INTRODUCTION

Welcome to Lawyers’ Ethics. While most of your courses in law school may have tended toward use of the traditional case method and lecture, this class will offer you the opportunity to engage in interactive, collaborative class discussions and problem-solving exercises. I aim to facilitate an open and respectful classroom environment where there are no “dumb” questions and students are encouraged to think beyond the confines of your assigned readings. While I want you to learn the fundamental principles and rules relating to professional responsibility, I also want you to continue to practice the essential lawyering skills of critical thinking and analysis.

WHAT YOU WILL LEARN FROM THIS COURSE

- How to identify fundamental ethical issues “in the moment” of law practice situations
- Ability to recognize tensions implicit in ethical rules
- Development of a decision-making framework for handling “gray areas” of ethical dilemmas not explicitly covered by the ethics rules
- How to critically analyze ethical issues from legal, practical, political, economic, moral and historical perspectives
- Knowledge and successful application of ethical rules for purposes of MPRE
- Familiarity with the New York Code of Professional Responsibility and its distinctions from the Model Rules

REQUIRED TEXTS


GRADING AND EVALUATION

Class Performance/Participation (20%): In an effort to simulate how lawyers actually grapple with ethical dilemmas in practice, much of our class time will involve drawing from the cases and rules that you’ve reviewed outside of class to help discern how to resolve new problems. Each week, you will work through problems collaboratively with other students as if you are practicing lawyers. Accordingly, all students are expected to do the assigned reading each week and actively participate in class discussion throughout the semester. These exercises are designed to develop your ability to identify ethical issues and apply the rules appropriately or,
as may be the case, to recognize the limitations of the rules. If you have more than two unexcused absences and/or you do not demonstrate thorough preparation, this portion of your grade will be reduced.

Final Exam (80%): The final exam will be a 2-hour, closed-book exam, which may include short answer or short essay questions and multiple choice questions. I will provide more information later in the semester to help you prepare for it.

CALI MATERIALS

The Center for Computer-Assisted Legal Instruction (CALI) Consortium has created a series of multiple choice questions designed to help you prepare for the MPRE at no charge. You can download or run the lessons directly from the CALI website by going to the Hofstra library's "on-line resources" page, which can be found at: http://law.hofstra.edu/Library/Research/libres_online.cfm?alphaview#C. You will need to obtain a password from the reference desk.

CLASS COMMUNICATION

I am always happy to speak with students about the course or anything else. I will generally be in my office all day on Mondays, Wednesdays and Thursdays. Please feel free to stop by during those days – if I am busy, I will be happy to set up an alternative time to meet. You may also e-mail me to make an appointment.

I have also set up a Lexis Web Course, which can be accessed by going to www.lexisnexis.com/lawschool. The password for enrollment is my daughter’s name, “Grace.” I will use this site to post all the relevant course materials, including the syllabus, supplemental readings, and handouts. In addition, I may post discussion threads, recent legal developments, or links to helpful resources or cases. It is also an excellent way for you to communicate with me and with each other. If you have not already done so, please register immediately. Please make sure your email address in Lexis is the one you wish to use for class communication.

USEFUL WEBSITES

http://www.courts.state.ny.us/attorneys/clientattorneyrel.shtml (New York Unified Court System Ethics Resources)
http://www.nysba.org/ (New York State Bar Association Ethics Resources)
http://www.nycbar.org/ (New York City Bar Association Ethics Resources)
http://abanet.org (American Bar Association Ethics Resources)
http://www.law.cornell.edu/ethics (Legal Information Institute Legal Ethics Library)
WEEKLY ASSIGNMENTS*

* Please note that assignments may change during the semester; I will give you advance notice both in class and on the Web Course so you can plan your class preparation accordingly.

WEEK ONE: August 21st

In-Class:
- Introduction to the Course
- Sources for Ethics Rules, Regulations, Law
- Overview of Regulatory Framework for New York Lawyers
- Elements of Lawyer-Client Relationship
  - *Cotto v. United States* (1st Cir. 1993) (p. 59)

Reading:
- Gillers, *Regulation of Lawyers*, Chapter 1: Where Do “Ethics” Rules Come From? (pp. 1-11);
  Chapter 2: Defining Lawyer-Client Relationship (pp. 17-23; 56-70)
- Gillers & Simon, *Supplement*, Preamble, MRPC 1.0, 1.1, 1.3, 1.4

WEEK TWO: August 28th

In-Class:
- Elements of the Lawyer-Client Relationship: Confidentiality, Attorney-Client Privilege, and Exceptions to the Rule
  - *My Client is HIV Positive* (p. 23)
  - *All’s Not Well* (p. 23)
  - *Slip and Fall* (p. 31)
  - *In a Box* (p. 70)

Reading:
- Gillers, *Regulation of Lawyers*, Chapter 2, continued (pp. 23-56, 70, 489-92)
- Gillers & Simon, *Supplement*, MRPC 1.6, 1.13

WEEK THREE: September 4th

In-Class:
- Autonomy of Attorneys and Clients
  - *Jones v. Barnes* (U.S. 1983) (p. 73)
  - *Olfe v. Gordon* (Wis. 1980) (p. 80)
- Terminating the Lawyer-Client Relationship
  - *Ms. Niceperson* (p. 72)
  - *I Don’t Bargain* (p. 73)
  - *I’d Rather Die* (p. 79)
  - *Accept the Offer* (pp. 79-80)
Reading:
• Gillers, *Regulation of Lawyers*, Chapter 2, continued (pp. 71-88)
• Gillers & Simon, *Supplement*, MRPC 1.2, 1.14, 1.16

**WEEK FOUR: September 11th**

In-Class:
• Communicating with Another Lawyer’s Clients
  • *Niesig v. Team I* (N.Y.2d 1990) (p. 93)
  • *United States v. Hammad* (2d Cir. 1990) (p. 103)
• Improper Acquisition of Confidential Information
  • *Slip and Fall Redux* (p. 92)
  • *The Sting* (p. 101)
• *Something You Should Know* (pp. 111-12)

Reading:
• Gillers, *Regulation of Lawyers*, Chapter 3: Protecting the Client-Lawyer Relationship Against Outside Interference (pp. 89-118)
• Gillers & Simon, *Supplement*, MRPC 3.3, 4.2, 4.4

**WEEK FIVE: September 18th**

In-Class:
• Role of the Marketplace
  • *Brobeck, Phleger & Harrison v. Telex Corp.* (9th Cir. 1979) (p. 122)
• Unethical Fees
  • *Matter of Cooperman* (N.Y.2d 1994) (p. 138)
• Contingent Fees and Statutory Limits
  • *What Are You Worth?* (p. 128)

Reading:
• Gillers, *Regulation of Lawyers*, Chapter 4: Financing Legal Services (and Dividing the Money) (pp. 119-146)
• Gillers & Simon, *Supplement*, MRPC 1.5

**WEEK SIX: September 25th**

In-Class:
• Minimum Fee Schedules
  • *Goldfarb v. Virginia State Bar* (U.S. 1975) (p. 149)
• Court-Awarded Fees
  • *Evans v. Jeff D.* (U.S. 1986) (p. 155)
• Mandatory Pro Bono Plans
  • *Those Fees Are Outrageous* (p. 154)
• *Should We Adopt Mandatory Pro Bono?* (p. 168)
Reading:
• Gillers, Regulation of Lawyers, Chapter 4, continued (pp. 149-82)
• Gillers & Simon, Supplement, MRPC 1.5, 6.1, 6.2

WEEK SEVEN: October 2nd

In-Class:
• Advertising & Solicitation
  • Ohralik v. Ohio State Bar Assn. (U.S. 1978) (p. 805)
  • Zauderer v. Office of Disciplinary Counsel (U.S. 1985) (p. 811)
  • Shapero v. Kentucky Bar Assn. (U.S. 1988) (p. 818)
  • In re Primus (U.S. 1978) (p. 831)
  • I’m Back On My Feet (p. 799)
  • I Need to Make Contact (p. 831)

Reading:
• Gillers, Regulation of Lawyers, Chapter 16: Marketing Legal Services (pp. 799-840)
• Gillers & Simon, Supplement, MRPC 7.1, 7.2, 7.3, 7.4, 7.5

WEEK EIGHT: October 9th

NO CLASS

WEEK NINE: October 16th

In-Class:
• Views of Adversary Justice
• Moral Accountability for Clients
• Truth & Confidences
• Nix v. Whiteside (U.S. 1986) (p. 340)
• Fostering Falsity or Advancing Truth?
• Obligations to Reveal Adverse Legal Authority
• Matter of Thonert (Ind. 2000) (p. 396)
• Carl’s Story (p. 335)
• The Lecture (p. 353)
• The Eyewitness (Part I) (p. 375)
• The Eyewitness (Part II) (p. 376)

Reading:
• Gillers, Regulation of Lawyers, Chapter 7: Ethics in Advocacy (pp. 335-71, 374-88, 393-400)
  *NOTE: Some of this reading is informational only and will not be covered in class. We will focus primarily on Nix and the problems.
• Gillers & Simon, Supplement, MRPC 1.2, 3.3, 3.4, 4.1
WEEK TEN: October 23rd

In Class:
- Real Evidence
- *In Re: Ryder* (E.D. Va. 1967) (p. 404)
- *People v. Meredith* (Cal. 1981) (p. 412)
- Ethics in Negotiation & Transactional Settings
- Reliable Sources Say (p. 401)
- Vanity Ink (p. 401)

Reading:
- Gillers, *Regulation of Lawyers*, Chapter 8: Real Evidence (pp. 401-20); Chapter 9: Negotiation and Transactional Matters (pp. 423-48)
- Gillers & Simon, *Supplement*, MRPC 1.2, 1.16, 3.3, 3.4, 4.1, 4.3

WEEK ELEVEN: October 30th

In-Class:
- Concurrent Conflicts of Interest
- Client-Lawyer Conflicts
- *May the Lawyer Be Our Client?* (p. 190)
- The Client Says We Messed Up (p. 204)
- Karen Horowitz’s Dilemma (p. 206)

Reading:
- Gillers, *Regulation of Lawyers*, Chapter 5: Concurrent Conflicts of Interest (pp. 185-209)
- Gillers & Simon, *Supplement*, MRPC 1.7, 1.8

WEEK TWELVE: November 6th

In-Class:
- Concurrent Conflicts of Interest Continued
- *Fiandaca v. Cunningham* (1st Cir. 1987) (p. 239)
- The Insurance Triangle
- The Advocate-Witness Rule
- Murder One, Murder Two (p. 209)
- Murder at the Ballgame (p. 218)
- Did Officer Schwartz Get Effective Assistance of Counsel? (219-220)
- Will You Represent Us Both? (p. 238)
- May We Do Both Cases? (p. 238)
• What Kind of Consent? (p. 259)
• The Insurer Would Want to Know

Reading:
• Gillers, Regulation of Lawyers, Chapter 5, continued (pp. 209-227, 238-52, 259-73)
• Gillers & Simon, Supplement, MRPC 1.7, 1.8, 3.7

WEEK THIRTEEN: November 13th

In-Class:
• Successive Conflicts in Private Practice
• Analytica, Inc. v. NPD Research, Inc. (7th Cir. 1983) (p. 275)
• Imputed Disqualifications & Migratory Lawyers
• Cromley v. Board of Education (7th Cir. 1994) (p. 294)
• You Don’t Know Anything (p. 275)
• Do I Still Owe the Record Store? (p. 281)
• Divorce and Default (p. 281)
• Can We Hire the Guy? (p. 292)

Reading:
• Gillers, Regulation of Lawyers, Chapter 6: Successive Conflicts of Interest (pp. 275-304)
• Gillers & Simon, Supplement, MRPC 1.9, 1.10

WEEK FOURTEEN: November 20th

In-Class:
• Transient Lawyers and Multijurisdictional Firms
• Leis v. Flynt (U.S. 1979) (p. 565)
• Birbrower, Montalbano, Condon & Frank v. Superior Court (Cal. 1998) (p. 574)
• Supervisory Responsibilities
• Local Office, National Practice (pp. 572-73)
• I Don’t Want to Pry, But . . . (p. 591)

Reading:
• Gillers, Regulation of Lawyers, Chapter 12: Control of Quality: Reducing the Likelihood of Professional Failure (pp. 562-88, 591-93)
  • Gillers & Simon, Supplement, MRPC 5.1, 5.2, 5.3, 5.5, 5.6, 8.1, 8.5

WEEK FIFTEEN: November 27th

NO CLASS

WEEK SIXTEEN: December 1st

In-Class:
• Catch-up and Review