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


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

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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