

Narrative Answer Questions [total weight is two-thirds of the examination]

This section contains three (3) questions. The weight of each is stated below.

The total word limit (for all questions combined) is 3,000 (three thousand) words. Students should consider their answers thoroughly before writing them, and they should take time to proofread after writing them. When grading essays, I will consider organization, clarity, and attention to quality of writing. Time spent outlining an answer will be time well spent. The same is true of time spent reviewing drafts.

Question 1 [one-half (50 percent) of the narrative answer portion of the examination]

You are a new associate at a law firm. Among other responsibilities, you provide occasional assistance to the partner who serves as the firm’s “ethics counsel.” The ethics counsel offers advice on lawyer law to other lawyers at the firm. A colleague at the firm sent the following email message to the ethics counsel:

Dear Ethics Czar:

Last week, three musicians came by seeking advice. They are a singer, a guitarist, and a drummer, and they play together in a band. They would like help creating a corporation that would deal with the logistics of their music business—copyrighting songs, arranging concerts, paying roadies, booking travel, collecting ticket and album sales revenue, paying taxes, etc. The idea of course is that the corporation will pay them money when it turns a profit. We would also perform some work for the corporation itself once it is formed. (For example, we might negotiate a contract between the corporation and an accountant.)

By the way, there was once a fourth member of the band, the bassist. The bassist and the drummer were married, and the bassist left the band after the divorce. We represented the bassist in the divorce, which became final in 2009.

As of now, the band doesn’t have much money. It mostly plays in small clubs, and the musicians support themselves with day jobs. But a few bigger gigs have been booked for the coming summer, and a couple of record companies have expressed interest in selling the band’s next album.

The musicians have suggested that instead of paying us now, they might instead give us a share of the band’s future income in exchange for our legal services. This could be some percentage of concert revenue, some share of album royalties, or something

similar. Also, the drummer suggested that he could assign us the media rights concerning the story of his sensational divorce.

Assuming we work for these people, we'd like to obtain our usual advance waiver of future conflicts of interest. You will recall that in the past our firm has represented hotels and other clients who have sued musicians after the "trashing" of hotel rooms and other such behavior associated with big-name rock stars. Ideally, we'd get a waiver allowing us, should the situation arise, to represent entities that might one day have claims against these musicians.

We would also like to ensure that should the clients complain of malpractice, any disputes between us and them would go to binding arbitration.

May we proceed with the representation of the musicians? If so, may we use the creative fee arrangements proposed by the musicians? May we seek to obtain the advanced waiver and an arbitration clause?

By the way, one of our associates hit it off with the singer, and the two of them are going out to dinner tonight. Should I be worried about that?

The ethics counsel asks you to draft a reply to the message. What do you write?

[NARRATIVE QUESTIONS CONTINUE ON NEXT PAGE.]

Question 2 [three-tenths (30 percent) of the narrative answer portion of the examination]

[The facts of this question may appear similar to those of a multiple choice question. Note that the facts presented here are the ones you should use when writing your essay answer. You need not worry if the facts differ somewhat from the multiple choice question.]

You are the general counsel of HugeSeller, a major American consumer products corporation, which has received a letter from the U.S. Department of Justice. The letter notified the company that it is a “target” of investigations concerning alleged violations of federal environmental laws. Your boss, the company’s chief executive officer, ordered your office to conduct a full internal investigation of the alleged wrongdoing.

The investigation will involve the review of HugeSeller documents as well as interviews with several HugeSeller employees. Because you are busy, you plan to delegate most of the work to two associate general counsels, whom you recently hired. Neither of them has worked on an internal investigation before. After they conduct the initial investigation, you intend to review their work and to decide what else must be done before your office submits its report.

Before they begin their work, the associate general counsels ask you two questions:

- (a) Are we permitted to interview HugeSeller employees whom we suspect broke the law?
- (b) If so, what must we do to avoid getting in trouble related to these interviews?

First, indicate how you would respond to their questions. Second, explain whether their behavior during the investigation is actually your problem.

After answering the questions above, address the following new information:

The associate general counsels return one week later and report as follows:

“We found a bunch of documents showing that HugeSeller has dumped factory waste into a river in violation of the Clean Water Act. In addition, some employees have admitted to us that they participated in the dumping or ordered it to be done.”

You report this news immediately to the CEO. She describes how she intends to act:

“We need to destroy those documents ASAP. Also, get whoever was involved in the dumping to my office so I can make sure they don’t blab to anyone else.”

What do you do now?

[NARRATIVE QUESTIONS CONTINUE ON NEXT PAGE.]

Question 3 [one-fifth (20 percent) of the narrative answer portion of the examination]

You are a new clerk to a justice of the Supreme Court of your state. Like Missouri, your state has not adopted any amendments to its equivalent of Model Rule 1.10 that allow a law firm to avoid the imputation of conflicts if a new lawyer (who joined the firm upon leaving a different private law firm) “is timely screened” and other requirements are met. *See* Model Rule 1.10(a)(2); *see also* Missouri Supreme Court Rule 4-1.10. (The relevant Model Rule amendments were enacted in 2009.)

Your state’s rule (which is materially identical to the Missouri rule) is reprinted here:

**RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL
RULE**

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule 1.10 may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

In your state, the Supreme Court can amend the rules of professional conduct governing lawyers in the state. The justice for whom you work chairs the court’s committee on ethics and procedure. The justice seeks a memo answering this question:

“Should we adopt the ABA Model Rule, keep our existing Rule 1.10, or do something else?”

[END OF NARRATIVE ANSWER SECTION.]

[END OF TAKE-HOME EXAMINATION.]