

**Legal Ethics and Professionalism  
Preliminary Syllabus - Autumn 2013  
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 (Third Edition 2012).

Gillers, Regulation of Lawyers: Statutes and Standards (Concise Edition 2013)

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

**Schedule and How to Reach Me**

Class meets on Tuesdays and Thursdays at 4:40 p.m. in Wolf 205, subject to the need to reschedule class sessions. I am very happy to meet with you individually 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 the sort of ethical problems you are likely to confront in practice, mimicking the sort of reasoning and approach you are likely to follow 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 half a grade level, up or down (e.g., from B+ to A- or vice versa). During the examination, you may consult the Lerman and Schrag and Gillers textbooks, but no other materials (e.g., class outlines).

### **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: 1-45, 56-68; skim Model Rules of Professional Conduct

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

Reading: 45-56, 68-78

#### **Lawyer Liability**

3. Professional discipline, reporting misconduct by others

Reading: 78-118; 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: 118-155

#### **The Rule of Confidentiality**

5. The duty to protect client confidences

Reading: 159-179; Model Rule 1.6, 3.3

6. Exceptions to the rule

Reading: 179-200; 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: 201-228; 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: 229-277

**Duties to the Client**

9. When does the attorney-client relationship start? And the duty of competence

Reading: 279-312 Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

10. The duties of honesty, communication, and diligence

Reading: 312-334; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

11. Who calls the shots? And when does the attorney-client relationship end?

Reading: 334-377; 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**

### 12. General principles in evaluating conflicts

Reading: 379-407; Model Rule 1.7, 1.10

### 13. Conflicts between clients and positions

Reading: 407-421; Model Rule 1.7, 1.10

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

Reading: 423-469; Model Rule 1.7, 1.10, 18(f)

## **Conflicts Involving Former Clients**

### 15. Conflicts: duties to present and former clients

Reading: 471-496; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

### 16. Conflicts wrap up

Reading: 497-519; Model Rules 1.7, 1.9, 1.10

## **A Changing Profession**

### 17. Advertising, Solicitation, Globalization, Competition and Barriers to Entry

Reading: 906-948; Model Rules 5.4, 5.5, 7.1-7.5

## **Legal Fees: Conflict in Another Sphere?**

### 18. Fees: conflicts between lawyers and their clients

Reading: 521-543; Model Rules 1.4, 1.5, 7.1, 8.4

19. Fees, continued

Reading: 543-578; 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*

20. Fee Disputes

Reading: 578-605; 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**

21. Being an adversary without being adversarial

Reading: 643-675; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

22. Truth and Falsity in Litigation

Reading: 675-692; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

23. The duty to disclose

Reading: 692-741; 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*

24. Communications with lawyers and third parties

Reading: 741-787; Model Rules 3.8, 4.1-4.4, 8.4

25. What kind of lawyer do you want to be? A debate

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

## **The Practice of Law Today**

26. Pressures of modern practice: how will you handle them?

Reading: 851-905; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

27. The provision of legal services and its challenges

Reading: 789-848; Model Rules 5.3, 6.1, 6.2

28. TBD