

Student Exam Number _____

Final Examination
Legal Profession, Professor Leslie Griffin
University of Utah College of Law
July 31, 2004
9 A.M. to NOON

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

This examination is **CLOSED BOOK, NO NOTES**. You may not consult any other materials or communicate with any other person. Do not 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. At the end of the exam, return everything, including the exam and all scratch paper, to the proctor.

This exam is six pages long, with **THREE** questions. Question I is worth 35 points. Question II is worth 35 points. Question III contains 6 short questions and is worth 30 points. You have three hours. I recommend that you spend 60 minutes on each question.

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. In your answers, you should cite to any applicable provision of the Model Rules and to the governing case law that is relevant to the question. You do not need to cite rule numbers, but you must spot the ethical issues that are covered in the rules.

If you write your exam, use **ONE SIDE** of a page only, and **SKIP LINES**. If you type, **DOUBLE SPACE**, and leave wide margins if the software allows you to do so.

Question I
(35 points, 60 minutes)

Gertrude worked for O'Brien law firm as a legal assistant while attending law school from 1997-2000. During her employment with the firm, she provided assistance in the firm's representation of Cigarette Company as a defendant in suits by plaintiffs with injuries from smoking. She conducted research, collected and reviewed confidential documents, conferred with Cigarette Company representatives, and assisted in formulating defense strategies for current and future tobacco litigation.

After Gertrude graduated from law school and obtained her law license, the Peterson law firm hired her. As a result of negotiations with O'Brien, lead attorney Pete Peterson and Gertrude signed an "Agreement Regarding Conflicts of Interest" in which they agreed that neither they nor any attorneys at Peterson would participate in any claims or suits against Cigarette Company involving tobacco exposure.

Gertrude left the employment of the Peterson law firm in January 2003. In February 2003, Joe and Carol McDonald came to the Peterson law firm to ask about a lawsuit for Joe's lung cancer, which he says was caused by smoking cigarettes. The Peterson law firm filed suit against Cigarette Company for Joe's injuries. The O'Brien law firm still represents Cigarette Company.

1. The O'Brien law firm decides to file a motion about this case. What should they argue?
2. How should the court rule on O'Brien's motion? Imagine that you are the clerk in the office of the judge who is deciding the motion. Explain to the judge how and why he should rule on this motion.

Question II
(35 points, 60 minutes)

Jane Jones is a longtime factory worker who began supplementing her income in the 1970s by buying small houses and then renting them out. By 1995, she owned more than 20 rental properties. But tax rates went up over those years, and she had trouble paying the taxes. She talked to her accountant about her financial options. The accountant recommended that Jane speak with the accountant's personal financial advisor, the lawyer Larry Lincoln. The accountant thought Larry could help.

Larry is a former banker and an active member in good standing of State Bar. He is Of Counsel at Queen & Queen, a law partnership. He manages Queen & Queen's pension fund and occasionally makes real estate loans as part of that practice. He tells his friends that he took over the pension work when he retired from the practice of law. Larry set up a corporate structure for Jane and loaned her \$25,000 to cover her outstanding tax debt.

Jane continued to have tax troubles, so she went back to Larry three other times to get new loans totaling \$95,000. Larry also did the legal work for Jane when she established a trust; that work took him about two hours.

Jane eventually fell behind on her loan payments. Larry then foreclosed on Jane's properties, taking all the rental properties away from her. The combined value of all the rental properties is \$ 2 million.

Jane was so upset with Larry that she hired another lawyer, Arthur Attorney. She told Arthur that she had really enjoyed working with Larry. "He was a combination; he loaned me money and he was my personal attorney. I thought it was a great arrangement," Jane told Arthur. When Larry heard that Jane had said that, he retorted, "She came to me to borrow money out of our pension fund. She didn't come to me as a lawyer." Asked about the trust, Larry said, "That was a minor matter."

Larry says he asked Jane to sign a waiver that he was not acting as her lawyer for each loan and that she should take the matter to another lawyer for independent review. She signed the waiver for every new loan. He told his friends he doesn't really want to keep all the rental properties, but might keep a few and give the rest back to Jane.

Jane is very upset, and asks Arthur what she can do now, both to regain her financial stability and to make Larry pay for the harm he caused her. What should Arthur recommend?

Question III
(6 questions, 30 points total, 60 minutes)

A. (5 points)

Hank Granger is an attorney who specializes in business law. He has been asked by two brothers, Carl and Clyde Carson, to form a partnership that would operate a chain of dry cleaning establishments.

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

1. Hank may represent both Carl and Clyde in the formation of the partnership as long as their interests are generally aligned.
2. Hank may represent both Carl and Clyde in the formation of the partnership as long as there is no difference in interest between them.
3. Hank may not represent both Carl and Clyde in the formation of the partnership.
4. Hank may represent both Carl and Clyde as long as each gives informed consent to the joint representation.

B. (5 points)

George Smith is an attorney who represents a plaintiff in a case about an accident allegedly caused by faulty brakes. The defendant is a corporation that operates a large local car dealership whose service department may have negligently repaired the brakes of plaintiff's car. The defendant is represented by counsel in this dispute. George wants to interview several employees of the defendant without the defendant's counsel being aware of the interviews. He particularly wants to interview the file clerk (to learn how the records of the dealership are maintained) and the mechanic who performed the allegedly faulty work on the brakes.

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

1. George may interview the file clerk but not the mechanic because the mechanic is a person whose actions may be imputed to the defendant for purposes of civil liability.
2. George may not interview either employee of the defendant because the defendant is represented by counsel in the matter.
3. George may interview both the file clerk and the mechanic because neither is part of the control group of officials who regularly consult with and direct the defendant's attorneys.
4. George may interview both the mechanic and the file clerk as long as neither is represented personally by counsel in this matter.

C. (5 points)

John Doe is an attorney in a city that is in close proximity to another state. He is admitted to practice only in his home state. His practice frequently requires him to go into the neighboring state to meet with clients. To facilitate his practice, he is considering opening an office in that neighboring state.

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

1. He must not establish a continuous and systematic presence in the neighboring state unless he is admitted to the bar of that state.
2. He may establish the office as long as he does not hold himself out as licensed to practice law in that state.
3. He may establish the office as long as its sole purpose is to facilitate temporary legal services in the neighboring state.
4. He may establish the office if he associates an attorney licensed in the neighboring state for his activities in that state.

D. (5 points)

Lee Anne Pulis is an attorney who is representing a man in a divorce action. Her client has just called her and said (referring to his wife's lawyer) "I ought to just go over there and shoot that lousy low-life." She does not believe her client is likely to do any such thing but is concerned about her professional responsibilities.

Which of the following statements most accurately describes Lee Anne's obligations under the Model Rules of Professional Conduct?

1. She must disclose what her client said to her opposing counsel because the client has threatened to cause death or serious bodily harm, even though she does not believe harm is likely.
2. She may not disclose the client's statement because she does not believe that the client is likely to carry out the threat.
3. She may disclose the client's threat anonymously to the police.
4. She has discretion to disclose her client's threat to her opposing counsel to prevent death or serious bodily harm, even though she does not believe harm is likely.

E. (5 points)

Twentieth Federal Court of Appeals Judge Smith read a Massachusetts state court decision that required the state to perform gay marriages. He told the crowd at his church's breakfast that the decision was a terrible mistake and that there was no right to gay marriage. Twentieth Federal Court of Appeals Judge Jones was a law professor before she went on the bench. She wrote a law review article that supported the constitutionality of gay marriage.

Three months after the Massachusetts ruling, Twentieth Federal District Court Judge Parker decided that state laws permitting heterosexual but not homosexual marriage are unconstitutional under the Fourteenth Amendment's due process and equal protection clauses. Twentieth Federal Court of Appeals Judge Garcia is a good friend of Judge Parker; he was best man at his wedding.

Should Smith, Jones and Garcia participate in the appeal of Parker's ruling? Why or why not?

F. (5 points)

You are a tax attorney. Your client, PharmaCo, manufactures a drug, PerfectPressure, that keeps blood pressure at a healthy level. PharmaCo gave you a stack of financial records so that you can prepare its tax returns. Among the documents was a company research memorandum that concluded that 5-10% of patients who take PerfectPressure develop precancerous tumors that have a 95% chance of developing into cancer within three years. Your mother died of cancer, so the memo makes you very uncomfortable and anxious.

What do the Model Rules allow you to do to ease your discomfort?

**Legal Profession, Professor Leslie Griffin
Summer 2004, University of Utah
Final Exam Memo**

Your grades were assigned according to the law school's grading policy, which requires a mean within the range of 3.10 to 3.30. The mean GPA for this class was 3.296. The following letter grades corresponded to the point totals:

90 and above	A	6 students
83-89	A-	5 students
80-82	B+	6 students
70-79	B	4 students
65-69	B-	3 students
62	C+	2 students
60	C	1 student

For Question I, the answer begins with O'Brien's motion to disqualify Peterson. It was important for you to discuss the conflict of interest with a former client (with the materially adverse and substantially related test spelled out in MR 1.9). Then you had to analyze the imputation of Gertrude's conflict to her new law firm (MR 1.10). One hard issue was whether you should treat Gertrude as a paralegal or a lawyer. We impute conflicts because of concerns about confidentiality; hence you had to discuss confidentiality. The best answers talked about the presumption of disclosure of confidential information and whether it could be rebutted in these circumstances. Good answers analyzed the facts as well as stated the rule, so you did better if you paid attention to the specific facts of this question and argued about them.

Many of you missed big portions of Question II. You should have considered legal malpractice, breach of fiduciary duty, and reporting Larry to state disciplinary authorities. This was not an ineffective assistance of counsel question. Good answers considered both the loan aspect of this financial arrangement as well as whether Larry and Jane had entered into a business transaction. Most of you did a good job on the attorney-client relationship.

For Question III, the correct answers were:

- A. 1
- B. 1
- C. 1
- D. 2

E. For this question about judges, the best answers considered the rules and precedents that we discussed in class. For Judge Smith, you should have discussed the rule against commenting on pending cases and Justice Scalia's recusal in the Pledge of Allegiance case. For Judge Jones, good answers drew parallels to the Republican Party announce clause precedent and free speech. For Judge Garcia, the important parallel was Justice Scalia's friendship with Vice President Cheney.

F. The best answers mentioned the possibility of withdrawal from representation, the permissibility of disclosure under MR 1.6, and the attorney's ability to reject cases that s/he finds personally repugnant.

Student model answers are available when you pick up your exams. As always, clear writing and analysis gets higher grades than vague lists of possibilities.

I encourage you to look over your answers and to compare them to the model answers. If you have any questions, please do not hesitate to contact me at lgriffin@uh.edu, (713) 743-1543. I know you are a good group of students so don't hesitate to contact me if you need another reference on your resume! I hope you will be ethical attorneys who enjoy the practice of the legal profession.

Question I

MODEL ANSWER 1

A. O'Brien should argue that Peterson should be disqualified from acting as the McDonald's counsel based on an imputed conflict of interest from when Gertrude assisted with the cigarette case at their firm.

Gertrude would have a conflict if she represented the McDonalds against Cigarette Co since the cases are substantially related and are materially adverse. If she were going to represent McDonald, she would need Cigarette Co's informed consent in writing. O'Brien should argue the same conflict is imputed to Peterson, even though Gertrude is no longer employed at Peterson. Also, although Gertrude was a law clerk while she worked on the cigarette case, O'Brien should argue the conflict rules apply to her as if she were an attorney.

O'Brien should argue that even though the MR doesn't require disqualification for non-legal personnel in a law firm when the firm handled a case that created a conflict, Gertrude is different. Gertrude's conflict should be subject to conflict rules for attorneys, since she basically acted as an attorney on the cigarette case while in law school. The most likely reason for not having the same rule for non-legal personnel is that they are less likely to be exposed to confidential

information, to communicate it with attorneys, and to have the chance to use it to the advantage of other clients. Gertrude was exposed to huge amounts of confidential information on the cigarette case. She collected and reveiwed confidential documents, conducted research, and assisted with defense strategies. Gertrude also undoubtedly communicated with the attorneys at O'Brien's about confidential info regularly.

Gertrude is not in a position to use that information to advantage the McDonald's, since she no longer works at Peterson. However, Peterson is in a position to use any information they gleaned from Gertrude about the case to the McDonald's advantage. Whether they would use the information or not, the fact that they are *in a position* to use it is the problem, since confidentiality is key to the legal profession.

Do they have info?

O'Brien should argue that the based on the presumption of shared confidences, it can be presumed that all of Gertrude's info about the cigarette case was shared with all the attorneys at Peterson, since they were in the same firm. So, even though Gertrude is no longer employed there, her conflict should be imputed to the whole firm. Peterson even recognized the possibility of shared confidences due to

Gertrude's exposure to that regarding that case, as evidenced by their agreement to not participate in suits against Cigarette Co involving tobacco exposure.

O'Brien should assert that based on the policy reasons for the imputed conflict rule: honoring client confidentiality, client loyalty, and avoiding the appearance of impropriety regarding confidentiality and loyalty, Peterson should be disqualified.

B. As a clerk, I would advise the judge to disqualify Peterson as counsel for the McDonald's in this case.

I would advise the judge that disqualification is the best choice, based on O'Brien's arguments above, unless Peterson can rebut the presumption of shared confidences.

The burden is on Peterson to show that no confidential information about the cigarette case was transmitted by Gertrude to anyone who could affect the McDonald case, even in casual conversation. That is unlikely to be true, since Gertrude worked for Peterson from the time she became an attorney (presumably shortly after graduation in 2000?), until the time she left in 2003 (about 2 1/2 years). It is VERY likely that Peterson discussed her work on the cigarette case with people at Peterson during that time. And, she had enough confidential

information that she could really hurt the Cigarette Co and advantage an adverse client.

There are strong policy reasons to allow a client to pick their own legal representation, especially if they are established clients. In the case where the attorney worked for a corp and and individual in it for 20+ years, then later sued the corp on behalf of the individual based on a document she drew up for the corp, the court noted the importance of letting clients pick their own representation. However, in that case (as here), that does not outweigh the need to protect client confidences especially if there is a threat the confidential info would put one client in a position of advantage at the expense of another's confidential info, if revealed.

The only way it could possibly be appropriate for Peterson to remain as McDonald's counsel would be if they could meet the burden of proving no confidential info from Gertrude was released or would be released to the attorneys who would be handling McDonald's case. The fact that Peterson signed an agreement to not participate in claims/suits against Cigarette Co in tobacco exposure cases makes it appear that Peterson did not implement any screening procedures when Gertrude joined the firm. Indeed, if Peterson had planned on avoiding those case, there would be no reason to screen, which supports the

presumption of shared confidences. Another possibility is if the attorneys handling Peterson case were so far removed from Gertrude that they would not have been exposed to any confidential info (if they worked in a huge firm, a different branch of the firm, different city, etc., and had no contact with Peterson or the attorneys she had contact with). Or, Peterson could remain as counsel if they could prove no attorneys remained at the firm who knew anything of the cigarette case from Gertrude.

Since it does not appear that Peterson has rebutted the presumption of shared confidences, Gertrude was highly involved as legal personnel in critical confidential aspects of the cigarette case, Peterson should be disqualified, even though Gertrude has left the firm.

GD

----- next answer -----

Question _II_

Arthur should recommend that Jane sue for breach of fiduciary duty. Larry had many conflicts of interest that Jane could likely prove well enough to recover in some capacity. (Legal malpractice wouldn't really fit due to the 'case w/in a case')

----- next answer -----

Question II

MODEL ANSWER II

Arthur Attorney (AA) has a duty to inform Jane Jones (JJ) of all possible courses of action she has against Larry Lincoln (LL) and discuss with her which options she wants to pursue. AA should advise JJ of the following possible remedies:

1. Legal Malpractice Claim

JJ may want to file a legal malpractice action against LL. This will allow her to receive compensation for the damages he has caused her. Such a claim relies on showing the following four elements:

a. **Duty**

A duty is established by determining if there was an attorney-client (a-c) relationship. While the model rules are silent on when an a-c relationship is formed, the Restatement of Law advises that a client intent to form a relationship in addition to an attorney consenting or failing to manifest lack of consent creates an a-c relationship. Another rule available is from the *Togstad* case, where an a-c was found with just a single consultation and no fees paid based upon the subjective interpretation of the client.

In the instant case, JJ was having financial and tax troubles. Her accountant was unable to help her so he sent her to LL. LL helped her set up a corporate structure and helped her establish a trust. It was reasonable for JJ to interpret that LL was acting as her attorney so a relationship can be established here.

LL may argue that he had JJ sign waivers stating that he was not acting as her attorney, however these waivers will not be upheld by the court. An attorney can only limit his liability with a client if the client has actual independent representation. Furthermore, it seems that the waivers were signed only when LL was making loans to JJ, not in his actions of setting up the corporation and trust, which alone are enough to establish an a-c relationship.

Bottom line= LL had a duty becuase there was an a-c relationship between LL and JJ.

b. Breach

A breach of a duty is shown by establishing that the attorney acted or failed to act in a way that a reasonable attorney in similar circumstances would have acted. This is usually established by the testimony of an expert witness, e.g. another attorney in a similar practice in the community, although in at least one case the court held that some negligence can be found by the lay-jury.

In this case, a breach can be established if an expert testifies that if they had a client with financial/tax troubles, that setting up a corporation and trust and then getting \$95,000 in new loans was not the client's best course of action. For example, maybe the standard would have been to set up an installment agreement

or offer-in-compromise with the Internal Revenue Service or advise the client to sell one or more of the 20 properties she had acquired.

c. Causation

The causation element requires showing that the attorney's actions were the proximate cause of the client's damages. Here, JJ would need to establish that the reason she took out the additional loans that got her into further financial trouble and did not pursue another course of action was because of the erroneous advise of LL.

d. Damages

Damages in a civil malpractice action require showing a reasonable probability that but-for the attorney's actions, the result would have been different. Where litigation is involved, this is shown with a case-within-a-case where the client shows that they could have won their case otherwise. In these particular circumstances, a case-within-a-case may not be necessary because the client's issues may not have required litigation. However, the client may be able to

establish damages just by showing the foreclosure of her properties that were worth \$2 million.

In summary, JJ will probably be successful in a legal malpractice action against LL. She may even be able to negotiate a settlement with him on a malpractice claim and get most of her properties back without having to even go to court since he stated to a friend that he may do that anyway.

2. Breach of Fiduciary Duty (Tort Claim)

JJ may want to file a tort claim of Breach of Fiduciary Duty against LL to recollect any legal fees she has paid him. This claim is normally associated with disloyalty between an attorney and a client. For example, a client whose divorce attorney took advantage of her by having sex with her and charging her unreasonable fees established a breach of fiduciary duty and her remedy was the attorney's fees that she would have otherwise paid to the attorney.

In JJ's case, LL was disloyal to her 1) when he loaned her money which was not only unethical and not in her best interest but his own, 2) when he continued to represent her despite the conflict he created with his own financial interests, and

3)when he foreclosed on her properties, which is essentially a legal action against his own client.

A court will likely agree that LL's actions were disloyal to JJ and a breach of LL's fiduciary duty and award JJ the legal fees she has paid to date for LL's disloyal representation.

3. Negligent Misrepresentation (Tort Claim)

JJ may want to file a tort claim of Negligent Misrepresentation against LL to establish his liability for some of her damages. Negligent Misrepresentation is similar to unintentional fraud. JJ can make a showing of this claim by establishing that even if LL's intentions were to help her, he was defrauding her of 25 years worth of accumulating property by not giving her proper legal advice. If a reasonable attorney would have been able to give her legal advice that would have prevented her current predicament, then even if his intentions were to help, LL's negligence makes him liable for her damages. This claim seems a little less straight-forward than a malpractice claim but it is a nice alternative for JJ if she and AA do not think she can make out a case for malpractice.

4. Reporting him to the Disciplinary System

JJ should report LL's breaches of the rules of professional responsibility to the state bar for their investigation and issuance of disciplinary measures. If JJ chooses not to report LL to the state bar, AA has a duty to report the same violations. The following actions of LL should be reported:

a. Loaning money to a client

The majority rule is that attorneys may advance legal costs to clients in some situations, but never living costs and certainly not personal business loans. This scenario is a perfect illustration of why this rule exists--because then attorneys are necessarily acting in their own interests and have a stake in the case different than their duty of representing the client's interests. It was against the rules of professional responsibility for LL to make such loans to his client.

b. Having a client sign a waiver of liability without independent representation

An attorney may limit his liability with a client only if the client is actually represented by independent counsel. It is not enough to advise a client that it is

desirable to take the matter to another attorney for review, as LL did here. These waivers are unethical and will not be upheld by a court.

c. Proceeding with legal representation where there is a conflict with his own financial interests

An attorney should not proceed in representation of a client if he has a conflict between that representation and his own financial interests. In such circumstances, an attorney can cure the conflict by getting informed consent of the client and then setting up protections for the client. In this case, LL may argue that he did try to inform the client with the waivers he had JJ sign, but because the client was not represented by counsel in that decision, the client was just consenting, not making an informed consent. Furthermore, it appears that LL did nothing to set up protections for JJ's interests so did not cure the conflict. It was unethical for LL to continue to represent JJ in the face of a conflict with his own interests.

d. Filing a legal action (foreclosure) against his own client

Another illustration of why an attorney should not give loans to clients is the predicament it put LL in when Jane fell behind on her payments. Technically, an attorney should not file a suit against his own client without the client's consent. That rule applies here, where LL filed for foreclosure on JJ's properties, which was essentially a legal action against his own client. Since there is no indication that JJ consented to the action, it was unethical of LL to persue it. -

In conclusion, AA should advise JJ of all of the above possible courses of action and reccomend to JJ the actions that meet her goals. Since JJ wants to regain her financial stability, the best way to do that is to get damages from LL on a Legal Malpractice claim. Regarding JJ's desire to "make Larry pay", her best course of action is likely to report his actions to the bar for discipline.

GD

----- next answer -----

Question _III_

A. 1

C: 1) Must not establish continuous and systematic presence unless admitted.

D: 2) She may not disclose b/c she does not believe harm is likely.

+ 20

E:

MODEL ANSWER 3

Smith: According to the Code for Judicial Conduct, the appearance of impropriety and undue influence should be avoided and impartiality should be maintained. Smith's comments indicate a lack of the appearance of impartiality, which is defined in White by Scalia as "open-mindedness." Arguably, Smith's public comments while a judge that the Massachusetts decision was a terrible mistake and that there is no right to gay marriage shows an apparent lack of open-mindedness, and so Smith should probably recuse himself from participation in the appeal of Parker's ruling. In accord would be Scalia's recusal memo from participating in the Pledge of Allegiance case. The public nature of his comments and the inflammatory public criticism of another court's decision should prevent the judge from participating in the case.

Jones: The same issues of impartiality and impropriety are raised in this context, with the twist that Jones' article was written prior to becoming a judge,

and in all likelihood the analysis was based on an arguable interpretation of the law. Although the article indicates a probable leaning of the judge, judges are not required to have no opinions at all (see White allowing judges to "announce" their opinions in elections without reaching the question of whether they may indicate how they would decide pending/impending cases). Because of this, and the presumption that judges are open-minded, Jones should participate in the appeal of Parker's ruling.

Garcia: A different issue is raised by Garcia's participation, the appearance of an undue influence from the friendship of Garcia with Parker. The question is whether the friendship between the judges would lead Garcia to uphold Parker's decision based on the friendship alone. However, friendships are not forbidden between judges, especially considering the fact that they will often interact in their official capacities. To argue that the friendship will prevent the judge from reaching an unbiased opinion would improperly suggest that the judge cannot reason independently from his friendships, and that there should be no interaction between the levels of the courts, an unlikely presumption. Furthermore, an adverse ruling would generally be considered to have little to no effect on an extrajudicial friendship between the judges, so suggesting an influence based on the possible effect on the friendship would be going too far. In accord, see Scalia's memo

explaining his participation in the Cheney case. Therefore Garcia should participate in the appeal of Parker's ruling.

F:

The applicability of the Modern Rules depends on the circumstances. If the company has taken a deceptive position on the drug that has not been disclosed during the pursuit of approval of the drug (FDA), the lawyer may attempt to convince the client to change its position. This may be done, first by going to the lowest level of the client who is responsible for the failure to disclose (the research team, say), followed by going up to increasingly higher levels of control, eventually reaching the CEO and/or board of directors. If the position taken by the company was criminal or fraudulent and the client refused to change its position, then she could withdraw or noisily withdraw, renouncing any materials prepared for the client that depend on the fraudulent position taken by the company.

If the information were not general knowledge, MR 1.6 allows the lawyer to reveal the information to prevent reasonably certain death or substantial bodily harm. Since this information relates to a cancerous agent that causes a 95% chance of cancer (serious bodily harm) in 5-10% of cases (this is reasonably certain, since the drug is probably taken by a large number of people -- even though the question

of reasonable certainty might be arguable), she could reveal the information to prevent the harm at any stage of the above proceedings.

If the information were disclosed by the company as it sought approval for the drug, a different question is presented. Presumably, she need not worry about disclosing the information, as it would already be disclosed and the risks assumed by the populace, although she could reveal the information if it were not publicly available. The model rules allow her to withdraw from representation of the client if the client or its positions are morally repugnant to the lawyer as long as no substantial harm to the client's material interests would occur and the lawyer protects the client's interest upon withdrawal. If the lawyer were involved in any proceedings before a court, she might have to receive the permission of the court before withdrawing and would have to continue the representation if so ordered by the court. Otherwise, she may terminate her employment to ease her conscience, even though the Model Rules indicate that working for the client does not indicate lawyer acceptance of the client's ideals and positions.