Final Examination
Professional Responsibility, Professor Leslie Griffin
University of Houston Law Center
December 10, 2002
6-9:30 P.M.

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAM

This examination is CLOSED BOOK and NO NOTES. You may not consult any other materials or communicate with any other person. You are bound by the Law Center’s Honor Code. Don’t forget that it is a violation of the Honor Code to discuss the exam’s contents with any student in this class who has not yet taken it.

Write your examination number in the blank on the top of this page. If you are handwriting your examination, write your examination number on the cover of each of your bluebooks. If you are using the computer, write your examination number on each diskette and at the beginning of your response to each question. At the end of the exam, you MUST turn in the examination along with your answers. Please do not write your name, social security number or any other information that provides me with your identity.

This exam is four pages long, with THREE questions. Question I is worth 35 points. Question II is worth 35 points. Question III is worth 30 points. You have three and a half hours. I recommend that you spend 60 minutes on each question.

Your job is to analyze the facts in each question. Do not make up facts or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of irrelevancies all count in your favor.

If you write your exam, use ONE SIDE of a page only, and SKIP LINES. If you type, DOUBLE SPACE, and leave wide margins.

Honor Code. It is a violation to use ANY aid in connection with this examination; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the examination; or to discuss its contents with any student in this class who has not yet taken it. By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. If for any reason you cannot truthfully make that pledge, notify me as soon as possible.

PLEDGE: _____________________________________
While arresting Victim in August 1999, Police Officer allegedly sexually assaulted her in the police car and then in the police precinct, with many police officers standing around nearby. The newspapers covered the story on their front pages. Police Officer told investigators that he was not the policeman who committed the assault; it was another officer. Shortly after the assault, the law firm that represented the Policeman's Benevolent Association ("PBA"), the police officers' union, hired Attorney as trial counsel to represent Police Officer. Attorney did not work for the law firm; she was hired as outside counsel. Attorney’s fees were to be paid by the PBA.

Victim sued PBA in a civil suit that alleged a conspiracy among the PBA members to cover up the assault on Victim.

The grand jury indicted Police Officer in June 2000 for conspiracy to deprive Victim of her civil rights (based on the assaults) and for obstruction of justice for lying to investigators about the assault. After the indictment was handed down, Attorney decided to form her own law firm with a few of her friends from law school. In August 2000, the new “Attorney Law Firm” entered into a two-year, $10 million retainer agreement with the PBA to represent all police officers in administrative, disciplinary, and criminal matters as well as to provide them with civil legal representation. After entering into the PBA retainer, Attorney agreed to continue her representation of Police Officer without charging further fees beyond the PBA retainer. Attorney did not plan to call any PBA witnesses at Police Officer’s trial.

Police Officer was convicted of the charges in the indictment and sentenced to 188 months of imprisonment.

You are Police Officer’s new appellate counsel, and naturally want to have his conviction vacated. Write out the argument that you will give to the appellate court that his conviction should be vacated. Will the court uphold or reverse the conviction? WHY?
Question II

(35 points, 60 minutes)

Lawyer receives a visit from Prospective Client who is accused of stealing a car and who seeks Lawyer's representation in defending against criminal charges relating to the theft. From previous notoriety, Lawyer is aware that Prospective Client (PC) has been linked publicly to a group associated with organized criminal activity. During the meeting PC tells Lawyer that the car is parked in a heated garage at PC's house, and that PC does not intend to dispose of the car in any way. However, when Lawyer raises the issue of a retainer, PC responds that she intends to pay the retainer in cash, but will need a few days to raise the money. From the conversation, it appears that PC is unemployed and has no visible legitimate means of support.

As a result of the foregoing, Lawyer strongly suspects that PC intends to pay the retainer from the proceeds of some other, as yet uncommitted, criminal act, possibly the sale of the admittedly stolen car. Lawyer ponders whether he may ethically provide the authorities with PC’s whereabouts and identity, the fact that PC has stolen a car and retains possession of the stolen vehicle, and his concern that the client intends to commit another crime.

Under the Model Penal Code in Lawyer’s jurisdiction, knowing possession of stolen property is a criminal violation.

May Lawyer do any of the things he is considering? Why or why not? Answer for both Texas and a Model Rules jurisdiction.
Question III  
(4 parts, 30 points total, 60 minutes)

1. (10 points)
   Attorney placed an advertisement that stated:

   *Personal Injury Attorney, J.D., will help you pay for your aches and pains.*

   --Trip/Fall sidewalk--brain injury: $1,000,000 verdict
   --Dog bite: $50,000 settlement
   --Whiplash: $2 million or more settlement

   Has Attorney committed an ethical violation?

2. (5 points)
   Lawyer is also a certified public accountant employed by an accounting firm. From one office at the accounting firm, may Lawyer contemporaneously conduct public accounting services as an employee of the accounting firm and a law practice independent from the accounting firm? Explain the reasoning behind your answer.

3. (10 points)
   Partner worked in a big law firm that was committed to pro bono work. Two new associates in the firm undertook representation of an indigent plaintiff in a slip-and-fall case against the local grocery store. Associates did most of the work but Partner signed all the legal papers connected with the case.

   Partner got bored with his practice, ran for and was elected Judge. The grocery store’s appeal of the jury’s award of damages to plaintiff came to his court. May Judge hear the case:

   (a) in a Model Code jurisdiction?  
   (b) in Texas?

4. (5 points) May Texas judges attend holiday or seasonal law firm parties?
The exam was worth 100 points. The class was graded under the mandatory grading curve, which requires that the mean fall between 2.9 and 3.1. Your class mean was 3.08. The point totals correspond to the following letter grades:

<table>
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<th>Points</th>
<th>Letter Grade</th>
<th>Number of Students</th>
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<tr>
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<td>90</td>
<td>A-</td>
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<td>68-69</td>
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1. The question is about vacating a conviction. You should have immediately thought of ineffective assistance of counsel as the best means available to overturn a conviction. Remember the Mickens case that we discussed in class? Your class notes have the answer to this question. Under Strickland, a “defendant alleging ineffective assistance generally must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. An exception to this general rule presumes a probable effect upon the outcome where assistance of counsel has been denied entirely or during a critical stage of the proceeding. The Court has held in several cases that ‘circumstances of that magnitude’ may also arise when the defendant's attorney actively represented conflicting interests. In Cuyler v. Sullivan, the Court held that, absent objection, a defendant must demonstrate that a conflict of interest actually affected the adequacy of his representation.”

To overturn the conviction here you should have argued that the conflicts of interest give a presumption of probable effect upon the outcome.

And then analyze the conflicts of representation, including the questions about fees and concurrent representation. This was a two-level question combining what you knew about ineffective assistance and conflicts.

2. Everyone knew that confidentiality was the core of this question. The most important issue here was to see the difficulty of figuring out the line between a past crime (which cannot be revealed) and a future one (which sometimes can). You did poorly if you couldn't identify the grey area!

3. Most of you got all four parts of question correct. These were the easy points that everyone should have mastered. In Question 1, you had to say that these ads were misleading because of the expectations raised for prospective clients. In question 2, you needed to focus on the independence of the attorney and MR 5.4. In question 3, you needed to figure out if waiver was permitted in either jurisdiction. And question 4 was
covered in class, when Judge Christopher said that judges could attend such parties only if lawyers from other firms were present.

Copied below are the best student answers. They will give you a sense of what answers students were able to give under exam conditions.

**Model Exam Answers**

**Question I**

In the appeal to have the conviction vacated, I would concentrate on the several mistakes made by the attorney in an effort to get at a bottom line ineffective assistance of counsel argument. The attorney seems to have violated her duty of professional independence and to zealously represent her client. She was paid by the PBA, and the PBA allegedly orchestrated a conspiracy among its members to cover up the assault on the victim. Thus, it appears that perhaps the PBA was calling the shots in the attorney's representation of the Police officer. Furthermore, the attorney is under an ethical duty to refrain from giving the appearance of unethical conduct. At the very least, she appears to have given up her professional independence as an attorney by first taking her fees from the PBA and then to continue her representation of the Police Officer without charging further fees beyond the PBA retainer which was later given to her. When she did not call any PBA witnesses at the Police Officer's trial, her professional independence as an attorney certainly appeared tainted.

Next, there is a huge MR 1.7 conflict of interests problem in this case. The Police Officer asserted that another officer was the culprit, yet the attorney took her fees from the police officers' union (PBA). Thus, she possibly took her fees from one who may have been the offender. Then, to compound the situation, she took a $10,000,000 retainer agreement with the PBA to represent all police officers in legal matters including criminal matters. Meanwhile, the indicted officer is maintaining that another officer is the offender and the victim, herself, has sued the PBA in a civil suit alleging a conspiracy among the PBA members to cover up the assault on the Victim. At the very least, even if the indicted officer is guilty, other police officers stood around nearby during the second assault in the precinct. Surely this by itself would lead to other criminal charges which would result in an adversarial relationship between the indicted officer and other officers. In any event, the conflict of interests is clear as between the indicted officer and the other officers who make up the PBA which the attorney now represents.

Also, the attorney's new "Attorney Law Firm" would have been disqualified under MR 1.10. There was no effective screening of the tainted attorney because the tainted attorney was the one who represented the indicted officer at trial. Thus, every one of the attorneys at the new "Attorney Law Firm" had a conflict of interests problem as between the indicted officer and the other attorneys who made up the PBA.

Additionally, it wouldn't be a stretch to say that this case, also involved a MR 1.8 problem. The client's interest certainly conflicted with the attorney's interest in acquiring the $10,000,000 retainer to represent the PBA in all matters including criminal matters. By agreeing to represent the PBA, the attorney agreed to represent one who was potentially the offender and those others who possibly were guilty of something because
they just stood around during the second assault which took place in the precinct. Even though she may never have represented such person or persons thereby directly creating a 1.7 problem in the same proceeding, clearly a 1.8 problem is present as the client's interests seemed to have taken a second role to the attorney's interests.

Finally, in conjunction with the above violations of the MR, this appeal can argue for ineffective assistance of counsel and that the convicted officer's 6th Amendment rights were violated. The attorney did not call any PBA witnesses at the indicted Police Officer's trial despite the fact that the second assault took place at the precinct with other officers standing around the victim's civil suit alleging a conspiracy among the PGA members.

Ultimately, however, I think the court would uphold this conviction. In Cuyler v. Sullivan, the U.S. Supreme Court found that an attorney's conflict of interests was not enough to impugn a criminal conviction. Furthermore, in Strickland v. Washington, the U.S. Supreme Court asserted that for a death penalty to be overturned for ineffective assistance of counsel, the attorney's conduct had to be so egregious and apparent that it is clear that the outcome was prejudiced. The Fifth Circuit in 2001 held that a sleeping attorney during trial didn't even reach this standard. This high standard is attacked where a death sentence has been handed down. Here, the officer got 188 months of imprisonment. Surely, the standard would not be lower. As such I think the court would uphold the conviction.

**Question II**

I. Model Rules
   A. Prospective Client

   Even though PC is only a prospective client, the MR still require Lawyer to keep PC’s disclosures of his stealing the car in confidence, just as if he were a client under MR 1.6.

   MR 1.6 requires that Lawyer shall not reveal information concerning the representation, no matter the source. Here Lawyer learned that PC had stolen a car, where it was, and that PC did not intend to dispose of it. All this relates to the representation and may not be revealed unless another rule permits it.

   B. Scope of Representation

   Under the MR, Lawyer cannot assist PC in committing a crime, although Lawyer may defend PC and force the state to prove their case. With respect to the stealing of the car, although this is a crime, Lawyer did not assist PC in the crime. It is a past crime, and the scope of Lawyer’s representation of PC is therefore not ethically challenged by it. With respect to the possession of the stolen car, Lawyer could only be unethical if he assists in that crime. If Lawyer actively conceals the crime, that may be assistance, but it is unlikely that Lawyer’s failure to affirmatively seek out and inform the police could be considered assisting. On the contrary, such action would be an unethical violation of Lawyer’s duty of confidentiality to PC as explained above.

   With respect to the sale of the stolen car, Lawyer cannot affirmatively seek out and disclose this to the police. As above, attorney is not assisting in the sale. No advice has been given in how to avoid getting caught selling a stolen car, for example. At worst, the Lawyer only knows that PC will sell it, but has not assisted.
If Police Ask Attorney

In addition to not affirmatively seeking out and notifying the police, if the police ask Lawyer for PC’s name, whereabouts, and the crime committed and/or contemplated, Lawyer must remain silent. Even if Lawyer reasonably believes, because of PC’s organized crime background, lack of employment, and no support, and despite PC’s statement that he does not intend to dispose of the car, that PC intends to sell it, Lawyer does not need to withdraw from the representation, because no attorney-client relationship had yet formed, and Lawyer may accept employment from PC because it will be a past crime.

Although it is true that a client’s name and whereabouts are not protected by attorney-client privilege, it is unethical for Lawyer to voluntarily reveal this information that relates to Lawyer’s representation of PC in the car theft matter. The fact that PC stole a car and retains it and may sell it are not only protected by the MRs duty of confidentiality, but also the attorney-client privilege, assuming an attorney-client relationship is formed.

Therefore, Lawyer may not ethically reveal this information voluntarily to anyone.

Court Order

A court could order Lawyer to answer any of these questions. Lawyer would assert attorney-client privilege. I do not remember if AC privilege reaches prospective clients. If it does then the state would argue that the name and whereabouts are not protected. Lawyer will argue that the information establishes part of the state’s case, namely who the thief is. The court might sustain the privilege with respect to identity and whereabouts. And certainly as to the other facts of the crime. Regardless, if a court orders Lawyer to talk, then under the MRs, he may reveal this information.

If not, then this assertion of privilege would fail in PC’s case because PC is only a PC, and no AC relationship was formed.

II. Texas Rules

In Texas, the duty of confidentiality is subject to the attorney’s permitted disclosure when the attorney knows or reasonably believes the disclosure is necessary to prevent the client from committing crime.

In this case, Lawyer did not have actual knowledge that PC would sell the car. In fact, client specifically stated he would not dispose of it.

While one could argue that Lawyer could reasonably believe that the disclosure is necessary to prevent crime because of the involvement in organized crime and lack of funds, this flies in the face of PC’s explicit statement that he did not intend to do so.

Wasserstrom’s argument that the most vigorous advocacy for your client should be reserved for criminal defendants is particularly appropriate in this case. Lawyer has information confided to him by an accused. Although the Texas rules might allow disclosure in these circumstances and a Texas court might not discipline Lawyer for affirmatively seeking out and disclosing this, it cannot be that this would be ethical for a criminal defense lawyer. However, he will probably not be disciplined for doing so if police ask.

Again since the future sale of the car is arguably not reasonably believed by Lawyer, ethically Lawyer should resolve all doubts in favor of the client and not disclose. Because of the importance of trusting criminal defense lawyers in our system of justice,
however, Texas courts will probably not discipline him for disclosing because he could argue that he reasonably believed the car would be sold, and therefore had to disclose.

Question III

1. Even if attorney is truthfully relating real settlements/verdicts obtained by him and such disclosure is with his former client’s informed consent, this is still an ethical violation.

   Ads must not be misleading. In this case, attorney has set up unrealistic expectations for clients who may believe that any dog bite will get them $50K.

   Also, the statement “will help you pay for your aches and pains” is misleading due to its ambiguity. It could mean that attorney will help by loaning money to the client for the client’s medical bills, which is both cruel (as it is assuredly not the case) and unethical because attorneys cannot provide financial assistance to a client except for advancing the costs and expenses of litigation. Because this ad raises the misleading notion that medical bills will be paid by the lawyer, it is unethical and a violation.

2. Under the MR lawyers cannot be managed by non-lawyers when giving legal advice. But here, Lawyer’s law practice is independent, so no non-lawyer is managing him as he practices law.

   A non-lawyer cannot hold an interest in an organization that practices law. And, in lawyer’s independent law practice none do.

   But a lawyer must also use independent judgment and not have other responsibilities that conflict with his ability to diligently serve his clients. There is no evidence that the accounting firm would interfere with lawyer’s independent legal judgment in matters independent from the accounting office. Certainly if a law client wanted attorney to sue the accounting firm, lawyer would have a personal conflict and could not accept the representation, but such instances by themselves will not make the entire arrangement unethical.

   The most important issue is whether lawyer can split his responsibilities between the accounting practice and law practice. This is questionable. If the accounting firm can demand that lawyer perform certain tasks by certain times regardless of lawyer’s responsibilities in his law practice, then the arrangement is not ethical. Only in the unlikely event that lawyer can come and go from his accounting duties at will would this arrangement be ethical.

   In addition, the location of the law practice in the accounting firm will raise the issue that employees of the accounting firm may want to use lawyer’s services. This would not be permitted. Lawyer should not represent employees at the accounting firm because it would create a 1.8 conflict between his personal interest in his accounting job and client needs that may be adverse to the accounting firm.

   Finally, security of files and property will be an issue in this arrangement. Atty must make doubly sure that accounting personnel cannot access the law-related material. Depending on the extent of the law practice, these measures would become unreasonable, and so practicing law at the accounting office would be unethical.
3. (a) Under MR

Under the Model Code, judge is disqualified from hearing the case because he formerly represented plaintiffs in the matter, even though all he did was sign the papers. When he signed the papers, he vouched that they were non-frivolous. So there may be a conflict when deciding the case. Nevertheless, judge may hear the case even though he formerly represented a party to the matter, but only if:

1. the judge discloses that he formerly represented plaintiff to both parties’ counsel.

2. both parties confer outside the presence of the judge, and agree that the disqualification be waived (which they might since judge’s former firm only represented plaintiffs pro bono—so they know that judge’s friends aren’t getting paid if the award is sustained) and

3. the judge makes a record of the waiver.

(b) Texas Rules

Under the Tx Constitution, a judge is disqualified from hearing a case if he formerly represented a party in the matter. Here, judge participated in representing plaintiffs even though it was only pro bono and he only signed papers. Accordingly he should be disqualified.

In Texas, the disqualification cannot be waived and can be raised for the first time on appeal. Therefore, this disqualified judge may not hear the case.

4. Yes, but only if lawyers from other law firms are there. They cannot attend if only lawyers from that one firm are there. My authority for this is what the judge who came to class told us.
Professor Griffin  
Professional Responsibility  
Example Exam Answers  

Question 1

INEFFECTIVE ASSISTANCE OF COUNSEL

Police Officer was denied his 6th Amendment right to counsel at his trial for violation of victim’s civil rights. Under the Supreme Court’s decision on Strickland, a conviction must be overturned on appeal if an accused is convicted during a trial at which he had ineffective assistance of counsel. The Strickland Test is:

1. Whether or not there was deficient counsel, and
2. Whether defendant was prejudiced by the deficient counsel.

First attorney called no PBA witnesses during police officer’s trial. The standard for whether counsel is deficient is whether egregious attorney error was committed.

Police officer pleaded not guilty to the crime and alleged that another officer committed the crime.

In order to complete this answer, I would need to know whether the other officers’ testimony would be that another officer committed the crime. If so then there was deficient counsel and prejudice as explained below. If the other officers would have identified P.O as the attacker, then no error in not calling them as they would have incriminated him egregious attorney error was committed.

Many other officers witnessed the crime, these officers’ testimony clearly could have established that police officer (P.O.) did not commit the crime. Failure to call these witnesses was therefore egregious error.
Under the model rules of professional conduct (MR), competence is defined inter alia as thoroughness reasonably necessary for the representation. Not calling the other officer witness was not thorough because a reasonable attorney would have called them. Therefore this failure constituted incompetent counsel under the MR which is probative towards the issue of deficient counsel.

Prejudice can be shown clearly. P.O. was prejudiced because many potentially exculpatory witnesses were not called. Had these many potentially exculpatory witnesses been called, P.O. believes that testimony would identify an officer other than P.O. Consequently, P.O. would not have been convicted.

Thus, Attorney’s failure to call the PBA witnesses has ineffective assistance of counsel.

**CONCURRENT CONFLICT**

Courts have also overturned convictions when a defendant’s attorney has a concurrent conflict of interest between the defendant and another client. Again, the MR’s provide guidance. A concurrent conflict exists when a lawyer represents two or more clients with adverse interests or when there is a significant risk that representing one client will limit the effectiveness of representing the other.

In this case, as of August 2000, attorney (Atty) represented not only P.O., but also all the PBA officers P.O. had accused another officer (represented by Atty) of committing the crime. The other PBA officers and P.O. therefore had directly adverse interests. Vigorous advocacy for P.O. could not include protecting the other PBA officers from possible criminal liability. Therefore, there was a concurrent conflict
between the PBA officers and P.O., and under the M.R.’s, Atty should not have represented P.O. at trial.

Prejudice should be presumed in a case like this with such a serious conflict between current clients. This cases raises serious questions of whether the public can have confidence in the legal profession. According, this court should overturn P.O.’s conviction due to the concurrent conflict of interests. I would need to know if Atty withdrew from representing P.O. after the indictment. If so, then P.O. is a former and current client and the argument below applies. If not then P.O. is only a current client.

CONFLICTS BETWEEN SUCCESSIVE CLIENTS

Alternatively, this court should overturn the conviction of P.O. Because Atty’s representation of P.O. prior to joining the attorney conflicts with Atty’s later representation of PBA, officers the PBA officers have materially adverse interests (they don’t want to go to jail) to P.O. in the same matter as in Atty’s former representation of P.O. Therefore, barring P.O.’s informed consent, there was a violation of MR 1.9 – A conflict between successive clients. Prejudice should be presumed in such a serious situation where a former client accuses a later client of a crime.

OTHER FACTORS

The case is ripe with ethical violations.

First, PBA hired atty. Atty’s independent professional judgment is therefore suspect since she represents P.O. when P.O. accuses another officer. PBA controlled the money so Atty would abide by their decisions, not P.O.’s

NEED FURTHER FACTS:
Does retainer cover matters like P.O.’s that were already commenced? If not then he will be dis-incentived to vigorously pursue P.O.’s defense because she is not earning a separate fee for his case. The faster she disposes of it the better for her. Under the MR this is a conflict between her, the atty, and the client P.O.

But if it already covers P.O.’s case, this argument does not apply.

**Will Court Overturn?**

Opposing counsel will argue, probably successfully, that the Strickland standard is a high one, and that atty’s counsel is not ineffective for that reason. Also, the state could argue that any number of valid strategic decisions justified not calling the witnesses. For example, the jury might think that all the cops were merely “watching each other’s backs.” In any event, the failure to call the witnesses alone will probably not be ineffective assistance.

For the fee agreement, the opposing side will argue that it was ethical, because as long as atty did not reasonably believe she had or in fact had a personal conflict or a limitation on her professional judgment, such agreements are ethical. The court will agree.

For the current conflict, the opposing side (the state) will have no argument that a conflict existed. The only question is whether prejudice is found. Opposing side will argue the law that if the trial had “a reliable result,” then the conviction should stand. On these facts, we do not know how strong the evidence against P.O. is. But unless the evidence is so strong that standing by itself it proves P.O.’s guilt beyond all reasonable doubt, the court should overturn the conviction.

**Question 2**
I. Model Rules

A. Prospective Client

Even though PC is only a prospective client, the MR still require lawyer to keep PC’s disclosures of his stealing the car in confidence, just as if he were a client under MR 1.6.

MR 1.6 requires that lawyer shall not reveal information concerning the representation, no matter the source. Here lawyer learned that PC had stolen a car, where it was, and that PC did not intend to dispose of it. All this relates to the representation and may not be revealed unless another rule permits it.

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In this case, lawyer did not have actual knowledge that PC would sell the car. In fact, client specifically stated he would not dispose of it.

While one could argue that lawyer could reasonably believe that the disclosure is necessary to prevent crime because of the involvement in organized crime and lack of funds, this flies in the face of PC’s explicit statement that he did not intend to do so.

Wasserstrom’s argument that the most vigorous advocacy for your client should be reserved for criminal defendants is particularly appropriate in this case. Lawyer has information confided to him by an accused. Although the Texas rules might allow disclosure in these circumstances and a Texas court might not discipline lawyer for affirmatively seeking out and disclosing this, it cannot be that this would be ethical for a criminal defense lawyer. However, he will probably not be disciplined for doing so if police ask.

The combination of Texas Rules 1.05 and MR 4.2 leads to the conclusion that since such a disclosure is permitted under 1.05, Rule 4.2 mandates that lawyer not fail to disclose material facts believed to be reasonably necessary to prevent a crime.
Again since the future sale of the car is arguably not reasonably believed by lawyer, ethically lawyer should resolve all doubts in favor of the client and not disclose. Because of the importance of trusting criminal defense lawyers in our system of justice, however, Texas courts will probably not discipline him for disclosing because he could argue that he reasonably believed the car would be sold, and therefore had to disclose under 4.2

Question III

Part I

Even if attorney is truthfully relating real settlements/verdicts obtained by him and such disclosure is with his former client’s informed consent, this is still an ethical violation.

Ads must not be misleading. In this case, attorney ahs set up unrealistic expectations for clients who may believe that any dog bite will get them $50K.

Also, the statement “will help you pay for your aches and pains” is misleading due to its ambiguity. It could mean that attorney will help by loaning money to the client for the client’s medical bills, which is both cruel (as it is assuredly not the case) and unethical because attorneys cannot provide financial assistance to a client except for advancing the costs and expenses of litigation. Because this ad raises the misleading notion that medical bills will be paid by the lawyer, it is unethical and a violation.

Part 2

Under the MRS lawyers cannot be managed by non-lawyers when giving legal advice. But here, Lawyer’s law practice is independent, so no non-lawyer is managing him as he practice law.
A non-lawyer cannot hold an interest in an organization that practices law. And, in lawyer’s independent law practice none do.

But a lawyer must also use independent judgment and not have other responsibilities that conflict with his ability to diligently serve his clients. There is no evidence that the accounting firm would interfere with lawyer’s independent legal judgment in matters independent from the accounting office. Certainly if a law client wanted attorney to sue the accounting firm, lawyer would have a personal conflict and could not accept the representation, but such instances by themselves will not make the entire arrangement unethical.

The most important issue is whether lawyer can split his responsibilities between the accounting practice and law practice. This is questionable. If the accounting firm can demand that lawyer perform certain tasks by certain times regardless of lawyer’s responsibilities in his law practice, then the arrangement is not ethical. Only in the unlikely event that lawyer can come and go from his accounting duties at will would this arrangement be ethical.

In addition, the location of the law practice in the accounting firm will raise the issue that employees of the accounting firm may want to use lawyer’s services. This would not be permitted. Lawyer should not represent employees at the accounting firm because it would create a 1.8 conflict between his personal interest in his accounting job and client needs that may be adverse to the accounting firm.

Finally, security of files and property will be an issue in this arrangement. Atty must make doubly sure that accounting personnel cannot access the law-related material.
Depending on the extent of the law practice, these measures would become unreasonable, and so practicing law at the accounting office would be unethical.

Part 3

(a) Under MR

Under the Model Code, judge is disqualified from hearing the case because he formerly represented plaintiffs in the matter, even though all he did was sign the papers. When he signed the papers, he vouched that they were non-frivolous. So there may be a conflict when deciding the case. Nevertheless, judge may hear the case even though he formerly represented a party to the matter, but only if:

1. the judge discloses that he formerly represented plaintiff to both parties’ counsel.

2. both parties confer outside the presence of the judge, and agree that the disqualification be waived (which they might since judge’s former firm only represented plaintiffs pro bono—so they know that judge’s friends aren’t getting paid if the award is sustained and

3. the judge makes a record of the waiver.

Texas Rules

Under the Tx Constitution, a judge is disqualified from hearing a case if he formerly represented a party in the matter. Here, judge participated in representing plaintiffs even though it was only pro bono and he only signed papers. Accordingly he should be disqualified.

In Texas, the disqualification cannot be waived and can be raised for the first time on appeal. Therefore, this disqualified judge may not hear the case.
Part 4.

Yes, but only if lawyers from other law firms are there. They cannot attend if only lawyers from that one firm are there. My authority for this is what the judge who came to class told us.