SYLLABUS FOR PROFESSOR GARTNER’S COURSE
IN PROFESSIONAL RESPONSIBILITY

HOFSTRA LAW SCHOOL

Section: Fall 2009
Room: 230
Professor: Kenneth L. Gartner
Telephone No.: (516) 742-6200
Email address: klgartner@lynngartnerlaw.com
Secretary: Nicole Jones (516- 463-4481; Nicole.Jones@hofstra.edu)

Course Materials


2. Steven Gillers and Roy D. Simon
   
   *Regulation of Lawyers: Statutes & Standards* (2009 ed.)
   (ASPEN Publishers)

3. Monroe H. Freedman and Abbe Smith
   
   *Understanding Lawyers’ Ethics* (3rd ed.)
   (Lexis/Nexis)

The former New York Code of Professional Responsibility contained in Gillers & Simon was replaced, effective April 1, 2009, with newly released New York Rules of Professional Conduct. The format and terminology of the new New York Rules were modeled on, and to a large extent follow, the ABA Model Rules of Professional Conduct, but there are also significant points of distinction. Because the change was so recent, the new New York rules are not contained in the printed text. The new New York rules are available at the website of the New York State Bar Association, both in a concise, 43 page typeset pdf containing only the Rules themselves, and in a 190 page Word document containing the Rules and Comments. 

http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm Since these New York Rules are a central facet of this course, you should print out both versions, and have them with you in class.

**Purpose of the Course:** The rules of law governing lawyers professional conduct are studied through the ethics codes, lectures, text, cases, problems and class discussion. Principal attention is given to whether lawyers should subordinate their own moral judgment to that of their clients, the lawyer’s role in an adversary system, zealous representation, lawyer-client confidentiality, conflicts of interest, prosecutors’ ethics and
solicitation of clients. This is a required course that must be taken in either the second or third year for full-time students, or second, third or fourth year for part-time students.

**Communications:** The best way to communicate with me is by email. I will try to get back to you within 24 hours. While I do not maintain regular office hours, if you need to speak with me in person, we can set up an appointment either before or after class.

**Classes:** This is a two-credit class, scheduled, with one exception, to meet every Tuesday, in Room 230, from 6:10 p.m. until 8:00 p.m., commencing Tuesday, August 25, 2009, and continuing through Tuesday, December 1, 2009. The one exception is as follows: There will be no classes on Tuesday, September 29, 2009 (Monday schedule in effect).

**2009 Hofstra Legal Ethics Conference:** On Sunday, Monday, and Tuesday, October 18 – 20, Hofstra Law School will be hosting a conference, with a collection of nationally noted speakers, entitled “Power, Politics, and Public Service: The Legal Ethics of Lawyers in Government.” The conference will focus on the most important regulatory and cultural reforms regarding the ethics of prosecutors, and the ethical duties and limitations of government lawyers who advise or litigate on behalf of public officials or public agencies. Everyone in the class is required to attend at least two complete speeches at the conference, hand in a two page memo reacting to what you heard, and participate in a class discussion regarding it. More on this will be discussed, and the syllabus with respect to this may be modified, as the agenda of the conference is developed and posted.

**Attendance and Preparation:** Discussions in class will primarily center on analysis of the problems set forth in the Lerman & Schrag text. Your preparation for the final examination will to a great extent consist of your engagement and participation in these discussions. If you do not attend classes regularly, prepare for classes conscientiously, and participate in the analyses, you will not derive the benefit of these discussions, and will ultimately be cheating yourself when your ability to apply the substance of this course in an analytic framework is tested. In addition, the class is less beneficial to all if participation is low, so there is a degree of responsibility to your classmates. Consequently, participation in class will be considered, attendance will be taken, and more than two unexplained absences may result in the lowering of your grade. Sometimes you can’t avoid missing a class. If you know in advance that you will be missing a class for a compelling reason, or if you have missed a class due to illness or emergency, please send me an e-mail, briefly explaining the situation.

The class will largely focus on the ABA Model Rules of Professional Conduct (pp. 3-521 of Gillers & Simon). We will focus on individual provisions on an “as-needed” basis as we make our way through the Lerman & Schrag text, as indicated in the Schedule set forth below. However, you may find it helpful to familiarize yourselves with the formats in advance.
The Freedman & Smith text is an analytic work which goes into the concepts and background of the ethical issues which will be dealt with in class in greater depth than is possible in the Lerman & Schrag text. At present, no specific assignments have been made to it, although it will be referred to during class discussion. However, this may change during the course of the semester as this syllabus is updated.

**Lateness:** Students are expected to be on time to class. However, it is better to come to class late than not at all. You may walk in late, as long as you do not abuse this privilege.

**Examination and Grades:** The course will be graded on the regular A-B-C grading scale.

Hofstra’s mandatory curve, as set forth in the Student Handbook, and to which this course is subject, requires that no more than 10% of the grades may be “A”; no more than 25% of the grades may be “A-” or higher; at least 15% of the grades must be “C+” or lower; and at least 6% of the grades must be “C-” or lower.

The grade will be based mainly on the final exam, which will almost certainly include essays, possibly in combination with true-false questions, and perhaps short answers. I will also consider your attendance record and your contributions to class discussion. The examination will be open book. Exams from prior semesters, together with sample answers, are available in Hofstra’s on-line Exam Archive.

**Schedule:**

**WEEK 1: TUESDAY, AUGUST 25, 2009**

- a. Introduction to the course.
- b. Institutions that regulate lawyers
- c. The new New York Rules of Professional Conduct

**Pages* Assigned for Week 1:** Foreword, Preface and Introduction; 1-71

- d. Admission to practice

**Problem Assigned for Week 1:** 1-1 and 1-2

**WEEK 2: TUESDAY, SEPTEMBER 1, 2009**

* All “Pages” references are to the Lerman & Schrag text.
a. Professional discipline  
b. The basic principle of confidentially

**Pages Assigned for Week 2:** 73-149, 151-175  
**Problem Assigned for Week 2:** 2-1, 3-1, 3-2, 3-3, 3-4 and 3-5

**WEEK 3:**  TUESDAY, SEPTEMBER 8, 2009  

a. Risk of future injury or death  
b. Other exceptions to the duty to protect confidences

**Pages Assigned for Week 3:** 175 - 237  
**Problems Assigned for Week 3:** 3-6, 3-7

**WEEK 4:**  TUESDAY, SEPTEMBER 15, 2009  

a. The privilege for corporations  
b. Lawyers’ duties of competence, honesty, Communication and diligence

**Pages Assigned for Week 4:** 244-259, 265-291  
**Problems Assigned for Week 4:** 4-4, 5-1

**WEEK 5:**  TUESDAY, SEPTEMBER 22, 2009  

a. Lawyers’ duties of competence, honesty, communication, and diligence, continued  
b. Candor and communication  
c. Candor in counseling

**Pages Assigned for Week 5:** 291-333, 344-350  
**Problems Assigned for Week 5:** 5-4, 5-5, 5-7
WEEK 6: TUESDAY, SEPTEMBER 29, 2009

MONDAY SCHEDULE IN EFFECT – NO CLASS

Pages Assigned for Week 6: 351-389
Problems Assigned for Week 6: 6-1, 6-2, 6-3, 6-5

WEEK 7: TUESDAY, OCTOBER 6, 2009

a. An introduction to conflicts of interest

WEEK 8: TUESDAY, OCTOBER 13, 2009

a. Catch-up and review

WEEK 9: TUESDAY, OCTOBER 20, 2009

a. Class discussion of Ethics Conference.

WEEK 10: TUESDAY, OCTOBER 27, 2009

a. Representing both parties to a transaction

Pages Assigned for Week 8: 391-433
Problems Assigned for Week 8: 7-1, 7-2, 7-3, 7-4, 7-5

b. Concealment of documents and evidence in civil cases

Pages Assigned for Week 10: 643-656, 679-725
Problems Assigned for Week 10: 11-8, 12-4

WEEK 11: TUESDAY, NOVEMBER 3, 2009

a. The nature of conflicts between present and former clients

Pages Assigned for Week 11 435-481
Problems Assigned for Week 11  8-1, 8-2, 8-3

WEEK 12:  TUESDAY, NOVEMBER 10, 2009

a. Legal fees
b. Successive conflicts of present and former government lawyers

Pages Assigned for Week 12:  483-536; 537-591

Problems Assigned for Week 12:  9-1, 9-4, 10-1, 10-2

WEEK 13:  TUESDAY, NOVEMBER 17, 2009

a. Regulation of Judges
b. Being a good person in an adversary system

Pages Assigned for Week 13:  593-643

Problems Assigned for Week 13:  11-1, 11-2, 11-3, 11-4

WEEK 14:  TUESDAY, NOVEMBER 24, 2009

a. Advertising
b. The unmet need for legal services

Pages Assigned for Week 14:  791-833, 847-870

Problems Assigned for Week 14:  14-1, 15-1, 15-3

WEEK 16:  TUESDAY, DECEMBER 1, 2009

a. Pre-examination review

Problems Assigned for Week 15:  15-2, 15-4, 15-5