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BAUM
SUMMER 2012

# FINAL EXAMINATION
# 750-001 ETHICS

This is a three hour examination. The exam consists of fifteen short answer questions worth a total of 300 points. Each short answer question is worth 20 points each. Some of the fact patterns are longer than others but all are worth the same number of points. There is one bonus question at the end of the exam that is worth a possible 5 points.

In answering each question, you are to briefly describe and discuss each distinct issue of professional responsibility that you identify in the problem. For each 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. There may be more than one issue/rule implicated in each question. 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. Grades will be based upon:

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| Identification of issue(s) and rule(s) | 5 points |
| Application of rule(s) to specific facts | 5 points |
| Explanation of reasoning | 5 points |
| Conclusion (clear determination on action disciplinary counsel will take) | 5 points |

If there is more than one issue/rule per question, the point allocation will be pro-rated based on the number of issues/rules to be explored in that answer.

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.

**EXAM QUESTIONS – 15 SHORT ANSWER QUESTIONS (20 points each)**
You are the legal counsel for the Attorney Disciplinary Board. You are responsible for making initial determinations on the handling of complaints against attorneys. In each of the following fifteen scenarios, you have been handed a complaint and must decide, following your examination and investigation of the facts as provided, if you will recommend that the case proceed to hearing or if you will dismiss the complaint.

Your documents on each case must set out a clear decision on the complaint. Since a hearing panel will determine the action to be taken if you decide to move the complaint forward, you do not have to make a recommendation as to sanction against the attorney but you do need to clearly state the type of misconduct at issue, apply the appropriate rule(s), explain your reasoning, and state your conclusion on the complaint.

1. Attorney used to represent a client called Apex Equipment, Inc., which manufactures devices that aid disabled people. Attorney's work on behalf of Apex involved drafting and negotiating contracts with the company's parts suppliers and litigating contract disputes with those suppliers. Attorney's work for Apex began five years ago and continued for two years, ending three years ago. Last week, Attorney accepted a new client, Stanley Prose, a contractor who was the general contractor for the construction of a new annex for the Apex factory. Prose claims that Apex has not paid thirty percent of the contract price for the annex. Attorney has filed suit on behalf of Prose for the remaining amount due to Prose from Apex. During Attorney's representation of Apex, she did not have any responsibilities relating to the physical plant or to any construction matters. Attorney for Apex has filed a complaint.

2. Attorney previously represented a grocery store chain as its Washington counsel. Attorney worked on the chain's behalf to oppose a bill that would have required more precise food labeling to identify the countries from which various ingredients had been imported. During that session of Congress, the bill was defeated. Two years later, Attorney is representing the US Consumer Federation as its Washington lobbyist. The Attorney is lobbying for the Federation in favor of a food labeling bill that is similar to the one Attorney opposed for the grocery chain. The grocery store chain has filed a complaint.

3. Faith Lopez hired Lawyer in early 2008 to help her file for Social Security disability benefits. Lawyer filed an application on Lopez's behalf, which was denied on May 28, 2008. Although Lawyer told Lopez that he would appeal the decision, he did not do so. Throughout 2009, when Lopez contacted Lawyer about the status of her case, he falsely told her that the case was still pending. After Lopez learned from the Social Security Administration that her application for benefits had been denied, she asked Lawyer to return her file. He failed to do so, despite Lopez's repeated requests. In 2011, Lawyer was placed on inactive status for the bar based on a disability but neglected to notify Lopez that he could no longer represent her. Lopez has filed a complaint.

4. In 2010, Steve Larson hired Attorney to represent him in a workers' compensation matter. Attorney received several workers' compensation payments on behalf of Larson, including a check for $2,552.41, dated October 10, 2010. Attorney placed that check in her Client Trust Account but, instead of turning over the funds to Larson, she falsely told Larson that the check had been lost. In January 2011, Attorney transferred $1000 from the Client Trust Account to her operational account to pay rent on office space. Also in January, Attorney untruthfully represented to Larson that the check had been reissued by the workers' compensation board and mailed to her office address. In February, Larson received a check for $1552.41 from Attorney along with a statement showing a payment to Attorney of $1000 for "attorney fees for 10 hours of work performed for client in workers' compensation matter at $100 per hour." Attorney fees in workers' compensation claims are generally contingent upon recovery and are limited to 20% of the amount collected on the workers' compensation claim. Larson has filed a complaint about Attorney's fees.

5.After his 2003 divorce from his first wife, Attorney kept and continued to live in their home in Superior, Colorado. The house was encumbered by deeds of trust securing two mortgages for $297,050.00 and $97,600.00, respectively. The second mortgage was held by his friend Cook. Attorney reported during investigation that he had accrued about $75,000.00 in equity in the house by August 2007.

Attorney provided estate planning services to Dustin and Barbara Lindsey on a periodic basis beginning in 2002. In 2007 and 2008—the timeframe of the loans at issue here—an associate in Attorney's firm performed approximately $1,000.00 in legal services for the Lindseys.

Attorney and Mr. Lindsey skied and played golf together from time to time. In some instances, their outings were part of group events sponsored by Merrill Lynch, to which both men had a connection. Attorney stayed at least once at the Lindseys' second home in Vail Attorney considered Mr. Lindsey a friend. Mr. and Mrs. Lindsey both attended Attorney's 2007 wedding, but Attorney did not have an independent friendship with Mrs. Lindsey. Mr. Lindsey characterized his relationship with Attorney as "a friendly relationship that was based on business."

In the face of mounting financial pressures, and knowing the Lindseys had previously loaned money to friends, Attorney asked Mr. Lindsey for a loan of $168,000.00 around July 30, 2007. He explained to Mr. Lindsey that he was having trouble paying salaries and rent for his firm's office space in the wake of his associate's unanticipated departure. Attorney did not anticipate having trouble repaying the loan because his firm had been grossing $45,000.00 to $50,000.00 per month before the associate left and he believed the firm could return to that level of profitability. Mr. Lindsey responded by email to Attorney's request for a loan, saying the Lindseys would "be happy to help," noting that the transaction should be "discreet," and assuring Attorney, "As to terms, repayment, interest rate and all, we'll work something out."

Attorney did not advise the Lindseys to seek independent advice regarding the loan, obtain their written consent to the transaction, or inform them about his indebtedness to Cook or his

general creditworthiness. He knew, however, that the Lindseys had wealth management advisers from whom they could solicit advice and that Mrs. Lindsey—who had worked as an accounting manager for several companies, including Yahoo—was financially savvy. Mr. Lindsey, for his part, did not doubt Attorney would repay the loan, so he did not deem any additional information necessary before agreeing to the transaction. Mr. Lindsey had trusted Attorney enough to continue to retain him for estate planning services when he moved from one law firm to another, and Mr. Lindsey generally considered Attorney to be a "good guy."

At some point after requesting the loan, Attorney created and gave the Lindseys a draft deed of trust indicating that he was placing his house in trust for the Lindseys' benefit. According to Attorney, however, after he informed the Lindseys he had accrued only $75,000.00 of equity in his house, the parties agreed it was not worthwhile to follow through with the deed of trust.

Although Mr. Lindsey affirms that Attorney disclosed the limited equity in his house, Mr. Lindsey believes the parties nonetheless agreed to partially secure the loan with a deed on Attorney's house, such that the Lindseys would hold the second lien on the residence. Mr. Lindsey also stated that, although he had entered into multiple real estate transactions in the past, he was not very knowledgeable about deeds and did not realize a deed of trust must be recorded to carry legal force.

On August 15, 2007, the Lindseys and Attorney finalized the $168,000.00 loan transaction. As reflected in the promissory note he drafted, Attorney agreed to pay the Lindseys ten percent interest per year, with eleven interest-only monthly payments of $1,375.00 beginning on September 15, 2007, and one final payment of $169,375.00 on August 15, 2008.

The signed note includes an uncompleted clause that reads, "The indebtedness evidenced by this Note is secured by a Deed of Trust dated August ____, 2007...." The deed of trust was never finalized or recorded: the last draft is unsigned and contains blank spaces for dates and several sentences with strikethroughs. Attorney did not remove the reference to the deed of trust from the promissory note, however, nor did the Lindseys insist upon receiving a final copy of the completed deed of trust or a corrected version of the note.

From fall 2007 through spring 2008, Attorney made the prescribed monthly payments to the Lindseys, in some instances after the due date. In August 2008, he told Mr. Lindsey he could not pay off the balance of the loan. As such, the Lindseys agreed to extend the loan's maturity date by one year. Mr. Lindsey testified that he felt he had no choice at the time but to agree to the extension and hope for the best. Attorney drafted and signed a new promissory note providing for two interest-only payments of $1,375.00, due in September and October 2008, respectively, followed by nine payments of $16,000.00 each month from November 2008 through August 2009, when any remaining balance was due. As with the initial loan, Attorney did not suggest the Lindseys seek independent legal advice or obtain their written consent to the terms of the loan.

In partial satisfaction of the second note, Attorney made four payments of $1,375.00 each in 2008 and eight payments of $3,500.00 each in 2009. He then stopped making payments on

the loan in late 2009 and filed for bankruptcy, leaving an unpaid loan balance of approximately $156,000.00. The Lindseys have filed a complaint.

6. Anna Barnes has filed a complaint against Attorney. Your investigation has revealed the following information.

   Anna Barnes hired Attorney in March 2007 to represent her in a personal injury lawsuit against a motorist who struck her vehicle. Barnes, who is in her mid-eighties, testified that, from the outset, she had great difficulty in eliciting information about her case from Attorney. She claims to have heard nothing from him for nearly a year after retaining him, despite calling his work and cell phones weekly. He finally responded to a letter she wrote in early 2008, in which she sought a release from their contract. According to Barnes, Attorney called her to say that he had not received her earlier messages and had been addressing a problem with his mother, but he vowed to turn his attention to her case. Barnes agreed to let him continue the representation, and she then began to receive "sporadic" communication from him. However, she stated that he did not meet with her prior to her deposition and she was very distressed when he arrived at the deposition nearly an hour late without alerting her or his staff.

   When you contacted him, Attorney offered a somewhat different version of these events. Contrary to Barnes's recollection, he stated that he took photographs and obtained documents at a visit to her home on May 22, 2007, and he then interviewed her and collected information at her home on November 30, 2007. When they next met in March 2008, he explained to her that, among other actions, he had obtained relevant records and had sent notices to subrogation carriers. His notes show that he again visited her home on May 19, 2008, at which time he documented how her injuries had impaired her regular activities. You find Attorney's statements regarding his visits to Barnes's home to be credible.

   On November 5, 2008, Attorney filed a complaint on Barnes's behalf in Denver District Court. A settlement conference was held on September 14, 2009. Barnes attended the conference with Attorney, but she testified that she "just sat there" and no one talked to her. She also testified that she signed the settlement documents without receiving an explanation of what they meant. Attorney, by contrast, averred that he reviewed the settlement documents with Barnes by telephone before his assistant brought them to her home for her signature on November 2, 2009. You credit Attorney's testimony that he spoke with Barnes about the settlement documents before she signed them, though you also believe Barnes's statement that she did not receive a full and clearly comprehensible explanation regarding the documents.

   Under the terms of the settlement, Farmers Insurance agreed to pay Barnes $35,000.00 on behalf of the driver who hit her car. That figure was subject to a $22,510.00 lien held by Hartford Underwriters Insurance Company and a $12,953.50 lien held by Kaiser Colorado Foundation Health Plan for bills paid on Barnes' behalf by those companies. On November 2, 2009, the day Barnes signed the settlement documents, Attorney deposited Barnes's settlement check for $35,000.00 into his client trust account and paid

himself $11,666.66, his one-third share of the settlement proceeds based upon his contingency fee agreement with Barnes. That fee agreement was in writing.

From November 2009 to January 2010, Attorney endeavored to reduce the two outstanding liens. He first settled the Hartford lien on January 10, 2010, for $4,502.00. Attorney claims that he told Barnes at the time of the settlement and in January 2009 that he needed to resolve subrogation issues before giving her a check. But Barnes's indicated to disciplinary board counsel that she had not understood her receipt of settlement funds would be delayed and that she became concerned in early 2010 when no settlement check had arrived. On February 2, 2010, Barnes complained to the Disciplinary Board about Attorney. On February 3, 2010, she mailed a letter to Attorney requesting her settlement share. On February 5, 2010, Respondent sent Barnes a disbursement statement and a letter, explaining that he could not disburse the final sum to her until he resolved the outstanding Kaiser lien, a process that had been delayed when an adjuster took an extended leave. On February 11, 2010, Respondent settled the Kaiser lien for $1,050.00 and delivered to Barnes a check for $15,175.96.

7.In 2007, Mitchell Cole hired Attorney to represent him in post-dissolution matters involving his ex-wife ("Ms. Cole") and minor daughter. At the conclusion of the initial dissolution proceedings, the court entered an order ("May 2000 Order") stating that at all times not designated for the daughter to be with Cole, their minor daughter should be with Ms. Cole and that the parties should inform each other of their current addresses.

In 2006, after contentious and extended litigation resulting in a contempt hearing, the parties entered into a stipulation requiring Ms. Cole to provide Cole with their daughter's school year calendar within ten days of receipt and to bear equally the costs of their daughter's air travel. The stipulation further provided that if either party filed a motion for contempt, the prevailing party would be entitled to $1,000.00 in liquidated damages, reasonable attorney's fees, and costs.

In September 2008, Cole learned for the first time that Ms. Cole had enrolled their daughter in a Virginia boarding school the prior month. Cole believed his former wife was in violation of the May 2000 Order provision stating that their daughter should be with one or the other parent at all times. Attorney discussed these matters with Cole, who directed Attorney to file a punitive contempt citation on his behalf. Attorney did so in December 2008. In the citation, Attorney asserted that Ms. Cole's behavior violated the May 2000 Order, increased the distance between Cole and his child, increased the travel expenses for visitation, and made it difficult for Cole to communicate with his daughter, who was subject to telephone call restrictions at the school. Attorney argued that a temporary injunction pursuant to state law was in effect, which prohibited either party from removing their daughter from Colorado without consent of the other party or written court order.

At an advisement hearing on January 20, 2009, the court informed Attorney that the temporary injunction was no longer in effect, as it had not been made permanent. Attorney stated that he was not relying entirely the temporary injunction as grounds for

the contempt citation. In spite of the court's expressed concerns about the contempt citation, Attorney persisted and the matter was set for a citation hearing on March 17, 2009.

During the citation hearing, Attorney reiterated the arguments made in his contempt citation, except for the temporary injunction argument. Attorney noted during the investigation that he abandoned the temporary injunction argument after the court advised him that it was inapplicable. At the conclusion of the hearing, the court determined that no order entered in the case prohibited Ms. Cole from sending her daughter to boarding school outside of Colorado, Cole could have filed a motion to prohibit his daughter's removal rather than a contempt citation, Ms. Cole did provide Cole with the calendar by email in September 2008, and the child's attendance at boarding school had not affected Cole's visitation. Although the court stated that it believed the reasons that Cole gave for filing this motion, it ultimately concluded that Attorney's contempt citation was "not proven ... not founded ... spurious ... [and] vexatious." The court further ordered Cole to pay $9,369.50 in attorney's fees and $1,000.00 in liquidated damages.

Attorney appealed this order, contending that the trial court erred in determining Attorney did not meet his burden for the contempt claim and in awarding attorney's fees against him individually. The appeal is still pending.

In considering disciplinary action against Attorney, you have looked at the May 2000 Order and have determined that the order is open to interpretation but that the logical conclusion of Attorney's interpretation would be that the daughter could not leave Ms. Cole's house to attend any school. Attorney replied during investigation that he construes the May 2000 Order to prohibit Cole's daughter from attending school in Virginina because she would no longer be under either parent's care but rather under the care of a school administrator.

The elements of punitive contempt are: "(1) the existence of a lawful order of the court; (2) contemnor's knowledge of the order; (3) contemnor's ability to comply with the order; and (4) contemnor's willful refusal to comply with the order."

In his response to the disciplinary board inquiry, Attorney stated that he consulted with Cole prior to filing the contempt citation, that Cole was angry and concerned that Ms. Cole was allegedly intentionally hiding information from him regarding his daughter's schooling and whereabouts, and that Cole wanted to file the citation. Both of the parties were aware of the May 2000 Order and presumably had been complying with the order until August 2008. Attorney and his client interpreted Ms. Cole's actions to be a willful refusal to comply with the order.

Although state law allows for the modification of child custody, Attorney reported that he did not file a motion contesting the daughter's removal or for modification of child custody as he felt, given the contentious history between the parties and based on his discussions with Cole, that a contempt citation was proper.

8.Attorney maintains a Client Trust Account with JP Morgan Chase & Company ("Chase"). On February 10, 2010, Client Jones paid Attorney $500.00 by check pursuant to a flat fee agreement. That same day, Respondent deposited and withdrew $500.00 from his Client Trust Account. On February 18, 2010, Chase returned the $500.00 check because Jones had insufficient funds to cover it, causing two of Respondent's checks to bounce.

After Chase notified the disciplinary board of the overdraft, you asked Attorney for a written response, copies of the returned checks, his last three monthly Client Trust Account statements, copies of his record keeping system that coincided with his Client Trust Account statements, and his trust reconciliation documentation. In response, Attorney explained that Jones paid him $500.00, representing the first of four installments under a flat fee agreement, and that he had spent the funds a week earlier, thereby causing the overdraft in his account when Jones's check was returned. Attorney attached a copy of his February 2010 Client Trust Account statement but did not provide you with the other requested documents. Attorney reported that his fee agreement with Jones stated that Attorney was entitled to the $500.00 upon his entry of appearance and that this type of agreement is standard among attorneys. Attorney also reported that he cannot find the fee agreement in his files. Attorney reported that he had earned the fee on the day he deposited the $500.00 because he had already interviewed the client, prepared an entry of appearance in this matter, paid the filing fee, and completed legal research. Attorney stated that he billed Jones for the $500.00. Attorney's refusal to produce the documents has led you to infer that he did not have consent or authority to spend Jones' fee at the time he deposited the $500.00 into the Client Trust Account. Attorney has also not provided the full name of the client, preventing you from talking with the client about the fee arrangement.

In providing information about the Client Trust Account, Attorney reported that he keeps track of client funds held in trust on sheets of yellow notebook paper – one for each client. Attorney places the notebook paper and photocopies of bills in each client's file. Attorney does not have a system in place that affords him a complete view of the money he is holding in his accounts, as he does not have the funds to purchase computer hardware or software. Attorney admitted that he has not reconciled his bank statements in the last six months. Attorney has not asked for help in setting up an accounting system in his office, nor has he attended any CLEs on the subject.

9. Attorney filed an appeal of summary judgment in a discrimination case in federal court. The circuit court dismissed her appeal for failure to submit an adequate brief. The court's ruling stated that Fed. R.App. P. 28(a) requires that an appellant's brief include, *inter alia*,

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record ...;

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies ...

These requirements are mandatory. Appellant has filed a noncompliant brief. Her submission lacks the requisite statement-of-facts and summary-of-the-argument sections, which are required, but the absence of which is sometimes overlooked. Crucially, however, the brief furnishes-in lieu of an argument-only a precis on the law of summary judgment and Title VII.

10. Attorney filed a brief in the New Mexico Court of Appeals in which she referred to opposing counsel's arguments as "revolting," "disingenuous," "nonsensensical," "insulting to the intelligence of the Court," "ridiculous," and "reprehensible."

11. Attorney was cited by judge for contempt and reported to the Disciplinary Board for the following conduct.

1) During opening argument to the jury, Attorney discussed matters that occurred after the filing of the complaint which the Judge had previously ruled were inadmissible.
2) During the cross-examination of one of Attorney's expert witnesses, it was necessary to rule on a matter involving her testimony so the witness was asked to leave the courtroom. Judge had issued a standing rule that counsel for all parties were prohibited from speaking to their witnesses concerning matters arising during the cross-examination, while those witnesses were under cross-examination. During a recess, immediately following the ruling on expert witness testimony, one of defendants' lawyers overheard Attorney speaking with the expert witness concerning the ruling. Attorney did not deny that this conversation took place; rather, he cavalierly asserted that no harm was caused by this conversation.
3) Failing to stand when Judge entered the courtroom.
4) One Friday afternoon, after the jury had been dismissed and as they were leaving the courtroom, Attorney smiled, waved, and told the jury to "have a nice weekend."

12.This week, Attorney gave a gun to the police. She has admitted to having had the gun in her control for several months. She has declined to identify the person who gave the gun to her. After testing, the police found that the gun was used in a robbery in which several thousand dollars in small bills were stolen and in which a person was shot and injured. The gun had no fingerprints on it. A search warrant was issued for a search of Attorney's home and safe deposit box. A wad of bills was found in the safe deposit box. Some of the bills had blood on them that match the robbery victim's blood. Attorney, afraid of being charged with

the crime, gave police the following statement: "A person whom I have never advised before came into my office, set the gun and a bag of money on my desk, and said, 'I have just used this gun to rob a store, and I shot someone. Help me; I don't want to get caught. What should I do?' I accepted the person as my client, sent the gun out for testing, and placed the cash in my safe deposit box. When the tests came back on the gun, showing no fingerprints, I turned the gun over to the police." Attorney refuses to reveal the client's name.

13. Attorney has handled Elderly Client's legal matters for several years. This past year, Elderly Client didn't seem to recognize people, including Attorney, but has clear ideas on how she wants her property and estate matters to be handled. Attorney sometimes contacted Elderly Client's daughter to consult with her on the best way to handle Elderly Client's confusion. Recently, Elderly Client's daughter asked for Attorney's help in convincing Elderly Client that she should live in a special facility. Thinking that she was helping Elderly Client, Attorney took daughter on as a client in an action to allow daughter to assume guardianship of Elderly Client. Elderly Client has now fired Attorney and has hired another lawyer to represent her in the guardianship action. Elderly Client has filed a complaint against Attorney.

14.Attorney placed a printed flyer in the booth of every artist exhibiting works at the local county fair. Attorney is licenses to practice in this state. The flyer says the following:

> I, Attorney, am a lawyer with offices at 1117 Stanford Drive NE, Albuquerque, NM. My phone number is 555-555-5555. I have a J.D. from UNM School of Law and an M.F.A. from UNM. My practice includes representing artists in negotiating contracts between artists and dealers and protecting artists' interests. You can find me in the van parked at the fair entrance.

All of the factual information on flyer was correct. A retainer agreement was on the back of the flyer. At the entrance to the fair, Attorney parked a van with a sign that said "Attorney for Artists." You have received a copy of the flyer and a photo of the van in a complaint from another lawyer.

15**.** Below is an entry from Attorney's blog found on his firm website**.** Hines was represented by Attorney Hunter who wrote and published the blog entry.

# This Week in Richmond Criminal Defense™

## Not Guilty in Carjacking Case

On May 22, 2008, Brandon Hines was found not guilty of all charges stemming from a carjacking that took place in May of 2007. In a case tried by Horace F. Hunter of the law firm of Hunter & Lipton LLP before the Honorable Frederick L. Rockwell, Brandon Hines left the courtroom a free man after Judge Rockwell dismissed all charges against him. Citing the credibility of the prosecution witnesses along with the complete lack of evidence, Judge Rockwell dismissed the charges of carjacking, conspiracy to commit robbery, and two counts of contributing to the delinquency of a minor.

The case involved the theft of a car from the victim by three juveniles after the victim attempted to buy marijuana from them. The victim, accompanied by Brandon Hines, traveled to a neighborhood in Chesterfield County to purchase marijuana. It was undisputed at trial that Hines knew the victim as well as the juveniles who committed the robbery. Convinced that the juveniles could not have planned the robbery alone, the Commonwealth Attorney decided to charge the only other adult at the scene aside from the victim which just happened to be Hines. In an attempt to tie Hines to the carjacking, the prosecutor cut a deal with two of the juveniles to testify against Hines and implicate him in the robbery. The only problem for the prosecution was that one of the juveniles acknowledged that Hines was not involved and the other juvenile appeared to fabricate some of his testimony. Initially testifying that he did not have a deal with the prosecution, he eventually admitted that he did have an agreement with the prosecution to testify against Hines in exchange for his charges eventually being dropped. The other problem with his testimony of course was the fact that he was the one who drove away in the victim's car and his testimony was almost completely contradicted by the other prosecution witness.

This case is just one more example of the fact that simply because someone is charged with a crime does not mean that they are automatically guilty. People, including prosecutors, often make assumptions without fully evaluating the evidence in a particular case. That is why it is truly important to withhold judgment regarding the guilt or innocence of a defendant until both sides of the story have been told. Once the evidence has been fully examined and cross-examined, assumptions that were originally made are debunked and the innocence of a defendant will be proven as it was in this case.

BONUS QUESTION (5 points)
Identify one rule or issue discussed in Ethics this session that surprised or disappointed you and explain why.