PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 15, 2017
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 locally 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 ethical rules or applicable law. "Ethical" means according to the ethical 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 Josh Grayson, attorney at law, is charged with violating a statute that says lawyers who represent clients in immigration matters must first complete a 12-hour course prescribed by the legislature. His most promising defense would be:

a. The statute is unconstitutional because it denies him due process of law.

b. The statute infringes on the inherent power of the judiciary to regulate the practice of law and is therefore invalid.

c. The statute is invalid because it denies immigration clients the ability to retain the lawyer of their choice.

d. None of the above. Grayson has no obvious defense on these facts.

2 An attorney in Greenville disclosed confidential client information to a newspaper reporter, conduct that Model Rule 1.6 describes as forbidden. Which of the following is true?

a. Model Rule 1.6 is binding on the attorney because it has been adopted by the American Bar Association.

b. The American Bar Association may properly commence disciplinary proceedings against the attorney for this violation of the Model Rules.

c. The attorney may be subject to discipline under the authority of the state judiciary if he improperly divulged confidential information.

d. All of the above.

3 While handling a regulatory matter on behalf of a client, Wilson overlooked an important filing deadline and, as a result, the client lost several hundred thousand dollars due to legal delays. If Wilson's oversight constituted incompetence in violation of the ethical rules:

a. He is likely to be subject to discipline.

b. Discipline is unlikely, though he might possibly face a malpractice suit.

c. He is likely to face both discipline and a malpractice suit.

d. None of the above.

4 During protracted litigation, Curt Dabny made a number of dilatory and repetitive motions in violation of the ethical rules. James Exnor, another lawyer in Dabny's firm, could be subject to discipline along with Dabny:

a. If Exnor ratified Dabny's misconduct *after* he found out it had occurred.

b. If Exnor was Danby's immediate supervisor and did not make proper efforts to prevent the misconduct.

c. If Exnor is a partner is Dabny's firm and did not take timely remedial action that was still possible after he found out about the misconduct.

d. All of the above.

5 Burt Fallows, a personal injury lawyer, got a call from a client about a zoning matter. Fallows has no experience in zoning law. However, he has some free time and does not want to turn away a potentially attractive fee.

a. Fallows must politely decline to represent the client on the zoning matter.

b. Since the client is already an existing client, Fallows cannot properly refuse to provide representation on the zoning matter if he has time.

c. Fallows would be ethically permitted to undertake the zoning matter as long as competence could be achieved by necessary study.

d. Fallows should not take on the zoning matter since he is unfamiliar with that area of law.

6 Tyler Wexler was arrested in connection in a drug bust. He faces facing up to 20 years in prison if convicted. However, he claims he just happened to be in the area and had nothing to do with the crime. The prosecutor has offered a deal that would let Tyler out in 2 months if he pleads guilty to a low-level drug felony. His public defender thinks it would be very foolish for Tyler to refuse this offer, given the evidence against him. If Tyler cannot be convinced to accept the offer, the public defender:

a. Should override Tyler's decision because accepting the offer is in Tyler's best interest.

b. Should act in accordance with Tyler's decision.

c. Should exercise his best professional judgment and not be swayed by uninformed or imprudent choices of his client.

d. Would have implied authority to do whatever he thinks is best.

7 Darien Hargrove has retained a lawyer to help with the legalities of prescribing who gets his property after his death. The lawyer asked Hargrove whether he wants to leave his property mostly by will or prefers do it by means of a revocable trust. Ordinarily:

a. The client decides the objectives of the representation and the lawyer decides the means, in consultation with the client.

b. It is up to the lawyer to decide both the means of carrying out the representation as well as the objectives that would best serve the client's needs.

c. It is up to the client to decide both the means and the objectives of the representation, and the lawyer's job is to follow orders.

d. The allocation of decisions as to objectives and means is fluid, and neither the lawyer nor the client has any particular priority in deciding either one.

8 Shelley Grimes represented the plaintiff in a breach of contract case. She told her client that the other side might make a settlement offer before trial. The client replied: "Anything over $100,000 is okay. But nothing less." An offer to settle came in, at $98,000 "take-it-or-leave it." Grimes took it. Under the usual rules of agency:

a. The settlement is binding on Grimes' client if, in Grimes' independent professional judgment, it was an appropriate amount.

b. Grimes would have had apparent authority to make the deal, so it is binding on her client.

c. Grimes would have had actual authority to make the deal so it is binding on her client.

d. The settlement should not be considered binding on Grimes' client.

9 Suppose in the preceding question Grimes' client had told the other side that Grimes had "full authority" to negotiate a settlement on his behalf—without mentioning any financial limits. The client had, however, reiterated that $100,000 was the minimum when speaking to Grimes privately. If Grimes then accepted the $98,000 offer on her client's behalf:

a. Under the usual rules of agency the settlement would be binding on Grimes' client.

b. It would have been ethically proper for Grimes to accept the $98,000 on her client's behalf since she had apparent authority to do so.

c. Both of the above.

d. Under the usual rules of agency the settlement should not be considered binding on Grimes' client.

10 At lunch with some lawyer buddies, Emmett Murphy said, with mock chagrin: "You think you've got problems. I've got this new client who got herself tanked up on Chablis and rammed two cars and a police cruiser!" The plaintiffs' lawyer found out about Murphy's statement and now wants to introduce it into evidence.

a. The statement cannot be introduced into evidence because it is hearsay.

b. The statement should be admissible as a vicarious admission, but the implication that Murphy's client was DWI can be rebutted.

c. The statement should be admissible as a judicial admission and the implication that Murphy's client was DWI would be considered stipulated and irrebuttable.

d. The statement should not be admissible into evidence because it is protected by the attorney-client privilege.

11 Skip Towne is charged with a series of burglaries. He made several incriminating statements to the police but it is doubtful that his constitutional "Miranda" rights were observed. Under the court's local rule, motions to suppress such evidence must be made in a single package within 10 days of arraignment. Towne's court-appointed lawyer did not make the motion on time. Now Towne has a new lawyer who, shortly before trial, is challenging the admissibility of the statements.

a. The challenge will probably not be allowed because Towne is bound by the action of his lawyer in failing to make a timely motion.

b. The challenges probably *will be* allowed because a lawyer cannot waive a constitutional right on behalf of a client.

c. The challenges probably *will be* allowed because a defendant cannot waive a constitutional right without making a deliberate and knowing choice to do so.

d. The challenges probably *will be* allowed because the courts are inclined to excuse lawyer mistakes when required by the interests of justice.

12 Glenn Sarpsborg was sued on a loan that he had paid in full several years before. He hired a lawyer who said he would "handle everything." Glenn checked with lawyer every week and was told the case was "going fine." Then, unexpectedly, Glenn received a notice of a default judgment against him. According the notice, they plan to take his house to repay the loan. It turns out that Glenn's lawyer had done nothing, but Glenn probably has no reason for concern because:

a. The court will almost certainly open up the default judgment if it was the result of serious lawyer error or neglect.

b. The court will almost certainly vacate the default judgment since Glenn was diligent in checking up on his lawyer and his lawyer lied to him.

c. The courts exist to do justice and they do not allow the system to take advantage of honest citizens who play by the rules.

d. None of the above. There is a strong likelihood that the default judgment is enforceable.

13 In her practice, Bess Margrave does copyright work for authors and nothing else. One of her clients told her about a situation in which he was apparently a victim of actionable fraud by an online publisher. She believes the client does not realize he has a right to damages. Because the amount involved is small and it is not a copyright case, however, she does not want to open up a "can of worms" for herself telling her client about the possibility of damages.

a. It is basically Margrave's choice whether to discuss the fraud matter with her client, and she can properly choose not to.

b. Margrave may find herself liable to her client for damages if she does not mention the fraud matter and, due to passage of time, the client loses his right to sue.

c. Margrave has no responsibility to provide any legal advice outside the field for which she has been retained.

d. Margrave is ethically prohibited from discussing legal matters with clients outside of the field in which she practices and has expertise.

14 In a lawsuit for $400,000, the plaintiff's attorney received an unexpected offer to settle for $29,000. However, the attorney decided he did not need to tell the client about this offer. Does the attorney take any risk in not telling his client about the offer?

a. No, because settlement offer is way below what the client is entitled to.

b. No, because a client cannot give advance authority to the attorney to settle a case.

c. No, because the settlement of lawsuits is generally up to the attorney, and clients should have little role in the process.

d. Yes, because the decision to settle is up to the client, and she might decide to accept the $29,000.

15 Corrie Ebersole has a client who is charged with murder. The client wants to plead self-defense. Based on Corrie's discussions with the client, he thinks that the self-defense claim is bogus, but he also thinks the available evidence just might support it. In deciding whether assert self-defense, Corrie should:

a. Consult his own judgment and do what he thinks is best suited to assure a just outcome under the law.

b. Follow his client's instructions and do everything reasonably possible, within the bounds of the law and ethics, to assert the self-defense claim.

c. Follow his client's instructions and assert the self-defense claim but not necessarily press it with all the vigor he would use if he believed it was justified.

d. Inform the prosecutor, in the interest of justice, that his client wants to make a claim of self-defense that Corrie thinks is bogus.

16 Bud Fraley represents a client who did time for insurance fraud and, as an ex-felon, is not permitted to have a firearm. The client asks Bud what the penalties are if he's caught with a gun. He also wants to know the circumstances under which the police can search his house and whether it's okay for his girlfriend, who lives with him, to keep a gun in the house. Bud thinks the client is planning to skirt the law and get a gun that he's not supposed to have:

a. It would be ethically improper for Bud to talk to this client about the penalties for violating the gun law.

b. Bud should report his client's questions to the police.

c. Bud may discuss the penalties that would be involved but not how to break the law with impunity.

d. Bud may advise his client on how to circumvent the law (such as, perhaps, pretending his girlfriend "owns" the gun), but not the penalties for violations.

17 Bud has another client who buys and sells large pleasure boats. Recently the client took in a sailboat in trade. It turned out to have extensive hidden rot that would cost over $25,000 to repair. Instead, the client painted and patched over the bad areas, so the damage was hidden. He received an offer from an international buyer who doesn't know about the rot and is, in effect, being duped into paying full value. Bud knows all this. The client wants him to prepare necessary paperwork for the sale.

a. Knowing what he knows, it would unethical for Bud to prepare the paperwork for the sale.

b. Even if his client is defrauding the buyer, Bud may ethically prepare the paperwork for the sale as long as he avoids personally doing anything fraudulent.

c. If Bud merely acts as a lawyer papering the deal, he has no legal or ethical obligation to tattle on his client or protect the interests of others.

d. Even if Bud does not assist in the sale, Bud has an ethical duty to warn the buyer that his client is committing fraud.

18 Bud has been appointed by a court to represent a convicted robber in an appeal from conviction. The client sent Bud a list of 17 items he wanted to be covered in the brief. Using his best professional judgment, Bud decided it was best to include only 5 of the items in the brief that he submitted to the court.

a. The way Bud handled the brief probably deprived his client of his constitutional right to counsel.

b. Bud did *not* necessarily deprive his client of his constitutional right to counsel by omitting the items from the brief.

c. A lawyer's first duty is to remain independent and the lawyer should not be swayed by instructions from the client.

d. The client is probably entitled to a new appeal.

19 Bob Dawes has a corporate client accused of improperly disposing of hazardous chemical waste in violation of Federal law. While visiting his client's plant to speak with some of the employees, Bob happened to notice one of the workers pouring leftovers from a chemical process into an ordinary sink drain. Later, one of the employees Bob spoke with in connection with the case and told Bob: "I was on a work team that buried barrels of toxic waste behind the materials yard." In an *Upjohn* jurisdiction:

a. Possibly incriminating things that Bob saw at the plant would be covered by the by the attorney-client privilege.

b. Possibly incriminating statements that the employee made to Bob would be covered by the attorney-client privilege.

c. Both of the above.

d. None of the above.

20 Same facts as the preceding question. In an *Upjohn* jurisdiction:

a. If Bob has information covered by the attorney-client privilege, it would be improper (because of that privilege) for a court to require him to disclose it.

b. If Bob has information covered by the duty of confidentiality, it would be improper (because of that duty) for a court to require him to disclose it.

c. Both of the above.

d. None of the above.

21 Same facts as the preceding question: In speaking with Bob about the case, an employee named "Jane" made statements that incriminated both herself and Bob's client, the corporation. In an *Upjohn* jurisdiction, a court cannot properly require Bob to disclose the statements that "Jane" made to him:

a. If Bob's client (the corporation) objects.

b. Over the objection of "Jane."

c. Both of the above.

d. None of the above.

22 Same facts as the preceding question:

a. Bob would presumptively be the attorney for both the corporation and "Jane.".

b. Bob probably could not properly represent both the corporation and "Jane" due to a concurrent conflict of interest.

c. There is no reason why Bob should not represent both the corporation and "Jane" because their interests would by definition not be in conflict.

d. Bob should not represent both the corporation and "Jane" because lawyers should share the available legal work with their fellow lawyers.

23 Nesbitt Thornton represents man charged with burglarizing a jewelry store. The prosecutor tells him that, if his client pleads guilty to a reduced charge and returns all the stolen jewelry, he will be allowed to go home in 2 months. The client, who is being held pending trial, tells Thornton that the loot is hidden in the crawl space under his ex-wife's house. Thornton goes there, looks in the crawl space, and sees not just the jewelry loot but also a stash of rare coins—obviously stolen in a different burglary. Thornton decides to leave the coins in place and take only the jewelry, so he can return it to the owner.

a. Thornton can be properly compelled to testify that he saw the gold coins in the crawl space.

b. Thornton's knowledge of the location of the gold coins is covered by the duty of confidentiality.

c. Thornton's knowledge of the location of the gold coins is covered by the attorney-client privilege.

d. Both b. and c. above.

24 In the preceding question, Thornton could be properly required to testify as to where he first saw the gold coins:

a. Because the location of the coins is not information communicated to him by his client.

b. If he had taken the coins back to his office in order to protect them.

c. Because the attorney-client privilege cannot be invoked to conceal past criminal conduct.

d. All of the above.

25 According to the Model Rule on destruction of evidence, lawyers may advise their clients that they may destroy physical items:

a. As long as it is not unlawful to do so.

b. Provided only that the items have not already been subpoenaed.

c. Even if there is a law that specifically requires the client to retain the items.

d. None of the above. It is never proper to destroy items that might someday be useful as evidence in a legal proceeding.

26 Alan Brown was out to dinner with a client, who was also a personal friend. Three other people, friends of Alan and his client, were also present. At one point, something reminded Alan's client about the case. He mentioned to Alan a possibly important fact, in the hearing of all at the table, as the group waited for their food. Later, under oath, the client was asked about this conversation: The client's communication to Alan at the dinner:

a. Is covered by the duty of confidentiality.

b. Is something that a court can properly require either Alan or the client to disclose.

c. Both of the above.

d. None of the above because unnecessary third parties were present.

27 In the preceding question, one of the friends took Alan aside later during the dinner and told him privately that Alan's client was apparently lying or misremembering the "important fact" and that things had actually happened in a somewhat different way. What the friend told Alan:

a. Would be covered by Alan's duty of confidentiality to his client.

b. Would be protected by that attorney-client privilege.

c. Both the above.

d. None of the above.

28 Eleanor Gaspar is an insurance defense lawyer. She has been assigned by the insurance company to defend a lawsuit in which the plaintiff is one of her former college roommates. The roommate is represented by Raymond Orth, whom Gaspar does not much like. Gaspar ran into her former roommate at a local restaurant. She thought she could settle the case by making a very attractive offer directly to her former roommate.

a. Because courts favor settlements, Gaspar should not hesitate to deal directly with her former roommate if she thinks that could wrap up the case.

b. Gaspar may not properly talk to her former roommate about the case without Orth's consent.

c. The former roommate has a right to have her lawyer present when discussing the case with Gaspar, but she can waive that right—so long as there's no pressure.

d. Technically, Gaspar cannot properly talk with her former roommate at all as long as the case is pending.

29 Leila Benton hosted a deposition at her office. After the opposing lawyers left, she noticed they'd left behind a sheaf of papers in a file marked with the name of the case. Benton is required under the Model Rules to:

a. Quickly read through the papers, out of loyalty to her client, before the opposing lawyers discover their mistake and demand the papers back.

b. Refrain from examining the papers and notify the opposing lawyers, following any instructions that they give.

c. Notify the opposing lawyers.

d. Promptly send the papers to the court.

30 In the preceding question, if Benton reads the papers and they contain confidential information belonging to the other side:

a. She risks being disqualified from representing her client in the case.

b. She will be properly fulfilling her duty to zealously represent her client.

c. She would be acting within her rights since the rule is that, by leaving the papers behind, the opposing lawyers waived the attorney-client privilege.

d. Her only obligation would be to refrain from disclosing any confidential information that she obtained by reading the papers.

31 During settlement negotiations on a personal injury case, defense attorney Mark Porter stated that the policy limit on his client's insurance was $150,000. Soon thereafter, the plaintiff agreed to settle the case for that amount. The actual limit was $250,000, which the plaintiff's attorney could have easily discovered. However, the plaintiff did not learn the actual limit until after the settlement was paid. The plaintiff now wants to hold Porter liable for misrepresentation. Is there a basis for holding Porter liable?

a. No, because Porter, as an attorney, is only responsible (and liable) to his own clients.

b. No, because in litigation there is no right to rely on statements made by the opposing party's attorney.

c. No, because the plaintiff's own attorney made the mistake of relying on the opposing attorney, and the plaintiff should be suing his own attorney.

d. Yes.

32 Lara Cantwell is an Assistant District Attorney prosecuting a robbery suspect. She's counting on the victim to provide key testimony. Last, week, however, the victim was killed in a traffic accident. As a result, Cantwell cannot prove her case. In desperation, she offered an attractive plea to the suspect without telling him that the victim had died. The suspect, not knowing the state could not prove its case, decided to plead guilty and was sentenced to three years in prison. Now he has found out that the charges would have been dismissed because the prosecutor had no witness.

a. The conviction should be vacated because Cantwell improperly withheld the information that the victim had died.

b. The conviction should be vacated because Cantwell violated the Brady rule.

c. Both of the above.

d. None of the aobve

33 Hank Glover represented a corporate client in a business transaction with Korn Mfg.. In the transaction, the client delivered a certificate, drafted by Glover, falsely stating that there were no undisclosed liabilities against the client. In fact, as Glover knew, there was a large undisclosed liability of over $2 million. Glover has now been sued by Korn for misrepresentation.

a. Even if Glover improperly assisted his client in committing fraud, there is authority that a lawyer is not liable in damages for his client's false statements.

b. Because Glover assisted in his client's fraud in violation of the ethical rules, he is liable to pay damages to the person who was defrauded.

c. Glover cannot be liable to Korn because Korn is not Glover's client.

d. As an attorney, Glover is, for policy reasons, exempt from liability for fraud.

34 Alex Kloscher is a person of interest and potential witness in a money laundering prosecution. The money launderers received suspicious remittances in 2012-2014 from numbered accounts in a Cypriot bank, which has since closed its doors. Both Kloscher and his company had accounts with the bank in 2013. During grand jury testimony, Kloscher was asked: "Did you have any accounts with the [Cypriot] bank during the years 2012-2014?" Which of the following answers would be perjury?

a. "My company had an account in 2013 but it was closed before 2014."

b. "No, I did not."

c. Both of the above would have been perjury.

d. None of the above would have been perjury.

35 Suppose in the preceding question, Kloscher had been asked: "Did you have any accounts with the [Cypriot] bank in 2015?" The questioner clearly meant to say "2013" and Kloscher knew it.

a. Kloscher would be safe from a perjury conviction if he simply answers "no," because that would be a literally true answer.

b. Under some cases, Kloscher would risk a perjury conviction if he simply answers "no," even though that would be a literally true answer.

c. The courts will not require a person under oath to read the mind of the questioner, so it could not be perjury for Kloscher to give a literally true answer.

d. More than one of the above is true.

36 Suppose in the preceding question that Kloscher answered the question with a simple "no." The prosecutor argues that Kloscher reasonably should have known that the questioner really meant to say "2013" instead of "2015." because the grand jury proceeding was entirely about events before Kloscher's arrest in September 2013.

a. Kloscher cannot be convicted of perjury unless he actually knew that the questioner misspoke (and that his truthful answer was therefore misleading).

b. Kloscher would be safe from a perjury conviction as long as his answer was literally true.

c. Both of the above.

d. There are cases under which Kloscher could be held guilty of perjury if he reasonably should have known that the questioner misspoke.

37 Later in the questioning, Kloscher was asked if he'd ever had intimate relations with Margaret Wainscot, who was implicated in the money laundering scheme. Kloscher's truthful response was "I'm married with two kids." The more responsive (and also truthful) reply would have been "yes."

a. It would not be proper on these facts to convict Kloscher of perjury.

b. Kloscher could properly be convicted of perjury if his answer misled the questioner.

c. Kloscher could properly be convicted of perjury as long as his answer was reasonably likely to be misleading.

d. More than one of the above

38 Ellie Barrett represents the defendant in an automobile manslaughter case. The prosecutor alleges that the defendant was texting while driving. The defendant confessed to Barrett that she was in fact texting, which was confirmed to Barrett by the passenger in the defendant's car. However, the passenger has died from his injuries, which makes the texting allegation hard for the prosecutor to prove. Barrett thinks, based on the now available evidence, she should put the prosecution to its proof on its claim that her client was texting. Most lawyers would probably agree that, for Barrett to make the prosecution prove the texting claim:

a. Would be a serious violation of the ethical rules.

b. Would violate her lawyer's duties of honesty and candor.

c. Would be an appropriate strategy in representing her client.

d. Would be grounds for disbarment.

39 In the preceding question, most lawyers would probably consider it frivolous advocacy for Barrett to controvert the prosecution's texting claim (true or false):

a. True, because she does not have a basis in law and fact for doing so.

b. False, as long as she *does* have a basis in law and the available evidence for doing so.

c. True, because it is unethical to controvert a relevant fact just because the other side may not have evidence to prove it.

d. False, because frivolous advocacy basically means the assertion of claims just for the fun of it or to get a rise out of the other side.

40 In the preceding question, if Barrett does controvert the texting claim despite her knowledge that her client was texting, it would constitute fabricated controversy:

a. False, because the texting issue is very likely "winnable."

b. True, because Barrett is trying to win by forcing the prosecution to bear the burden of proving a factual contention that she does not really disagree with.

c. True, and it would generally be considered outside the bounds of proper advocacy because Barrett would be making a play on imperfections of the system.

d. Both b. and c. above.

.

41 Suppose in the preceding question, Barrett's client is sued for negligence and is deposed by the plaintiff. During the deposition, she is asked under oath whether she was texting at the time of the crash. The client falsely replies "no." Would Barrett be required to do anything in response?

a. Yes, she would be required to take reasonable remedial measures.

b. No, not if doing something would destroy her strategy of controverting the texting issue.

c. No, not if doing something would violate her duty of confidentiality.

d. Both b. and c. above.

42 A prosecutor has just been assigned to try Warner Snubbs for a robbery that Snubbs confessed to the police. However, the confession is not admissible (because Snubbs was not properly Mirandized). Looking through the file, the prosecutor finds references to certain evidence that the defense lawyer is not aware of. Which of the following would the prosecutor be required to make known to the defense lawyer?

a. A police officer who will testify for the prosecution was recently reprimanded for false statements in a prior unrelated proceeding.

b. There is an eyewitness who swears (evidently mistakenly) that the defendant was not the person who committed the robbery.

c. Both a. and b. above if the defense lawyer asks.

d. Both a. and b. above whether or not the defense lawyer asks.

e. None of the above.

43 Ronnie Burton, a local pusher, has been arrested for possession with intent to distribute narcotics. Because Burton has only a low-level position in the suspected drug ring and is a young first offender, he would normally be charged with basic possession and receive little or no jail time. Technically, however, he could be charged with conspiracy to distribute and face penalties up to 27 years. The prosecutor is thinking of taking the latter course, hoping to "squeeze" Burton into

testifying against people higher up in the ring. If the prosecutor follows this latter strategy:

a. It would generally be considered an abuse of discretion because criminal penalties are meant to provide just punishment, not as a tool for legalized "blackmail."

b. There would be no particular legal or ethical objection to his doing so.

c. It would violate Burton's constitutional right to due process of law.

d. It would be fully within the prosecutor's discretion because there are no ethical limits on what a prosecutor is ethically permitted to charge.

44 Alston Nonce represented the defendant in a personal injury suit. During a deposition of his client, the plaintiff's attorney, Linda Walsh, was clearly trying to get compromising admissions from Nonce's client. Nonce responded by adopting an belligerent, belittling tone, referring to Walsh sarcastically as "Honey," "Sweetie" and words we cannot repeat here. He asked Walsh several times "where she learned to practice law." He later told the court he regretted that Walsh took his comments personally, admitting he was simply pursuing a strategy "of putting Ms. Walsh off balance" to keep her from getting his client to make damaging statements.

a. It is not necessarily improper for a lawyer to get another lawyer "off balance" in a deposition, but the means used by Nonce went over the line.

b. It was ethically improper for Nonce to try to get the opposing lawyer "off balance" in the deposition.

c. Nonce's innuendo that Walsh was less than competent is specifically prohibited by the Model Rules.

d. Few would doubt that Nonce acted entirely properly in providing representation to his client.

45 In writing a brief on appeal in a white-collar crime case, Noreen Carswell quoted a passage from the trial record where a witness stated that Carswell's client was not present at a certain meeting held on May 2, 2014 at Lyons Corp.. Her brief did not, however, mention the testimony of two other witnesses in the same record who'd said the client *was* present for at least part of the meeting.

a. Carswell has quoted wisely: She has not lied and, after all, it is up to the other side to quote the passages from the record that the other side considers helpful.

b. Although Carswell has not literally misstated the record, this sort of tactic carries a risk of strong disapproval by the court.

c. Carswell would be violating her duty to her client if she quoted portions of the record that are unfavorable to her client.

d. It is entirely up to the lawyer's discretion to decide what or how much is required to be quoted from the trial record in writing a brief on appeal.

46 A new prospective client has come to Alice Miller's law office seeking representation. Miller would have a concurrent conflict of interest in accepting this client if:

a. She already represents another client whose interests are directly adverse to those of the new prospective client.

b. There's a significant risk that a personal interest of Miller's may materially limit her in representing the new client.

c. Both of the above.

d. None of the above.

47 If Miller would have a concurrent conflict of interest in representing a new client but she decides to go ahead and do it anyway:

a. She may be subject to discipline.

b. She may be subject to discipline and might also find herself disqualified from representing the client at a very unpropitious time.

c. She may be subject to greater vulnerability to malpractice liability if something goes wrong for the client.

d. All of the above.

48 Suppose Miller does collections work (and only collections work) for Hancock Farm & Hardware Supply. She was approached by a prospective client who wants to sue Hancock for negligence after suffering a personal injury in Hancock's machinery lot. The lawsuit would be entirely unrelated to Miller's collections work, and the prospective client is not even a Hancock customer who might potentially owe money to Hancock. If Miller decides to represent this prospective personal-injury client:

a. There should be no ethical problem.

b. There would be no ethical problem if Miller obtains informed consent from Hancock.

c. There would be no ethical problem if Miller obtains informed consent from both the new client and Hancock.

d. There would be a serious ethical problem even if Miller obtained informed consent from both the new client and Hancock.

49 Gloria Wakeman has long represented Jonas Fairham, M.D. in matters related to his practice. Recently, Dr. Fairham was indicted in a pills-for-money scheme that allegedly violated the

Federal drug laws. Now Wakeman herself has been charged with making a false statement to Federal agents in the course of representing Dr. Fairham. Both she and Dr. Fairham would like for her to continue defending the doctor. If she does continue:

a. There should be no ethical issue as long as Dr. Fairham consents.

b. There should be no ethical issue as long as Wakeman gets a different lawyer for herself.

.

c. There should be no ethical issue as long as Wakeman truly believes she will be able to provide competent and diligent representation to Dr. Fairham.

d. None of the above, by itself, would permit Wakeman to continue representing Dr. Fairham in the case.

50 Harry Gallatin is a defense lawyer who has been retained by the parents of two brothers to represent the boys on charges of molesting a classmate. The boys, who face up to 10 years in prison, deny the charges vehemently. The prosecutor knows that Harry is a good lawyer, especially on cross-examination, and is concerned about the strength of his own evidence. On the eve of trial, the prosecutor offered the younger boy a deal in which he would plead guilty to much reduced charge, testify against his brother, and serve only 3 months in jail.

a. There is no ethical problem with Harry continuing to represent both boys.

b. Due to the prosecutor's offer, Harry probably cannot properly continue to represent both boys in the case.

c. Due to the prosecutor's offer, Harry probably cannot properly continue to represent the younger brother but he can properly represent the older boy.

d. Due to the prosecutor's offer, Harry probably cannot properly continue to represent the older brother but he can properly represent the younger boy.

51 Anita Webber represented three partners in a small business. They wanted to incorporate and have Anita handle the legal aspects, which included a moderately complex "shareholder's agreement" setting out their respective rights and duties. Because the partners' interests did not entirely coincide, Anita suggested that they each hire a lawyer for the negotiations. The three balked and said it would cost too much. At their request Anita went ahead and prepared the agreement and other papers representing "all three."

a. What Anita has done in trying to represent "all three" raises serious conflict-of-interests questions.

b. It would be quite unusual for a lawyer to represent all three in setting up a corporation in a situation like this.

c. Both of the above.

d. None of the above.

52 As payment of part of her fee in the preceding question, Anita took an interest (50 shares of stock) in the newly formed corporation. By taking an interest in her clients' business:

a. Anita has acted unethically since a lawyer should never take an interest in a client's business.

b. Anita could not be considered to have acted unethically as long as all three of her clients agreed she should have an interest in the new corporation.

c. Anita could not be considered to have acted unethically as long as her clients alone decided the terms of her participation in the new corporation.

d. Anita would be considered to have acted improperly unless several additional conditions, not mentioned in the facts of this question, were met.

53 Glenn Barlow represented the seller in the sale of his home. Now the buyers want to sue the seller for alleged misrepresentation during the course of the negotiations. The buyers have come to Glenn and asked if he will represent them in their suit against the seller.

a. Glenn can properly represent the buyers against the seller if the seller gives informed consent.

b. Even without anybody's informed consent, Glenn can properly represent the buyers against the seller if the representation of the seller has terminated.

c. Glenn can properly represent the buyers against the sellers under any circumstances.

d. Glenn may as well represent the buyers against the seller since this is not the kind of situation in which he could be disqualified for conflict of interest.

54 Angela Forrest is a lawyer in the Pittsburgh office of a large law firm. She was the primary lawyer doing trademark work for Bellweather Corp. until Bellweather switched to another firm. Yesterday, a lawyer in her firm's Miami office brought in a new client, Xylophene Co. The new client wants to bring suit against Bellweather challenging five trademarks that Angela helped Bellweather to buy. Angela hardly knows the lawyer in the Miami office; they've only met once and they never communicate.

a. As long as Angela and the Miami lawyer do not communicate, there's no problem with the firm representing Xylophene against Bellweather.

b. Even if Angela and the Miami lawyer do not communicate, their firm could be disqualified from representing Xylophene against Bellweather.

c. Angela's firm is free to represent Xylophene against Bellweather since Angela no longer does legal work for Bellweather.

d. Angela's firm is free to represent Xylophene against Bellweather since Angela and the Miami lawyer work in entirely different offices.

55 After Nathan Robb was hospitalized following a car crash, his wife visited the law office of David Vincente hoping to retain Vincente to sue the other driver. After listening to Mrs.

Robb's description of the events, Vincente declined to take the case. Relying on certain statements that Vincente allegedly made during the consultation, the Robbs decided it would be fruitless to sue. Later they learned that Mr. Robb did indeed have a sound claim against the other driver but that it was now too late: the statute of limitations had passed. Vincente cannot be liable to Mr. Robb for malpractice because:

a. He declined to accept Mr. Robb as a client.

b. Mr. Robb never paid Vincente a fee and never even agreed to do so.

c. Vincente had never even met Mr. Robb.

d. All of the above.

e. None of the above.

56 Assume that Vincente accepted Mr. Robb as a client and proceeded to bring suit on his behalf. If Robb later sues Vincente for malpractice, who would be potentially liable to pay damages?

a. Vincente and all of his partners in his law firm.

b. Vincente and all of his partners who worked on or participated in the Robb lawsuit.

c. Vincente and all of his partners who were aware of or should have been aware of the Robb lawsuit.

d. Vincente only.

57 Assume again that Vincente accepted Mr. Robb as a client in the car case and proceeded to bring suit on his behalf. After a judgment *against* Robb in the car case, Robb sued Vincente for malpractice alleging certain errors and omissions in the representation. In order to make his case for damages against Vincente, Robb would have the burden to prove:

a. Only that Vincente was Robb's lawyer and Robb sustained damages as a result of losing the case.

b. That Vincente's failure to meet the legal standard for representation proximately caused Robb to sustain damages due to losing the car case.

c. That Vincente's failure to meet the legal standard for representation failure was the but-for cause of Robb's damages due to losing the car case.

d. Both b. and c. above.

58 In the preceding question, in order for Robb to present sufficient evidence on the question of whether Vincente met the legal standard for representation, Robb's lawyer generally:

a. Needs simply to show what Vincente did and didn't do and leave it to the jury to determine whether it measured up to standard.

b. Must present evidence showing what Vincente did and didn't do and also expert testimony informing the jury as to the applicable standard.

c. Must introduce the Model Rules into evidence for the purpose of informing the jury as to the applicable standard.

d. Must present whatever evidence feels right in his professional judgment and then persuade the jury to decide that Vincente's conduct fell short of the standard.

59 In deciding the standard of conduct that should apply in a lawyer malpractice case:

a. The Model Rules are generally taken as determinative.

b. The Model Rules are accepted under the majority rule as evidence of the applicable standard.

c. The Model Rules are generally considered irrelevant.

d. None of the above.

60 Nelson Pettigrew represented Matthew Archer in his divorce despite a rather massive conflict of interest (Pettigrew was having a secret affair with Archer's estranged wife). Now Archer wants to sue Pettigrew for breach of fiduciary duty in the representation. However, Archer's new lawyer has reviewed the divorce papers and concludes that Pettigrew's representation of Archer was flawless—Archer having received everything in the divorce that he would have gotten if he'd had a non-conflicted lawyer instead.

a. The new lawyer should tell Archer that he has no hope of a financial recovery from Pettigrew on these facts and there's no point in bringing suit.

b. Even if Archer has not sustained damages, he should at least be able to require Pettigrew to disgorge all or part of the fee that he received from Archer.

c. Archer can recover money for breach of fiduciary duty only if and to the extent he has sustained actual financial damages.

d. The new lawyer should tell Archer that there is no breach of fiduciary duty on these facts.

<End of examination.>