



LEGAL PROFESSION

Fall, 1992

Professor Terrell

FINAL EXAMINATION

Time: 2 hours, 30 minutes

INSTRUCTIONS:

1. This is a closed book examination. You will be given a copy of the "Model Code of Professional Responsibility" and the "Model Rules of Professional Conduct" for this examination.
2. You have a maximum of 2 hours and 30 minutes to complete the examination.
3. There are twelve questions on the examination. Please make certain that your copy of the examination contains all twelve questions.
4. There are 138 total raw score points available on the exam. The raw score points available on each question are noted at the beginning of each question, along with a suggested time allotment for each question corresponding to the relative number of raw score points available on that question.
5. Note: The average amount of time allotted to each question is about ten (10) minutes. Your answers will therefore necessarily be relatively short. Make them efficient and to the point. However, they also should be thorough. To be thorough in your responses, you should often argue not only why a particular conclusion you have reached is correct, but in addition why competing possibilities would be incorrect.
6. At any point in this examination, if you believe you lack crucial information for an adequate answer, you are entitled to note the information you believe you need, and if necessary make a reasonable assumption concerning that information. You must be explicit about such notations and assumptions.
7. Any announcements concerning the examination shall be made in the room assigned for the examination and the typing room.
8. Good luck.

Question One  
(15 raw score points; 20 minutes)

Suppose you have recently become a partner in a small law firm that has a broad, general practice. You are attending a partnership meeting where the item under discussion is a memorandum signed by all three of the newly-hired associates. They have asked the firm to establish a policy that permits and encourages every lawyer in the firm to devote the equivalent of 100 billable hours per year to representing indigent clients. (The lawyers in the firm average about 1,800 billable hours per year.) The state pays a modest fee to court-appointed counsel in criminal cases, but there is no compensation scheme for civil matters, and the state's legal services program has been sharply cut due to lack of public funding. One of your partners has argued that to adopt the proposed policy, the firm will either have to cut its present overhead, or cut the present pay of the staff and the lawyers, or raise its fees to paying clients by about 5%. Would you raise any other points about economic concerns? Would you suggest any other points for consideration at all? How will you vote on the proposal, and why?

Question Two  
(10 raw score points; 9 minutes)

A congressional investigating committee subpoenaed certain files from a governmental agency in connection with the committee's investigation of the agency's allegedly illegal expenditure of government funds. Lawyer Altmont (the agency's Chief Counsel) instructed lawyer Barker (the Deputy Chief Counsel) to gather up the files and prepare them for production. Barker, in turn, assigned the project to lawyer Crawford (a newly-hired junior lawyer). In giving Crawford the assignment, Barker said: "I wouldn't be surprised if all of these files had been shredded long ago, pursuant to our regular Document Storage and Retention Procedures Manual ('DSRPM')." Crawford discovered that the files still existed, even though the DSRPM called for their destruction six months earlier. Crawford dutifully shredded the files himself and then reported the fact to Barker. Barker responded by stating: "Good. I wonder if the computer backup for those files still exists?" Crawford interpreted this as an instruction to erase the computer backup materials, which he promptly did. Barker then reported the full story to Altmont who informed the congressional investigating committee that both the files and the computer backup had been destroyed in accordance with the agency's regular procedure under the DSRPM. Are any of the three lawyers named above subject to discipline?

Question Three  
(12 raw score points; 12 minutes)

In which of the following situations would the information received by the attorney be covered by *both* the attorney-client privilege and the ethical duty to preserve the client's confidential information? Explain.

- I. Lawyer L is defending client C in a tax fraud case. With C's consent, L hires a tax accountant to examine C's records, to talk with C, and to prepare some worksheets for L to use in defending the case. The accountant turns the worksheets over to L.
- II. L is representing C in a boundary line dispute with C's neighbor. When combing through the county land records, L discovers that C's grantor apparently had no legal title to the land he purported to grant to C.
- III. L is defending C in a first degree murder case. In the course of her investigation, L talks to a taxi driver who tells L that he remembers that on the night in question C rode in his taxi to an address near the scene of the murder.
- IV. L represents C in an action for breach of an oral contract. When preparing the case for trial, L stumbles across an old newspaper clipping, reporting C's conviction of a felony in a distant state 15 years ago.

Question Four  
(8 raw score points; 7 minutes)

What is "confidential government information"? Why is it relevant to a course in legal ethics?

Question Five  
(11 raw score points; 9 minutes)

Paredo Meat Packing Company sued its supplier, Dungan Bros. Beef Works, for breach of express and implied warranties in connection with the sale of nine carloads of beef by Dungan Bros. to Paredo. Paredo alleged that Dungan Bros. shipped the beef without proper refrigeration and that it was spoiled when it arrived at Paredo's plant. Attorney Aguilera was counsel for Dungan Bros. in the case. His theory of defense was that the beef was properly refrigerated in shipment and that it arrived at Paredo's plant in good condition. To prove this, he planned to

introduce into evidence at trial a collection of transit temperature records which showed proper temperatures at all times. Two days before trial, Aguilera received an anonymous note stating that, shortly after Paredo's suit was filed, someone at Dungan Bros. destroyed the original transit temperature records and substituted falsified records in their place. Aguilera did some investigating and concluded that the anonymous informant was correct. What may Aguilera do at this juncture?

Question Six  
(10 raw score points; 8 minutes)

Attorney Arossio was defending Doyle in a drunk driving case. The state's drunk driving statute specified a fine up to \$1,000 for a first offense. For a second offense, it specifies a fine up to \$10,000, plus a mandatory jail sentence of 60 days up to one year. Doyle told Arossio in confidence that he had one prior conviction for drunk driving. Arossio consulted the public records and found that Doyle's prior conviction had never been properly recorded. Doyle decided to plead guilty. The hearing transcript shows the following colloquy:

The Court:Your guilty plea will be accepted, Mr. Doyle. Ms. Prosecutor, are there priors in this case?

Prosecutor:No, your Honor. The People ask the maximum fine of \$1,000.

The Court:Very well. Mr. Arossio, since your client is a first-timer, I'm inclined toward a fine of \$750. Is that acceptable?

Regarding each of the following responses, discuss whether Arossio would be subject to discipline.

I.Yes, thank you, your Honor.

II.My client will accept the court's judgment, your Honor.

III.Since my client's blood-alcohol level wasn't much above the mark, and since his record is clean, I would ask your Honor for a fine of not more than \$500.

IV.There's been a mistake, your Honor. My client has a prior conviction that does not appear on the record.

Question Seven  
(13 raw score points; 10 minutes)

Lawyer Lexington represents the plaintiffs in a civil action. His clients are three members of the congregation of All Souls' Divine Missionary Church, suing on behalf of themselves and others similarly situated. The defendants are All Souls' Divine Missionary Church, Inc., (a corporation) and Pastor Dorset, the spiritual leader of the church and president of the church corporation. Pastor Dorset and the church corporation are represented by separate defense lawyers. The complaint alleges that Pastor Dorset misappropriated large amounts of church money, and that the Board of Elders, acting as corporate directors, knew about it and failed to stop him. In the early discovery phase of the case, lawyer Lexington conducted a lengthy, private interview with the church bookkeeper, an employee of the church corporation. She brought the church books with her to the interview, and she and Lexington went over them in great detail. Lexington did this without the knowledge or consent of either defense lawyer.

- (a) Was Lexington's conduct proper?
- (b) Would it make any difference if the bookkeeper had been discharged by the church corporation several months before the interview?

Question Eight  
(12 raw score points; 11 minutes)

Lawyer Lattimer is on the in-house legal staff of Centennial Corporation, a major manufacturer of steel shipping containers. She regularly provides legal advice to Vice-President Markler, the executive in charge of sales and marketing. In the course of a routine preventive law project, Lattimer discovered that Markler had participated in a series of telephone conferences with his counterparts at the company's two main competitors. Further, she discovered that each such conference was promptly followed by an increase in the prices charged by the three companies. When Lattimer took this up with Markler, she said: "If you have been discussing prices with our competitors, we may be in deep trouble. Your telephone conferences may violate the Sherman Antitrust Act, and that could mean civil and criminal liability, both for you and for the corporation. And, as you know, the corporation has a rule against rescuing executives who get in antitrust trouble." Markler responded as follows: "Ms. Lattimer, I'm glad you're my lawyer, but you don't know much about the real world. You can't run a business these days if you try to trample on your competition. Now don't worry yourself about my telephone conferences, because I'm sure you have better things to do with your time." If Markler remains uncooperative,

what is the proper course for lawyer Lattimer to take?

Question Nine  
(14 raw score points; 10 minutes)

Attorney Tillis is a partner in the 138 person firm of Dahlberg & Sneed. The firm is located in a state that has adopted the ABA Model Rules of Professional Conduct. The Citizens Alliance for Coastal Preservation has asked Tillis to represent the Alliance in a public interest law suit against Vista del Oro, Inc., a real estate developer. Vista del Oro owns several thousand acres of beautiful coastline, about an hour's drive from the largest city in the state. It is building vacation homes to sell to the public. When the project is complete, the entire area will be fenced off to prevent access by non-owners. The Alliance seeks to force Vista del Oro to provide access paths across the property, so that members of the public can get from the state highway to the public beaches.

Attorney Prentice is also a partner in Dahlberg & Sneed. He is a member of the Board of Directors of Vista del Oro, and he owns seven of the vacation home sites as a personal investment. No Dahlberg & Sneed lawyer has ever represented Vista del Oro, and none will do so in the present case. After careful consideration, Tillis has concluded that his representation of the Alliance would not be adversely affected by Prentice's interest. Under the ABA Model Rules, discuss whether any of the following conditions must be met if Tillis is to represent the Alliance.

- I. The Alliance consents after full disclosure.
- II. Vista del Oro consents after full disclosure
- III. Prentice resigns as a director of Vista del Oro.
- IV. Prentice sells his seven home sites.

Question Ten  
(10 raw score points; 8 minutes)

A statute of State X requires prison inmates to be provided "sanitary living conditions, suitable education and recreation facilities, and competent medical treatment." The statute authorizes inmates who are deprived of these benefits to sue the State Commissioner of Prisons for equitable relief. The statute also permits (but does not require) the courts to order the state to pay the attorney fees of successful inmate plaintiffs. At the request of the local bar association, private attorney Andrade agreed to represent a group of indigent inmates who were

allegedly being deprived of proper medical attention at a State X prison. After extensive discovery proceedings, the State Commissioner of Prisons offered to settle the case by entering into a consent decree that would give the inmates all the equitable relief they could ever hope to receive, provided that Andrate would not request an award of attorney fees. What should Andrate do with respect to the settlement offer?

Question Eleven  
(11 raw score points; 9 minutes)

After they graduated from law school, Cheryl and Dennis were married and went to work for separate law firms in a large city.

Cheryl's practice is primarily trademark litigation, and Dennis' practice is primarily general business counseling; only rarely does he become involved in trial work. One of Dennis' regular business clients sued a major corporation for trademark infringement. Dennis and his law firm appear on the pleadings as counsel for plaintiff, but, in fact, all of the trial work is being done by another firm that specializes in trademarks. The defendant's lead counsel died suddenly, and his firm withdrew from the case. Now the defendant has asked Cheryl and her firm to take over the defense. Can they do so? Under what circumstances?

Question Twelve  
(12 raw score points; 10 minutes)

When attorney Aldrich was in private practice, she defended client Costa in two criminal assault and battery cases. The cases were three years apart, and both times the victim was Vincent, Costa's brother-in-law. Costa was convicted in both cases. Thereafter, Aldrich was elected County Prosecutor. As County Prosecutor, Aldrich hires and fires deputy prosecutors and generally supervises their work. As time permits, she also personally prepares and tries some cases. Her former client Costa is in trouble again, this time for the apparent first-degree murder of Vincent. A state statute requires all first-degree murder prosecutions to be conducted under the "direct, immediate, and personal supervision" of the County Prosecutor. The statute further provides that the State Attorney General's Office shall take over any criminal prosecution in which the local County Prosecutor cannot act due to a conflict of interest.

- (a) Can Aldrich and her office proceed?
- (b) What if the facts were reversed, and Aldrich had prosecuted Costa earlier, and Aldrich was now asked to defend him? Could Aldrich do so?