## PROFESSIONAL RESPONSIBILITY Prof. Nivala Spring 1998

This exam consists of two questions totaling 120 points. The only material you are allowed to use is the rules of professional responsibility accompanying this exam.

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 1 (60 points)

On October 12, 1996, an explosion at the Denuded Petrochemical Plant killed 12 workers. The 12 workers were members of the International Union of Petrochemical Workers (IUPW). On October 25, 1996, an IUPW representative met with the families of 11 of the 12 deceased workers. The IUPW representative offered to contact an attorney on behalf of the families; all 11 families authorized the representative to do so.

The IUPW representative contacted the law firm of Laster & Faster which agreed to represent the families on a contingency fee basis if the IUPW representative obtained the signatures of all family representatives on the law firm's standard contingency fee agreement. The representative did so. On December 12, 1996, the law firm filed suit against Denuded. On December 13, 1996, the attorney representing the twelfth deceased worker also filed suit against Denuded. The court consolidated the two suits.

After pre-trial discovery was completed, the two suits were scheduled for trial beginning December 1, 1997. On November 1, 1997, a lawyer representing Denuded called Laster & Faster and offered to settle their suit for \$6 million; under its fee agreement, Laster & Faster would receive \$2.0 million as legal fees and \$250,000 in legal costs. The 11 families would equally divide the remaining \$3.75 million.

Laster and Faster contacted the IUPW representative and relayed Denuded's offer. The IUPW representative said that the families would agree to a \$6 million settlement. Laster & Faster then called Denuded's lawyer and agreed to the settlement which was formally signed on November 5, 1997. At a meeting with the 11 families on November 8, 1997, Laster & Faster distributed \$341,000 checks to each family, saying that the checks were full compensation for each worker's death.

On December 1, 1997, the suit involving the twelfth worker went to trial. After 10 days of testimony, the case was given to the jury which, in 4 hours, returned a judgment of \$1.25 million in favor of the worker's family.

On January 3, 1998, the families of the 11 workers, now being represented by the law firm of Punish & Avenge, filed a legal malpractice action against Laster & Faster. You are a law clerk for the judge to whom this case has been assigned. Your judge wants a memo discussing the professional responsibility issues raised by these facts. Your jurisdiction has adopted the rules which accompany this exam. The more specific and accurate your reference to the rules, the better.

## QUESTION 2 (60 points)

On August 3, 1997, Exuding Chemical Corporation filed a suit seeking a declaration of insurance coverage regarding environmental claims arising from contamination at Exuding's facilities. Exuding's suit named 6 insurance companies as defendants; one of those companies was Homefriendly.

In May, 1988, Exuding was the subject of a hostile takeover bid by Turncoat Corporation. From May to October, 1988, Exuding was represented by Conrad Atkins, a sole practitioner. Atkins had unrestricted access to documents and employees and worked closely with Exuding's in-house attorneys as well as its investment bankers. The takeover bid was withdrawn in October, 1988.

When Exuding filed its instant lawsuit, Homefriendly retained the Skidmore law firm to represent it. Skidmore and the law firms representing the other five insurance companies entered into a Joint Defense Agreement for the purpose of managing and expediting the litigation in an orderly and cost effective manner through coordination of discovery and other activities of common concern.

After the Joint Defense Agreement was entered into, Skidmore retained Conrad Atkins as a contract attorney whose duties were contractually limited to issues raised by Exuding's action against Homefriendly.

On January 24, 1998, during a deposition of Exuding's former in-house counsel, Exuding learned that Atkins had been retained by Skidmore to handle the Homefriendly issues. Exuding's attorney immediately filed a motion to disqualify Atkins, the Skidmore law firm, and all law firms representing members of the Joint Defense Agreement. You are the law clerk for the judge to whom this motion has been assigned. Your judge wants a memo discussing the professional responsibility issues raised by these facts. Your jurisdiction has adopted the rules which accompany this exam. The more specific and accurate your references to these rules, the better.