Professional Responsibility Final
Fall 94

Last 4 digits of SS #

This is a two and a half hour exam in two parts. Part I is 25 questions, multiple choice and short answer, applying the Model Rules and the material on Attorney Client Privilege, each question counting one point -- closed book and rules. Part II is essay (50 points total) open book, rules and personal notes (no hornbooks, commercial outlines and the like). Pick up Part II when you turn in Part I. Do not spend more than fifty minutes on Part I.

Honor Code. All academic endeavors are governed by the College of Law Honor Code, which prohibits cheating on examinations. The Honor Code requires any student observing cheating to report the matter. Failure to report cheating is a violation of the Honor Code.

General Instructions for Part I

1) Must or subject to discipline asks whether the conduct in question subjects the attorney to discipline under the Model Rules of Professional Conduct.

2) Should asks whether the conduct in question at least conforms to the level of conduct expected of an ethical attorney, as reflected in the rules and comments of the Model Rules of Professional Conduct.

3) May or it is proper asks whether the conduct in question
is professionally appropriate in that it would not subject the attorney to discipline and is not inconsistent with the rules and comments of the Model Rules of Professional Conduct.

It is intended that there be only one correct answer for each multiple choice question. If you feel that there are two correct answers, pick an answer and state your reasoning in the margin.

1. Lawyer has been retained by the officers of Amalgamated Finishers and Pattern workers Union, Local 453, to draft a new set of bylaws for the local. Lawyer strongly disagrees with one of the provisions the officers want included in the new bylaws. The provision would deny members of the local the right to vote on some issues that involve the expenditure of union funds. Although Lawyer believes that the provision is lawful and consistent with the national union charter, she believes it would be unwise and inconsistent with the best interests of the members of the local. If the union can obtain other counsel without serious loss, may Lawyer withdraw from the matter

a) Yes, but only if she obtains the consent of her client.
b) Yes, if her client insists on her doing something that she considers to be imprudent or repugnant.
c) No, because she is obliged to carry out the lawful objectives of her client.
d) No, unless her client has breached the agreement under which she agreed to perform the work.

2. 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) together 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 have 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 material, 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 procedures under the DSRPM.

a) only Barker and Crawford are subject to discipline.
b) Only Crawford is subject to discipline.
c) Altmont, Barker, and Crawford are all subject to discipline.
d) Neither Altmont, nor Barker, nor Crawford are subject to discipline.

ii)

* * * *
a) 
b) 
c) 
d) 

3. Three years ago, attorneys Hooten and Snod formed a law partnership called Hooten & Snod. A year later, Hooten died, and Snod continued practicing under the former firm name. Then Snod hired a salaried associate, attorney Tremble, and the firm name was changed to Hooten, Snod & Tremble. The following year, Snod left law practice to become a commissioner on the Federal Trade Commission. Tremble took over the practice and continued to use the same name. Later, because he had more space in the office than he needed, he entered into a space-sharing agreement with attorney Gangler. The sign on the door now reads Tremble & Gangler, Attorneys at Law. Which of the following are correct

i) After Hooten died it was proper for Snod to continue using the firm name Hooten & Snod.

ii) When Snod hired Tremble, it was proper to change the firm name to Hooten, Snod & Tremble.

iii) After Snod joined the FTC, it was proper for Tremble to continue using Snod as part of the firm name.

None of the above.

(i) and (iii) only.

(i) and (ii) only.

(i) only.
4 After Client was injured in a car wreck, he was treated in
the hospital for twelve days by Physician; she billed him $7,500
for her medical services. The wreck put Client out of work, and
he had no way to pay Physician's bill. He hired Attorney to sue
the person who caused the wreck; in a written fee agreement,
Attorney promised to do the work for a contingent fee. Attorney
decided that Physician would make a good expert witness in the
case. Attorney and Client agreed that Attorney would lend Client
$7,500 to pay Physician's medical bill and that Attorney would
advance the money needed to pay Physician at her hourly rate for
the time she spent preparing to testify and testifying as an
expert witness. Client agreed to pay back Attorney at the
conclusion of the Case.

i) Attorney is subject to discipline for agreeing to lend Client the $7,500.

ii) Attorney is subject to discipline for participating in an agreement to pay a witness for giving testimony.

iii) Attorney is subject to discipline for agreeing to advance the money needed to pay Physician's expert witness fee.

None of the above.

(i) and (iii).

(i) only.

All of the above.

5. On June 1st, Client hired attorney Attorney to sue defendant
Degan for securities fraud. Client and Attorney realized that
the complaint would have to be filed by September 15th to be
within the statute of limitations. Attorney was very busy with
other matters. Starting in mid-August, Client telephoned
Attorney every few days to see what progress Attorney was making.
Attorney repeatedly assured Client that he was assembling the
facts and preparing preliminary drafts of the complaint, but in truth Attorney was doing nothing on the case. On September 10th, Client learned from Attorney's secretary that Attorney had still not started to work on the case. At that point, Client fired Attorney and hired a different lawyer who was able to get the complaint on file by September 15th. Although Attorney did not charge Client any fee, Client reported the matter to the state bar. Which of the following is most nearly correct?

a) If Attorney would have been able to complete the necessary work by September 15th, his conduct was proper.
b) Since Client suffered no damage due to Attorney's delay, Attorney's conduct was proper.
c) Even though Client suffered no damage due to Attorney's delay, Attorney is liable for malpractice.
d) Attorney is subject to discipline for neglecting Client's case and for lying to Client about the status of the matter.

6. Client has retained Lawyer to represent her in divorce proceedings instituted by Client's husband. Client has moved out of the family home and is living in a distant town; she no longer sees her husband or their children. Client tells Attorney in confidence that, before the separation, she had been physically abusing the children. A state statute requires physicians and psychotherapists to report to the police all suspected cases of child abuse. The statute makes no mention of attorneys. Which of the following is most nearly correct?
a) If Attorney reports the child abuse to the police, he will be subject to discipline.

b) Attorney may report the child abuse to the police if he believes that the interests of justice will be served by doing so.

c) Attorney must report the child abuse to the police, because the state policy favors the protection of children.

d) Attorney must report the child abuse to the police, because child abuse is a crime that may result in death or serious bodily injury.

7. Attorney Arlington is a young associate in the firm of Smith & Black. He is assisting senior partner Black in the discovery phase of a case in which the court has ordered Black's client to produce certain documents. Black asked Arlington to study the court order, to review several boxes of documents sent over by the client, and to decide which documents must be produced. Arlington did the work and presented his conclusions to Black. Black and Arlington disagree about one group of documents. Black maintains that the court order does not require them to be produced, but Arlington insists that a fair reading of the court order does require them to be produced. The two attorneys agree that the question is a close one, but each is convinced that the other is incorrect. Which of the following is most nearly correct?

a) If Arlington gives in to Black's point of view, Arlington will be subject to discipline, since an attorney must not hold back what a court has ordered to
be produced.

b) Since a subordinate attorney cannot be held accountable for following the directions of a supervising attorney, Arlington must accede to Black's point of view.

c) Since the point is a debatable one, Arlington may accede to Black's point of view.

d) Since an attorney is required to follow his own, independent judgment in handling a client's matter, Arlington must either insist that the documents be produced or else decline to work further on the case.

8. Biochemist invented a "gene-splicing process for making snake antitoxins. The invention was a major breakthrough because Biochemist's antitoxins were far cheaper and more reliable than the natural variety produced from the venom of live snakes. She obtained a U.S. Patent on her process. Shortly thereafter, she was sued in a declaratory judgment action brought by United Laboratories, Inc. United sought a declaration that her U.S. Patent was invalid. Biochemist asked Lawyer to represent her in the case. Lawyer agreed to do so on the following terms: (1) Biochemist would pay Lawyer for the necessary legal work at Lawyer's regular hourly rate; (2) Lawyer would advance the litigation expenses, subject to repayment by Biochemist no matter what the outcome of the case; and (3) at the outset, Biochemist would assign to Lawyer a 10% ownership interest in the U.S. Patent.

a) The arrangement is proper, assuming that the total
Lawyer earns from it is reasonable.

b) Lawyer is subject to discipline because the arrangement requires biochemist to pay back the advanced litigation expenses even if she loses the declaratory judgment case.

c) Lawyer is subject to discipline because the arrangement provides for an advance of litigation expenses by the lawyer in a civil case.

d) Lawyer is subject to discipline because the arrangement gives her a personal financial interest in the U.S. Patent which is the subject of the declaratory judgment case.

9. At the trial of a routine civil case in a United States District Court, defense lawyer Westerman presented the testimony of an insurance company investigator. On cross examination, plaintiff's lawyer established that on the day before the trial began, the investigator spent three hours in Westerman's office going over his testimony. On that occasion, Westerman showed the investigator some handwritten notes from the insurance company files, in an effort to refresh the investigator's recollection of some important dates. Plaintiff's counsel asked to have the notes brought to court the next morning; after hearing oral argument on the point, the judge ordered Westerman to bring them the next morning. Westerman responded: "I'll bring them, judge, on the next cold day in Hell." The judge looked startled but chose to overlook the remark. Westerman intentionally failed to bring the notes to court the following day. Which of the following are correct?

i) Westerman is subject to discipline for discussing the investigator's testimony with him before the trial.

ii) Westerman is subject to discipline for his rude remark to the judge.

iii) Westerman is subject to discipline for intentionally violating the judge's order.
10. Lawyer represented clients Clark and Craddock who were the sole partners in a business joint venture. In that connection, Clark and Craddock met frequently with Lawyer to discuss confidential matters relating to the business. One day Clark alone came to Lawyer's office. Before Lawyer could stop him, Clark disclosed that he had usurped a business opportunity that properly belonged to the joint venture. Lawyer informed Clark that she could not advise him on that topic. Further Lawyer promptly withdrew as counsel to Clark and Craddock. Ultimately Craddock sued Clark for the usurpation. Craddock's lawyer subpoenaed Lawyer to testify at a deposition about the statements Clark made to Lawyer. At the deposition Clark's lawyer asserted the attorney-client privilege on Clark's behalf. Ultimately the court ordered Lawyer to disclose what Clark said. Which of the following is most nearly correct?

a) It was proper for Lawyer to withdraw as counsel to Clark and Craddock. Further, Lawyer must disclose what Clark said.

b) It was proper for Lawyer to withdraw as counsel to Clark and Craddock. However, Lawyer will be subject to discipline if she discloses what Clark said.

c) Lawyer is subject to discipline for withdrawing as counsel to Clark and Craddock. Further, Lawyer will be subject to discipline if she discloses what Clark said.
d) Even if Lawyer believes that the court order is correct, she must refuse to disclose what Clark said.

11. Client asked attorney to prepare some legal papers in connection with Client's proposed public sale of investment shares in a real estate venture. Lawyer advised Client that it would be a felony under state law to sell the shares without first registering them with the State Commissioner of Real Estate. Assume that a reasonable lay person would not realize, without a lawyer's advice, that this conduct would be criminal. When Client heard Lawyer's advice, he told Lawyer simply to abandon the project. Later Lawyer learned that Client went ahead and sold the shares to the public without registering them.

Which of the following items are correct

i) Since Client sought Lawyer's aid in committing a future crime, the attorney-client privilege does not cover the communications between them.

ii) Lawyer must contact the State Commissioner of Real Estate and reveal what he told Client.

iii) Lawyer may contact Client and urge him to take appropriate steps to rectify his wrong.

iv) It would be proper for Lawyer not to tell any outsider about his communications with Client.

a) (i), (ii), and (iii) only.

b) (iii) and (iv) only.

c) (ii) and (iii) only.

d) (iv) only.

12. Attorney left the prosecutor's office after ten years to
open a criminal law practice specializing in DUI defense. For which of the following is the attorney subject to discipline:

i) Incorporating as "DUI Defense P.S.C." and using that name on her business cards.

ii) Charging her clients according to result--$1,000 for an acquittal and $200 for a guilty plea or conviction.

iii) Telling prospective clients that she is a close friend and confidante of Judge Barnes, the judge who handles DUI cases (this is true).

All of the above.

(i) and (ii) but not (iii).

(i) and (iii) but not (ii).

(ii) and (iii) but not (i).

13. In his third year of law school, Frank worked for Attorney as a law clerk. Attorney fired Frank after Frank used the office computer to send pornographic messages over the Internet. Frank has now applied to take the bar and Attorney wants to know if he must report what he knows about Frank. Must Attorney report what he knows? Why or why not?

14. Attorney represented Paul, a new client, in a personal injury action without communicating the basis of the fee to Paul. The case was settled for $100,000. Attorney then told Paul the fee would be 1/3 ($33,000). When Paul protested Attorney told
him she was escrowing the entire $100,000. Rather than escrow
the money, however, Attorney placed the entire check in her
personal account. Attorney and Paul agreed on a fee of $25,000
and Attorney paid Paul $75,000. Which of the following
statements is true:

i) Attorney is subject to discipline for not communicating
the basis of the fee to Paul.

ii) Attorney is subject to discipline for not paying Paul
at least $67,000 on receipt of the settlement.

iii) Attorney is subject to discipline for placing the money
in her personal account even though Paul suffered no
financial loss.

a) All of the statements are true.

b) Only (i) and (ii) are true.

c) Only (ii) and (iii) are true.

d) Only (i) and (iii) are true.

15. M & N is a large law firm which represents the Updown
Company in many matters, including an anti-trust suit brought
against Updown by Bisco. M & N has just hired Carl, formerly
with the firm of P & Q, which is counsel to Bisco in the anti-
trust action. Bisco has moved to disqualify M & N. While with P
& Q, Carl worked for Bisco on the anti-trust suit brought against
Updown. Should the motion to disqualify be granted? Why or why
not?

16. Attorney was hired by two roommates, Mutt and Jeff, who are
charged with possession of cocaine. The cocaine was found in a
trunk in their apartment. Mutt claims it was Jeff's cocaine and
he knew nothing about it. Jeff claims it was Mutt's cocaine and he knew nothing about it. Is Attorney subject to discipline if he represents both with their consent. Why or why not?

17. Attorney was a passenger in a car driven by his friend Harry. Harry's car was involved in an accident with Defendant. Harry has asked Attorney to represent him in a personal injury suit against Defendant. Attorney saw the accident and believes it was Defendant's fault. Attorney and Harry have agreed on a contingent fee and Attorney has agreed to advance litigation costs to be repaid only in the event of a recovery or settlement.

i) It is not proper for Attorney to represent Harry because he is a potential witness to the accident.

ii) Attorney is subject to discipline for advancing litigation costs which are to be repaid only in the event of recovery.

iii) Attorney is subject to discipline if the fee agreement is not in writing.

* * * *

a) All of the above.
b) (i) and (ii) but not (iii).
c) (i) and (iii) but not (ii).
d) (ii) and (iii) but not (i).

18. Attorney represented Client in a divorce action. Without the knowledge of Attorney, Client falsely testified that he did not have an interest in a business owned by his brother. The
judge relied on this testimony in dividing the assets of the parties. After the representation was over the brother told Attorney that Client in fact has a $50,000 interest in the business.

a) Attorney must inform the judge of the false evidence on which the judge relied.

b) Attorney may, but is not required to, tell the judge of the false evidence.

c) Attorney must not inform the judge because the representation ended before he learned of the false testimony.

d) Attorney must not inform the judge because the information is within the attorney client privilege.

19. Attorney represents Client who is seeking a divorce from Husband. On filing the divorce petition, Attorney submits an affidavit in support of an ex parte custody order for the couple's two young children; the affidavit asserts that Husband has struck Client in the presence of the children. The affidavit makes no mention of the fact, known to Attorney, that Client is a drug addict who has twice in the last six months partied overnight, leaving the children alone in the house for as much as 24 hours.

a) Attorney is subject to discipline for omitting the adverse information from the affidavit.

b) Attorney is subject to discipline if, and only if, in response to the judge's question, she states she knows of no reason why the judge should not give temporary
custody to Client.

c) Attorney is not subject to discipline because the adverse information is confidential information relating to the representation of Client.
d) Attorney is not subject to discipline if Attorney in good faith believes that Client is a fit custodian for the children.

20. Jim asked his friend, Attorney, for help in filing a pro se bankruptcy. Attorney told Jim he would help in the preparation of the petition if Jim would agree not to sue him if a mistake was made. Accordingly Jim signed a "release from liability" in which he agreed not to make claim against Attorney for negligence. Attorney helped Jim prepare the petition and helped him ready his testimony for the hearing before the bankruptcy judge. The hearing went well and Jim received his discharge of indebtedness. He sent Attorney a basket of fruit and bottle of wine in gratitude. Attorney is subject to discipline for:

i) assisting Jim in the unauthorized practice of law;
ii) making an agreement prospectively limiting his liability to Jim;
iii) accepting a gift from Jim

all of the above

(i) and (ii) but not (iii)
(ii) only
none of the above

21. Attorney A, a corporate lawyer, was approached by a neighbor who was charged with DUI) Attorney A referred the client to
Attorney B, who specializes in criminal law. Under what circumstances, if at all, may B split her fee with A?

22. Attorney A was approached by Sam who asked for assistance in filing a fraudulent claim for personal injuries. A refused the representation but referred Sam to Attorney B, whom he said was "good at that sort of thing." Sam obtained the services of Attorney B for the filing of the claim and obtained a large recovery from an insurance company. A met with the police and reported his conversation with Sam and the referral to B.

i) A is subject to discipline for referring Sam to B;
ii) A is subject to discipline for telling the police of his conversation with Sam and the referral to B

a) both (i) and (ii) are correct
b) (i) only is correct;
c) (ii) only is correct;
d) neither (i) nor (ii) is correct

23. On the facts of (22) assume that a grand jury investigating Attorney B subpoenaed A, who was willing to cooperate, to testify about Sam's claim and the referral to B. The judge should rule that A's testimony about his conversation with Sam is unprivileged for the following reasons:

i) A waived the privilege when he told the police about the conversation;
ii) A declined to represent Sam;
iii) Sam sought A's help to perpetrate a fraud

a) all of the above reasons;
b) (i) and (iii) but not (ii)
c) (ii) and (iii) but not (i)
d) (iii) only

24. Attorney represented Buyer in the purchase of her home.
Buyer asked Attorney about title insurance. Attorney said title insurance was advisable and, at Buyer's request, Attorney arranged for title insurance on the home and, by prearrangement, the Title Insurance company sent Attorney a 10% commission on the sale. May Attorney keep the commission without telling Buyer?

a) Yes
b) No;
c) Yes, but only if the commission is deducted from the fee charged to client;
d) Yes, so long as Attorney's advice to Buyer was not influenced by his relationship with Title Company

25. Attorney Smith, while driving too fast on a foggy morning on his way to a deposition, struck and killed a child waiting for a school bus. He was indicted for reckless homicide (Class D felony) and acquitted. His auto insurance policy paid $300,000 to the parents of the child. Is Attorney Smith subject to discipline? Why or why not?