

GWID Number _____

Final Examination
Law 218-11 Professional Responsibility, Professor Leslie Griffin
George Washington University Law School
December 11, 2006
2 to 4 p.m.

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

This examination is **CLOSED BOOK, CLOSED NOTES**. You may not consult any materials or communicate with any other person. Doing so is a violation of the Honor Code. By taking this examination you pledge that you have attended at least 80% of class sessions.

Write your GWID number in the blank space on the top of this examination. 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.

If you are handwriting your examination, write your examination number on the cover of *each* of your bluebooks. Number your bluebooks by indicating the book number and total of books (e.g., 1/5, 2/5, 3/5, 4/5, 5/5). If you are handwriting, please ***do not use pencil***. If you write your exam, use ONE SIDE of a page only, and SKIP LINES.

This exam is TWELVE pages long, with THREE questions worth 100 total points. You have TWO HOURS to complete the exam. Question I is worth 55 points; I recommend that you spend 60 minutes on it. Question II is worth 21 points; I recommend that you spend 25 minutes on it. Question III includes 12 multiple choice questions, worth two points each, for a total of 24 points (and a recommended time of 30 minutes). Write the answers to all the questions, including the multiple choice questions, in your bluebook or on your typed exam; there is no scantron or other form on which to enter the multiple choice answers.

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. You should refer in your answers to the governing ethical principles identified in the Model Rules, the Model Code, and other case law and readings that we have covered in class. If you cannot remember rule numbers or case names, be sure to identify the relevant issues and topics that the case law and rules protect.

Good luck on the exam and enjoy the holidays.

Question I (55 points, 60 minutes)

Sam Smith was arrested for rape by intoxication and charges were filed against him for that crime in September 2005 by Cobb County prosecutor Fiona Fiction, who worked in the Cobb County District Attorney's Office. In January 2006, Fiction self-published a novel entitled *Intoxicating Agent*. The novel was published by Infinity Publishing. According to Infinity Publishing's website, it charges "a one-time setup fee of only \$499. For this, your book will be shipped to you as a real, hardcopy book in about 8 weeks from submission. It will be made available for sale on our e-commerce Web site, submitted to amazon.com and others, and sold to bookstores on a returnable basis. We will then pay you royalties each month on all sales of your book."

The novel concerns the exploits of Cobb County Deputy District Attorney Jordon Danner. According to an article dated May 31, 2006, and published on the website of the *Cobb County Independent*, a local newspaper, "Fiction admits Danner is a pumped-up version of herself." In an article published on Fiction's website, she is quoted as stating that Danner is "Fiona Fiction on steroids." The novel describes Danner as "zealous about seeking justice and brave in stepping up and fighting for it."

The book jacket summarizes the novel as follows: "While prosecuting a volatile arson/murder case, Jordon Danner finds herself in the untenable position of falling under the influence of her adoring and seductive investigating Officer. Jordon's attraction to him collides with her love and devotion for her husband, family, and justice. In an effort to resolve her heart-wrenching conflict, as well to consider the hurdles she now faces in the murder case and an impending trial of an alleged rapist, Jordon retreats to her remote mountain home, where she figures out how she will prosecute the rapist."

In the novel the victim of the rape is named Diana. Diana is described as devoted to her job, community, family, friends and church. At the time of the rape, Diana was intoxicated with extremely high levels of alcohol. Danner concludes that Diana is an alcoholic in denial about her alcoholism.

The defendant in the novel is 42-year-old Ernie Jones, described as having a bloated face, a protruding belly, filthy hands and being "felony ugly." Felony ugly is an in-house expression used by some prosecutors to describe a defendant who fits the stereotype of a perpetrator of the crime for which he is charged. In the novel, Danner vows to "get Jones" for Diana's sake and for all the others who could follow. "If I try and don't succeed, then all he'll learn is that he can get away with victimizing women. I can't try this one unless I can win it." According to the novel, Jones says that Diana consented to sex, and Diana admitted having too much to drink and remembering nothing of the evening. Danner believed that because of the alcohol, Diana was incapable of giving legal consent to sex with Jones.

The novel also talks of Jones' friendship with Arty Artist, a bartender who looks like a skinny-dark-haired-beatnik with stringy, black hair. Sam Smith looks like a skinny-dark-haired-beatnik with stringy, black hair.

The novel is sold in at least two local Cobb County bookstores. Fiction conducted a book signing at one of the book stores and at the Women's Center of the University. A local television station interviewed Fiction about the book, and the *County Independent* published a favorable review. The back cover states, "Fiona Fiction is a Senior Deputy District Attorney for Cobb County. She specializes in sexual assault crimes, crimes against children, murder, and hate crimes." In the acknowledgements section, Fiction writes, "Weekdays I am surrounded by caring, smart people in the Cobb County District Attorney's Office and in our courts--for this I am deeply appreciative." Fiction has made about \$50 on her novel so far.

In November 2006, Fiona Fiction announced that the County's prosecution of Sam Smith for rape by intoxication would begin on December 31.

In the same Cobb County office, Max Movie filed a two-count indictment against Kevin Killer and four codefendants for committing a murder during the commission of a kidnapping. The five men were allegedly drug dealers who kidnapped the younger brother of one of their distributors with whom they had a falling-out over a shipment of ecstasy. The murder victim was bound with duct tape, blindfolded, hit over the head with a shovel and then shot and buried in the woods. Within 48 hours of the police discovery of the victim's body in the woods, law enforcement officials arrested Killer's four codefendants, but by then Killer was already a fugitive and had fled to Venezuela. Max Movie successfully prosecuted the four codefendants for kidnapping and murder.

After Max Movie obtained convictions against all four codefendants, he was contacted by the famous Film Director who wanted to make a movie called *Alpha Dog*, based on the murder. Film Director asked Movie to provide any assistance or materials to help create a screenplay, including trial transcripts and witness contacts; Max turned over the trial materials, including all reports, tapes and photos, and agreed to serve as a consultant for the movie. The disclosed materials included both police and probation reports with the names, phone numbers, and addresses of witnesses. Max Movie may have unintentionally disclosed rap sheets containing criminal offender record information, saying he gave boxes of materials to the filmmakers and would not have turned over rap sheets if he had known they were in the boxes.

Max never asked for and was not given any monetary consideration for his assistance; he said that he decided to cooperate with Film Director because he believed *Alpha Dog* would be the last opportunity to get the kind of widespread publicity necessary to locate Kevin Killer and bring him to justice. Movie later explained: "I asked only that Killer's picture be shown at the conclusion of the film along with a phone number to call with information as to his whereabouts. I asked that the audience be told that Killer remains a fugitive and that there is a reward for his arrest." When the movie appeared, however, real names were not used, and Kevin Killer was presented as a character named Johnny Truelove. During the movie, several characters refer to Truelove as a monster. There was no phone number listed at the end of the movie.

Film Director says *Alpha Dog* would not have been such a successful movie

without Max Movie's participation. Movie showed him the crime scene and helped him contact witnesses. Film Director's assistant declared that Max appeared to be star-struck and eager to assist the film-makers. Film Director stated he was provided access to computer disks, photographs, audio recordings, video recordings, still photographs, law enforcement evaluations, probation reports, and criminal history reports, among other items of evidence. Film Director stated that these items of evidence were stored in boxes, which he was permitted to remove without supervision from the District Attorney's Office.

After the movie appeared in local movie theaters, Kevin Killer was discovered in Venezuela and extradited back to Cobb County, where Max Movie indicted him for murder and kidnapping. His trial is due to start in January 2007.

IT Company retained a small private law firm, the Mutt and Jeff Law Firm, to help it acquire contracts for information technology services with Cobb County. Attorneys Mutt and Jeff provided various services to IT company, advising it about doing business with Cobb County and providing general counseling about intellectual property and patent law. Jeff was IT's principal lawyer. Records show that Mutt billed four hours to a "review of Cobb County contract document." Unknown to Mutt and Jeff, Louise from the Cobb County District Attorney's Office was investigating IT Company for irregular payments made to County employees in an attempt to get County business. Fifteen months later, Mutt successfully won election as the Cobb County District Attorney. Before taking office, Mutt announced he would personally not participate in any case involving a client of his former law firm.

Ten months after Mutt was sworn in, Louise named the IT Company as a defendant in a complaint seeking damages for the County on allegations of fraud, statutory violations, and breach of contract. In a press release, Louise denounced IT Company for betraying a public trust. IT asked Jeff to defend it against these charges. Mutt took measures to screen himself from the case. To maintain the ethical screen, attorneys working on the case were directed to report to Louise and not to discuss the case with Mutt. Those attorneys maintained locked files and computerized records that were inaccessible to Mutt. Louise's case is scheduled to start in February 2007.

What arguments should Sam Smith, Kevin Killer and IT Company make about their trials? Will they win or lose their arguments?

Question II (21 points, 25 minutes)

Leslie Lawyer has a plaintiff's personal injury practice. She does not maintain an internet web site and does not otherwise engage in advertising. However, her e-mail address is published on the State Bar membership records website, which is accessible to the public.

On Friday morning Lawyer received an e-mail from Dana Driver, the driver of the second car in a five car "daisy chain" rear end collision, which read:

Dear Leslie:

I obtained your e-mail address from the State Bar web site. I would like to retain you to represent me in a personal injury case in which I was rear-ended by three cars. I was in car no. 2. I have a lot of back pain and my knee was injured a lot.

Prior to the accident, I had a few drinks. Do you think they will discover that? Will it change my recovery? Please contact me at the following telephone number. I will look forward to your representation.

Because Leslie was in court all morning and had already scheduled a conference with Henry Hurt for Friday afternoon, she did not access Dana's e-mail message prior to her conference with Henry. Henry's initial interview sought Leslie's representation for his personal injuries arising out of an auto accident. During the conference, Henry disclosed a lot of confidential information and produced a police report, which Leslie read later.

After the conference, but before she signed off on Henry's fee agreement, Leslie accessed her e-mail and read Dana's message. After reading Dana's message, Leslie reread Henry's police report, which identified the driver of the car that hit him as Dana Driver.

May Leslie represent Henry and/or Dana? Why or why not?

Does your answer differ if Dana got Leslie's e-mail address from Leslie's website?

Does your answer differ if Leslie's website contained a "contact Leslie" button that connected Dana to Leslie's e-mail address?

Does your answer differ if Leslie read Dana's e-mail quickly Friday morning, as she ran to court?

Does your answer differ if Leslie read Dana's e-mail carefully, before she met with Henry?

Question III (12 questions, 2 points each, 24 points total, 30 minutes)

1. George Clinton is an attorney who recently won a preliminary injunction against a defendant. George has just learned, in a confidential conversation with his client, that his client testified falsely at the hearing on the preliminary injunction.

Which of the following statements most accurately describes George's options under the Model Rules of Professional Conduct?

- A. George must seek to withdraw as counsel but may not reveal why to the court without his client's informed consent.
- B. George must inform the court of his client's perjury if his client will not recant and withdrawal from the case will not solve the problem created by the perjury.
- C. George must immediately inform the court of his client's perjury.
- D. George must seek to "noisily" withdraw from the case and inform the court and opposing counsel of the perjury.

2. Jones, the driver of a car, and Smith, his passenger, were injured as the result of a collision with a bus. Jones and Smith believe the bus driver was entirely at fault, and they want to bring a negligence action against the bus company. Jones and Smith seek to hire attorney Adams to represent them.

Which of the following would be proper conduct by Adams?

- I. Accept the proffered employment only after informing Smith that he may have a cause of action against Jones and obtaining Jones' and Smith's written consent to represent them both against the bus company.
- II. Withdraw from the common representation if discovery shows that Smith has a claim against Jones.
- III. Represent Jones and Smith, and also represent the bus company in a solely unrelated matter before the Transportation Board.

- A. I only.
- B. II and III only.
- C. I and II only.
- D. None of the above.

3. The M&S law firm represented United Oil Company in a merger transaction in which United acquired all the assets of Mogul Petroleum Inc. in exchange for a specified amount of capital stock of United. M&S's work for United was limited to the antitrust and securities law issues raised by the merger, and the M&S lawyers who worked on the matter did not become privy to any confidential information concerning the routine operations of United's business. The merger work was completed two years ago, and M&S has not subsequently represented United in any other matter.

Recently, M&S took in a new partner, lawyer Lurner, who had previously practiced as a solo practitioner. One of the cases that Lurner brought to M&S from his solo practice was *Droan v. United Coil Co.*, an employment discrimination case in which Lurner's client, Droan, claims that United fired him solely because of his age. When Lurner became an M&S partner, United promptly made a motion in the trial court to disqualify Lurner and M&S as counsel for Droan due to M&S's earlier representation of United in the Mogul merger matter.

Are Lurner and M&S subject to disqualification?

- A. No, because the merger matter and the discrimination case are unrelated matters and because M&S did not gain confidential information from United that would be material in the discrimination case.
- B. No, because whatever material confidential information M&S might have picked up in the merger matter is not imputed to Lurner.
- C. Yes, because M&S owes continuing duties of loyalty and confidentiality to its former client, United.
- D. Yes, even though the merger matter and the discrimination case are unrelated and even though M&S did not gain confidential information from United that would be material in the discrimination case.

4. Lewis, an attorney, was formerly employed by the Environmental Protection Agency (EPA) as government counsel in the New York office. In this capacity, Lewis acted as chief counsel in several suits brought by the EPA involving chemical dumping into public waterways. Two years after leaving the employ of the EPA, Lewis was retained to represent Acme Chemical Corporation in a suit brought by the EPA alleging violations of certain EPA regulations regarding the dumping of chemical wastes. While with the EPA, Lewis was never directly involved in a case concerning Acme Chemical Corporation. The EPA Washington office had exclusive responsibility for the drafting, promulgation, and enforcement of the regulations in question.

Which of the following statements is correct?

- A. Lewis may represent Acme, but only with the consent of the EPA.
- B. Lewis may represent Acme, whether or not the EPA consents.
- C. If Lewis represents Acme without the consent of the EPA, he will be subject to discipline.
- D. If Lewis represents Acme, he will be subject to discipline, even if the EPA consents to the representation.

5. Client Chandler, a concerned environmentalist, hired lawyer Lipscomb to obtain preliminary and permanent injunctions against a highway construction project that would require draining and filling certain wetlands inhabited by migratory waterfowl. Lipscomb is the nation's leading expert in wetland preservation law, and he charges \$400 per hour for his services. Chandler agreed to pay him at that rate. She gave him a \$40,000 advance

on attorneys' fees and a \$5,000 advance to cover future litigation expenses. Lipscomb deposited the entire \$45,000 in his client trust account.

Lipscomb then spent 80 hours preparing and filing a complaint and preparing and arguing a motion for a preliminary injunction. He paid a court filing fee of \$50, plus \$1,950 in witness fees to wetlands experts who testified at the hearing on the preliminary injunction motion. The judge denied the preliminary injunction motion. Lipscomb sent Chandler a bill for \$32,000 in attorneys' fees and \$2,000 in litigation expenses, and he told her he would deduct those sums from the advances she had given him unless he heard from her to the contrary within 15 days. In light of the loss of the preliminary injunction motion, Chandler was outraged at the size of Lipscomb's fee; she immediately fired him and demanded the prompt refund of her entire \$45,000.

Which of the following amounts must Lipscomb promptly refund to Chandler?

- A. \$0
- B. \$43,000
- C. \$11,000
- D. \$13,000

6. John Naylor is a wealthy building contractor. For many years, lawyer Lawton has represented Naylor in a wide variety of legal matters, including disputes with Naylor's suppliers and customers. Naylor is a contentious man; indeed, he is Lawton's most lucrative client. Naylor built a single-family home for Jill and George Holmes. When Naylor finished, the Holmeses confronted him with a list of 289 items that they claimed were either construction defects or uncompleted tasks. The Holmeses refused to pay Naylor the final 25% installment under their construction contract until all 289 items were remedied. Naylor contested all 289 items and demanded immediate payment. The Holmeses refuses to pay and refused to talk further with Naylor. At that point, Naylor called in Lawton. Lawton met with the Holmeses and offered to represent both them and Naylor in trying to find an amicable solution to their dispute. Lawton said that, if his efforts failed, he would charge no fee; if his efforts produced an amicable solution, then his total fee would be \$2,500, half to be paid by the Holmeses and half by Naylor.

May Lawton represent both the Holmeses and Naylor on those terms?

- A. No, because Lawton has proposed a contingent fee arrangement, and there is no *res* from which the fee can be paid.
- B. Yes, because Lawton would, in essence, be serving as a third-party neutral between the Holmeses and Naylor.
- C. Yes, but only if both the Holmeses and Naylor give informed, written consent to the arrangement.
- D. No, because Lawton cannot reasonably believe that he can represent the Holmeses competently and diligently in light of his relationship with Naylor.

7. Booker is employed as an accountant for Hyrax Corporation. Several months ago, Hyrax's president, Potsdam, noticed that there were some discrepancies in the company's books, and that some funds seemed to be missing. Unbeknownst to Booker, Potsdam has been checking Booker's work after hours and he is convinced that Booker has been embezzling funds from Hyrax. Potsdam, on behalf of Hyrax, retains the services of Arnold Attorney to determine if Hyrax has a case against Booker. Arnold agrees with Potsdam that there is a strong indication that Booker has been embezzling funds. In fact, Arnold has already determined that tomorrow he will file a civil suit against Booker to recover Hyrax's money and go to the prosecutor's office to sign an embezzlement complaint against Booker. Arnold, however, tells Potsdam that the more evidence they can obtain against Booker, the stronger their case will be. Potsdam suggests that Arnold interview Booker before he presses charges, as Booker may make some remarks that would implicate him in the embezzlement. Arnold readily agrees to this. Potsdam tells Booker that Arnold is investigating some problems in account recordkeeping to make sure Hyrax's procedures comply with all applicable laws and regulations. He asks Booker to explain how his operation works. Arnold and Booker go to a private office, where Arnold interrogates Booker for approximately two hours. During the course of the interrogation, Booker becomes suspicious of the line of questioning and asks if he is in any trouble. Arnold tells him not to worry, as the amount of money involved is so small that the action may not be worth pursuing.

Is Arnold subject to discipline for questioning Booker?

- A. Yes, because of his statements urging Booker not to worry.
- B. Yes, because all communications with parties who are not represented by counsel are prohibited.
- C. No, because Arnold was trying in good faith to further the interests of his client.
- D. No, because Arnold has not yet filed suit on behalf of his client.

Question 8 is based on the same facts as Question 7.

8. Assume that during the questioning, Booker not only admitted to embezzling funds, but also described company-wide accounting practices that could subject Hyrax to civil and criminal liability. In an effort to avoid publicity and liability, Hyrax fired Booker but agreed not to turn the matter over to the police. Hyrax has since rectified its accounting problems. Some time later, Hyrax was sued by Cable Corp., one of its creditors, for fraud based on the above accounting practices. During the trial, Cable's attorney calls Arnold to the stand to testify about his conversation with Booker. Hyrax's attorney objects, claiming attorney-client privilege.

The objection should be:

- A. Sustained, because Booker talked to Arnold at Potsdam's request and his statements concern accounting.
- B. Sustained, because Hyrax can claim the privilege on behalf of Booker, its employee.
- C. Overruled, because Booker was not seeking legal services from Arnold.
- D. Overruled, because Booker is no longer an employee of Hyrax.

9. Lawyer Lou LaCosta represented Carter Corp. in some business negotiations with Alconn Construction Inc. Only four persons were present during the negotiations: (i) Carter Corp.'s present, Cora Carter; (ii) Carter Corp.'s business lawyer, Lou LaCosta; (iii) Alconn's chief executive officer, Al Conn; and (iv) Alconn's attorney, Arlo Askew. During the negotiations, Cora Carter and LaCosta clearly heard Al Conn make a certain representation that was vital to the success of the negotiation. Based on Al Conn's representation, the parties reached an oral, handshake agreement to pursue a certain business opportunity as a joint venture. Six months later, after Carter Corp. had invested \$11 million in the joint venture, Carter Corp. discovered that Al Conn's representation was false and that Al Conn undoubtedly knew it was false when he made it. Due to the false representation, the joint venture failed, and Carter Corp. lost its \$11 million. Carter Corp. sued Alconn Construction Inc. and Al Conn in federal court for intentional misrepresentation. Carter Corp. selected one of LaCosta's law partners, Liddy Gator, as its trial counsel. The defendants denied making the representation. Carter Corp.'s final pretrial statement listed Cora Carter and LaCosta as witnesses for Carter Corp. stating that they would testify that they heard Al Conn make the representation. Counsel for the defendants then moved to disqualify Liddy Gator as trial counsel due to LaCosta's role as a witness for Carter Corp.

Is Liddy Gator subject to disqualification?

- A. Yes, because LaCosta is a necessary witness for Carter Corp.; he is the only nonadversary witness who can corroborate Cora Carter's testimony about the representation Al Conn made at the meeting.
- B. Yes, because LaCosta's testimony does not relate to a minor, uncontested matter or to the nature and value of the legal services rendered in the case; nor is this a situation in which disqualification of Liddy Gator would work a substantial hardship on Carter Corp.
- C. No, because there is no conflict of interest presented by LaCosta's role as a witness for Carter Corp., and because a lawyer is ordinarily allowed to serve as trial counsel in a case where her law partner will testify on behalf of her client.
- D. No, because LaCosta's testimony will be merely corroborative; he will simply confirm Cora Carter's testimony that Al Conn made the representation at the meeting.

10. Ed Sharp is an attorney who, until recently, was employed by McMillen & Elkin. Ed now is interviewing for a job with Johnston & Barone, another local law firm. Johnston & Barone would like to hire Ed, but they are concerned because Johnston & Barone's biggest case is against a client represented by McMillen & Elkin, and Ed worked for

McMillen & Elkin while that case was ongoing (although Ed had nothing to do with the case and knows nothing about it or the client).

Which of the following best describes Johnston & Barone's options under the Model Rules of Professional Conduct?

- A. The firm may hire Ed as long as McMillen & Elkin's client gives informed consent, confirmed in writing.
- B. The firm may hire Ed as long as the firm is prepared to withdraw from the case against McMillen & Elkin's client.
- C. The firm may hire Ed as long as it screens him from any participation in the case involving McMillen & Elkin's client and as long as he receives no income from the case.
- D. The firm may hire Ed and continue in the case because Ed did not acquire confidential information about McMillen & Elkin's client.

11. Attorney Alex has a high-profile divorce law practice in Centerville. Because of his heavy case load, Alex often appears before the four chancery judges of the county court. One of the chancery judges, Jamal, is getting married, and he sends a wedding invitation to Alex. Alex wishes to send Judge Jamal, as a wedding gift, an imported Italian machine that makes espresso and cappuccino coffee because Alex knows that Judge Jamal loves fine coffee. The coffee machine sells for \$200 at Centerville's best cooking equipment store.

Would it be proper for Alex to send the coffee machine to Judge Jamal?

- A. Yes, unless Judge Jamal believes that he would be unduly influenced by the gift.
- B. Yes, but only if Alex and Judge Jamal are friends and only if the gift is not excessive for the occasion and the relationship.
- C. No, because the gift is not a campaign contribution, and lawyers should not give other types of gifts to judges.
- D. No, because the value of the gift exceeds \$150.

12. Judge Jamagian sits on a State A trial court. Every six years, State A trial judges must stand as candidates in a public election to determine whether they will retain their positions. Judge Jamagian will be a retention candidate in the election to be held nine months from now. In the same election, her husband, attorney Ali, will be a candidate for Lieutenant Governor of State A.

Which of the following may Judge Jamagian do?

- I. Establish a campaign committee that will immediately begin soliciting reasonable contributions for Judge Jamagian's campaign.

II. Allow her name to be listed on Republican Party election materials, along with the name of her husband and other Republican candidates for elective offices.

III. Publicly endorse her husband as a candidate for Lieutenant Governor.

IV. Attend political gatherings in the company of her husband, and speak on behalf of both herself and him.

V. Personally solicit contributions to her own campaign.

VI. Personally solicit contributions to her husband's campaign.

A. I, II and IV only.

B. I, II and III only.

C. II, IV, V and VI only

D. I and II only.

Professional Responsibility Exam
Professor Griffin
George Washington University Fall 2006

Your grades in this course were based on the final examination only and were awarded according to the mandatory GW grading curve for required courses. The letter grades were awarded according to the following point totals:

86-92	A	7
84-85	A-	12
76-83	B+	23
70-75	B	21
64-69	B-	8
61-63	C+	4
Below 60	C	2

You may pick up your exams from Katie Nguyen, whose desk is outside the mailroom on the 5th floor of Burns. You are welcome to keep your exams and to e-mail me at lgriffin@uh.edu with any questions about your answers. Please read through this memo and your exam before you contact me with questions.

I ran into students after the exam who complained that the first question unfairly focused on one subject, prosecutorial ethics, that was not central to the course. In Question I, you did have to mention prosecutorial ethics, specifically to remember that the prosecutor has a higher ethical duty than other lawyers under Model Rule 3.8. The point of the question, however, was to rehearse two topics on which we had spent a lot of time, namely conflicts of interest and confidentiality. For both Fiona and Max, you needed to address whether the prosecutors had violated their ongoing duties of confidentiality by writing the fiction book or participating in the movie. Fiona appeared to use confidential information that was readily identifiable as related to her real-life prosecution. Max was turning over files and documents connected to his case. It was difficult to see that the disclosures fell into any exceptions to the confidentiality rules, and you should have considered whether both prosecutors had stepped over the line.

The book and movie also raised questions about conflicts of interest. Recall that under MR 1.7, lawyers should not participate in cases if their actions may be limited by their own personal interests, namely on these facts success of a book or participation in a famous movie? You also knew that some literary and media deals are prohibited under MR 1.8, and so that might have been a reason for you to consider whether book and movie deals were a personal interest. Then, on a point that many of you missed, you needed to consider whether any conflicts held by Fiction and Movie would be imputed to the rest of the office to keep other prosecutors from handling the case or whether MR 1.11 required any screening. Under MR 1.10, personal interests are not imputed; what should happen under MR 1.11?

Most of you spotted the conflict of interest for Mutt, but needed to spend time and detail addressing whether he was adequately screened from the case, including by considering whether he had gained confidential information when working for IT Company at his law firm. You had to analyze the screen, not merely state that it was appropriate to have a screen in place.

Question II forced you to focus on when an attorney-client relationship attaches. To do so, you should have relied not only on the Model Rules, but also on relevant case law like *Togstad* and *Perez*. Answering this question without case law was inadequate. You also needed to pay attention to MR 1.18, which specifies the duties that lawyers owe to prospective clients. On similar facts to this question, a San Diego bar association opinion recently concluded that unsolicited e-mail was not confidential. You did not need to reach that *conclusion*, but you needed to address the different arguments as to when the obligations of the attorney-client relationship commence.

I also expected you to address issues of advertising and solicitation when you saw the questions about the website. You lost points if you did not address advertising and solicitation at all for the website.

Question III contained multiple choice questions that we had gone over in class and that were posted on the web portal throughout the semester. The correct letter answers are listed below.

- | | |
|------|-------|
| 1. B | 7. A |
| 2. C | 8. A |
| 3. A | 9. C |
| 4. B | 10. D |
| 5. C | 11. B |
| 6. D | 12. D |

I enjoyed meeting all of you and having you as students in my class this semester. Please do not hesitate to contact me with questions about your exams or if you need letters of recommendation or other help or advice. Best wishes for successful careers in the legal profession.