

## PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

December 20, 2011  
TIME LIMIT: 4 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

### **GENERAL INSTRUCTIONS:**

This examination consists of 60 multiple-choice questions to be answered on the Scantron.

- Write your examination number on the “name” line. *Write it NOW.*
- Mark “A” in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also, write your examination number in the boxes where it says “I.D. Number” on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns. *This is part of the test.*

Answer each question selecting the *best* answer. Mark your choice on the answer sheet with the special pencil provided. *Select only one answer per question. If you change an answer, be sure to fully erase your original answer* or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

When you complete the examination, turn in the answer sheet together with this question booklet.

**Model Rules:** Assume that the applicable ethical rules are the Model Rules of Professional Conduct as currently promulgated by the American Bar Association.

**LIMITED PERMITTED MATERIAL:** The **only** material you may bring into the examination is your copy of your assigned *Standards, Rules and Statutes* book (Dzienkowski, or Gillers & Simon), **provided it is not marked except as allowed below.**

**Allowable markings:** Your copy of the *Standards, Rules and Statutes* book may be highlighted, underlined, tabbed and annotated with **brief** notations, but “**no paragraphs**,” no bits of outlines and no sentences or sentence fragments exceeding a few words or so on the margins, backs, etc. of the printed material. *All materials brought into the examination will, in fairness to all, be subject to inspection, and students who are deemed to have violated this rule will have the material in question taken away, and they will be unable to refer to it during the examination.* A determination by me that you have exceeded the letter or spirit of this “limited marking” rule will be final, so *if in doubt, tear it out.*

1. Clarissa Ridley practices law in a small town. She plans to build up her practice by attaching advertising flyers to utility polls in the neighborhood around her office. The First Amendment to the U.S. Constitution:

- a. Contains essentially nothing of relevance to Ridley's plan.
- b. Forbids lawyers like Ridley to advertise their services to members of the public.
- c. Disallows government restrictions on advertising by lawyers.
- d. Protects free expression, including lawyer advertising.

2. Codger, Nastie and Grump, an old established firm in town, is annoyed that Ridley has taken some of their clients. They have persuaded the disciplinary committee to begin disciplinary proceedings against her for false advertising.

- a. To protect Ridley's privacy, the disciplinary committee can hold the proceedings in private and does not have to give notice, even to Ridley.
- b. Under due process requirements, Ridley is entitled to be heard in the disciplinary proceedings and to notice that she is accused of false advertising.
- c. Under due process requirements, Ridley is entitled to be heard in the disciplinary proceedings and to a notice

specifying the exact ways in which her advertising is allegedly false.

d. Since Ridley is not ethically permitted to advertise, she faces censure or suspension, but probably not disbarment.

3. Although lawyers are expected to diligently pursue their client's *lawful* objectives, which of the following, if knowingly done, would most lawyers probably agree to be highly questionable or worse?

- a. Doing ordinary routine criminal defense work in order to help a person who has committed robbery to obtain an acquittal so he will avoid the prison term that he deserves according to criminal law.
- b. Doing ordinary routine tort defense work in order to help a person who has negligently inflicted a serious injury to avoid or minimize liability for the full compensatory damages called for by law.
- c. Doing ordinary routine real estate transactions work for a purchaser who is making legitimate investments to launder the profits from the illegal drug business that he runs.
- d. Doing ordinary contract negotiation and settlement work for a land developer who, due to the collapse of the real estate market, wants to get out of binding contracts without paying full damages.
- e. All of the above.

4. A state legislature in the Midwest has passed a law making it mandatory for lawyers to have 12 hours of CLE in order to be eligible for court appointments as guardians ad litem. A group of lawyers has challenged this law in court:

- a. The court must follow the law laid down by the legislature and, since the legislature has spoken, there is no proper basis for a court to strike down this law.
- b. At least some of the cases have held that laws like this one are invalid as intrusions by the legislature on the inherent power of the courts.
- c. The law must be upheld because it is solely up to the legislature to determine the qualifications required for members of the various professions.
- d. The law should be struck down because duly admitted attorneys should not, as a matter of policy, have to do extra CLE in order to be guardians ad litem.

5. The American Bar Association (pick the *false* statement, if any):

- a. Was responsible for drafting several versions of the ethical rules applicable to the legal profession, including the current Model Rules of Professional Conduct.
- b. Issues formal and informal opinions on various ethical questions that arise, and these opinions are generally treated with respect by the courts.
- c. Actively engages in the promotion of ethical legal practice and respect for the legal system and rule of law.

d. Has authority in its quasi-official capacity to enact binding rules of legal ethics and to disbar or suspend lawyers who fail to comply.

e. None of the above (pick this if all are true).

6. Loren Corder, a newly admitted lawyer, was retained today by three new clients. One of them needs him to work on a matrimonial matter, another on a real estate deal and the third on a DWI defense. Loren has no experience in any of these areas.

- a. The Model Rules and comments recognize that, even as a newly admitted lawyer, Loren can be as competent as a practitioner with long experience as long as he reasonably prepares himself
- b. In general, Loren would be ethically required to associate himself with more experienced lawyers in handling the representation of these clients.
- c. If Loren makes a serious mistake in the course of any of these representations, it is highly likely that he would be brought up for discipline.
- d. Because Loren is a newly admitted lawyer, it would be normal and expected for opposing lawyers to discretely point out, in the interest of justice, any serious mistakes or blunders that Loren might appear to be about to make.

7. Kendrick recently went together with a law school classmate to form a law partnership. However, Kendrick's new partner quickly lost

control of his time commitments and, Kendrick has been told, has tried to bluff his way through several negotiations that he wasn't prepared for. In light of this situation:

- a. Kendrick should be concerned about potential malpractice liability, but there is nothing in the rules under which Kendrick himself risks discipline.
  - b. As long as Kendrick is not his partner's supervisor, there is nothing in the rules under which Kendrick himself risks discipline.
  - c. Kendrick is obligated to make reasonable efforts to ensure that his firm has measures in effect giving reasonable assurance of ethical compliance.
  - d. In a law partnership, all partners are expected to supervise one another's work, and it is a disciplinary violation not to.
8. While Eileen was drafting a will for Gordon, he told her that he had an estranged half-brother living in Seattle. This existence of this half-brother was otherwise unknown locally except to Gordon and his immediate family. After the representation of Gordon was complete, Eileen voluntarily told a police investigator about the half-brother in order to assist an investigation of alleged past wrongdoing.
- a. Eileen would not be subject to discipline for revealing this information since she did so after the representation was complete.
  - b. Eileen would not be subject to discipline for revealing this information if Gordon did not communicate it to her in a

confidence that was protected by the attorney-client privilege.

- c. Both of the above.
  - d. Eileen would be subject to discipline for revealing the information.
9. Barrow represents Hugo Townes, the plaintiff in a personal injury case. During a conversation with the defense lawyer, Barrow accepted a settlement offer of \$300,000. Townes had been hoping to get at least \$400,000 from the lawsuit.
- a. If Barrow accepted the offer without actual authority from Townes, he may be liable (either to Townes or to the defendant) for purporting to accept the offer.
  - b. Only the client can decide whether to accept a settlement or not, so Barrow's purported acceptance of the offer cannot be binding on Townes.
  - c. Even if Townes actually authorized Barrow to accept a settlement in the amount of \$300,000, Barrow's acceptance of the offer would not be binding on Townes if Barrow's authority was not apparent to the other side.
  - d. As a lawyer representing Townes in a lawsuit, Barrow automatically had inherent authority under the Model Rules to accept any settlement that he concluded was in his client's best interest..

10. Suppose in the preceding question that the defense lawyer had offered only \$50,000 in settlement and Barrow rejected it as preposterously low—not even bothering to tell his client. If the jury later comes in with a verdict for the defendant and Townes gets nothing:

- a. Barrow would be in the clear because, as an attorney, he did not have authority to settle without Townes' consent anyway.
- b. Barrow would be in the clear because, as an attorney, he has complete discretion in deciding whether to tell his client about settlement offers.
- c. Barrow violated his duty as an attorney by not communicating the offer to Townes.
- d. Because settling a case is a “means” of representation and not an “objective” in itself, the decision whether to accept an offer is generally left to the lawyer’s independent judgment.

11. In the preceding question, getting a settlement was important to Barrow because, among other things, it meant there would be no further delay in receiving his contingent fee. In deciding whether to advise Townes to accept the settlement offer:

- a. Barrow, as a fiduciary, should place Townes’ interest ahead of his own.
- b. Barrow, as a fiduciary, should place his own and Townes’ interests on an equal footing with one another, insofar as possible.

c. Barrow should place his own interest ahead of Townes’ in order to maintain his “independence” as an attorney.

d. None of the above. Barrow would not have been a fiduciary for Townes unless the two had expressly agreed in the retainer agreement that he would act as such.

12. Stella Asmund is representing a client at trial. In which of the following situations is Asmund ethically required to notify the other attorney or the tribunal that there is a problem?

- a. As Asmund asks a question during cross examination, she realizes that the question is improper under the rules of evidence but, for some reason, the opposing lawyer does not object.
- b. At end of the other side’s evidence, she realizes that the opposing lawyer forgot to ask about a key point, meaning the other side will probably lose on a technicality when it’s clearly entitled to win under the law and facts.
- c. While the opposing lawyer is examining a witness, he asks a perfectly proper question that the judge erroneously requires him to withdraw—to the possible detriment of his case.
- d. While the opposing lawyer is cross-examining a witness, the witness provides an answer favorable to Asmund’s client but which Asmund knows is a deliberate falsehood.
- e. None of the above.

13. Janice Wynn represents Alan Kittroid, who is accused of robbery. There are two people who will testify that Alan was miles away at the time of the robbery, but both currently face charges for unrelated crimes. Janice fears that the prosecutor might tempt these witnesses to “forget” their alibi evidence in exchange for favorable plea deals. To forestall this possibility, she does not give the prosecutor advance notice of the witnesses as the local procedural rules require.

- a. Janice cannot, by violating local procedural rules, destroy or waive Alan’s constitutional right to call witnesses in his own defense.
- b. States are free to adopt reasonable procedural rules for criminal cases, but they may not apply rules under which defendants lose constitutional rights that they do not knowingly or willingly waive.
- c. A client is normally bound by the decisions his lawyer makes in the course of litigation, and the court may preclude Alan from calling his alibi witnesses.
- d. All of the above.

14. Sylvia is a real estate lawyer. Today, one of her clients got involved in a car accident while on his way to view a property. He suffered apparently minor injuries. As Sylvia listened to the client’s story, it crossed her mind that he should notify his insurance company, but she did not mention anything. When the client’s injuries turned out to be serious, his insurance company refused to pay because the required notice was not given.

a. If the client retained Sylvia only to do real estate work, she had no obligation to provide any legal advice at all about unrelated matters, such as the insurance claim.

b. Sylvia should have suggested the possible need for notice by her client to the insurance company if it was reasonably foreseeable that client might be unaware of the possible need to do so.

c. It would have been improper for Sylvia to try to limit the scope of her representation to real estate work.

d. If Sylvia does not have experience in personal injury law, she should never presume to give legal advice with respect to personal injury matters.

15. Caroline Proctor represents Lenny Wurtz, a home grower of medical marijuana in a state where it is legal under state law. The activity is nonetheless a crime under federal law. Lenny has some questions. Which of the following (if any) could Caroline probably answer without running afoul of the disciplinary rules?

- a. What are the penalties under federal law for growing marijuana?
- b. Are there any precautions I should take so that federal agents will not have probable cause to search my home?
- c. How should I handle the large cash income from marijuana sales so it will not arouse suspicions?
- d. Caroline should be able to answer any of the above without running afoul of the disciplinary rules.

e. None of the above.

16. In representing Lenny, Caroline can properly:

- a. Represent Lenny in his application for routine zoning permission from the local town so he can carry on his business in a residential zone.
- b. Represent Lenny in negotiations with the local bank to obtain a line of credit for his business.
- c. Take whatever lawful and ethical measures are required to vindicate his cause or endeavor as long as she does not assist him in conduct she knows is criminal or fraudulent.
- d. All of the above.

17. Warren Ruggles represents Fred Obert, who is Lenny's landlord in the preceding two questions. Under federal law, Obert would be considered an accomplice in Lenny's medical marijuana business. A state court would probably let Obert evict Lenny, but Lenny has been a good tenant who pays his rent on time, and Obert does not want the hassle of breaking the lease. If Obert's plan is to continue leasing the property to Lenny, thus supplying him with (among other things) a place to grow medical marijuana:

- a. Warren is probably not ethically permitted to assist Obert in claiming tax deductions for the property if IRS tries to disallow them on the ground that they are "expenses in connection with illegal income."

b. Warren probably should not advise Obert on how to hold off a potential federal forfeiture proceeding brought to seize his property because of its continuing illegal use.

c. Both of the above.

d. Warren should take the initiative and send Lenny a lease termination notice (without tipping off Obert in advance) because that would clearly be in his client's best interest.

18. Erskine has client who is the founder and CEO of a small iPad app developer. Erskine does only contract and corporate work for this client. Due to an unexpected shift in the market, his client is experiencing severe financial difficulties and needs cash fast while it negotiates a line of credit with a bank. Erskine is willing to help by lending his client some money to invent in the business.

- a. Erskine can properly take advantage of his intimate knowledge of the client's financial situation and, based thereon, ask the client to mortgage his home to Erskine as collateral for the money that Erskine lends.
- b. Erskine can provide financial assistance to this client, but he'd be well advised to have the client retain independent counsel to represent it in the negotiations with Erskine.
- c. Both of the above.
- d. Erskine is ethically precluded from providing financial assistance to this or any other client (except advances of court costs or the like).

19. Julian represents the seller of a house. Before the closing (but since the inspection), the furnace completely broke down. The client “confidentially” informs Julian of what happened. At the closing, Julian hears the buyer ask: “Is everything still okay with the house?” His client says: “Yes. Absolutely” Julian tries his best to persuade his client to disclose that the furnace has broken down, but his client adamantly refuses. At this point:

- a. Julian apparently must tell the buyer about the furnace under Model Rule 1.6.
- b. Julian apparently must tell the buyer about the furnace when Model Rule 1.6 is read together with another Model Rule.
- c. Julian may properly continue representing his client in the transaction as long as he carefully avoids making any false statements himself.
- d. Julian may choose to go forward and represent his client in the closing as if nothing had happened.

20. In the preceding question, if Julian chooses go forward with the closing as if nothing had happened:

- a. He will be fulfilling his duty of loyalty to his client and doing nothing that is questionable under the Model Rules.
- b. He would not be running afoul of any of the Model Rules as long as he himself carefully avoids any personal endorsement of false documents or statements made by his client.

c. He and his client would almost certainly both be liable in damages for deceit.

d. He will be assisting his client to commit fraud in violation of the Model Rules.

21. Tom Sullivan works for a firm that represents Rapacious Regional Bank. He’s just been assigned to do a bunch of home foreclosures and has broad discretion to make whatever adjustments or settlements he determines are in the bank’s interest. One of his cases is the home of Darren Destitute who got behind in his payments because he lost his job. Although Darren is plainly in default, Tom knows that a good lawyer could delay or even prevent the foreclosure by forcing the bank to verify the authenticity of certain loan documents. But Darren has no lawyer, and the foreclosure will go forward unopposed—leaving Darren and his family homeless. Under the Model Rules, Tom:

- a. Should try to produce the most just all-around result by using his independent judgment as to what is fair and equitable for all concerned.
- b. Must try to persuade the bank to “let this one go.”
- c. May take whatever lawful measures are required to vindicate the bank’s interests, including moving ahead with a prompt foreclosure on Darren’s home.
- d. Should promptly report to the police any signs of fraud that he finds in the bank’s loan documents.

22. Tom (from the previous question) noticed something weird about some of the documents in his files. A further inquiry showed that at least 2,300 certificates of default, some already filed in court, had supposedly been notarized by the same notary in three different cities on the same day—an impossible feat. Although the responsible malefactors have been relieved of their positions, it would be very expensive and, in many cases, impossible, to correct all of these errors:

- a. Tom must immediately tell his firm that he is withdrawing from representation of the bank.
- b. Tom should set steps in motion to advise all relevant bank employees that they are in possible legal jeopardy and that, as the bank's counsel, he automatically represents their interests, too.
- c. Tom should do nothing that would in any way obstruct the availability of evidence to lawyers for homeowners who are trying to fight foreclosures of their homes.
- d. Tom may advise the bank to tell all employees with relevant information not to voluntarily discuss the certificate of default problem with representatives of homeowners trying to fight foreclosures of their homes.

23. Candice Larkin represents the plaintiff in a personal injury case. During the course of the litigation, there are many decisions to be made. Larkin should:

- a. Consult with her client on every decision that might actually affect the outcome of the case.

b. Reasonably consult with her client on the means to be used in carrying out the representation, but abide by the client's decisions with respect to the objectives.

c. Reasonably consult with her client on the objectives of the representation, but ultimately she should pursue whatever ends are in her client's best interest.

d. Reasonably consult with her client as time permits but only to the extent that it is, in her professional judgment, consistent with efficiently carrying on her practice.

24. While riding in Pete's car, Linda was injured in a collision with Jackman. She retained Clem Potter to sue Jackman for personal injury. While Linda, Pete and Clem were discussing the accident, Pete asked Clem if he could recover for the damage to his car, and Clem said he'd add Pete's claim to the complaint. Now Jackman's lawyer has sent Clem a lab report showing that Pete used cocaine a few minutes before the accident, a fact that could greatly reduce the amount of Jackman's liability to Linda. If that happened, Linda would have to sue Pete to get a full recovery.

- a. Clem should immediately drop Pete as a client so there will be no problem in his continuing to represent Linda.
- b. There is serious doubt whether Clem can represent Linda against Pete.
- c. As long as Pete is only a "former client," Clem's representation of Linda should raise no conflict of interest problem.
- d. Clem would have no further responsibilities to Pete if Pete never agreed to pay Clem for legal services.

25. Morris Benson is assigned counsel representing a disgraced and bankrupt securities executive in a criminal appeal. His client, who once spent a year in law school, has given Morris a list of 27 items that he wants covered in the brief.

- a. The client's constitutional right to effective assistance of counsel does not mean that Morris's brief has to cover every one of the items in his client's list.
- b. As a general rule, Morris controls the means of representation and, therefore, he can disregard his client's instructions on how to argue the case.
- c. There is nothing that prevents Morris from simply refusing to cover all of the items on his client's list.
- d. In the final analysis the client is the master of his own cause, and he has a constitutional right to have his lawyer present the case according his instructions.

26. Kevin Joyce represents a woman who is selling some rental property and has left it to Kevin to negotiate the fine points. The client has specified that she is willing to take back a mortgage as partial payment, but only a first mortgage. Kevin has an offer from a buyer willing to pay a very favorable price but insists on providing only a second mortgage. Because the price is so good, however, Kevin thinks it is in his client's best interest to take the deal as offered. If Kevin structures the sale to include the second mortgage:

- a. He could not later be criticized as long as he was trying to get the best deal possible for his client.

b. He can be held liable in malpractice if the client sustains any loss as a result of the second mortgage.

c. He has full discretion whether to inform his client that the mortgage is a second mortgage.

d. None of the above.

27. Warren was lunching with some of his lawyer friends and told them about the clever finesse he made during some delicate negotiations last week. The story necessarily revealed some details about his client's transaction, but the information revealed is already available in public documents on file at the courthouse and, besides, it is all pretty innocuous.

- a. Warren has not violated his duty of confidentiality unless the information about the client was embarrassing or damaging to the client.
- b. Warren has not violated his duty of confidentiality if the information about his client could have been obtained from other sources anyway.
- c. Warren has not violated his duty of confidentiality if the information about his client was not covered by the attorney-client privilege.
- d. None of the above. Warren has violated his duty to his client if he has disclosed information relating to the representation.

28. Walter Gibbs just got a new client who “thinks” he’s wanted in a robbery. The client tells Walter that the money from the robbery is at his apartment, and he gives Walter the key. Walter goes to the apartment and finds the money along with a sawed-off shotgun, illegal in his state. Walter takes both with the intention of turning them over to the police. Later, though, not wanting to volunteer evidence that will convict his client, Walter decides to hang onto the money and gun until after the trial.

- a. As long as the authorities make no demand, Walter may retain both the money and gun because they are covered by the attorney-client privilege.
- b. As long as the authorities make no demand, Walter may retain both the money and gun because they are covered by his attorney’s duty of confidentiality.
- c. As long as the authorities make no demand, Walter may retain the money but not the gun because the money, at least, is covered by the attorney-client privilege.
- d. As long as the authorities make no demand, Walter may retain the gun but not the money because the gun is not stolen (so far as he knows) and it is covered by the attorney-client privilege.
- e. Walter could be in serious trouble if he retains either the money or the gun.

29. In the preceding case, if Walter promptly turns in the money and gun to the authorities, he can be compelled to testify where he got them:

- a. Because, by moving these items, he has in effect destroyed evidence by making it so the items are no longer located in his client’s apartment.
- b. Because the attorney-client privilege applies only to communications between attorney and client and never to information that the lawyer learns in other ways.
- c. Because, by turning in the items to the authorities, Walter has waived the attorney-client privilege.
- d. None of the above. Walter cannot be compelled to testify where he got the money and gun.

30. Davis got a call from his client, a local hardware dealer, saying that one of his salespeople had just put out a customer’s eye while demonstrating a nail gun. Soon thereafter, Davis was talking with the salesperson in question.

- a. If Davis is representing the hardware dealer, he is presumptively also representing the salesperson, as employee.
- b. Even if the communications between the salesperson and Davis are protected by the attorney-client privilege, that does not mean the salesperson can keep Davis from disclosing what the salesperson privately tells him.
- c. Both of the above.
- d. If Davis does not actually represent the salesperson, it would be improper for Davis to request the salesperson to

refrain from discussing the case with representatives of the injured customer.

- e. All of the above.
31. In the preceding question, the attorney-client privilege would probably apply to communications between Davis and the salesperson if:
- a. The local jurisdiction adheres to the control group test.
  - b. The local jurisdiction adheres to the “subject matter” test.
  - c. Both of the above.
  - d. Davis was representing the salesperson and not otherwise.
32. In general, courts have held that the attorney client privilege:
- a. Allows lawyers to refuse to disclose even the identity of their clients.
  - b. Ceases to apply after the death of the client.
  - c. Is so sacrosanct that the lawyer cannot violate it even to collect his fee.
  - d. None of the above.
33. Henkin represents two employees of Excelsior Corp. who contend they were discriminated against when the company filled a recently-opened managerial position. The two are both Sharmandian immigrants and the job was given to a Caucasian who, they claim, was less qualified for the position. Henkin would have a conflict of interest:
- a. If Excelsior offered an attractive settlement to one of these clients and nothing to the other.
  - b. If Excelsior offered an attractive settlement to both clients on the condition that both accept, and one wanted to take the offer but the other did not.
  - c. From the moment he accepted the two as clients if the relief they were seeking was an order to award the promotion to the most qualified employee.
  - d. All of the above.
34. Henkin and his two clients in the preceding question had several conversations together in preparing to bring the case. In general, the attorney-client privilege would not protect communications between Henkin and either of these two clients:
- a. If the other of the two was present in the room at the time.
  - b. If a repairman working on Henkin’s air conditioning system was present in the room at the time.
  - c. Both of the above.
  - d. Because Henkin has a conflict of interest.

35. Tony Palance is a young lawyer in the legal department of Cornwell Corp., a large toy importer. It has just been discovered that some recently imported toys are coated with paint containing a toxic chemical known as “PR.” Although the toxicity exceeds federal limits, it is not at all clear that the toys are actually unsafe. The company’s CEO wants to sell them anyway. Tony’s strenuous objections within the company are unavailing. If Tony reports the situation to the federal products safety regulators and then is fired:

- a. No court is likely to let him maintain an action for retaliatory discharge because clients have almost total discretion to terminate legal representation.
- b. No court is likely to let him maintain an action for retaliatory discharge because he has violated his solemn duty of confidentiality.
- c. Historically, courts have generally allowed lawyers employed by corporations to sue for retaliatory discharge because the employer is not a “client” in the traditional sense.
- d. More than one of the above is true.
- e. None of the above is true.

36. Larry went to college with Ken, now a businessman. Ken is suing Larry’s client and half a dozen other defendants in a big commercial lawsuit. Ken is represented by a large downtown firm. Larry ran into Ken the other day at the Princeton Club and Ken offered Larry a drink. Larry saw this as a great opportunity to get his

client out of the case since he and Ken were always good friends and his client’s liability is, at most, only secondary.

- a. It would have been totally improper for Larry to talk to Ken at all.
- b. Before talking to Ken about the case, Larry should have advised Ken of his right to have his lawyer present and make sure Ken was willing to waive that right.
- c. Larry could talk with Ken about last weekend’s football games, but he was not allowed to discuss the lawsuit.
- d. Out of his duty of loyalty to his client, Larry should definitely have taken this opportunity to try and work out a deal with Ken.

37. Suppose in the preceding question that Ken was the one who brought up the lawsuit.

- a. As long as Ken was the one to bring up the lawsuit, Larry was free to talk to him about it.
- b. Larry should have advised Ken of his right to have his lawyer present and made sure Ken was willing to waive that right.
- c. As long as Larry restricted himself to aspects of the lawsuit that Ken raised, Larry didn’t need to advise Ken of his right to have his lawyer present.
- d. Larry should have politely declined, firmly if necessary, to discuss the lawsuit with Ken.

38. Erin Cornell is representing the defrauded buyer of a kerosene space heater. She thinks a local store is falsely telling customers that the heater is legal under municipal ordinances. To get evidence, Erin hired an investigator to wear a secret recording device and pretend to be a customer wanting to buy a heater. Although Erin does not actually know whether the store owner has a lawyer, she does know that the store is part of a large chain that has eleven outlets in the three-county area.

- a. There could be no risk of violating the “no-contact” rule in this situation as long as Erin has never actually been told that the store owner is represented.
- b. There could be no risk of violating the “no-contact” rule in this situation as long as Erin does not personally contact the store’s owner or sales personnel.
- c. If Erin’s investigator only contacts store employees, who would not be “clients” of the store’s lawyer anyway, Erin could not be considered in violation of the “no-contact” rule.
- d. There is some authority that the no-contact rule does not forbid using deceitful tactics in sting operations like this because they do not threaten the kinds of abuses that the rule is meant to prevent.

39. During a hotly contested trial, Quinn received a letter that was written by the opposing lawyer and obviously intended only for the opposing lawyer’s client. Quinn assumes that the letter somehow got into the wrong envelope during a mailing.

- a. Quinn must immediately destroy the letter without reading it.
- b. Quinn should promptly notify the opposing lawyer that he has received the letter.
- c. Most courts would say that the opposing lawyer waived the attorney-client privilege by carelessly putting the letter in an envelope addressed to Quinn.
- d. All of the above.

40. Two years ago, Pierce’s client was injured on steps leading to a basement restroom at a restaurant. Last week, two things happened that could critically affect the case. First, it was discovered that Pierce’s investigator had somehow inadvertently misplaced a key piece of evidence favorable to the plaintiff. Then, Pierce’s client died unexpectedly from causes unrelated to the case. Pierce would like to reach a settlement as soon as possible, before the other side gets wind of what’s been going on. Generally speaking, Pierce is required to tell the other side (without being asked):

- a. About the misplaced piece of evidence.
- b. About his client’s death.
- c. Both of the above.
- d. None of the above.

41. Don Lenihan’s client told him confidentially that he “had something to do with” the robbery for which he is being tried. The

one consistent part of his story has always been that he was hanging out on a stoop near the robbery scene during the general time span when the robbery occurred. Now, though, he has just told Lenihan that he wants to testify that he was home watching TV the whole evening. Lenihan should:

- a. Try to dissuade his client from testifying falsely.
  - b. Report perjury that does occur to the tribunal if there is no other reasonable way to remedy it, even if reporting it means disclosure of confidential information
  - c. Both of the above.
  - d. Try to dissuade his client from testifying falsely, but in no event should he violate the confidentiality of client information relating to the representation.
42. Prosecutor James Garnett received a complaint from a parent that her son's first grade teacher, Madeleine Turner, engaged in inappropriate touching at the school. Turner, a 27-year old mother of three, vehemently denies the charge, but the boy's psychologist maintains that the boy's recovered memories of the events ought to be taken as reliable. Garnett is dubious about the charges and the psychologist, but he is not sure what to do.
- a. Most prosecutors would probably say that it would be improper for Garnett to prosecute Turner unless he actually believes that she committed the crime.
  - b. It would be proper for Garnett to prosecute Turner if he believes he has enough evidence to get a conviction.
- c. The Model Rules prohibit a prosecutor from pursuing a case unless the prosecutor thinks the defendant is guilty as charged.
  - d. Over the years, prosecutors have become seen more and more as "ministers of justice" rather than persons whose job is to get convictions whenever they can.
43. Thompson represents an employer being sued for sexual harassment. By making repeated motions to adjourn depositions, constantly asking for additional information, repeatedly requesting more time to obtain witnesses, getting adjournments of hearings, etc. he can delay the final judgment for literally years and, possibly, even make it financially impossible for the plaintiffs to continue their case.
- a. According to the wording of the applicable rule, the Model Rules seem to permit such tactics as long as they are consistent with the interests of the client.
  - b. According to the wording of the applicable rule, the Model Rules seem to permit such tactics only if they are consistent with the *legitimate* interests of the client.
  - c. According to the comments to the applicable Model Rule, the use of such tactics is perfectly fine as long as the rules of procedure make them possible.
  - d. None of the above.
44. Elmer Saif represents a plaintiff suing a drunk driver whose recklessness caused her to have a permanent limp. The defense is

about to take his client's deposition, which Elmer thinks is just a "fishing expedition" to pursue a hunch. There is, however, a substantial risk that several hours of probing questions might turn up something damaging to his client's case. By making nasty gender-biased remarks against the defense attorney, Elmer might be able to prevent serious harm to his client's case.

- a. Despite the potential advantage to his client, Elmer should not engage in such tactics because trying to throw his opponent off balance is not a legitimate litigation tactic.
  - b. Despite the potential advantage to his client, Elmer should not engage in such tactics, because insults based on gender, race, religion or the like have no proper place in legal proceedings.
  - c. Both of the above.
  - d. Elmer should put his client's interests first and use such tactics, especially if there is reason to think they will help prevent an unjust outcome.
45. Waddell Traubman has approached Dave Carter about forming a law partnership. Traubman has a wide practice and many years of experience in the community. Carter is worried that, if the two join together, it may result in many conflicts of interest, which could spell trouble.
- a. Carter has no need for concern since conflicts of interest are always waivable as long as the affected clients consent.

b. Carter has no need for concern since conflicts of interest are always waivable as long as the affected clients give *informed* consent.

c. Depending on the circumstances, a court may disqualify a lawyer with a conflict of interest even if the client wants the lawyer to continue.

d. Carter has no need for concern since Traubman's conflicts of interest would not be attributed to Carter anyway.

46. During cross-examination, Howard Dargus was asked: "Did you rent property in Palm Beach during the year 2008"? The fact is that Dargus rented a house in Palm Beach from June, 2007 until March 31, 2008. After that, his wife rented the house in her name until 2009. Which of the following responses, if any, would be perjury?

- a. "No."
- b. "My wife rented a house there beginning in April."
- c. Both of the above.
- d. "During the whole year of 2008? Why, no."
- e. All of the above responses (*i.e.*, a, b and d) are perjury.

47. The firm of Hitchens & Covey has just been asked to take a major role in a large and potentially lucrative patent lawsuit against Federal Electric Corp. However, a lawyer in the firm's Santa Fe office does Federal Electric's local corporate filings for the

company's sales office there. The corporate filing work and the patent suit have absolutely no conceivable relationship to one another.

- a. Hitchens & Covey probably cannot participate as counsel adverse to Federal Electric in the lawsuit as long its lawyer in Santa Fe continues to do Federal Electric's corporate filings.
  - b. Even if the lawyer in Santa Fe continues to do the corporate filings, Hitchens & Covey can serve as counsel against Federal Electric as long their representation will not be materially limited by the conflict.
  - c. Even if the lawyer in Santa Fe continues to do the corporate filings, Hitchens & Covey can serve as counsel against Federal Electric in the lawsuit provided only that Federal Electric gives appropriate consent.
  - d. There is no way that Hitchens & Covey could ethically serve as counsel against Federal Electric in the lawsuit even if the lawyer in Santa Fe ceases to do the corporate filing work.
48. Ashton Robard represents the defendants in a medical malpractice case. The defendants are ENT specialists who performed a series of minor laser treatments on the plaintiff over a period of weeks. Unfortunately, the treatments were a monumental failure. After months of discovery and pre-trial activities, the plaintiff's lawyer has offered an attractive settlement to one of the defendants on the condition that he testify against the other.

a. Robard can continue to represent both defendants as long as he reasonably believes he can provide competent and diligent representation to both.

b. Robard can continue to represent the defendant to whom the offer was made but must withdraw from representation of the other.

c. Robard can continue to represent the defendant who did not receive the offer, but must withdraw from representation of the one who did.

d. On these facts, Robard cannot continue to represent either of the defendants.

49. Nikki Dorset, a low-life with no assets, was arrested in a raid on a meth lab. A high-powered drugs lawyer named Griggs showed up to represent her. It's a mystery who's paying his fee. However, Griggs announced that he has a new "policy" against plea bargaining, and "that means there's going to be no negotiation for a reduced sentence in exchange for Nikki's testimony." He intends to take this all the way. The prosecutor would like to get Griggs thrown off the case.

a. The prosecutor can probably get Griggs disqualified because it is obvious that somebody other than Dorset is paying his fee.

b. The prosecutor can probably get Griggs disqualified because Griggs is refusing, in advance, to even consider possible resolutions of the case that the prosecutor thinks would benefit his client.

- c. Griggs could be disqualified for conflict of interest if he allowed the person paying his fee to interfere with his independent judgment in representing Nikki.
- d. It is none of the prosecutor's business who represents the defendant, and the prosecutor risks being disqualified for conflict of interest if he tries to intermeddle in the defendant's choice of counsel.
50. Denise and Phil met when she was defending Percy Bullknight in a case that Phil was prosecuting. After the trial, they got together several times for dinner and, on two or three of those occasions, somehow ended up in a room at the Empire Hotel. Denise and Phil are both highly professional attorneys and neither has let the affair affect his or her work. About two weeks after their most recent "dinner," Denise's office assigned her to defend Jay Boyleston, a man that Phil has been assigned to prosecute. Since Denise and Phil are both married to other people, they want to keep their little liaison discrete. The question is whether Boyleston is entitled to know about the relationship between his lawyer and the prosecutor.
- a. No, there is no reason for either Denise or Phil to mention their relationship to anybody.
- b. Yes, Boyleston would be entitled to know unless Denise's personal interest in Phil does not pose a significant risk that her representation of Boyleston will be materially limited.
- c. Yes. Boyleston would be entitled to know because there is a non-waivable conflict of interest here.
- d. No. Because Denise and Phil are not married to each other or otherwise related, they have no obligation to disclose their informal relationship.
51. Darr's client is the defendant in a suit for fraud in the sale of securities. He also represented the client in the allegedly fraudulent transaction itself. The alleged fraud concerns statements contained in documents supplied to the buyers during the negotiations. While Darr wishes another lawyer could handle the defense, he feels he needs to retain "control" because there's a real chance he might be personally implicated and subject to civil or criminal liability. The strongest reason why Darr might have a conflict of interest is that:
- a. He represented the defendant in the transaction now alleged to have been fraudulent.
- b. There is a substantial risk that Darr's representation will be materially limited by his concern to protect himself from liability.
- c. He wishes another lawyer could handle the defense.
- d. All of the above are more or less equally strong reasons.
52. During the period 2007-10, Joe Baker represented Dr. Taylor in several medical malpractice cases brought by people dissatisfied with the results of knee surgeries that Taylor had performed. About a year ago, Dr. Taylor got a new malpractice insurer and Baker no longer represents him. Today, Baker's law partner, Carl Jergen, was visited by a man who wants to retain Jergen for a malpractice action against Dr. Taylor for a knee surgery done on the client last month.

Jergen does not want to invest a lot of time on the case if he is likely to be disqualified.

- a. Jergen should not have any conflict of interest problems as long as he, not Baker, does all the legal work in representing the new client.
- b. No question of Jergen having a conflict of interest should arise as long as Baker's representation of Dr. Taylor has clearly been terminated.
- c. If Jergen does have a conflict of interest due to Baker's prior representation, it would be resolved if Dr. Taylor gives informed consent in writing.
- d. All of the above.

53. In the preceding question, the reason Jergen very possibly has a conflict of interest is that:

- a. The new client's case is against the very same person that Baker defended previously.
- b. The new client's case involves not only the same defendant but also the same type of surgical procedure that was involved in the cases where Baker defended Dr. Taylor.
- c. Both of the above.
- d. None of the above.

54. While Rappaport was preparing for trial in a slip and fall case, his client suggested that a witness named Krebs might be able to provide helpful testimony. Rappaport's client says that the witness saw the incident and is willing to talk about it.

- a. To preserve objectivity, Rappaport should avoid any unilateral or ex parte contact with Krebs before he gets on the stand at trial.
- b. Rappaport is allowed to talk to Krebs before trial, but he should not discuss the substance of the case.
- c. Rappaport and Krebs should discuss the witness's proposed testimony and how to present it most effectively, but Rappaport must take care not to coach Krebs.
- d. In meeting his duties of diligence and thoroughness under the Model Rules, Rappaport should carefully go over the proposed testimony with Krebs and make explicitly clear to Krebs what he should and should not say on the stand.

55. While interviewing a lawyer applying for a position at his law firm, Roy LaPlace noticed that the applicant's resume stated he'd been a law clerk for Judge Markus Renwick, an appellate judge in another state. LaPlace happened to know Renwick from law school and gave him a call. Renwick said he'd never heard of the applicant, and certainly never had him as a clerk. Under the Model Rules:

- a. LaPlace has an obligation under the Model Rules to inform the appropriate professional authority.

- b. LaPlace should report the falsehood in the resume to the appropriate professional authority, but he cannot be disciplined for failing to do so.
  - c. The choice is basically up to LaPlace whether to report the applicant's lie because lawyers are basically never required to volunteer relevant information.
  - d. Although the applicant lied on his resume, he did not do so in the course of the actual practice of law, so the Model Rules would not cover this situation.
56. In his day-to-day law practice, Arthur Holborn frequently receives money that belongs to clients, and he must hold that money for varying periods of time:
- a. Holborn should use the same care in holding the client money as he uses for his own money and, ideally, he should keep the client money *with* his own money.
  - b. Holborn must keep the client money completely separate from his own money and never mix the two.
  - c. Holborn should not commingle the client money with his own money unless he keeps careful and timely records so that he can readily repay whatever he owes to his clients.
  - d. Holborn may borrow from client funds only up to the amount of his estimated fee and even then only if he is absolutely certain he will be able to repay it in full.

57. Arnold Dyckman represents a driver who negligently ran into a pedestrian, Lisa Warwick, while rounding a corner. Arnold's investigator discovered that Lisa, who is married and has a 3-year old, was in an on-again off-again affair and was returning from a meeting with her lover when the accident occurred. In cross-examining Lisa at trial, Arnold probed into her whereabouts immediately before the accident and, in particular, which direction she was coming from (arguably relevant to the case). As he did this, it became obvious to Lisa that Arnold knew about the affair, and she started to fear that he might actually mention it in court. As Arnold had hoped, Lisa became upset, defensive and somewhat confused in her story—leading to inconsistencies that Arnold later seized on to undermine her believability in the eyes of the jury:

- a. Under the Model Rules, Arnold acted reprehensibly if he deliberately undermined the credibility of a truthful witness.
- b. Under the Model Rules, Arnold acted reprehensibly if he embarrassed and humiliated Lisa just to get a negligent driver off the hook.
- c. Both of the above.
- d. As far as one can tell from these facts, it does not seem that Arnold acted improperly under the Model Rules.

58. Assume in the preceding question that neither the name of Lisa's lover nor evidence of the affair was relevant or admissible in this case. Nonetheless, since an advocate's statements at trial are neither testimony nor evidence, the Model Rules would not forbid Arnold from mentioning the lover's name or his personal knowledge of the affair ("purely as background"):

- a. In his opening statement.
- b. In his closing argument.
- c. Both of the above.
- d. None of the above.

59. Dibbs has been one of Rennard's clients for many years. He plans to buy a portion of his neighbor's property in order to settle a long simmering boundary dispute. Because only a relatively small amount of money is involved, the neighbor does not want to pay to hire his own lawyer. "Just show me the check," he says, "and I'll sign the papers."

- a. There is no problem with Rennard representing both buyer and seller. All he is ethically required to do is to make clear that he is protecting the interests of both
- b. Rennard may have special responsibilities in this situation, and he should not give legal advice to the neighbor other than tell him to get his own lawyer.
- c. Rennard is required to make sure that the deal is fair and equitable to both sides rather than try, as he usually would, to achieve the best possible outcome for his own client.
- d. If the seller seems to think that Rennard is representing both parties, Rennard need not correct him since lawyers have no general duty to volunteer relevant facts to the other side.

60. During a trial for shoplifting, it was shown that, when the defendant was apprehended at the store exit, she had a small notebook hidden in her pocket and enough money to pay for it. The defense lawyer then produced evidence that, just prior to heading for the exit, the defendant had received a call from her son's school informing her that the boy had taken suddenly ill with a high fever.

- a. Even if the defendant told her lawyer confidentially that she intended to steal the notebook, it would be generally considered permissible for him to argue that the call from her son's school tends to show that she was distracted and simply forgot to pay.
- b. Even if the prosecutor is certain (based on other evidence not admitted at trial) that the defendant intended to pay, it would be generally considered permissible for him to argue that the fact she'd secreted the notebook in her pocket shows that she intended to steal it.
- c. Both of the above.
- d. None of the above. It is generally considered tantamount to perjury for a lawyer to argue for false inferences.