Texts for the Course: I am not a fan of pricey casebooks. Thus, I do not use one for this course. Almost all of our readings will be posted on TWEN, and I leave it to you to choose whether you want to print them out or read them electronically. If the reading is not posted on TWEN, then it is available somewhere else electronically and I provide you the link in the syllabus.

We will rely heavily on the ABA’s 2008 Model Rules of Professional Conduct. Those are the rules that are tested on the Multistate Professional Responsibility Exam, which all of you who wish to be licensed lawyers will have to take. Note that the Rules are “model” rules. As you know, that means that standing alone, they have no authority. As with other model codes, each state decides whether it will adopt a particular model code as its own statutory authority. In legal ethics, most states, including Colorado, have adopted some form of the ABA Model Rules. I will try and note throughout the course those places in which Colorado may vary from the Model Rules.

The current ABA Model Rules are available online at: http://www.abanet.org/cpr/mrpc/mrpc_toc.html. If you wish, you may also purchase a hard copy of the Model Rules from the ABA’s website. The Colorado Rule of Professional Conduct are available online at: http://www.cobar.org/index.cfm/ID/384/CETH/Colorado-Rules-of-Professional-Conduct/.

Evaluation: I understand that law school grading can be stressful and maddening – for you and for me. The best way that I have found to try and reduce the distress around grading is to have multiple and different kinds of opportunities for you to engage with the substance of the course. I hope that you find that at least some of the opportunities allow you to demonstrate your competence in ways that work towards your strengths. More importantly, I also hope the multiple opportunities make the substance of the course more interesting for you.

Here are the opportunities for which I have planned (with the percentage of grade in parentheses):

- Classroom participation (25%): Legal ethics is an area of law that calls heavily on your own experiences as a moral actor. Thus, learning legal ethics happens best when class members actively share their ideas and experiences. Because I believe that class participation is so necessary to our learning, I substantially weigh it in grading. However, from my own teaching experiences, I know that an entirely volunteer-based participation system can privilege those who are most comfortable speaking in a large group. In order to avoid such privileging, I will randomly and actively call on all class members to speak. To avoid my own unintentional biases in calling (e.g., I know I always look to my right first so I’m more likely to call on students on that side of class), I will
carry a set of note cards on which each student’s name is printed. Each class I will use the note cards as my way of randomly selecting students to participate.

I have no interest in embarrassing any student. So, you are free to choose three days during the semester on which you will be off the call list. You must e-mail me the night before class to let me know you wish to be off the list the following day.

- **Homework assignments (25%)**: You will have four homework assignments during the course of the semester. The first one, due before the first day of class, requires nothing more than that you participate in a brief online survey. The three later assignments require more work. The homework assignments are noted throughout the syllabus in highlighted text boxes.

- **Team project (25%)**: It is highly likely that when you become a practicing lawyer you will work as part of a team. Maybe the team will be you and a partner at your firm, maybe you and a more experienced lawyer at a public defender office, maybe you and another newer lawyer doing due diligence on a transactional deal. However, in Law School you often are encouraged to work on your own, and not as part of a team. As you know from your own experience, working on a team can be incredibly rewarding if the team works well together, but incredibly frustrating if it does not. On a team you often have to be able to navigate many possible dynamics – dynamics of power, substantive knowledge, experience, gender, race/ethnicity, or time management skills. Since the legal profession will require teamwork from you, and law school has not given you many opportunities to work with your law school colleagues, I have planned a team project to try and balance out your experience.

For this team project, you will work in teams of 3-5 members, with teams to be assigned by a class-created method. Each team must screen a law-related movie. The team must identify all of the legal ethics violations that occur in the movie, and write up a report. The report should identify what is the basis of the violation (i.e., a Model Rule, a statute, a constitutional right etc.). Each team member must also submit an independent report of no more than 2 pages in which she/he assesses the dynamics of the team, and how she/he participated in the team’s work.

Some possible movies to review:

- The Verdict
- Anatomy of a Murder
- Class Action
- Regarding Henry
- A Civil Action
- Suspect
- The Client
- Illegal
- Intolerable Cruelty
- Michael Clayton
- The Rainmaker
- The Sweet Hereafter

Our library has most of the above DVDs, but not all of them. My list also is not exhaustive. If there is a law-related movie that you would rather watch, and you can assure me it has multiple examples of ethical dilemmas, then you are free to select it.
• **Final exam (25%)**: The exam will be one question. It will not be an issue spotter – that’s what the team project is designed to do. You will have 9 hours in which to complete the exam (i.e., pick up the exam at 8 am and return your answer no later than 5 pm that same day). I will give you a fairly strict page limit in which to craft your response.

If after thinking about the range of opportunities, you think that none of them work towards a strength of yours, you should feel free to propose some project that does. If you make a strong proposal, I’ll say yes – really. An example, I had a student who was also an aspiring playwright, and in a seminar class he asked if he could write a play instead of a legal ethics research paper. I was happy to say yes. I doubt the play will ever be produced, but he was a lot happier thinking about legal ethics as a playwright than as a law student. I was a lot happier reading his efforts to weave in legal ethics into a drama than I was reading an unenthusiastic attempt at a seminar paper.

**Office Hours**: As you know, I teach one of the clinics. Because my clinic cases involve court work, that means my schedule is a bit at the mercy of the court’s docket. That makes it pretty challenging to promise that I can always be in my office at a particular time and date. That makes me reluctant to set standing office hours because I worry that you and I both will get frustrated with my absences. I would like to propose instead an open door policy, which means that you are free to interrupt me in my office anytime you find me there. You should come find me in my first floor office, and I am usually in by 8:30 a.m. We can caucus throughout the semester to make sure you all are finding the open door policy workable.

**Homework**: No later than January 10th, you must complete a brief online survey available at http://www.zoomerang.com/Survey/?p=WEB228JRHB74X6. Your answers are anonymous. But you should print out the last page of the survey, which just thanks you for taking the survey, as your confirmation that you completed this homework assignment.

**Week 1**:  
Jan. 12th  
**Setting the Stage**
• What to expect from class  
• Zoomerang survey results
No Class on Jan. 14th, Deborah has previously scheduled court hearing.

**Homework:** As you know, you must complete a team project. The entire class has a shared homework assignment – to determine a fair and balanced way for the class to assign itself to teams. The class as a group will need to determine a process to use to solicit and gather input from class members, to determine the criteria that are relevant to a fair and balanced way of creating teams, to determine a process to resolve any disagreements, and to ultimately create a team assignment process. I have three requirements:

1. that the ultimate assignment process result in teams of 3-5 members;
2. that the entire homework assignment be carried out in a transparent way – e.g., by using TWEN's discussion board, by using some voting method that leaves a paper trail etc; and,
3. that each class member meaningfully participate, and verify that participation – e.g., posting substantively on the discussion board etc.

The class must present the team assignment process on January 27th with teams to be assigned by Monday, February 2nd. Teams must pick their movies by February 4th and e-mail their selections to me.

**Week 2:**

Jan 19th: A Brief History of Rules and Regulations on Lawyering
- Review the timeline at http://www.abanet.org/cpr/about/landmark_dates_brochure.pdf
- The Canons and the Model Code.
  - There are illustrations of the Canons and the Code posted on TWEN. You need not read those in detail, but you should skim sufficiently so that you have a sense of differences in tenor and style.
- Other sources of lawyer regulation.
  - One example, Sarbanes-Oxley, see 17 CFR 205 et seq. You should find the statute on Lexis or Westlaw and read at least Section 205.1 and 205.2
  - Another example, Court Rules, see Federal Rule of Civil Procedure 11, a version of which is posted on TWEN.

Jan. 21st: What Do We Mean by “The Adversary System” and Is It Justified?
- David Luban, The Adversary System Excuse, ch. I from LEGAL ETHICS AND HUMAN DIGNITY
  - This is one of the longer articles that we will read this semester, but persevere through it as it is foundational. Luban is one of the most important contemporary legal ethics writers.
- Model Rule 1.6, Colorado Rule 1.6
• The examples from North Carolina and Chicago. A bundle of newspaper articles is posted on TWEN.

Week 3:
Jan. 26th
• Spaulding v. Zimmerman, 116 N.W. 2d 704 (Minn. 1962).
• Model Rules 1.1, 1.3

Make sure you read the actual case before you read the Floyd & Gallagher article. Take note of what new you learn when you read the article and whether it influences the way that you think about the case.

Jan. 27th: What Do We Mean by “The Attorney-Client Relationship”?
• Norman W. Spaulding, Reinterpreting Professional Identity, 74 Univ. Colo. L. Rev. 1 (2003), excerpted.
• Model Rules 1.2, 1.4

Present team assignment process

Week 4:
Feb. 2nd
• Abbe Smith, The Lawyer’s “Conscience” and the Limits of Persuasion, 36 Hofstra L. Rev. 479 (2007).

Feb. 4th: Practice Settings – Criminal Defense
• Michael Mello, United States v. Kaczynski: Representing the Unabomber, in LEGAL ETHICS: LAW STORIES

Teams to have e-mailed Deborah their movie choice.

Week 5:
Feb. 9th
• Kenneth Mann, Defending White-Collar Crime: A Portrait of Attorneys at Work (excerpts)
• Model Rules 1.6, 3.3

Feb. 11th: Practice Settings – Criminal Prosecution
• Vanessa Merton, What Do You Do When You meet a “Walking Violation of the Sixth Amendment” If You’re Trying to Put That Lawyer’s Client in Jail?, 69 Fordham L. Rev. 997 (2000)

The example of Daniel Bibb. A bundle of articles about Daniel Bibb is posted on TWEN.
• Model Rule 8.3
  ✓ Another week with a heavier reading load, but all the pieces contain anecdotes that I find particularly engaging. I hope you do as well.

**Week 6: Practice Settings – Private Firms**
Feb. 16th

- Model Rule 8.3

Feb. 18th

- Colorado Bar Association Ethics Opinion 108, Inadvertent Disclosure of Privileged or Confidential Documents
- ABA Formal Ethics Opinion 06-442, Review and Use of Metadata
- Colorado Bar Association Ethics Opinion 119, Disclosure, Review, and Use of Metadata
- Maine Bar Ethics Opinion 196, Metadata
- Model Rules 4.4, 8.4

**Week 7:**
Feb. 23rd


Feb. 25th No class, Deborah away at conference.

✓ Some mutually convenient time before I leave for my conference, I will hold a 2-3 hour MPRE review session. The review session will count as make-up time for the classes I have to cancel.

**Week 8:**
Mar. 2nd & Mar. 4th: No class, Deborah away at conference.

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**Homework:** Due by start of class on March 9th, you should consider the course readings to date. Pick one reading you particularly liked and one you particularly did not. In no more than two pages, explain why you picked the two readings. What about the readings appealed/disappeared to you? (Yep, “disappealed” is a made up word.) Content? Writing style? Something else? You may choose to do this assignment as a 2-member team. If you work as a team, you must certify to me at the end of the two pages that both team members contributed equally to the assignment. Your certification must be under penalty of perjury.
**Week 9: Practice Settings – Cause Lawyering**

Mar. 9\textsuperscript{th} Some Background
- Model Rules Preamble, Rule 1.2, Rule 6.1

Mar. 11\textsuperscript{th} Real Experiences in Cause Lawyering
- Letter from Erik Pitchal, December 2000
- NY State Bar Association Ethics Opinion 751
  - Note that New York has not formally adopted the Model Rules, but its Disciplinary Rules are substantially in line with the Model Rules.
- Model Rule 1.1

**Week 10:**

Mar. 16\textsuperscript{th} The Role of Legal Education for Cause Lawyers

Mar. 18\textsuperscript{th} The Private Bar as Cause Lawyers – The Role of Pro Bono
- Model Rule 6.1

**Week 11: Spring Break**

Mar. 23\textsuperscript{rd} & 25\textsuperscript{th}: No class, spring break.

**Week 12: Conflicts of Interest**

Mar. 30\textsuperscript{th} Between Parties
  - Note that California has not formally adopted the Model Rules, but its Rules of Professional Conduct are almost entirely in line with the Model Rules.
- Model Rule 1.7
- Model Rule 1.8 (portion re: third-party payor)
  - Guest: Emma Leheny, partner, Rothner, Segall. Greenstone

Apr. 1\textsuperscript{st} Between Attorney and Client
- We are going to look at potential conflicts of interests between a lawyer and her client through the lens of a lawyer who may also provide other kinds of “law-related” services. An example would be a lawyer who also is a real estate broker.
• For an overview, read Timothy J. Pierce, Dual Practice: Combining the Practice of Law with Other Occupations, available at http://www.wisbar.org/AM/Template.cfm?section=Lawyer_Regulation&template=/cm/ContentDisplay.cfm&contentid=62701
• Model Rules 1.8, 5.4, 5.7

**Team Project: Film Review**
Due before the start of class on April 6th.

**Week 13: The Role of Values**
Apr. 6th

Apr. 8th:

**Homework:** No later than before the start of class on April 13th, you must complete a sample survey on the Project Implicit website, available at https://implicit.harvard.edu/implicit/.

**Week 14: Gender/Race/Ethnicity/Sexual Orientation**
Apr. 13th
• After you have taken a sample survey on the Project Implicit website, return to https://implicit.harvard.edu/implicit/demo/background/index.jsp to read more about the background of the IAT. You should read all of the links under “General Information.”

Apr. 15th:
• Paula Patton, Diversity Issues Emerge in Research Data, 3(2) The Complete Lawyer
• Hiring Partner’s Office blog post, Diversity, October 2, 2008
• Hiring Partner’s Office blog post, Outing Self on Resume, September 8, 2008

**Week 15:**
Apr. 20th Resource Scarcity
Apr. 22\textsuperscript{nd}  Things Never to Do?

- *Hayes v. Brown*, 399 F.3d 972 (9\textsuperscript{th} Cir., 2002)