

FALL 2015
Tuesday – 6:10 - 8:00 p.m.

LAWYERS' ETHICS

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Course Syllabus, Introduction and Assignments

Objectives:

This course will address the law and ethical framework governing lawyers and how they affect every aspect of a lawyer's career. The class will consist of lectures, discussion, and student presentations. **Familiarity with the assigned reading will be expected** and class discussion will focus on the issues raised in the problems identified in the reading assignments. Each student will be expected to be prepared to discuss and analyze the assigned materials. In addition, after the first class, students in teams of two will be assigned each week to analyze a problem and make their case to the class, which, where applicable, will then serve as the decisionmaker. These assignments will usually be made at least a week in advance and posted on TWEN or sent through email.

Objectives:

During the semester we will cover:

- How to deal with ethical problems that arise in legal practice
- The ABA Model Rules of Professional Conduct
- The disciplinary rules of the state where students intend to practice
- The duties and responsibilities of practicing attorneys and corresponding liabilities and obligations
- Legal issues and problems of professional liability and developing an approach to avoiding professional malpractice claims

In approaching these topics, students will learn:

- The legal principles that apply to the regulation of lawyers, including those that apply to admission and discipline
- How to recognize legal ethics concerns that arise in the daily practice of law
- How to analyze and address legal ethics problems that arise in representing clients and dealing with non-clients
- How to avoid legal ethics problems, disciplinary complaints, and potential legal malpractice

Course Materials

The assigned reading materials are:

ETHICAL PROBLEMS IN THE PRACTICE OF LAW, by Lisa G. Lerman and Philip G. Schrag (Wolters/Kluwer 3rd ed. 2012) (Printed not electronic version)

ABA MODEL RULES OF PROFESSIONAL CONDUCT (2013 or later edition) (You may use any printed version of the Model Rules provided it is current through the end of 2014 and contains the Comments to the Rules. The version published by the ABA is probably the most compact and least expensive.)

In addition, supplemental reading material may be posted on TWEN or emailed to you in advance of class.

Class Schedule: The class will meet on Tuesdays from 6:10 to 8:00 p.m.

Course Requirements and Grading:

Attendance and Participation: Students are expected to attend and be prepared for class. One component of your grade will be class attendance and participation. If you know you will miss a class, please email me at least 24 hours in advance letting me know and describing the reason.

Lateness: You are expected to be on time for class.

Final Grade: Your final grade will be based on a number of factors: class attendance and participation (10%); oral presentations and exercises (10%); written project(s) (15%); final exam (65%). The percentages for the first three components are approximate and may vary slightly.

The final exam will be a closed-book multiple choice exam and be similar in format to that used by the National Conference of Bar Examiners in the Multi-State Professional Responsibility Exam.

Computer Policy: Laptops, blackberries, iPhones, and other such indispensable items should be stowed away during class. If you believe that there is a reason that you need to use a laptop during class, please let me know and we can discuss whether an exception should be made.

Communication: Additional reading assignments and materials will be posted on TWEN or sent to you by email. Please check your email regularly. The best way to communicate with me is by email.

I will always be available for a meeting in person on the day of class or on the telephone at any time with a little advance warning.

Class Schedule and Assignments:

Please make sure to read the Model Rule(s) covered in each chapter (including the Comments to the Rules) and to do the reading before analyzing the problems. Also remember to check the updates on the authors' website.

The following is a schedule of reading for the semester. It is possible that we will be able to cover more than one topic in a class so it will be beneficial to stay ahead of the reading. Additional assignments will be posted on TWEN and/or sent by email. **Please send me your email address as soon as possible.**

Note: References to "Text" are to the textbook assigned for this course, ETHICAL PROBLEMS IN THE PRACTICE OF LAW and to "Rules" are to the ABA Model Rules of Professional Conduct.

August 25 – Introduction to course, lawyer regulation and the law and institutions that regulate lawyers, and admission to practice.

Reading and assignment:

Course Syllabus and Introduction (this document)
Rules: Preamble, Scope, Rule 1.1 (with Comments)
Text: pp. 1-51 (regulatory overview)
pp. 52 – 68 (admission to practice).

Be prepared to discuss the synopses of admissions cases on pp. 60-63 and to analyze the issues raised in problems 1-1 and 1-2 and support your positions. **(Hint: This analysis (and all those assigned) requires that you set pen to paper and give it some thought. In addition, complete the reading for each section before you tackle the problems)**

September 1 - Admission to Practice (continued); Professional discipline

Reading and Assignment:

Rules: 8.1, 8.4 (with Comments)

Text: pp. 68-78 (Admission)
Text: pp. 79-97 (stop at 2-1) (Professional discipline and lawyer liability))

All students are expected to be prepared to analyze the issues raised in the Mustafa case and in Problem 1-3. Teams of two students each will be assigned to argue for or against the student's position. The class will then serve as the decisionmaker(s).

September 8 – Professional Discipline and Lawyer Liability, Misconduct, Civil and Criminal Liability

Reading and Assignment:

Text: pp. 97-100 (Professional discipline and lawyer liability)

Rules: 8.4 (with Comments)

Text: pp. 100-122 (misconduct by other lawyers)

Rules: 8.3; 5.2 (with Comments)

Text: pp.135-154 (criminal and civil liability)

Supplemental reading: *Board of Overseers v. Warren*, 34 A3d 1103 (2011) (available on TWEN)

Be prepared to discuss the Himmel and Wieder cases and Problems 2-1, 2-2, and 2-3. Teams of students will be assigned to argue the issues raised in the problems.

September 25 (Class will be at 2 p.m.) -- The Duty to Protect Client Confidences; Exceptions

Reading and Assignment:

Text: pp. 160-170 (Basic confidentiality principles)

Rules: 1.6(a) (with Comments)

Text: pp. 170-188 (Exceptions)

Rules: 1.6(b) (with Comments); 4.1 (with Comments)

Text: pp. 201-227

NY Rule of Professional Conduct 1.6 (with Comments) (can be found on websites of New York State or New York City Bar Association)

Teams of students will be assigned to analyze and answer the questions raised in Problems 3-1, 3-2, 3-3, 3-4, 3-5, 3-8, 3-9, and 3-10.

September 29 – Attorney-Client and Work Product Privileges; Introduction to Attorney-Client Relationship

Reading and Assignment:

Text pp. 230-258; 261- 271 (Other exceptions)

Problems 4-1, 4-2, and 4-3.

Text pp. 280-301 (Attorney-Client Relationship)

October 6 - The Attorney-Client Relationship (cont'd.) Text pp. 301-323; pp. 326-353; pp. 370-377 (;Model Rules (all with Comments): 1.1; 1.2(a); 1.3; 1.4; 1.8(d); 1.8(h); 1.13(a);1.14;1.15(a); 1.16; 1.18; 6.1; 6.2. Be prepared to discuss Problems 5-1, 5-2, 5-4, and 5-8. Students will be assigned to lead the discussions.

October 13 - Concurrent Conflicts of Interest. Text pp. 380-412; 414-439 (top of page); Model Rules (with Comments) 1.7; 1.8(g); 1.13; 1.18. Be prepared to discuss Problems 6-1, 6-2, 6-3, 6-5, 6-6, 7-1, and 7-2. Students will be assigned to lead the discussions.

October 20 – Practice Exam

October 27 - Concurrent Conflicts (cont'd.) Text pp. 439-450; 456-459. Continued discussion of Model Rules assigned for October 13. Be prepared to discuss Problems 7-3, 7-4, 7-5, and 7-7. Students will be assigned to lead the discussions.

November 3 – Conflicts (cont'd.) Text pp. 472-496; pp. 499-519; Model Rules (with comments) 1.9; 1.10 (Conflicts and former clients); Text pp. 607-622; pp 640-642; Model Rules (with comments) 1.11; 1.12 (Conflicts involving judges and government lawyers). Be prepared to discuss Problems 8-1, 8-2, 8-3, 8-4, 8-5, 10-1. Students will be assigned to lead the discussions.

November 10 - Conflicts Involving Lawyer Interests. Text pp. 522-559; 566-605; Model Rules (with comments) 1.5;1.8; 1.15. Be prepared to discuss Problems 9-1,9-2, 9-3, 9-4. Students will be assigned to lead the discussions.

November 17 – Lawyers' Duties to Courts. Text pp. 644-691(mid-page); 692-695(mid-page); 700-709; Model Rules (with comments) 3.1; 3.3; 3.4;3.7. Be prepared to discuss Problems 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 11-8. Students will be assigned to lead the discussion.

November 24 - Lawyers' Duties to Adversaries and Third Parties. Text pp. 729-742; 746-751;758-778;Model Rules (with Comments) 4.1; 4.2; 4.3; 4.4; 3.8. Be prepared to discuss problems 12-1, 12-2,12-3,12-4. Students will be assigned to lead the discussions.

December 1 – Advertising and Solicitation; Multi-jurisdictional Practice; Multi-Disciplinary Practice. Text pp. 906-931; Model Rules 7.1, 7.2, 7.3, 7.4, 7.5; 5.4; 5.5. Be prepared to discuss Problem 15-2. Students will be assigned to lead the discussion.