

**PROFESSIONAL RESPONSIBILITY FINAL EXAM
TAKE-HOME QUESTION**

Professor Simon

Spring 2003

INSTRUCTIONS

A. General

1. This question will constitute 1/3 of your final exam grade.
2. You must bring your answer with you to the in-class portion of the final exam and turn it in with your bluebook.

B. Format

1. Your answer must be typed. Type on only one side of a page.
2. You are limited to a total of 900 words (roughly three pages). You will be penalized if you exceed this limit so please be sure to use the "word count" feature of your word processing program.
3. With these word limitations, you must take time to organize your answer. On the take-home portion of the examination, I am expecting higher quality answers than I would expect in an in-class examination. I am looking to see how well you **organize and analyze** the issues raised in the question. You will get little credit for simply stating conclusions.
4. Your answer should be double-spaced. Use 8 1/2" x 11" paper. Use 1 1/2 inch left margins. All other margins should be 1 inch. Use 12 point Times New Roman, Courier, or Century font.
5. Put your exam number on the top of each typewritten page you turn in. Place a page number on the bottom of each page you turn in. The page numbers may be handwritten.

C. Honor Code Issues

1. The Pierce Law School Honor Code applies to this examination. You are to work alone. You may consult your notes, books or any other material, but you are not to talk to or work with anyone else. If you compose your exam in the library or computer center, please do not put drafts of your answers in the recycle boxes.

2. You are to rely solely on the materials you used for the course and are **not to do any additional legal research** on this question once the question has been made available.
3. I believe there are important educational benefits to using a take-home for this type of question. I know this can increase the temptation to improperly collaborate, especially with students under the stress of the exam period. Please do not jeopardize your future by violating the Honor Code on this exam.

D. Question (75 Points)

The State Supreme Court is considering a proposal to define “the practice of law” as:

- (a) [T]he application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.
- (b) A person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:
 - (1) Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others;
 - (2) Selecting, drafting, or completing legal documents or agreements that affect the legal rights of a person;
 - (3) Representing a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or
 - (4) Negotiating legal rights or responsibilities on behalf of a person.
- (c) Whether or not they constitute the practice of law, this section permits as an exception:
 - (1) *Pro se* representation;
 - (2) Serving as a mediator, arbitrator, conciliator or facilitator;
 - (3) Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct; and
 - (4) Practice permitted by federal law.

The comment to this proposed rule states that "for a person's conduct to be considered the practice of law, there must be another person toward whom the benefit of that conduct is directed....The conduct also must be targeted toward the circumstances or objectives of a specific person. Thus, the publication of legal self-help books is not the practice of law." The Definition further notes that non-lawyers engaged in the practice of law could be subject to civil and criminal penalties.

The Court has asked its Rules Advisory Committee to take public testimony and make recommendations on whether this rule, if adopted, would serve the public interest. The Committee is made up of a judge from each level of the court system, partners in firms of varied sizes, a law professor, and two non-lawyers.

You have been retained by an organization, People for Equal Justice, who believe that skilled persons other than lawyers ought to be able to provide many, if not most, legal services. They wish you to prepare your best arguments that the rule as drafted does not further the public interest. They know, as a talented advocate, that you will not ignore the arguments likely to be made by the Bar Association and others in support of the proposed rule.

E. Have a good holiday break, and thanks for an enjoyable semester.