You have four hours to complete this exam. There are three questions: the first is worth 50% of the total exam score, the second is worth 40% of the total exam score, and the third is worth 10% of the total exam score.

You may consult the Model Rules of Professional Conduct, and should assume that these are the governing rules for purposes of this exam. This is the only source you may consult during the exam. However, you are encouraged to draw on your understanding of assigned readings and class discussions to support your answers. Do not cite to or otherwise refer to any outside materials.

If you feel that more information is necessary to make your analysis complete, identify what additional facts you would need and how those facts would be relevant for your analysis.

The College of Law Honor Code applies to the administration of this examination. By submitting your answers you agree that you have complied with these exam instructions and the Honor Code.

Good luck and enjoy your well-deserved break.
A drug dealer named Ron Sanborn has been found dead in a motel room, his drugs and cash missing and the initials “GH” carved in his back. You are a solo practitioner specializing in criminal defense. You have been appointed to represent Greg Hannigan, who is being accused of the murder. The crime scene evidence is both horrifying and perplexing. There are signs of struggle, and the forensic evidence reflects three different blood sources – one is a match with Sanborn, one is a match with Hannigan, and the third matches neither. Hannigan has acknowledged to you that he carved his initials into Sanborn’s back, but asserts that Sanborn was already dead when Hannigan arrived at the motel room to purchase drugs. You’re not sure what to make of this story, but you certainly don’t question the part about the drugs. Hannigan has been abusing a wide variety of drugs for more than twenty years, and is intensely addicted to methamphetamine. He has clearly been high during several of your meetings with him, and at other times he has exhibited the confusion and psychotic reactions associated with meth withdrawal. When neither high nor suffering from withdrawal, however, he is lucid and focused.

The prosecutor seems to have developed the theory that Sanborn made sexual overtures toward Hannigan during their drug transaction, and that Hannigan, feeling threatened, attacked Sanborn in a fit of rage. The prosecutor has offered a deal that would allow Hannigan to plead guilty to second degree murder, and would require him to admit that he killed Sanborn in the heat of explosive anger brought on by Sanborn’s amorous advances. The relief you felt upon receiving the plea offer was immense. A second degree murder conviction would probably result in a sentence of 15 to 25 years. The prosecutor had previously announced her intention to seek the death penalty if the case goes to trial. You haven’t done all that many jury trials, but you certainly know enough to foretell that a jury’s review of crime scene photos – with your client’s initials carved into the victim’s back – is not exactly a recipe for acquittal. When you meet with Hannigan to convey the plea offer, he barely allows you to explain the terms of the deal before interrupting you to reject the plea out of hand. First, Hannigan continues to insist that he did not kill Sanborn. Second, he has a fear of being associated in any way with homosexual conduct and absolutely refuses to admit to being the subject of Sanborn’s sexual interest. How should you proceed?

For this part of the question, assume that Hannigan is no longer suffering from the effects of methamphetamine addiction or withdrawal. Assume as well that the case went to trial and that Hannigan was convicted of murder in the first degree, a capital offense. In your jurisdiction, once a defendant is convicted of a capital crime, a separate sentencing proceeding is held during which it is the defendant’s burden to prove that there is sufficient mitigating evidence such that the death penalty should not be imposed. [Do not address the constitutionality of this scheme in your answer.] A defendant’s failure to meet this burden will result in a sentence of death.
Your meetings with Hannigan to prepare for this hearing have uncovered some powerful mitigation evidence. Hannigan has confided in you that he was subject to extraordinary physical and sexual abuse at the hands of his step-father from the time he was eight years old until he left home at the age of thirteen. You know both from experience and from consulting with other attorneys that this type of mitigation evidence is extremely effective. However, Hannigan has refused to testify to that effect and has forbidden you from calling his mother and sister as witnesses. He wants to avoid the death penalty, but doesn’t want this aspect of his personal life put on display. How should you proceed?
2. You are a junior lawyer at a national law firm with an impressive roster of Fortune 500 clients. In addition to general litigation, intellectual property, and transactional work, your firm has a thriving regulatory practice. The firm represents pharmaceutical companies in administrative proceedings before the Food and Drug Administration, energy clients involved in license application and enforcement proceedings in front of the Federal Energy Regulatory Commission, as well as clients from various industries appearing before the Federal Trade Commission regarding possible antitrust violations. Your firm is also involved in some very interesting pro bono work – in particular, the representation of a Moroccan national who was legally present in the United States on a student visa when he was picked up by federal authorities and transferred to Guantanamo. He has been held there for four years, and the government is asserting the power to detain him indefinitely on the basis of a presidential declaration that he is an enemy combatant. Your firm is arguing that the government must either release him or file charges against him and try him in a court of law. You feel extremely fortunate to have had the opportunity to work on this important case, and you’ve really thrown yourself into it – both the legal research and the factual investigation have been fascinating. One morning, visiting your favorite news websites, you come across a story with some shocking allegations. Lawyers from various parts of the country who represent other Guantanamo detainees are alleging that the government has been monitoring all communications to and from their law firm offices. One lawyer, who declined to give his name, said that he had heard noises on his office telephone that convinced him that the line had been bugged. Another lawyer said that government officials who insisted on remaining anonymous told him that he “should be careful in his electronic communications.” You immediately go speak with the partner in charge of this case. The partner thanks you for your diligence and tells you that she will consult with the firm’s legal ethics specialist. A week later she tells you that the government has refused to confirm or deny the eavesdropping allegations and that the firm has decided that no additional action is necessary.

a. Is the firm’s assessment correct? Analyze the ethical issues presented in this situation and evaluate what, if anything, the firm is required to do under the Model Rules. Then comment on what you think the firm should do.

b. What are your individual ethical obligations in this scenario?
3. Choose one of the following: Model Rule 1.6, 1.5, or 8.3. Then identify an improvement you would suggest to the drafting committee. Be sure to explain the underlying purpose (or purposes) of the rule, and then set out how the rule as currently drafted falls short in your view. Your revision may be drastic, but it need not be – in any event, you should explain how your proposed version is superior to the current version. If you think that none of these rules would benefit from revision, do ONE of the following:

- Divide your answer into three parts; for each of the afore-mentioned rules, identify the underlying purpose (or purposes) and briefly explain how the current version reflects the best possible approach to furthering those goals.

OR

- Choose another rule and follow the underlined directions above.