PROFESSIONAL RESPONSIBILITY Final Exam

Professor Nivala Spring 2004

- This exam consists of 4 pages (including this cover sheet), and contains 1 question totaling 200 points.
- The accompanying rules are the only material you are permitted to use during the 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.

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FINAL EXAM

Consolidated Recovery Ltd. is in the business of identifying, tracing, and securing assets that have been laundered by financial criminals and then having those assets liquidated and distributed as restitution to the victims and as compensation to Consolidated. In June, 2003, Consolidated agreed to help recover monies lost by thousands of U.S. citizens who were victims of a large-scale lottery fraud scam run by a Canadian firm, Mounties Help. Consolidated entered into power of attorney agreements with 29 MH victims which authorized Consolidated to prosecute their claims and recover monies which MH illegally obtained. These agreements said each claim owner

appoints Consolidated to be the legal representative for Claim Owner, with authority to prosecute the claim as it deems best, and for the purpose of instructing counsel, causing suits to be filed to enforce the claim and to take whatever other actions whatsoever it deems needful to enforce the claim.

Canada and the United States. To facilitate recovery in those two countries, Consolidated decided to initiate a class action in a U.S. state court, obtain a judgment, file that judgment as an enforceable judgment in Canada where MH was in bankruptcy, and then returning the amount recovered to the U.S. State Court where it would be joined with other MH assets for distribution to the class members.

Consolidated retained the law firm of Baddley, Lesser, and Fetid to carry out this plan. Their agreement said BLF

would commence legal proceedings in whatever U.S. jurisdiction(s) that it considers appropriate to seek a final money judgment against MH and any co-conspirators for the liquidated value of the outstanding financial loss or damages suffered by Consolidated claim owners. BLF agrees to prosecute such U.S. legal proceedings in the proper court(s) to final end.

BLF was authorized "to disclose confidential information conveyed to it by Consolidated to a court in furtherance of U.S. legal proceedings as may be reasonably necessary." BLF advanced \$1 million to mail notices to the potential class members. BLF would receive 25% of the net compensation paid to Consolidated out of the Canadian proceedings plus whatever compensation BLF would be entitled to in the U.S. class action.

BLF filed the class action in our state. Consolidated provided BLF with internal memos detailing what it knew about MH's operations and with documents it had obtained in pursuing MH. Because Consolidated was concerned that MH might try to move or conceal U.S. assets valued at \$50-60 million, BLF sought and, on April 7, 2004, obtained a temporary restraining order barring MH and its individual officers from disposing of or transferring any U.S. assets.

On April 15, 2004, Consolidated representatives flew in to attend a hearing on a motion to convert the TRO to a preliminary injunction. When they arrived at the airport, they learned that BLF had started settlement talks with individual officers of MH and had postponed the preliminary injunction hearing. At BLF's request, Consolidated provided materials concerning MH's operations including a table of MH's known assets and a

report from Canadian forensic accountants analyzing thousands of document concerning MH's ownership and financing of certain real estate holdings.

On April 17, 2004, BLF continued the settlement talks with the law firm representing MH. At a meeting later that day, BLF informed Consolidated that MH had proposed a settlement in which MH would repay the cost of mailing the class notices, would establish a \$10 million fund to pay approved claims, and would pay BLF a \$2 million fee. BLF agreed to "a \$5 million trigger" which would permit MH to cancel the settlement if the approved claims exceeded that amount. MH's decision to take this action would not affect the fee provision. Any undistributed fund monies would revert to MH.

Consolidated objected that the proposal was unfair to it and to class members since its research showed that class members had paid MH amounts in excess of \$100 million. BLF explained that it had already provisionally agreed to MH's proposal. In addition, BLF said that MH demanded, as part of the settlement, that Consolidated be excluded from any recovery and walled off from any further knowledge of the substance of the settlement talks. When Consolidated again objected, BLF said it had to protect the class by agreeing to MH's demands. On April 23, 2004, BLF sent Consolidated a letter withdrawing from representing Consolidated and, since then, has not provided Consolidated with any information.

Consolidated has retained our law firm. Please prepare a memo for me identifying and analyzing possible Rules of Professional Conduct issues arising under these facts and discussing what actions we could take.