

QUESTION NO. 1

Members of the Church of Scientology believe that an immortal spiritual being exists in every person. A person becomes aware of this spiritual dimension through a process known as “auditing.” Auditing involves a one-to-one encounter between a participant (known as a “preclear”) and a Church official (known as an “auditor”). An electronic device, the E-meter, helps the auditor identify the preclear’s areas of spiritual difficulty by measuring skin responses during a question and answer session. The preclear gains spiritual awareness by progressing through sequential levels of auditing.

The Church charges a “fixed donation,” also known as a “price” or a “fixed contribution,” for participants to gain access to auditing sessions. These charges are set forth in schedules, and prices vary with a session’s length and level of sophistication. The system of mandatory fixed charges is based on a central tenet of Scientology known as the “doctrine of exchange,” according to which any time a person receives something he must pay something back. In so doing, a Scientologist maintains “inflow” and “outflow” and avoids spiritual decline.

Thomas Cruiser is a member of the Church of Scientology. He has paid thousands of dollars to the Church for auditing sessions and seeks to deduct these payments on his federal income tax returns as charitable contributions. The Church of Scientology is a qualified charitable organization under the Internal Revenue Code. As his tax attorney, what do you tell him? Please discuss the reasons for your advice.

QUESTION NO. 2

Kentucky's Open Record Act legislation provides in pertinent part as follows:

“All public records shall be open for inspection by any person...and suitable facilities shall be made available by each public agency for the exercise of this right.”

The General Assembly has enacted certain exceptions to this directive. One such exception has been stated as follows:

“The following public records are excluded from the application [of the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction...

Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy...

Review the following three fact patterns giving consideration to the Open Records Act legislation described above and conclude whether or not the records at issue must be disclosed to the requesting party. Explain your reasoning for each conclusion.

1. The Paducah Sun newspaper makes an Open Records request to the City of Paducah requesting full copies of final settlement agreements reached by the city in three civil lawsuits against it during the last year. The City of Paducah responds to the request by providing the newspaper with a computer print-out which show payments made by the city government in connection with the lawsuits. This information reveals that the city settled the three civil lawsuits for \$1.2 million, \$75,000.00 and \$23,500.00. However, the city refused to provide copies of the final settlement agreements or other information by which the newspaper could determine the identities of the recipients of the settlements and what the claimed injuries were in the lawsuits. The city argues that

the settlement agreements each contain confidentiality clauses which preclude disclosure of the settlement amounts. You are the new judge of the McCracken Circuit Court [the Circuit Court for the county where Paducah is located] and you have just received the motion filed by the newspaper seeking the withheld information from the City of Paducah as well as the response filed by the city. State how you will rule on this Open Records request and explain your reasoning for this conclusion.

2. The Lexington Herald-Leader newspaper makes an Open Records request to the Kentucky Board of Examiners of Psychologists, a public agency responsible for licensure and regulation of psychologists in Kentucky, seeking disclosure of the Board's investigation file concerning complaints made by patients to the Board about alleged sexual misconduct by a psychologist, Dr. Don Juan. During the last two years, a number of patients of Dr. Juan have made written complaints to the Board of Examiners of Psychologists, each charging acts of misconduct within the professional relationship on the part of Dr. Juan. All the alleged objectionable conduct consisted of sexual improprieties during Dr. Juan's treatment of the patients. After receiving the written complaints, the Board began an investigation and accumulated the complaints, Dr. Juan's patient files for the alleged victims, as well as the depositions of the complainants, Dr. Juan, and others. All of this information is contained in the Board's investigation file.

After completing its investigation, the Board issued a formal complaint against Dr. Juan charging misconduct toward four patients. A formal hearing was scheduled, but was rendered unnecessary when Dr. Juan resigned from his practice, surrendered his

license, and agreed that he would neither seek re-licensure nor attempt to provide mental health treatment to patients.

The Lexington Herald-Leader newspaper now seeks access to the Board's investigation file concerning Dr. Juan. The Board refuses to permit inspection of its file and it has denied the Open Records request.

You are the new judge of the Franklin Circuit Court [the county where the Board is located]. You have just received the motion from the newspaper seeking an order requiring the Board of Examiners of Psychologists to turn over its investigation file concerning Dr. Juan and you have also received the Board's objection to the motion. At the hearing you conduct on the motion, you learned that the Herald-Leader newspaper seeks this information because Dr. Juan has been hired by a competing newspaper in Louisville to write a column answering mental health questions submitted by readers. State how you will rule on this motion and explain the reasons for your decision.

3. Attorney Al Ambulancechaser has made an Open Records request to the Kentucky Department of Workers' Claims, a public agency which handles workers' compensation cases in Kentucky, seeking access to certain public records under the Department's control. Specifically, Ambulancechaser wishes to inspect forms filed with the Department pursuant to the Workers' Compensation Act known as the "Employer's First Report of Injury," which contains such information as the name and address of the employer and the nature of his business along with a brief statement of the facts giving rise to the employee's injury. The form also includes detailed personal information concerning the injured employee, such as the employee's name, home address, telephone number, date of birth, social security number, marital status, wage rate, and

number of dependents. Ambulancechaser's practice includes workers' compensation claims and he seeks to utilize the information contained in the forms to target direct mail solicitations to potential clients.

The Department of Workers' Claims has denied Ambulancechaser's Open Records request, stating that in addition to placing an unreasonable burden on the Department the request to inspect these forms would constitute a clearly unwarranted invasion of personal privacy. Ambulancechaser replies that the Kentucky Supreme Court has recently stated in an opinion that "the unambiguous purpose of the Open Records Act is the disclosure of public records even though such disclosure may cause inconvenience or embarrassment" and he further cites language used by the General Assembly in the Open Records legislation which states that the "free and open examination of public records is in the public interest".

You are the new judge of the Franklin Circuit Court [the county in which the Department of Workers' Claims is located]. You have just received Ambulancechaser's motion requesting an order allowing him access to the forms maintained by the Department of Workers' Claims as well as the response objecting to the motion filed by the Department. State how you will rule on this motion and explain your reasoning.

QUESTION NO. 3

Morgan Morose was a skeptical, neurotic, slightly obsessive-compulsive boy his entire childhood. He had a tendency to keep to himself and had a rather glum disposition. He had been diagnosed as a teenager with an obsessive-compulsive disorder and depression (OCD). He had a constant drive to obtain a perfect result with everything he did, which was probably a result of his OCD. When he went to law school when he was twenty-one, as many slightly neurotic over-achievers do, his OCD began to work against him and the resulting anxiety became overwhelming. His inability to cope with the rigorous demands of the professional school drove him deeper into depression. He went and sought help for his condition from one of the few doctors the University's health insurance accepted, Dr. Nick. The doctor prescribed ReLax XR; a new anti-depressant designed to curb anxiety and OCD. Morgan took the drug for several months, but slipped deeper and deeper into depression and became extremely obsessive-compulsive. On the eve of his first semester exams, Morgan ended his life by pulling a bookshelf full of old statutes on top of himself in the school library.

Morgan's parents are suing Nustuff, Inc., the manufacturer of Relax XR, for Morgan's wrongful death in federal court under diversity of citizenship jurisdiction. Their lawsuit is based on the report and testimony of their expert, Dr. Phil, a bald but brilliant neuropharmacologist, M.D., Phd. Dr. Phil has performed a ground-breaking study utilizing new and unique techniques that led him to the conclusion that when ReLax XR was taken regularly by professionals in high stress jobs, who were obsessed with

success and who also had a tendency towards depression, the rate of suicide among that group was extremely high compared to individuals in the same circumstances and mental states who did not take Relax XR. Consequently, Dr. Phil has been touring the United States promoting his new book that outlines this study and his findings. Dr. Phil's report and deposition testimony is that in his expert opinion, Relax XR was a substantial factor in causing Morgan's death.

Nustuff, Inc.'s attorney has challenged the admissibility of Dr. Phil's testimony.

Should the trial court allow Dr. Phil to testify regarding his innovative and groundbreaking study and or his opinion of Relax XR's role in Morgan's death? What should the court consider in making this determination?

QUESTION NO. 4

Roy "Tin Cup" McAvoy and his trusty sidekick, Romeo Posar, ran a dilapidated driving range in Cadiz, Kentucky. Roy had been a fantastic college golfer, teaming with David Simms to win several championships. However, following college, Roy and Simms went in opposite directions. Simms, despite a well-earned reputation for being rude to senior citizens, animals and children, was a diligent and smart player who had become a champion in the PGA. Roy, on the other hand, was a riverboat gambler who made questionable decisions both on and off the course. After a series of memorable blow-ups in regional tournaments, his golf career was over. He and Romeo spent their days at the range, hitting golf balls, living off powdered doughnuts, whiskey, and faded memories of Roy's glory days.

One day, David Simms visited Roy at the driving range. He explained that he was playing in a celebrity tournament being held at the Boots Randolph golf course in Cadiz the following month. The winner's purse was \$250,000, and Simms badly wanted to win. Despite their personal hatred for one another, Simms knew that Roy could help him at the tournament. Roy had played the course countless times, and knew every inch of it. Plus, it was a great opportunity for Simms to get in a dig at Roy. Accordingly, Simms offered Roy ten percent of whatever money he won at the tournament if Roy would be his caddy.

The offer was, as Simms had anticipated, a dig at Roy's considerable ego.

Nonetheless, he badly needed the money, so he agreed.

However, Roy was not a complete fool. He wasn't going to do anything without a written agreement. He grabbed a stained cocktail napkin, and had Simms put the agreement in written form. It contained the following language:

I, David Simms, hereby agree to pay to Roy McAvoy ten percent of my winnings from the Boots Randolph Invitational Golf Tournament in consideration of his serving as my caddie during the tournament on June 1-2, 2003.

Simms then signed his name and handed the napkin to Roy, who reviewed the agreement carefully, as Simms stood in amazement at the fact that Roy could read. Without changing a letter, Roy, also signed the agreement.

Through the first day of the tournament, everything went beautifully. Roy not only carried Simms' golf bag, but gave him excellent shot advice. By following Roy's directions, Simms led by five strokes going into the tournament's second and final day. Unfortunately for Roy, Simms got to thinking. He decided that, with such a sizable lead, he could simply fire Roy now, and protect the lead himself, and keep the entire winner's purse for himself. Accordingly, right before he teed off on the first hole, Simms unceremoniously fired Roy as his caddy. The greedy Simms carried his own bag for the rest of tournament, and held on to win. As Roy was stomping off the course, another player offered him \$500 to carry his bag for the rest of the day, but Roy angrily refused. Broken both spiritually and financially, he went back to his old dilapidated driving range, where Romeo was waiting with more whiskey and powdered doughnuts.

Not too long after, Roy was giving a golf lesson to Dr. Molly Griswold, a psychologist. Though she was a terrible golfer herself, Molly had heard that Roy was a great player who just needed help with his mental approach to the game. Seeing an opportunity to get out of her unprofitable small town practice, and taking into consideration that she thought he was cute in a beer-stained T-shirt sort of way, Molly made Roy an offer. She offered to give him counseling to improve his mental approach, so he could enter the U.S. Open, which was being held at nearby Kentucky Dam Village. In exchange for the therapy, he would agree to marry her after the U.S. Open, regardless of whether or not he qualified for the tournament or won it. Roy was highly skeptical, but thought it was worth a shot. He and Molly shook hands on the deal, but signed nothing.

It turned out that Molly's therapy was, quite literally, just what the doctor ordered for Roy. He breezed through the qualifying tournaments, winning the last one with only his seven-iron (he had broken his remaining clubs in a dispute with Romeo on the second hole). Roy continued his dazzling play right through the U.S. Open. He won the tournament with a record-setting final round, and became the greatest underdog champion in the history of the prestigious tournament.

After the press conference, Roy decided to take Molly to the local Waffle House to celebrate. After raising a toast to their victory, Molly asked Roy when they would be getting married. Roy looked at her as though she had just told him that he was out of beer. He told Molly that he appreciated everything that she

had done for him, but now that he was famous, he did not want to get married. When Molly asked about their handshake agreement, Roy smiled and said that he did not remember any such agreement.

A. As to David Simms and Roy, please discuss the following: (1) whether any binding contracts were executed between the parties; (2) why or why not; (3) if any contracts were executed, was there a breach; and (4) the potential damages for any such breach.

B. As to Dr. Molly Griswold and Roy, please discuss the following: (1) whether any binding contracts were executed between the parties; (2) why or why not; (3) if any contracts were executed, was there a breach; and (4) the potential damages for any such breach.

QUESTION NO. 5

In a small, rural town, while on routine patrol one night, Peter Policeman stopped an automobile because one of the tail lights was out. The automobile stopped in a parking lot of a defunct gas station, which had been the subject of many citizen complaints to Peter as the site of numerous drug deals. The driver of the vehicle, Della Defendant, immediately exited the car carrying her purse. Peter recognized Della and also recalled that she did not have a drivers license. Della came up to Peter's patrol car and asked why she was stopped. Peter asked for her license, at which time Della admitted that she did not have a license. Driving without a license is an offense that can result in a sentence of up to 90 days in the county jail.

Peter then stated "I can take you to jail or you can let me search for drugs." Della responded "I don't want to go to jail go ahead and search the car."

Peter exhaustively searched the car, but found nothing. Then, he asked to look into Della's purse. Della responded "you said you wanted to search the car." Peter stated, "I said I wanted to search for drugs." Della stated "I don't want you to look into my purse. I have personal items there." Peter responded, "then you are going to jail." At that point, Della stated "okay, here's my purse," and handed the purse to Peter.

In the purse were eight prescription bottles for OxyContin. In the eight prescription bottles were a total of 120 40mg pills. Two of the prescription bottles bore the name of Della Defendant, while the six remaining each had a different name.

Peter immediately arrested Della for trafficking in OxyContin and took her to jail.

Subsequently, Della was properly indicted for trafficking in OxyContin.

In the course of the proceedings, Della timely moved to suppress the OxyContin pills. The evidence at the suppression hearing was that outlined above and nothing else. There was no dispute about the facts as outlined. The basis for the motion was that the search and seizure was improper. The Commonwealth persuaded the trial court that the search and seizure was valid, despite the absence of a warrant, because Della had consented to the search. After her motion to suppress was overruled by the trial court, Della entered a conditional plea allowing her to appeal the seizure issue.

The matter is now before the Kentucky Court of Appeals. The single issue to be decided is whether the search is valid based upon Della's consent or whether the evidence should be suppressed. Please discuss and explain.

QUESTION NO. 6

Paul Plaintiff was a teacher and football coach at a small, rural high school. His last team won the state football championship, which was the first for his school although it had been to the finals on two previous occasions some years before. Football was a big deal at the high school and in the small, local community.

After winning the championship, Paul announced that he would retire effective December 31st. The necessary paperwork was completed prior to Christmas break. During the break, Paul had no duties because school was not in session.

Paul had a retirement party at his home on the evening of Monday, December 29th. The party was well attended by Paul's fans, family, and friends. Around midnight, responding to a complaint call, the local police came to Paul's home and requested that the noise be reduced. Paul complied. There were no more complaints and the party ended shortly thereafter.

On Friday, January 2nd the banner headline in the local newspaper read "PAUL PLAINTIFF ARRESTED AT DRUNKEN PARTY WITH FEMALE STUDENTS." The gist of the story was that Paul had been partying with high school girls at his home and had been arrested on December 29th for giving alcohol to the under aged girls. The story listed as its source a local policeman, William Witness.

Paul immediately filed suit for libel. Additional proof developed in the course of the lawsuit revealed that William was not one of the officers who had responded to the noise complaint and that he held a grudge against Paul because William's son had been dismissed from the football team for disciplinary reasons.

The newspaper editor testified that he had received his information from William and would not have published it if he had not been given a copy of an arrest citation on December 30th prepared by William. The editor also stated that the story could not be run in the paper's Wednesday edition, because the story was discovered too late to meet the deadline. The paper is published on Sunday, Wednesday, and Friday. The editor was aware of the dismissal of William's son which had been the subject of a short article at the time it occurred. The arrest citation given to the editor was produced by the newspaper in discovery, although there was no other evidence of the existence of the citation despite extensive searching at the local police department. The editor testified he never doubted the validity of the arrest citation. William took advantage of the Fifth Amendment's protections and refused to testify as to the origin or the source of the arrest citation.

Finally, for whatever it is worth, the newspaper published a follow-up story on January 16th indicating that the arrest report was apparently manufactured without any basis in fact. The newspaper apologized in an editorial, but explained that it normally relied upon records, such as arrest citations, in publishing stories. Apparently, according to the newspaper editorial, this was the first instance where an arrest citation had been manufactured.

The newspaper has moved for summary judgment asserting that it's protected by the First Amendment. It asserts that it is protected by the First Amendment because it had a reasonable basis to support the story as published at the time the story was published. Paul counters by saying that he is only a private individual and the newspapers' actions were negligent for which he can recover.

Please discuss the First Amendment protections available to the newspaper; the impact, if any, of Paul's status; and the appropriate disposition of the newspaper's motion for summary judgment.