Lawyers' Ethics Prof. Theo Liebmann

Spring 2015 Syllabus

Welcome to Lawyers' Ethics. This syllabus provides you with an overview of the course and with other important information. There may be times when I make changes to this syllabus, but for the most part what you see here is what you'll get.

Contact Information

My office is room 125 in Joan Axinn Hall (the one-story brick building directly across California Avenue from the Law School). Due to my obligations as Attorney-in-Charge of the Youth Advocacy Clinic and the Juvenile Justice Clinic Practicum, I will often have unexpected court dates or client meetings, so please contact me in class, or via email or phone, to schedule an appointment. My email address is theo.liebmann@hofstra.edu, and my phone number is 463-4736.

Class Schedule

Our class meets on Mondays from 10:10 to 12:00. I will begin promptly at 10:10 and will usually give you a break about halfway through each class.

Materials

We have three sources of materials:

1. Richard Zitrin, Carol M. Langford, and Nina W. Tarr, LEGAL ETHICS IN THE PRACTICE OF LAW (4th Edition, LexisNexis 2013).
2. The 2014 Model Rules of Professional Conduct, which are available for purchase at: http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213365.
3. Occasional supplemental readings that I will either hand out in class or post on our TWEN site.

TWEN

I have set up a course page on TWEN, which is available at www.lawschool.westlaw.com. The TWEN page serves three purposes. First, I will post all class assignments, special announcements, syllabus changes, handouts, interesting weblinks, etc. on TWEN. Second, the TWEN course page allows for class discussion to extend beyond the classroom. Please use the page to share ideas and ask questions of each other. While I will monitor the discussions, I will very rarely add comments; the purpose of the TWEN discussions is for you to converse with each other. Finally, I will give all quizzes using the TWEN page. Please register for TWEN by the end of the first week of classes.

Course Goals

You will develop three main competencies over the course of our semester together:

- You will become familiar with and understand the ethical rules which guide lawyers' conduct.
- You will understand and be able to critically analyze the rationales behind the ethical rules.
- You will develop the ability to efficiently identify ethical issues and dilemmas in realistic scenarios, and to propose well-reasoned and articulate resolutions to those issues and dilemmas.

We will develop these competencies through the use of assigned readings, in-class discussion of the rules and the policies behind them, weekly simulations and discussion of common and/or difficult ethical scenarios, and quizzes.

Grading

I will base your grade on your performance on the 2.5 hour final exam. The exam will consist of short essay questions. It is closed book, but I will provide you with a copy of the ABA Model Rules (with commentary). You will be responsible for all material covered during the semester.

I will frequently give quizzes on the topics we cover. The quizzes will typically be one multiple choice question. Your performance on the quizzes and your class participation can impact your final grade in that particularly excellent quiz performance and class participation can result in my raising your final grade.

Attendance

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly scheduled classes. A student enrolled in a two-credit course may thus miss no more than two class sessions, though of course I would greatly prefer that you not miss any.

My role regarding attendance is very limited. I pass out an attendance sheet at the beginning of each class, collect it at the end of each class, and hand it to my secretary, who keeps a record of absences for each student. When my secretary sees that a student has two absences, she notifies the student with an email warning. If the student then is absent a third time, my secretary sends an email to the Dean of Students reporting that fact. Each student is responsible for signing in for himself or herself. Falsification of a signature on the attendance sheet is a violation of the Code of Academic Conduct.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations can be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

Assignments

For class each week you should be ready to analyze any assigned problems, discuss the assigned readings, and refer intelligently to the Model Rules and their applicability to the problem and readings. In order to guide your preparation for class, I will post an assignment memo on TWEN by the end of the day on the Wednesday preceding each class. The assignment memo will typically include any additional readings, as well as questions for you to consider as you do the readings. Note that assignments may change throughout the course of the semester if there is a need to slow down, speed up, or skip readings. I will give you advance notice of any changes.

<u>Assignment 1</u>
Topics:
Sources for the Law Governing Lawyers and Their Conduct
Competence, Diligence, and the Fiduciary Duty
Rules:
Model Rules: Preamble, 1.0, 1.1, 1.3, 1.4
Zitrin, et al.:
Problem One & Questions (p. 41-42)

<u>Assignment 2</u>
Topics:
Creating the Lawyer/Client Relationship
Scope of Representation
Fees (an introduction)
Rules:
Model Rules: Preamble, 1.2, 1.4, 1.5, 1.8, 1.18
Zitrin:
Problem Three & Questions (p. 87-89)

<u>Assignment 3</u>
Topics:
Confidentiality
Client Counseling
Rules:
Model Rules: 1.2, 1.4, 1.6, 1.9, 2.1, 3.3, 3.4, 4.1
Restatement of Law Governing Lawyers §§68 through 72
Zitrin:
Problem Four & Questions (p. 117-118)
Belge case (p. 118-123)
*Ryde*r and *Meredith* Cases (p. 124-131)
Zacharias hypos (p. 132-134)

<u>Assignment 4</u>
Topics:
Technology and Confidentiality
Rules:
Model Rules: 1.6, 4.4
Federal Rule of Evidence 502
Zitrin:
Problem Six & Questions (p. 171-173)

<u>Assignment 5</u>
Topics:
Conflicts of Interest: An Overview

Conflicts of Interest: Current Clients
Conflicts of Interest: Organizational Clients
Rules:
Model Rules: 1.4, 1.7, 1.8, 1.13, 2.4
Zitrin:
Problem Seven & Questions (p. 201-204)
Problem Eight & Questions (p. 227-228)

Assignment 6
Topics:
Conflicts of Interest: Former Clients
Conflicts of Interest: Imputation
Rules:
Model Rules: 1.2, 1.9, 1.10, 1.11, 1.12
Zitrin:
Problem Ten & Questions (p. 283-285)
Krutzfeldt Ranch case (p. 288-292)

Assignment 7
Topics:
Decision-making and Client Autonomy
Rules:
Model Rules: 1.2, 1.3, 1.4, 1.14, 1.16, 2.1, 3.3
Zitrin:
Problem Thirteen & Questions (p. 361-362)
Two Extremes, Balanced Decision-Making, Three Client Circumstances, A Fight to the Death (p. 362-368)

Assignment 8
Topics:
Advising a Client Ethically
Rules:
Model Rules: Preamble, 1.2, 1.4, 2.1
Zitrin:
Problem Fourteen & Questions (p. 387-388)
Problem Twenty-Six & Questions (p. 707-709)
The Audit Lottery (p. 709-712)
Advising on Torture (p. 713-715)

Assignment 9
Topics:
The Duty of Candor
Rules:
Model Rules: 1.2, 1.6, 1.16, 3.3, 3.4, 8.4

Zitrin:
How Far Should One Go with a Guilty Client? (p. 428-433)
Cross Examining the Truthful Witness (p. 434-438)
Problem Sixteen & Questions (p. 439-440)
The Perjury Trilemma (p. 441-452)
Problem Seventeen Parts II and III, & Questions (p. 464-465)

<u>Assignment 10</u>
Topics:
Presenting a Claim Ethically
Ethics in Negotiation, Investigation, and Discovery
Rules:
Model Rules: 3.1, 3.2, 3.4, 3.8, 4.1, 4.2, 4.3, 5.3, 8.4
Federal Rules of Civil Procedure Rule 11
Zitrin:
Problem Seventeen Part I & Questions (p. 463-464)
Problem Nineteen & Questions (p. 519-520)
Judge Alvin Rubin's "Causerie" (p. 523-525)
Larry Lempert's "Situations" (p. 525-530)

<u>Assignment 11</u>
Topics:
Ethical Challenges for the Government Lawyer
Rules:
Model Rules: 1.13, 3.8

Zitrin:
Problem Twenty-Three & Questions (p. 625-627)
ABA Standards Relating to the Administration of Criminal Justice (p. 628-629)
The Duty of the Prosecutor (p. 539-541)

<u>Assignment 12</u>
Topics:
Fees
Advertising
Rules:
Model Rules: 1.4, 1.5, 7.1, 7.2, 7.3, 7.4, 7.5
Zitrin:
Problem Twenty-Eight & Questions (p. 761-762)
Problem Thirty-One & Questions (p. 839-841)
Overbilling (p. 763-765)
Bates case (p. 841-849)
Ohralik case and progeny (p. 856-861)

<u>Assignment 13</u>
Topics:
Staying Ethical Under Pressure
Rules:
Model Rules: 5.1, 5.2, 5.3, 8.3, 8.4
Zitrin:
Problem Twenty-Seven & Questions (p. 733-735)
Peter Kelly's Stand (p. 735-739)