PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 15, 2016
FINAL EXAMINATION 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 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. **Do not assume any "informed consent" unless the question says so.**

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 Anne Gorman represents a teenager seriously injured on an amusement park ride. Following the accident, the lawyers for the park quickly paid a visit to the park employee, Jeff Collins, who operated the ride. The lawyers took extensive notes during this interview. Now Gorman is demanding to see the notes of the interview.

a. Because the notes are protected by the lawyers' duty of confidentiality, the park lawyers cannot be forced to reveal them if the park owner objects.

b. The notes may be protected by the attorney-client privilege and, if so, the park lawyers cannot be forced to reveal them if the park owner objects.

c. The attorney-client privilege cannot apply to the notes unless the park lawyers were also representing Jeff.

d. Neither the duty of confidentiality nor the attorney-client privilege could apply to the notes taken during the interview.

2 Same facts as in the preceding question except assume also that the park lawyers were *not* representing Jeff.

a. Under the control-group test the notes would probably be protected by the attorney-client privilege.

b. Under the *Upjohn* rule, the notes would probably be protected by the attorney-client privilege.

c. Both of the above.

d. None of the above.

3 Same facts as in the preceding question (including that the park lawyers were *not* representing Jeff). Assuming that the *Upjohn* rule applies:

a. The attorney-client privilege could not apply to the notes that the park lawyers took during the interview.

b. The attorney-client privilege could be asserted by either the park owner or by Jeff (or both).

c. Neither the Jeff nor the park owner would have a right to prevent disclosure of the notes.

d. Even if the attorney-client privilege applies to the notes, the park owner can allow the notes to be disclosed despite Jeff's objection.

4 Same facts as in the preceding question except that, during the interview, the park lawyers gave Jeff reasonable grounds to believe that they were representing him, too (even though they were not) and that they would keep his statements confidential:

a. Under the control-group test the notes would probably be protected by the attorney-client privilege.

b. Neither the park owner nor Jeff would have a right to prevent disclosure of the notes.

c. The park lawyers would owe no duty to Jeff to keep the notes confidential because there was, in fact, no attorney-client relationship with Jeff.

d. The park lawyers could be held liable to the Jeff if they reveal the notes.

5 Dougherty represents an environmental group that opposes a pipeline project through a pristine woodland area. The leader of the group tells Dougherty that they plan to set fire to some bulldozers and other expensive equipment as a protest against the project. They ask Dougherty what the penalties would be if they are caught.

a. Dougherty may not ethically discuss the penalties but should simply advise the clients that their proposed conduct is illegal and counsel them strongly against it.

b. Dougherty should counsel his clients strongly against their criminal plans, but he can ethically discuss the legal consequences with them.

c. Dougherty can ethically discuss the legal consequences of the client's plans and suggest lawful ways to avoid detection.

d. Dougherty must withdraw from representation of these clients.

6 Same facts as preceding question.

a. Under a literal reading of the Model Rules, Dougherty seems to have an ethical obligation to disclose his client's illegal plans.

b. There is no basis in the Model Rules for saying that Dougherty may properly report his client's illegal plans to the police.

c. Dougherty would be ethically required to keep his client's illegal plans confidential.

d. Dougherty must not only report his client's illegal plans to the police but must also withdraw from the representation.

7 During a confidential jailhouse interview, Burley's client (accused of burglarizing an electronics store) told Burley that he wants to plead not guilty. He also expressed the fear that the police might "find something" if they were to search the shed behind his mother's house. The next day Burley went to the shed and found electronic goods that matched the items stolen from the store. The client later got a new lawyer, and Burley has been called to testify.

a. Burley can properly be required to testify as to what he found in the shed even if he left everything exactly where he found it.

b. Burley can properly be required to testify as to what he found in the shed if he took the stolen electronics gear back to his office for safekeeping.

c. Both of the above.

d. Under no circumstances can Burley properly be required to testify as to the source of items that he found as a result of attorney-client communication.

8 Later that year, Burley interviewed another client in his office. The client left behind a small address book containing possibly incriminating phone numbers.

a. Generally speaking, because the address book is not contraband, Burley can properly return it to his client or, with the client's permission, quietly retain it.

b. Because the address book is potential evidence, Burley would generally be required, on his own initiative, to turn it over to the police.

c. Because the address book may be evidence, Burley would generally be required, on his own initiative, to inform the police that he has it and turn it over if asked.

d. Because the address book is physical evidence and not a communication, the lawyer's duty of confidentiality would have no application to it.

9 Orlando Crewe got a call from a client who was having a dispute with a repair shop. The shop refuses to return one of the client's backhoes. The backhoe had been left off for a repair estimate and the shop manager says he won't release it until the client pays a disputed amount due for a previous repair. Crewe's plan is to call the manager and threaten to press charges for larceny if the repair shop does not release the backhoe without delay. He calls you for ethical advice and asks if his plan is "ethically okay." Your answer should be:

a. There never has been any problem with threatening criminal prosecution as leverage in negotiating a settlement of a civil action.

b. The Model Rules contain no provision that would per se prohibit Crewe from threatening criminal prosecution.

c. Both of the above.

d. The general rule today is that lawyers should never threaten criminal prosecution to gain an advantage in negotiating a settlement of a civil action.

10 In the preceding question, Crewe also asks you if he needs to get permission from the repair shop's lawyer before calling the manager. He says he doesn't actually know that the repair shop has a lawyer, but it's a substantial corporate operation and he'd be surprised if they didn't. Even so, he wants to talk with the shop manager and other employees without the shop's lawyer present. Your advice would be:

a. As long Crewe does not have actual knowledge that the repair shop has a lawyer, he can safely proceed as though it does not and talk with its employees.

b. Even if the repair shop has a lawyer, Crewe can ethically talk with its employees as long as they are willing to talk without the lawyer being present.

c. Even if the repair shop has a lawyer, Crewe can ethically talk with its employees as long as the *employees* are not represented by a lawyer.

d. On the question of whether the repair shop has a lawyer to represent it, Crewe should not close his eyes to the obvious.

11 While attending Parent's Night as her daughter's school, Elise Potter ran into a woman that her client is suing in a fender-bender case. She is set to take the woman's deposition in a couple of weeks. The woman recognizes Potter from a previous deposition and says "hello." The woman's lawyer (arranged and paid for by her insurance company) is, of course, not present.

a. Potter is ethically prohibited from talking with the woman without her lawyer's permission or presence.

b. It is not unethical for Potter to talk with the woman as long as she does not communicate concerning the subject of the representation.

c. The only thing that Potter can say to the woman is that she cannot talk to her because her lawyer is not present.

d. Potter can properly talk to the woman, even about the pending case, as long as she first tells the woman that she has a right to have her lawyer present.

12 Suppose in the preceding question Potter quickly tried to excuse herself saying: "I shouldn't be talking with you about the case." The woman replies: "Oh don't be silly. I know my right to have that lawyer here, but he'd just be in the way. Let's talk this thing over, just between us."

a. Potter would now be ethically permitted to talk with the woman because she has voluntarily waived her right to have her attorney present.

b. Since the woman wants waive her right to have her lawyer present, Potter's only duty is to make crystal clear that the waiver is a knowledgeable one.

c. The general rule is that the client cannot waive the no-contact rule and Potter should be firm is refusing to talk about the case.

d. Potter owes a duty to her own client to hear what the woman has to say, just in case she might make some damaging admissions.

13 Ildowitz is gathering evidence for a hiring discrimination case against Biggo Corporation, He wants to send in people of different ethnicities to pretend to apply for jobs with Biggo in order to see how Biggo's personnel office responds. Ildowitz knows, of course, that Biggo is represented by counsel on an ongoing basis. Ildowitz's proposed plan of action:

a. Should raise no ethical concerns as long as Ildowitz acts through intermediaries and does not himself make direct contact with Biggo's employees.

b. Should raise no ethical concerns as long as Biggo's employees are not themselves represented by counsel (either the company's lawyers or their own).

c. Is a kind of lawyer tactic that is roundly and uniformly condemned by the courts because of the deceit and misrepresentation that is involved.

d. Is similar to evidence gathering through testers that has been treated as permissible, at least by some courts, as a legitimate investigative technique.

14 Lester Lambeau prepared a package of very sensitive documents to send to his client in connection with a pending lawsuit. Due to a word-processing foul-up, he mailed the package to the opposing lawyer.

a. The opposing lawyer is required to promptly notify Lambeau when realizes that he has received documents that have been sent to him inadvertently.

b. The opposing lawyer would generally be entitled to treat the attorney-client privilege as waived and use the documents as he sees fit.

c. The opposing lawyer has an ethical duty to his client to stay mum about receiving the documents, both under his duty of confidentiality and his duty of loyalty.

d. No serious consequence could result if the opposing lawyer quickly reads through the documents before he has to give them back.

15 Sheldon McDonald has a client, Joey Leff, who owns a medical supply business. Leff is under investigation for Medicare fraud. McDonald has just learned that Leff plans to meet with a business associate, Freeman Budds. Supposedly, Budds told Leff that he's been subpoenaed to testify in Leff's case and that he thought they should "get their stories straight." McDonald suspects a setup and thinks Budds was sent by the prosecutor. If the federal prosecutor did indeed send Budds to talk to Leff knowing that Leff has a lawyer:

a. No evidence obtained by Budds would be admissible against Leff because it would have been obtained in violation of the ethical rules.

b. No evidence obtained by Budds would be admissible against Leff because it would have been obtained in violation of law.

c. The evidence obtained by Budds would be admissible against Leff because federal prosecutors are not bound by state ethics rules.

d. The use of Budds to obtain evidence in this manner would generally be considered a legitimate investigative technique.

16 During settlement negotiations in a personal injury case, the defense lawyer asked Robert Estero, counsel for plaintiff, whether his client still needed crutches. Estero falsely said "yes" despite knowing the truth. Relying on Estero's false statement, the defense lawyer offered $150,000 in settlement. Estero's client happily accepted. The defense lawyer has since learned that Estero was lying and has brought an action for

fraud and deceit against Estero. The action should be dismissed because:

a. Estero, as an attorney and advocate, is generally held to a lesser standard of veracity.

b. Estero and the defense lawyer were *adversaries*, and an opposing lawyer has no right to rely on the adversary's statements in litigation.

c. The defense attorney was negligent by not doing his own investigation of the facts and, instead of due diligence, took the shortcut of asking Estero.

d. None of the above: A lawyer, like anyone else, can be held liable for fraud and deceit if he or she does not tell the truth.

17 Assume that Estero was representing a child injured in an ice skating accident. As a defense to liability, the defense lawyer is arguing, among other things, assumption of risk. During settlement negotiations, Estero stated: "You know, assumption of risk is not a valid defense when the injured plaintiff is under 8 years of age." This was an arguable interpretation of the one of the local precedents, but Estero did not personally believe it to be the correct one.

a. Estero has committed fraud and deceit for which he can be held liable.

b. Estero has provided an opinion of law, and a lawyer generally cannot be held liable to a non-client for a "false" statement of pure law.

c. Lawyers are held to vouch for their legal interpretations and, for that reason, Estero should be held liable if the other lawyer relies.

d. Both b. and c. aboved.

18 Deegan represents Meeks, suing for injuries in a construction accident. A few months after the accident, Meeks was further injured in a car crash. The defendant wanted an independent assessment of Meeks' injuries and required him to appear for a physical exam by a doctor that the defendant chose. The doctor was unaware of the car crash and Deegan assumes that the doctor mistakenly believed the car crash injuries were caused by the construction accident. But Deegan kept silent, hoping the mistake might lead defendant to offer a more generous settlement. As a general matter:

a. Deegan would be expected to clear up any possible misunderstanding and inform defendant's lawyer that Meeks also had injuries from an unrelated event.

b. If defendant's lawyer informally asks Deegan about possible unrelated causes of Meeks' injuries, Deegen would be required to answer and to do so truthfully.

c. If defendant's lawyer informally asks Deegan about possible unrelated causes of Meeks' injuries and *if* Deegen answers, his answer must be truthful.

d. Both b. and c. above.

19 Under a contract of sale for a commercial building, the seller was required to deliver to the buyer a certificate stating that the foundation was in good condition. However, as both the seller and his attorney knew, the foundation had a serious crack that was concealed behind a wooden wall. Nonetheless, the attorney drafted a certificate complying with the contract, had his client sign it and delivered it to the buyer, who bought in reliance on it. The buyer now sues the seller and seller's attorney for damages.

a. Seller's attorney did not act in accordance with the ethical rules.

b. Seller's attorney did not violate the ethical rules because, technically, the false statement in the certificate was the client's, not the attorney's.

c. Seller's attorney did not violate the ethical rules because the client was contractually required to provide the certificate.

d. Technically, seller's attorney did not violate the ethical rules because he acted as a mere scrivener in preparing the certificate.

20 Based on the facts set out in the preceding question:

a. There is no legal rationale for protecting seller's attorney from liability for fraud and deceit.

b. There are cases that would support an argument that seller's attorney should not, as a matter policy, be liable to the buyer for fraud and deceit.

c. Seller's attorney could not properly be held liable to the buyer for fraud and deceit because, due to his confidentiality duty, he could not have done otherwise.

d. There is no real disagreement that the attorney could properly be held liable to the buyer for fraud and deceit.

21 During a trial for robbery, Susan Marcus called defendant's sister to the stand to provide alibi evidence. The sister testified that defendant was having dinner at her house on March 7 at 7:00, which was time when the robbery occurred. Later that day, the sister telephoned Marcus and said she'd "misspoken" and claimed she'd "got the dates mixed up." The dinner actually had occurred on March 6. Assuming the trial is still in progress:

a. Marcus has a duty to take reasonable remedial measures if she had called the sister to testify even if she thinks the sister did not deliberately lie.

b. No matter who called the sister to testify, Marcus has a duty to take reasonable remedial measures if she knows the sister knowingly lied in her testimony.

c. Both of the above.

d. Marcus would have no duty to take reasonable remedial measures as long as the sister was not her client.

22 Dustin Farber has a client who is going on trial for murder during a drug transaction gone bad. Initially the client told Dustin the decedent did not have a weapon. Now, however, he says he wants to testify that the decedent pulled out "something shiny" before he was shot. Dustin believes his client plans to commit perjury. Which action should he take?

a. Notify the judge that he must withdraw from the case, without giving a reason.

b. Notify the judge that he must withdraw from the case, explaining that the reason is that his client plans to commit perjury.

c. Try to persuade his client to not testify falsely.

d. Do his best to assist his client in testifying any way the client wants to—true or false.

e. Any of the above would be appropriate actions for Dustin to take.

23 Clive Corrales represents a fellow attorney accused of a disciplinary violation. With diligent research he has found an opinion of the ABA's committee on ethics and professional responsibility that is right on point. According to the opinion, Corrales' client should not be subject to discipline. Most courts would regard the opinion as:

a. Binding authority because the American Bar Association is final decider of lawyer ethics question.

b. Entitled to great respect and consideration, though not necessarily binding on the court.

c. Part of the law of the state.

d. Merely a viewpoint of a private organization, not entitled to any particular deference or high regard in reaching its conclusion.

24 It is said that the legal profession is a self-governing profession. The reason for saying this is that:

a. Lawyer discipline for unethical conduct is generally handled by the legal profession itself without any interference from governmental entities.

b. The ethical rules of professional conduct are generally made by the legal profession itself free from involvement of governmental entities.

c. The ethical rules of professional conduct are enforced by lawyers themselves, who constantly police the conduct of other lawyers.

d. None of the above.

25 Facing a short-term cash-flow problem, Chuck Keller borrowed $3000 from an account he was holding for one of his clients. He repaid it in full five days later. No one would have even known about the "borrowing" if there had not been a unexpected audit of Keller's accounts by the disciplinary authorities. For this conduct:

a. Keller likely faces serious disciplinary action that may include, in some states, permanent disbarment.

b. Keller is likely to be disciplined but his violation would not be considered serious as long as no one was hurt.

c. Keller is likely to be disciplined but his violation would not be considered serious since he never intended to steal the money, only to borrow it.

d. Keller faces discipline but the seriousness of his misconduct depends mostly on how good a reason he had to borrow the $3000.

26 In practice for only 6 months, Sara Randall already has many clients—so many that she has trouble getting everything done. Last month, she went to a contract negotiation on behalf of a client and, due to incomplete preparation, she didn't notice that the contract lacked a routine but critical clause protecting her client in the event the other party became insolvent. Now the worst has happened and insolvency has occurred. Her client stands to lose $200,000 unnecessarily.

a. Randall is likely to be disciplined for this oversight.

b. Randall may be liable for malpractice for this oversight, but discipline is unlikely.

c. It is likely in a case like this that Randall will both be disciplined and liable for malpractice.

d. Everybody makes mistakes and Randall probably has no reason to worry about there being consequences for her oversight.

27 Francesca Forman is a criminal defense lawyer who often represents people who are probably guilty. Nevertheless, through a variety of techniques Forman can sometimes get an acquittal or, at least, a very attractive plea deal. She says that, in order to maintain her objectivity, she never asks the client whether he or she "did it." On the contrary, she makes it very clear that she does *not* want to know.

a. Forman's mode of practice makes a lot of sense and raises no ethical issues.

b. Forman's mode of practice raises a serious question as to whether she is fulfilling her ethical duty of competence.

c. Forman's mode of practice is generally recommended if the lawyer is concerned that, otherwise, she might not be ethically able to help the client commit perjury.

d. The ethical implications of Forman's mode of practice are, essentially, neutral.

28 Reggie Ventura is an associate in a firm. He has been assigned to gather facts for a new case. Reggie called the opponent's client in violation of the no-contact rule and, pretending to be a credit agency staffer, obtained several damaging admissions. He proudly presented the results of his work to his supervising partner, explaining how he got them.

a. The partner should sternly warn Reggie not to do it again but, since done is done, he may go ahead and use the info that Reggie has obtained.

b. The partner may be subject to discipline if he does not take proper steps in light of Reggie's action.

c. The partner probably should sternly warn Reggie but he would not be subject to discipline if he decided, in the interest of the client, to let the matter rest.

d. The partner should commend Reggie for his initiative but warn him to be careful not to get caught.

29 Lincoln Loggs has just passed the bar and opened up a law office. A prospective client has come in and wants him to draft a will. Loggs has never drafted a will or done estate planning work. He did not even take the Wills course in law school.

a. Loggs should respectfully but firmly decline the representation.

b. Loggs may accept the representation, but he must associate himself with a lawyer who has experience in the field.

c. Loggs may accept the client, but he must study up to prepare himself so he can provide competent representation.

d. There are no ethical limits or concerns that would apply to this situation.

30 Justin Barnes was appointed by a court to represent a client charged with armed robbery. The prosecutor has just offered to reduce the charge to the lesser offense of larceny if Barnes' client will plead guilty. Based on Barnes' considerable experience, he knows that this would be an unusually good deal for his client.

a. Barnes should accept the prosecutor's officer immediately, before it can be withdrawn.

b. Barnes should get in touch with his client and relay the offer to the client for decision.

c. Barnes should keep the offer confidential from his client.

d. Barnes should mention to the prosecutor that the offer is unusually good just in case the prosecutor has made a mistake and would want to reconsider.

31 Suppose that no plea deal was reached in the preceding question and Barnes' client went to trial. During the trial Barnes declined to cross-examine an eyewitness called by the prosecution. That turned out to be a serious blunder. Now the client wants to appeal his conviction claiming that, due to Barnes' blunder, he was deprived of his constitutional right to confront and cross-exam witnesses against him.

a. The conviction should be set aside because waivers of constitutional rights must be done personally and cannot be delegated to an attorney.

b. The conviction should be set aside because waivers of constitutional rights must be intentional and cannot be based on a lawyer's mistake.

c. The conviction should be set aside because the constitutional rights of an accused cannot be waived by a *court-appointed* attorney.

d. None of the above. A client is normally bound by his attorney's actions at trial in carrying out the representation.

32 Lanie Hayward represents the plaintiff in an action for damages allegedly resulting from a breach of a commercial contract. At a break during a deposition, her client mentioned to the opponent that he had full confidence in Hayward and he was leaving it to her to negotiate a settlement, if possible. Later, he privately told Hayward not to accept a settlement of less than $500,000. The next week, the opponent made Hayward an offer of "$475,000 right now. Take it or leave it." Hayward took it.

a. The settlement appears to be binding on Hayward's client.

b. The settlement is probably not binding on Hayward's client because she did not have authority to accept it.

c. The settlement could be binding on Hayward's client only if there are some additional facts providing a basis for actual authority.

d. Hayward has no need to be concerned about possible liability to her client on these facts.

33 Suppose that during a telephone call following the deposition in the preceding question, Hayward accidentally let out that her own client had also breached certain provisions of the contract—which was a damaging concession. Now the opponent wants to introduce Hayward's statement into evidence.

a. The statement cannot be introduced against Hayward's client because it would be barred by the attorney-client privilege.

b. The statement cannot be introduced against Hayward's client because Hayward made it accidentally.

c. The statement can be introduced and it would be binding on Hayward's client (*i.e.*, not rebuttable).

d. The statement can be introduced against Hayward's client but Hayward could rebut it with other evidence.

34 Todd Sweeney was sued by his neighbor in a land dispute over 22 acres of wooded hillside. He turned the case over to a lawyer who assured him: "I'll take care of everything." After some time elapsed, Sweeney received a notice that a default judgment had been entered against him. His lawyer had simply "forgotten" to file an answer. Under the judgment, he lost the land in question (even though he would have had a complete legal defense).

a. Sweeney will probably be able to get the default judgment set aside due to his lawyer's inexcusable neglect.

b. Sweeney will probably be able to get the default judgment set aside as long as he took reasonable steps to be sure his lawyer was diligently handling the matter.

c. Sweeney may well not be able to get the default judgment set aside despite his lawyer's inexcusable neglect.

d. Because Sweeney had a complete defense, he almost certainly can get the default judgment set aside because, after all, the job of courts is to do justice.

35 Suppose in the preceding question Sweeney retained a new lawyer, Stanley Swaine, to try to get the default judgment set aside. In reviewing the situation, Swaine noticed that Sweeney had never applied for a local property exemption that was available for woodlands. As a result, he had been paying thousands more in property taxes than he needed to. However, property tax law was not one of Swaine's areas of competence and, moreover, he had not been retained to look into that issue.

a. Swaine should notify Sweeney about the property tax issue and suggest that he get another lawyer to handle it for him.

b. Swaine should not comment to Sweeney about the property tax issue since it is not within his area of competence.

c. Swaine is Sweeney's lawyer and must represent him on the property tax issue and, if need be, study up on the topic to achieve the necessary competence.

d. On these facts, Swaine has no responsibility to Sweeney with respect to the property tax issue.

36 Alexa Thorne, an attorney, let her 15 year-old son drive the family truck down a short stretch of country road between their home and the house where Alexa's mother lives. A deer jumped out from the roadside and her son swerved to avoid it, crashing into the ditch. The truck was fairly badly damaged and Alexa knew her insurance would not cover the loss if her son was driving. So Alexa filed a carefully-worded sworn insurance claim saying: "My truck was damaged in an accident after swerving to avoid a deer…"

a. Alexa's quoted statement clearly appears to be perjury.

b. Alexa's quoted statement appears to raise a substantial question concerning her fitness to practice law.

c. Alexa's quoted statement was ethically questionable as deceit.

d. Both b. and c. above.

e. All of the above.

37 Quentin Rostock (who is not an attorney) is under investigation for improper disclosure of confidential technical information to his employer's competitor. A critical issue in the case is whether and when Rostock communicated with David Fillmore, the competitor's chief design engineer. Rostock was asked in a deposition: "Did you at any time during March 2014 get into contact with Mr. Fillmore?" In fact, as Rostock was well aware, Fillmore had called up Rostock on March 23, 2014. But Rostock answered, truthfully: "I never called Mr. Fillmore."

a. Rostock's literally truthful answer would be perjury.

b. To avoid committing perjury, Rostock should have insisted that the questioner rephrase the question to ask what he obviously meant to ask.

c. Since Rostock reasonably should have known what the questioner actually meant, but was evasive and misleading, he should be guilty of perjury.

d. All of the above.

e. None of the above.

38 Suppose in the preceding question, Rostock's lawyer prepared him to testify by helping him work out literally true but misleadingly evasive answers that would have a good chance of throwing the questioner off track but still would not reveal damaging information. Such conduct by a lawyer would:

a. Constitute perjury.

b. Be ethically dubious as dishonest and deceitful.

c. Not likely fall within the definition of "coaching."

d. Be generally considered the sort of thing a good advocate is supposed to do.

39 During a robbery trial, an eyewitness identified Jack MacKinnon's client as the man seen running from the scene moments after the crime occurred. The client has confidentially admitted to committing the robbery and to being seen by the eyewitness. However, Jack feels that, by using his skills at cross-examination and using truthful impeachment evidence, he can persuade the jury to doubt or disbelieve the eyewitness testimony. For Jack to use this proposed strategy would be generally considered to:

a. Legally amount to perjury.

b. Be ethically out of bounds.

c. Be a kind of illegal witness tampering.

d. Be the sort of thing a good advocate is supposed to do.

40 Same facts as the preceding question. The most important ethical reason the proposed strategy to discredit the witness would be considered improper is that:

a. Jack knows his client is guilty.

b. Jack knows the witness is telling the truth.

c. Jack knows the witness's reputation will be seriously damaged by the impeachment.

d. All of the above are valid ethical objections to the proposed strategy.

e. None of the above would make the proposed strategy ethically improper.

41 Same facts as the preceding question except the prosecutor does not believe the eyewitness's claim that he saw Jack's client. He does not think the man is lying, but believes he is mistaken, so his testimony would be false. What is more, he is not sure that Jack's client actually committed the crime (though he has "probable cause" even without the questionable eyewitness). Under these circumstances:

a. It would be ethically improper for the prosecutor to proceed with the prosecution.

b. The prosecutor can properly proceed with the prosecution only if he believes that Jack's client is guilty.

c. Both of the above.

d. None of the above.

42 Same facts as the preceding question. Suppose also that the prosecutor has exculpatory information tending to show that Jack's client did not commit the robbery. Suppose, too, that this evidence would be likely to change the outcome of the case if presented to the jury.

a. The prosecutor has an ethical duty but not a constitutional obligation to share the information with Jack.

b. Prosecutors in similar situations who do not share the exculpatory information can generally expect to face strict discipline for professional misconduct.

c. Both of the above.

d. The prosecutor may not properly withhold the information from Jack's lawyer but he is unlikely, as a practical matter, to face consequences if he doesn't.

43 Osborne told his client in a civil lawsuit there was probably no way for him to win. In response the client asked Osborne to "stave off the inevitable" as long as possible. During discovery, Osborne endeavored to keep certain sensitive information from the other side by repeatedly objecting to document requests and using arguments based on thin pretexts, even though he knew the arguments had no basis in law or fact. Their only effect was to delay the litigation.

a. Osborne's conduct was not ethically proper.

b. Osborne's conduct was a legitimate strategy for protecting his client's interests.

c. Osborne's conduct would not be considered "frivolous" because losing a lawsuit is a serious affair.

d. Osborne's conduct was improper because advocates are supposed to assist one another in furthering the search for truth.

44 Suppose in the preceding question that Osborne made numerous plausible but generally unsuccessful motions and objections that all had at least a weak basis in law and fact. His purpose was to stretch out the case in order to soften the resolve of the other side and get better terms of settlement.

a. Such delaying tactics are not tolerated by the bench and bar.

b. Such delaying tactics, if in order to protect or further the client's interest, are not clearly prohibited by the Model Rules (as opposed to the comments).

c. Both of the above.

d. All agree that delay is a legitimate tactic as long frivolous arguments are not used.

Remember: Do not assume any "informed consent" unless the question says so.

45 Valerie Trescott represents two teenagers who are charged with vandalizing a school restroom. The prosecutor tells Trescott that he will consider probation against the younger of the two if he agrees to testify against the older boy. Trescott's ethical responsibilities are:

a. To relay the offer to her younger client but she need not mention it to her older client.

b. To inform both of her clients about the offer and help two of them reach an agreement about how to respond.

c. To get both of her clients to consent in writing to her continuing the representation before doing anything else.

d. Withdraw from representing one or, probably, both of her clients because she now cannot represent them both—even with consents.

46 Paul Rodino does general legal work for a local car dealer. Two prospective clients, Norman and Glenn, have separately asked Rodino to represent them in some legal work involving the dealership. Glenn is a neighboring owner who wants Rodino to write up a deed conveying a strip of land to the dealer in order to clear up an ambiguity in an earlier deed. Norman is a customer who wants to hire Rodino to sue the car manufacturer. The dealer would be a named defendant in the case but the manufacturer's lawyers would fully handle the case for both the dealer and the manufacturer.

a. Rodino may be ethically permitted to handle both of these matters if all his clients (including the dealer) give the required written informed consent.

b. Rodino may be ethically permitted to draft the deed if both the dealer and Glenn give written informed

consents, but he could not handle the lawsuit even with consents.

c. Rodino cannot ethically handle either of these matters even if he gets written informed consents from the all the clients involved.

d. Rodino may be ethically permitted to handle the lawsuit if Norman and the dealer give written consents, but he could not write up the deed even with consents.

47 In the preceding question, suppose Rodino goes ahead and represents Norman in the lawsuit against the dealer and manufacturer—and does not get any consents. If the car dealer later objects that he has a conflict of interest, Rodino would be subject to:

a. Discipline.

b. Disqualification.

c. Both of the above.

d. Most likely, malpractice liability only.

48 Harold Richards regularly represents, Linnett, a real estate investor and developer. Last week, Linnett told Harold about a deal to buy and flip a piece of prime development land. The deal was being structured by Linnett's friend, who was looking for 4 or 5 co-investors. Linnett said he saw this as a great opportunity for a quick profit, and he thought that both he and Harold should get involved. If Harold goes into the deal as an investor along with Linnett and the others:

a. He can avoid having any conflict of interest problems simply by not acting as Linnett's lawyer in connection with the deal.

b. There could be no conflict of interest problems as long as Linnett's friend is entirely responsible for structuring the terms of the deal.

c. He could not have a conflict of interest problem as long as he does not represent any other participant in the deal and is merely an investor in it.

d. He could be subject to discipline based on precedent involving situations similar to the this

49 Gerard Fresno represents a small pizza restaurant in his neighborhood. Due to competition from nearby chain outlets, business is down and his client is short on cash. He has asked Fresno for a loan at a normal rate of interest.

a. Fresno can ethically make the loan as an investment in the business provided certain ethically required precautions are taken.

b. Fresno can ethically make the loan to help his client remain financially viable in connection with pending litigation.

c. Both if the above.

d. None of the above. A lawyer cannot properly provide financial assistance to a client.

50 Renee Strachen has been engaged by Nationride Ins. Co. to represent one of its insureds who was involved in an auto accident. Her fees are being paid by the company and, under state law, the insured (and not the company) is regarded as her client. The insured is not being entirely cooperative in the defense and, under a clause in the policy, non-cooperation is a listed basis for voiding the coverage. Strachen's primary responsibility is to:

a. Defend the insured as best she can and do everything reasonably possible to induce him to cooperate in the defense.

b. Notify the insurance company that is paying her fees that it has an apparent basis for avoiding liability under the policy.

c. Follow the instructions of the insurance company in good faith to protect its interests unless she receives contrary instructions from the insured.

d. Remember who is paying her fees and fulfill her duty of loyalty to her fee-payor.

51 Arthur Reilly has been engaged by Magellus Ins. Co. to represent one of its insureds who was involved in a boating accident. His fees are being paid by the company and, under state law, the insured (and not the company) is regarded as his client. When he read the complaint in the case, he was surprised to see that his daughter, Lena, was representing the plaintiff.

a. It seems unavoidable that either Arthur or Lena will have to withdraw from this case.

b. There is nothing in the ethical rules that would suggest that either Arthur or Lena might need to withdraw.

c. Neither Arthur nor Lena would necessarily have to withdraw if their respective clients give the required written informed consents.

d. Arthur would have the responsibility to withdraw from the representation, since he represents the defendant.

52 Hansen was representing Ed and Ted, who were joint venturers in a small hedge fund. During confidential conversations with both Ed and Ted present, Ted told Hansen certain private information concerning a previous venture he'd been involved in. Now, another investor in that previous venture is suing Ted and wants Hansen to testify about statements Ted made to Hansen (with Ed present) concerning the previous venture.

a. When a lawyer represents multiple clients, things said in joint conferences are presumptively *not* subject to the attorney-client privilege unless all agree.

b. When Ted chose to make statements to Hansen in the presence of Ed, he impliedly gave consent that the statements need not be kept confidential.

c. The statements by Ted to Hanson are *not* protected by the attorney-client privilege because they were made while a third party (Ed) was present.

d. The statements by Ted to Hanson *are* protected by to the attorney-client privilege as long as Hansen was representing both Ted and Ed when they were made.

53 For many years Rowland has defended canning companies in lawsuits by consumers who have found various foreign objects in their cans of food. Recently, he has been asked to represent a plaintiff who wants to sue a canner (not one of his current or former clients). The case may require him to take positions that are inconsistent with ones he might later want to take on behalf of his canning company clients.

a. Rowland appears to have an irreconcilable conflict of interest that prevents him from representing the plaintiff.

b. Rowland should not take the case if there's a substantial risk that his representation will be materially limited by his responsibilities to any of his canner clients.

c. For Rowland to take this case would create a positional conflict, and positional conflicts are strictly forbidden.

d. All of the above.

54 Henley's cousin has a cellphone repair business. During a family reunion, the cousin told him about a "possible legal problem" with a supplier to his business. Henley concluded that his cousin had an action against the supplier. It would be a very lucrative item of legal work and he informally agreed to take the case. The next day, Henley discovered that his firm had represented the supplier on a previous matter (on which another lawyer in the firm did the work). Consent cannot be obtained. Can Henley now properly represent his cousin in this new case? (pick *best* answer)

a. No, if the new case involves a matter that is substantially related to the previous matter.

b. No, if the new case involves a matter that is substantially related to the previous matter *and* Henley's representation would be materially limited.

c. Yes, as long as the other lawyer in his firm who represented the supplier on the previous matter does not get involved in this case.

d. Yes, as long as Henley did not personally participate in the representation of the supplier in the previous matter.

55 Dina Watkins represented three entrepreneurs who formed a small business. She handled the incorporation papers, etc. Two of the three entrepreneurs were active participants in the business and the third one, named Schneider, was a purely passive investor. Later, the three got into a dispute and Schneider wants to sue the two active participants and the corporation. Assume nobody is willing to consent:

a. Watkins can properly represent the two active participants and the corporation against Schneider (who must have his own separate lawyer).

b. Watkins can properly represent Schneider against the two active participants and the corporation (who must have their own lawyer or lawyers).

c. Watkins cannot properly represent Schneider or the two active participants or the corporation in this dispute.

d. Watkins can represent whomever she wants as long as her representation will not be "materially limited."

56 Howard Gefflin, an established lawyer with 20 years experience, applied for admission to practice law in a new state (in addition to the 3 states where he was already admitted). The printed application had an item that asked: "Previous bar admissions (list states and dates)." Gefflin's answer truthfully listed two states in which he was admitted, but it omitted the third state, where he'd had a minor disciplinary issue against him a few years back.

a. There should be no ethical problem with Gefflin's answer to this item since he has not made a false statement.

b. Gefflin should be safe under the rule that a lawyer is not required to volunteer relevant information but only avoid telling outright lies.

c. Both of the above.

d. Gefflin's failure to mention the omitted state is a proper basis for discipline.

57 Periwinkle is an associate attorney with a BigLaw firm. In filling out his daughter's private school application, he substantially understated his income in order to qualify for a higher financial aid award from the school. The tactic was initially successful, but he was later found out. The school declined to press charges for fraud and, as far as his law practice goes, he has an exemplary record as a highly skilled lawyer.

a. He is not subject to discipline for this conduct because it was unrelated to the practice of law.

b. He is not subject to discipline for this conduct because he was never convicted of any crime for doing it.

c. Both of the above.

d. He is subject to discipline for misconduct even though the misconduct was not in connection with his law practice.

58 Jeremy Cobb is being sued for malpractice. The claim is based on a meeting he had concerning a prospective client who wanted to sue Magruder. Jeremy decided not to accept the case. The prospective client now claims that during the meeting Jeremy made misleading statements as to certain legal points. Acting in reliance on these statements, the prospective client

says she forfeited valuable legal rights against Magruder. It would be a valid defense to a malpractice action that:

a. Jeremy never actually met the prospective client but only spoke with her representative during the meeting.

b. Jeremy declined to take the case and made it clear that he was unwilling to do so.

c. No fee was ever paid to Jeremy for legal advice in the matter.

d. All of the above would be valid defenses.

e. None of the above would be valid defenses.

59 Suppose in the preceding question that Jeremy was given sensitive information about the case during the meeting but then the prospective client decided not to go with Jeremy but, instead, retain a different lawyer. If Jeremy is later approached to act as co-counsel representing Magruder in the very same matter:

a. He would be free to use the sensitive information as long as there was no lawyer-client relationship when he received it.

b. He would be free to use the sensitive information because no lawyer-client relationship ever came into existence between Jeremy and the prospective client.

c. He would be free to represent Magruder but he must take care not to use any of the information to the disadvantage of his former prospective client.

d. He could not accept the representation as co-counsel for Magruder.

60 A monster lawsuit is underway between Worldwide Mfg. and International Combine, Inc. In the midst of the case, Linda Cosentino moved from being an associate at Weeb Doberman (which represents plaintiff) to being a partner at Dory & Darth (which represents defendant). Now the Weeb firm has moved to disqualify the Dory firm from the case.

a. Under the traditional rule, the disqualification would be proper if Linda worked on the case while she was still an associate at Weeb.

b. Under the modern rule, the disqualification may be avoidable by screening Linda at Dory even if she worked on the case while she was still an associate at Weeb.

c. Even without screening, disqualification could be avoidable under the traditional rule if Linda acquired no information about the case while still at Weeb.

d. All of the above.

<End of examination>