INSTRUCTIONS:

1. This is a closed book examination. You will be given a copy of the 2013 version of the "ABA Model Rules of Professional Conduct" (without the comments) for this examination. (The Model Rules have not been officially amended since 2013).

2. You have a maximum of 3 hours and 10 minutes to complete the examination.

3. The examination consists of eight questions. Please make certain that your copy of the examination contains all eight.

4. YOU MUST RETURN YOUR COPY OF THE EXAMINATION WITH YOUR EXAMINATION ANSWERS. BE CERTAIN TO PUT YOUR EXAM NUMBER ON THIS COPY OF THE EXAM. **IF YOUR COPY OF THE EXAM IS NOT RETURNED, YOUR EXAM WILL NOT BE GRADED.**

5. There are 152 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.

6. **NOTE:** The average amount of time allotted to each question is about twenty (20) minutes. Your answers will therefore necessarily be relatively short. Make them efficient and to the point. However, they also should be thorough. **This will require you to explain your conclusions, not simply state them.** And you should make appropriate citations to the Model Rules when they are relevant to your analysis and answers. Citations to other sources, such as the Restatement of the Law Governing Lawyers or state versions of the Rules, are welcome and will be considered favorably, but are not "required" for a good answer.

7. Although a few of the questions on the exam explicitly raise the topics of "professionalism," those topics might nevertheless be relevant, in your opinion, to other questions. If so, you are welcome to raise such points as you have time. But you should not assume that professionalism must be discussed in your responses to every question.
8. 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.

9. Any announcements concerning the examination shall be made only in those rooms assigned for the examination.

10. Good Luck.
Question One
(16 raw score points; 20 minutes)

You are a member of your firm's "Business Review" Committee, and the following two pieces of new work have come to the Committee's attention. What would you advise?

(a) During the previous two years the firm has done a small amount of legal work for Jones Steel Company. The work involved some tax issues and questions under the Fair Labor Standards Act. The firm has not done any work for Jones Steel this year. Fees paid by Jones during the last two years total about $25,000. Recently, General Contractors, Inc. has asked Knight & McLaughlin to represent it in a major breach of warranty action against Jones. The partner in the firm who would be in charge of the matter estimates that the case would generate more than $1 million in fees for the firm.

(b) The firm is handling the formation of NYM Associates, a limited partnership with ten doctors as limited partners. The partnership owns and operates sophisticated equipment used in medical testing and diagnosis. Oldtown Hospital has asked the firm to defend it in a malpractice action filed against the hospital and several doctors, one of whom is a 10 percent owner in NYM Associates. The hospital will need to argue in the litigation that if any malpractice occurred, it was the fault of the doctor and that it bears no responsibility.
Question Two
(14 raw score points; 16 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 fee of $1,000.
Defendant Doyle: But your Honor! This is my first offense! And I was just barely over the legal limit!
The Court: I hear you, Mr. Doyle, but I want to speak to your attorney. 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 Three
(16 raw score points; 20 minutes)

The office of the attorney general in your state, as in most states, defends cases brought against the state. You are an assistant attorney general, and you have been asked to defend the State Department of Juvenile Services in a class action that claims that conditions at its facilities violate federal statutory law and the constitutional rights of juveniles. The department largely admits that it violates the law, but the director of the agency says that the agency cannot do anything about the problems because the state legislature has not provided sufficient funds for the department to comply with its legal obligations. The agency head directs you to defend the suit as best you can, even though there is no realistic possibility of a successful defense, because it will give the agency some time in the hope that it can obtain additional funding.

(a) Do the rules of legal ethics give you guidance here concerning how to respond?

(b) Is the concept of professionalism relevant here?
Question Four
(20 raw score points; 24 minutes)

The Duane Morris law firm agreed to represent Nan and Alex Smith in a law suit against McKesson Information Solutions ("MIS"), in which the Smiths accuse MIS of fraudulent business practices and producing software derived from technology developed by the Smiths.

MIS is a subsidiary of McKesson Corp. While representing the Smiths against MIS, Duane Morris was concurrently representing two other McKesson Corp. subsidiaries, McKesson Automation Inc. (MAI) and McKesson Medication Management Inc. (MMM) regarding claims these companies were pursuing against a debtor in bankruptcy court in Pennsylvania. As an aspect of the engagement letter presented to both these subsidiaries, months later, each had agreed to "consent waivers" that permitted Duane Morris to engage in other legal work that "might be tangentially inconsistent with the interests" of either company.

MIS filed a motion to have Duane Morris disqualified from representing the Smiths in the Georgia matter.

(a) What issues would be relevant to the Court's analysis of a legal ethics problem here?

Assume that the Court decides to disqualify Duane Morris. Two months later, MAI and MMM settle their claims in the Pennsylvania bankruptcy proceeding, and two weeks after that, the bankruptcy court enters a final order resolving those claims. Duane Morris then seeks to withdraw as counsel for both MAI and MMM. Neither company objects, and the bankruptcy court issues an order permitting the firm to withdraw.

Duane Morris then returns to the Georgia Court and asks the Court to lift its disqualification order. MIS objects strenuously.

(b) What arguments do you think Duane Morris and MIS will present to the Court, and how do you think the matter should be resolved?
Question Five
(28 raw score points; 30 minutes)

Liz has come to your office and related the following story:

She is the owner and manager of a Burger Queen franchise in town. She recently agreed to settle a lawsuit she had brought against the Burger Queen company for what she contended were slow deliveries of supplies, and delivery of poor quality supplies, all of which she believed was part of an effort by the company to harass her. She is convinced that the company wants her to relinquish her franchise so the company can give it to someone else.

The terms of the settlement of her suit, however, simply give her the right to inspect the supplies at the company's warehouses before shipment, and to check the company's shipping manifests to see if her franchise is being neglected. She says she was very dissatisfied with this settlement when it was presented to her by her lawyer, but she says her lawyer told her that the Burger Queen company emphatically denied her allegations, and that going to trial would be very expensive, time-consuming, and risky given the facts. She says she therefore decided, very reluctantly, to accept the settlement offer.

She had been represented in the litigation by the firm of Prince & Pauper, a respected medium-sized firm in town, while Burger Queen was represented by King & Wilson, a very large, multi-city law firm. Liz has come to you because she is now furious with Prince & Pauper, and particularly with the partner there who handled her case. Her anger is based on the following facts she has learned after much informal detective work:

-- Prince & Pauper has for several years represented Hank Sellum, a very successful local businessman who owns, among other properties, the Taco Quickie franchise across the street from Liz's Burger Queen, which is her most direct competitor;

-- Prince & Pauper started as a firm seven years ago as a split-off from King & Wilson, and the two firms have maintained a cozy relationship, often referring legal work to each other;

-- The partner at Prince & Pauper who was Liz's lawyer, along with the partner at King & Wilson who was Burger Queen's principal lawyer in Liz's matter, both jointly represent a company currently involved in a major securities fraud case;

Question continues onto next page
-- Prince & Pauper represents the Taco Quickie company in all its labor disputes around the country;

-- The Burger Queen company is owned by a huge conglomerate company called Monarch Foods which recently (immediately after Liz's case was settled) hired Prince & Pauper to handle a very large real estate transaction; and

-- The partner at Prince & Pauper who was Liz's lawyer is married to a partner at King & Wilson.

(a) Liz wants to report all these lawyers (at Prince & Pauper and King & Wilson) to the State Bar Association's disciplinary committee, and perhaps sue them for malpractice. What do you advise?
(b) As a separate topic to discuss for this exam, rather than imagining this to be a part of your conversation with Liz, would you consider any of the elements of Liz's concerns above to be unprofessional, as opposed to unethical?
Question Six
(18 raw score points; 20 minutes)

(a) You are an attorney with the office of the public defender. You have been appointed to represent Albert Simmons, who has been accused of a series of burglaries in the community.

For several months the police have been investigating the disappearance of a teenager. The family and friends of the teenager have organized a massive public campaign in an effort to obtain information about their daughter, but with no success. According to the local newspaper, the investigation is at a dead end, without any leads.

During the course of one of your interviews with Simmons, he begins crying uncontrollably and tells you that he has a terrible secret that he can’t keep to himself any longer: He killed the girl that the police have been looking for. Simmons also tells you that he left her body in an abandoned mine several miles from the city. Simmons goes on to tell you that he is sure the police will find her body and that they’ll trace it to him because he left “some other stuff there.” Simmons says he’s got to get out of jail and get the stuff and to hide the body. He asks you to work on getting him out on bail. You know that, given the current charges against him and his general ties to the community, bail will not be a serious issue. What would you say to Simmons, and do thereafter?

(b) Assume that the bail amount set for Simmons is too high for him to meet, and he is stuck in jail for the foreseeable future. He tells you that “I’m dead if they find the body, but I know someone who can get rid of the body for me. You’ve got to help me get in touch with them, because I won’t be able to locate them while I’m stuck here in jail.” What would you do?
Question Seven
(24 raw score points; 25 minutes)

A massive fire at the International Hotel killed 15 guests and injured many more. The estate of one of the deceased guests has retained you to represent its interests. You have sent your investigator to the scene of the fire, and he has learned the names of a number of the hotel’s employees. Some of them worked in the kitchen where the fire began, while others worked in other parts of the hotel.

When your investigator tried to arrange an interview with one of the employees, he was told by the employee that “The hotel’s lawyers told us not to talk to anyone about the case.” Your investigator learns that the law firm of Wilson & Farr has been retained to represent International, and that several paralegals from that firm have taken statements from many Hotel employees.

During the course of your investigation of the fire, you learned that three months ago the hotel fired its manager, Anita Allen. You contacted Anita who told you that the hotel fired her because she had been complaining about the hotel’s unwillingness to spend money on maintenance. Allen says that the hotel had experienced some electrical problems in the kitchen, and she suspected that this may have caused the accident. She gave you a copy of a memorandum that she had sent to the home office of International complaining about the lack of maintenance and raising safety concerns.

You have filed discovery requests in the matter, including a request that all the statements collected by Wilson & Farr be produced, and you have called that firm to complain about their attempts to silence International’s employees.

In response, Wilson & Farr rejects your fussing about the employees, refuses to release any of the collected statements, and files a motion of their own to disqualify you and your firm from handling the case because of your ex parte contact with Ms. Allen.

How do you respond?
"You talk about a sweet situation. Things don't fall together like this very often.

"I represent Mary in a divorce. She's married to Stan, who is represented by one of the partners at Sullivan & Sheets -- the biggest law firm in town -- and that partner is one of the most arrogant, overbearing jerks I've ever met. Anyway, Stan is a very successful businessman who owns Busicorp. Busicorp, however, is presently involved in a big tax dispute with the government, and it's represented by Sullivan & Sheets as well.

"Well, Mary tells me of a rumor she's heard that Busicorp's accountant, who is an old friend of hers, has been modifying the company's books and records to give it a stronger case against the government. I just had a little informal chat with this accountant, and he confirmed the rumor! (How I got him to talk is another story I'll have to tell you sometime.) But this guy begs me not to say anything to anyone.

"As if this isn't good enough, my partner Bob, who recently came to the firm from the local prosecutor's office, tells me the police have been developing several other possible criminal charges under State law against Stan and Busicorp, but the cops lack some crucial information about some meetings that Stan held at his home. Mary, however, knows all about those meetings! She can basically put ol' Stan in jail.

"Mary and I are meeting with Stan and his lawyer tomorrow. I can't wait to unload these tidbits on them. They'll fold in a flash.

"So, why are you frowning?"