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MASSACHUSETTS SCHOOL OF LAW at ANDOVER

Syllabus for PROFESSIONAL RESPONSIBILITY

Spring Semester 2020

Professor Kurt Olson

Tues./Thurs. 9:30-10:45 a.m. & 7:30-8:45 p.m.; Room 210

**1st Half – MPRE Prep; 2nd Half – *Ethical Problems***

***In the Practice of Law*, Concise 4th Edition**

**During the first half of the course, we will focus on learning the text of the rules and how to apply those rules in the context of multiple choice questions. The next administration of the MPRE is either Thursday, March 12th or Friday, March 13th, and the registration deadline is February 12th, so register soon (**[**http://www.ncbex.org/exams/mpre/registration/**](http://www.ncbex.org/exams/mpre/registration/)**). It doesn’t matter that you haven’t completed my course before taking the MPRE; the sooner you take it, the better. You will have to achieve a passing score on the MPRE before you will receive a grade for my course.**

**During the second half of the course, we will use the text and its multiple real-life problems to learn the rules and how they’re applied in real law practice settings.**

**Required Books**

**Lisa G. Lerman and Philip G. Schrag, *Ethical Problems in the Practice of Law* (Concise 4th Ed., Wolters Kluwer 2018) [referred to as “Text”].**

**ABA Annotated Model Rules of Professional Conduct: (**[**https://1.next.westlaw.com/Search/Results.html?query=aba%20annotated%20rules%20of%20professional%20conduct&saveJuris=False&contentType=ANALYTICAL&querySubmissionGuid=i0ad740350000016f0c7cc6407c3efe71&startIndex=1&categoryPageUrl=Home%2FSecondarySources%2FEthicsProfessionalResponsibilitySecondarySources%2FEthicsProfessionalResponsibilityTextsTreatises%2FABAAnnotatedModelRulesofProfessionalConduct&searchId=i0ad740350000016f0c7cc6407c3efe71&kmSearchIdRequested=False&simpleSearch=False&isAdvancedSearchTemplatePage=False&skipSpellCheck=False&isTrDiscoverSearch=False&thesaurusSearch=False&thesaurusTermsApplied=False&ancillaryChargesAccepted=False&proviewEligible=False&eventingTypeOfSearch=NAT&transitionType=Search&contextData=%28sc.Search%29**](https://1.next.westlaw.com/Search/Results.html?query=aba%20annotated%20rules%20of%20professional%20conduct&saveJuris=False&contentType=ANALYTICAL&querySubmissionGuid=i0ad740350000016f0c7cc6407c3efe71&startIndex=1&categoryPageUrl=Home%2FSecondarySources%2FEthicsProfessionalResponsibilitySecondarySources%2FEthicsProfessionalResponsibilityTextsTreatises%2FABAAnnotatedModelRulesofProfessionalConduct&searchId=i0ad740350000016f0c7cc6407c3efe71&kmSearchIdRequested=False&simpleSearch=False&isAdvancedSearchTemplatePage=False&skipSpellCheck=False&isTrDiscoverSearch=False&thesaurusSearch=False&thesaurusTermsApplied=False&ancillaryChargesAccepted=False&proviewEligible=False&eventingTypeOfSearch=NAT&transitionType=Search&contextData=%28sc.Search%29)**)**

**& ABA Code of Judicial Conduct (**[**https://1.next.westlaw.com/Browse/Home/SecondarySources/EthicsProfessionalResponsibilitySecondarySources/EthicsProfessionalResponsibilityTextsTreatises/CodeofJudicialConduct?originationContext=typeAhead&transitionType=CategoryPageItem&contextData=(sc.Default)**](https://1.next.westlaw.com/Browse/Home/SecondarySources/EthicsProfessionalResponsibilitySecondarySources/EthicsProfessionalResponsibilityTextsTreatises/CodeofJudicialConduct?originationContext=typeAhead&transitionType=CategoryPageItem&contextData=(sc.Default))**)**

**If you choose to purchase an older version of the Annotated Model Rules, the safer route will be *not* to buy one older than the 2012 edition.)**

**Reading the assigned Model Rules** When an assignment requires you to read a Model Rule, please read both the Rule, the comments, and all annotations. If the comments to a particular rule are voluminous, don’t try to read all of them at once. (Your eyes will glaze over.) Instead, find the comments that are relevant to the topic under discussion. Often there are references in the text to the relevant material, or headings within the comments themselves that identify the subtopic covered.

**A note about the problems**

This is a problem-based course. The textbook includes many problems that we will discuss in class. Most of the problems put you in the shoes of a lawyer who has to deal with a situation involving both legal strategy and legal ethics, which are sometimes in conflict. Most of the problems are more complex than on-the-spot classroom hypotheticals; they require analysis before the class in which the problem will be discussed. For each assigned problem, study the facts carefully, decide what you would do if you were in the shoes of the lawyer, and come to class prepared to discuss and defend the action (if any) that you would take. In a problem method course such as this one, you may find it helpful to work in a study Firm outside of class, because members of the Firm are likely to take different approaches to a problem, thereby exposing the possible options and considerations.

This schedule may be revised during the course of the semester. If I make changes in daily assignments, I will announce them in class and post an announcement on TWEN. If there are any major changes, I will publish an amended syllabus.

**Schedule of Assignments**

Jan. 21: Introduction to Course, Model Rules, MPRE & Introductory Material on Developing Multiple Choice Test-Taking Skills; Read Preamble, Scope, & Terminology in ABA Annotated Model Rules of Prof. Conduct

Jan. 23: **Conflicts** – ABA Annotated Model Rules of Prof’l Conduct 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, & 1.13

Jan. 28: **More on Conflicts** – the most heavily tested topic on the MPRE

Jan. 30: **The Client-Lawyer Relationship** – ABA Annotated Model Rules of Prof’l Conduct 1.2, 1.4, 1.5, & 1.16

Feb. 4: **Litigation and Other Forms of Advocacy** – ABA Annotated Model Rules of Prof’l Conduct 3.1-3.7

Feb. 6: **Competence, Legal Malpractice, and Other Civil Liability** – ABA Annotated Model Rules of Prof’l Conduct 1.1, 1.3, 1.8, & 2.3

Feb. 11: **Client Confidentiality & Attorney Client Privilege** – ABA Annotated Model Rules of Prof’l Conduct 1.6 & **Regulation of the Legal Profession (Part 1**) – ABA Annotated Model Rules of Prof’l Conduct 5.1-5.6

Feb. 13: **Regulation of the Legal Profession (Part 2)** – ABA Annotated Model Rules of Prof’l Conduct 5.7, 8.3, 8.1, 8.4, & 8.5 & **Communication About Legal Services** – ABA Annotated Model Rules of Prof’l Conduct 7.2, 7.3, 7.4, & 7.6

Feb. 18: **Different Roles of the Lawyer –** ABA Annotated Model Rules of Prof’l Conduct 2.1, 2.4, 3.8, 3.9, & 1.13 & **Transactions and Communications with Persons Other than Clients** – ABA Annotated Model Rules of Prof’l Conduct 4.1-4.4

Feb. 20: **Safekeeping Property** – ABA Annotated Model Rules of Prof’l Conduct 1.15 & **ABA Model Code of Judicial Conduct**

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| **Date** | **Topics problems and cases to be discussed in class** | **Pages of textbook assigned, and relevant rules** |
| **Introduction and Chapter 1: Regulation of Lawyers** | | |
| **Feb. 25** | Introduction to the course  Institutions that regulate lawyers  State ethics codes  Admission to practice  The character and fitness inquiry  **1-1 *Weed***  **1-2 *The Doctored Resume*** | Text: pp. xxvii-xxxi and pp. 1-57  Model Rules: Preamble and Scope note, and Rule 8.1 |
| **Chapter 2: Lawyer Liability** | | |
| **Feb. 27** | Professional discipline  Grounds for discipline  **2-1 *The Dying Mother***  Reporting misconduct by other lawyers  **2-2 *Exculpatory Evidence***  Lawyers’ responsibility for ethical misconduct by superiors and colleagues  **2-3 *The Little Hearing***  Legal protections for subordinate lawyers  Civil liability of lawyers  Criminal liability of lawyers | 59-100  Rules 1.0(d), 5.1-5.3, 8.3 |

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| **Chapter 3: The Duty to Protect Client Confidences and Chapter 4: Attorney-Client Privilege** | | |
| **March 3** | The basic principle of confidentiality  **3-1 *Your Dinner with Anna***  Exceptions to the duty to protect confidences  Revelation of past criminal conduct  **3-2, 3-3 and 3-4 *The Missing Persons***  ***People v. Belge***  Risk of future injury or death | 101-134  Rule 1.6  Model Code DR 4-101 |
| **March 5** | Confidentiality, continued  Client frauds and crimes that cause financial harm  **3-6 *Reese’s Leases***  Other exceptions to the duty to protect confidences  Use or disclosure of confidential information for personal gain or to benefit another client  The attorney-client privilege  ***4-1 A Secret Confession***  The work product doctrine | 134-176  Rules 1.2(d), 1.6, 1.16, 3.3, 4.1, 8.4(c) |
| **Chapter 5: Relationships Between Lawyers and Clients** | | |
| **March 10** | Formation of the lawyer-client relationship  **Togstad v. Vesely, Otto, Miller & Keefe *“You have no case.”***  Lawyers’ responsibilities as agents  Lawyers’ duties of competence, diligence, honesty, and communication  **5-1 *The Washing Machine***  Competence in criminal cases  **Strickland v. Washington *“Capital case, not enough mitigating evidence”***  **5-2 *A Desire to Investigate***  Candor and communication  Candor in counseling  Who calls the shots?  The competent adult client  **Jones v. Barnes *“Who decides what to argue on appeal?”***  Clients with diminished capacity  **5-3 *Vinyl Windows***  Terminating a lawyer-client relationship | 177-247  Rules 1.1-1.4, 1.14, 1.16, 1.18 |

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| **Chapter 6: Concurrent Conflicts of Interest: General Principles** | | |
| **March 12** | 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  Suing a current client  **6-2 *I Thought You Were My Lawyer!***  Cross-examining a current client  Representation of co-plaintiffs or co-defendants in civil litigation  **6-3 *The Injured Passengers, Scene 2***  Positional conflicts: Taking inconsistent positions in litigation  Conflicts involving prospective clients | 249-284  Rules 1.7, 1.10 **Chapter 7: Concurrent Conflicts in Particular Practice Settings** |
| **March 17 & 19** | **No Class – Spring Break** |  |
| **Chapter 7: Concurrent Client Conflicts in Particular Practice Settings** | | |
| **March 24** | Representing both parties to a transaction  Representing organizations  **7-1 *My Client’s Subsidiary***  Representing criminal co-defendants  **7-2 *Police Brutality, Scene 1*** | 285-309 (to the end of 7-2, Scene 1)  Rules 1.7, 1.10, 1.13 |
| **March 26** | Representing criminal co-defendants, continued  **7-3 and 7-4 *Police Brutality, Scenes 2 and 3***  Representing family members  **6-5 *Representing the McCarthys***  Representing insurance companies and insured persons | 309-319 |
| **Chapter 8: Conflicts Involving Former Clients** | | |
| **March 31** | The nature of conflicts between present and former clients  Duties to former clients  Distinguishing present and former clients  Evaluating successive conflicts  **8-1 *Keeping in Touch***  Addressing former client conflicts in practice  ***8-2 Toxic Waste***  Conflicts between the interests of a present client and a client who was represented by a lawyer’s former firm  Imputation of former client conflicts to affiliated lawyers  **8-3 *A Brief Consultation*** | 321-365  Rules 1.0(k), 1.7, 1.9, 1.10 |

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| **Chapter 9: Conflicts Between Lawyers and Clients** | | |
| **April 7** | Legal fees  Lawyer-client fee contracts  Regulation of hourly billing and billing for expenses  Contingent fees  Forbidden and restricted fee and expense arrangements  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 clients  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 | 367-433  Rules 1.0(b) and (n), 1.4, 1.5, 7.1, 1.8, 5.2, 5.4, 7.1, 8.3, 8.4 |
| **Chapter 10: Conflicts Issues for Government Lawyers and Judges, and Chapter 11: Lawyers’ Duties to Courts** | | |
| **April 9** | Successive conflicts of former and present government lawyers  Conflicts involving judges, arbitrators and mediators  Lawyers’ duties to courts  Being a good person in an adversary system  **11-1 *Your Visit from Paula Jones***  Truth and falsity in litigation  The rules on candor to tribunals  A lawyer’s duties if a client or witness intends to give false testimony  **Nix v. Whiteside *“He said he saw something metallic”***  A lawyer’s “knowledge” of a client’s intent to give false testimony  **11-2 *Flight from Sudan, Scene 1*** | 435-492  Rules, 1.11, 1.12, 3.1, 3.3 |
| **April 14** | Lawyers’ duties to courts, continued  A lawyer’s duties if a client misleads the court without lying  **11-3 *Flight from Sudan, Scene 2***  False impressions created by lawyers during litigation  **11-4 *The Drug Test***  Lawyers’ duties of truthfulness in preparing witnesses to testify  Concealment of physical evidence and documents  Duties of criminal defense lawyers with respect to evidence of crimes  **11-5 *Child Pornography***  Concealment of documents and evidence in civil and criminal cases  The duty to disclose adverse legal authority  Disclosures in ex parte proceedings  Improper influences on judges and juries  Lawyers’ duties in non-adjudicative proceedings | 493-538  Rules 1.0(a), (f), and (h-j), 3.3-3.9 |
| **Chapter 12: Lawyers’ Duties to Adversaries and Third Persons** | | |
| **April 16** | Communication with lawyers and third persons  **12-1 *Emergency Food Stamps***  **12-2 *The Break-In***  Duties of prosecutors  **12-3 *The Prosecutor’s Masquerade*** | 539-589  Rules 4.1-4.4, 3.8 |
| ***Chapters 13 and 14: The Provision of Legal Services, and The Evolving Business of Law Practice*** | | |
| **April 21** | **The Provision of Legal Services**  The unmet need for legal services  Sources of free legal services for those who cannot afford legal fees  **13-1 *Mandatory pro bono service***  Restrictions on legal services  **The Evolving Business of Law Practice** | 591-648  Rules 5.4, 5.5, 6.1-6.2, 7.1, 7.2 |
| **April 23** | **Firm Presentations** |  |
| **April 28** | **Firm Presentations** |  |
| **April 30** | **Review, Review, Review** |  |

**Rules, Rules, More Rules**

**Preamble and Scope:**

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**Terminology**

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**1.13:**

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**Now, Let’s See if You Guys can find these**

**sections of the ABA Annotated Rules**

**yourselves. It’s pretty simple.**

**Let’s also talk a bit about the**

**Restatement of the Law Governing**

**Lawyers!!! Whoopeee!!!**