REQUIRED BOOK


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@mslaw.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


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
  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 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
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

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