

**PROFESSIONAL RESPONSIBILITY, Spring 2018**  
**M/W 3:35-4:50 pm – Oakes 007**  
**Professor Margaret Barry**

**SYLLABUS**

Office Hours: Tuesdays, 9:00-12:30pm  
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Please read this memo carefully. I do not expect to take class time to go over most of it orally. It contains important information on matters including attendance policy, award of discretionary points, and the exam.

**My Objectives for the Course**

My primary objectives for this course are as follows.

1. Students should leave the course alert and able to recognize and anticipate professional responsibility issues. Some issues of professional responsibility are very difficult to “fix” if they are not recognized early enough. A confidence cannot be unheard. Accepting a conflicted representation can lead not only to withdrawal from that client’s representation, but also may require withdrawal from representation of other clients of other lawyers in a firm. Such forced withdrawals not only may engender client ill-will, but also bad reactions from the colleagues who lost their clients. It may lead to civil liability as well. My goal is to hone your instincts for danger. We will consider “How could a lawyer have avoided this difficult situation?”

2. Students should leave with knowledge of the substance of the law regulating lawyers. You must have memorized enough of that substance to recognize issues in your day-to-day practice as described in #1 (and enough to pass the MPRE). You, however, should not rely on your memory in analyzing what to do about those issues. (One of my dislikes of the MPRE is the implication that memorization of much of the relatively picky detail on which the exam tests is the important point for practice.) You should never reach a conclusion on an issue in professional responsibility without actually rereading the pertinent rule and comment (or other applicable law). Consistent with this philosophy, I give an open-book and expect you to cite to the part of the Model Rules on which you are relying in the answer. I want you to know where to go to look for answers, as well as having sufficient grounding in the subject matter to recognize and conceptualize issues. In looking at the law in various areas, consider when the law gives lawyers discretion and when it does not.

That said, in teaching this course, I recognize that the Multi-state Professional Responsibility Examination (MPRE) is the first part of the Bar Exam students will encounter, which understandably causes apprehension. I am committed, along with the Academic Success Program, to assisting you in some test preparation though my focus is on the broader course goals. You should emerge from the course with a solid understanding of Rules content and the regulatory system of professional conduct. At the end of major topics, we will cover sample MPRE questions relevant to that topic, which should help in familiarizing you with test format and substantive emphases. Although the course is primarily designed to improve your ethical judgment and readiness for practice, and not a bar exam review, you should find the test practice questions helpful. You may also find the TWEN posted CALI exercises useful in preparing for the test.

3. Through the problems we use, students should gain a sense of the practice context in which issues arise and how the substantive law governing lawyers is applied in day-to-day work – how and where issues come up and the potential consequences of running afoul of that law. Contrary to what many students think when they begin the course, the relevance of PR law concerns far more than the disciplinary system. For example, conflicts of interest rarely come up in discipline, but focus on them absorbs a tremendous amount of attention in law firms because of potential disqualification and civil liability.

4. I want students to consider how they will go about ethical decision-making. Some students seem to find frustrating that there are not “clear answers” on what a lawyer should do in various circumstances. I do not see the law in this field as less clear than it is in many others.

I think perhaps the frustration comes from the realization that it is one’s own conduct that would be at issue, not advice to a client. The lawyer personally might suffer consequences for a decision later deemed to be against the rules or the basis for civil liability. When answers are not clear, it usually is because the question is very difficult, *i.e.*, it involves a clash of important principles like loyalty to client vs. loyalty to the court or fairness to third parties. Ethical decision-making also involves close attention to context, for example, what you see as “the facts” and the consequences of taking various actions. Even when knowledgeable lawyers might differ about the “right answer” in a given circumstance, they almost always would agree on the relevant issues, pertinent rules, and the framework in which the matter should be analyzed.

5. Students should to start to develop their own philosophy on being a lawyer or refine the one already in progress. Some students may see this as an exciting possibility because they feel frustrated that law school has not often enough dealt with moral and philosophical questions. Others will react: “Philosophy!! I want something practical, not philosophical.” The type of philosophy of which I speak is very practical because it provides the framework in which you will do the ethical decision-making described in #4. As a lawyer, you probably will

not have a week, or perhaps a day, that goes by without having to make some choices about matters covered in this course. Some of those choices will have clear parameters; many will involve an exercise of discretion. Advance consideration of your views on what you think lawyers should be doing in the legal system and the society and how you consider that role to relate to your own personal morality helps in making decisions and exercising discretion.

6. I want students to consider the construction of lawyer's role to which the various provisions on lawyer regulation and aspiration build and critically appraise the implications for our society and for themselves.

### **Textbooks and Assignments**

Our required text is ZITRIN, LANGFORD AND COLE, LEGAL ETHICS IN THE PRACTICE OF LAW, 4<sup>TH</sup> ED. You should also purchase a copy of MODEL RULES OF PROFESSIONAL CONDUCT (2017 ED.), or any similar, current version of the rules and comments. Every time a Model Rule is cited in the textbook, you must read the Rule and the Comments to that Rule.

The ABA significantly revised the Model Rules of Professional Conduct in 2003, and most states have rewritten their rules using the Model Rules as a framework. Because ethical regulation is largely a state law issue, most states have adopted the ABA MODEL RULES with some *changes*. Most changes are not major, except in the area of confidentiality. We will not attend to individual state variations except where variations are notable. To facilitate your comparison of specific state Rules, the following link is helpful:  
[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html).

### **TWEN Postings & Hard Copies of Materials**

All course materials from me will be put on the TWEN site. Please register on the TWEN site so I have the e-mail that you routinely use and have the capacity to e-mail the whole class if there are any important announcements between classes.

### **Contacting Me**

In addition to the office hours I have posted, I do respond to e-mails and make appointments by request for hours not posted.

### **Class Participation and Preparation**

I believe people learn better when they engage actively in what goes on in the class. I also think the class is more interesting when we hear from the broadest range of perspectives. I will try to call on everyone in the class during the semester. I often recognize

volunteers, but I call on a number of students in almost, if not, every class.

If circumstances have prevented you from being prepared, please e-mail me or give me a note before class starts, and I will not call on you in that class. If I call on someone who is not prepared (and has not told me in advance), I sometimes will stay with the person if the question is one the person should be able to reason through.

### **Attendance**

Academic Rule II.A. states the rule on class attendance. Please review that provision. I will ask you to sign the attendance sheet for each class to assist me with regard to this rule. In filling out this sheet as with all aspects of your conduct in relation to this course, please attend to the school's Honor Code.

### **General Class Expectations**

I expect the following are obvious to everyone in the class, but "for the record," please note these expectations: 1.) If you are absent from a class, you are responsible for making sure that I did not announce a modification to any previously announced assignments. 2.) I expect people to make every effort to be in their seats when the class is scheduled to start. Emergencies arise, but it is distracting to other students and to me when people come in late. 3.) I expect everyone to be prepared and ready to be called upon unless they have let me know otherwise. 4.) If you miss class, I expect you to check on whether anything was distributed and get the material from TWEN.

### **Laptop Use**

Laptop use is permitted in class, provided you use them only for class-related purposes. Other use is distracting to your colleagues and therefore prohibited. That said, I offer the following for your consideration:

In an article on why he has banned laptops in his introductory Federal Income Tax class, Professor Kevin Yamamoto reviews the debate about computers in the law school classroom including pertinent research on learning and cognition. *Banning Laptops in the Classroom: Is it Worth the Hassle?* 57 J. LEG. ED. 477 (2007). He identifies four problems with laptop use: (1) distraction to the student and those around the student when someone is doing non-class related activities in class; (2) interference with classroom discussion by creating a physical and mental barrier between professor and students; (3) encouragement of verbatim note-taking; (4) negative effect on student learning.

Linda Stone, a former executive at Apple and Microsoft, has coined the term "continuous partial attention," which she argues is more descriptive than multitasking in that it describes the negative consequences of habitually failing to give full attention to something in which one is engaged.

## Taping Class Sessions

You have my permission to audio tape class, either yourself or by asking a classmate to do it.

## Assessment

Class participation:

Class participation is expected and will be a component of evaluation (20% of final grade). This includes (besides regular attendance) careful preparation, demonstrated substantive understanding, and thoughtful insights into the material. Sometimes I will ask you to meet as Ethics Committees outside of class, and work in those small groups will also count toward class participation.

Examination:

The final is a three-hour, open-book examination; you will be expected to use Examsoft. The examination questions will resemble the Problems we discuss in class, which are excellent preparation.

## ***Readings in Legal Ethics in the Practice of Law***

**M/W 3:35-4:50 pm – Oakes 007**

<b>Topic</b>	<b>Chapters/Problems</b>	<b>Read</b>	<b>Class Dates M/W</b>
Overview	Introduction Chapter 1	1-17; 19-37	Jan 8
Hanging Out Your Shingle	Problem 1	41-65	Jan 10
<b>No Class/Martin Luther King, Jr. Day</b>			<b>Jan 15</b>
Taking on a Client and Getting Paid	Problem 3	87-115	Jan 17
Roger Earl Receives Some Evidence	Problem 4	117-141	Jan 22
When Does a Lawyer Talk Too Much?	Problem 5	143-170	Jan 24
Technology + Confidentiality = Trouble	Problem 6	171-197	Jan 29
When Are Two Clients Too Many?	Problem 7	201-225	Jan 31

Who Is My Client?	Problem 8	227-254	Feb 5
Personal Interests Loyalty, Imputation and the Business of Being a Profession	Problems 9 and 10	255-279 283-309	Feb 7
A Day in the Life	Problem 12	343-359	Feb 12
Savior or Mouthpiece?	Problem 13	361-383	Feb 14
Multi-Cultural World	Problem 14	387-408	Feb 19
How Far Should Richie Go?	Problem 15	411-438	Feb 21
When a Client Insists on Lying	Problems 16	439-460	Feb 26
Rule 11	Problem 17	463-484	Feb 28
<b>Spring Break</b>			<b>Mar 3-11</b>
Is Discovery Survival of the Fittest	Problem 18	489-515	Mar 12
Negotiation	Problems 19	519-541	Mar 14
Ethical Dilemmas in Mediation	Problem 22	599-622	Mar 19
<b>MPRE</b>			<b>March 24</b>
Trial Tactics	Problem 20	545-566	Mar 21
Civility, Contempt, Free Speech and Publicity	Problem 21	569-595	Mar 26
Must a Prosecutor Play By Different Rules?	Problem 23	625-649	Mar 28 <sup>9</sup>
What's A City Attorney to Do?	Problem 24	653-676	Apr 2
Advising the Corporate Client	Problem 25	679-704	Apr 4
Challenges: What is Important in Client Advising	Problem 26	707-728	Apr 9
Law Firm Practices	Problems 27,	733-759	Apr 11

Lawyer in the Firm, Bias	Problem 28, 29	761-783 808-813	Apr 16
Advertising/Solicitation	Problem 31	839-862	Apr 18
Access, UPL	Problem 32	865-887 913-919	Apr 23