

## PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

May 7, 2013  
TIME LIMIT: 3 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 30 multiple-choice questions (to be answered on the Scantron) and 10 short essays based on three scenarios. The essay portion will count as approximately one-half of the exam.

- Write your examination number on the “name” line of the Scantron. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the Scantron. *Mark it NOW.*
- Also, write your examination number in the boxes where it says "I.D. Number" on the right side of the Scantron. 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 multiple-choice question selecting the *best* answer. Mark your choice on the Scantron 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 answers 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. The word “proper” means permitted by the Model Rules or applicable law. “Ethical” means according to the Model Rules.

**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. Brock Campbell has practiced as a real estate lawyer for many years. One of his clients has requested representation in a DWI case. Brock has no experience in DWI at all.

- a. Brock may accept the DWI case without qualms because, as a lawyer admitted to practice, Brock is not subject to any ethical limits on the kinds of cases he accepts.
- b. Brock may properly represent the client in the DWI case if he can achieve the requisite level of competence by reasonable preparation
- c. Brock may properly represent the client in the DWI case only if he associates himself with a lawyer who has established competence in DWI.
- d. There is no way that Brock may properly accept the DWI case, and he must advise his client to find another lawyer.

2. Under the First Amendment to the Constitution:

- a. Government may not limit the legal advice that lawyers provide their clients as long as they do not advise clients to do anything unlawful or unethical.
- b. A legislature may not set special qualifications for practice in particular legal areas (such as guardianship for juveniles) beyond those imposed by the courts.
- c. A state may not completely ban lawyers from advertising their services.
- d. All of the above

3. A lawyer is required to comply with the Model Rules of Professional Conduct:

- a. Because the American Bar Association has adopted the Model Rules as its standards to govern lawyer professional responsibility.
- b. If the jurisdiction where the lawyer practices has adopted the Model Rules as its requirements to govern lawyer professional responsibility.
- c. Only in those states where lawyers are required by law to become members of the bar association.
- d. None of the above. The standards contained Model Rules are never considered to have the status of “law” but only guidelines that lawyers are encouraged to observe.

4. Albert Romilly represents a debt collection agency. Yesterday, the agency asked him to file suit on a number of consumer accounts that were so far overdue that the statute of limitations had expired. The amounts were small enough (generally \$1000-3000) so that most of the debtors would probably not put in an answer—giving the client enforceable default judgments because the statute of limitations is waived if not raised.

- a. Romilly may use his own moral judgment to decide whether to represent the agency these lawsuits, though he is not legally or ethically obligated to decline the representation.
- b. Romilly must tell his client that he cannot file the lawsuits as requested because the client’s objective is reprehensible, namely, taking advantage of people’s ignorance to obtain payments that are no longer legally due.

c. Romilly has an ethical duty to zealously try to collect the accounts in question because it is up to the client to determine the objectives of the representation.

d. Under the ethical rules, Romilly must withdraw from representation of this client in order to preserve the good name of the profession.

5. Howard Bara has a trusts and estates practice. He frequently holds client-owned funds and property for various periods of time. Recently, his young daughter had a serious bicycle accident on the way to school and this led to large medical expenses. To cover his immediate needs for medical costs, Howard temporarily borrowed some of the client money he was holding. However, he re-deposited every last cent of it to the client accounts within a couple of weeks, and no one was detrimentally affected in any way. Howard probably does not have to be concerned about serious discipline for these actions because:

a. The primary purpose of lawyer discipline is to compensate the victims of lawyer malfeasance and, in this case, no one was hurt.

b. Howard promptly re-deposited the money that he used for his expenses so there was only, at most, a technical violation.

c. The extenuating circumstance of needing money to cover a child's medical expenses would probably be deemed to justify the trivial risk that Howard's actions posed to his clients.

d. None of the above. If Howard's actions are found out, there is likely to be a serious disciplinary response.

6. Grace Collins recently passed the bar. She began practicing law out of her home until she can afford an office. A college friend asked her to represent him in a house closing, something she'd never done before and about which she knows almost nothing. She borrowed a book on real estate transactions, studied it thoroughly and carefully tried to follow the instructions contained in it. Unfortunately, she didn't notice that the sales contract omitted a routine clause relating to percolation testing. Her client ended up having to pay an extra \$27,000 to fix a problem with the septic system.

a. Grace can probably expect disciplinary proceedings against her because she has violated the rule requiring competence.

b. Grace can probably expect disciplinary proceedings against her because she undertook to represent a client in a legal area where she's totally inexperienced.

c. In a situation like this, the lawyer representing the other party probably would report the error because lawyers are generally on the alert to cleanse the profession of members who are a danger to the public.

d. Although Grace has apparently made a mistake, it is not clear from these facts that she has violated the Model Rules.

7. In representing the defendant in a lawsuit, Duncan was astonished that his opponent failed to make motions and take other actions that would normally be expected of a competent lawyer. In fact, Duncan believes that his client probably won the case precisely because of these blunders by his opponent. However, Duncan does not of course want to do anything that might highlight the opponent's errors as possible grounds for appeal.

a. Because Duncan is an attorney admitted to the practice of law, he's required to report all ethical violations,

including any instances of incompetence, to the disciplinary authorities so they can determine whether further action is warranted.

b. Duncan is not ethically obligated to report his opponent's every error unless the conduct raises a substantial question as to the opponent's honesty, trustworthiness or fitness to practice law.

c. Duncan is not ethically obligated to report the opponent's actions unless the quantum of evidence against the opponent raises a substantial question as to the latter's honesty, trustworthiness or fitness to practice law.

d. Duncan's first responsibility is to his own client, and he has no "duty" to report on other lawyers if doing so could possibly have an adverse effect on the interests of his own client.

8. Andrea Flagg is a partner in Snodd, Kalman and Bloff. She's being assisted in a commercial lawsuit by third-year associate, Tim Owens. Today she learned that Tim obtained some key compromising information from one of the opponent's employees, a guy he chanced to meet at popular club last night. She believes that Tim's conduct likely violated the no-contact rule. Technically, Andrea is subject to discipline:

a. As a partner in the firm because the ethical violations of the associates are attributed to the partners (or those with comparable managerial authority).

b. If she uses Tim's information against the opponent even if she did not initially request or authorize Tim to violate the no-contact rule.

c. Both of the above.

d. None of the above.

9. Dave Ravanelli was involved in an automobile accident. He believes that he did nothing wrong and that the other driver (who died in the crash) was at entirely fault. Nonetheless, Dave has been indicted for manslaughter. However, the prosecutor has offered to reduce the charge to criminally negligent homicide if Dave will plead guilty. His lawyer thinks this is an amazing deal and urges Dave to take it, but Dave wants to reject the plea deal because he thinks he's innocent and that he should win at trial. The decision whether to accept the deal for a guilty plea:

a. Is ultimately for Dave's lawyer, since the calculation of whether to risk a trial is, basically, one that requires legal experience and expertise.

b. Is for Dave to make, but his lawyer has the final say on the terms of settlement of the civil suit that is expected to be brought by the other driver's estate.

c. Is for Dave to make, as a practical matter, because Dave can discharge his lawyer at any time if the lawyer does not agree on such a fundamental point.

d. Is for Dave to make according to the ethical rules, which make it clear that the lawyer should defer to the client on this decision.

10. Caleb Johnston has been contacted by a man charged with a number of hate crimes. Johnston thinks there's a good argument that could get the accused off on a technicality, but he has political ambitions and he fears that taking and winning the case might tarnish his reputation with a key constituency. Which of the following best states the situation?

- a. Since Johnston has a choice in deciding whether to represent this defendant, he shouldn't be surprised if doing so might adversely affect how he is viewed by voters.
- b. The ethical rules do not permit the client's moral views or activities to be attributed to the lawyer, so it would be improper for Johnson to consider his political ambitions in deciding whether to represent this defendant.
- c. The ethical rules recognize that people may attribute a client's moral views or activities to his lawyer and they encourage lawyers to bear this in mind when deciding whether to represent a client.
- d. The ethical rules recognize the reality that, by representing a client, a lawyer inevitably endorses the client's views and they imply that the lawyer should not try to pretend otherwise.

11. Henry Lawton represents the plaintiff in a personal injury case. Waiting for the elevator following a deposition, the defendant's lawyer said: "C'mon, Henry. Why don't you take the \$240,000 we're offering so we can get this thing over with." Lawton reiterated his client's rejection of that amount, but added: "If you can do better, we're willing to talk." Lawton's client chimed in: "Yeah. I'm totally in my lawyer's hands. Whatever he says goes." Later, Lawton received an offer of \$285,000. He regarded this as a very good deal even though it was less than the \$300,000 "rock-bottom minimum" that the client had instructed him privately. If Lawton accepts the \$285,000 offer, it would probably be:

- a. Binding on his client, because Lawton has apparent authority.

- b. Binding on his client, because Lawton has actual inherent authority, as the attorney representing his client's interests.
- c. Both of the above.
- d. Not binding on his client.

12. Hank Rothman represents Dave Garner, who's suing Indusco Machinery Co. Garner sustained a head injury while using a backhoe (allegedly faulty) built by Indusco. At one point, Rothman argued to Indusco's lawyer that he personally knew that Garner was not the kind of person to over-dramatize an injury because they'd played football together in high school. Indusco's lawyer now seeks to introduce Rothman's statement at trial as evidence that the head injury may have been, at least in part, a pre-existing one.

- a. Rothman's statement cannot be introduced because it is protected by the attorney-client privilege.
- b. Rothman's statement is binding on Garner and cannot be kept out of evidence or rebutted.
- c. Rothman's statement is admissible as a vicarious admission, but it can be rebutted.
- d. Rothman's statement is inadmissible because an attorney cannot be forced to be a witness against his own client.

13. In reviewing the medical evidence in Garner's case, Rothman notices that Garner may also have a malpractice action against the doctor who treated him in the emergency room. However, Rothman doesn't handle medical malpractice cases and, in any case, he has not been retained by Garner to pursue anything other than the Indusco claim. Under the circumstances:

- a. It is entirely up Rothman whether to inform Garner about the possible medical malpractice claim.
- b. Rothman should inform Garner of the possible medical malpractice claim if it's reasonably foreseeable that Garner would not otherwise be aware of it.
- c. Rothman should not intermeddle in matters (such as the medical malpractice issue) that are outside the scope of the representation for which he had been retained.
- d. Rothman must tell Garner about the medical malpractice claim and represent him in pursuing it if that's what the client wants.

14. Yesterday, Rothman got an request to act as local counsel in a big class action that will involve a lot of travel and won't leave him time to properly represent his existing client, Garner. He's mulling over whether to drop Garner as a client in order to get involved in the class action case. Can he?

- a. Yes he can because a lawyer is generally permitted to withdraw from representation at any time and for any reason.
- b. Yes he can, as long withdrawal can be accomplished without material adverse effect on his client, Garner.
- c. No he cannot, unless Garner is using his services to commit a crime or fraud or Rothman finds his actions to be repugnant.
- d. No, he cannot withdraw for any reason without first obtaining Garner's informed consent.

15. Sally was arrested for shoplifting. The crucial evidence against her is certain merchandise found in her bag by police officers called

to the scene. She first claimed she was bringing the items back to return them but then she confessed. However, due to the confusion of the moment, Sally had not been properly "Mirandized" before she was questioned. Her first court-appointed lawyer initially overlooked this impropriety and didn't make a timely motion to suppress the confession even though it was obtained in violation of Sally's constitutional rights. Her new lawyer now seeks to rectify the error.

- a. Because Sally did not appoint her first lawyer, she cannot be blamed for his error, and the court must allow a late motion to suppress as though it had been made on time.
- b. Because Sally did not appoint her first lawyer, she cannot be blamed for his error, and the court must allow the late motion to suppress as long as the prosecution has not been harmed or prejudiced by the delay in making the motion.
- c. Constitutional rights belong to the accused and not to her lawyer, so the first lawyer could not waive Sally's right to *Miranda* warnings in any event—and he certainly could not "waive" them by inadvertence.
- d. Under the general rule, Sally would be bound by her first lawyer's acts and omissions (and even for his blunders).

16. Dana Larkin has a client who's a small homebuilder. In a private consultation today, her client revealed to her that he routinely pays small bribes to various building inspectors in order to get his jobs approved. "Everybody does it," he says. "If we don't, they hold us up and it can cost us a lot of our profit." Paying the bribes is, of course, a criminal act.

- a. Despite the rule of confidentiality and attorney-client privilege, Dana can be legally compelled (ordered by a

court) to reveal what her client has told her about any *illegal* bribes he's paid.

b. The attorney-client privilege does not apply to the bribes her client has paid because they are illegal acts.

c. Dana is permitted to suggest *lawful* precautions that her client can take to minimize the chances he'll get in trouble for paying future bribes.

d. Dana is ethically permitted inform her client of the penalties for paying the bribes and discuss other legal consequences that he may incur.

17. Doug Potter has just learned some unsettling information concerning his client. He realizes that his client is about to make a fraudulent representation in a business transaction scheduled for closing later today. The other side would be sure to suffer serious financial losses due to the fraud. If Doug cannot persuade his client not to make the fraudulent representation, then:

a. Rule 1.6 would permit him to reveal his client's fraud.

b. Rule 1.6 would require him to reveal his client's fraud.

c. Both of the above.

d. The Model Rules that would *prohibit* Doug from revealing his client's fraud.

18. In the preceding question, a practical and ethical solution that many lawyers in Doug's position might opt for would be:

a. A "noisy withdrawal."

b. To go ahead and represent the client at the closing but to carefully confine himself to routine legal matters and avoid having anything to do with any fraudulent statements.

c. To withdraw from representing the client but take care not to say or do anything that might adversely affect his client's interests.

d. To go ahead and reveal any fraud that occurs because, by committing fraud, the client forfeits confidentiality.

19. Alice Harding was appointed to represent a defendant on appeal from a conviction for using a cell phone to send a 17-year old some pictures she took last summer at a "naturist" resort. Alice's client was particularly keen to have Alice include, even stress, a First Amendment argument, namely, that the law is (at least as applied in this case) an unconstitutional restraint on free expression. She specifically told Alice to make such an argument. However, Alice considered the argument a non-starter and refused to include it in her brief. As a result:

a. Alice's client was probably denied her constitutional right to effective assistance of counsel.

b. Alice has very likely violated her duties to her client by refusing to follow her client's instructions.

c. Both of the above.

d. None of the above. The decision of what to include in and leave out of an appellate brief is entirely up to the lawyer.

20. Rachel Horwath represents the defendant in a commercial dispute. The plaintiff's lawyer just phoned her to ask for a short postponement. Horwath agreed, as a common courtesy. After

hanging up, Horwath realized that a written stipulation is necessary in this particular situation and that the plaintiff's lawyer has apparently forgotten. If she just lets things take their course, her client will probably win the case due to the failure of the plaintiff's lawyer to get the written stipulation—though there's a small chance that the plaintiff would be allowed to cure. At any rate, a lot of bad feeling would be generated in the process. Your best advice to Horwath would be:

- a. Do nothing and let things take their course.
- b. Call the plaintiff's lawyer promptly and inform him of the need for a written stipulation.
- c. Call her client and discuss the pros and cons of the possible courses of action.
- d. Call the judge and have the plaintiff's lawyer disqualified for incompetence.

21. It is said: "One of the places where lawyers and clients tend to have inherently opposite interests is when it comes to the fees for the lawyer's services." Among the specific problem areas that a lawyer should be alert to are that the lawyer might be tempted to:

- a. Reject a settlement offer that the client would (if properly counseled) be inclined to accept.
- b. Accept a settlement offer that the client would (if properly counseled) be inclined to reject.
- c. Spend time pursuing claims that lack merit or decline to pursue claims that have merit.
- d. All of the above.

- e. None of the above.

22. When a friend of Ken Devogne's found out that Devogne was representing Malcolm Pudge, the friend said to Devogne: "Just between you and me, Pudge has some secret accounts overseas and you'd better hope 'they' don't find out about them"—adding some specific details.

- a. Since this information is covered by the attorney-client privilege, Devogne doesn't have to worry that he can be forced to testify about it.
- b. Since this information is covered by the attorney's ethical duty of confidentiality, Devogne doesn't have to worry that he can be forced to testify about it.
- c. This information is not covered by the attorney's ethical duty of confidentiality unless Devogne had some sort of confidential relationship with the friend who provided it.
- d. None of the above.

23. Brad Holcomb represents a girl who's suing her school district for injuries sustained in a playground accident. The district's lawyer impleaded the girl's older brother as a third party defendant, alleging that her injuries were partly due to the fact that he was 'roughhousing' with her at the time. When the third party complaint arrived, Brad reassured the parents that he'd represent the brother as well, at no extra charge.

- a. Brad appears to have a conflict of interest here.
- b. Brad probably has no conflict of interest representing both the brother and sister because they are both members of the same family.

c. While there's no conflict of interest on these facts, there would be if Brad were taking an extra retainer for representing the brother.

d. There is almost necessarily a conflict of interest here because Brad is trying to represent two people who are "related by blood or marriage."

24. Ruth Donnelly is on retainer to represent ShopSmart Supermarkets in various contract negotiations but not in personal injury lawsuits (which are always handled by lawyers hired by ShopSmart's insurance company). Ruth's friend, Carol, slipped on some spilled mayo and broke her ankle at ShopSmart's store. She wants Ruth to represent her in making a claim against ShopSmart. Because the claim would have nothing to do with any matters in which Ruth represents ShopSmart, Ruth sees no problem helping out Carol with the representation.

a. Ruth's instincts seem correct, and there should be no ethical problem with her representing her friend in making a claim against ShopSmart.

b. As long as Ruth gets Carol's informed consent, there should be no ethical problem with her representing Carol in making a claim against ShopSmart.

c. As long as Ruth gets the informed consent of both Carol and ShopSmart, there should be no ethical problem with her representing Carol in making a claim against ShopSmart.

d. Even if Ruth gets the informed consent of all concerned, there would still be a serious question whether Ruth could ethically represent Carol in making a claim against ShopSmart.

25. Before Donna became a lawyer she worked selling real estate and is still a licensed broker. Occasionally she has clients looking to sell their homes and, using contacts from her real estate days, she's often able to find them a buyer. When this happens, Donna and her client agree in advance that she will receive a separate brokerage commission (as seller's broker). She also, of course, represents her clients as the seller's lawyer in finalizing the deal.

a. There is no obvious ethical problem with Donna taking both a commission as seller's broker and also acting as the seller's lawyer since the interests that she serves in the two capacities are almost perfectly consistent.

b. Serious ethical concerns about conflicts of interest could arise from the fact that Donna is acting as both the seller's broker and also the seller's lawyer.

c. Any and all ethical concerns that might arise from Donna's dual role as seller's broker and lawyer would be fully dispelled if her client gives informed consent in writing.

d. The Model Rules specifically prohibit lawyers from taking a commission as seller's brokers while also acting as the seller's lawyer.

26. One of Donna's legal clients has a house for sale and Donna decided she wants to buy it for herself. She made the client an offer, and it was an especially good one since no commission would have to be paid to an outside broker. Donna also agreed to do all the legal work for the deal —another big cost saving.

a. Because of the obvious benefits and savings to the client in this situation, there are no ethical concerns that need to be considered if Donna and her client proceed according to this plan.

b. In addition to getting her client's informed consent to the proposed representation arrangements, Donna must advise her client in writing of the desirability of getting the advice of another lawyer in doing the transaction.

c. Donna risks violating the ethical rules by, in effect, providing legal services for free, which lawyers are not supposed to do except in the context of *pro bono*.

d. As long as Donna's client is in total agreement with the proposed terms and arrangements, there's no further requirement that the deal should meet any externally imposed standard of "fairness."

27. Bob Dixon was involved in a fender-bender. The other driver has sued him. Bob called his insurance company and was informed that it had named Nelson Glover to represent him at the company's expense (as per the policy). Bob doesn't like Glover and would never have chosen him on his own, but he figures that, since the company's paying any settlements, he might as well go along. Glover had a routine check done and found out that Bob's license was under technical suspension at the time of the accident. Bob's policy excludes coverage for accidents in which the driver does not have a valid license. Glover has a conflict of interest that may prevent him from representing Bob because:

a. He was selected by somebody other than his client, Bob, and his actual client would never have chosen Glover on his own.

b. His fee is being paid by somebody other than his client, Bob, and under the ethical rules it's not considered possible that he could exercise truly independent judgment on Bob's behalf.

c. He may have representation responsibilities to the insurance company and thus be required to inform them of Bob's license suspension as a possible basis for excluding insurance coverage under the policy.

d. All of the above.

e. None of the above. Glover does not appear to have a conflict of interest on these facts.

28. Bill and Marge Feldman are both lawyers and are married to each other. Before Bill and Marge joined to form a law partnership, he worked in a big firm where (among other things) he represented Base Co. in employment discrimination cases. In that capacity he learned a lot of confidential information about the company's internal procedures for dealing with allegations and employee complaints. Now an old college classmate of Marge's wants to retain her to assert an employment discrimination claim against Base Co. If Marge has a conflict preventing her from taking the case (on these facts), it would be because:

a. She is married to Bill, who previously represented Base Co in substantially related matters.

b. She is in a law partnership with Bill, who previously represented Base Co in substantially related matters.

c. Both of the above.

d. None of the above. There is no plausible reason to think that has a conflict of interest on these facts.

29. Rob Gibson got fired and he thinks his employer was discriminating against him because of his political views. He visited Kevin Grey, a lawyer in town, and described his situation. Grey told him that he didn't have a case. Gibson never signed a retainer

agreement and Grey did not charge him a fee. Later, Gibson heard about a friend who recovered \$100,000 after being fired under circumstances that Gibson's thinks were very similar to his. Gibson has consulted you about the possibility of a malpractice action against Grey for giving Gibson faulty legal advice. Gibson's chances of a malpractice recovery against Grey are:

- a. Practically nil because Gibson did not actually retain Grey to represent him.
- b. Practically nil because Grey did not charge Gibson a fee.
- c. Not quite zero, but proving a case against Grey would require Gibson to prove that he would have won a judgment on his claim against his former employer.
- d. All of the above.

30. During a routine compliance audit, attorney Glenn Underwood was asked to supply a list of banks in which he maintained client trust accounts. Underwood sent an email response in which he wrote: "I have client trust accounts in the following banks:" and he listed 3 banks. He did not, however, list the Third National Bank where he had a client trust account from which he'd "borrowed" \$3000 for a few days during the previous month. As required by his firm's rules, the "ethics" partner in Glenn's firm, Renee Goodwin, got a copy of the email, and she read it shortly after he sent it out. She realized he'd failed to include mention of the Third National Bank.

- a. Because Glenn's answer is not technically a lie, it does not raise any issues under the ethical rules.
- b. Renee probably has an obligation to report Glenn to the disciplinary authorities because the evasiveness of his answer raises a substantial question as to his honesty and trustworthiness.

c. Renee probably has no obligation to report Glenn to the disciplinary authorities because, as his law partner, she does not have direct supervisory authority over him.

d. Glenn's cleverly crafted response is simply an example of good advocacy by Glenn on his own behalf, and Renee should send him a congratulatory note

### Short-Answer Essay Questions

Each of the following 10 questions is meant to be answered in a few lines. Just state your conclusion(s) along with 2-6 sentences or so that give your reasons. There is no “word limit” as such, but crisp, concise answers that show a firm grasp of the material will receive more credit than answers that are wordy and wandering. Important note: If you believe that the answer to the specific question depends on a crucial fact not given, your answer should include both sides of the issue (for example: “If so-and-so is privileged, then .... But if it is not privileged, then ....”

#### I.

Arlen Towne represents Harry Rivers who is charged under the Lacey Act with illegal trafficking in rare orchids. The Act makes it a felony to import or possess plants or plant parts taken from the wild in violation of local (foreign) laws. Towne sent an investigator to his client’s property to check out a small shed that Rivers used for his horticultural activities. Near the shed, behind some thick bushes, the investigator found a rubbish pile containing partially burned remnants of international shipping containers. If an analysis of the containers turns up DNA of prohibited plant species, it could implicate Rivers in the offense charged. The investigator didn’t move anything, but he came back and told Towne what he’d found.

1. Is Towne’s knowledge that there are potentially incriminating shipping containers in the rubbish pile covered by the attorney-client privilege? (If you believe that the answer depends on one or more *additional* facts—not *different* but *additional*—please specify what the additional fact(s) would be.)
2. Suppose that Towne’s knowledge of the existence of the shipping containers is *not* covered by the attorney-client privilege. What would be Towne’s ethical obligations with respect to disclosing such knowledge? Would he be required to disclose, on his own initiative, the existence of the containers to the prosecutor?
3. Suppose (to change the facts slightly) the investigator brought the shipping containers back to Towne’s office. Is there any reason why Towne could not just quietly keep them or would he be required, on his own initiative, to turn them over to the prosecutor? Would it matter if there were still some bits of illegal orchids in the containers?
4. Suppose the prosecutor finds out that Towne has taken possession of potentially incriminating shipping containers and subpoenas them as evidence. Could Towne be forced to disclose where they were found?

## II.

Smithfield Corp. is under investigation for allegedly polluting a stream with effluents from its Raymont plant—one of 34 such plants that Smithfield has around the country. Smithfield’s lawyer, David Frazier, consulted with Smithfield’s CEO and its operations VP about this situation. After that, he went out to Raymont, where he interviewed the plant manager and also the employees who were in charge of running the machinery that had allegedly discharged the effluents in question. In order to encourage the employees to be forthcoming, Frazier assured them that he was there as a lawyer and that anything they said to him would be strictly confidential. He also obtained written statements from the employees.

5. The state environmental protection agency now wants copies of the written statements that the employees and various executives made to Frazier concerning the alleged pollution incidents. Smithfield’s executive management does not want these documents turned over to the agency. Can Frazier, as a lawyer, be lawfully forced to deliver the documents to the agency if the agency tries to subpoena them?

6. With the company dragging its feet on releasing the employees’ written statements to Frazier, the agency lawyer in charge of the case has instructed his staff to get in touch with the relevant Smithfield employees directly and see what information can be gleaned. His staff hit a stone wall, however, because the employees’ response was that “Mr. Frazier told us not to talk to anybody about this situation, especially not to you.” The agency lawyer was very agitated to hear this, and he personally called up several of the employees—but got little info. Now, he’s thinking about reporting Frazier to the disciplinary authorities for telling witnesses not to talk. Was there anything ethically improper with Frazier’s behavior? How about that of the agency lawyer?

7. Because of the amount of damage allegedly caused by the pollution, there’s now talk of indictments. The open question is whether the company itself will be indicted or only the employees and supervisors responsible for running the machinery. It all depends, the prosecutor says, on whether the company “cooperates” with the investigation. He has repeated the agency’s request that Frazier turn over copies of the written statements he got from the employees. One of the employees, Wayne Cravitz, has just hired a lawyer, and Wayne’s lawyer objects to release of the statements that Wayne made to Frazier. If the company has decided that it’s in its interest to turn over Wayne’s written statements to the prosecutor, does Wayne’s lawyer have a legal basis to stop it based on the attorney-client privilege or confidentiality?

8. If, despite Wayne’s objections, Frazier turns over Wayne’s statements to the agency, does Wayne have any likely basis for holding Frazier liable for doing so? If so, was there anything Frazier could have done differently to protect himself from such liability?

## III.

Charles Wilcox represents Shawn Hendry, who’s charged with breaking into a drugstore and stealing certain pharmaceuticals. According to time stamps on the drugstore’s security videos, the break-in occurred at 11:30 at night. However, Hendry has several friends who will testify that he was there at 11:30. What’s more, the records at Hendry’s bank show that, at 11:23, he withdrew money from an ATM located 15 minutes by car from the drugstore. Initially, Hendry

admitted to Wilcox that he'd committed the break-in, but he changed his story when he heard about the time stamps on the security video and realized that the DA has an erroneous idea as to when the break-in occurred. Wilcox has concluded that the timer on the security video must have been out of adjustment, but his client remains adamant in his new story, and he wants Wilcox to get him an acquitted.

9. Is it ethically permissible for Wilcox to put the alibi witnesses on the stand to testify where Hendry was at and around 11:30 and to introduce the bank records into evidence for that same purpose?

10. Suppose that Hendry got on the stand (against Wilcox' advice) and, on cross-examination, the following colloquy occurred (the answer coming before Wilcox had a chance to object):

Q: C'mon, Mr. Hendry. Didn't you break into that drugstore and haven't you even admitted that you did before you concocted this story that you didn't do it?

A: How could I have done it if I was with my friends, miles away, when the place got robbed?

If Wilcox cannot persuade Hendry to stop the charade and retract this answer, does he have an obligation to report Hendry to the tribunal for perjury?

**<End of examination.>**