

Law of Lawyering

Professor Sammons

Fall Semester 1997

1. You should have nothing with you other than something to write with. Please put all written materials either outside the classroom or along the walls of the classroom.
2. Please take **two** blue books as they are being passed around the room. **Put your exam number on the front of each blue book.** If you do not know your exam number come see me now.
3. You may write on both sides of the page and you do not need to skip lines. I would suggest, however, that if your writing is very bad that you should skip lines to make it more readable.
4. You may answer the questions in whatever order you prefer, but please put the number of the question in very large print at the beginning of each answer.
5. If you use more than one blue book for the exam, put the second blue book inside the first, the third inside the second, and so forth when you turn them in. Turn all blue books in **face down** in the box provided at the front of the room.
6. You do **not** need to turn in the examination questions.
7. Check now to see if you have four pages in addition to this cover page. If you do not, raise your hand. **Do not read the questions now.**
8. There are three questions. Each question is of equal value. Each question is based on something we discussed in class so do not be surprised that the questions seem familiar to you.
9. You have **three hours** to complete the exam. You should not expect, however, to take more than two to two and a half hours. I believe there is plenty of time to complete this exam. I will post the time in increasing small intervals on the board at the front of the room.
10. Best of luck on the exam.

Question #1

Please note: This problem is a variation on Problem 2-8 in our text. Please note that there are differences that raise issues other than those we discussed in class.

You represent Nic Donetti, who has been under investigation in connection with the death of his wife, Myra. Myra drowned in what Donetti says was a boating accident. The police have been suspicious of Donetti's story from the beginning. This morning the prosecutor held a press conference to announce Donetti's indictment for murder. The prosecutor informed reporters that the couple's eight year old child, Michael, who was with them in the boat, had told the police that his father had killed his mother. The prosecutor also said that the police had uncovered a motive for murder: only a month before Myra's death, Donetti had taken out a large insurance policy on her life.

You and your client are outraged at the prosecutor's conduct because information given to the police was, in your opinion, grossly misleading. Donetti tells you that Michael did not see his mother fall into the water. What he saw was Donetti extending an oar for his wife to grab. Michael was confused as to what was happening and said: "Don't hurt mommy." Donetti also tells you that he did not take out a new insurance policy on his wife's life; he converted an existing term policy to a whole life.

All of this is as you expected. What Donetti then adds, however, is that the reason Myra was in the water was that Donetti had pushed her in after she revealed to him her adultery with one of her colleagues at work. Donetti says he knows Michael did not see this because Michael was asleep. The splash in the water awoken him. Donetti adds that his efforts to reach his wife with the oar were sincere. He immediately regretted what he had done. He fears, however, that no one will believe this change of mind especially in light of his son's confused testimony.

While you and Donetti are talking, you receive a phone call from a local reporter for one of the local television stations. The reporter says that her station will be running the prosecutor's news conference on the six o'clock news. She wants to know if you have any comments.

Imagine that you can freeze frame the situation. Take me through what you would say to Donetti about the representation and what you would say to the reporter about the news conference and why.

Question #2

You are a member of the Formal Advisory Opinion Board in a Model Rules State. The Board has assigned to you the task of drafting an Opinion on the following:

An attorney has asked what he should do when he receives a fax erroneously delivered to his fax machine from an opposing attorney that was intended for the opposing attorney's client. The attorney says that this happens both in situations when the mistake is obvious from the cover sheet and in those when it is not but can be readily discerned from the contents of the subsequent pages.

This Opinion should not be limited to an analysis of ethical regulations as applied to this specific situation. It is customary for Opinions, in addition to analyzing ethical regulations, to notice applicable law, offer practical advice on how the matter should be handled, and justify the advice given.

Draft the opinion.

Question #3

Rhoda and Carl Pierce are married, but not for long. Several months ago they went to see Anna Zimmerman, a divorce lawyer. At the office they first filled out a number of forms that Anna uses routinely for all domestic clients. These forms included questions about financial matters, custody desires, and so forth. Soon after the initial interview began, Anna advised the Pierces that, although they were currently in agreement about custody, support, and alimony, she could not represent both of them in the divorce because the risk of conflict arising was too high. She said she would step out of the office to permit them to discuss this and decide between the two whom she should represent.

When she returned to the office the Pierces announced their decision: She should represent Rhoda. Anna said that was fine and advised Carl to seek other representation. After Carl leaves the office, Rhoda tells Anna that she has been seeing a man for the past six months or so, sometimes with the children present, whom she hopes to marry after the divorce. Rhoda admits that the children are very uncomfortable with her new friend.

Carl goes to see Carol Martel who agrees to represent him. In the initial interview, Carl tells Carol that there may be some reason for concern about Rhonda's new friend and his relationship with the children. At a later interview, Carl tells Carol that he has become more concerned about this, especially so after noticing a bad bruise on his seven year old son's leg when he gave him a bath soon after he had been with his mother on one of her visits with her friend. He says that when he asked his son about it the son seemed anxious and did not want to talk about it. Carl decided to tape his own phone hoping that Rhoda and her friend might say something that would help. Yesterday, he says, they did, and he hands a tape to Carol. "When you listen to it," he says, "you'll hear him ask how Bobby's leg is and apologize to Rhoda for losing his temper and 'belting' the kid." He then adds, "I want you to contest custody!"

Carol has now filed an answer to Rhoda's divorce complaint contesting custody of the children. Anna and Carol have agreed to meet to discuss the matter. When Anna comes in, she says, "What's going on here." Carol replies, "A contested custody matter, it seems to me." "Sure I know that," says Anna, "but this guy sat in my office not two months ago and agreed that his wife could have custody of the children." What do you propose to extort from her by adding this phony custody claim?" She continues, "I don't know of any reason why Rhonda would be considered anything other than an ideal parent." Carol then says, "Well, we are very serious about this. Mr. Pierce cares about the well being of his children very much. I believe that what is best for the children would be custody with Mr. Pierce, but we are willing to have a guardian ad litem appointed for the children who could, after becoming familiar with the circumstances, advance the interest of the children in a neutral way." Anna responds, "We will resist that. I see no reason why the court can't make the decision on its own. There is no indication that the children needs the special protection of a guardian ad litem."

Carl has now moved out of the family home. He has not seen the children for three weeks. His calls to Rhoda are unanswered and no one answers the door. At his request, Carol

calls Anna. When asked about her client's whereabouts, Anna says, "They're gone. I told her about your request for a guardian ad litem. Next day I got a note from her telling me that she and the kids had taken off. I'm not sure we'll hear from them again."

Imagine that you are Carol Martel. You are incensed at what has happened. Your initial reaction is to file a complaint with the State Disciplinary Board against Anna Zimmerman, but you are not sure for what. You know that you are too close to this matter to consider it carefully so you have asked another lawyer in the firm to join you in reviewing these events for their ethical implications. Write the conversation between the two such that it is a careful consideration of all of the ethical implications of the story you have just read.

Do not limit yourself to a review of the potential ethical violations by Anna Zimmerman. Carol has asked the other lawyer to consider everything that happened in the case. In other words, cover all of the matters given in the answer form I gave out to you in class.