

**Legal Ethics and Professionalism
Preliminary Syllabus - Autumn 2011
Judge Neil Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means, more generally, to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the concepts embodied in the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing actual problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will – unavoidably – face you in your own career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Second Edition 2008).

Gillers, Regulation of Lawyers: Statutes and Standards 2009

Additional materials will be handed out in class or posted on TWEN.

Schedule and How to Reach Me

Class will meet on Mondays and Wednesdays at 4:40 p.m. in Wolf 305, subject to the need to reschedule class sessions. I am happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through ethical quandaries in a way that seeks to mimic how you might work through with colleagues the ethical questions you will inevitably face in practice. Toward this end, I follow a loose Socratic approach and it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. You will be “on call” at various points during the semester but expected to participate regularly even when you’re not on call.

To facilitate discussion laptops are not permitted. There will be a three hour final exam on which your grade will be primarily based, but attendance and participation can affect your final grade by plus or minus three points.

Preliminary Schedule (subject to revision during the course of the semester)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-38, 45-59; skim Model Rules of Professional Conduct

2. The law governing lawyers, admission to practice, continued

Reading: 38-45, 59-71

Lawyer Liability

3. Professional discipline, reporting misconduct by others

Reading: 73-110; Model Rules 5.1-5.3, 8.3; *The Fall of America's Meanest Law Firm*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 110-149

The Rule of Confidentiality

5. The duty to protect client confidences

Reading: 151-169; Model Rule 1.6, 3.3

6. Exceptions to the rule

Reading: 169-187; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

From Confidentiality to Privilege

7. Confidentiality and its exceptions, continued

Reading: 187-213; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 215-261

Duties to the Client

9. Duties of competency, honesty, communication, and diligence

Reading: 265-320; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

10. Who Calls the Shots?

Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16; *Bribery Case Brings Down Legal Legend*; *60 Minutes Reports Legal Ethics Head-Scratcher*

Conflicts Involving Current Clients

11. General principles in evaluating conflicts

Reading: 351-377; Model Rule 1.7, 1.10

12. Conflicts between clients and positions

Reading: 378-389; Model Rule 1.7, 1.10

13. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 391-433; Model Rule 1.7, 1.10, 1.8(f)

Conflicts Involving Former Clients

14. Conflicts: duties to present and former clients

Reading: 435-459; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

15. Conflicts wrap up

Reading: 459-481; Model Rules 1.7, 1.9, 1.10

Lawyer Advertising

16. Advertising

Reading: 791-818; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 483-506; Model Rules 1.4, 1.5, 7.1, 8.4

18. Fees, continued

Reading: 506-536; Model Rules 1.4, 1.5, 1.8, 1.16(d), 5.2, 7.1, 8.3, 8.4;
Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

19. Fee Disputes

Reading: 537-561; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

Duties to Your Good Name, Your Adversary, and the Court

20. Being an adversary without being adversarial

Reading: 593-624; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

21. Truth and Falsity in Litigation

Reading: 624-643; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

22. The duty to disclose

Reading: 643-689; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Lawyers Taken to the Woodshed Over Discovery Conduct; Bogus Claim of Privilege in Qualcomm Case*

23. Communications with lawyers and third parties

Reading: 689-730; Model Rules 3.8, 4.1-4.4, 8.4

24. What kind of lawyer do you want to be?

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

25. Pressures of modern practice

Reading: 731-790; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

26. Provision of legal services

Reading: 819-872; Model Rules 5.3, 6.1, 6.2

27. TBD