Class will meet Mon, Wed. 3:35-4:50 pm in Oakes 007 unless the Covid pandemic changes the class meetings to online meetings on Teams. We may also use Teams for bad weather as well. Watch for emails if that occurs.

My office hours will be on Wed. 2:00-3:00 pm or by appointment. You may also reach me by email me at jvogel@vermontlaw.edu.

**Required Books**


**Reading the assigned Model Rules:** When an assignment requires you to read a Model Rule, please read both the Rule and the comments. If the comments to a rule are voluminous, do not 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
group outside of class, because members of the group are likely to take different
approaches to a problem, thereby exposing the possible options and considerations.
This schedule may be revised during the semester. If I make changes in daily
assignments, I will announce them in class and send an email to each of you. If
there are any major changes, I will publish an amended syllabus.

Twen Site

I have set up a Twen site for Professional Responsibility. You must sign up for
that site so you can receive messages and class materials.

ATTENDANCE

Class attendance is required. Absences resulting from religious observance,
serious illness, and personal emergency are excused if notice is given to the
Professor or through the Registrar within a reasonable time of the absence.
Excused absences will not affect your grade unless they are excessive.

Unexcused absence from more than two classes will affect your grade. A third
unexcused absence will result in a written warning. Unexcused absence from a
fourth class will result in a grade of F-Wd (Fail/Withdrawal). This statement
constitutes the notice required by VLS Academic Regulation X.A.1 (a) & (b)
(2020).

GRADING

Final exam: 90% of the grade:
closed book: combination of multiple choice and essay

Participation & Preparation: 10%
Measured primarily by the meaningfulness and utility of your contributions to
class discussions. I will call on you at random. If you are not prepared on a
particular day, you may elect to pass. Every subsequent “pass” will be considered
an unexcused absence. If you have thoroughly prepared for class, you should
participate even if you are not confident in your understanding of the materials.
Ask questions if you do not understand—during or after class, during office hours
or appointments, or by email. The only ignorant question is the one that is not
asked.
LEARNING OBJECTIVES

Students who successfully complete this class will be able to:

• Recognize professional ethical dilemmas when they occur in a practice setting
• Identify the Model Rules that should be considered in resolving ethical dilemmas
• For their chosen jurisdiction, identify the rules applied in resolving ethical dilemmas
• Identify other laws that should be considered in resolving ethical dilemmas
• Find and apply case law and ethics opinions (formal and informal) applicable to problematic behavior under review
• Demonstrate mastery of the Model Rules on the national Multistate Professional Responsibility Exam (MPRE)
## Schedule of Assignments

<table>
<thead>
<tr>
<th></th>
<th>Topics, problems and cases to be discussed in class</th>
<th>Pages assigned and relevant rules</th>
</tr>
</thead>
</table>
| 1 | Preface  
Introduction  
Chapter 1: The Legal Profession: Bar Admission, History, and Diversity  
Admission to the bar  
*Problem 1-1: Adderall* | Text: pp. xxxi-xxxv, 1-35  
Supp: Model Rules Preamble and Scope; Rule 8.1 |
| 2 | Admission to the bar  
*Problem 1-2: The Doctored Resume*  
History and development of the U.S. legal profession  
Diversity and discrimination in the legal profession | 35-64 |
| 3 | Institutions that regulate lawyers  
State ethics codes  
The disciplinary system  
*Problem 2-1: The Dying Mother*  
*Problem 2-2: Exculpatory Evidence* | 65-113  
Rules 1.2(d), 8.3, 8.4, and 8.5 |
| 4 | *Problem 2-3: The Little Hearing*  
The Wieder case  
Case study: The strange tale of Scott McKay Wolas  
Civil liability  
Criminal liability  
Client protection funds | 114-150  
Rules 5.1, 5.2, 5.3, and 8.3 |
| 5 | Formation of the lawyer-client relationship  
*Togstad v. Vesely, Otto, Miller & Keefe*  
Lawyers’ duties of competence, diligence, honesty, and communication  
*Problem 3-1: The Washing Machine*  
Strickland v. Washington  
Missouri v. Frye  
Lafler v. Cooper  
*Problem 3-2: A Desire to Investigate* | 151-192  
Rules 1.1, 1.3, 1.4, and 2.1 |
| 6 | Lawyers’ duties of competence, diligence, honesty, and communication (continued)  
   **Problem 3-3: Torture**  
   Lawyers’ responsibilities as agents  
   Who calls the shots?  
   **Jones v. Barnes**  
   **Problem 3-4: Vinyl Windows**  
   Terminating a lawyer-client relationship | 192-225, 229-232, 233-237, Rules 1.2, 1.14, and 1.16 |
|---|---|
| 7 | **Chapter 4: The Duty to Protect Client Confidences**  
   The basic principle of confidentiality  
   **Problem 4-1: Your Dinner with Anna**  
   Exceptions to the duty to protect confidences  
   **Problem 4-2: The Buried Bodies, Scene 1** | 239-263 (Don’t read ahead!)  
   Rule 1.6 |
| 8 | Exceptions to the duty to protect confidences (continued)  
   **Problem 4-3 and 4-4: The Buried Bodies, Scenes 2 and 3**  
   **People v. Belge**  
   **Spaulding v. Zimmerman** | 263-281  
   Rule 1.6 |
| 9 | Exceptions to the duty to protect confidences (continued)  
   **Problem 4-5: Rat Poison**  
   **Problem 4-6: Reese’s Leases**  
   Use or disclosure of confidential information for personal gain or to benefit another client  
   **Problem 4-7: An Investment Project**  
   Talking to clients about confidentiality | 281-302  
   Rule 1.6 |
| 10 | **Chapter 5: The Attorney-Client Privilege and the Work Product**  
   Confidentiality and attorney-client privilege compared  
   The elements of attorney-client privilege  
   Asserting the privilege  
   Waiver of the privilege  
   Exceptions to the privilege  
   **Problem 5-2: The Payoff**  
   The death of the client  
   **Problem 5-3: A Secret Confession**  
   **Swidler & Berlin v. United States**  
   The attorney-client privilege for corporations  
   The attorney-client privilege for government officials  
   The work product doctrine  
   **Problem 5-4: Worldwide Bribery** | 303-322, 324-345 |
<table>
<thead>
<tr>
<th>Chapter 6: Conflicts of Interest: Current Clients</th>
<th></th>
</tr>
</thead>
</table>
| 11 | An introduction to conflicts of interest  
General principles in evaluating concurrent conflicts  
*Problem 6-1: The Injured Passengers, Scene 1*  
Conflicts between current clients in litigation  
*Problem 6-3: I Thought You Were My Lawyer*  |
| | 347-372, 374-377  
Rule 1.7 |
| 12 | Conflicts between current clients in litigation (continued)  
*Problem 6-4: The Injured Passengers, Scene 2*  
*Problem 6-5: Top Gun*  
Conflicts involving prospective clients  
*Problem 6-6: The Secret Affair*  |
| | 377-391  
Rules 1.7 and 1.18 |

<table>
<thead>
<tr>
<th>Chapter 7: Conflicts Involving Former Clients</th>
<th></th>
</tr>
</thead>
</table>
| 13 | Nature of conflicts between present and former clients  
Duties to former clients  
Distinguishing present and former clients  
*Problem 7-1: Keeping in Touch*  
*Problem 7-2: A Better Client*  
Evaluating successive conflicts  |
| | 393-414  
Rule 1.9 |
| 14 | Addressing former client conflicts in practice  
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  
*Problem 7-3: Toxic Waste*  
*Problem 7-4: A Brief Consultation*  |
| | 415-436, 437-438  
Rules 1.9 and 1.10 |

<table>
<thead>
<tr>
<th>Chapter 8: Conflicts Issues in Particular Practice Settings</th>
<th></th>
</tr>
</thead>
</table>
| 15 | Representing both parties to a transaction  
Representing organizations  
*Problem 8-1: My Client’s Subsidiary*  
*Problem 8-2: “Don’t Rock the Boat”*  |
| | 439-454  
Rules 1.7, 1.9, 1.10, and 1.13 |
| 16 | Representing co-defendants in criminal cases  
*Problems 8-3, 8-4, and 8-5: Police Brutality, Scenes 1, 2 and 3*  |
| | 454-467  
Rules 1.7, 1.8(f), 1.9, and 1.10 |
| 17 | Representing co-defendants in civil cases  
*Problem 8-6: The Leased Car*  
Representing family members  
*Florida Bar Opinion 95-4*  
*Problem 8-7: Representing the McCarthys*  
Representing insurance companies and insured persons  
Representing employers and immigrant employees  
Representing plaintiffs in class actions  
Representing parties to aggregate settlements  |
| | 468-488  
Rules 1.7, 1.8(f) and (g), 1.9, and 1.10 |
<table>
<thead>
<tr>
<th>Chapter 9: Conflicts of Interest Between Lawyers and Clients</th>
</tr>
</thead>
</table>
| 19 | Legal fees  
**Matter of Fordham**  
*Problem 9-1: An Unreasonable Fee*  
*Problem 9-2: Rising Prices* |
| 20 | Legal fees (continued)  
*Problem 9-3: An Impoverished Client*  
Lawyer as custodian of client property and documents  
Conflicts with lawyers’ personal or business interests |
| Chapter 10: Conflicts Issues for Government Lawyers and Judges |
| 21 | Regulation of government lawyers and those who lobby them  
Successive conflicts of former and present government lawyers  
*Problem 10-1: The District Attorney*  
Conflicts involving judges, law clerks, arbitrators, and mediators  
*Problem 10-2: The Judge’s Former Professor* |
| Chapter 11: Lawyers’ Duties to Courts |
| 21 | Being a good person in an adversary system  
Investigation before filing a complaint  
*Problem 11-1: Your Visit from Paula Jones*  
Truth and falsity in litigation  
Problems 11-2 and 11-3: Flight from Sudan, Scenes 1 and 2 |
| 22 | Truth and falsity in litigation (continued)  
*Problem 11-4: The Drug Test*  
*Problem 11-5: The Body Double*  
Concealment of physical evidence and documents  
*Problem 11-7: Child Pornography* |
| 23 | Concealment of physical evidence and documents (continued)  
*Problem 11-8: The Damaging Documents*  
The duty to disclose adverse legal authority  
Disclosures in ex parte proceedings  
Improper influences on judges and juries  
*Problem 11-9: A Letter to the Editor*  
Agreements not to accept future cases  
Lawyers’ duties in nonadjudicative proceedings |
| Chapter 12: Lawyers’ Duties to Adversaries and Third Persons |
| 24 | Communications with lawyers and third persons  
*Problem 12-1: Emergency Food Stamps*  
*Problem 12-2: Insurance Claims*  
The Messing case |

Table: Chapter 9: Conflicts of Interest Between Lawyers and Clients

| 19 | Legal fees  
Matter of Fordham  
*Problem 9-1: An Unreasonable Fee*  
*Problem 9-2: Rising Prices* |
| 20 | Legal fees (continued)  
*Problem 9-3: An Impoverished Client*  
Lawyer as custodian of client property and documents  
Conflicts with lawyers’ personal or business interests |

Table: Chapter 10: Conflicts Issues for Government Lawyers and Judges

| 21 | Regulation of government lawyers and those who lobby them  
Successive conflicts of former and present government lawyers  
*Problem 10-1: The District Attorney*  
Conflicts involving judges, law clerks, arbitrators, and mediators  
*Problem 10-2: The Judge’s Former Professor* |

Table: Chapter 11: Lawyers’ Duties to Courts

| 21 | Being a good person in an adversary system  
Investigation before filing a complaint  
*Problem 11-1: Your Visit from Paula Jones*  
Truth and falsity in litigation  
Problems 11-2 and 11-3: Flight from Sudan, Scenes 1 and 2 |
| 22 | Truth and falsity in litigation (continued)  
*Problem 11-4: The Drug Test*  
*Problem 11-5: The Body Double*  
Concealment of physical evidence and documents  
*Problem 11-7: Child Pornography* |
| 23 | Concealment of physical evidence and documents (continued)  
*Problem 11-8: The Damaging Documents*  
The duty to disclose adverse legal authority  
Disclosures in ex parte proceedings  
Improper influences on judges and juries  
*Problem 11-9: A Letter to the Editor*  
Agreements not to accept future cases  
Lawyers’ duties in nonadjudicative proceedings |

Table: Chapter 12: Lawyers’ Duties to Adversaries and Third Persons

| 24 | Communications with lawyers and third persons  
*Problem 12-1: Emergency Food Stamps*  
*Problem 12-2: Insurance Claims*  
The Messing case |
<table>
<thead>
<tr>
<th>Page</th>
<th>Communications with lawyers and third persons (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td><strong>Problem 12-4: The Break-In</strong>&lt;br&gt;Duties of prosecutors</td>
</tr>
<tr>
<td></td>
<td><strong>Problem 12-5: The Prosecutor’s Masquerade</strong>&lt;br&gt;The Duke lacrosse case&lt;br&gt;Conduct prejudicial to the administration of justice&lt;br&gt;Are lawyers really too zealous?</td>
</tr>
<tr>
<td></td>
<td><strong>Chapter 13: The Changing Landscape of Law Practice</strong></td>
</tr>
<tr>
<td>26</td>
<td>Unauthorized practice of law: Who can provide legal services&lt;br&gt;<strong>Problem 13-1: Special Education</strong>&lt;br&gt;Getting business: Advertising and solicitation&lt;br&gt;<strong>Bates v. State Bar of Arizona</strong>&lt;br&gt;<strong>Problem 13-2: Traffic Crimes</strong>&lt;br&gt;Multidisciplinary practice&lt;br&gt;Financing law practice&lt;br&gt;Temporary and contract lawyers</td>
</tr>
<tr>
<td>27</td>
<td>Outsourcing legal work to cut labor costs: Offshoring and onshoring&lt;br&gt;Globalization of law practice&lt;br&gt;Law practice in America: Workplace Culture and professional satisfaction&lt;br&gt;<strong>Chapter 14: Access to Justice: The Lawyer’s Role</strong>&lt;br&gt;The unmet need for legal services&lt;br&gt;Sources of free legal services for those who cannot afford legal fees&lt;br&gt;<strong>Problem 14-1: Restrictions on Legal Services</strong></td>
</tr>
<tr>
<td>28</td>
<td>Chapter 14: Access to Justice: The Lawyer’s Role&lt;br&gt;<strong>Evans v. Jeff D.</strong>&lt;br&gt;<strong>Problem 14-2: The Prisoners’ Dilemma</strong>&lt;br&gt;Pro bono representation&lt;br&gt;<strong>Problem 14-3: Mandatory Pro Bono Service</strong>&lt;br&gt;Loan forgiveness and scholarships for public service lawyers.&lt;br&gt;<strong>Problem 14-4: The Future of the Legal Profession</strong></td>
</tr>
<tr>
<td></td>
<td>733-761, 762-764&lt;br&gt;Rules 3.8, 4.1, 4.2, 4.4, 8.4</td>
</tr>
<tr>
<td></td>
<td>765-812&lt;br&gt;Rules 5.4, 5.5, 7.1, 7.2, and 7.3</td>
</tr>
<tr>
<td></td>
<td>812-862&lt;br&gt;Rule 5.4</td>
</tr>
<tr>
<td></td>
<td>862-884&lt;br&gt;Rules 6.1 and 6.2</td>
</tr>
</tbody>
</table>