

PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH
FINAL EXAMINATION

December 9, 2023
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.

OPEN-BOOK EXAM: You may use any written materials or electronic devices you want, but you are not permitted to communicate in any way with any other person or AI application.

GENERAL INSTRUCTIONS:

This examination consists of 50 multiple-choice questions to be answered using EXAM4.

By now you should have downloaded EXAM4 (<https://law.pace.edu/academics/registrarbursar/exam-information>) and taken a Practice Exam on it. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

Answer each question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple-Choice screen in EXAM4. Confirm your answer and the question number on the left side of the screen. **If you want to delete or change an answer, follow the EXAM4 instructions using the “unlock” button. You should have already practiced deleting or changing answers on the Practice Exam to familiarize yourself with the process.** The answers you submit at the end of this exam cannot be later be changed.

It is **strongly recommended** that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You will not be able to review your individual exam if you do not do this. You will receive 2 bonus points for correctly using EXAM4.

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 ethics rules or applicable law. “Ethical” means according to the ethics rules. **Do not assume that “informed consent” has been given unless the question says so.**

Note: Unless otherwise indicated, “Both of the above” (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

1 Under indictment for robbery, Client confidentially told Lawyer that he left home at 9:00 the night of the crime. Some weeks later, Client learned that the victim says the robbery occurred at 9:15. Client now tells Lawyer he must have stayed home until at least 9:30 because he remembers seeing the end of the game on TV (which ended at 9:30). Client now wants to testify that he left home after the end of the game (9:30). Most lawyers would probably say that Lawyer should:

- a. Assume that Client is now lying.
- b. Try to dissuade Client from committing perjury but not assume that the new story is necessarily a lie.
- c. Threaten to withdraw from representation unless Client returns to his original story.
- d. Warn the court that Client has changed his story to make it less incriminating.

2 Defendant was convicted of assault. He brings a habeas corpus proceeding claiming that he received ineffective assistance of counsel. According to the Supreme Court:

- a. There's ordinarily a fairly strong presumption that such a claim has merit since ineffective assistance of counsel is relatively common.
- b. There would be a presumption that Defendant's claim has merit because ineffective assistance of counsel, though not common, is a very serious matter.

- c. To prevail, the Defendant must show both serious attorney error and prejudice.
- d. To prevail, the Defendant must either show serious attorney error *or* prejudice.

3 Assume again that Defendant was convicted of assault and claims in habeas that he received ineffective assistance of counsel. This claim could succeed only if:

- a. The original trial was in federal court since the right to effective counsel is a *federal* constitutional right.
- b. There's a reasonable probability that the outcome would have been different but for the defense lawyer's errors.
- c. Both of the above.
- d. The defense lawyer's errors more likely than not altered the outcome.

4 The reason the Model Rules have the force of law is that:

- a. They have been adopted as binding ethical rules by the American Bar Association.
- b. They have been adopted as binding ethical rules by the state bar association.
- c. They have been designated as law by the state's legislature.

- d. They simply restate the common-law rules of legal ethics that originally evolved in the courts.
- e. They have been adopted by courts pursuant to the inherent judicial power to regulate the practice of law.

5 In the midst of a tense negotiation, Lawyer received a digital copy of the latest draft of the contract for review. Lawyer noticed that the draft contained wording that was unusual for this sort of deal and unfavorable to his client. Lawyer didn't remember seeing the provision before and he wanted it out. He did not, however, want the other side to ask for something in exchange. Most lawyers would probably agree that:

- a. Lawyer may remove the wording from the draft without notifying the other side, since it's up to each side to make sure the final contract is satisfactory.
- b. Lawyer may quietly remove the wording from the draft without telling the other side since Lawyer has no duty to volunteer relevant to the other side.
- c. If Lawyer removes the objectionable wording from the draft, he should notify the other side he's doing so even though that may cause a snag in the negotiations.
- d. If Lawyer suspects the other side tried to sneak the wording into the document, then Lawyer should feel free to sneak it out again.

6 In expectation of a large contingent fee, Lawyer made several personal financial commitments. He was unable to

meet these commitments when the fee was delayed. To avoid embarrassment, Lawyer borrowed some money from a client trust account, keeping careful records of the amounts involved and taking steps to assure there'd be no financial loss to the client. The contingent fee came in a few days later and the trust accounts were all reimbursed without incident. The borrowings were discovered in a surprise audit a few months later.

- a. Lawyer has committed an ethical violation but need not worry about discipline since no one was hurt.
- b. Lawyer has committed a serious ethical violation and may expect to be sanctioned relatively severely, perhaps even disbarment.
- c. Lawyer has committed a technical ethical violation but the precautions he took to prevent loss of money to the client probably rule out serious discipline.
- d. The disciplinary authorities are only concerned about lawyers that cause real economic loss to clients and don't waste time on cases of "no harm no foul."

7 Lawyer, a recent law school graduate, has just been admitted to the bar. A friend called today and says he was picked up last night for DWI. He wants Lawyer to represent him. Lawyer has no experience in any area of legal practice, including this one.

- a. Before representing his friend in this DWI case, Lawyer should have the friend to sign a waiver of malpractice liability, just in case.

b. The Model Rules say that Lawyer can ethically represent his friend in the DWI, but only if Lawyer associates with another lawyer who has experience.

c. Lawyer can ethically represent his friend in this case if competence can be achieved by reasonable preparation.

d. Due to his lack of experience, Lawyer is not ethically permitted to represent his friend in this DWI case.

e. More than one of the above is true.

8 Lawyer has a client who was arrested for burglarizing a store. He was caught when he tried to pawn one of the items stolen in the burglary at a pawn shop. Lawyer is pondering whether he should ask his client where he got the item in question.

a. As an ethical matter, Lawyer probably shouldn't ask because the answer might give Lawyer incriminating knowledge that could tie Lawyer's hands later on.

b. As an ethical matter, there's no reason why Lawyer should or shouldn't ask the question. It's a purely tactical decision.

c. Lawyer probably should ask because competent representation requires Lawyer to investigate both the factual and legal aspects of the case.

d. Lawyer has an ethical duty of candor to learn the truth and reveal it to the court.

9 In the course of representing a client, Lawyer discovers his opponent engaging dubious tactics while representing the other side. Lawyer believes the other lawyer may be committing ethical violations that raise questions about the other lawyer's honesty, trustworthiness and fitness to practice law.

a. Lawyer must report the suspected violations to the disciplinary authorities and can be punished as an accessory to the other lawyer's violations if he does not.

b. Lawyer is probably *not* required to report the suspected violations because the information he has about them appears to be protected by Rule 1.6.

c. Most lawyers would probably agree that Lawyer must report the other lawyer to the disciplinary authorities as long as he strongly suspects a violation.

d. Lawyer is required to report the other lawyer's dubious tactics even if doing so would violate confidentiality to his own client.

e. Lawyer should hold the information in reserve to use as possible leverage to gain a tactical advantage.

10 Lately, Lawyer has been very busy, often finding himself with more work than he can handle. The problem is that Lawyer is hesitant to turn new clients away. One of Lawyer's clients has just discovered that Lawyer committed a serious

blunder in a transactional matter. The blunder has caused substantial damages to the client:

- a. Lawyer can normally expect to be removed from the profession for such incompetence (disbarment) or, at least, be subjected to a substantial suspension.
- b. Incompetence on the part of a lawyer sullies the reputation of the entire profession, and the disciplinary authorities are especially vigilant to root it out.
- c. Both of the above.
- d. Lawyer may be liable to the client for damages in malpractice, but he is unlikely to incur professional discipline for this one blunder.

11 Lawyer has a client who's being tried for several crimes. Lawyer is convinced that the client is guilty, would make a terrible witness and should accept the prosecutor's plea offer. Most other criminal defense lawyers would agree with Lawyer's assessment of the case and consider it highly imprudent to reject the plea offer.

- a. Lawyer must abide by the client's decision, after consultation, as to the plea to be entered.
- b. Lawyer may properly refuse to assist the client in entering a false "not guilty" plea.
- c. Lawyer should notify the court if the client tries to enter a false "not guilty" plea.

d. Both b. and c. above.

e. As the legal expert in the case and fiduciary for the client, Lawyer should do whatever is in the client's best interest irrespective of what the client may think.

12 Lawyer has a client suing for damages in a civil matter. The client has told Lawyer that he will settle for "any amount over \$500,000." The other side has offered \$450,000 and does not seem likely to budge any higher. Lawyer decides it's in the client's best interest to accept the \$450,000. If Lawyer does agree to \$450,000 (despite the client's express desires), the settlement would be binding on the client because, under the usual laws of agency:

- a. Lawyer had inherent authority to agree to it.
- b. Lawyer had apparent authority to agree to it.
- c. Lawyer had implied authority to agree to it.
- d. None of the above. The settlement would not be binding on the client under the usual rules of agency.

13 While at dinner with family and friends, Lawyer mentioned that one of her clients was being sued in an automobile negligence case. Lawyer expressed the view that the client may have been experiencing road rage at the time of the accident. Word of Lawyer's statement about road rage got back to the plaintiff. He wants to call attendees at the dinner to testify as to what Lawyer said and to use her statement as evidence that Lawyer's client was driving in a reckless manner.

- a. Testimony concerning Lawyer's out-of-court statements cannot be introduced into evidence for this purpose.
- b. Lawyer's out-of-court statement may constitute an irrebuttable vicarious admission that can be introduced against her client at trial.
- c. Testimony concerning Lawyer's out-of-court statement can be introduced as a vicarious admission, but it can be rebutted by other evidence.
- d. Testimony concerning Lawyer's out-of-court statement cannot be introduced against her client because the statement violated confidentiality.

14 Lawyer was representing Defendant during a criminal trial. Lawyer made a tactical decision not to object to certain prosecution evidence that had apparently been gathered in clear violation of Defendant's constitutional rights. The evidence turned out to be pivotal, and Lawyer tried to belatedly object to its admissibility in post-trial proceedings. However, the court said the objection was too late. Assume that many lawyers might question Lawyer's original tactical decision, but that it would not rise to the level of ineffective assistance of counsel.

- a. The court should reconsider the admissibility of the evidence, even after the trial, because it is never too late to assert a clear constitutional right.
- b. The court should reconsider the admissibility of the evidence because a person on trial for a crime should not be made to suffer because of his lawyer's mistake.

- c. In general, the consequences of a lawyer's tactical mistake at trial will be borne by the client.
- d. The court will probably reconsider the admissibility of the evidence if Lawyer did not consult Defendant in making his decision not to object.

15 During the lead-up to trial in a civil proceeding, counsel for Plaintiff submitted a motion for summary judgment using the court's electronic document system. For some reason, the motion went to the defense lawyer's junk/spam folder, and he didn't see it. As a result, summary judgment was rendered against the Defendant even though he has a strong case on the merits. Following the approach of the federal cases we read in class,

- a. The court will probably reopen the summary judgment and allow the case to proceed if it finds that the defense lawyer's failure was inexcusable neglect.
- b. The court may well penalize the defense lawyer, but not his client, if it finds that the defense lawyer's failure was inexcusable neglect.
- c. The court will probably reopen the summary judgment and allow the case to proceed if the Defendant was too young to properly supervise the representation.
- d. None of the above.

16 Lawyer has represented a number of illegal drugs clients over the years, with notable success. Now the prosecutor has indicted Lawyer himself on charges of possession and distribution. The prosecutor has suggested that things will go easier for Lawyer if Lawyer helps the prosecutor out with information that can be used to convict some of Lawyer's former drug clients.

- a. It wouldn't be improper for Lawyer to help secure justice against guilty former clients as long as Lawyer doesn't inform on any of his current clients.
- b. Lawyer may not divulge information about former clients, but he may ethically use it to help the prosecutor as long as he doesn't actually divulge it.
- c. Lawyer is not ethically permitted to seek leniency in exchange for information relating to the representation of current or former clients.
- d. Pursuant to his oath as an attorney, Lawyer should provide the information requested by the prosecutor as part of his duty to justice and the justice system.

17 Client's employer asked Lawyer to defend Client in a civil suit arising out of a car collision that occurred while Client was on the job. The employer will be paying Lawyer's fee. It is reasonably apparent that Client may have an action against the hospital where he was treated following the accident. Lawyer mentions this to the employer who responds that it doesn't want "to pay fees for lawsuits against the hospital." Is Lawyer ethically or legally required to inform Client about the possible action against the hospital?

- a. Yes, if it's foreseeable that Client won't otherwise be aware of the possible action against the hospital.
- b. No, as long as Lawyer tells Client: "The scope of my representation is to defend you in the collision case. Nothing more."
- c. No if the employer (who's paying Lawyer's fee) specifically instructs Lawyer not to mention it.
- d. Yes, because lawyers are ethically expected to represent their clients in all matters arising out of the same basic transaction. They cannot pick and choose.

18 Lawyer has been retained by a local businessman to do some collections work. Lawyer realizes that, in many of the cases, the statute of limitations has run on the claims. Lawyer mentions this to his client, but the client says: "I want you to sue them anyway. They sometimes pay up even if they don't have to."

- a. As long as Lawyer represents the client, he should use whatever lawful and ethical measures are required to further the client's cause or endeavor.
- b. If Lawyer thinks the client's cause is unjust, he can ethically choose to go through the motions of bringing suits but avoid pursuing obviously unjust outcomes.
- c. Once Lawyer agrees to represent the client, he can't just back out because he later finds the client's course of action to be repugnant.

- d. Lawyer is not ethically permitted to continue representing this client.

19 Lawyer represents a land developer who's developing a substantial tract of land into home sites. Workers at the site have discovered a large den of endangered-species reptiles. The client asks Lawyer what the penalties would be if one of his bulldozers "accidentally" plowed over and destroyed the endangered species habitat. There's a lot of money at stake, and Lawyer suspects that such an event might happen if the client finds out the criminal penalties aren't too severe.

- a. Though lawyers should advise their clients as to what is and is not legally prohibited, they should not in general discuss the penalties.
- b. If the client needs to remove an obstacle to a valuable project, Lawyer should suggest how the client can "non-comply" with the law without consequences.
- c. A lawyer is generally permitted to present an analysis of the legal aspects and consequences of questionable conduct.
- d. Unless Lawyer absolutely knows that the client plans a criminal act, Lawyer can't be considered to be "knowingly" assisting the client's crime.

20 Lawyer provides mostly routine legal services on retainer to a physician whose specialty is prescribing pain medications. The client tells Lawyer she thinks the legal restrictions on "overprescribing" are too restrictive and leave too many people

with untreated pain. She opposes such restrictions on principle. When a new "patient" offered the client a bribe for a pain prescription, Lawyer advised the client not to take it, fearing a sting. Now Lawyer has been accused of assisting the client in overprescribing controlled substances in violation of federal law.

- a. Even though he's an attorney, Lawyer is not exempt from prosecution for providing legal advice and legal services to an illegal business.
- b. Lawyer can properly provide routine legal services even if he knows the services indirectly assist the client in overprescribing in violation of federal law.
- c. Lawyer could not be considered to be "assisting" in crime if Lawyer's legal services to the client do not specifically relate to the illegal overprescribing itself.
- d. Lawyer cannot be properly convicted as an accomplice if his client honestly believes the legal rules on "overprescribing" are too restrictive.

21 Lawyer represented Client in arranging the sale of a small business. Shortly before the closing, Lawyer realized Client had been lying about some important points and intended to defraud the buyer. Lawyer tried to talk with Client about these matters, but Client's response was to discharge Lawyer and retain somebody else. Lawyer reasonably concludes that the only way she can prevent Client's planned fraud is by disclosing certain confidential information to the buyer. Under the terms of Rule 1.6, and disregarding any other Model Rules:

- a. Lawyer would be permitted (but not obligated) to disclose the information under Rule 1.6.
- b. Lawyer would be *obligated* to disclose the information under Rule 1.6.
- c. Both of the above.
- d. None of the above. Lawyer's only option under Rule 1.6 is a noisy withdrawal (which is impossible because she's already been discharged).

22 In the preceding question:

- a. Lawyer is permitted (but not obligated) to disclose the information under Rule 4.1(b) alone.
- b. Lawyer appears to be obligated to disclose the information under Rule 4.1(b), read in conjunction with Rule 1.6(b).
- c. Lawyer appears to have no basis on these facts to violate the rule that lawyers should always keep client information confidential.
- d. Lawyer's duty of confidentiality to Client ceased when the lawyer-client relationship came to an end.
- e. Both c. and d, above,

23 Lawyer has a client whose property was damaged in a recent storm. The insurance company is hesitant to pay. Lawyer supplied several documents to the company in support

of the client's claim. It was then that Lawyer discovered her client was fraudulently overstating the value of the damaged property. Unable to dissuade her client from doing this, Lawyer decided she must withdraw:

- a. Lawyer may withdraw but must do so in a way that avoids any adverse repercussions for the client's cause or endeavor.
- b. To avoid "assisting" in the fraud, all that Lawyer needs to do is withdraw with notice to her client.
- c. To avoid "assisting" in the fraud, Lawyer may need to notify the insurance company that she's withdrawing and disaffirm documents she previously supplied.
- d. There is no reason why Lawyer may need to withdraw in this situation.

24 Client is a criminal defendant appealing a conviction. Client instructed his court-appointed lawyer to argue that his alibi evidence was erroneously excluded at trial. However, the lawyer is convinced that this is a weak argument and will undercut Client's entire case. In the end, the lawyer did not follow Client's instructions, and did not make the alibi argument.

- a. The lawyer has denied Client his constitutional right to effective assistance of counsel.
- b. The lawyer has not only denied Client's right to effective assistance of counsel but has also violated the duty to follow Client's instructions, as well.

- c. The decision of what to argue on appeal is solely up to the lawyer, and this lawyer has not violated any duty to Client at all.
- d. The lawyer may have violated a duty to Client, but he has not necessarily denied Client his constitutional right to effective assistance of counsel.

25 Lawyer has a client who's about to be sued by Claimant. While speaking with Claimant's attorney on the phone, Lawyer realizes that Claimant's attorney misunderstands the statute of limitations and plans to commence the action two days after the statute will have run. Lawyer knows that Claimant's case is probably meritorious and could prove costly to Lawyer's client.

- a. Lawyer has a duty of candor to correct the other attorney's misunderstanding.
- b. Lawyer should discuss the options with his client before deciding whether to correct the other attorney's misunderstanding.
- c. The decision of whether to correct the other attorney's misunderstanding is a tactical one that Lawyer should make entirely on his own.
- d. Lawyer should say whatever is necessary to support and reinforce the other attorney's misunderstanding.

26 Lawyer represents Client in the sale of a piece of commercial real estate. He happened to be speaking with a

HVAC contractor who is working on another project, and the contractor told Lawyer that the boiler in Client's building was on its last legs and would soon need to be replaced, at considerable expense. Lawyer thinks maybe he has a duty to let the buyer know.

- a. The information is not protected by confidentiality because Lawyer got it from someone other than the client.
- b. Lawyer is ethically barred from disclosing the information under the attorney-client privilege.
- c. Both of the above.
- d. The attorney-client privilege would not prevent a court from properly ordering Lawyer to disclose what the contractor told him.

27 Suppose in the preceding question that Lawyer privately confronted Client about the boiler and Client confidentially confirmed the truth of what the contractor said.

- a. Client's confirmation to Lawyer of the truth of what the contractor said is protected by the attorney-client privilege.
- b. Lawyer can be compelled to disclose that the contractor told him about the boiler's condition.

c. Rule 1.6 wouldn't necessarily bar Lawyer from voluntarily telling the buyer what he was told by the contractor.

d. All of the above.

28 One of Lawyer's past clients asked Lawyer to represent his 19-year-old daughter in a DWI. In confidential consultations, the daughter tells Lawyer that she's been using illegal Percocet that she buys from people she knows at college. Lawyer is concerned because there's recently been fake Percocet laced with fentanyl floating around the area, and there's a remote risk that the daughter might accidentally get some.

a. There's no reason why Lawyer shouldn't warn the father if he's the one who's paying Lawyer's fee.

b. It's clearly ethically permissible in a case like this for Lawyer to warn the father unless the daughter specifically told him not to.

c. It would be a violation of the attorney-client privilege for Lawyer to warn the father.

d. Lawyer should not tell the father about the illegal drug use without his client's consent.

29 A new client came to Lawyer's office for a confidential consultation and left a box of stuff. Lawyer later found a thumb drive in the box. It contained lots of incriminating data. The thumb drive is not something that is, in itself, illegal to possess. The client has since been arrested so Lawyer can't return the thumb drive to him.

a. The thumb drive is protected by the attorney-client privilege and Lawyer should retain possession of it for safekeeping without telling anybody about its existence.

b. Cases indicate that Lawyer should turn the thumb drive over to the authorities and must tell them where he got it.

c. Cases indicate that Lawyer should turn the thumb drive over to the authorities but, due to the attorney-client privilege, he shouldn't have to tell them he got it from the client.

d. Lawyer can properly destroy the thumb drive as long as it hasn't already been subpoenaed by the prosecution.

30 A new client came into Lawyer's office for a confidential consultation. He told Lawyer he had a safe deposit box with a bunch of relevant stuff. He gave Lawyer the key to the box. Lawyer went to the box and found a thumb drive. Lawyer took the thumb drive back to his office and discovered it contained lots of incriminating data. The thumb drive is not something that is, in itself, illegal to possess. The client has since been arrested and the police have sealed the box, so Lawyer can't return the thumb drive to the client or the box.

a. The thumb drive is protected by the attorney-client privilege and Lawyer should retain possession of it for safekeeping without telling anybody about its existence.

- b. Cases indicate that Lawyer should turn the thumb drive over to the authorities and can be compelled to tell them where he got it.
- c. Cases indicate that Lawyer should turn the thumb drive over to the authorities but shouldn't have to tell them where he got it.
- d. Lawyer can properly destroy the thumb drive as long as it hasn't already been subpoenaed by the prosecution.

31 Lawyer represents a corporation that operates a small department store. One of the store's maintenance employees, while replacing a light bulb, accidentally knocked a ladder over on a customer in the store. It caused significant injury. In anticipation of a lawsuit, Lawyer has gone to talk with the employee to get his side of the story.

- a. As attorney for the department store, Lawyer presumptively also represents the employee.
- b. If Lawyer doesn't intend to represent the employee in the matter, Lawyer should downplay this fact so the employee will be more forthcoming with information.
- c. If Lawyer doesn't intend to represent the employee in the matter, Lawyer is ethically required to make that clear to the employee.
- d. It is unlikely there would be ethical problems preventing Lawyer from representing both the employee and the department store.

32 Suppose in the preceding question that, during Lawyer's private talk with the employee, the employee made certain potentially self-incriminating admissions concerning his own conduct. The court follows the *Upjohn* rule concerning the attorney-client privilege in the corporate context.

- a. Statements made by the employee to Lawyer would probably be protected by the attorney-client privilege.
- b. A court could compel disclosure of the employee's statements to Lawyer if the department store has no objection to the disclosure.
- c. Both of the above.
- d. The attorney-client privilege would protect the employee's private statements to Lawyer if the employee didn't want the statements to be disclosed.

33 Suppose in the preceding question that Lawyer did not intend to represent the employee. However, to encourage the employee to speak freely during their private conversation, Lawyer gave assurances that would lead a reasonable person to believe that Lawyer was representing both the employee and the department store. Later, with the department store's consent (but over the employee's objection), Lawyer revealed the employee's self-incriminating admissions to the authorities:

- a. Lawyer could potentially be held liable for voluntarily revealing the self-incriminating admissions that the employee revealed to him privately.

b. Lawyer could reveal the employee's admissions without liability as long as he did so to protect and further the interests of his client, the department store.

c. Lawyer owed no obligation to be candid with the employee if the employee was not Lawyer's client.

d. No matter what the employee may have "believed," Lawyer couldn't owe a confidentiality duty to him if Lawyer never agreed to represent him,

34 Lawyer represents a client in a breach of contract case. Out of the blue, Lawyer received a phone call from the person her client is suing. The caller "wants to negotiate" without his own lawyer being present "because he'd just mess things up."

a. Lawyer should hang up the phone as she's not ethically permitted to talk with the caller, period.

b. Lawyer should not talk with the caller concerning the subject matter of the litigation.

c. Lawyer can talk with the caller about the case, but she should first be sure that the caller wants to waive his right to have his own lawyer present on the call.

d. Lawyer can talk with the caller about the case because it was the caller, not Lawyer, who initiated the call.

35 Lawyer has a client who's having a dispute with a tire shop. The client wants Lawyer to call up the manager of the tire shop, which is part of a local chain, and press them to honor

the client's claim. The client believes that his claim against the shop, if asserted by an attorney, will make a bigger impression on the manager.

a. There is no ethical reason why Lawyer should not just get on the phone and call up the manager, like his client wants him to do.

b. Lawyer can safely assume that the tire shop is not represented by counsel unless Lawyer definitely knows that it is.

c. Lawyer need not be concerned whether the tire shop is represented by counsel because Lawyer will only be talking with an employee, not senior management.

d. None of the above.

36 Lawyer has been retained by a public-interest client who believes a certain temp employment agency discriminates illegally. Lawyer and her client agree that the best course is to send in "testers" to apply for positions and see how the agency responds. The goal is for the testers to get incriminating evidence from agency employees by pretending they're looking for temporary employment.

a. There'd be no possible ethical issues about the testers' use of deception as long as Lawyer does not engage in any direct deceit or misrepresentation herself.

b. The no-contact rule would not apply because Lawyer wouldn't be talking or communicating directly with the employees of the targeted agency.

c. The proposed course of action may technically raise ethical issues, but courts seem generally reluctant to let such issues prevent the use of testers.

d. The proposed use of testers raises serious ethical issues and Lawyer faces a significant risk of probable discipline if she gets involved in it.

37 Lawyer is a federal prosecutor supervising an investigation of a local politician accused of accepting bribes. At Lawyer's direction, two agents were assigned to see if they could obtain incriminating statements from the politician. They pretended to be executives of an overseas plastics corporation hoping to receive favors in exchange for payments under the table. Based on the evidence they obtained, the politician has been indicted.

a. There appears to be no reason why the evidence obtained in this way cannot be used against the politician at trial.

b. Under the McDade Amendment, federal prosecutors are exempt from the local ethical rules that apply to lawyers generally.

c. Both of the above.

d. Investigators working with prosecutors may use methods that are "authorized by law," but the law does not authorize resort to deception.

38 Lawyer represents a corporate client that is suing another corporation in a commercial dispute. She just received a packet

of documents by hand delivery. On cursory inspection, the packet was found to contain confidential documents prepared for the other corporation's lawyer. A brief note accompanying the documents indicates they were sent by a disgruntled employee of the other corporation.

a. Lawyer should notify the law firm representing the other corporation that she has received the documents and then read them.

b. Before notifying anybody, Lawyer should quickly read through the documents to see if they contain anything that could be useful to Lawyer's client.

c. Lawyer incurs essentially no risk of consequences if she reads through the documents without permission.

d. Most would say that the other side waived the attorney-client privilege with respect to the documents because it did not take due care to protect them.

e. It would not be proper for Lawyer to keep, read or use the documents.

39 Lawyer represents a client in the sale of a warehouse. The night before the closing, the air conditioning malfunctioned. A repair crew was called the next morning and, as far as Lawyer and the client know, everything is fixed. Later in the day, at the closing, the buyer (unaware of these events) asked: "Has the air conditioning been working OK?" Not wanting to sow doubts at a critical moment, Lawyer's client responded: "You have the engineer's report from last week, and it shows everything is fine." The buyer, who had seen the report, nodded agreement.

Lawyer continued representing the client in completing the sale:

- a. The client's answer was a lie, and Lawyer could be considered to be assisting a client in the commission of fraud.
- b. The client's answer was a lie, and Lawyer had a duty to disavow the answer.
- c. The client's answer was arguably misleading but not, strictly speaking, a lie.
- d. The client's answer was not a lie, and there's no ethical reason why Lawyer shouldn't have suggested to the client that he give that answer.

40 Lawyer was discussing ongoing litigation with counsel for the other side. Lawyer asserted that, under the *Napoca* case (a local precedent), her client would be deemed an "employee" entitled to certain benefits. Lawyer wasn't actually sure the court in the present litigation would apply *Napoca* that way, but she said so anyway. For good measure, she purposely misstated some of the facts of the *Napoca* case so they better fit her argument. Lawyer is later sued for misrepresentation. Most would probably agree:

- a. As an attorney in an adversary setting, Lawyer is immune from liability for misrepresentations made to the lawyers representing the other side.

- b. It is not actionable misrepresentation for a lawyer to assert a purely legal opinion even if the lawyer isn't sure a court will eventually agree.
- c. It is not actionable misrepresentation for a lawyer to purposely misstate the facts of a legal precedent in adversarial dealings with another lawyer.
- d. Lawyers in adversary settings have no right to rely on statements made by lawyers representing the other side.

41 Lawyer is engaged in settlement negotiations in a major civil case. Lawyer's case heavily relies on a non-party witness who gave very strong and persuasive testimony during a deposition. Unbeknownst to the other side, the witness has just died and will therefore not be available for trial, greatly weakening Lawyer's case. Believing the witness was still alive, the other side agreed to pay a much larger settlement than they otherwise would have. Did Lawyer have a duty to notify the other side of the witness's death before settlement?

- a. Yes, and the validity of the settlement is in question.
- b. Yes, and Lawyer he may be liable for damages for failing to do so.
- c. Both of the above.
- d. None of the above. Most would agree that Lawyer had no duty to notify the other side of the witness's death.

42 During negotiations for the sale of an apartment building, Lawyer supplied a letter to his client (the seller) in which Lawyer negligently misrepresented that the building contained 14 legal living units. In fact, it contained only 12 legal living units. Lawyer knew his client would probably show the letter to the buyer, who would rely on it. After the sale was completed, the buyer sued Lawyer for economic loss resulting from reliance on the negligent misrepresentation.

- a. Under the traditional rule of privity, Lawyer could be held liable to the buyer based on the negligent misrepresentation.
- b. Under the traditional rule of privity, Lawyer would be protected from liability to the buyer based on the negligent misrepresentation.
- c. Under the more modern approach, Lawyer could be held liable to the buyer for negligent misrepresentation because he could reasonably foresee that the buyer would see and rely on the letter.
- d. Both b. and c. the above.

43 In the contract for the sale of an apartment building, the seller was required to supply the buyer with a letter certifying that the building contained 14 approved living units under the certificate of occupancy. The seller's lawyer drafted a letter for the seller's signature that complied with the contract. Just before the closing, the seller and his lawyer learned that, actually, the building had only 12 approved units (and two unapproved units). Nonetheless, with his lawyer's knowledge,

the seller signed the letter and delivered it to the buyer, who paid for the property in reliance.

- a. The seller's lawyer is probably liable to the buyer for fraudulent misrepresentation because he drafted the letter that contained the false certification.
- b. The seller's lawyer is probably liable to the buyer for fraudulent misrepresentation because his client delivered the letter containing the false certification.
- c. The seller's lawyer has probably violated his ethical duties under the Model Rules.
- d. All of the above.

44 Lawyer has a client being tried for burglarizing a fast-food restaurant. The client confidentially admits he did it. Video surveillance shows that the burglary occurred at 3:50 am. However, the client has a traffic ticket showing the client was stopped for speeding eight miles away at 3:51 am. Lawyer surmises that the time stamp on the surveillance video must be wrong.

- a. Lawyer cannot ethically introduce the traffic ticket as evidence that the client was 8 miles from the crime scene at 3:51 am.
- b. There is authority that Lawyer can properly introduce the ticket as evidence that the client was 8 miles from the scene when the crime allegedly occurred.

- c. Lawyer's first duty is to assure justice, and so he should not introduce the ticket to show that the client was far from the crime scene at 3:51am.
- d. Lawyer may use the ticket as evidence for the client only if he explains that he thinks the video surveillance timestamp is wrong.

45 Lawyer is preparing her client to testify in court. Which of the following would almost certainly be considered inappropriate advice for Lawyer to give the client?

- a. "Don't be afraid to answer 'I don't recall' if you really don't remember the answer."
- b. "Just answer the questions as directly and concisely as possible, and don't volunteer anything that they don't specifically ask about."
- c. "Be ready for questions about the company's insolvency during the cross-examination."
- d. "If they ask about bank accounts in Nevada, say the company had an account there for a while, but don't mention your own account in Nevada."

46 Lawyer represents a client accused of committing a brutal street beating. There is video footage of the beating, but the perpetrator's face is blurry. However, an elderly woman who lives in a nearby building saw the events from her window, and she can testify as to the perpetrator's identity. Lawyer believes the witness will correctly identify his client but thinks that, by

skillful cross examination, he can confuse and addle her on the stand and so the jury will doubt her testimony.

- a. Lawyer should cross examine the witness vigorously, but not deliberately undermine the credibility of truthful testimony.
- b. It would be unethical for Lawyer to confuse the witness after she makes an accurate identification on the stand.
- c. It is not unethical in itself for Lawyer to try to challenge the credibility of the witness even if Lawyer thinks she's probably testified truthfully.
- d. Lawyer should refrain from cross-examining this witness if he believes her testimony is accurate.

47 Prosecutor has three witnesses to a car theft. Two of them identify Defendant as the perpetrator while the third one says she thinks somebody else did it. The prosecutor decides to call only the two witnesses who identify Defendant as the perpetrator and to not use the third witness at all.

- a. The prosecutor should remove any references to the third witness from any documents and files that might be seen by the defense, so they won't be tipped off.
- b. The prosecutor has a duty, without being asked, to disclose the third witness's existence and potentially exonerating testimony to the defense.

c. The prosecution has no duty to volunteer relevant information concerning the third witness to the other side, but neither should he take steps to conceal the witness's existence.

d. The prosecutor should instruct the third witness not to speak with the defense lawyers unless someone from the prosecutor's office is present.

48 Lawyer has a commercial client who operates a small donut franchise. The client has just qualified for a significant bank loan, but the funds will not be available for several weeks. The client needs a short-term bridge loan to carry him over until the bank loan funds are received. Lawyer would like to help his client out with a loan.

a. Loans from lawyers to their clients (like this one) are ethically prohibited under the conflict-of-interest rules.

b. The loan is not flatly prohibited but, in making it, a number of ethical conditions must be carefully complied with to assure fairness to the client.

c. The loan is not flatly prohibited but, in making it, a number of rules must be complied with to assure that the client doesn't take advantage of Lawyer.

d. Both b. and c. above.

49 An insurance company has arranged for Lawyer to handle the litigation for one of its insureds following an automobile accident. Under local precedents, the insured (and not the

insurance company) is considered "the client" in these situations. Nonetheless:

a. Lawyer is ethically required to share confidential information about the representation with the insurance company because it is paying the bills.

b. Lawyer would normally have an ethical duty to follow any express instructions of the insurance company concerning the representation.

c. Both of the above.

d. The client is required to give informed consent to the payment of Lawyer's fee by the insurance company.

e. All of the above.

50 Lawyer has been retained to represent two clients who are charged in an armed robbery. The prosecutor has offered a very attractive plea deal to one of Lawyer's clients in exchange for testimony against the other.

a. There is no reason why the plea offer should prevent Lawyer from continuing to represent both clients.

b. There is no reason why Lawyer can't continue to represent the client who received the plea offer, provided he withdraws from representing other client.

c. There is no reason why Lawyer can't continue to represent the client who did *not* receive the plea offer,

provided he withdraws from representing the one who did.

d. In the absence of informed consent, the Lawyer probably cannot properly continue to represent either of the two clients.

<end of examination>