## Professional Responsibility Final Exam Prof. Nivala May 5, 2002

This exam consists of 1 question worth 200 points. The only materials you are allowed to use are the rules accompanying this exam. In answering the questions, the more specific and accurate your references to the rules, the better.

Please write legibly in ink using every other line. You may use both sides of a page. Include your exam number on each bluebook.

## Question

On February 24, 2001, Donald Done died. He was survived by his wife, Wilma Done, and two adult children. In 1998, Donald executed a will leaving his estate to Wilma and to the Done Family Trust. Under the will, Wilma was to be the personal representative of the and if she could not serve, the two children were to serve jointly.

In 1999, Donald and Wilma separated, and Donald began divorce proceedings. After Donald moved out, he began a relationship with Holly Hunter. Donald and Holly were living together when he died. On February 20, 2001, Donald hand wrote a new will leaving 25% of his estate to Holly, 25% to his sister, 25% to one of his children, 15% to the other child's infant son, and 10% to various charities. Donald did not name a personal representative in this will, but did say all assets, including life insurance policies, should be made part of this estate.

After Donald's death, Holly retained an attorney named Brian Adams. Adams had previously represented Holly in a personal injury action. On March 2, 2001, Adams filed the hand written will with the probate court. In papers accompanying the will, Adams alleged a need to protect the estate pending appointment of a personal representative; he therefore applied to have

Holly appointed as special administrator. The probate court clerk, pursuant to statute, granted the application.

In June, 2001, the probate court granted Adam's motion on behalf of Holly to have the hand written will admitted to probate as Donald's last will and testament. The next day, Donald's two children, later joined by Wilma, moved for an order suspending Holly's powers as special administrator. They also sought probate of Donald's 1998 will.

The probate court, worried that the hand written will might be invalid, suspended Holly's powers. The court also ruled that Donald's children should not be appointed to replace her. The parties then agreed to the appointment of Faithful Fiduciary Inc. as special administrator; this appointment was made effective September 21, 1996. Approximately six weeks later, Faithful's attorney notified the parties that Adams would associate with him on behalf of Faithful.

Wilma then asserted several claims against the estate including a claim for the proceeds from insurance policies which she said Donald agreed to keep in force for her benefit. Since our state has enacted community property legislation, Wilma also filed a claim for her share of that property as guaranteed by the applicable statutes. Fiduciary opposed all claims. The probate court subsequently determined that Wilma was entitled to the insurance proceeds as her own property. However, Wilma's remaining claims are pending. Adams has since billed the estate for hours spent since filing the hand written will.

You are a staff attorney for the State Ethics Advisory Panel. Wilma's attorney has asked for advice regarding Adam's conduct. Please prepare a memo discussing all issues of professional responsibility raised by these circumstances.

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