct or incorrect.

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. Julie Junior Attorney was recently admitted to the Bar and began to work for Senior Attorney, whose practice solely focuses on landlord-tenant issues, specially 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.

3. Attorney filed a medical malpractice suit against Doctor on behalf of Client. The suit centered around Client's claim that Doctor removed the wrong lump on her back. Prior to the suit being filed, Attorney subpoenaed the MRI report and discovered that the lump removed was actually the correct lump. Thinking that no one was watching, Attorney destroyed the only copy of the MRI report. However, Partner saw Attorney tear up the report.

Is Partner subject to discipline for failing to report Attorney's conduct to an appropriate authority?

- A. Yes, because Partner saw Attorney destroy the MRI report.
- B. Yes, if Partner knew that the MRI report was a piece of evidence.
- C. No, because Partner can assert a Fifth Amendment right against self-incrimination since he became an accessory after the fact when he observed the destruction of the MRI report.
- D. No, because Partner does not have a duty to report the conduct of one of his employees to the authorities since Partner is already considered to be an authority.

4. Attorney Alpha was retained by Client to incorporate Client's business, which previously had been operated as a sole proprietorship. Alpha noticed in Client's file copies of some correspondence from Client to Attorney Beta concerning the possibility of Beta's incorporating Client's business. Alpha questioned Client to make certain that any attorney-client relationship between Beta and Client had been terminated. Client told Alpha, "It certainly has been terminated. When I discussed the matter with Beta six months ago, he asked for a retainer of \$1,000, which I paid him. He did absolutely nothing after he got the money, even though I called him weekly, and finally, last week when I again complained, he returned the retainer. But don't say anything about it because Beta is an old friend of my family."

Is Alpha subject to discipline if she does not report her knowledge of Beta's conduct to the appropriate authority?

- A. Yes, if Alpha believes Beta clearly was guilty of professional misconduct.
- B. Yes, unless Alpha believes Beta does not usually neglect matters entrusted to him.
- C. No, if Client was satisfied by Beta's return of the retainer.
- D. No, unless Client agrees that Alpha may report the information.

5. Attorney has a lucrative criminal defense practice. For years, Attorney has earned a great deal of money and notoriety as trial counsel for Client, the reputed head of an organized crime family. On four occasions, Attorney has successfully defended Client against murder charges. For a fifth time, Client is charged with murder. As usual, Attorney prepares to take the case to trial.

Two days before the trial, Attorney was involved in a serious motor vehicle accident. Attorney was clinically dead for several minutes before being resuscitated. Attorney withdrew as counsel, with the court's permission, and trial was adjourned for three months to allow Client's new counsel to prepare for trial. Two weeks before the new trial date, Attorney, having miraculously recovered from his injuries, appeared at the office of the prosecutor. Attorney advised the prosecutor that Attorney's near death experience caused him to reconsider his role as Client's "mouthpiece." Attorney told the prosecutor that Client admitted to all of the murders, including the pending case. Attorney was willing to testify against Client in order to achieve his own inner peace.

Is Attorney subject to discipline?

- A. No, because he is preventing the perpetration of a fraud on the court.
- B. No, since he no longer represents Client.
- C. No, because Attorney is obligated to report the confession to prevent Client from committing future crimes.
- D. Yes, if the admission by Client was made in confidence while Attorney represented Client.

6. 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.

SHORT ANSWER (45 points)

The following three questions set out brief statements or scenarios. In addressing the questions, you must identify the correct rule(s) and offer relevant language or a paraphrase of language from the rule(s) or the rule comments, state a definite conclusion or answer, and support your conclusion/answer through complete presentation of all steps in your reasoning and citation to relevant authority.

1. Abe Advocate is an attorney who represents a plaintiff who seeks to recover for injuries she received while riding the roller coaster at Seven Banners Amusement Park. Abe decides to talk to as many Seven Banners employees as possible before filing suit. When Seven Banners' attorneys hear that Abe is talking with employees, they instruct all employees not to talk with Abe. Abe decides to send his investigator to talk with the employees instead and instructs the investigator not to identify herself as Abe's investigator.

Abe locates another person who was on the ride with his client who has no connection to Seven Banners other than being an occasional customer. During an interview, the potential witness tells Abe that "I don't mind talking to you about the accident as long as you aren't a lawyer." Abe doesn't tell her that he is a lawyer.

Is Abe subject to discipline for any of his actions? Explain your answer.

2. At a well-attended press conference for a high profile criminal case that is about to go to trial, the following statements are made. For each statement, determine if there is an ethical violation and explain the basis for your conclusion, including reference to the applicable rule.
 - a. The prosecutor: "Given the current status of plea negotiations, we are not likely to see a trial in this one."
 - b. Attorney representing the defendant in response to a reporter asking if his client is guilty: "I believe in my client and I believe he is innocent. I just had a one-on-one meeting with my client, and he told me that he was at the scene of the crime, but he did not commit the crime."
 - c. Former prosecutor who is not involved in the current case in any way: "I prosecuted this defendant many years ago. Although this case is not related to the case where I prosecuted him, I think he did it."
3. As a lawyer, you are a member of a self-regulating profession. With self-regulation comes responsibility. What do you view as the most important responsibility of the legal profession and how do the Model Rules address that responsibility?