

Seminar on Lawyers' Ethics
Law 2968 A
Professor Monroe Freedman

Required Course Materials:

Freedman & Smith, *Understanding Lawyers' Ethics* (4th ed., 2010)

ABA Model Rules of Professional Conduct (latest edition).

Instead of the ABA Model Rules, I recommend Gillers, Simon, & Perlman, *Regulation of Lawyers: Statutes and Standards* (latest edition). (This is not the Gillers casebook of a similar name). I recommend the Gillers, Simon, & Perlman book because it has the Model Rules and considerable additional material of value; however, it is more expensive and is not required.

The Syllabus and Supplementary Materials are available in hard copy in the Copy Room and on TWEN.

Please sign up as soon as possible on TWEN, because Course Materials have been posted and important notices will be put on TWEN.

Everyone will be expected to attend class regularly, to be fully prepared for every class, and to volunteer to participate actively in class discussions. Contributions to the discussions on TWEN will be given some weight with regard to class participation. However, you will not be required to post on TWEN (as distinguished from reading it), and credit for postings will be given less weight than participation in class discussions.

The final grade for each person will be based one-half on the final exam and one-half on the quantity and quality of your class participation. Because of the small class size, there will be no curve applied to inflate grades. That means that competent professional work will receive a C; highly competent work, a B; and only work of the highest professional competence will receive an A.

This course is not a prep-course for the bar exam. (In any event, you should take a bar prep course.) We will be focusing principally on criminal defense and prosecution ethics, but much of that is applicable as well to civil practice. Also, almost all the material on conflicts of interest and on judicial disqualification deals with civil practice. You are responsible for a working familiarity with everything in *Understanding Lawyers' Ethics* and in all Model Rules that are assigned during the course.

Most importantly, you will learn how to read and interpret rules, standards, and statutes. Appendix B at page 101 of the Supplementary Materials is a note on *Construing Legal Language*. Reading and understanding the meaning of rules is an essential part of this course, and you should read Appendix B before the first class.

At the beginning of the first class we will watch most of an episode of The Practice. This clip introduces almost all the ethical issues covered in the seminar. While you watch the film, please note the ethical issues that are raised in it. You will be responsible for beginning the discussions of each of these issues after the film.

When the episode of The Practice was filmed, Massachusetts had the following Disciplinary Rules, from the ABA Model Code of Professional Responsibility (1969).

DR 4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.* * * *

(C) A lawyer may reveal:* * * *

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.* * * *

DR 1-103 Disclosure of information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of [an ethical rule] shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.* * * *

Massachusetts Rule 1.6 (current)

(a) A lawyer shall not reveal confidential information relating to representation of a client unless the client consents after consultation, ... except as stated in paragraph (b).

(b) A lawyer may reveal ... such information:

(1) to prevent the commission of a criminal or fraudulent act that the lawyer reasonably believes is likely to

result in death or substantial bodily harm ... or to prevent the wrongful execution or incarceration of another; * * * *

Question 1: Did the ethics expert correctly interpret the confidentiality rule?

Question 2: Did Eugene correctly interpret the reporting rule?

Question 3: Would the current Massachusetts Rule 1.6 change Jimmy's obligation?

I'm looking forward to working with you.

Please feel free to email me at lawmhf@hofstra.edu or to call me at 212-564-8111 if you have any questions.