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MASSACHUSETTS SCHOOL OF LAW at ANDOVER Syllabus for PROFESSIONAL RESPONSIBILITY

Spring Semester 2022

Professor Kurt Olson

Mondays, 4:30 – 7:10 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 Wednesday, March 23rd or Thursday, March 24th, and the registration deadline is January 21st, so register soon (<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-life legal 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=i0ad74035000016f0c7cc6407c3efe71&startIndex=1&categoryPageUrl=Home%2FSecondarySources%2FEthicsProfessionalResponsibilitySecondarySources%2FEthicsProfessionalResponsibilityTextsTreatises%2FABAAnnotatedModelRulesofProfessionalConduct&searchId=i0ad74035000016f0c7cc6407c3efe71&kmSearchIdRequested=False&simpleSearch=False&isAdvancedSearchTemplatePage=False&skipSpellCheck=False&isTrDiscoverSearch=False&thesaurusSearch=False&thesaurusTermsApplied=False&ancillaryChargesAc>

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& 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.

The following 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. 24th: 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

Conflicts – ABA Annotated Model Rules of Prof'l Conduct 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, & 1.13

Jan. 31st: **More on Conflicts** – the most heavily tested topic on the MPRE

The Client-Lawyer Relationship – ABA Annotated Model Rules of Prof'l Conduct 1.2, 1.4, 1.5, & 1.16

Feb. 7th: **Litigation and Other Forms of Advocacy** – ABA Annotated Model Rules of Prof'l Conduct 3.1-3.7

Competence, Legal Malpractice, and Other Civil Liability – ABA Annotated Model Rules of Prof'l Conduct 1.1, 1.3, 1.8, & 2.3

Feb. 14th: **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. 21st: **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 28th: **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

Safekeeping Property – ABA Annotated Model Rules of Prof'l Conduct 1.15 & **ABA Model Code of Judicial Conduct**

Date	Topics problems and cases to be discussed in class	Pages of textbook assigned, and relevant rules
Introduction and Chapter 1: Regulation of Lawyers		
March 7th	Introduction to the course Institutions that regulate lawyers State ethics codes Admission to practice The character and fitness inquiry 1-1 <i>Weed</i> 1-2 <i>The Doctored Resume</i>	Text: pp. xxvii-xxxii and pp. 1-57 Model Rules: Preamble and Scope note, and Rule 8.1
Chapter 2: Lawyer Liability		
March 7th	Professional discipline Grounds for discipline 2-1 <i>The Dying Mother</i> Reporting misconduct by other lawyers 2-2 <i>Exculpatory Evidence</i> Lawyers' responsibility for ethical misconduct by superiors and colleagues 2-3 <i>The Little Hearing</i> 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

March 13-20 – No Class – Spring Break

Chapter 3: The Duty to Protect Client Confidences and Chapter 4: Attorney-Client Privilege

<p>March 21st</p>	<p>The basic principle of confidentiality 3-1 <i>Your Dinner with Anna</i> Exceptions to the duty to protect confidences Revelation of past criminal conduct 3-2, 3-3 and 3-4 <i>The Missing Persons</i> <i>People v. Belge</i> Risk of future injury or death</p>	<p>101-134 Rule 1.6 Model Code DR 4-101</p>
<p>March 21st</p>	<p>Confidentiality, continued Client frauds and crimes that cause financial harm 3-6 <i>Reese's Leases</i> 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 <i>A Secret Confession</i> The work product doctrine</p>	<p>134-176 Rules 1.2(d), 1.6, 1.16, 3.3, 4.1, 8.4(c)</p>

Chapter 5: Relationships Between Lawyers and Clients

<p>March 28th</p>	<p>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 <i>The Washing Machine</i> Competence in criminal cases Strickland v. Washington "Capital case, not enough mitigating evidence" 5-2 <i>A Desire to Investigate</i> 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 <i>Vinyl Windows</i> Terminating a lawyer-client relationship</p>	<p>177-247 Rules 1.1-1.4, 1.14, 1.16, 1.18</p>
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Chapter 6: Concurrent Conflicts of Interest: General Principles		
March 28th	An introduction to conflicts of interest General principles in evaluating concurrent conflicts 6-1 <i>The Injured Passengers, Scene 1</i> Conflicts between current clients in civil litigation Suing a current client 6-2 <i>I Thought You Were My Lawyer!</i> Cross-examining a current client Representation of co-plaintiffs or co-defendants in civil litigation 6-3 <i>The Injured Passengers, Scene 2</i> 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
April 4th	Chapter 7: Concurrent Client Conflicts in Particular Practice Settings Representing both parties to a transaction Representing organizations 7-1 <i>My Client's Subsidiary</i> Representing criminal co-defendants 7-2 <i>Police Brutality, Scene 1</i> Representing criminal co-defendants (cont.) 7-3 & 7-4 <i>Police Brutality, Scenes 2 & 3</i> Representing Family Members 6-5 <i>Representing the McCarthys</i> Representing insurance companies and insured persons	285-319 (to the end of 7-2, Scene 1) Rules 1.7, 1.10, 1.13
Chapter 8: Conflicts Involving Former Clients		
April 11th	The nature of conflicts between present and former clients Duties to former clients Distinguishing present and former clients Evaluating successive conflicts 8-1 <i>Keeping in Touch</i> Addressing former client conflicts in practice 8-2 <i>Toxic Waste</i> 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 <i>A Brief Consultation</i>	321-365 Rules 1.0(k), 1.7, 1.9, 1.10
April 18th	No Class – Patriot's Day	

Chapter 9: Conflicts Between Lawyers and Clients

April 25th	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
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Chapter 10: Conflicts Issues for Government Lawyers and Judges, and Chapter 11: Lawyers' Duties to Courts

April 25th	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 <i>Your Visit from Paula Jones</i> 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 <i>Flight from Sudan, Scene 1</i>	435-492 Rules, 1.11, 1.12, 3.1, 3.3
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<p>May 2nd</p>	<p>Lawyers' duties to courts, continued A lawyer's duties if a client misleads the court without lying 11-3 <i>Flight from Sudan, Scene 2</i> False impressions created by lawyers during litigation 11-4 <i>The Drug Test</i> 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 <i>Child Pornography</i> 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</p>	<p>493-538 Rules 1.0(a), (f), and (h-j), 3.3-3.9</p>
<p>Chapter 12: Lawyers' Duties to Adversaries and Third Persons</p>		
<p>May 2nd</p>	<p>Communication with lawyers and third persons 12-1 <i>Emergency Food Stamps</i> 12-2 <i>The Break-In</i> Duties of prosecutors 12-3 <i>The Prosecutor's Masquerade</i></p>	<p>539-589 Rules 4.1-4.4, 3.8</p>
<p><i>Chapters 13 and 14: The Provision of Legal Services, and The Evolving Business of Law Practice</i></p>		
<p>May 2nd</p>	<p>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 <i>Mandatory pro bono service</i> Restrictions on legal services The Evolving Business of Law Practice</p>	<p>591-648 Rules 5.4, 5.5, 6.1-6.2, 7.1, 7.2</p>

Rules, Rules, More Rules

Preamble and Scope:

<https://1.next.westlaw.com/Document/I968a22c3ff9811de9b8c850332338889/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa60000016f1a4e03bf95cb0008%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI968a22c3ff9811de9b8c850332338889%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Category%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=41feee0a70d47a809434a236d463ccd7&list=ANALYTICAL&rank=6&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=categorypagelisting&transitionType=SearchItem&contextData=%28sc.Category%29>

Terminology

[https://1.next.westlaw.com/Document/Idef1ef99436911e18b05fdf15589d8e8/View/FullText.html?
navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa6000016f1a5a99bb95cb0ce5%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1ef99436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=f716bd6cad792f5bcdbd8a612437475f&list=ANALYTICAL&rank=2&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29](https://1.next.westlaw.com/Document/Idef1ef99436911e18b05fdf15589d8e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa6000016f1a5a99bb95cb0ce5%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1ef99436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=f716bd6cad792f5bcdbd8a612437475f&list=ANALYTICAL&rank=2&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

1.7:

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navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa60000016f1a4efd4a95cb00d5%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1efae436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=90956f7b4952114756445cbd43fd1b97&list=ANALYTICAL&rank=1&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29](https://1.next.westlaw.com/Document/Idef1efae436911e18b05fdf15589d8e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa60000016f1a4efd4a95cb00d5%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1efae436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=90956f7b4952114756445cbd43fd1b97&list=ANALYTICAL&rank=1&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

1.8:

[https://1.next.westlaw.com/Document/Idef1efb1436911e18b05fdf15589d8e8/View/FullText.html?
navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa6000016f1a508efe95cb0203%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1efb1436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=47e4ce18c7bd47af9eb2b7a898079d49&list=ANALYTICAL&rank=1&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29](https://1.next.westlaw.com/Document/Idef1efb1436911e18b05fdf15589d8e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa6000016f1a508efe95cb0203%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1efb1436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=47e4ce18c7bd47af9eb2b7a898079d49&list=ANALYTICAL&rank=1&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

1.9:

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1.10:

<https://1.next.westlaw.com/Search/Results.html?query=1.10&saveJuris=False&contentType=ANALYTICAL&querySubmissionGuid=i0ad73aa60000016f1a52cd3d95cb048e&startIndex=1&categoryPageUrl=Home%2FSecondarySources%2FEthicsProfessionalResponsibilitySecondarySources%2FEthicsProfessionalResponsibilityTextsTreatises%2FABAAnnotatedModelRulesofProfessionalConduct&searchId=i0ad73aa60000016f1a52cd3d95cb048e&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>

1.11:

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1.12:

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<https://1.next.westlaw.com/Document/Idef1efc0436911e18b05fdf15589d8e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa60000016f1a5c0a9f95cb0e26%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIdef1efc0436911e18b05fdf15589d8e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=e11355d44bae648009c8ec01d0edc1ab&list=ANALYTICAL&rank=1&sessionScopeId=36fc89148137be949222394ea381995a8b9fe198f44a10a8f4d6c2b37d1d6b41&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29>

1.13:

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Now, let's see if you can find these sections of the ABA Annotated Rules yourselves. It's pretty simple, and it's just the kind of skill you'll be expected to have and display on that 1st job interview.

Let's also talk a bit about the Restatement of the Law Governing Lawyers!!! Whoopee!!!