

PROFESSIONAL RESPONSIBILITY
FALL SEMESTER, 1997
FINAL EXAMINATION

PROFESSOR STRASSER
DEC. 6, 1997
IN CLASS

INSTRUCTIONS

1. THIS IS A 3-HOUR, OPEN-BOOK EXAM. YOU ARE WELCOME TO LOOK AT YOUR NOTES, YOUR OUTLINES, YOUR TEXT AND MODEL CODE/RULES BOOK, BUT YOU ARE NOT PERMITTED TO MAKE USE OF ANY COMMERCIAL MATERIALS (EXCEPT AS NOTED ABOVE). FAILURE TO ABIDE BY THESE RULES IS AN HONOR CODE VIOLATION.

2. BEGIN EACH ANSWER IN A NEW BLUE BOOK. NUMBER EACH BLUE BOOK, E.G., ON THE FIRST, #1 OF 3, ON THE SECOND, #2 OF 3, AND ON THE THIRD, #3 OF 3. I YOU SHOULD BE ABLE TO DO THIS EXAM USING ONLY TWO BLUE BOOKS BUT YOU ARE WELCOME TO USE MORE IF YOU SO DESIRE.

3. The questions are of EQUAL WEIGHT.

4. AMBIGUITIES: If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as though your assumptions were part of it. DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.

5. IDENTIFICATION: Write your exam number on the FRONT COVER OF EACH BLUE BOOK.

6. TAKE THE TIME TO THINK ABOUT THE QUESTION. Organize your answers, which should be concise and to the point. You should discuss ALL RELEVANT ISSUES even if one issue might dispose of the case. This exam requires you to do ISSUE-SPOTTING and ANALYSIS.

7. REPETITION. When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. DO NOT CROSS-REFERENCE. (I do not want my judgment of how you are doing in Question Two to be affected by my judgment of how well you did on Question One.)

8. CITATION. When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Upjohn Court or the Hollis court.

9. If dates are offered in the questions below, they are just there to facilitate the sequencing of events.

10. You need not turn in the copy of the exam. You are welcome to frame, recycle, or otherwise dispose of it as you see fit.

11. WRITE LEGIBLY. IF I CANNOT UNDERSTAND WHAT IS WRITTEN, I CANNOT GIVE CREDIT FOR THE ANSWER.

QUESTION 1

Mary Mason, attorney at law, practices in the state of Capitania. She was sitting in her office on Wednesday, June 1, when she received a phone call. Chris Client was on the phone. He said that he had a matter of some urgency to discuss with her and arranged for an appointment that afternoon.

Chris arrived at 3:00 p.m. carrying a large bag. He explained that he needed an attorney because he feared that he might be arrested for the murder of Thaddeus Thoreau, whose body he had found in a remote part of a nearby nature preserve. Mary offered a written explanation of her fees, which Chris found agreeable. He gave her \$100 as a retainer.

Mary asked Chris to make a map indicating where the body was. Chris pulled a map out of his pocket and said, "Here, I made one so that I would remember where the body was. You might as well have it."

Chris put the bag he had been carrying on the desk, took a gun out of it, and handed it to Mary. He explained that he had seen the gun in the preserve close to where he had eventually found the body. He had picked up the gun to examine it and only then had he seen the body hidden under some trees. He would have left the gun there but he realized that his prints would be all over the gun and that he would be suspected of the murder. He had thought that it would be prudent to take the gun to avoid the possible misunderstandings that might otherwise result. Mary took the gun from him, assuring him that the gun would be protected by attorney-client privilege.

Mary asked Chris why he thought that he might be suspected of killing Thaddeus. Chris explained that he and Thaddeus had argued publicly and, further, that Chris would benefit were Thaddeus to die. Mary asked if Chris knew of anyone else who would benefit from Thaddeus's death. Chris replied that a number of people would, both because Thaddeus had been such an unpopular person and because Thaddeus had threatened to cut various people out of his will.

Mary asked if there was anything else that Chris thought was important for her to know. He replied that he could not think of anything but that he would call her should anything occur to him.

Mary went out to the nature preserve to view the body. She took some photos but neither touched the body nor disturbed it in any way.

After Mary had finished taking photos, she found a phone in the nearest town and made an

anonymous call to the police, explaining where the body might be found. When asked to identify herself, she declined and hung up the phone.

Thursday, June 2, the Capania Post headline read, "Thaddeus Thoreau dead. Foul play suspected."

On Monday, June 6, Mary received a visit from the police. She was asked whether she knew anything about Thaddeus Thoreau's murder. She responded that she did not. She was asked whether she was defending anyone in connection with that murder and, if so, whom. She responded that she was but that the identity of that person was protected by attorney-client privilege.

As she continued investigating who might benefit from Thaddeus's death, she discovered that Zelda Zainwright, a current client, was named in Thaddeus's will and, further, that she (Zelda) and Thaddeus had been heard arguing heatedly on several occasions. Mary decided to ask Zelda whether she knew anything about Thaddeus's death. Zelda replied that she did not, that she had never been in the county where the preserve was found, much less in the preserve itself, and that she had been in Chicago on business between May 24 and June 1.

Harry Holmes, the investigator hired by Mary, had acted on a hunch and had talked to a few individuals selling gasoline in the only town near the preserve. Harry discovered that a woman named Zelda Zainwright had bought gasoline on May 31. The attendant had remembered that the customer hadn't known how to open the gas tank and that the customer had explained that the car was rented. The attendant also remembered that the woman had seemed quite nervous.

Eventually, Chris was charged with the murder of Thaddeus. At trial, Mary tried to convince Chris not to testify. The prosecution's case was weak based mostly on circumstantial evidence. No gun had been found. The only damaging testimony had been that a gas station attendant had remembered seeing Chris on June 1. The attendant had admitted on cross-examination that he might be mistaken about the day but that business had been very slow that week and that he had had only a few customers that entire week. Mary did not ask any questions about any of the other customers that the attendant had seen that week.

Chris insisted on testifying. He maintained his innocence and, not in response to any particular question, denied ever having been in the preserve. At this point, Mary pointed out to the court that she had many questions for her client. Since it was almost noon, Mary requested that they take the lunch recess at this point.

During the recess, Mary warned her client that she could not suborn perjury. She pointed out that he had told her that he had been in the preserve and had in fact given her the gun that he had found. Now he was changing his story. She explained that were he to continue to maintain that he had never been there, she would ask the court to allow her to withdraw from the case.

When the trial resumed, Mary asked whether Chris wished to change his previous testimony. Chris responded that he may in fact have once visited the preserve. On cross-examination, Chris

admitted that he may have been in the preserve on June 1 and may indeed have been seen by the attendant.

Chris was convicted and sentenced to life imprisonment without possibility of parole. You have been asked to decide whether you want to handle his appeal. Discuss all relevant issues, including what actions you will take or advice you will give with respect to possible complaints to the Capitania State Board on Professional Discipline. The Professional Code adopted by the state of Capitania conforms to the Model Code of Professional Responsibility.

QUESTION 2

Arthur Attorney practices in the state of Columbia. He has been down on his luck recently. He has lost some contingency fee cases at trial, which any reasonable jury would have decided in his clients' favor. He needed to have and win a big case, both to restore his confidence and to supply some needed cash.

He was reading the morning paper and discovered that Verona Victim had just suffered grievous injury while using a Lucky Lighter. Not only would she need numerous surgeries but her very lucrative movie career had been destroyed for all intents and purposes. Arthur decided to give her a call, reasoning that since he would not be talking to her face-to-face, the solicitation ban would not be violated.

Arthur convinced Verona that he should represent her, although if truth be told, she had already been thinking of contacting him since he had such a fine reputation. Arthur started working on the case immediately, making the appropriate filings, etc.

The Lucky Lighter Corp. was rather uncooperative. Indeed, it was pretty clear to Arthur that those whom he had deposed were hiding something. Further, the firm representing the corporation, Stall, Stall, and Stall, had a reputation for stonewalling.

Arthur knew that he had to do something a little unorthodox. He had inferred that William Whistleblower, Vice-President in charge of Quality Control, was a bit of a loose cannon who might be able to reveal some very interesting information. Arthur decided to give William a call and to meet for an informal chat. William seemed only too anxious to comply. In fact, he was carrying a suitcase containing a variety of documents when he met Arthur at the restaurant in the Hideaway Hotel.

After talking to William and looking at the official documents, which William had secretly copied, Arthur knew whom and what to ask. Suddenly, Sally Stall was advising her client that the Verona Victim case might be much more expensive than was originally anticipated.

After consulting with her client, Sally called Arthur to make a settlement proposal. Sally said that her client was willing to pay for all medical costs (the numerous surgeries, the therapy, etc. might involve hundreds of thousands of dollars) plus \$200,000 to compensate for lost economic opportunities and pain and suffering. Arthur laughed. He asked her to call again when she was

willing to make a realistic offer.

Sally decided at that point that Arthur had to be disqualified if at all possible. She did some research and discovered that Arthur had once represented the Lucky Lighter Corporation in a tort action in which the victim had been severely injured while in corporate headquarters when riding an elevator which had suddenly fallen several floors. The employees had been put on notice that the elevator was dangerous and had done nothing to prevent the victim from riding in that elevator.

Sally made a motion to have Arthur disqualified based on this past representation. The motion was granted.

Verona Victim now had to find a new attorney. She contacted Barbara Binghamton who agreed to represent Verona. Barbara sent a letter to Arthur asking him to send her Verona Victim's file. (Included with that letter was a request that the file be sent to Barbara, which had been signed by Verona Victim.) Arthur happily complied, reasoning that this way he still would get his 1/3 (one third) contingency fee when Barbara finished up the case.

Barbara agreed to take Verona's case on a 1/3 (one third) contingency fee basis, where Arthur's fees and expenses would be taken out of Barbara's share. As soon as Barbara took the case, Lucky Lighter offered to settle the case for 3 million dollars plus medical expenses. Verona, who had been thinking about retiring anyway, thought that this was fair and agreed to the settlement.

The state of Columbia has incorporated the ABA Model Rules into its Code of Professional Conduct. Please address all relevant issues.