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BAUM
FALL 2013

FINAL EXAMINATION
750-001 ETHICS

This is a three hour examination. You will have an additional 30 minutes to read the questions and plan your answers before writing your answers. The exam consists of three questions worth a total of 300 points. The value of each question is noted below. One question is worth 75 points, one is worth 125 points, and the last is worth 100 points.

In answering each question, you are to 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:

Identification of issue(s) and rule(s)
Application of rule(s) to specific facts using specific standards and language from the relevant rule(s), comments, case law or other materials as appropriate
Explanation of reasoning
Conclusion (clear determination on action disciplinary counsel will take) supported by your analysis and application of the rule(s)

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.

Each of the exam question fact patterns is taken directly from a disciplinary decision.

QUESTION ONE (75 points)

In July 2010, Client retained Attorney to represent him in a criminal matter involving several felony charges. Following Attorney's explanation of the representation agreement and Attorney's discussion of the agreement with Client, the two executed a written contract for legal services with provisions 4(b) and (6) being specifically initialed by Client. The contract between Attorney and Client provided, in relevant part:

> 3. Counsel shall defend the case to dismissal, or sentence or deferred imposition of sentence, including a jury trial if necessary. Defense shall include investigation. Counsel agrees to and shall perform the services to the best of his ability and put forth his best effort in defense of the case.
> 4. *FEE:* In consideration for Counsel's legal services in paragraphs 2 and 3 above, Client does hereby agree to pay Counsel a fee in money as follows:
> a. $ __N/A_____ flat fee. There is no refund of this flat fee.
> OR
> b. $ *30,000* minimum fee, plus Counsel's hourly rate for time put in over the minimum fee. Counsel's hourly rate is $175.00 per hour out of court, and $200.00 per hour in court. Counsel keeps track of all services and time put in on a case, and this information is generally provided to Client monthly. Any fee due over the minimum fee will be billed to Client monthly and is due upon receipt. There is no refund of the minimum fee.
> ....
> 6. *TRUST ACCOUNT:* Client agrees to pay $ *1000.00* in advance into Counsel's trust account for payment of costs and expenses, and for possible, future incurred attorney fees, and to *replenish* the trust account money as needed and agreed to by the parties. Trust account money is Client's money, but Client hereby agrees that Counsel can draw on the money for costs and expenses, and unpaid attorney fees. The status of the trust account money, including draws and balance, will be provided to Client in the monthly billing. Any unused trust account money at the conclusion of the case will be returned to Client upon final billing.
> ....
> 8. Counsel shall have the right to move the court for withdrawal from representation of Client at any time for any failure by Client to pay Counsel for any money due Counsel under this agreement. Additionally, IF AT THE TIME OF THE PRETRIAL CONFERENCE CLIENT IS GOING TO CONTINUE A PLEA OF NOT GUILTY AND THE CASE IS TO BE SCHEDULED FOR JURY TRIAL, THEN CLIENT AGREES TO PAY TO COUNSEL, IF NOT ALREADY PAID, PRIOR TO THE PRETRIAL CONFERENCE, ALL OF ANY BALANCE DUE COUNSEL AT THAT TIME, PLUS AT COUNSEL'S OPTION, TO COUNSEL'S TRUST ACCOUNT, AN ESTIMATED AMOUNT OF MONEY TO INSURE THE PAYMENT OF ATTORNEY FEES AND COSTS FOR THE JURY TRIAL. COUNSEL WILL PROVIDE SUCH AMOUNTS TO CLIENT PRIOR TO THE PRETRIAL CONFERENCE. FAILURE BY CLIENT TO PAY SUCH AMOUNTS PRIOR TO THE PRETRIAL CONFERENCE SHALL BE CAUSE FOR COUNSEL TO MOVE THE COURT FOR WITHDRAWAL FROM REPRESENTATION OF CLIENT IN THE CASE ON OR BEFORE THE TIME OF THE PRETRIAL CONFERENCE. At any time after the pretrial conference, and before trial,

Counsel may require, at his option, that Client pay into his trust account an estimated amount of money to insure the payment of attorneys fees and cost for trial, if not already paid by Client. A failure to pay fees and costs under this agreement is a breach of this agreement.

9. IF CLIENT BREACHES THIS AGREEMENT AS TO ATTORNEY FEES OR COSTS, CAUSING COUNSEL TO WITHDRAW FROM REPRESENTING CLIENT, OR FOR ANY OTHER REASON GIVES THE COURT CAUSE TO ALLOW COUNSEL TO WITHDRAW, CLIENT WILL NOT BE ENTITLED TO ANY REFUND OF ANY PREVIOUSLY PAID FEES.

Client paid Attorney $30,000 and an additional $1,000 for an advance payment of expenses, as required in the contract. Attorney placed the $30,000 in his operating account.

Attorney noted the following in Client file and in monthly statements to Client:
Conferences with Client on July 16, August 4, and August 27, 2010 (1 hour each)
Letter to the prosecuting attorney on August 27, 2010 (1 hour)
Received a fax from Client on September 8, 2010 (.5 hours)
Preparation for preliminary hearing (begun on September 16, 2010) (20 hours)
Appearance at a 45–minute preliminary hearing in the case on September 21, 2010 (1 hour)
Two-hour meeting with Client after the preliminary hearing (2 hours)

Attorney worked on other clients' matters while representing Client.

Client terminated Attorney's employment on September 22, 2010 and requested return of the "unearned portion" of the $30,000 payment. Attorney did not return any payment to Client based upon the fee agreement provision that "there is no refund of the minimum fee."

Following Attorney's refusal to return any funds, Client filed a complaint with the disciplinary board. Attorney stated to disciplinary counsel that he went over the contract in detail with Client because of the "red flags" presented by Client, in that Client was firing another attorney for whom Attorney had respect, that there was a long history with the case, that it would be a difficult case, and that Client had a tendency to repeat himself in their meetings and not stay focused. Attorney also stated that Client was talking about hiring numerous experts and demanding Attorney talk to them at very early stages of the proceedings. Further, Attorney was aware that Client had fired a lawyer just before the first scheduled preliminary hearing, that there would be another preliminary hearing scheduled, and Attorney was concerned Client would again switch lawyers before the next hearing. Attorney also stated that he wanted to be compensated for his availability, for the time and responsibility he invested, and for the risk he assumed in the early stages of a serious case involving multiple felonies.

As disciplinary counsel, you have been asked to assess the complaint and determine if Attorney should be disciplined. You are to draft a memo (discussion section only) of your analysis for the disciplinary board. Note the general exam instructions for structure of the exam answer. Your memo is to include a clear and specific recommendation as to disposition of the complaint.

QUESTION TWO (125 points)

Attorneys founded Kimmel & Silverman, P.C., in Ambler, Pennsylvania in 1991. The firm's practice focuses almost exclusively on the prosecution of motor vehicle warranty and "lemon law" civil claims. Both founders were admitted to the Pennsylvania Bar in 1989, and later admitted to the New York Bar. In addition, Silverman was admitted to practice in New Jersey and Kimmel in Massachusetts. Neither is admitted to the practice of law in Maryland.

From the inception of the firm, K & S handled cases in both Pennsylvania and New Jersey. Sometime after 2000, K & S expanded into other jurisdictions, to include New York and Massachusetts. K & S handles "lemon law" cases as a high volume practice. The applicable fee shifting statutes provide an incentive to automotive manufacturers to settle, as does the desire to promote customer satisfaction. In the experience of both Kimmel and Silverman, approximately 99% of their cases settle if handled properly. K & S is organized in various teams that are supervised by one of the partners or a senior attorney. The firm relies extensively on paralegals and its own mechanical experts to manage high volume attorney caseloads.

In 2011, K & S decided to expand into Maryland. Although Kimmel and Silverman considered associating with a Maryland practitioner with experience in the "lemon law" field, they were unable to find a suitable candidate. Therefore, they decided to hire and train an attorney to start up their Maryland practice.

Robin Katz responded to a web site job posting by K & S. After forwarding her resume and a cover letter, she received a call from K & S and was scheduled for an interview with Robert Rapkin. Rapkin began with the firm in approximately 2001. He manages his own caseload and has supervisory responsibility over one of the "teams" of lawyers, paralegals, and other support staff within the firm.

Katz was first admitted to practice in Maryland in December 2003. From 2003 through 2010, Katz handled social security disability cases for Health Management Associates ("HMA") in a non-adversarial administrative law setting. Katz was hired in 2010 by Health Education Resource Organization ("HERO") as a staff attorney. Katz remained at HERO for approximately nine months.

When Katz interviewed at K & S in June 2011, she had no civil trial experience. However, Katz had high volume work experience, and she had handled uncontested administrative and masters hearings. Rapkin conducted an interview and followed up with reference checks, including contact with administrative judges before whom Katz had tried cases. Katz was described as competent, well organized, and capable of handling a large caseload. Her former employer at HMA described her as someone capable of managing her own office. Rapkin knew that Katz had no jury trial experience, although he was unaware that she also had not handled contested matters. Rapkin also knew that Katz had managed a caseload of 200 to 300 social security cases. Overall, he thought Katz appeared to be a nice and competent individual who was capable of handling the job.

Katz received and accepted an offer from K & S on the same day as her interview. She spent the next month in the K & S home office in Ambler, Pennsylvania, where she was trained to handle "lemon law" cases. During that time, Rapkin took Katz with him to a couple of depositions and arbitrations. He also assisted her in developing Maryland forms for basic pleadings. She was trained on the firm method for preparing and evaluating cases. Katz met most of the K & S lawyers and staff, and she spent time with both Kimmel and Silverman.

K & S utilizes "Time Matters," which is a computerized calendaring/database system. K & S policy requires that time sensitive matters be entered into Time Matters when they are received, at which time the due dates for deadlines and responses are calendared. The Time Matters system sends automated reminders of deadlines to the responsible lawyers and paralegals. Additionally, it enables supervising attorneys to monitor to ensure that case deadlines are met. Lisa Graham, who serves as the K & S Office Manager, along with IT staff, trained Katz on the use of Time Matters during her orientation at the Ambler, Pennsylvania office. Katz acknowledges that she was trained on the Time Matters system. She described it as a tickler or calendaring system. She was well aware of her responsibility to input matters she received into the calendaring system. After the month training period, Katz returned to Maryland. Katz made arrangements to procure office space and open an office in Owings Mills. Katz was the only person in the office. She shared equipment and some common space with other unrelated entities. Additionally, she had the shared use of a receptionist to answer and transfer calls. Katz was responsible for all of her own clerical work.

Katz understood that she would not have a paralegal in Maryland at the outset. She knew, however, that she would have access to paralegal assistance through Pennsylvania. She was led to believe that K & S would hire a paralegal for the Maryland office once it had a sufficient caseload.

K & S had begun to accept Maryland cases while Katz was still training in Pennsylvania. There existed approximately fifty Maryland cases by the time she opened the office in Maryland. Katz immediately started drafting Maryland complaints based upon Pennsylvania forms that she adapted to Maryland law.

Testimony and exhibits clearly reflect that K & S operates a volume practice in a number-driven environment. The overt emphasis on attorney numbers and expectations is pervasive in intra-office communications, and seems essential in the firm culture.

Starting in early September, K & S gave Katz a weekly benchmark for complaints to be filed. She was initially expected to put ten cases a week in suit, although that number increased in January 2012 to fifteen cases per week. In addition to the filing expectations, a specific revenue target of $10,000 per week in attorney's fees from settlements was established. This was confirmed to Katz in a November 23, 2011 e-mail from Rapkin, who initially supervised her work.

Katz's ability to meet her revenue expectations was the subject of a series of email exchanges, all of which emphasized the importance of this objective. In a particularly blunt exchange on

November 29, 2011 from Rapkin, with copies to Silverman, Kimmel and the Office Manager, Katz was told:

> This is not what I want to see. The report you gave me says you settled 1 case in the last 2 weeks, and you have 224 cases. Let me make it clear, first and foremost, you must make your number. The number you have is not set for fun; it has a very important purpose. Your number is the most important way we judge how to give raises, whether we can fund support staff for your office, and as a practical matter if all your cases come up for trial at the same time b/c they are not settled you won't be able to handle them all. Therefore, no excuses, don't call, no need to talk, just get on it and only call me with good positive news of settlements, or demands you are going to make.

The revenue quota was also documented in a memorandum outlining performance expectations for Katz in order for her to have a positive employment review. As stated in the Memorandum:

> You have already been told our expectations of how much income we expect you to bring to the firm each week, *on a consistent basis.* Every weekly number is based upon 52 weeks a year. Each lawyer shall make certain that when he or she is on vacation or holiday, the settlements for the weeks before and after are not forgotten. The attorney must make up the missing week/days settlements so the average income per week is still expected.
>
> ... Your weekly number starting the week of 01/03/12 is $10,000.00. So there is no confusion, we expect you to consistently bring to the firm $10,000.00 in attorney fee and cost receivables each week in order to have a positive review in June.

It is clear that Katz did not consistently meet her performance benchmarks. No adverse action was initiated by K & S. However, the performance measures were a regular point of emphasis. In January 2012, Kimmel assumed supervisory responsibility over Katz. The emphasis on her numbers remained.

On February 8, 2012 and April 12, 2012, Silverman e-mailed Katz expressing concern that she was not settling cases with manufacturers other than Ford and Chrysler. On May 10, 2012, Kimmel followed up on this topic and instructed Katz: “To break the backlog, I've decided to help you along.” Kimmel directed Katz to send at least ten substantive letters three days per week to opposing counsel and that, unless Kimmel agreed in advance, this was “to be done without fail as instructed.” As Kimmel described:

> I do not want form letters or correspondence that clearly shows the file has not been reviewed. Each letter should have substantial detail and/or a demand that applies accurately to that particular case. While you may disagree with this routine, watch what happens as a result. You will blow through your numbers, be better prepared for arbitrations and be in more frequent contact with clients. As a consequence, we can add another attorney and at least one paralegal. I want YOU to head up MD and make it a well-oiled machine, but allowing all manufacturers but two to largely ignore you while

> waiting for trial is NOT the way. Do what I ask and you will reap ALL the rewards of that labor, in ways you will find very beneficial.

Katz dutifully started sending out thirty letters per week, with copies forwarded to Kimmel three times per week. This continued from June 1, 2012 through the end of Katz's employment, except during vacation periods. On June 3, 2012, Kimmel again emailed Katz questioning the fees generated in her settlements, which were almost always $2,500 per case. In response to Katz's claim that most settlements were pre-suit, and fees would be larger in other cases, Kimmel commented:

> I, for example, review every file every month, and it takes me about 30–60 minutes to update myself. Each month, between .5 and 1.0 are added to the file for that alone. Then there are issues that come up, protracted discussions, consultations with the experts and client, etc. No two cases are identical and so I expect that settlement of fees would be similar across the board, but not identical as they have been.

At the time, Katz had between 200 and 300 cases that would need such monthly review to follow this directive.

The issue of paralegal support for Katz was also a subject of continuing discussion. As early as September 23, 2011, Kimmel indicated that he agreed with Katz that the firm needed a "full time professional paralegal down there." It is clear that Katz could and did avail herself of paralegal support from the Pennsylvania office. This was not always a smooth process. In one e-mail exchange in October 2011, Katz noted instances where discovery mailed directly to Pennsylvania in Maryland cases was forwarded to her to handle just before responses were due. Part of the problem at that time was that the firm was using its Pennsylvania address on filings, so pleading were mailed there. Although this part of the difficulty was corrected, the coordination for support from Pennsylvania to Maryland was not always smooth. In late December, Katz inquired of the Office Manager whether there was any news about hiring a paralegal for Maryland. In response, she was reminded of the need to file fifteen complaints per week.

Once again, on January 3, 2012, Katz asked Silverman where the firm stood on hiring a paralegal. In particular, she noted she was receiving five to ten sets of discovery each week, and that she had a number of motions hearings set. While she acknowledged the assistance she was receiving in Pennsylvania to draft complaints, she noted the need to arrange service, file affidavits of service, subpoena records, and communicate with clients.

There was at least one other occasion in April 2012 when Katz noted a problem filing timely discovery responses because the assigned paralegal was leaving on vacation. Whether the problem was caused by delays by Katz in forwarding the documents to Pennsylvania, or by the paralegal that had not advised Katz of the upcoming vacation, was not entirely clear.

It is clear that Katz's workload steadily increased over her tenure with K & S. By September 27, 2011, she had 127 cases, with 45 in suit. Barely a week later, on October 2, 2011, she reported that she had 194 cases. By November 8, 2011, she had 203 cases, with approximately 100 in suit. As of December 6, 2011, the number had grown to 239 cases, with 125 in suit. During the period

from September 2011 through August 2012, Katz filed 461 suits in Maryland. She was assigned over 500 total matters.

Katz did not have an unusual caseload for a K & S attorney, when evaluated based solely on the number of cases. More senior attorneys have up to 1,000 or more cases assigned to them. It also is not unusual at K & S to manage discovery with the assistance of paralegals in other offices.

Katz also noted the growth in her workload in other areas. While the practice of the firm is to move aggressively toward settlement, and to settle most cases early, Katz had a volume of cases in suit with active discovery. Unlike the practice in some other jurisdictions, Maryland did not require early arbitration, so cases did not get pushed as easily towards settlement. Therefore, in addition to discovery, Katz began to handle a steady array of motions and court appearances. In one e-mail in late April 2012 that discussed calendar matters that were scheduled in the next six weeks, Katz noted six motions hearings in a week period, together with multiple mediations. Additionally, she had matters in jurisdictions throughout the state.

Katz managed to meet various competing demands with one glaring omission. She failed to enter deadlines into Time Matters in forty-seven cases. These were all Nissan or Toyota cases that were aggressively litigated by the law firm of Piper Rudnick. The discovery filed in those cases was relatively routine. However, Katz did not access, or even attempt to access, paralegal assistance with responses in those cases.

Although Katz was assigned a specific paralegal in the Pennsylvania office to work with in her early months with the firm, that system evolved. By the fall of 2011, K & S paralegals were assigned to specific manufacturers, so discovery was referred by lawyers to the paralegals in charge of that manufacturer. Although there was a K & S paralegal to assist with Nissan and Toyota matters, Katz seemed unaware of that assignment. Since Katz sought no assistance in these cases, and discovery and motions were never logged into Time Matters, no alerts were generated when responses were delinquent.

When timely responses were not filed, a series of Motions for Sanctions seeking dismissal were filed by opposing counsel. Katz did not respond to those Motions. Rather, she undertook to prepare discovery responses. In twenty-eight cases, the Motions for Sanctions were treated as Motions to Compel, and a deadline was set to file belated discovery responses. In eighteen of those matters, no discovery was ever filed. In the remaining ten, answers were filed outside the extended deadline. Renewed Motions for Sanctions were filed, and all but three of those were not even answered. The first case dismissal occurred in May 2012. Ultimately, dismissals with prejudice were entered in all forty-seven cases.

Katz was overwhelmed by January 2012. Rather than prioritize the overdue discovery and motion responses, Katz continued to focus on putting cases in suit and pushing for settlements, as those were the objective criteria being measured within the firm. By that time, Katz was also out of the office a lot with court appearances and depositions. Katz seemed genuinely unaware that matters could or would be dismissed because of the discovery lapses.

Katz was afraid to disclose her lapses to Kimmel and Silverman. Katz felt the partners were not pleased with her and that her job was on the line. While this assessment was not completely accurate, it impacted her decisions. Since the discovery and motions in the dismissed cases were never logged in to Time Matters, the problem could not be detected through the firm's computerized system. However, Katz also acted affirmatively to cover up her difficulties. In June and July 2012, Katz forwarded Kimmel copies of at least ten (10) letters she purportedly sent to opposing counsel in cases that she knew had already been dismissed.

The Iweala case was the first dismissed case that came to light. In Iweala, Katz was given an extension to file discovery in an Order entered in response to an initial Motion to Compel. Although Katz mailed responses within that extended deadline, they were unexecuted. In response to a renewed Motion to Compel, which also went unanswered, the Iweala matter was dismissed with prejudice on May 24, 2012.

On June 29, 2012, the Iweala dismissal came to the attention of K & S, and the Office Manager immediately communicated with Katz seeking an explanation. Katz characterized the dismissal as inappropriate, as she claimed to have timely filed discovery. Katz also represented that a Motion to Reopen had been filed. That Motion was not actually docketed until July 6, 2012. Silverman contacted Katz when he learned of the problem, and was initially assured that she believed the matter could be reinstated. When Katz later acknowledged that she had made a mistake and the case could not be reinstated, Silverman did not take any further action. Silverman was unaware of any other problems at that time, and felt Katz was generally doing a good job. He believed that Iweala was an isolated mistake, that good lawyers occasionally make mistakes, and that they should move forward.

In mid-July, other concerns regarding discovery came to light at K & S. The Office Manager e-mailed Katz on July 19, 2012, asking why they had received Orders ruling on Motions to Compel. Again, Katz downplayed the extent of her difficulties, claiming that discovery had already been sent in some and the rest would be done that day. As she claimed, “Nissan loves to file these things, even though the discovery deadline is months away. The reason the rogs [interrogatories] aren't getting in is because I've been so limited in time in following up with the clients. These are all files that are here, so I didn't have Tracey working helping me with them.” No partner response to these concerns occurred.

Katz was scheduled for a one-week vacation in late July. She returned to two bins of mail and other matters that had piled up in her absence. By that point, she was totally overwhelmed. She described herself as depressed, crying all the time, and she had lost twenty pounds. Although the firm finally hired a paralegal for the Maryland office during July, Katz had the added responsibility to train the person. Katz submitted her resignation by e-mail on August 10, 2012, and left immediately. While the firm asked her to stay for a period to help with transition, she refused, citing health concerns.

Silverman drove to the Maryland office and met with Katz on the day she resigned. This was his first visit to the Maryland office. He described Katz as looking “like a beaten dog.” He was immediately concerned by stacks of documents in her office that were not filed. When he looked in file cabinets, he found other loose papers. K & S mobilized attorneys and paralegals to assist

in assessing the problem. The firm immediately hired three Maryland lawyers, and Katz's cases were all reassigned within a two to four week period.

K & S undertook to resolve client problems that came to light that were created by Katz's inaction. Clients were contacted and advised of the status and outcomes in their cases. Silverman quickly made fair settlement offers, including payment of fees to consult with counsel, for former clients who asserted claims.

Charles Carter was one client whose case was dismissed as a result of inaction by Katz, who failed to designate experts in a timely manner. Carter attempted to contact the K & S Maryland office six times in late July and early August to check on the status of his case and to obtain a scheduling order. He was unaware of Katz's resignation until some later point in time when he received a voice mail message. Carter also sent letters to K & S's home office on August 23, September 10, September 28 and December 31, 2012 and February 6, 2013, seeking a status update and Scheduling Order. Carter also sent e-mails to the home office. The first responsive communication Carter received was a letter dated February 7, 2013, advising him of the dismissal of his case.

Carter's case was eventually resolved to his satisfaction, including payment of his damages and fees to enable him to consult with counsel. Silverman negotiated the settlement reasonably and efficiently. However, Silverman did not become involved until Carter hired counsel after learning of the dismissal.

During Katz's tenure with K & S, she was the only attorney admitted to the bar in Maryland. Lawyers and paralegals within the firm were available to assist her, but her communications with them were exclusively by e-mail and telephone. Rapkin did visit the Maryland office on three or four occasions, mostly with the office manager when she interviewed potential paralegal candidates. Neither Graham nor Rapkin noted anything unusual in those visits. Neither Kimmel nor Silverman visited the Maryland office prior to Katz's resignation. They were unaware of concerns with Katz's representation. Kimmel noted he received no client complaints, which is the more typical sign of overload. Kimmel also emphasized that resources were always available to assist, if Katz had only asked.

Kimmel and Silverman were aware of Katz's request for staff support. However, they felt Katz appeared to be doing an adequate job and they were unaware of the growing problems. Although they claimed her numbers didn't dictate the staffing response, it seems clear they were not pushing to address Katz's staffing request. When the crisis hit in August, they were able to hire three lawyers almost immediately. Maryland remains staffed now with two lawyers and one paralegal with attorney caseloads around 200, which are significantly lower than other K & S offices.

As counsel for the state bar disciplinary board, you have been asked to consider disciplinary action against Katz, Kimmel, and Silverman. You are to draft a memo (discussion section only) of your analysis for the disciplinary board. Note the general exam

instructions for structure of the exam answer. Your memo must include a clear and specific recommendation as to disposition of the complaint.

QUESTION THREE (100 points)

A ranch, which was a viable livestock raising enterprise, was developed by Isaac Brooks who died in the spring of 2000, leaving a substantial estate that included the ranch. Isaac Brooks' wife, Patricia, was appointed the personal representative of the estate, and she, of course, was among the heirs. In addition to his wife, Isaac Brooks was survived by their four natural children and a daughter of Mrs. Brooks whom Isaac had adopted. One son was in quite delicate health, having already had a colostomy and a brain shunt at a relatively early age.

About two months after Isaac Brooks' death, members of the Arambel family, neighbors and long-time friends, began a series of almost daily visits with Mrs. Brooks. In the course of these visits, she expressed an interest in leasing the ranch. She also manifested an overriding concern for the future of her ill son. The record demonstrates that the additional duties required of her as personal representative, which included management of the ranch, when added to her usual responsibilities as the mother of five young children, created an extremely difficult burden for Brooks, who had not received much formal education and had little business experience. She exhibited indications of stress including drinking as much as a case of beer per day.

Not long after she expressed an interest in leasing the ranch, the Arambels arranged a meeting with Brooks in the law offices of Attorney Zebre for the purpose of discussing and arranging a possible lease. Zebre was acquainted with Brooks. The record discloses he visited in her home during Isaac Brooks' last illness. At that time, he reviewed Isaac Brooks' will, in her presence, and offered some suggestions as to improvement of the dispositive scheme.

At the meeting in Zebre's office, Brooks advised Zebre that another attorney was handling the probate of the estate of her deceased husband. Brooks suggested to all who were present that the estate attorney be involved in the negotiations. Later, she testified that, in response to this suggestion, John Arambel told her, “[y]ou don't need to talk to [the attorney] because he won't let you do it because he wants all the money.” She further testified that Zebre said to her, “[d]on't tell [the attorney] because he'll just tell you not to lease that ranch.” Zebre claims to have made several attempts to contact the attorney for the Brooks estate, but the record does not demonstrate that any contact ever was made or that the estate attorney was informed of these matters until after all negotiations had been completed and the agreement had been executed. The meeting at which the contract provisions were agreed upon was conducted with neither Brooks, nor her children, nor the estate being represented by an attorney or any other person knowledgeable in either business or law.

This meeting, which lasted about an hour, is exemplified only by reports of the conversation. No records were kept, and no documents were reviewed, discussed, or created. The parties testified that Mike Zebre, Zebre's brother who is a CPA, was summoned to the meeting at one point to explain the tax consequences of the imputation of interest by the Internal Revenue Service with

respect to periodic payments that did not include an interest factor. Brooks asked no questions of Mike Zebre, although he admitted in his deposition that he, in fact, did give her advice. Brooks' testimony with respect to this meeting was that she was not able to comprehend much of the discussion. Her recollections of the meeting, and the discussion relating to the lease and the option, were extremely vague. She testified that she did not remember any conversation concerning an option to purchase the ranch, a forty-year lease, a sale of all the cattle and sheep, or other essential terms and conditions of the agreement finally reached. Zebre recalls, on the other hand, that Brooks was “very poised, confident” and that “she was very certain and very positive, confident about what she was there about, what was happening.”

Following the meeting, Zebre prepared the contract encompassing the lease, the option, and the sale of livestock as well as the other aspects of the agreement reached at the meeting in his office. On the next day, Brooks and the Arambels again met at Zebre's office and proceeded to review, for the first and only time, the proposed contract, the drafting of which was attributable to the joint efforts of Zebre and the Arambels. Zebre asserts that he did attempt to reach the attorney for the Brooks estate at that time, but was unsuccessful. Even though he was unable to contact the other attorney, he returned to the conference room and presided over the execution of the agreement, assuring Brooks, all the while, that he was going to get in touch with the attorney for the estate the first thing the following Monday morning to make sure that the attorney had appropriate copies of everything. Zebre did follow through and delivered a fully executed copy of the agreement to the attorney for the estate, demanding that the attorney seek court confirmation of the transaction because the property still was involved in the probate proceedings. Upon his review of the agreement, the attorney for the estate recommended to Brooks that she return any consideration she already had received and that she seek rescission of the contract. Brooks did not, at that time, follow through on that advice.

A complaint has been filed against Attorney Zebre for his actions in the above matter. As counsel for the disciplinary board, you are to draft a memo (discussion section only) of your analysis for the disciplinary board. Note the general exam instructions for structure of the exam answer. Your memo must include a clear and specific recommendation as to disposition of the complaint.