

**JULY 2017**

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**INSTRUCTIONS FOR THE  
ILLINOIS ESSAY EXAMINATION**

**(90 Minutes)**

***The Illinois Essay Examination consists of the 3 questions contained in this booklet. You are required to answer all 3 questions.***

**Laptop users** – Be sure to type your answers in the correct fields. Type the answer to Question 1 in the field for Question 1; then advance to the field for Question 2 before typing the answer to Question 2, etc. Be aware that you will be limited to 4,600 characters for each answer.

**Handwriters** – You have been provided with 3 answer booklets that are numbered to correspond to the 3 questions. Be sure to write each answer in the correct answer booklet and confine the answer to that booklet. There is no cover to the answer booklet – begin your answer on the front page. Write your answer on the printed lines only, and do not exceed one handwritten line per printed line. Portions of answers that exceed these limitations will be disregarded by the Board. The printed lines are on one side only. Do not remove pages from or disassemble any booklet. Answer booklets must be intact when handed in.

Scratch paper for notes and outlining is being provided and will be collected at the end of the exam.

(Questions begin on next page)

## Question 1

Spyware Services, Inc. ("SSI") designs custom computer software that permits large corporations to monitor malicious software or other programs that might infect their computer networks. After significant success in New York, SSI's president ("President") recently targeted several corporations in Illinois for SSI's newest sales efforts. Instead of deploying one of SSI's existing employees to approach the relevant decision-makers at the Illinois corporations, President decided to hire an outside Illinois salesperson ("Salesperson") to pitch SSI's products. President also sent a personalized letter to the chief information officer ("CIO") of Mega Corporation, located in Peoria, Illinois, advising the CIO that SSI had hired Salesperson and had given Salesperson full authority to market SSI's services.

SSI entered into a written sales and agency agreement (the "Agreement") with Salesperson. The Agreement provided that Salesperson would receive 5% of the overall value of all contracts that he entered into with Illinois corporations on SSI's behalf. The Agreement also required Salesperson to use a standard-form contract (the "Contract") specifically prepared by SSI for use with Mega Corporation, but permitted Salesperson to negotiate: (a) the term of the contract for services between SSI and Mega Corporation, provided that term was at least 7 years, and (b) the fee for SSI's services, provided the fee was between \$1.5 and \$2.0 million per year. The Agreement specifically prohibited Salesperson from modifying any other terms in the Contract. The Contract required SSI to make their software operational at Mega Corporation within six months of the Contract being formally approved by Mega Corporation, and to make monthly on-site software diagnostic visits.

During his negotiations with the CIO, Salesperson explained that his Agreement with SSI required him to charge Mega Corporation \$2.5 million per year. Days later, after further negotiations, Salesperson struck a deal with the CIO and Mega Corporation for a seven-year term

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at a cost of \$2.5 million per year. To compensate Mega Corporation for the high annual costs, Salesperson modified the "software maintenance" portion of the Contract to require SSI to make weekly on-site visits to run diagnostics on the system.

The Contract with SSI was formally approved by Mega Corporation's Board. Salesperson then personally delivered the fully executed and approved Contract to SSI. Five days later, after reviewing the Contract, President personally congratulated Salesperson for reaching such a favorable deal with Mega Corporation. SSI made their software operational at Mega Corporation four months later, and received \$2.5 million for the first year's services. Soon after, SSI informed the CIO that SSI would only conduct on-site diagnostics on a monthly basis. The CIO and Mega Corporation were not happy to learn that SSI would not conduct on-site diagnostics as often as expected.

Following six months of unsuccessful attempts to resolve their dispute, SSI and Salesperson (in his personal capacity) were properly served in Illinois state court with a complaint filed by Mega Corporation alleging breach of contract and seeking specific performance of the modified software maintenance clause.

- A. Under agency principles, will Mega Corporation prevail on its suit against SSI for breach of contract and specific performance arising from the modified software maintenance clause? Explain your answer.
  - B. Under agency principles, can SSI recover in an action against Salesperson for any losses it sustains as a result of Salesperson's modification of the software maintenance clause? Explain your answer.
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## Question 2

Renter was in the second year of a three-year lease for a modest apartment in the basement of a house owned by Landlord in Chicago, Cook County, Illinois. Renter's lease was valid, she had never made a delinquent payment, and had never violated the terms of the lease. Still, Landlord orally advised Renter in March of 2017 that she and her children had to vacate the unit by April 30, 2017 – a full 18 months earlier than the lease's expiration. Landlord's motivation for pushing her out was to sell the house to a developer who wanted to expand an adjacent commercial property. When Renter refused to move, Landlord shut off the gas to Renter's apartment, preventing Renter and her children from heating the apartment or getting hot water.

Renter was advised to hire a lawyer, but she concluded she could not afford one. Renter wrote a simple breach-of-contract complaint and filed it *pro se*. Renter also properly accomplished service on Landlord.

Renter, Landlord, and Landlord's lawyer ("Lawyer") all appeared in person before a Cook County, Illinois Circuit Court judge during the first scheduled hearing on the case.

The following day, Lawyer called Renter to discuss the case. Lawyer asked Renter whether she planned to hire a lawyer. Renter said she was thinking about doing so, but was not sure. Lawyer told Renter, "Let me put aside my work for [Landlord] for a moment. If I were an outside lawyer looking at the situation, I would still conclude that [Landlord] has the law on his side. Consider that when you decide how to spend your money." Renter then mentioned her plan to submit Rule 216 Requests for Admissions of Fact to Landlord, to which Lawyer responded, "Don't, those are not permitted in Cook County. The judge will not allow my client to answer them. But you will need to answer the interrogatories I'm going to send you tomorrow, within 14 days."

The case proceeded to trial. After the judge's *voir dire* of the first group of prospective jurors in order to determine their qualifications to serve, Lawyer requested a side-bar conference. At side-bar, Lawyer asked the judge for permission to question the prospective jurors directly regarding their qualifications as jurors. Renter objected to the request. The judge asked Lawyer why he believed

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he needed to conduct a direct examination of the prospective jurors himself, to which Lawyer responded, "For the simple fact that I think the Supreme Court Rules give me an absolute right to do so, Your Honor." The judge responded, "I disagree," and denied the request. Jury selection continued without the direct participation of Lawyer or Renter. Jury selection was concluded and the jurors were sworn in.

By the end of the first day of trial, both sides had completed their presentations of evidence and had delivered closing arguments. At that point the judge, with the agreement of Lawyer and Renter, read the jury the 35 pages of written instructions that the judge had prepared, and the jury retired to deliberate. Lawyer asked the judge after the jury retired to provide the written instructions to the jury. Renter said nothing. The judge denied the request and explained, "This is not a complicated case, counsel. The jury has been adequately advised on the law."

An hour after their deliberations began, the jury sent the judge a note asking for a copy of the lease upon which Renter's claims were based. The lease had been received into evidence during the trial. The judge held a hearing, outside the presence of the jury, to consider the request. At the hearing, Renter informed the judge that she had no objection to the lease being sent to the jury room. However, Lawyer strenuously objected to providing the jury with the lease. The judge then ruled that the lease could be sent to the jury room. The jury received the lease minutes later. The jury returned a verdict in favor of Renter.

- A. Did Lawyer run afoul of the Illinois Rules of Professional Conduct governing dealing with an unrepresented person? Explain your answer.
- B. Was Lawyer correct in asserting that the rules give him an absolute right to conduct direct *voir dire* of prospective jurors? Explain your answer.
- C. Did the judge err by refusing to send the written instructions to the jury room? Explain your answer.
- D. Did the judge err by sending the lease to the jury room? Explain your answer.

### Question 3

Victim was murdered in Jackson County, Illinois, on January 31, 2016. A witness ("Witness") saw the perpetrator leaving the scene. The police conducted an investigation. Based upon Witness's statements and other gathered evidence, Defendant was formally charged with murder on April 15, 2016. The Court appointed counsel ("Trial Counsel") for Defendant, who was being held without bond at the Jackson County Jail on the murder charge. His cellmate ("Cellmate") was in jail for an unrelated robbery charge.

Cellmate's lawyer contacted the lead detective ("Detective") on May 31, 2016, suggesting that Detective speak with Cellmate about information Cellmate had regarding Victim's murder. Detective did so on June 1, 2016. Cellmate told Detective that on May 29, 2016, Defendant confessed to him that he (Defendant) had killed Victim. In exchange for a reduced sentence in his robbery case, Cellmate agreed to cooperate with prosecutors by getting Defendant to repeat his confession to the charged murder while secretly recording it.

On June 15, 2016 Cellmate wore a hidden recording device while speaking with Defendant regarding the murder. Defendant allegedly repeated his confession; however, the recording device malfunctioned for 20 seconds and no confession was recorded. Detective then interviewed Cellmate about what Defendant had said to Cellmate on June 15, 2016. Detective prepared a report memorializing his interview with Cellmate on June 15, 2016, as well as the June 1, 2016 meeting between Detective and Cellmate, during which Detective first learned of Defendant's May 29, 2016 alleged confession.

Two weeks later, Trial Counsel learned of the May 29, 2016 alleged confession and the June 15, 2016 alleged confession, when she received Detective's report and a copy of the partially inaudible recording from the June 15, 2016 conversation between Defendant and Cellmate.

Defendant's case went to trial in early September of 2016. On direct examination by the prosecutor, Cellmate testified about the June 15, 2016 conversation that he had with Defendant regarding the murder, including details of Defendant's alleged confession on that date. Trial Counsel did not object to this testimony. While still testifying on direct examination, Cellmate was then asked

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to describe Defendant's May 29, 2016 alleged confession. Trial Counsel objected to that testimony based on improper bolstering. The court overruled the objection and allowed Cellmate to testify about the May 29, 2016 alleged confession.

Witness also testified about what he saw. The prosecution presented forensic and other circumstantial evidence linking Defendant to the murder. Defendant did not testify. Defendant was convicted.

Prior to sentencing, the judge considered a written motion for a new trial prepared by Trial Counsel. Trial Counsel did not include in that motion an allegation of error concerning the testimony and evidence of the June 15, 2016 alleged confession. The judge denied Trial Counsel's motion for a new trial and sentenced Defendant to 30 years in prison.

On appeal, Defendant was represented by a different lawyer, Appellate Counsel. Appellate Counsel cited the plain error doctrine (embodied by Illinois Supreme Court Rule 615(a)) to litigate an issue that was not raised at trial: that the use of Defendant's June 15, 2016 alleged confession to Cellmate violated Defendant's rights. Defendant, through Appellate Counsel, also alleged on appeal that Trial Counsel's failure to object to evidence regarding Defendant's June 15, 2016 alleged confession constituted constitutionally ineffective assistance of counsel.

- A. Did the use of Defendant's June 15, 2016 alleged confession to Cellmate violate Defendant's Constitutional Sixth Amendment and Ill. Const. (1970) Article I, Section 8 right to counsel? Explain your answer.
- B. Did the court err by overruling the "improper bolstering" objection? Explain your answer.
- C. Regardless of your response to question "A" above, what legal standards must Defendant satisfy in order to prevail on the ineffective assistance of counsel claim raised by Appellate Counsel? Explain your answer.