

Professional Responsibility and the Legal Profession
Kirkland Section
Spring 2009 Final Exam

- 1) Answer the following questions yourself, without the assistance of any other person. You may consult any sources you bring with you in preparing your answers. You may not access and consult the Internet during the exam.
- 2) Put you exam number on the upper right hand corner of your exam.
- 3) If you have questions or concerns during the exam, ask the Registrar. Approaching me with questions risks compromising your anonymity and therefore is improper.
- 4) Cite to the Model Rules of Professional Conduct by rule number. You don't need to quote the rules in full when you apply them. Certainly, you should quote the pivotal rule language as you apply it.
- 5) Assume the scenarios described in Questions One and Two below take place in a state that has adopted the Model Rules without change.
- 6) Thank you for your engagement in the course throughout the semester. Have a good summer.

Question One- 45 points

Sarah is a new associate at Tate & Kang. She feels incredibly lucky to have landed this job in a tough economy. She has substantial student loans and needs the job at Tate & Kang, a 100-lawyer firm, to make those payments.

Sarah attended a hearing on a case with two partners, Tom and Dan. The three traveled by car to the courthouse and on the ride Tom and Dan talked about a call Tom had received from Mark, a lawyer at another firm who was trying to locate an old friend of Tom's. The old friend was a prominent financier in the city. Tom told Dan:

“Mark asked me if I knew how he might reach Jeff (the old friend). Mark said Jeff was a key witness for the defense in a securities fraud case Mark was defending. I had actually called and spoken to Jeff by a couple of minutes before Mark called me. But Jeff was on vacation in California and I didn't want Mark to bother Jeff. Jeff's had a really tough couple of months and really needed this vacation, so I told Mark I didn't know where Jeff was or how to reach him.”

Tom and Dan continued to talk and Tom mentioned that he had never represented Jeff because Jeff's sister is a lawyer and she handles all of his legal work. Sarah overheard all of this conversation.

What should Sarah do? Explain the analysis Sarah needs to walk through and then discuss her options and what you think is her best course of action.

Question Two (35 points)

Ari is a litigation associate at Shea, Porter & Hodes, a 100 lawyer firm in the city. He is a third year associate. Susan, a partner in the firm, comes to Ari and asks him to take on a case for one of her clients. She says it's a perfect case for him because it is relatively small and will be a great opportunity for him to develop litigations skills. The client, Mary, wants to bring a civil suit against Paul for defamation and intentional infliction of emotional distress. Mary and Paul both have teenage sons who play basketball. Their teams are rivals. During a game, Mary and Paul got into a shouting match on the sidelines. Paul got so angry he shoved Mary, causing her to fall. He also accused Mary, who was acting as timer for the game, of having shaved minutes off the clock to her son's team's advantage. All of the 100 parents standing on the sidelines saw and heard the altercation.

Susan tells Ari that Mary owns a successful manufacturing business in town and Susan is handling all of the corporate work for her company. Although the case is small, Susan wants to take it on as a favor to Mary.

Ari tells Susan that one of the litigation partners in the firm, Stan, represented Paul in a criminal case arising out of this same incident. Mary pressed criminal assault charges against Paul and Stan represented Paul in the matter, though Stan withdrew before trial because Paul ran out of the money and decided to proceed pro se. Susan says she knows about Stan's representation of Paul, but she doesn't think it's a problem. Ari asks Susan if he should get Paul's consent before taking on the case. Susan tells Ari there is no need to get Paul's consent, and that she really doesn't want to "open a can of worms." She tells Ari "don't worry about it. Meet with Mary and draft the complaint. File it and have fun with this. It's a great opportunity for you. Just don't talk to Stan about the case and everything will be fine." Ari believes this would be a terrific opportunity for him to take charge of a case from start to finish. He'd like to take it on.

What should Ari do? Explain the analysis Ari needs to walk through and then discuss his options and what you think is his best course of action.

Question Three (20 points)

You are an employment lawyer. A new client, the CEO of a manufacturing company calls you and says, "I'd like to fire all of our employees over 50 years of age. This will include factory workers and clerical staff. It won't include managers. I don't like having all these old codgers around." You know that firing employees based on age (over 40) violates the Age Discrimination in Employment Act. Will you

1) Tell him he can't fire everyone over forty, explaining why such a plan violates the ADEA, without suggesting to him a way he might do what he wants while minimizing the company's exposure, or

2) Advise him that firing everyone over 50 would expose the company to the risk of lawsuits under the ADEA, but if he persists in wanting to fire the over 40 employees, help him to find a way to do this that would reduce the company's exposure (e.g. use a productivity test to determine who will be fired)?

I am not looking for an analysis of the rules here. I want you to discuss what you believe is your role as a lawyer. There is no right answer here. I know and respect lawyers who would take opposite view here. I have done both of these things myself in similar situations. I am evaluating your thoughtfulness in exploring the issues presented.