

PROFESSIONAL RESPONSIBILITY  
Semester II, 2001-02

UNM School of Law  
Final Examination  
Three Credits

Professor Norman C. Bay  
April 29, 2002; May 10, 2002

**INSTRUCTIONS**

This is a three-hour exam. There are four questions. Read the questions thoroughly, address each issue separately, organize your analysis carefully, and **please budget your time**.

You may have with you your notes, any outline prepared by you or your classmates, and the Materials Supplement (which contain the NM Rules of Professional Conduct). You may not use the case book or any commercial outlines, treatises, or hornbooks.

Organize your answers before you begin writing. You will probably find it helpful to outline your answers first.

The time suggested for each question generally reflects its weight in grading.

Please write **legibly**, in ink, and on only one side of each blue book page. If you type, please double space and be sure that your examination number, your professor's name, and the page number appear at the top of every page. Clear and concise thought will be recognized and rewarded.

**GOOD LUCK!**

[Examination Begins on Next Page]

QUESTION I (45 minutes)

PART A

Greg Rivera graduated from law school in 1999 and began working for Abo & Gado (AG), an eight-person plaintiff's personal injury law firm in State A as a litigation associate. As a junior associate, Rivera often did legal research for other lawyers. In the fall of 2001, he moved to State B for family reasons. There, he interviewed with Dewey, Ever & Work (DEW), a prestigious law firm with a national litigation practice and more than 200 lawyers. Rivera was offered a position as an associate, which he accepted. He began working for DEW in January 2002.

DEW specializes in products liability defense. One of its clients is General Households, a manufacturer of consumer appliances. Among other things, General Households makes the "Hot Boy," a portable space heater. The "Hot Boy" has been likened in the press as the "Pinto" of space heaters, because of a number of reported instances in which it has allegedly exploded. It has become the subject of extensive litigation, with more than two dozen lawsuits filed nationally against General Households. DEW supervises the litigation of those cases for General Households and engages local counsel in jurisdictions in which DEW does not have an office.

By April 2002, three months after Rivera began working for DEW, the firm began to receive a number of motions seeking to disqualify it from litigation in which it represented General Households. The motions fall into two categories:

- A. A motion from AG (Rivera's former firm) alleging that the firm was handling a claim based on a "Hot Boy" while Rivera was there. The motion seeks to disqualify DEW from continuing to represent General Households on that claim.
- B. Eighteen motions from other firms representing plaintiffs in "Hot Boy" cases. These motions allege that the other firms, together with AG, were part of a "Hot Boy Litigation Committee" that pooled confidential information and tactical information about their claims while Rivera was at his former firm. Consequently, the clients of the other firms assert standing to disqualify DEW.

When asked, Rivera says that the only "Hot Boy" work he did at AG was to draft a few paragraphs in a five-page motion that argued for a change of venue based on pretrial publicity. Rivera's portion of the motion set forth the legal standard for a change of venue. This is confirmed by Rivera's billing records from AG. Rivera does admit, however, that from time to time he heard people talking at AG about the "Hot Boy."

**How should these motions be decided?**

## PART B

Bill Hall is a “takeover” specialist, a litigation partner in the mergers and acquisitions section of Dewey, Ever & Work (DEW). A prospective client, Mirv Blagg, comes to see Hall. Blagg is the hard-nosed and aggressive general counsel of Enronco, a large corporation. Blagg explains that Enronco is looking for counsel. He says that Enronco has decided to mount a hostile takeover of another company. The attempt has been kept completely secret, Blagg explains, or the share prices of the target company could be driven up in anticipation of the takeover, which would make the acquisition much more expensive. Or, worries Blagg, the target might have time to mobilize anti-takeover strategies. In a low voice, Blagg tells Hall that the target is General Households. He explains that the stock market has driven down their share prices because of the “Hot Boy” litigation.

Hall is surprised; he knows that DEW has represented General Households in the “Hot Boy” litigation. Hall tells Blagg that he must talk to his partners about the matter. Coincidentally, Hall has been invited to DEW’s corporate section’s weekly lunch meeting. All but five of the 30 corporate partners are there. The corporate section is widely considered to be one of the best in the business. At the meeting, Hall announces, “Look, you wouldn’t believe what I just heard! Enronco is planning a hostile takeover of General Households!” Hall’s announcement is greeted with stunned silence. A corporate partner explains that a month ago General Households asked DEW’s corporate section to devise anti-takeover strategies in order to try to fend off any potential hostile takeover. Two of the three corporate lawyers working on the General Households anti-takeover strategies are at the lunch.

**First, what should DEW do and why?**

**Second, assume that Blagg knew that DEW represented General Households at the time he met with Hall. Would this affect the analysis? If so, how and why?**

### QUESTION II (45 minutes)

Hiram Powers, once a high-level executive with General Households, goes to the office of Ed Vega, a local attorney, at 8:15 a.m. Vega has a general practice but was once a Public Defender and is an experienced defense lawyer. Powers is clearly distraught. He tells Vega, “Last night around 1:00 or 2:00 in the morning, I had a big argument with a drinking buddy, Sam. As far as I can recall, he was making fun of me because of the “Hot Boy” heater. When that thing blew, the company lost a lot of money, and I got fired. So we’d been drinking. We get into a fight.” Powers touches a bruise on his cheek; the other cheek is scratched. “Next thing I know I’m coming to, and he’s just lying there. Not moving. I realize he’s dead. I panic. I put him in the trunk of my car and drive out to the big white rock on the north side of the reservoir. I put him behind the rock. No one will ever be able to find him in a million years unless they hear it from me.”

Vega agrees to represent Powers. Powers says he needs to leave town for a while.

## PART A

Vega drives to the reservoir. He brings his cell phone and camera. After much searching, behind the big white rock on the north side of the reservoir, he sees a body. He walks up to the body. Suddenly, he hears a low moan. Vega was a nurse before he went to law school. He realizes that Sam is alive, but barely. Sam needs immediate medical assistance, though even with such assistance it is almost certain that he will die. Assume that the State does not have a "Good Samaritan Law" that requires third parties to assist the injured. **What should Vega do?**

## PART B

Now assume that Sam is dead when Vega finds him. Vega takes photographs of the body, and the area around the body. As he walks back to his car, 50 feet from the body, Vega finds an engraved keychain with the initials "HP" on it. Vega puts the keychain in his pocket. Powers calls that evening and confirms that the keychain belongs to him. The next day, Vega hears on the news that the police are investigating the disappearance of Sam and Powers. **What, if anything, should Vega do with the (1) information he has regarding Sam's whereabouts; (2) the photographs; and (3) the keychain? If he does something, when should he do it? If Vega turns in the keychain, can the State require him to testify where he found it and the source of the information?**

## PART C

It turns out that Sam had been a successful realtor. A week before his death, he had retained Vega to represent him in small real estate closings. The police ultimately arrest Powers. At the time of his arrest, Powers confesses to the crime. Bloodstains are found in the trunk of his car; DNA testing identifies the blood as Sam's. Powers is charged with Second Degree Murder but convicted of Voluntary Manslaughter after a jury trial. Vega represents Powers from beginning to end. After being convicted, Powers learns for the first time that Vega had represented Sam; Vega never told Powers. "I thought he knew, and I just didn't think it mattered. As far as I was concerned, Sam was gone and Powers alone was my client," said Vega. Assume that Powers's confession was admissible, as were the bloodstains, and that whatever decision Vega made with respect to the photographs, the keychain, and what Powers told him was the correct one and did not require his disqualification from the case.

Powers retains a new lawyer and seeks to set aside his conviction on ineffective assistance of counsel grounds. **What result and why?**

## QUESTION III (45 minutes)

Gus Johnson is an unhappy man. On February 2, 2002, he comes to your law office seeking your counsel. "My doggone internet lawyer!" he says. Gus explains that he was in a serious car accident on January 28, 2000. He was driving through an intersection, when another car ran a red light and broadsided Gus's car. Gus suffered serious injuries, including a broken leg, a broken arm, and several broken ribs. It took months for Gus to recuperate, and he incurred large hospital bills. "The worst of it," he says, "is that I wasn't able to work for damn near half a

year.” The driver who caused the accident received a traffic citation for reckless driving and entered a guilty plea a few months after the accident.

In December 2001, Gus decided to explore his legal options. When asked why he waited so long, he replies, “I’ve never needed a lawyer, don’t know any lawyers, and don’t know if I trust them anyhow.” A friend told Gus about a website where he could get legal help, [www.wesueforyou.com](http://www.wesueforyou.com). Gus used his friend’s computer to access the website in order to get legal assistance. On its homepage, the website says, “Chat one-on-one with your own lawyer online, who will explain general legal concepts and will give you the most relevant legal information possible for a small fee!” Gus lives in State A; the website and its lawyers are located in State B.

Gus decided to seek assistance from the website. Before being able to chat on-line with a lawyer, Gus had to click a button saying “I AGREE” to the following terms:

CAUTION: NO ATTORNEY-CLIENT RELATIONSHIP OR ATTORNEY-CLIENT PRIVILEGE WILL BE CREATED. OUR LAWYERS MAY NOT BE ABLE TO TELL YOU WHAT THE LAW IS IN YOUR PARTICULAR STATE OR TELL YOU WHAT YOU SHOULD OR SHOULD NOT DO TO ADDRESS YOUR LEGAL PROBLEM OR ISSUE. NOTHING PROVIDED BY OUR ATTORNEYS SHOULD BE USED AS A SUBSTITUTE FOR THE ADVICE OF COMPETENT COUNSEL. WE ONLY PROVIDE LEGAL INFORMATION, NOT LEGAL ADVICE.

Gus clicked the “I AGREE” button and paid a \$100 fee. He then chatted with a lawyer on-line, whereupon the following discussion ensued:

Gus: Look, I really need some advice. I don’t know anything about the law. Heck, I never even finished high school.

Lawyer: You want advice, we got advice! That’s what “We Sue for You” is all about.

Gus: I had this accident in January 2000 where I got busted up pretty bad. Was out of work for a while. The other guy ran a red light and smacked into me. My hospital bills were huge. What can I do to get some compensation?

Lawyer: It sounds like you suffered a personal injury, or what the law calls a tort, and have a personal injury claim. In most jurisdictions, you have several years to file your claim. You could recover a substantial sum of money! So, yes, you can be compensated! If you’d like, talk to a lawyer in your jurisdiction. Good luck!

#### PART A

Gus explains that on February 1, 2002, he went to see a local lawyer in town. To his dismay, he learned that his claim was time barred. Gus's jurisdiction, unlike many jurisdictions, has a two-year statute of limitations for tort claims. Gus has come to you for a second opinion. You agree to represent Gus.

**Gus sues the website for malpractice. What result and why?**

**Gus files a complaint with the disciplinary board in State A. What result and why?**

### PART B

Gus asks you to represent him and to file a lawsuit against the other driver. You explain that his claim is absolutely barred by the statute of limitations. Gus insists that the claim be filed anyway. "Dang it all, I don't care if I win," he says, "It's a matter of principle." In your jurisdiction, the statute of limitations is an affirmative defense that must be asserted by the other side. **Can you file the claim for Gus? Why or why not?**

### QUESTION IV (45 minutes)

Your law partner, Shelly, represents Flowers, Inc., a successful store that sells flowers at the wholesale and retail level. You and Shelly have a general practice in which your firm handles routine business matters, as well as trusts and estates. Flowers, Inc., is a closely held company with five shareholders. The president of the company, John Barbri, owns two-thirds of the stock. He is the marketing guru for the store; the brains of the outfit. The other four shareholders are passive shareholders who have never worked for Flowers, Inc.

Over the years, John alone has dealt with Shelly. One day, John comes to Shelly's office. John quietly and calmly tells Shelly that he has been diagnosed with a terminal form of cancer and, at most, has a year or so to live. John asks Shelly to draft a will for him.

"It's all over," John says. "I've seen what cancer can do." John proceeds to say that he plans to kill himself after the will has been finalized. He emphasizes that he does not want anyone, especially his wife Jane, to know of his plans. "It will look like an accident," he says. "Besides," he quickly adds, "Jane won't be able to collect on my million dollar life insurance policy if the insurance company finds out that I killed myself. I want Jane to be financially secure after I'm gone. Either way, I'm a goner. And if the cancer gets me, Jane is entitled to the insurance proceeds anyway. I just don't want to wait that long."

The State has a law on the books that makes suicide and attempted suicide a crime, though two months ago a State Court of Appeals invalidated the law, holding that it violated substantive due process under the State Constitution. Last week, the State Supreme Court granted certiorari. Please assume that there is no applicable federal law.

After John leaves the firm, a concerned Shelly comes to your office for advice on what to do. **What advice do you give her and why?**