You will have three hours. Part A, questions 1 – 10, are ten multiple choice questions worth three points each. PLACE THE ANSWERS TO “PART A” ON PAGE ONE OF YOUR BLUE BOOK or at the beginning of your typed answer pages. Part B, QUESTIONS 11 – 20, are ten short answer questions which must be answered IN THE MANNER DESCRIBED BELOW. Each short answer is worth six points each. Please write legibly and in ink. Write your examination number on the front of each blue book you use.

Each short answer question will give you the main issue presented, and then ask for two pieces of information: a short statement, in your own words, of the relevant rule (RULE) from the Model Rules, and then a short (3-4 sentences) discussion (DISCUSSION) analyzing what the lawyer should do in each circumstance, relating the rule to the issue presented. WRITE THE WORDS “RULE” and “DISCUSSION” BEFORE EACH OF YOUR ANSWERS. Following is an example:

Lawyer Larry represents Defendant, a veterinarian, in a trial in the U.S. District Court of Nebraska. The action stems from a charge of malpractice and revolves around the issue of the standard of care for a veterinarian who has held herself out to be a specialist in a very technical and highly specialized area of veterinary medicine. The plaintiff's lawyer has failed to cite a recent case from the State Supreme Court of Colorado involving the same issues which would support the plaintiff's arguments, and as far as Lawyer Larry knows, the judge is also unaware of this case.

ISSUE: Must Lawyer Larry reveal the case?

ANSWER
RULE: A lawyer should disclose legal authority when adverse, on point, from a controlling jurisdiction if not disclosed by opposing counsel.

DISCUSSION: The case from Colorado appears to be adverse since it helps the plaintiff here, and it also seems to be on point. It is not disclosed by opposing counsel. However, the Supreme Court of Colorado would not be a controlling jurisdiction for the District Court in Nebraska, so Lawyer Larry would not be required to cite this case. He may wish to do so in order to distinguish it, but he is not required to reveal it.

You must return this examination to the proctor. Failure to do so will result in a failing grade being entered.

PLEASE WAIT TO BEGIN THE EXAM UNTIL INSTRUCTED. YOU WILL HAVE THREE HOURS. GOOD LUCK, AND HAVE A GREAT SUMMER!
Part B – Answer these ten short answer questions in the manner described on the instruction page. The questions and the cases on which they are based will be posted on the Law Library exam archive site after the exam.

11. From news reports: The Binghamton Press & Sun-Bulletin newspaper has been accused of defamation by Derek H, whose picture was in the newspaper for a series of articles in 2010 on gang violence. He contends that following his Sept. 12, 2010 arrest in Binghamton, he was libeled by articles in the Press & Sun-Bulletin that associated him with a rash of drug-related violence that law enforcement officials traced to gangs migrating into the area from New York City. One story linked H to the Bloods under the headline "Biggest Street Gang in Binghamton."

Attorney Jackson represents the newspaper. Attorney Jackson was formerly employed by the County District Attorney and that Attorney Jackson, as a County ADA, personally prosecuted plaintiff Derek H. for several crimes. H argued that Jackson had prosecuted him for crimes including drug-related conspiracy, felony assault and tampering with evidence during Jackson's tenure as an assistant district attorney from 2002 to 2004. Jackson now works in his own firm, Jackson Bergman in Binghamton.

Issue: If Derek H. moves to disqualify Jackson from representing the newspaper, what will the Court rule?

11. [Link: http://www.newyorklawjournal.com/id=1202646490700/Pro-Se- Plaintiff-Wins-Disqualification-of-Defense-Counsel#ixzz2xI8Brydi]

12. Atlantic Bank loaned money to a homeowner to refinance her mortgage. Fidelity National Title Insurance Co. (Fidelity) issued a title insurance policy to Atlantic Bank insuring the priority of its deed of trust.

Unbeknownst to Atlantic Bank, the homeowner obtained a business line of credit from Pacific Bank around the same time. The line of credit was secured by a deed of trust recorded against the home a few days before Atlantic Bank's deed of trust was recorded. The homeowner defaulted on the line of credit, and Pacific Bank purchased the home at a foreclosure sale.

Fidelity hired the law firm of Gilbert, Kelly to represent Atlantic Bank in an action against Pacific Bank for equitable subrogation, injunctive and declaratory relief, and fraud. During the litigation Pacific Bank served subpoenas seeking documents that reflected communications between the law firm and Fidelity regarding the litigation. Atlantic Bank moved to quash, asserting the attorney-client privilege.

Issue: How will the trial court rule on the motion to quash the subpoena?

13. Attorney Anna formed an investment club with her friend Evil Stephanie to produce Shakespeare plays around the country using only Pig Latin for dialogue. Having never been done before, the two of them thought this was ingenious. Anna served as the club’s counsel while Stephanie sought out investors. Now, a federal agency has filed a civil action against Anna and Stephanie, alleging fraud and violation of federal stock and trading regulations.

Attorney Anna is as pure as the driven snow on a stormy night in Nebraska (the case is from Nebraska), while Evil Stephanie, even though beautiful and charming, can be — well, evil.

Anna turns to her old law school ethics professor for help. She brings to the wise, overweight, bearded kindly grandfather, the following documents:

• her notes of conversations with securities attorneys from whom she sought advice to ensure the club's compliance with rules and regulations. Stephanie was present during these conversations;
• a letter that Stephanie’s assistant wrote to the state, which had been looking into the club's activities. The letter stated that the lawyer was unaware of any wrongdoing, had not been involved in any trading decisions, and had advised the club to retain a securities lawyer; and
• handwritten notes that the lawyer took of a conversation with the assistant about a belief that Stephanie may have engaged in inappropriate dealings with an investor's funds.

Anna believes that producing these documents will assist in the lawyer's defense, but Stephanie insists that the materials are confidential and must not be released.

Issue: What advice should the old bearded ethics professor give to Anna about releasing the documents to the federal agency?

Full text at

14. The plaintiff is suing the defendant, and the defendant has an insurance policy of one million dollars. The insurance company has hired a lawyer to represent the defendant. At a dinner meeting on the evening before scheduled trial, the judge conducted a mediation session in which the defendant’s attorney and the plaintiff’s attorney attended and participated.

The judge was informed by defendant’s counsel that approximately $680,000 had been paid or committed to the legal fees of the defendant’s defense, thereby leaving
approximately $320,000 available under the policy for payment of any settlement or judgment. The actual policy had only paid out $300,000 on legal costs. During the joint phase of the mediation session, the defendant’s lawyer did not inform the judge that the figures were inaccurate or that he had provided erroneous figures to the plaintiff’s lawyer.

During the ex parte phase of the mediation session, the judge had a discussion with the plaintiff’s lawyer and recommended a settlement value of $400,000. The judge then had an ex parte discussion with the defendant’s lawyer. The judge requested that the defendant lawyer obtain authority to settle the matter for $400,000. The matter did not settle during the mediation session due to a dispute between the parties regarding an indemnification waiver.

Issue: Is the defendant’s lawyer a really sharp and clever negotiator, or has he violated an ethics rule?


15. Attorney Spotswood and Real Estate Agent Bruce, neither being the sharpest crayons in the box, are long time friends and drinking buddies. Attorney Spotswood writes the State of Touravia Bar Ethics Committee with the following question: Spotswood represents mortgage lenders in foreclosure proceedings. Therefore, he becomes aware early on in the matter of properties which will become foreclosed or soon-to-be foreclosed. He wonders if he would run afoul of ethics standards if he funneled leads about desirable properties that may soon be on the market to Bruce, who has asked him to join his real estate investment company.

Issue: If you are a member of the Ethics Committee, what would you respond to this inquiry?


16. Maryland criminal defense attorney Shirley bought a .45 caliber handgun and gave it to her boyfriend and former client, Cortney. She knew his application to buy the gun had been turned down but didn't know he had been convicted of crimes that disqualified him from having a gun, she later said.

The state charged Shirley with violating a Maryland statute that makes it a misdemeanor to knowingly participate in the illegal transfer of a regulated firearm. The statute in question provides that a person may not transfer a gun to someone who the person knows “or has reasonable cause to believe” has been convicted of a disqualifying crime. Shirley agreed to a deal in which she pleaded not guilty pursuant to an “agreed statement of facts” that acknowledged she had given a handgun to a
prohibited person. Shirley received “probation before judgment,” and the records of the criminal case were subsequently expunged.

Meanwhile, the attorney grievance commission charged Shirley with violating the Maryland Lawyers' Rules of Professional Conduct. At the disciplinary hearing, Shirley testified that when she asked Cortney to hold the gun for her, she was not aware that he was prohibited from possessing it. She took the plea, she said, because “I felt like I should have known better.”

A hearing judge found that Shirley did not commit any ethics violation because the record merely showed she “should have known” that Cortney was a prohibited person, and did not demonstrate by clear and convincing evidence that she actually knew it. The attorney grievance commission, acting through bar counsel, then filed a “notice of dismissal” requesting the court of appeals to drop the case.

The decision was appealed. In Maryland, the court of appeals has authority to review a hearing judge's conclusions of law even if the attorney grievance commission does not file exceptions. Usually, where the commission filed a notice of dismissal, the court accepted the request without further hearings. The court may conduct a de novo review and determine whether Shirley committed a violation.

Shirley’s lawyer told the appeals court the hearing judge in the disciplinary proceeding completely credited her testimony that she did not know Cortney was prohibited from owning a gun.

Issue: The Court of Appeals overturned the decision of the hearing officer, relying on one part of the Rules of Ethics. What rule might Shirley have violated?

Attorney Grievance Comm'n v. Reno, 2014 BL 29214, Md., Misc. Docket AG No. 5, 1/24/14)

17. In 2010, Dougherty, an official in Local 98 of the International Brotherhood of Electrical Workers, alleged in his defamation complaint that the defendant newspaper The Star “engaged in [a] continuous and systematic campaign to harm [Dougherty's] reputation by publishing a series of articles and editorials disparaging him.” The articles were published during Dougherty's failed 2008 bid for the Pennsylvania senate. The articles focused on the investigation of a contractor who was sentenced to two years in prison for a raft of public corruption charges—including allegations that he performed free work for Dougherty in violation of federal laws that prohibit union employers from giving anything of value to labor leaders. Although Dougherty was not charged, he was subpoenaed to appear before a grand jury and search warrants were executed on his home and bank records.
Attorney Pepper “advised [Dougherty] concerning the grand jury subpoena and was present during a search of [his] home.” Now Dougherty learns that Pepper is representing defendant The Star newspaper in his defamation suit. Pepper intends to pursue numerous discovery requests, including U.S. Attorney files from the previous federal investigation, while defending this defamation claim.

Issue: Will Pepper be allowed to represent The Star newspaper?


18. Jake used to be not only the finest high school basketball player in the Great State of Nebraska, but he was also the finest attorney in the land, from Omaha to Scottsbluff. They used to tell tales of his exploits and sing songs about his victories in court. He was really something.

But Jake has slowed down now, and from time to time he seems confused, not even knowing the difference between a Cornhusker and a husk of corn! Recently his partners have noticed these actions:

A. Jake informed a mediator that his client was making $75,000 per year when he was actually earning $50,000.
B. Jake vastly over stated on behalf of his client the client's “bottom line” settlement number.
C. Jake states that his client's, the defendant's, insurance policy is $50,000 when it is really $500,000.
D. Jake on behalf of his defendant client states that his client will file for bankruptcy if the plaintiff wins at trial, but Jake knows the defendant does not qualify for bankruptcy protection.
E. Plaintiff instructs his lawyer Jake, and Jake agrees, not to reveal his new, better-paying job to the other side even though the parties have agreed to exchange additional information about the plaintiff's wage loss claim.

Issue: Which items above are ethical and why, and which are unethical and what is the one reason that they are similarly unethical?


19. In 2001, an elderly couple leased a farm to their son, James, and his wife. The lease was for 16 years, annual rent was $12,500, and the lessees were given an option to buy the farm at any time during the lease for $200,000 minus any rent already paid. Attorney Leah prepared the lease.
After the couple died they left the farm to three children: sons James and Steven, and daughter Diane. The will named Diane as the estate's executor, and she designated Lawyer Leah as its lawyer.

While probate was ongoing, James and his wife exercised the option to buy the farm from the estate under the terms in their lease. Lawyer Leah handled that transaction. Diane heard about the proposed sale and thought that the farm was worth more than the purchase price, and she wondered if the option to buy was still valid after the death of her parents.

Issue: If Diane comes to see Leah to ask her advice about the two questions she has, what is the one thing Leah must tell her?


20. This happened in La Jolla, CA, a beautiful city right by the Pacific Ocean, north of San Diego. It’s where I met my wife, now of 43 years.

So it seems that Mollie, Eva and Abe each owned condominium apartments in the Seahaus La Jolla building, and the three of them were each members of a condominium owners association. As things progressed, Molly, Eva and Abe each noticed problems with the building, and finally they made a motion at an owners meeting to hire a lawyer and sue the property developer and builder.

After a lawyer was hired, the attorney came to the building for an informational meeting and met with members of the owners association to discuss their complaints, their rights as condominium owners, and what California law allows with regard to construction defects. The meeting was videotaped for the benefit of those owners who could not attend.

The attorney for the defendant now seeks to subpoena the recording of the informational meeting and also plans to depose homeowners about the information imparted at the sessions. The plaintiff’s lawyer objects, but the defendant’s counsel tells the Court that first, it was only an informational meeting and was at the condominium, not at a law office, and second, there was no privilege because there was no attorney-client relationship between the individual condo owners and the association's counsel.

Issue: How will the court rule on the plaintiff’s motion to quash the subpoena and disallow the deposition?

20. Seahaus La Jolla Owners Ass'n v. Superior Court (La Jolla View Ltd., LLC), 2014 BL 69340, Cal. Ct. App. 4th Dist., No. D064567, 3/12/14.)