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BAUM
FALL 2010

FINAL EXAMINATION
750-001 ETHICS

This is a three hour examination. One-half hour of the three hour exam period is to be used to read the exam and contemplate the issues you identify and to outline notes to help you organize your answers. You are not to begin writing your exam answers before the 30 minute reading period has elapsed.

The exam consists of one essay question and five short answer questions worth a total of 300 points. The essay question is worth a total of 150 points, 100 points for issue identification and 25 points for each of the two issue analyses you are to complete. The five short answer questions are worth 30 points each.

In answering the essay question, you are to briefly describe each distinct issue of professional responsibility that you identify in the problem. In your issue description, you are to clearly identify the issue using specific facts and then are to briefly describe the rule(s) or concept(s) of professional responsibility implicated in the facts that you have identified. Each issue identification answer should be a short paragraph of 2-3 sentences.

From the listing of issues that you identified in the essay, you are to select two different types of professional responsibility issues to analyze and discuss. In your analysis of the two situations which you select, you are to provide a thorough discussion and explanation of the issue and the relevant rule(s) and to state a firm conclusion on the issue supported by your application of the rule(s) and your analysis. You may determine that a rule has been violated or has not been violated but your conclusion must be clearly stated and must be supported by your discussion of the issue.

For each short answer question, you are to provide a thorough discussion and explanation of the issue(s) you identify and the relevant rule(s) implicated by the situation and to state a firm conclusion on the issue supported by your application of the rule(s) and your analysis. You may determine that a rule has been violated or has not been violated but your conclusion must be clearly stated and must be supported by your discussion of the issue.

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 ABA Model Rules of Professional Conduct and comments, NM Rules on Admission to the Bar, NM Creed of Professionalism, cases, and ethics opinions to the facts and to provide references to and analysis of relevant provisions of the rules and relevant case law and ethics opinions to demonstrate your reasoning and to support your conclusions.

To receive full credit for each question, you must identify the issues, state the correct rule(s) and offer relevant language or a paraphrase of language from the rule(s) or the rule comments, apply the rules directly to specific facts in the question, state a definite conclusion or answer on each issue and each question asked, and support your conclusion/answer through complete presentation of all steps in your reasoning and reference 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.

Your answers are best presented in a format that starts with overall conclusion or statement of the issues involved followed by separate paragraphs on each issue and subissue. You may divide these paragraphs by rule number or by element or factor in an analysis. Be sure that your answers present an organized analysis on each issue and subissue with full application of the rule to relevant and specific facts taken from the question.

If you find any ambiguities in the facts or questions posed, identify the assumptions that 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 double-spaced and single-sided. If typed, your answers are to be double-spaced and single-sided with 1" margins at tops, bottoms and sides of pages.

You are to return your exam questions with your answers.

Essay Question (150 points)

- A) In answering the essay question, you are to briefly describe **each** distinct issue of professional responsibility that you identify in the problem. In your issue description, you are to clearly identify the issue using specific facts and then are to briefly describe the rule(s) or concept(s) of professional responsibility implicated in the facts that you have identified. Each issue identification answer should be a short paragraph of 2-3 sentences.
- B) From the listing of issues that you identified in the essay, you are to select **two** different types of professional responsibility issues to analyze and discuss. In **your analysis of the two situations** which you select, you are to provide a thorough discussion and explanation of the issue and the relevant rule(s) and to state a firm conclusion on the issue supported by your application of the rule(s) and your analysis. You may determine that a rule has been violated or has not been violated but your conclusion must be clearly stated and must be supported by your discussion of the issue.

You have been hired by a multi-state corporation which is being sued for violations of state employment discrimination law in two states, State A and State B. You are licensed to practice in State A but not in State B. You have associated with Newbie, a recent graduate and member of the bar of State B, who will work with you on the discrimination case in State B. You notified the corporation of this association of counsel from the other state.

Your offices are located in State A and Newbie's offices are located in State B. Newbie has no experience with employment law but you are planning to supervise him closely in all aspects of the case.

You have instructed Newbie to interview employees of the corporation who work in State B. Never having done such an interview, Newbie asked you a month ago for some guidance on the types of questions to ask and how to frame the questions to gather the best information. The interviews need to be done within the next week but you have been so busy with some other clients' matters that you have not yet gotten back to Newbie. Newbie decides to move forward on his own and begins interviewing employees of the corporation. The first employee that Newbie approaches is the supervisor of the plaintiff in the State B lawsuit. This supervisor, I. M. Nawty, is named in the complaint as the person who denied the plaintiff a promotion based on race and gender considerations.

Newbie's conversation with Ms. Nawty begins with basic background information about her experience at the corporation. When the questions turn to the specifics of the plaintiff's complaint, Ms. Nawty wants to know how she is going to be protected in this lawsuit. She is concerned that her reputation is going to be damaged and that the corporation is going to fire her as part of a settlement with the plaintiff. As Newbie talks with her further, it becomes clear that Ms. Nawty does not have her own attorney and is seeking legal advice from Newbie. Newbie clarifies for her that he is representing the corporation in this interview but gives her his business card and suggests that she come by his office to discuss her concerns and options for action if the corporation should fire her.

A few weeks later, Ms. Nawty is indeed fired by the corporation and makes an appointment with Newbie to discuss her options. Newbie talks thoroughly with her about situation and about her

history with the company, gathering lots of details about corporate operations and practices. In the conversation, Newbie discovers that the corporation has an unwritten policy of not promoting females beyond a certain level in the company. Newbie is intrigued by this discovery and wants to represent Ms. Nawty and her cohort of similarly situated co-workers in a suit against the corporation, which he is sure will be very lucrative. He immediately drafts an engagement letter for Ms. Nawty to sign. The letter explains that he will represent her through trial but will not represent her on appeal and that his fee will be 43% of any settlement obtained before trial or 50% of any judgment amount obtained after trial with any court related expenses and other office expenses being taken from the total before the fee is calculated. He gets so busy with preparation of the complaint and with discovery motions that he forgets to send the engagement letter to Ms. Nawty.

Newbie calls you and tells you that he must remove himself from the representation of the corporation because of a conflict of interest that has developed. He, of course, cannot tell you the specifics of the conflict because of client confidentiality but he assures you that he will hold confidential the information that he had learned from interviewing employees of the corporate client as part of his work for you on the discrimination case filed in State B.

A month or so later, you are contacted by a very unhappy corporate client who wants to know why the corporation is being sued by the very attorney who is working with you on the employment discrimination case in State B. The corporate client wants you to handle the case and sends a copy of the complaint to you. After reading it, you are very concerned that Newbie used confidential corporate information in crafting Ms. Nawty's suit against the corporation. You are also very angry that Newbie abused your trust so badly.

You want to find out more about Ms. Nawty before you contact Newbie because you seem to recall that there were some rumors about her unprofessional behavior. You decide to send your investigator onto Facebook to friend her so she will not recognize your name and deny you access to your page. Through your investigator, you find out that Ms. Nawty was on Facebook during work hours more than she was working and send that information to corporate human resources. The human resources staff put together a report that indicates that Ms. Nawty was fired for cause.

With the human resources report in hand, you call on Newbie. You suggest that he might want to drop Ms. Nawty's lawsuit against the corporation because her claim is frivolous, as the human resources report shows. When he balks at the prospect of dropping the suit and starts questioning you about how and when you got information about Ms. Nawty's Facebook activities, you suggest that you may need to report him to the bar for his use of information about the corporation in preparing Nawty's complaint. With cool and calm demeanor, Newbie explains that he obtained all of the information in the complaint after he withdrew from representation of the corporation. You are skeptical about his claim on the timing but you decide to retreat for now.

You move on with the trial preparation for both lawsuits and obtain permission from the court in State B to represent the corporation in the Nawty lawsuit. Newbie's discovery requests on the Nawty lawsuit include a request for data on female promotions for the past 15 years. Your client has several reports that indicate that there have been no promotions of women beyond middle management during the 15 year period Newbie is asking about. Your client also has thousands of pages of human resources paperwork on female employees. You have asked your client to pull together all of the material as raw data to send to Newbie. Your client does not want to turn over

the reports on female promotions that they have compiled, claiming that they were prepared by former legal counsel in anticipation of another discrimination suit a few years ago.

On the eve of trial, you turn on the national legal news show on cable to see Newbie at a press conference. He is describing the pattern of discrimination in corporation's personnel practices that he will prove in court. You do not know what proof he has, however, since you did not send the reports on female promotions to him when you sent the thousands of pages of raw data. You did not seek a court ruling on the reports. You simply are holding them in your office with a tag identifying them as corporation's property. You prepared a note for the file claiming that these reports are attorney work product not subject to the discovery request.

As you are thinking about those files, you hear Newbie say that he is sure that he is going to be successful in the lawsuit and that the appalling behavior of the corporation will come to light, benefitting all of the female employees who "have suffered for so long under the oppression of this chauvinistic enterprise." Jury selection begins tomorrow.

Short Answer Questions (30 points each)

For each short answer question, you are to provide a thorough discussion and explanation of the issue(s) you identify and the relevant rule(s) implicated by the situation and to state a firm conclusion on the issue supported by your application of the rule(s) and your analysis. You may determine that a rule has been violated or has not been violated but your conclusion must be clearly stated and must be supported by your discussion of the issue.

1. When you were a law clerk for a judge after you finished law school, you worked on a case in which a major law firm represented the defendant Big Client. At the time that the case was in progress, you were interviewing for permanent jobs. The major law firm (MLF) interviewed you and offered you a job. You talked with the judge, who was your mentor, about the job and decided to take it at the end of your clerkship. Several years later, you were ready to move on to another opportunity. You were preparing to set up your own firm with two classmates from law school. You each had particular clients that wanted to move with you. You represented Big Client while one of your classmates represented Bigger Client. Big Client and Bigger Client are currently in negotiations for settlement of a patent dispute, in which Bigger Client is accused of using Big Client's invention without a license.
2. A new client has come into your office, asking you to draft his will. As he talks with you, his mind wanders from topic to topic, making it difficult to get answers to your questions. He seems concerned that he is being followed and that someone is trying to take all of his money. He sits with his back to the wall when he is sitting but he is usually pacing the room and looking out the window or peering in your closet. He hands you a packet that he says is full of cash to pay your fee but, when you open the package, you find Monopoly money. He abruptly leaves your office without finishing the conversation. You do nothing further. A few days later, he calls and tells you that he is ready to sign the will that you have drafted and wants to know when he should come back to your office. When you tell him that you have decided not to draft the will, he begins to cry, saying that no one will help him and that he thought you understood him. Just before he hangs up, he cries into the phone, "But, I thought you were my lawyer."
3. This fall, some of your law school classmates got together for Thanksgiving. Someone was taping all of the festivities, following everyone around the house. When a group disappeared, the videographer tracked them down in the bathroom where they were all doing cocaine. The footage ended up on YouTube. Now the group is applying for admission to the bar. The bar application asks:

Are you currently engaged in the illegal use of drugs?

"Illegal Use of Drugs" means the use of controlled substances obtained illegally as well as the use of controlled substances which are not obtained pursuant to a valid prescription or taken in accordance with the directions of a licensed health care practitioner.

"Currently" does not mean on the day of, or even the weeks or months, preceding the completion of this application.

Rather, it means recently enough so that the condition or impairment may have an ongoing impact.

You have a right to elect not to answer those portions of the above questions which inquire as to the illegal use of controlled substances or activity you have reasonable cause to believe that answering may expose you to the possibility of criminal prosecution. In that event, you may assert the Fifth Amendment privilege against self-incrimination. Any claim of the Fifth Amendment privilege must be made in good faith. If you choose to assert the Fifth Amendment privilege, you must do so in writing. You must fully respond to all other questions on this application. Your application for licensure will be processed if you claim the Fifth Amendment privilege against self-incrimination.

They are not planning to say anything about the cocaine incident on the application. You are considering the action that you might take.

4. Attorney, who was under contract as attorney to the local county welfare department as well as maintaining his own practice, was approached by a woman who was seeking representation for a child support arrearage claim due from the father of her minor child. The woman supplied the attorney with records concerning her support action and her income. Also included in these documents was information regarding the father, including the fact that he was going to receive a substantial inheritance, his salary, his place of employment, and his address.

In the course of reviewing the documents supplied by the woman, the attorney discovered that a judgment had been entered against both the woman and the child's father, making them jointly liable for almost \$4,500 of medical and hospital debt resulting from the birth of their child. The judgment was in favor of the local county welfare department. The attorney contacted the woman to determine if the medical debt owed to the welfare department had been paid by either her or the father and found out that it had not been paid. The attorney then informed the woman that he would be unable to represent her in the case because of a conflict of interest, then forwarded her documents, at her request, to another attorney.

The attorney received approval from the local county welfare department to file a collection suit against the father. Later, the father's counsel joined the woman as a party defendant in the collection suit. The attorney ultimately obtained a summary judgment against the mother and the father. The attorney did not withdraw from the case after the mother was joined as a party defendant.

5. Professor Randy Chastain from the University of South Carolina Law School was licensed to practice law in both South Carolina and Colorado. In his domestic relations practice, he had access to client funds, which he used for his own purposes. He stopped returning phone calls from clients, he stopped appearing in court, he collected retainers from clients and immediately

pocketed the money, and he collected settlements and did not disburse funds. All of his law practice activities occurred in South Carolina.