

### Fall 2023 Syllabus

Welcome to Lawyers' Ethics! I love teaching and discussing ethics, and I hope that by the end of this course you will have learned to appreciate not just the black letter law of the ethical rules and principles by which lawyers practice, but also the contexts and nuances that make ethics both fascinating and frustrating. You should expect to develop a firm understanding of what is ethically required and permitted to do as a lawyer, enabling you both to meet your obligations to your clients, and to avoid the consequences of professional discipline and malpractice actions. Equally important, you can expect this course to be an important step in developing your professional identity. You all have a *personal* code and *personal* values that you will bring to your work as lawyers; ethical rules and principles provide an additional foundation for the development of your own *professional* code and values. So study the rules diligently, and consider and critique them thoughtfully, and you will not just do well in this course, you will have taken an important step on your journey to becoming a lawyer.

#### Contact Information & Office Hours

My email address is [lawtsl@hofstra.edu](mailto:lawtsl@hofstra.edu), and my phone number is 463-5934. Because I will often have unexpected court dates or client meetings due to my obligations as Attorney-in-Charge of the Youth Advocacy Clinic, please talk to me after class, or contact me via email or phone, to schedule an individual or small group appointment. I am happy to do either in-person or zoom meetings.

#### Class Schedule

Our class meets in Room 238 from 2:10 to 3:30 on Mondays and Wednesdays from August 21 through November 27. All classes will be meeting in person unless I explicitly arrange otherwise. I will start class promptly at 2:10, so please be settled in by then.

We do not have class on September 4 (labor day) or September 25 (Yom Kippur). We **do** have class on Tuesday, September 5 because the law school will be on a Monday schedule that day. In addition, Hofstra's Freedman Institute for the Study of Legal Ethics will be hosting a full-day symposium on Accountability and the Supreme Court on Thursday, September 21. You will be required to attend one of the three panels at the Symposium; I will provide more information in class.

#### Course Structure and Assignment Memos

I have broken the semester into ten Units. For each Unit I have posted an Assignment Memo that (1) details the Model Rules and other readings we will be discussing; (2) provides you with some questions to consider as you do the readings; and (3) gives you a short problem set to complete before class. In class we will go over the Rules, and use other readings, in-class hypotheticals, and the problem sets to help us understand the policies behind the Rules and how they apply in real-life scenarios.

### Canvas

Please make sure you are able to access the course Canvas page. If you are having any trouble, let me know. We will use Canvas for the following:

- I will post this Syllabus, including any updates, on the *Syllabus* tab.
- I will post any announcements on the *Announcements* tab.
- All assignment memos, course materials and web links will be posted in the *Modules* tab. These materials will be organized by Unit.

### Materials

We have two sources of materials:

- The 2023 ABA Model Rules of Professional Conduct, which are available for purchase in book form through Amazon or directly from the ABA at <https://www.americanbar.org/products/inv/book/429791752/>. If you don't feel you need a hard copy, you can get free online access to the Rules at this link: [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/).
- Supplemental readings, which will be available through documents or links that I will provide on the Canvas page for this course.

### Grading

I will base your grade primarily on your performance on the three hour final exam. The exam will consist of a series of short hypotheticals that will require you either to select the best answer among a set of multiple choice responses, or to write a short essay answer. The exam will be closed book, but I will provide you with a copy of the Model Rules (without the Comments) that you will be permitted to refer to during the exam. You will be responsible for all assigned material, as well as topics covered in class during the semester. Your grade for the course can also be effected by your satisfactory completion of these additional requirements:

- **Attendance**

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly scheduled classes. A student enrolled in a *three*-credit course who misses more than *three* class sessions will not pass the course. My role regarding attendance is very limited. I pass out an attendance sheet at the beginning of each class, collect it at the end of each class, and hand it to my secretary, who keeps a record of absences for each student. When my secretary sees that a student has three absences, she notifies the student with an email warning. If a student is absent a *fourth* time, my secretary sends an email to the Dean of Students reporting that fact. Each student is responsible for signing in for himself or herself. Falsification of a signature on the attendance sheet is a violation of the Code of Academic Conduct. If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations can be made for students who must be absent for religious

reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

- **Reaction Papers**

Prior to the start of the semester you must register to receive daily emails from the Law360 Legal Ethics webpage. This daily e-newsletter highlights interesting and important decisions, developments, and rulings related to lawyers' ethics. Instructions for registering to receive the emails are on the course Canvas page under the Module for Unit 1. If you have trouble registering, please contact Lisa Spar at the law library.

Over the course of the semester you must send me at least one 2-4 paragraph reaction to an item from the Law360 e-newsletter. You may send your reaction to me via email, either in the body of the email or as an attachment. Your reaction should (1) clearly illustrate that you have read and understood the issue being discussed; (2) express some sort of opinion on the subject matter of the news item, including the basis for your opinion; and, (3) show that you have done some additional research into the issue. The last day of classes is the last day you may submit a reaction paper that you want counted towards this requirement. Please note that I will frequently circulate reaction papers to the entire class; if you do not want me to do so, or want it circulated without being identified as the author, just let me know. As with in-class discussion, I expect comments and replies to reaction papers to be civil in tone.

- **Questions to Consider & Problem Sets**

As noted above, the Assignment Memo for each Unit includes questions and a problem set. For each Unit, beginning with Unit 2, I will pre-assign individuals to be ready to provide answers in class for that Unit's questions and problems. In general, I strongly encourage *everyone* to think about the questions, and write out answers to the problems, for each Unit. Many of the problems are similar in content and format to questions that you will get on my exam, as well as on the Multistate Professional Responsibility Exam (MPRE), and it is excellent practice to write out your answers.

### Class Participation

I highly value and strongly encourage your participation in class discussion, regardless of whether you are pre-assigned for a Unit. You all often ask questions that are on the minds of many other students; you consistently have insights and observations that I have not considered; and you come to the course with your own set of personal and professional experiences that may be relevant. Do not worry about derailing my lecture with a question or comment; I promise you I will cover everything I plan to for each Unit and for the course.

### Course Topics

Below is a list of the 10 Units for the course, with the topics covered in each Unit. As noted above, you will find the Assignment Memos and course materials for each of these Units under the *Modules* tab of the course Canvas page.

**Unit 1: Introduction to Ethics**

Core Fiduciary Duties; Scope of Ethical Rules Governing Lawyers and Their Conduct; Consequences of Unethical Conduct; Self-Care as an Ethical Responsibility

**Unit 2: The Client-Lawyer Relationship**

What Makes Someone a Client; Allocation of Authority in the Client-Lawyer Relationship; Access to Legal Assistance; Setting Fees and Scope of Representation; Declining and Terminating Representation

**Unit 3: Confidentiality**

Purpose of Confidentiality Rules; Exceptions to Confidentiality Rules; Confidentiality vs Attorney-Client Privilege; Confidentiality Rules for Prospective and Former Clients

**Unit 4: Advising a Client Ethically**

Role of Client Counseling; Content of Ethical Counseling; Advising Effectively in a Multi-Cultural World

**Unit 5: Conflicts I**

Lawyer-Client Conflicts; Current Client Conflicts; Former Client Conflicts; Prospective Client Conflicts; Imputation

**Unit 6: Conflicts II**

Special Conflict Situation: Non-lawyer Conflicts; Former Government Lawyers; Former Judges; Clients with Diminished Capacity; Organizational Clients

**Unit 7: Truthfulness**

Lawyers and Honesty; Presenting and Pursuing a Claim Ethically; Candor Toward the Tribunal; Truthfulness Outside the Courtroom

**Unit 8: Fairness and Integrity**

Fairness to Opposing Parties; Respecting the Rights of Third Persons; Maintaining the Integrity of the Tribunal; Communicating with Non-Clients; Discriminatory Conduct and Harassment

**Unit 9: Representing the Government**

Prosecutors; Government Lawyers

**Unit 10: Technology and the Business of Lawyering**

Ethical Billing Practices; Advertising; Political Contributions; Ethics and “New” Technologies; Ethics During a Disaster