



MASSACHUSETTS SCHOOL OF LAW at ANDOVER

Syllabus for
PROFESSIONAL RESPONSIBILITY
Spring Semester 2012

Professor Kurt Olson
Mondays 4:30-7:10 p.m.

REQUIRED BOOK

Lisa G. Lerman & Philip G. Schrag, *Ethical Problems in the Practice of Law* (2nd Ed., Aspen 2008).

Office hours will Mondays, 2:00-4:00 p.m;
Tuesdays/Thursdays, 9:00 a.m.-7:00 p.m. or by appointment
at other times. You can also reach me by e-mail at
kolson@msslw.edu or phone at 978-681-0800 (ext. 131).

All students are also required to obtain copies of the Model Rules of Professional Conduct and the Model Code of Judicial Conduct. You can either purchase copies (they could be pricey), or you can obtain copies on the web site of the American Bar Association. By the way, there is an underscore _ between "mprc" and "toc.html".

http://www.abanet.org/cpr/mrpc/mrpc_toc.html
<http://www.abanet.org/cpr/mcjc/home.html>

THIS IS IMPORTANT: Any time you see a Model Rule or a section from the Code of Judicial Conduct or Restatement listed in the reading, **READ IT!** The only way to pass the MPRE is to become familiar with the rules and the comments. Even though I can't force you to read and learn to apply the rules, you have to pass the MPRE before you can be admitted to practice. Thus, self-interest (if not interest in the subject matter) should compel you to want to read and understand the rules.

Registration deadline for the next MPRE is January 31, 2012. For more info., go to www.ncbex.org/multistate-tests/mpre/guidelines/dates/

January 23

Introduction and Chapter 1: Regulation of Lawyers

Introduction to the course
Institutions that regulate lawyers
Admission to practice

The Character and Fitness
inquiry

1-1 Pot

The law governing lawyers
Mental health of applicants
Misconduct during law school

In re Mustafa "Missing moot court money"

1-2 The Doctored Résumé

Text: Forward, Preface, pp. 1-71

Model Rules: Introduction, Preamble & Scope note. Rule 8.1;

Restatement §§ 1 & 2

January 30

Chapter 2: Lawyer Liability

Professional Discipline
Grounds for Discipline

In Re Peters "The tactile dean"

Reporting misconduct by other lawyers

2-1 The Little Hearing

Legal protection for
subordinate lawyers

Kelly v. Hunton & Williams "The whistleblowing associate"

2-2 The Photographer

Civil liability of lawyers
Criminal liability of lawyers
Client protection funds

Text: pp. 73-149

Model Rules: 5.1-5.3, 8.3

Restatement §§ 5, 11, 12, & 48-57

February 6

Chapter 3: The Duty to Protect Client Confidences

The basic principle of confidentiality

3-1 & 3-2 *Your Dinner with Anna, Scenes 1 & 2*

Exceptions to the duty to protect confidences

Revelation of past criminal conduct

3-3 *The Missing Persons, Scene 1*

3.4 & 3.5 *The Missing Persons, Scenes 2 & 3*

In re Belge

Risk of future injury or death

Spaulding v. Zimmerman "The undisclosed aneurysm"

Text: 151-187

Model Rule 1.6

Model Code DR 4-101

Restatement §§ 59, 60, 63, 64, & 66

February 13

Confidentiality, cont.

3-6 *Your Dinner with Anna, Scene 3*

Client frauds and crimes that cause financial harm

3-7 *Reese's Leases*

Other exceptions to the duty to protect confidences

Chapter 4: The Attorney-Client Privilege and the Work Product Doctrine

Confidentiality and attorney-client privilege compared

The elements of attorney-client privilege

Client identity

Waiver

4-1 *Murder for Hire*

The crime-fraud exception

4-2 *The Fatal Bus Crash*

The death of the client

Swidler & Berlin v. U.S.

The privilege for corporations

Upjohn v. U.S.

4-4 *Worldwide Bribery*

The work product doctrine

Text: pp. 187-263

Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, & 8.4(c)

Restatement §§ 62, 65, 67-80, 82 & 83, 86-93

February 20

Chapter 5: Relationships Between Lawyers and Clients

Formation of the lawyer-client relationship

Togstad v. Vesely, Otto, Miller & Keefe "You have no case."

Lawyers' responsibilities as agents

Lawyer's duties of competence, honesty, communication, & diligence

5-1 *The Washing Machine*

Competence in criminal cases

Strickland v. Washington, "Capital case, lazy lawyer"

Candor and communication

5-2 *Lying to clients*

Candor in counseling

5-3 *Torture*

Who calls the shots?

Jones v. Barnes "Who chooses what to argue on appeal?"

Text: pp. 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)

Restatement §§ 14, 16, 20-23, 26, & 27

February 27

Who calls the shots? Cont.

The competent adult client

5-4 *The Package Bomber*

Clients with diminished capacity

5-5 *Vinyl Windows*

5-6 *Tightening the Knot*

Terminating a lawyer-client relationship

Chapter 6: Concurrent Conflicts of Interest: General Principles

An Introduction to conflicts of interest

General principles in evaluating concurrent conflicts

6-1 *The Injured Passengers, Scene 1*

Conflicts between current clients in civil litigation

6-2 *I Thought you were my Lawyer!*

Text: pp. 321-377

Model Rules 1.2, 1.4, 1.7, 1.10, 1.14, 1.16

Restatement §§ 24, 31-33, 46, & 121-123

March 5

Conflicts between current clients in civil litigation, cont.:

Cross-examining a current client

Representation of co-plaintiffs or co-defendants in civil litigation

6-3 *The Injured Passengers, Scene 2*

Representing economic competitors in unrelated matters

Taking inconsistent positions in litigation

6-5 *Top Gun*

Conflicts involving prospective clients

6-6 *The Secret Affair*

Representing both parties to a transaction

Representing organizations

Chapter 7: Concurrent Conflicts in Particular Practice Settings

7-1 *My Client's Subsidiary*

Representing criminal co-defendants

7-2, 7-3, & 7-4 *Police Brutality, Scenes 1, 2, & 3*

Text: pp. 378-416

Model Rules 1.7, 1.10, & 1.13

Restatement §§ 128 & 130

March 12 - No Class - Spring Break

March 19

Representing family members

Florida Bar Opinion 95-4

7-5 *Representing the McCarthys*

Representing insurance companies and insured persons

7-6 *Two Masters*

Representing plaintiffs in class actions

Representing parties to aggregate settlements of individual cases

Chapter 8: Conflicts Involving Former Clients

The nature of conflicts between present and former clients

Duties to former clients

8-1 *Keeping in Touch*

Distinguishing present and former clients

Evaluating successive conflicts

Addressing former client conflicts in practice

8-2 *The District Attorney*

Text: pp. 416-459

Model Rules 1.7, 1.8(f), & 1.9

Restatement §§ 30(2) & 132

March 26

Representing the competitor of a former client

Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz "Our lawyer took on business competitors as clients"

Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm

8-3 A Dysfunctional Family Business

Imputation of former client conflicts to affiliated lawyers

8-4 The Fatal Shot

Chapter 9: Conflicts Between Lawyers and Clients Legal fees

Lawyer-client fee contracts

Brobeck, Phleger, & Harrison v. Telex Corp. "The Hidden million-dollar minimum fee"

In the Matter of Fordham "Too many hours"

9-1 An Unreasonable Fee?

9-2 Rising Prices

Text: pp. 459-506

Model Rules 1.4, 1.5, 1.7, 1.9, 1.10, 7.1, & 8.4

Restatement §§ 34, 38, 132

April 2

Legal fees, cont.

Regulation of hourly billing and billing for expenses

Scenes from a Law Firm

Contingent fees

Forbidden and restricted fee and expense arrangements

9-3 An Impoverished Client

Fee disputes

Dividing fees with other firms or with nonlawyers

Payment of fees by a third party

Lawyer as custodian of client property and documents

Client trust accounts

Responsibility for client property

Administering estates and trusts

Conflicts with lawyers' personal or business interests

Business transactions between lawyer and client

9-4 Starting a Business

Gifts from clients

Sexual relationships with clients

Intimate or family relationships with adverse lawyers

Imputation of lawyer-client conflicts to other lawyers in a firm

Text: pp. 506-561

Model Rules 1.4, 1.5, 1.7, 1.8(a), (c), (d), (e), (f), (h), (i), 1.10, 1.15, 1.16(d), 5.2, 5.4, 7.1, 8.3, & 8.4

Restatement §§ 10, 35, 36, & 41-47

April 9

Chapter 10: Conflicts Issues for Government Lawyers & Judges

Successive conflicts of present and former government lawyers

10-1 *A Lawyer for Libya*

Conflicts involving judges, arbitrators, and mediators

10-2 *A Trip to Monte Carlo*

10-3 *The Judge's Former Professor*

Chapter 11: Lawyers' Duties to Courts

Being a good person in an adversary system

Investigation before filing a complaint

11-1 *Your Visit from Paula Jones*

Truth and falsity in litigation

The rules on candor to tribunals

Which rule applies when?

A lawyer's duties if a client or witness intends to give false testimony

Nix v. Whiteside "He said he saw something metallic"

11-2 & 11-3 *Flight from Sudan, Scenes 1 & 2*

Text: pp. 563-624

Model Rules 1.2, 1.9-1.12, 1.16, 3.1, 3.1, 3.8, 4.4, & 8.4(c)

Restatement §§ 15, 97, 110, 111, 120, & 133

ABA Model Code of Judicial Conduct (especially canons 2 & 3)

April 16 - No Class - Patriot's Day

April 23

Truth and falsity in litigation, cont.

False impressions created by lawyers during litigation

11-4 *The Drug Test*

11-5 *The Body Double*

Lawyers' duties of truthfulness in preparing witnesses to testify

11-6 *Refreshing Recollection*

Concealment of physical evidence and documents

Duties of criminal defense lawyers with respect to evidence of crimes

11-7 *Child Pornography*

Concealment of documents and evidence in civil cases

11-8 *The Damaging Documents*

The duty to disclose adverse legal authority

Disclosures in ex parte proceedings

Improper influences on judges and juries

11-9 A Letter to the Editor

Lawyers' duties in non-adjudicative proceedings

Chapter 12: Lawyers' Duties to Adversaries and Third Persons

Communications with lawyers and third parties

12-1 Emergency Food Stamps

In re Gatti "The lawyer posed as a doctor"

Restrictions on contact with represented persons

Messing, Rudavsky, & Weliky, P.C. v. President & Fellows of Harvard College "The plaintiff's lawyer interviewed the defendant's employees"

Restrictions on contact with unrepresented persons

12-2 The complaining witness

Duties of prosecutors

12-4 The Prosecutor's Masquerade

Conduct prejudicial to the administration of justice

Are lawyers really too zealous?

Text: pp. 624-730

Model Rules 3.3-3.9, 4.1-4.4, 7.1, & 8.4

Restatement §§ 98-103, 104, 106, 107-112, 118, & 119

D.C. Rule 3.3

April 30

Chapter 13: The Legal Profession

Origins and development of the U.S. legal profession

A short history of American legal education

Race, sex, and class in the legal profession

The legal profession today

Large firms

13-1 The Reforming Partner

Small firms

Government and nonprofit organizations

Temporary and contract lawyers

Overseas outsourcing

The ethical climate of the legal profession

Mass production

13-3 Small claims

Pressure to pad bills

Pressure from clients to help them commit fraud

Ethics and substance abuse

13-4 "I'm not driving"

Public perceptions of lawyers

How to find an employer that has high ethical standards and humane working conditions

**Chapters 14 & 15: Regulatory Restrictions on Law Practice
and The Provision of Legal Services**

Civil legal aid

15-2 Restrictions on Legal Services

Fee-shifting statutes

Pro bono representation

15-3 Mandatory Pro Bono Service

Loan forgiveness and scholarships for
public service lawyers

Restricting legal services: limiting the role of lay advocates

15-4 Special Education

15-5 Service to the Poor and the Middle Class

Text: 731-872

Model Rules 5.3-5.5, 6.1, 6.2, & 7.1-7.5