LAWYERS' ETHICS  
Fall 2008  
Wednesdays, 2:10-4:00 pm, Roosevelt 109

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COURSE SYLLABUS

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 what you’ve learned from 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 build 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
- 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 and for practice
- Familiarity with the New York Code of Professional Responsibility and its distinctions from the Model Rules
GRADING AND EVALUATION

Class Performance/Participation (20%): In an effort to help you learn how lawyers actually grapple with ethical dilemmas in practice, a significant portion of class time will involve discussions and simulated legal arguments requiring you to draw from the cases and rules that you’ve reviewed outside of class to help discern how to resolve problems from the book or that I have provided to you. To get the most out of these exercises, you must spend some time thinking about how you would resolve these problems in advance of class. Sometimes you will get the benefit of working collaboratively with your peers but other times you will be called on to work through it individually. Each week a small group of students will have primary responsibility for analyzing and resolving the problems from the casebook and for reporting on the relevant cases. I will distribute this list after the first week of class. You will be graded on the thoroughness of your preparation, in-class performance, and post-performance reflection. I will discuss this more in-class on the first day.

Class Participation (10%): Class time will be interactive & dynamic. Much of our time will involve analysis and interpretation of the relevant rules of professional responsibility or other statutory or constitutional provisions. It is critical that you read these rules in advance of class and consider how they were applied in the assigned cases, as well as how they might be applied (or have limited application) to the problems we’ll be discussing in class. Regardless of whether you have primary responsibility for the in-class problems, all students are expected to do the assigned reading each week and to actively participate in class discussion throughout the semester. If you have more than 2 unexcused absences and/or you have not been a regular participant in class discussions, this portion of your grade will be reduced.

Final Exam (70%): The final exam will be a 2-hour, open-book exam which will include essay questions and perhaps some short answer or multiple-choice questions. I will provide more information later in the semester to help you prepare for it.
REQUIRED TEXTS


CALI MATERIALS

Hofstra is a member of the Center for Computer-Assisted Legal Instruction (CALI) Consortium, which has put together a series of multiple choice questions 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 & TECHNOLOGY

I am always happy to speak with students about the course or anything else. Though you are welcome to stop by my office on the chance that I am free and able to meet with you, I highly recommend that you e-mail or call me or my administrative assistant, Maria Filotti, to set up an appointment.

I have also set up a course page on TWEN, which can be accessed by going to www.lawschool.westlaw.com. I will use this site to post all the relevant course materials, including the syllabus, supplemental readings, and classroom slides. I also hope to include podcasts or video capture from certain classes. I'll also use TWEN to 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. In the past, students have had great discussions about a variety of current issues, as well as follow-up discussions from class. If you have not already done so, please register immediately.
**WEEKLY ASSIGNMENTS**

* Please note that the assignments may change throughout the course of the semester if I feel that we need to slow down, speed up, or skip some of these readings. I will give you advance notice both in class and on TWEN.

**WEEK ONE: August 20th**

**In-Class:**
- Administrative Details
- Sources for Ethics Rules, Regulations, Law
- Overview of Regulatory Framework for New York Lawyers
- Elements of the A/C Relationship: Competence, Fiduciary Responsibilities
- Cases:
  - *Cotto v. United States* (1st Cir. 1993) (p. 59)

**Reading:**
- Gillers, *Regulation of Lawyers*: pp. 1-11, 17-23, 56-70
- Supplement: Preamble, Rules 1.0, 1.1, 1.3, 1.4

**WEEK TWO: August 27th**

**In-Class:**
- Elements of the A/C Relationship: Confidentiality/Privilege
- Cases:
- Problems:
  - *My Client is HIV Positive* (p. 23)
  - *All’s Not Well* (p. 23)
  - *Slip and Fall* (p. 31)

**Reading:**
- Supplement: Rules 1.6, 1.13; Restatement §§ 59-73
WEEK THREE: September 3rd

In-Class:
• Autonomy of Attorneys and Clients
• Cases:
  Jones v. Barnes (U.S. 1983) (p. 73)
  Olfe v. Gordon (Wis. 1980) (p. 80)
• Problems
  Ms. Niceperson (p. 72)
  I Don’t Bargain (p. 73)
  I’d Rather Die (p. 79)
  L.A. Law Clip (video in class)

Reading:
• Gillers, Regulation of Lawyers: pp. 71-85
• Supplement: Rules 1.2, 1.3, 1.4, 1.14

WEEK FOUR: September 10th

In-Class:
• Terminating the Lawyer-Client Relationship
• Communicating with Another Lawyer’s Clients & Unrepresented Persons
• Improper Acquisition of Confidential Information
• Cases:
  Niesig v. Team I (N.Y.2d 1990) (p. 93)
  The Florida Bar v. Belleville (Fla. 1991) (p. 436)
• Problems:
  Slip and Fall Redux (p. 92)
  Something You Should Know (pp. 111-12)
  Law & Order Video Clip: In re: Mark Paulter

Reading:
• Supplement: Rules 1.16, 3.3, 4.2, 4.3, 4.4
WEEK FIVE: September 17th

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

Reading:
- Gillers, Regulation of Lawyers: pp. 119-146
- Supplement: Rule 1.5

WEEK SIX: September 24th

In-Class:
- Court-Awarded Fees
- Pro Bono Service
- Cases:
- Problems
  - Those Fees Are Outrageous (p. 154)
  - Should We Adopt Mandatory Pro Bono? (p. 168)

Reading:
- Handouts
- Gillers, Regulation of Lawyers: pp. 153-77
- Supplement: Rules 1.5, 6.1, 6.2
WEEK SEVEN: October 1st

NO CLASSES – Rosh Hashanah Observed

WEEK EIGHT: October 8th

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

Reading:
• Gillers, Regulation of Lawyers: pp. 799-840)
• Gillers & Simon, Supplement, Rules 7.1, 7.2, 7.3, 7.4, 7.5

WEEK NINE: October 15th

CLASS RESCHEDULED FOR PRESIDENTIAL DEBATE
WEEK TEN: October 22\textsuperscript{nd}

In-Class:
\begin{itemize}
  \item Views of Adversary Justice
  \item “Truth” & Confidences
  \item Witness Coaching/Preparation
  \item Cases:
    \begin{itemize}
      \item \textit{Nix v. Whiteside} (U.S. 1986) (p. 340)
    \end{itemize}
  \item Problems
    \begin{itemize}
      \item \textit{Carl’s Story} (p. 335)
      \item \textit{The Lecture} (p. 353)
    \end{itemize}
\end{itemize}

Reading:
\begin{itemize}
  \item Gillers, \textit{Regulation of Lawyers}: pp. 315-18, 331-60
  \item Gillers & Simon, \textit{Supplement}, Rules 1.2, 3.3, 3.4
\end{itemize}

WEEK ELEVEN: October 29\textsuperscript{th}

In-Class:
\begin{itemize}
  \item Fostering Falsity or Advancing Truth - The Law of Perjury
  \item Frivolous Positions and Abusive Tactics
  \item Dilatory Tactics
  \item Hardball & Incivility
  \item Misrepresentations & Omissions
  \item Cases:
    \begin{itemize}
      \item \textit{Mullaney v. Aude} (Md.App. 1999) (p. 389)
      \item \textit{Matter of Thonert} (Ind. 2000) (p. 396)
    \end{itemize}
  \item Problems
    \begin{itemize}
      \item \textit{In Re: Max Steuer}
      \item \textit{The Eyewitness (Part I)} (p. 375)
      \item \textit{The Eyewitness (Part II)} (p. 376)
    \end{itemize}
\end{itemize}

Reading:
\begin{itemize}
  \item Gillers, \textit{Regulation of Lawyers}: pp. 360-371, 374-400
  \item Gillers & Simon, \textit{Supplement}: Rules 3.1, 3.3, 3.4, 4.1
\end{itemize}
WEEK TWELVE: November 5\textsuperscript{th} [CLASS WILL GO EXTRA 10 MIN]

In Class:
\begin{itemize}
  \item Real Evidence
  \item Candor to the Tribunal and Third Parties: The Trilemma Dilemma
  \item Cases:
    \begin{itemize}
      \item In Re: Ryder (E.D. Va. 1967) (p. 404)
      \item People v. Meredith (Cal. 1981) (p. 412)
    \end{itemize}
  \item Problems
    \begin{itemize}
      \item Reliable Sources Say (p. 401)
      \item Vanity Ink (p. 401)
    \end{itemize}
\end{itemize}

Reading:
\begin{itemize}
  \item Gillers, \textit{Regulation of Lawyers}: pp. 401-20, 423-26, 435-36
  \item Gillers & Simon, \textit{Supplement}: Rules 1.2, 1.16, 3.3, 3.4, 4.1
\end{itemize}

WEEK THIRTEEN: November 12\textsuperscript{th} [CLASS WILL GO EXTRA 10 MIN]

ATTEND LICHTENSTEIN LECTURE: 11:00-12:00

In-Class:
\begin{itemize}
  \item Concurrent Conflicts of Interest: Attorney/Client Conflicts
  \item Concurrent Conflicts of Interest: Client/Client Conflicts
  \item Joint Representation
  \item Cases:
    \begin{itemize}
      \item Matter of Neville (Ariz. 1985) (p. 191)
      \item Fiandaca v. Cunningham (1st Cir. 1987) (p. 239)
    \end{itemize}
  \item Problems
    \begin{itemize}
      \item May the Lawyer Be Our Client? (p. 190)
      \item The Client Says We Messed Up (p. 204)
      \item Karen Horowitz's Dilemma (p. 206)
      \item Will You Represent Us Both? (p. 238)
      \item May We Do Both Cases? (p. 238)
    \end{itemize}
\end{itemize}

Reading:
\begin{itemize}
  \item Gillers, \textit{Regulation of Lawyers}: pp. 185-201, 204-09, 238-43, 249-52
  \item Gillers & Simon, \textit{Supplement}: Rules 1.7, 1.8
\end{itemize}
WEEK FOURTEEN: November 19th [CLASS WILL GO EXTRA 10 MIN]

In-Class:
- Consent & Waiver
- Advocate-Witness Rule
- Successive Conflicts in Private Practice
- Imputation of Conflicts
- Cases:
  - Analytica, Inc. v. NPD Research, Inc. (7th Cir. 1983) (p. 275)
  - Cromley v. Board of Education (7th Cir. 1994) (p. 294)
- Problems
  - What Kind of Consent? (p. 259)
  - 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: pp., 259-64, 270-73, 275-306, 309-12
- Gillers & Simon, Supplement: Rules 1.7, 1.9, 1.10, 1.11, 3.7

WEEK FIFTEEN: November 26th

NO CLASS – HAPPY THANKSGIVING!
[Class time made up by extra 10 min of previous classes]
MAKE-UP CLASS: December 2nd [CLASS WILL GO EXTRA 10 MIN]

In-Class:
• Admission to the Bar: Education & Examination, Character Inquiries
• Transient Lawyers and Multijurisdictional Practice
• Cases
  In re Mustafa (D.C. 1993) (p. 554)
  Birbrower, Montalbano, Condon & Frank v. Sup. Ct. (Cal. 1998) (p. 574)
• Problems
  Shattered Glass (p. 553)
  The Racist Bar Applicant (pp. 559-60)
  Local Office, National Practice (pp. 572-73)
  I Don't Want to Pry, But . . . (p. 591)

Reading:
• Gillers, Regulation of Lawyers: pp. 552-60, 572-88, 591-93
• Gillers & Simon, Supplement: Rules 5.1, 5.2, 5.3, 5.5, 5.6, 8.1, 8.5