

EXAMINATION FOR PROFESSIONAL RESPONSIBILITY
SPRING 1999

*This examination should have eight (8) pages, including this page and the list of Model Rules attached to the BACK of the examination. **COUNT YOUR PAGES!** (Page numbers are in the upper right hand corner of each page.)*

- 1) You may answer questions in any order you like. To assist your decision making, I have indicated point and approximate time allocations for each question. Whatever sequence you choose, you should clearly label your essays with the Part number and question letter.
- 2) The exam format is:
 - Part One:** one fact pattern with one broad essay question (100 points), and one shorter essay question (30 points). **(Two hours/130 points total)**
 - Part Two:** one fact pattern with five short answer questions embedded in the fact pattern. For each question, you may use any facts preceding the question, including facts preceding prior questions. **(One hour/50 points total)**
- 3) Your exam grade will reflect your place on a curve of points accrued on this exam; that is, the curve will start with the highest number of points accrued by any test-taker, and end with the lowest number of points accrued by any test-taker. I will grade your answers by awarding complete and partial points. I will not impose “negative” points for “wrong” answers.
- 4) If you are a graduating senior, clearly indicate that status on the outside cover of each of your exam booklets.
- 5) Write as legibly as you can, preferably using every other line. Use ONLY the right hand pages in your booklets.

DO YOUR BEST, AND HAVE A GOOD SUMMER!

PART ONE

(2 hours/130 points total)

Alan Attorney graduated from law school last May, and passed the bar exam that July. In August, he set up shop as a solo practitioner. Since then, he has worked hard to establish his law practice as a viable business.

Recently, Alan obtained a new client, Ritz Realty Company. Ritz's owner, Sam Slumlord, said that he chose Alan as Ritz's new attorney because he was attracted by Alan's yellow pages ad, which promised that Alan would "personally provide service in ANY area of law." This ad appealed to Sam because Ritz regularly needed a lawyer who could handle diverse legal issues, preferably on his own so as to "maximize confidentiality." In response to this description of his new client's needs, Alan declared, "I'm just the lawyer for you, then!" To seal the deal, Alan offered to handle all of Ritz's legal needs in return for a fixed monthly fee of \$1,000. Sam readily agreed to this offer, which was then memorialized in writing.

During the first month of the representation, Alan handled two legal questions in just five hours, earning the agreed-upon fixed monthly fee of \$1,000 for his services. The next month, Sam asked Alan to research zoning laws in nearby Upton to determine whether Ritz could convert office buildings in that city into multi-unit apartment dwellings. Ritz hoped to do so because Upton had a very weak office rental market and a strong housing market. Thus, long-empty office buildings could be cheaply bought and converted, then rented at relatively high prices. One reason that these properties offered such strong rental income prospects was their proximity to several factories employing low wage workers unable to afford home ownership. Many of these workers were immigrants; thus, Sam also asked Alan to determine whether any federal or state laws governed rental arrangements with legal or illegal immigrants. Assuming Ritz could rent to these tenants, the only remaining factor for the plan's success depended upon the sellers' ignorance of the properties' profit potential, which meant that the planned conversion would have to be kept secret until after the purchase.

Alan had no idea where or how to begin to learn the law applicable to these new questions. He had never taken a course in zoning or immigration law, and had sold all his Legal Methods books after first year, including his copy of *The Process of Legal Research*. He despaired of replicating the previous month's success of a relatively high return for just a few hours of work, and worried that he would lose Ritz's business if Sam discovered that he did not have a ready knowledge of different areas of law. Panicked, Alan lay awake the night after getting his new assignment and tried to think of a way to quickly serve Ritz's needs. At 3:00 in the morning, he suddenly had an idea: he remembered that one of his law school buddies had a cousin specializing in real estate and immigration law. Why not call the buddy, get the cousin's name and phone number, and then consult with the specialist?

By noon the next day, Alan was on the phone with his buddy's cousin, Suzie Specialist. Suzie confirmed that she was well-versed in zoning and immigration law, as she regularly represented members of Upton's immigrant community in housing and employment cases.

Without naming Ritz or Sam, Alan began by telling Suzie that he had a client who needed to know whether zoning laws would permit conversion of office buildings into apartments. Suzie responded that the answer depended on where the buildings were located, so Alan gave her the Upton addresses of the buildings that Ritz wanted to buy. Suzie then told him his client would need to file a letter brief seeking a zoning variance, and detailed the mechanics of filing such a brief. Alan then asked what legal arguments he should make in the brief. With a barely disguised sigh of exasperation, Suzie described the best legal argument for obtaining the variance. She cautioned Alan that the argument "would have to be a bit of a stretch, but if you clearly tell the board you are arguing by analogy, you should be able to use about five cases." Alan asked her to give him those case citations in Bluebook form, which she did. They then turned to the immigration questions, which turned out to be uncomplicated.

Suzie concluded the conversation by telling Alan that she was glad to help a young attorney, "but next time I give you this much help, you'll have to share the client instead of having me consult like this without any client relationship or fee." Embarrassed, Alan explained that his client preferred to minimize its use of lawyers so as to maximize confidentiality. "I understand," said Suzie. "Don't call me again for this one, then."

Once he got off the phone, Alan drafted a letter brief to the zoning board while Suzie's arguments were fresh in his memory. He worked in the five case citations directly from his notes, pleased that he had thought to get the Bluebook form of the citations from Suzie so that he would not even have to spend time looking in the Bluebook, let alone doing research, to complete the brief. While his secretary typed the brief, Alan called Sam. He reported what he had learned, without revealing how he had learned it. They agreed that Alan would file the letter brief seeking the zoning variance as soon as Ritz purchased the buildings.

After the variance came through, Alan helped Ritz contract with cut-rate architects and builders to accomplish the conversion. He then drew up standardized leases for the prospective renters. He offered to have the leases translated into Spanish so that Spanish-speaking renters could understand their leases, but Sam declined, saying he didn't want to wait for a translation because Ritz's business plan depended upon quickly renting the units. Alan suggested that Ritz "at least have someone explain the lease in Spanish, so renters know what they are getting into, because I've written a lease that favors Ritz and you don't want a court calling this an unconscionable contract somewhere down the line." Sam resisted the suggestion, telling Alan: "I thought I hired you to be a lawyer, not a bleeding heart social worker. If they're in this country, they gotta use English. If they don't understand it, it ain't my problem." Not wanting to annoy Sam any further, Alan dropped the suggestion.

Alan now finds himself defending Ritz from lawsuits brought by unhappy tenants of the converted office buildings. The renters claim that their apartments were shoddily constructed and are unfit for habitation. They also allege that Ritz fraudulently induced to enter into unfair rental agreements for the apartments. As part of their legal support for these claims, the renters argue that the office conversion violated zoning laws. Thus, a large part of Ritz's defense depends upon the validity of the legal arguments Alan used in his letter brief to the zoning board.

Unfortunately, Suzie Specialist represents the renters, so she knows the weaknesses of those arguments far better than Alan does. Alan has decided that his best hope of winning the cases lies with disqualifying Suzie, and has filed a motion to do so. In response to Alan's motion for her disqualification, Suzie argues she was not representing the plaintiffs on any matter when Alan consulted her, and that she had no idea at that time that she would later obtain clients who would rent from, and sue, Ritz.

(A) Assume the Model Rules govern legal practice in Alan's jurisdiction. Assess whether Alan violated any ethical rules in his representation of Ritz. (100 points)

(B) You are the judge who must rule on Alan's motion to disqualify Suzie. Please rule on the motion, and provide the legal reasoning for your ruling. This reasoning should rest upon the Model Rules and related legal doctrines and principles. Furthermore, you should assume that Alan and Suzie CORRECTLY believed that Suzie's consultation did not result in the formation of an attorney-client relationship between Suzie and Ritz. (30 points)

PART TWO
(1 hour/50 points total)

Lucy Lawyer is a general practitioner who handles varied civil and criminal litigation matters. She has many years of experience and is a well-respected attorney in her community. Her children are grown and married.

A year ago, Lucy had dinner with close non-lawyer friends, Peter and Paula Parent, who have a 15 year-old child named Sonny. When Lucy asked after Sonny, Paula burst into tears. Between sobs, she explained that Sonny had recently become surly and difficult. "He spends hours on the Internet and playing violent video games," she wailed. "He dresses in black, burns a lot of incense and candles in his room, and pierced his tongue." Peter chimed in: "We were getting so concerned that we searched Sonny's room for drugs and guns. Thank God we didn't find either of those things, but we found his diary. There's stuff in there about how he hates everybody at his school, especially the teachers. He keeps writing about wanting to blow the place up. If he did something like that, would we be in legal trouble for failing to control him?"

Lucy told her friends that American law tends not to hold parents criminally responsible the acts of their children unless the parents aid or abet the child's misdeeds. "But," she warned, "civil liability would be another question. If you entrust him with a gun, or you know he is planning a crime and you do nothing about it, it is possible you could be held liable for any damages that he causes, like medical costs if he injures somebody."

Alarmed, Paula asked, "are you sure about that? How can we be held responsible if he goes and blows something up when I can't even get him to do his chores, let alone control what he does at school?"

"I know what you mean," Lucy said. "I once was the parent of a teenager, too. I can't say for sure what you should do, let alone what would happen in a lawsuit. For now, maybe talk to Sonny, but that might mean you have to risk losing his trust by admitting that you read his diary. Kids like to have privacy, after all. As for the clothes and the candles and the pierced tongue, you know kids like to make their parents crazy. Remember the purple mohawk Peter got in 12th grade?"

(A) Would a court find that Lucy formed an attorney-client relationship with Peter and Paula Parent? Explain the reasoning the court would give in support of its finding. (15 points)

REGARDLESS OF YOUR ANSWER TO QUESTION (A), FOR ALL SUBSEQUENT QUESTIONS YOU SHOULD ASSUME THAT SUCH A RELATIONSHIP WAS FORMED, AND REMAINED ONGOING FOR THE DURATION OF THE FACT PATTERN.

Six months later, Peter and Paula Parent called Lucy and asked her to represent Sonny in a juvenile matter. The local police caught him setting three small fires--one in the Parent's back yard, one in the school parking lot, and one nearby the town hall--and he was facing charges for

those acts. Lucy accepted the representation and met with Sonny and his parents. Sonny began the meeting by sullenly asking whether Lucy was acting as his lawyer, or a lawyer for his parents. Lucy assured him that she represented him; “remember,” she said, “you’re the one in trouble. I’m here to help you.” In response, Sonny grumbled that he didn’t see why his parents got to pick his lawyer, and that, if the choice were up to him, maybe he wouldn’t pick his parents’ best friend for his lawyer because she was only going to do what they told her to do, anyway. “Too bad for you buster, because we’re paying the legal bills and we choose her,” snapped Peter.

To calm the situation, Lucy asked whether Sonny and his parents agreed about how to deal with the legal problems that arose from Sonny’s fire setting. Sonny and his parents then discussed his options, sometimes arguing and appealing to Lucy for her opinion or for legal advice. Sonny initially insisted that he wanted to “tell off the judge and make a statement about how screwed up the school and the system are.” Not surprisingly, Peter and Paula said that Sonny would do no such thing. When asked for her advice, Lucy told Sonny that he could decide whether he wanted to plead guilty or innocent, but that what was said to the judge after that would be her decision, because she would know best how to get the result that Sonny wanted. This advice set off angry protests from Sonny, but he eventually agreed with Lucy and his parents that it was best for him to admit wrongdoing, cooperate, and hope for a light sentence given his previously clean record.

As Sonny’s hearing date approached, Lucy read a book about the psychology of adolescent violence and dangerousness. The book warned that the major signs of a propensity for violence, “well known to psychologists and law enforcement authorities,” are fire setting and cruelty to animals. Lucy did not know whether to be worried or relieved: Sonny’s fire setting worried her, but the book didn’t mention angry diaries, and Sonny hadn’t been cruel to any animals so far as she knew. She decided not to discuss her concerns with Sonny or his parents, as she did not want to alarm them or increase their nervousness before the hearing.

(B) Identify any conflict of interest issues raised by Lucy’s representation of Sonny, and explain why the representation is or is not ethically precluded by a conflict of interest. (10 points)

(C) Assess whether Lucy has dealt with Sonny in accordance with the general legal principles and Model Rules governing the scope and nature of the lawyer-client relationship. (15 points)

At the hearing, Sonny admitted that he had set the fires, and expressed remorse for his acts. The judge asked if there was any information relevant to Sonny’s propensity for violence other than the evidence entered in the record, which consisted of police testimony and Sonny’s admissions regarding the fire setting incidents. Peter, Paula, and Sonny all responded affirmatively that there was no such information. Lucy said nothing.

(D) Assess whether Lucy fulfilled or violated Model Rule 3.3. (5 points)

The judge sentenced Sonny to a three-month probationary program of counseling and community service. Once Sonny completed the program, his record would be expunged if he stayed out of trouble for another year. Unfortunately, Sonny did not stay out of trouble. Two months into his program, he was accused of setting off an explosion and fire in a chemistry lab at school. The explosion severely burned the chemistry teacher. The injured teacher has sued Peter and Paula for civil liability, seeking compensatory and punitive damages for her injuries.

After consulting with Lucy about possible conflicts of interest created by Lucy's prior representation of Sonny, Peter and Paula asked Lucy to defend them in this civil action. Plaintiff's discovery included separate depositions of Peter and Paula. At both depositions, opposing counsel asked whether Sonny "keeps" a diary. Each parent responded "no." During breaks, Lucy asked each parent about the diary they had once found and described to her. Each told her: "after the lab explosion we confronted Sonny about that diary. He got angry, told us he'd burn down the house if we ever messed with his things again, and said he'd never keep a diary again. We didn't dare ask what he'd done with the old diary, and we don't really want to know any more about what goes on in his head." Lucy let the deposition testimony stand as it had been given.

(E) Assess whether Lucy complied with, or violated, Model Rule 3.4(d), which states: "A lawyer shall not . . . fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party." (5 points)