

# ETHICS IN CRIMINAL ADVOCACY

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Spring 2018  
Wednesdays 10:10-Noon

## Course Objectives

The objective of this course is to learn and engage with the rules of professional conduct and the law as it relates to the differing roles of the prosecutor and the criminal defense lawyer. Students will gain knowledge of constitutional rights and principles that affect the conduct of counsel and the intersection of that law with the rules that govern lawyers. On a fundamental level, students must gain an understanding of the historical and public policy considerations underlying the law and rules governing the conduct of prosecutors and defense lawyers. To do so, requires the careful study of substantive law, rules of professional conduct, and standards for the prosecution and the defense function.

## Required texts

There are three required texts (1) a collection of readings entitled Ethics in Criminal Advocacy (from an edited version of Bruce A. Green, *Ethics in Criminal Advocacy* (2016)) which is available on TWEN **under Course Materials**. (2) the Model Rules of Professional Conduct and the ABA Standards for the Prosecution and Defense Function, available online. If you choose to purchase these, you can find them in a range of texts including Morgan & Rotunda *Selected Standards on Professional Responsibility*, Gillers and Simon, *Statutes and Standards* or any comparable collection of professional responsibility standards from the past two years. To facilitate class discussions, *please bring the Rules and Standards and a hard copy of the day's course materials to class*.

The third text is Eugene Volokh, Academic Legal Writing (5<sup>th</sup> edition). **You should get a copy of this as soon as possible.** You can find used editions online.

## TWEN

Please ensure that you register for TWEN.

## Course Requirements

This seminar has two basic requirements: (1) informed participation in class discussions; and (2) a paper of at least 20 pages. To promote vigorous class discussion, I am requesting that you *do not use laptop computers in class*. Because this is a seminar, there is a premium on class discussion. My experience is that laptop use significantly interferes with the quality of class discussion.

## Office Hours

I am available to meet after class and at other times by appointment. It is best to make an appointment through email. yaroshef@hofstra.edu

### **Paper Requirement**

In connection with the paper requirement for the seminar, you will be expected to submit a topic proposal, outline, draft and final paper. The **topic proposal** is due on or before **February 14**. It should be approximately one page long and should indicate (a) the general subject of the paper; (b) the relevant literature; and (c) in general terms, how the author proposed to conduct research and analyze the subject.

You are invited to discuss proposed topics with me in advance of February 13. Experience suggests that many proposed topics will turn out to be inadvisable (because they are unfocused, overwritten, or otherwise unsuitable) or entirely unacceptable (because they are not within the subject of the course). The **outline** is due on or before **March 28**. The **final paper** is due on **April 26, 2017**.

One of the most difficult hurdles in writing a paper for this or any other course is selecting a topic. Until you have completed a course, you may feel that you lack sufficient familiarity with the subject matter to choose a topic that will enable you to engage in “significant and original analysis.” You should review the course material to get a general idea of what the course covers.

The paper must deal with some aspect of the professional conduct of prosecutors and/or criminal defense lawyers. It can be normative, theoretical, comparative, historical, etc. It can draw on empirical work (e.g. interview with lawyers). Although it should not focus exclusively on positive law, it need not (and probably should not) focus exclusively on the ethics codes, either. It can address questions involving the interrelationship between ethical norms and criminal law or procedure. It can address how lawyers conduct themselves in the absence of guidance from the ethics codes or propose additional restrictions that should be recognized.

Finally, this is an ethics class, and you are expected to act ethically as a student in this class. This means coming to class and being prepared to discuss the reading. This also means academic honesty in preparing your paper. This included not only avoiding outright plagiarism, but also giving appropriate attribution to the works on which you rely. For example, you may not lift a series of statutes or articles from someone else’s footnote without attribution. You must be candid about whether an idea is original or someone else’s. At the same time, you are strongly encouraged to have other students in the class review your drafts and make suggestions. If you have any questions whatsoever about what is and is not permissible, ask me.

I look forward to working with you this semester.