

PROFESSIONAL RESPONSIBILITY
Final Exam - Fall 1999
5013 - Professor Kilpatrick

PRELIMINARY INSTRUCTIONS

1. **THE EXAM IS “OPEN BOOK.”** You may consult ONLY the Brill Rules book, the Aronson textbook, assigned articles, and any notes and outlines you have prepared. You may not conduct any research or consult outside sources on issues raised by this exam.

2. **EXAMS ARE AVAILABLE:**

PICKUP: After 2:00 p.m., Friday, December 3, 1999, Circulation Desk, Library. Since the library is open at different hours over the weekend, it is your responsibility to schedule your exam pickup so that it can be returned to the library within the time period.

The exams will be in a folder marked **“EXAMS.”** There also will be blue books in the folder for those who wish to write their exam (please note that there are page limits for answers). On the front of the folder, a **“sign out”** sheet will be affixed. Exam copies are numbered. When you pick up your exam, please **“sign out”** using (1) your exam number, (2) the number of the exam copy you have been given, and (3) the time and date of pickup.

Your completed answers, plus the exam, must be returned **to the law library** within **24 hours**.

3. **RETURN: Within 24 hours** your answer AND the exam must be returned to the Circulation Desk. **Final due date is 2:00 p.m. on Monday, December 13.** An accordion folder marked **“KILPATRICK PROFESSIONAL RESPONSIBILITY EXAM”** will be held in the **“Library Reserve”** cabinet. It will contain a **“sign in”** sheet.

When you return your complete answer and exam, **“sign in”** by exam number and indicate the date and time. Insert your copy of the exam and your answer into the manila envelope. **DO NOT sign your name.**

4. Once you have picked up the exam, you may not discuss it in any way with anyone until Monday, December 13 at 2:00 p.m. Violation of the rules regarding consultation with others or with outside materials will be considered honor code violations.

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Exam No.: _____

INSTRUCTIONS

This exam contains one essay question and comprises 50% of your final grade.

1. **PLACE YOUR EXAMINATION NUMBER ON THIS PAGE OF THE EXAM AND ON THE FRONT OF EACH PAGE OF YOUR ANSWER (WHETHER TYPED OR BLUE BOOK).** Return the Exam with your answer.

2. **THE EXAM IS “OPEN BOOK.”** You may consult ONLY the Brill Rules book, the Aronson textbook, assigned articles, and any notes and outlines you have prepared. You may not conduct any research or consult outside sources on issues raised by this question.

3. **READ EACH QUESTION CAREFULLY BEFORE YOU BEGIN.** Briefly list the ethical issues raised by the question, then discuss them. In your response, please cite to the applicable Rule(s) and analyze the facts in light of the Rule(s). (Show me your reasons for making the connection between issue and Rule.) I do not want, and will not give credit for, a general discussion of the law or quotes from the rules. Rather, your answer should reflect a discussion of the relevant rules and principles in the context of the facts given. Restrict yourself, to the extent possible, to the facts given. If additional facts are needed to resolve the existing issues, state what they are and why, but do not change the facts.

4. **YOUR ANSWER SHOULD BE NO MORE THAN NINE (9) PAGES, DOUBLE-SPACED AND TYPED.** Leave one-inch margins and use nothing smaller than the font I used for the exam question. (It must be readable without a magnifying glass and the maximum word length limit for handwritten answers applies to computer users.)

If handwriting, please use blue or black ink, write clearly on alternating lines, and calculate the maximum length based on the average number of words per page in your handwriting.
Maximum length: 2250 words.

5. **RETAIN A COPY OF YOUR ANSWER.** The process might fail us.
7. **GOOD LUCK! AND HAVE A GOOD HOLIDAY.**

(continue to next page)

QUESTION

Adam is a plaintiff's personal injury attorney in Fayetteville, AR. Since graduating from UA School of Law, he has never engaged in any other form of practice. One day earlier this year, his friends Bob and Carol, a married couple, came to him with a business proposition they wished to organize. Bob and Carol wanted to form a tax-sheltered limited partnership to own and trade commodities futures in an offshore commodities market from which the commodities would later be imported into the United States. In this case, the market concerned was located in the Cayman Islands. Adam agreed to represent Bob and Carol in doing the legal work to set up the partnership and establish and document it and, thinking this was going to be a marvelous investment, also agreed to put \$50,000 of his own money into the deal as an investor. (His practice had been doing very well.)

In fact, Adam thought so highly of the deal that he suggested to his friend, Doug, another plaintiff's personal injury attorney, that Doug ought to invest too, and also ought to help Adam prepare the necessary partnership papers. Adam wanted Doug's help because Doug had recently done his first such deal and Adam had never done one at all.

After reviewing the information Adam had obtained in his meeting with Bob and Carol, and especially the financial arrangements Bob and Carol wanted to make, Doug began to suspect that the "commodities" Bob and Carol wanted to buy and import included the dread cannabis sativa (marijuana). Although Doug did not convey his suspicions to Adam, he told Adam that before Adam or he got involved, they should ask Bob and Carol for a substantial advance retainer — \$15,000 — for Adam and Doug's time, expenses and costs. They did so, and shortly thereafter a man identifying himself as "Earl" appeared in Adam's office carrying a suitcase. Earl handed the suitcase to Adam, saying "This is for Bob and Carol." Adam opened it to find \$15,000 in \$100 bills. Adam deposited the money in his trust account and on his office accounting records opened an account card in Bob and Carol's names, showing a \$15,000 credit to them. Adam also mailed them a receipt for the \$15,000.

Adam and Doug prepared the partnership papers and Bob and Carol went into business offering to potential investors limited partnerships in "Caribbean Commodities Ventures, Ltd." for \$100,000 each. Adam became one of the limited partners but Doug never did invest in the deal. Adam and Doug billed Bob and Carol \$15,000 in fees, expenses and costs, took the money out of Adam's trust account, and split it between the two of them. Doug spent his \$7,500 on gambling and parties; Adam used his to make the down payment on a condominium in Florida.

When Bob and Carol first started selling the partnerships, some of the investors asked them about the partnership's assets. Bob showed them an uncertified list of assets prepared by his accountants from information he had furnished them. Bob said these assets were owned by

the partnership, including a gold mine in Ecuador. One of the documents supporting his stated value for the gold mine was a report from a mining engineer on the value of the gold ore lode available to that mine. These investors asked for an opinion of counsel regarding this list of assets; Bob asked Adam for such an opinion and Adam, relying on Bob's good faith, prepared a letter stating that in his opinion the assets of the partnership were worth what Bob said they were and further stating that he himself had relied on these representations of value in buying his own partnership interest.

Bob left with Adam the file supporting this list of assets, including his accountants' workpapers, correspondence and memos to and from him and the accountants, and to and from him and the engineer, and the engineer's report. Adam put this file in his case file on the partnership's organization.

The Drug Enforcement Administration has arrested Bob and Carol. The U.S. Attorney has obtained from the Federal Grand Jury an indictment for conspiracy to import marijuana, naming Bob, Carol, Adam and Doug as co-conspirators. The indictment also charges criminal RICO violations and seeks the seizure and forfeiture of all proceeds of the criminal enterprise.

The U.S. Attorney has subpoenaed Adam to produce all records of his employment contract, retainer and payments by Bob and Carol. The State Commissioner of Financial Institutions had initiated an investigation of Caribbean Commodities and has obtained a court order directing Adam to turn over all records showing any assets held or claimed to be held by the partnership.

Adam and Doug have come to see you (another attorney in Fayetteville) for advice concerning their situations. Adam tells you during this meeting that he never knew of any criminal wrongdoing. He believes that the file on Bob and Carol in his office will show that he was never informed of and never had any reason to suspect any illegalities. Doug, also during that meeting, tells you that from the beginning he did suspect that Bob and Carl were dabbling in smuggling but that he never told Adam about this.

What should you do or say? Advise Adam and Doug.

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Answer Outline (F99, Final Exam):

“You” (attorney talking with Adam & Doug).

(3) — representing multiple parties (1.7) (2.2 is not applicable because the representation is not *between* the two).

“Adam” (representing Bob & Carol).

(2) — competence (1.1 re type of legal work, associating with an attorney who is only slightly more experienced in the area).

(1) — representing multiple parties (2.2).

(1) — who is the client (1.13, once the “business” entity is created).

(2) — establishing a fee based on scope of representation (1.5(b)).

(1) — confidentiality (1.6 re discussing matter with Doug without client consent).

(3) — investing in client’s business (1.8(a), 1.7(b)).

• receipt of \$100,000 limited partnership interest for \$50,000 (fairness?)

(2) — given all the circumstances, should he have been suspicious and investigated more thoroughly (1.2, 1.4, 1.6, 1.16, 2.1).

(4) — opinion letter (2.3, 1.1, 1.2, 4.1, 1.6[12]).

(5) — subpoena, court order (important to *distinguish* these two, they are subject to different treatment although both demand disclosure through “compulsion of law,” (Comment [5]) (1.6).

[2] • the subpoena is not a *final* order and, ordinarily, Adam would “object” to the request for “records of his employment contract, retainer and payments by Bob and Carol, thus allowing the court to determine if these were discoverable (unless, of course Bob and Carol consented to disclosure, which is unlikely).

[1] • however, Adam *may* disclose confidential information demanded by the subpoena under 1.6(b)(2) since he has been indicted for criminal conduct, *but* he must not disclose more than is needed to protect himself and may have to make choices among the items listed.

[2] • the court order is more final and, although ordinarily Adam might appeal such an order to a higher court, the requested documents (assets file) were not created by him in the course of representation (*i.e.*, work product) but were given to him for safekeeping by Bob and *cannot* be protected in this manner (the opinion letter was meant for distribution to third parties and, although work product, is not protected).

“Adam & Doug” (representing Bob & Carol).

- (3) — associating Doug as co-attorney without client consent (1.2, 1.4)
- (12) — \$15,000 fee (1.5(a)).
 - [2] • reasonableness of amount (apparently determined arbitrarily).
 - [2] • accepting payment from third party (1.8 (f), 1.15(b), 5.4 (c), no check with clients, amount over \$10,000 reporting requirements).
 - [2] • treatment of funds (1.15, deposit into trust account, creating a record for clients, sending receipt to clients, accounting for use).
 - [3] • use of funds (1.5, 1.15, appropriate billing for fees, costs, expenses).
 - [3] • fee-splitting (1.5(e)).
- (2) — withdrawal (1.16)
 - at earlier points during the representation because of client’s goals.
 - and now (in addition, are likely witnesses against Bob and Carol), (3.7).
- (2) — violations of Rules of Professional Conduct (8.4).

“Doug”

- (2) — competence (1.1)
- (3) — should he have acted on his “suspicions” (1.1, 1.2, 1.4, 1.6, 1.16, 2.1).
- (1) — does he have joint responsibility for Adam’s acts regarding opinion letter, subpoena, and court order (in which case same Rules noted above would apply to Doug).
- (1) — failure to report Adam (8.3).

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