Legal Ethics and Professionalism
Preliminary Syllabus - Spring 2009
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 Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing real 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).

ABA, Model Rules of Professional Conduct. Where Rules are assigned reading, you should read both the black letter rules and the accompanying comments. If the comments are voluminous, focus on those that are relevant to the topic under discussion. Often there are references in the text to the relevant material or headings within the comments.

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

Schedule and How to Reach Me

We will generally meet on Tuesdays and Thursdays from 4:30 to 5:45 in Wolf 306, subject to the need to reschedule class sessions. I am happy to meet with you after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.
Grades, Class Attendance, and Class Participation

Your grade will be calculated as follows: final exam 80% (approximately); class participation and attendance 20% (approximately). Most of our class time will be spent discussing problems, cases, and hypotheticals. For this to work, it is essential that you complete the reading assignments before each class and attend prepared to discuss them. This class will work best if everyone is an active participant. In addition, you will be “on call” at various points during the semester. On the days you are on call, you will be expected to answer questions and participate actively in class discussions.

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

I. The Regulation of Lawyers: An Overview

   A. 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

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

      Reading: 34-44, 59-71

II. Lawyer Liability

   A. 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

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

      Reading: 110-149
III. The Rule of Confidentiality

A. The duty to protect client confidences

   Reading: 151-169; Model Rule 1.6

B. 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

IV. From Confidentiality to Privilege

A. 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)

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

   Reading: 215-263; 60 Minutes Reports Legal Ethics Head-
   Scratcher

V. Duties to the Client

A. Formation of the attorney-client relationship

   Reading: 265-284; Model Rules 1.1, 1.3, 1.4, 6.2

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

   Reading: 284-320; Model Rules 1.0(d), 1.2, 1.4, 1.16(b),
   2.1, 8.4(c); Bribery Case Brings Down Legal
   Legend
VI. From Duties to the Client to Conflicts with the Client

A. Who Calls the Shots?
   Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16

B. General principles in evaluating conflicts
   Reading: 351-377; Model Rule 1.7, 1.10

VII. Conflicts: Specific Applications

A. Conflicts between clients and positions
   Reading: 378-389; Model Rule 1.7, 1.10

B. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios
   Reading: 391-433; Model Rule 1.7, 1.10, 18(f)

VIII. Conflicts Involving Former Clients

A. 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

B. Conflicts wrap up
   Reading: 459-481; Model Rules 1.7, 1.9, 1.10

IX. Legal Fees: Conflict in Another Sphere?

A. Fees: conflicts between lawyers and their clients
   Reading: 483-506; Model Rules 1.4, 1.5, 7.1, 8.4; A Disputed Fee; Free: Ex-Sullivan Partner Resigns Over $500,000 in False Billings

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B. Legal 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*

X. Fee Disputes and Advertising

A. Fee Disputes

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

B. Advertising

Reading: 791-836; Model Rules 5.4, 5.5, 7.1-7.5

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

A. 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*

B. Truth and Falsity in Litigation

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

XII. Duties to Your Good Name, Your Adversary, and the Court, continued

A. The duty to disclose

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

B. Communications with lawyers and third parties

Reading: 689-730; Model Rules 3.8, 4.1-4.4, 8.4
XIII. The Practice of Law Today

A. Pressures of modern practice

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

B. Provision of Legal Services

Reading: 836-872; Model Rules 5.3, 6.1, 6.2

XIV. Our Profession Revisited

A. TBA

B. Wrap-up/review