

PART II: Essay Question (65 Points)
Recommended Time: 1.5 hours

Attorney Ted Tech is a sole practitioner with a busy family law practice. To increase his client base, Tech sets up a website with truthful, non-deceptive information about filing for divorce, frequently asked questions, and recommended interview questions to ask prospective divorce attorneys. On the website he also lists routine legal services and the prices he charges for each type of service. Finally, he has a forum on his site where visitors to the site can post questions of Tech or inquire about legal representation.

Wanda Winfrey is online and finds Tech's site. She and her husband Harrold Hamlin have been separated for six months and they have recently decided to file for divorce. Winfrey is very depressed about the prospect of a divorce and posts a long message late one night on Tech's site explaining what went wrong in her marriage and seeking Tech's advice. Unfortunately, Tech's solo practice has become extremely busy and he is behind on checking the emails that come through the website. Several days later, Harrold Hamlin is having a drink at a bar in the middle of the afternoon when Tech sits down at the bar stool next to him. They get to chatting and Hamlin tells Tech about his marital problems and his decision to divorce. Tech mentions that he is a divorce attorney and gives him his card. He tells Hamlin before leaving, "Whatever you do, freeze all of your joint credit cards because any debt run up now will belong to both of you." "Boy, what a fortunate thing that I ran into you!" responds Hamlin. "Actually," replies Tech, "I get most of my clients at this very bar. I come here every day for lunch and one day I realized that anyone who is drinking in the middle of the day probably has problems and probably needs a lawyer to help solve those problems. I try to come to this bar as often as I can and while I am here I scout potential clients. I have even figured out a way to write my bar tab off on my taxes as a business expense!"

Hamlin comes to see Tech a few days later and Tech agrees to take Hamlin's case. They shake hands and go get a round of drinks at the local bar to memorialize their agreement. After filing the petition for divorce, Tech and Hamlin are shocked to be served with a motion by opposing counsel to disqualify Tech as Hamlin's attorney. It is only after Tech gets back to his office that he finds Winfrey's email (and several follow-up ones she sent) in his in-box.

Discuss the professional responsibility issues raised by the above facts, under both the ABA Model Rules of Professional Conduct and (if they differ) the California Rules of Professional Conduct. You need not cite the rules or statutory provisions by number, and you need not discuss the California provisions if they do not differ from the ABA Model Rules. You may also discuss any applicable case law.

END OF EXAM