

## PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

December 13, 2013  
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 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 columns. 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. People affected by major storms in the State of Bliss sometimes have trouble collecting on their insurance. They often find themselves at a disadvantage when dealing with the professional claims adjusters hired by the insurance companies. The legislature enacted a statute authorizing qualified non-lawyers to offer services as “private insurance adjusters” to help people with asserting their insurance claims. A group of local lawyers has sued challenging this new statute. The lawyers’ best argument would be:

- a. The legislature has no power to regulate the practice of law and, therefore, the new statute is not valid.
- b. The power to determine who is admitted to practice law is part of the inherent power of the courts and not a decision for the legislature.
- c. The new statute violates the inherent powers that courts have under rules of the American Bar Association.
- d. The new statute violates the Model Rules.
- e. All of the above are strong arguments against the new statute.

2. Lawyers are said to be members of a self-regulating profession. Lawyers who commit serious ethical violations are subject to disciplinary proceedings that are conducted:

- a. By local county bar associations carrying out their responsibilities as part of the profession.
- b. By grievance or disciplinary committees operated by the American Bar Association, the profession’s highest governing body.

c. Mostly by individual judges who become aware of violations either directly or based on reports by lawyers acting as “officers of the court.”

d. By grievance or disciplinary committees that are, essentially, administrative agencies created by the judicial branch of state government.

3. It is generally agreed that the purposes of lawyer discipline include:

- a. Protecting the public and the integrity of the legal system.
- b. Deterring unethical conduct.
- c. Both of the above.
- d. Compensating clients and others harmed by a lawyer’s errors and misconduct.
- e. All of the above.

4. Craven Credit Associates has asked its attorney, Barry Lewis, to bring lawsuits to collect consumer debts that have been barred by the statute of limitations. The consumers in question are unlikely to have lawyers, and Barry would likely be able to obtain many enforceable judgments by default even though the debts are technically no longer valid. Barry finds Craven’s plan to be repugnant, but Craven is a source of substantial fees and it always pays on time:

- a. Barry should refuse to bring the lawsuits because lawyers are only permitted to pursue their client’s *lawful* objectives.

b. Barry should withdraw from representation if Craven insists on trying to collect debts that are no longer enforceable because that would constitute assisting a client in committing unlawful acts.

c. Barry should carry out Craven's instructions (within the bounds of the law) or else withdraw from representation.

d. Barry may simply ignore client instructions that he finds personally repugnant.

5. Last week Barry received a notice from the disciplinary authorities. It stated that they had investigated his collections work for Craven and found a number of acts of misconduct for which Barry was being suspended for 30 days. Barry believes he's done nothing wrong and, in any case, this is the first he's heard that there were questions about his professional conduct. Which course of action would you tell Barry is most promising:

a. Contest the imposition of the suspension on the ground that he was not given notice of any disciplinary proceeding or an opportunity to present his side.

b. Contest the suspension on the ground that "suspension" is not a generally authorized sanction for attorney misconduct.

c. Contest the suspension on the ground that malpractice liability is the only proper sanction for misconduct in collections cases.

d. Cut his losses and accept the sanction because 30 days is not really a very long time.

6. Hobart represents Perkins who is suing Roth for \$350,000. One day Roth's lawyer told Hobart: "My client says he's willing to settle

for \$50,000. Let me know." Hobart thought Perkins should recover far more than \$50,000 so he did not hesitate to reply: "Not enough." The case later came to trial and the jury awarded Perkins only \$5,000.

a. Hobart has committed an ethical violation in his representation of Perkins.

b. Hobart is probably liable for damages to Perkins for his conduct in this case.

c. Hobart is now ethically required to tell Perkins that he had previously received and rejected a settlement offer that would have given Perkins \$45,000 more than the jury awarded.

d. All of the above.

7. Hobart also has two other clients, R.B. Magnus and Donner, Inc. Yesterday, seeking legal advice, Magnus told Hobart confidentially that Ray Wentworth was a computer hacker and that he'd been fired for sabotaging his previous employer's IT system. Two days later, Donner's president mentioned to Hobart that he'd hired Ray Wentworth in his company's IT department. Assuming that any relevant informed consent is *not* possible to obtain:

a. Hobart has an ethical obligation to tell Donner what Magnus said about Ray Wentworth.

b. Hobart can't ethically tell Donner what Magnus said about Ray Wentworth since he cannot get informed consent from Magnus.

c. Both a. and b. above, but Hobart's duty to keep Donner informed would override any duty that Hobart might have to Magnus.

d. Both a. and b. above, but Hobart must withdraw from representing Donner if his duty of confidentiality prevents him from telling Donner what Magnus said about Ray Wentworth.

8. Clark Ramsey is a lawyer in the public defender's office. He's been assigned to represent a man arrested for vandalizing a day-care center with racist graffiti, an act that Clark finds repugnant. The prosecutor offered a plea deal involving about one year in jail. Clark's client told him confidentially to accept it. Clark then learned that the key prosecution witness just died of a drug overdose, meaning the prosecution cannot prove its case. The plea deal is still technically on the table and Clark, who doesn't like his client, is inclined to simply tell the prosecutor that his client accepted the plea deal.

- a. Since Clark finds his client's action repugnant, he's permitted to simply tell the prosecutor that his client accepted the plea deal.
- b. Clark must inform his client of the witness's death and its legal significance to the case.
- c. As public defender, Clark has the final say on plea deals.
- d. Clark has to tell his client about the witness's death, but he probably doesn't need to talk about the legal significance of the event.

9. Jake Unger does small-scale real estate work and nothing else. While representing the seller in the sale of her home, Jake notices she has a claim against the contractor who put in a new furnace. What's more, he thinks she probably doesn't realize it. However, Jake doesn't want get involved in litigation and feels unqualified to

do so. At the initial interview, Jake had clearly told his client (as he does all his clients) that he will act as her attorney *only* in the sale.

- a. Jake has no responsibility to inform his client about her possible claim against the contractor unless the client asks.
- b. Jake would be straying outside the permissible scope of his representation if he volunteered information about extraneous legal issues.
- c. Jake should inform his client about her possible claim against the contractor, but he has no ethical obligation to represent her in the matter.
- d. Jake should inform his client about her possible claim against the contractor and he is ethically committed to represent her in the matter.

10. In the pre-trial stage of a case, Lambert realized that his opponent had failed to notice an important deadline coming up next week. Missing the deadline would probably be fatal to the opponent's case. As a lawyer and officer of the court:

- a. Lambert is ethically required to warn his opponent of the impending deadline, despite the possible loss of advantage to his own client's cause.
- b. Lambert has an ethical duty to report all critical *factual* information to the opponent, but not necessarily legal deadlines.
- c. In the interest of justice, Lambert is required to report all critical information either to the opponent or to the court.
- d. Lambert has no general duty to volunteer relevant information to the opponent.

**Facts for Epson-Ronn questions.** Mary Epson was retained by Anson Ronn, a hospital orderly. He told her he feared that the hospital suspected him of stealing Arvain, a narcotic pain reliever, from the hospital pharmacy. Ronn also told Epson confidentially that he'd placed 100 vials of stolen Arvain in a secret compartment in his car, parked at the Clement St. garage. Epson later stopped by the garage and located the secret compartment.

11. If the drugs are in the secret compartment, which of the following should Epson do?

- a. Take possession of the drugs to hold for safekeeping so that Ronn won't be able to destroy or dispose of them.
- b. Leave the drugs in place and don't tell anybody where they are.
- c. Leave the drugs in place but tell the police or prosecutor where the drugs are located.
- d. All of the above would be about equally proper (or equally improper) courses of action.

12. If Epson also found a bag of marijuana in the car's secret compartment and left it where it was:

- a. She could not be legally compelled to report it to the police or prosecutors because her information concerning the existence of the marijuana would be covered by the attorney-client privilege.
- b. She must report it to the police even though the fact is technically within the scope of her lawyer confidentiality.

c. She must report it to the police because the information concerning the marijuana's location is not covered by the attorney-client privilege.

d. She would have no duty to volunteer the existence of the marijuana to the police, but a court could properly compel her to disclose its existence and location.

13. Suppose now that Epson found a bag of marijuana in the car's secret compartment and turned it promptly over to the police:

- a. She may also choose (voluntarily) to tell the police where she found it because that information is not within the scope of her lawyer confidentiality.
- b. She may also choose (voluntarily) to tell the police where she found it because that information is not covered by the attorney-client privilege.
- c. She could not be legally compelled to disclose where she found it because that information would be covered by the attorney-client privilege.
- d. She could (under these circumstances) be legally compelled to disclose where she found it because she has moved it.

14. Suppose that Epson found a bag of marijuana in the car's secret compartment and, for the protection of her client, she took it back to her office for safekeeping:

- a. She would be doing exactly what, as an attorney, she should be doing in the interest of loyally representing her client.

- b. These actions could not be considered, in any sense, destruction of evidence.
- c. She could be legally compelled to answer if asked whether she removed any contraband from Ronn's car and, if so, where it is now.
- d. She might be acting unethically but, as an attorney, she would not be committing any legal offense.

15. Because Epson is a criminal defense attorney representing Ronn, she is, under the Model Rules:

- a. Generally required to reveal relevant evidence to the prosecutor.
- b. Generally required to refrain from disclosing evidence that tends to inculpate her client.
- c. Generally required to reveal relevant evidence to the prosecutor except for evidence covered by the attorney-client privilege.
- d. Generally forbidden to reveal any evidence unfavorable to her client unless the evidence is already a matter of public knowledge

16. The police have tried without success to find Ronn's car. They have turned to Epson for help.

- a. Epson can be required to reveal the location of the car because the location is a fact and, therefore, not covered by the attorney-client privilege.

b. Although Epson cannot be required to reveal the location of the car, she is ethically permitted to do so in the interest of justice even if that would be contrary to her client's interests.

c. Epson would be legally required to reveal the location of the car because a refusal to do so would violate the law making it a crime to conceal evidence.

d. Epson cannot be required to reveal the location of the car because her knowledge of its location is the direct result of a protected attorney-client communication.

17. In terms of the scope of information protected, the attorney-client privilege:

- a. Is generally broader than the lawyer's duty of confidentiality.
- b. Is generally narrower than the lawyer's duty of confidentiality.
- c. Is generally about the same as the lawyer's duty of confidentiality.
- d. Is strictly speaking just another name for the lawyer's duty of confidentiality.

18. The government alleges that Crier Corp. has committed various regulatory violations. Melvin Garner is an associate in the law firm that represents Crier. The firm has sent him out to interview Crier Corp. employees who may have relevant information within the scope of their employment. One of the law firm's goals is to prevent a criminal indictment of Crier, if possible. Melvin needs to have the full and frank cooperation of the employees that he'll be talking to. Under the *Upjohn* rule, he can (without stating a falsehood) tell the employees that:

- a. Anything they say to him in confidence will be covered by the attorney-client privilege.
- b. Nothing they say to him in confidence can be revealed without their consent.
- c. Everything they say to him in confidence will be covered by attorney-client confidentiality and, therefore, cannot be revealed without their consent.
- d. All of the above.

19. In talking with Crier's employees as Crier Corp's lawyer, Melvin:

- a. Will presumptively be the employees' lawyer as well.
- b. Should tell the employees that he is "there to represent them, too" even if, technically, he's not since he needs their full cooperation.
- c. Can properly tell the employees that he is "there to represent them, too" even if, technically, he's not since their interests almost certainly coincide with those of Crier.
- d. Is in a very delicate position because he needs the help of persons who are not his clients and who might be better off not talking freely with him.

20. When interviewing the Crier employees as the lawyer for the corporation, Melvin is:

- a. Presumptively looking out for the best interests of all concerned, including the employees.

- b. Completely free to tell the employees whatever is in the corporation's best interest for them to hear.
- c. Under no duty to keep information that he gets from Crier employees confidential from the corporate management.
- d. All of the above.

21. Ray Summit has been retained by Gallitin Corp. to negotiate a factory acquisition from Lark, Inc. In preparation, Ray has learned a lot of special information, and he will probably be able to get a better deal for Gallitin if Lark does not also have this information. In negotiating the proposed transaction with Lark's lawyers, Ray:

- a. Is generally free to misrepresent facts without liability since the other lawyer's reliance would not be deemed "reasonable" reliance.
- b. Is generally free to misrepresent any facts that Lark's lawyers can check out on their own but not facts that only he or his client have any way of knowing.
- c. Can be held liable to Lark for damages if he makes false statements of material facts.
- d. May be subject to discipline for making false statements of material facts to Lark's lawyers but he cannot be held liable for damages.

22. While representing his client in negotiating a sale of a small business, Reggie Harper made the following statements. Which was a violation of Model Rule 4.1?

- a. "My client has an offer from another buyer who's willing to pay \$75,000 more than your offer." In fact, the client had no other offers.
- b. "My client won't accept anything less than \$400,000." In fact, Harper had no reason to believe that his client has any particular minimum price in mind.
- c. "My client has received an offer to buy for all cash up front." In fact, the client had received such an offer, but it had already been retracted.
- d. All of the above were violations of Model Rule 4.1.

23. While attorney Gus Fairborne was having lunch with some of his lawyer friends, he mentioned that he had to go to California for a certain client that was thinking about buying a facility there. Has Gus violated any of his duties of confidentiality?

- a. Yes.
- b. No, as long as he didn't mention the name of the client.
- c. No, unless what he disclosed would have been embarrassing or financially harmful to the client.
- d. No, since Gus disclosed the information only to persons who were also lawyers and, therefore, also bound by the rule of confidentiality.

24. Last month, Fairborne's friend and shooting-range buddy, Shane Gibson, was arrested for robbing a deli and firing a shot that hit the clerk in the arm. Fairborne is now representing Shane. The police have determined that a Glock pistol was used in the robbery. During a confidential conversation yesterday, Shane told Fairborne that he owned a Glock, and Fairborne replied: "I know. I was with you at the

gun store when you bought it last October." Under the attorney-client privilege:

- a. Fairborne can be required to disclose that Shane told him he owns a Glock.
- b. Fairborne can be required to disclose that Shane had bought a Glock.
- c. Both of the above.
- d. None of the above.

25. Clayburgh asked MontPierre to represent his daughter, Jessica (age 19), on a DWI charge, promising to pay MontPierre's fee. Later, Jessica told MontPierre in a confidential interview that, in addition to underage drinking, she sometimes "did coke" with her friends. MontPierre and Clayburgh have known each other since college and MontPierre believes that Jessica's father should be told that his daughter may need help with substance abuse.

- a. MontPierre is ethically permitted to tell Clayburgh about Jessica's substance abuse because Clayburgh is paying the fee.
- b. MontPierre is ethically permitted to tell Clayburgh about Jessica's substance abuse because it was Clayburgh, not Jessica, who put MontPierre on the case.
- c. MontPierre is ethically permitted to tell Clayburgh about Jessica's substance abuse because it's a fact that's publicly known, at least among Jessica's friends.
- d. MontPierre is not ethically permitted to tell Clayburgh about Jessica's substance abuse



26. William Collier has been retained on a contingent fee basis by Lee Reiser, an ex-employee of Windview Golf Club. Reiser is suing the club for wrongful termination. Reiser has told Collier that the club is in bad financial shape and a big judgment could drive it into bankruptcy. Last week, the club offered a substantial settlement that Collier thinks would be financially better for both Reiser and himself. He worries that a final judgment might trigger bankruptcy and prevent any recovery at all. For personal reasons, however, Reiser prefers to go for judgment and, hopefully, force a bankruptcy.

- a. Because Collier is working on a contingent fee basis, he has an interest that allows him to accept a reasonable settlement despite Reiser's objections.
- b. Because he's the attorney and Reiser is only the client, Collier is ethically allowed to accept a reasonable settlement despite Reiser's unreasonable objections.
- c. If going for judgment is, in Collier's professional opinion, a huge strategic mistake, he is ethically allowed to accept a reasonable settlement despite Reiser's objections.
- d. Because Reiser is the client, it's up to him to determine the objectives of the representation.

27. Gwen Rabin represents a group of women suing for an injunction under Title VII. The week before the trial, the defendant's lawyer offered Rabin's clients essentially everything they were demanding on the condition that Rabin waive her claim for statutory attorney fees that are assessable against a losing defendant.

- a. Rabin has an irresolvable conflict of interest and must withdraw from the case.

- b. Rabin is ethically required to do what is best for her clients even if that means accepting the offer and sacrificing her fee, despite all the work she's done.
- c. The defendant's lawyer risks disciplinary action for even making such an offer.
- d. Rabin is not ethically required to accept the offer on these onerous terms even if her clients want her to.

28. Ellen Hopkins represents a teenage girl suing for injuries sustained in a water skiing accident. Ellen expects a settlement agreement tomorrow. Meanwhile, Ellen just learned that her client has been in a serious car crash. Because her client was expected to be a very sympathetic witness, Ellen decides to finalize the settlement and go for the needed court approval without telling the court or opposing counsel what's just happened.

- a. If Ellen's client died in the car crash, there is a serious risk that the settlement may later be successfully challenged.
- b. If the client survived the crash but probably won't be able to testify, there is a serious risk that the settlement may later be successfully challenged.
- c. Both of the above.
- d. Whether or not Ellen's client survived the crash and can testify, there's no expectation that she should tell opposing counsel or the court what's just happened.

29. Caleb Webb parked his truck in a private parking lot without permission and it was towed away. Now Dave Taylor, his lawyer, is suing in replevin to get it back. The towing company demands, in addition to the tow charge, a "storage fee" of \$150 per day. By now, the storage fee is quite high, and Taylor thinks it's probably

unenforceable. But the towing company has the truck and won't budge. Taylor thinks a little "hint" about possible prosecution for larceny might strengthen his negotiating posture in the replevin action.

- a. The Model Rules, in a break from past precedent, would specifically forbid a threat of criminal prosecution as a tactic to induce settlement.
- b. The Model Rules, in a break from past precedent, would not necessarily treat a warning of possible prosecution as unethical.
- c. It is not now (and never has been) considered ethically questionable to threaten prosecution in connection with a civil case but simply a matter of tactics and strategy.
- d. If Taylor decides to make the threat, he should be sure to communicate it directly to the towing company and not risk diluting its impact by going through their lawyer.

**Facts for Lisa Kirby-Felix Robb questions:** Lisa Kirby represented Felix Robb, a developer who bought a piece of land to build a small shopping strip. Robb gave the seller a promissory note for about 90% of the purchase price. The seller took the note in reliance on Robb's certified financial statements, which were about 2 months old, plus a signed "update" statement that there was "no substantial change" in Robb's financial condition. Kirby prepared all of the papers for Robb, including the "update" statement that Robb signed and delivered. All along, however, Kirby knew that a recent major loss on another project had left Robb nearly insolvent. In other words, the "update" statement was false. Nonetheless, Kirby went ahead and quietly performed ordinary attorney functions in connection with the transaction.

30. Based on these facts:

- a. Kirby has violated the Model Rules.
- b. The general view is that Kirby should be held liable to the defrauded seller damages for her role in the transaction.
- c. Both of the above.
- d. There is no basis on these facts for finding either an ethical violation or liability for damages.

31. Which of the following would be considered solid arguments *against* holding Lisa Kirby liable to the seller for fraud in carrying out her representation on Robb?

- a. The seller was not Kirby's client and lawyers are not liable for false statements to persons who are not their clients.
- b. Kirby did not make any false statements herself nor did she do anything other than act as scrivener for Robb's false "update" statement.
- c. Both of the above.
- d. None of the above. Most courts would agree that Kirby *can* be held liable to the seller for fraud on these facts.

32. Ferguson's client, Jason, was injured in an auto crash. Everyone agrees that the other driver (now defendant) ran a red light. Jason confided to Ferguson that he'd had a glass of sherry at work shortly before the accident. The defendant does not know this, and there's no evidence that Jason's driving was impaired. Still, Ferguson worries that defendant's lawyer, if he finds out about the sherry, could use it as a hammer to beat down the jury verdict. In dealing ethically with this situation, Ferguson should:

- a. Make ascertainment of truth his first priority and work to assure that the whole truth is presented before the tribunal.
- b. Emphasize those truths that further his client's interests and keep other relevant information confidential unless he is legally obliged to disclose it.
- c. Pay little or no attention to the question of "what is truth" since there is no such thing as "truth" until the court has determined it.
- d. Refrain from making false statements unless doing so is clearly in his client's interest and, even then, only if he is practically certain that the falsity will never be discovered.

33. Last week, Ferguson was at trial in a complicated case. One of the other lawyers asked an eye witness a key question during cross-examination and the witness gave an answer that Ferguson knew was false. Ferguson wondered if the witness was even aware that her answer wasn't true. However, Ferguson felt it could harm his client if her answer was retracted. Ferguson's responsibility in this situation was to:

- a. Take reasonable remedial measures if the witness in question had been originally called to testify by Ferguson.
- b. Take reasonable remedial measures no matter who originally called the witness to testify.
- c. Take reasonable remedial measures no matter who originally called the witness to testify if the false testimony benefited Ferguson's client.

- d. Pursue his client's interest and say nothing since lawyers are never required to tell courts about false testimony unless they *know* the testimony is *intentionally* false.

34. Suppose in the preceding question Ferguson's own client gives a false answer during cross-examination by another lawyer. Ferguson knows the answer was false based solely on confidential information relating to the representation. Ferguson's responsibility in this situation is to:

- a. Take reasonable remedial measures if (but only if) his client was originally called to testify by Ferguson.
- b. Take reasonable remedial measures no matter who originally called his client to testify.
- c. Pursue his client's interest and say nothing unless he *knows* that his client's testimony was *intentionally* false.
- d. Withdraw from the case.

35. In deciding what to do in the preceding question, Ferguson should take as his operating premise that (mark the *best*):

- a. The purpose of the legal system is to do justice and so it always places truth ahead of other values or concerns.
- b. The purpose of the legal system is to resolve controversies and, in the process, values other than truth often are given precedence.
- c. Whatever is said to be the purpose of the legal system, the ascertainment of truth is sometimes subordinated to other values or concerns, but never intentionally.
- d. All of the above.

**Facts for Borg-Gregg questions.** Sandy Borg is in the office of her lawyer, Lawrence Gregg. In a confidential communication she tells Gregg that her son has been accused of an assault at his college and the police are looking for him. She adds that he hid out for the past three days in the family's summer cabin, north of the city, but he apparently left this morning. Borg says she saw him arrive via the cabin's video surveillance system connected to the Internet. She goes on to say that, if he comes back (as expected), she'll let him stay again because, as a mother, she has "no choice." She wants to know what the penalty might be. Assume that knowingly letting her son hide in the cabin is the crime of "harboring a fugitive."

36. Based on these facts:

- a. Gregg would have an ethical obligation to report to the police that Borg has let her son hide in the cabin for the past three days.
- b. Gregg would have an ethical obligation to inform the police about Borg's planned criminal act of letting her son hide in the cabin if he comes back as expected.
- c. Both of the above.
- d. None of the above.

37. Which of the following would Lawrence Gregg be ethically *permitted* to report to the police?

- a. Borg's criminal act of letting her son hide out in the cabin for the past three days.
- b. Borg's planned criminal act of letting her son hide out in the cabin if he comes back as expected.

- c. Both of the above.
- d. None of the above.

38. Which of the following would the attorney-client privilege protect from forced disclosure?

- a. Borg's statement to Gregg that she let her son hide out in the cabin for the past three days.
- b. Borg's statement to Gregg that she plans to let her son hide out in the cabin if he comes back as expected.
- c. Both of the above.
- d. None of the above because the attorney-client privilege does not apply to discussions of criminal acts.

39. Later, Sandy Borg is charged with harboring a fugitive. She insists on testifying at her trial. She tells Gregg that she plans to say she was unaware that her son was in the cabin because she did not check the Internet surveillance site during the time he was there. Gregg tells her this would be perjury, to which she replies: "No, I guess didn't make myself clear about this. I knew he'd been there because I checked the recordings *after* he'd left. But I never knew he was there while he was actually there." Gregg is very doubtful, but he's not certain that she's lying now. He should:

- a. Do everything possible to dissuade Borg from committing perjury.
- b. Immediately inform the judge that he is withdrawing from the case.
- c. Refuse to question Borg on the stand unless she goes back to her original story.

- d. Represent Borg to the best of his ability including, if necessary, assisting her in testifying however she sees fit.

40. Suppose Gregg convinces Sandy Borg to come clean and she concedes that she knew her son was in the cabin from moment he arrived. She also says that she reviewed the recordings after he left and saw that he'd been there. She still insists on testifying on her own behalf. Gregg is concerned that the prosecutor will ask her point blank: "Mrs. Borg, we've established that there was an Internet-connected surveillance system. Did you know your son was in the cabin while he was there?" In anticipation of this question, Gregg could properly:

- a. Prepare Borg to answer: "I didn't look."
- b. Prepare Borg to answer: "I reviewed the recordings after he left and they showed that he'd been there."
- c. Prepare her to say either of the above.
- d. None of the above.

41. In the preceding question,

- a. If Borg gave the answer in a., it would be perjury.
- b. If Borg gave the answer in b., it would be perjury.
- c. Both of the above.
- d. None of the above.

**Facts for Jennie Waltham questions.** Jennie Waltham represents a man accused of robbing a convenience store. He has confidentially confessed the robbery to Waltham. Also, three eyewitnesses,

including the store clerk, have identified him as the man who did it. There was, however, a fourth eyewitness who was shopping in the store, and he picked out a different man during a lineup.

42. The prosecutor has not yet told Waltham about the fourth eyewitness and he prefers not to because it "might confuse" the case.

- a. If Waltham learns about the fourth eyewitness, she would be ethically allowed to call the man to testify that he saw somebody else do the robbery.
- b. Even if Waltham learns about the fourth eyewitness, she would not (in light of her client's confidential confession) be ethically permitted to call him to testify that he saw somebody else do the robbery.
- c. The prosecutor has no ethical or legal obligation to tell Waltham about the fourth eyewitness.
- d. The prosecutor must tell Waltham about the fourth eyewitness and Waltham must reveal her client's confession to the prosecutor.

43. Suppose the prosecutor decides to tell Waltham about the fourth eyewitness and she calls him to testify that he saw somebody else do the robbery. Waltham can ethically argue to the jury that:

- a. The man identified by the fourth eyewitness is the person who did the robbery.
- b. The prosecutor has not proved the case against her client beyond a reasonable doubt because there's an eyewitness who says he saw another man do it.
- c. Both of the above.

- d. None of the above.

44. Waltham discovers that one of the prosecutor's witnesses was convicted of computer fraud several years before. Although Waltham does not doubt that the witness is telling the truth, she wants to use this conviction to impeach him. It is generally agreed that:

- a. As defense lawyer, Waltham can ethically impeach the testimony of the witness.
- b. Waltham can ethically impeach the testimony of the witness because both prosecutors and defense lawyers can ethically impeach witnesses that they believe to be truthful.
- c. Neither the prosecutor nor defense lawyer can ethically impeach the testimony of witnesses they believe to be truthful, so Waltham should not impeach him.
- d. Only prosecutors are authorized to impeach witnesses they believe are truthful, and even then only if the interest of justice requires it.

45. During pre-trial discovery in a suit against Powell & Co., Jim Sawyer received a valid discovery demand for certain letters. He knew the letters contained information potentially damaging to his client's case. Sawyer thinks he has only a weak argument to refuse the demand, but he's thinking about holding back some of the letters anyway, so the other side have to make a motion to compel discovery. The delay will at least buy his client time and possibly lead to a more favorable settlement.

- a. It would not be ethical for Sawyer to use this strategy under any circumstances.

b. There's a good argument that Sawyer may properly use this strategy as long as the resulting delay is consistent with the interests of his client.

c. It would be unethical for Sawyer to use this strategy unless he has a reasonable chance of prevailing against the opponent's motion to compel discovery of the letters.

d. Sawyer should do whatever possible, including roadblocks and delays on any pretext, to further the best interests of his client.

46. In the preceding question, it would be considered unethically frivolous for Sawyer to assert a "very weak argument" as a reason for withholding the demanded letters if:

- a. Sawyer really believed there was little chance that the court would accept the argument.
- b. The argument had no non-frivolous basis in law and fact.
- c. Sawyer did not actually think the court would accept the argument.
- d. All of the above.

**Facts for Mel Miller questions.** Mel Muller practices in a small law firm. He has been approached by the Prime Bank to do a substantial part of its mortgage work, which would be a lucrative retainer for Mel. He discovers, however, that a first-year associate in his firm is providing pro bono representation to a woman who has a small credit card dispute with the bank.

47. If Mel accepts the retainer for the mortgage work:

- a. A conflict of interest would exist.

- b. No conflict of interest would exist as long as the mortgage work and the pro bono matter are not substantially related.
- c. No conflict of interest would exist as long as Mel carefully avoids having anything to do with the pro bono case.
- d. No conflict of interest would exist as long as Mel and the associate are carefully screened from one another.

48. If Mel Miller accepts the bank as a client, any possible concern about conflict of interest could be avoided by simply:

- a. Getting informed consent from both the bank and the pro bono client.
- b. Assuring that both Mel and the associate reasonably believe they can still provide competent and diligent representation to their respective clients.
- c. Assuring that no law prohibits simultaneous representation of the two clients.
- d. None of the above would, alone, be enough it itself to avoid the conflict of interest concern.

49. In considering whether Mel Miller should accept the bank as a client, it's important to be sure that no conflict of interest will result because:

- a. Mel, the associate and the firm would be at greater of risk of liability for malpractice if a conflict of interest were created.

- b. Mel could be subject to discipline.
- c. Both of the above.
- d. None of the above, but a conflict of interest could create a serious appearance of impropriety.

50. If Mel undertakes to do the mortgage work for the bank, the conflict of interest rules would:

- a. Prevent him from doing other, personal business with the bank, such as opening up a personal savings account there.
- b. Allow him to open a savings account at the bank as long as certain disclosures and advice are given to the bank and Mel obtains the bank's informed consent in writing.
- c. Have no bearing on whether Mel could do personal business with the bank. The rules deal with conflicting interests *among clients*.
- d. Require him to do his banking elsewhere. In order to maintain their independence, lawyers are ethically prohibited from doing business with their own clients.

51. Linda Hennoch has been retained on a contingent fee basis to represent a client suing for injuries sustained when a toppling ladder hit him in a department store. The client now cannot work and is becoming destitute. A substantial judgment or settlement is, however, a near certainty. It's just a matter of time.

- a. Linda is ethically permitted to give the client money to pay personal expenses incurred while the litigation is pending.

- b. Linda is ethically permitted to *lend* the client money to pay personal expenses incurred while the litigation is pending.
- c. Both of the above.
- d. None of the above.

52. In another case, Linda Hennoch is representing Toby Marshal, the defendant in a car crash case. Toby's auto insurance company selected her to do the case, and it is paying her fee as well as any adverse judgments, up to the policy limits.

- a. This arrangement violates the Model Rules, which prohibit lawyers from accepting fees from persons other than their clients.
- b. This arrangement would not violate the Model Rules as long as Toby gives his informed consent to it (and certain other requirements are complied with).
- c. This arrangement does not violate the Model Rules because the insurance company, not Toby, would be technically considered to be the client under the facts as stated.
- d. This arrangement violates the Model Rules because it puts Hennoch in the position of having a nonwaivable conflict of interest.

53. Keith Conner's client is suing a doctor who, allegedly, botched an operation last year. The doctor claims that Keith should be disqualified because Keith's wife (also a lawyer) previously represented *other* doctors when they were sued for the same kind of operation. The doctor says that Keith's wife gained specialized

information in that prior representation, which will give Keith an unfair advantage. It has been held on facts similar to these that:

- a. A lawyer in Keith's position should be disqualified because he has a concurrent conflict of interest.
- b. A lawyer in Keith's position should be disqualified because he has a successive conflict of interest.
- c. Both of the above.
- d. A lawyer in Keith's position should not be disqualified for conflict of interest.

54. Suppose that, in the preceding question, Keith and his wife are also law partners and that she had (while working for another firm) previously represented the *same* doctor as in Keith's case when he was once previously sued for the same kind of operation.

- a. Keith should be disqualified because there is a concurrent conflict of interest.
- b. Keith should be disqualified because there is a successive conflict of interest.
- c. Both of the above.
- d. It has been held on these facts like these that a lawyer in Keith's position should not be disqualified for conflict of interest.

55. Gwen Rabin represents a two women suing for employment discrimination. They allege that their employer unlawfully discriminated by passing them over for promotion to a supervisor's position, giving the job to a less qualified person instead. The week



before trial, the defendant's lawyer moved to have Rabin disqualified from representing her two clients.

- a. Rabin appears to have a nonwaivable conflict of interest and probably now cannot ethically represent either one of the two women.
- b. Rabin has a conflict of interest requiring withdrawal from representing one of the two women, and Rabin should choose which of the two to represent (helping the other to find suitable substitute counsel).
- c. Rabin has a conflict of interest requiring withdrawal from representing one of the two women, but she must leave it to her clients to which of the two she will continue to represent.
- d. As a general rule, the opponent (defendant in this case) never has standing to move for disqualification of other side's lawyer.

56. While investigating a possible conflict of interest, the disciplinary authorities asked Lance Drummond to supply a list of insurance companies that he represented during 2012. Drummond supplied a statement, under penalty of perjury, that said: "During 2012, represented the following insurance company clients: Allied Mutual Insurance, Coriander Insurance, Lefcoe Auto Insurance Group, and Allstate." He deliberately left two other companies that he represented off the list. Drummond's response is probably a disciplinary violation because:

- a. It fails to correct (and, indeed, it deliberately creates) a misapprehension..
- b. It constitutes a false statement and would therefore be perjury.

- c. It violates Rule 4.1.
- d. All of the above.
- e. None of the above. Drummond is simply responding a bit cagily, as a good lawyer would.

57. In the course of his practice, Drummond holds client funds for various reasons. Money goes in and out, but he normally has a balance of at least \$50,000 in his client trust account. Last month, while shopping for a new electronic tablet, Drummond noticed that he'd used the last check in his personal checkbook so he wrote a check on one of the trust account checks, which he happened to have with him. The next day, he reimbursed the client trust account out of his own personal funds. What Drummond did:

- a. Would be excusable as long as the amount was relatively small (under \$500) and nobody was hurt.
- b. Was ethically permissible as long as he had ample funds to reimburse the client trust account and he did so promptly.
- c. Would be considered a serious violation of the ethical rules
- d. Was a technical violation of the rules but would probably be overlooked since lawyers are generally free to dip into client funds when it's unduly inconvenient not to.

58. Dave Potter left law practice 9 years ago and became a mortgage loan broker. Last year he was investigated for fraudulent practices in his loan business, but charges were never filed. Now the disciplinary authorities are considering whether his conduct merits a disciplinary sanction.

- a. Potter could not be sanctioned for committing a criminal act in this connection as long as he was never convicted of a crime.
- b. Potter cannot be sanctioned for conduct that occurred in a private business activity unrelated to the practice of law.
- c. Both of the above.
- d. None of the above.

59. Danielle Cottonwood is being sued for malpractice. It's alleged that she failed to provide her client with certain information on a timely basis, resulting in a substantial financial loss. At trial, the client wants to introduce expert testimony concerning Cottonwood's responsibilities under Rule 1.4. This evidence should be considered:

- a. Inadmissible under the majority rule, which regards violations of the disciplinary rules as irrelevant to questions of civil liability.
- b. Admissible under the majority rule, which treats violations of the disciplinary rules as a per se basis for civil liability.
- c. Admissible under the majority rule, which treats violations of the disciplinary rules as evidence of a violation of the standards for civil liability.
- d. Admissible under the majority rule, which leaves it up to the jury to decide what relevance, if any, the rules have on the question of civil liability.

60. Beth Vorhees went to Henry Tabor to see he would represent her in a slip-and-fall case. Tabor listened to her story but declined to represent her. Beth later brought a malpractice suit against Tabor for

negligently advising her that she had no case. At trial, Beth testified that Tabor had said: "You don't have a case." Tabor testified that he'd only said that she didn't have a case that he wanted to take. Does this evidence present a jury question on the issue of whether Tabor may be held liable to Beth?

- a. No, because no formal lawyer-client relationship was ever established.
- b. No, because Beth never paid any fee under these facts.
- c. Yes, because the jury can believe Beth's version of what Tabor said.
- d. Yes, whether the jury believes either Beth's version or Tabor's version of what Tabor said.

**<End of examination.>**