HAMLINE UNIVERSITY SCHOOL OF LAW
PROFESSIONAL RESPONSIBILITY
FALL 2010
Fridays 8:00 a.m. - 9:50 a.m. Moot Courtroom

Course Faculty
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Office hours The instructor will reserve a room after class from 10:00 to 10:50 for meeting with students. Students may stop by or can schedule an appointment during that time, right after class or at another time.

Course Description. This is a course on the law of Professional Responsibility that explores the responsibility of lawyers to their clients, tribunals, and others through study and application of the ABA Model Rules and other authorities to problems arising in the practice of law. The course will also touch on the ABA Model Code of Judicial Conduct and the obligations of the judiciary. Although the course focus is not on ethics[1], students will gain an appreciation of the importance of their own morals, values, and identity in resolving conflicts in practice not easily resolved by the Rules. Students will be challenged to develop their own philosophy of lawyering as well as an appreciation of how their role as members of a profession impacts their relationships with their clients, colleagues, and the greater community.

Class Participation. This course will consist of a series of class meetings involving large and small group discussion, role playing, and other interaction, supplemented by lecture and an occasional ungraded exercise. Students are responsible for coming to each class appropriately prepared to discuss assigned material, and each student will be required to actively participate in one class during the semester which will be assigned and discussed with the instructor in advance.[2] Students who are interested in honing their practice skills, learning more about a particular area of practice, engaging in an alternate intellectual exercise, or expressing their creativity can volunteer individually or in groups for role plays or reports. Alternatively, students may participate in a more traditional fashion by preparing assigned material for class discussion. **The options are described on the Class Participation Volunteer Form, which can be accessed on TWEN or picked up in class on August 27. The form needs to be filled out and returned to the instructor by September 3.**

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[1] Ethics is the discipline of critical reflection on moral issues, or moral philosophy.
[2] Students will communicate with the instructor to discuss the participation during office hours the previous week or some other time arranged with the instructor.

Essay Assignment. Students will write a reflective essay describing their philosophy of lawyering on the personal level (integrating personal goals and values with your professional lives), the practice level (developing an approach to conducting yourselves as professionals and addressing difficult issues arising in practice or other role in the profession), and the institutional level (addressing issues of concern to the profession and the broader community). **The essay is due on Friday, October 29 by 8:00 a.m.**

Required Reading Materials. Required readings are drawn primarily from our textbook, rules supplement, and the supplemental materials packet available as a pdf on TWEN or in the bookstore. Students will also be assigned additional materials from time to time which can be accessed on TWEN or the internet or reviewed on reserve at the library.

Crystal, Professional Responsibility: Problems of Practice and the Profession (4th Ed.) ["Text"]

Gillers and Simon, Regulation of Lawyers, Statutes and Standards (2011 concise ed.)(or 2010 concise or regular edition) ["Rules Supp"]

Supplemental Materials (PDF on TWEN or available at the bookstore) ["Supp"]

Lee, To Kill a Mockingbird (must either read or review the movie)

Optional Reading Materials
Keeva, Transforming Practices: Finding Joy and Satisfaction in Legal Life (1999)(available on Amazon.com)

Grading. Student grades are based on the following:
Examination: (75%) The final examination will be composed of essay questions requiring application of the Rules, Code, other authorities, and the student's analysis. Students may use the Rules Supplement containing the student's hand-written notations on the front and back cover and inside pages while taking the exam. No additional pages may be appended.

Essay (25%) The essay will be scored on a 0-25 scale, with 20 points allocated for substance (depth of analysis, breadth of the coverage) and 5 points for presentation (clarity, brevity, composition, grammar, proofreading).

Class Participation The course grade may be raised up to one increment (i.e., an A- becomes an A) for quality of class participation. Lack of participation (see attendance below) may result in lowering of the grade by one increment, at the instructor's discretion. Failure to complete the mandatory participation requirement will result in an incomplete.

Attendance Policy. Attendance is required for satisfactory completion of the course, so an attendance record will be circulated at each class. Students must contact the instructor to arrange for an appropriate makeup for any missed class.[3] ***Failure to attend class without complying with this policy will be considered a lack of participation, and the course grade may be lowered accordingly.*** Repeated absences may result in the course grade being lowered or the student being withdrawn from the course with a "w" or "f" reflected on the transcript in accord with law school policy.

Policy on Using Computers or Recording Devices in Class. Out of respect for your classmates and the instructor or others presenting to the class, you may not use your computer for anything other than note taking or connecting to on-line materials relevant to class during class. This course requires free and open communication and participation in a "safe" environment. Therefore, absent extraordinary circumstances or necessity, the class sessions may be not recorded.

COURSE SCHEDULE

Note regarding "introductory materials": The material covered in the first few weeks of class provides the foundation upon which the course is built. The materials address the various and sometimes conflicting roles of a lawyer, the rules and other sources of the profession's standards of conduct, and how the standards of the profession are enforced. It also explores the human side of the profession, its challenges, and its potential and stresses the importance of developing a philosophy of lawyering to help the lawyer resolve ethical dilemmas, define his or her role in the profession, and contribute to the profession and the community.

Weekly assignments are in two parts, to roughly coincide with the two hours of class. Class discussions may lag behind assigned reading; nonetheless, read the assigned material unless instructed otherwise.

Please note that the reading for the first week is light, but students will need to read or view Harper Lee's "To Kill a Mockingbird" for Week 3 in addition to other assigned materials and should plan accordingly.

[3] Typically, the assignment is to become an "expert" on a rule or topic addressed in the missed class in addition to preparing for the missed class. The purpose is to ensure adequate preparation on the assigned material and improve future class discussions and not to punish.

Week 1-August 27, 2010

I. ***Foundations of Professional Responsibility***: Lawyer as Fiduciary, Officer of the Court, and Person with His or Her Own Interests

Text: pp. 1-12
Problems: Consider and prepare to discuss Questions 1-3, 5, p. 11-12
Rules Supp: Model Rules [Rules] Preamble, 1.0, 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 2.1, 4.3, 8.4(a)(c); Restatement §16; Skim the Model Rules and other authorities referenced in the text.
Other: Go to TWEN, read the syllabus in detail and be prepared to ask questions about the course, etc.

II. ***Resolving Tensions in the Lawyer's Role***: Professional Rules, Standards, and Laws; Beyond the Rules: Professionalism and Philosophy of Lawyering

Text: pp. 12-34
Rules Supp: 1) ABA Model Rules of Professional Conduct [Model Rules] Editor's Introduction, Table of Contents, Preamble, and Scope; 2) ABA Model Code of Professional Responsibility [Code] Editor's Introduction, Table of Contents, and Preliminary Statement; 3) Restatement of the Law Governing Lawyers [Restatement] Editor's Introduction and Table of Contents; Model Rules 1.2(b), 1.16(b)(4), 2.1; Restatement § 16(3)
Other: Read Minnesota's Professional Aspirations (in the Supp. or on Minnesota Lawyer's Board Website at www.courts.state.mn.us/lprb/profasp.html)
Access Class Participation Form on TWEN or pick one up in class, fill it out, and return it by September 3.

Week 2-September 3, 2010

I. Regulating Lawyers' Conduct through Admission, Discipline, and Civil and Criminal Liability

Text: pp. 34-53
Problems: 1-2, p. 39
Rules Supp: Rules Preamble, 1.0(f)(j), 1.2, 1.5(c), 1.6, 1.8, 5.2, 6.1, 6.2, 6.3, 6.4, 8.1, 8.4, 8.5
Supp: Section I: Disciplinary Process Flow Chart, Misconduct and Probation Statistics 2009, "Top 10 Excuses for Neglect and Non-communication", "Are you Fit to Practice?"
Other: 1)Skim Rule 4(A) and Rule 5 of the Rules for Admission to the Bar on the Minnesota Board of Law Examiners website at www.ble.state.mn.us
2)Locate the Minnesota Rules on Lawyers Professional Responsibility and view the features of the Minnesota Lawyers Board Website at www.courts.state.mn.us/lprb
3) Read In re Kasyzynski, 620 N.W.2d 708 (Minn. 2001)

II. Institutional Issues: A Profession of Human Beings
Supp: Section II-Materials on Quality of Life in the Law
Rules Supp: Rules 8.3, 1.16(a)(2), 1.3 cmt. 5, 5.1
Other: Visit LCL's website and review its features at www.mnlcl.org
Optional: Visit ABA Commission on Lawyer Assistance Programs at abanet.org/legalservices/colap

Reminder: turn in Class Participation Form today.

Week 3-September 10, 2010

I. Developing Your Philosophy of Lawyering
Text: pp. 53-63; 663-665; 486-95; 208-14; refresh your recollection of pp. 22-28
Supp: Section III-Finding Meaning in the Law
Other: Read or view Harper Lee's *To Kill a Mockingbird* and consider the philosophy of lawyering exemplified by Atticus Finch
Read Essay Assignment posted on TWEN
Problem: Read and think about problem 1-4(a), p. 56
Rules Supp: Skim Model Rules referenced in text reading
Optional: 1) Transforming Practices: forward, preface, introduction, and Chs. 1, 12, and 13 (the text is on reserve)
2) Visit the MSBA Life & the Law website for a bibliography on quality of life issues in the practice of law at www.mnbar.org/committees/lifelaw

II. Some Ethical Issues in Law Practice: supervision, organizing and leaving firms; multidisciplinary practice; multi-state practice
Text: pp. 643-648; 648-662; 477-486
Problems: 7-1(a), p. 643-644
Rules Supp: Rules 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 7.2(b), 8.3, 8.4(a)(c), 1.17
Supp: Section II "When Colleagues Need Help"
Other: Memorandum Opinion in Arnold v. Cargill (on TWEN)

Week 4-September 17, 2010

I. Lawyer and Client Relationship: representing the guilty; ethical duty of competence; ineffective assistance of counsel
Text: pp. 68-84
Problems: 2-1, p. 68
Rules Supp: Rules 1.1, 1.2(b), 1.16(b)(2), 2.1, 3.1, 3.3

II. Lawyer/Client Relationship: engagement, termination and withdrawal; professional liability

Text: pp. 236, 241-258
Problems: 3-2(a) (b), p. 236-37, 241-44; Question 1, p. 241
Rules Supp: Rules 1.0, 1.1, 1.2(a), 1.3, 1.4, 1.5, 1.6, 1.8, 1.13, 1.15, 1.16, 1.18, 2.1, 6.1, 6.2, 7.2; Restatement § 19;
Other: Read Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686 (Minn. 1980) **in its entirety** (not the excerpted case from the text).
Other: Read "Ethical Considerations In Providing Unbundled Legal Services" http://www.mncourts.gov/lprb/fc05/fc020705.html

Week 5-September 24, 2010

I. Lawyer and Client relationship: fees; safekeeping client property

Text: pp. 84-94; 96-98; 219-236
Problems: 2-3(a), p. 84-85
3-1, p. 219-220
Rules Supp: Rules 1.1, 1.5, 1.6, 1.16(d),1.8(d)(e), 1.15, 3.4(b), 5.4, 7.2, 8.4; Restatement § 46
Other: Read "Other People's Money" at http://www.mncourts.gov/lprb/OtherPeoples$$.pdf
Optional: View Minnesota's Rule 1.5 on the Minnesota Lawyer's Board Website at www.courts.state.mn.us/lprb

Week 6-October 1, 2010

I. Confidentiality Duty in Criminal Context; Intersection with Attorney-Client and Work Product Privilege

Text: pp. 98-113; 113-123
Problems: 2-4, p. 98
Consider and prepare to discuss Questions 1-4, pp. 104-05
2-5, p. 113
Rules Supp: Rules 1.2, 1.6, 1.16, 2.1, 3.4, 4.3, 8.4, Model Code DR 4-101; Restatement §§ 59-67, 67(2), 96, 119

II. Confidentiality: false testimony in criminal cases

Text: pp. 124-146
Problem: 2-6(a) (b) (c) (d) , p. 124-25
Rules Supp: Rules 1.2, 1.6, 1.16, 2.1, 3.3, 3.8(d), 8.4; Restatement § 120

Additional Limits of Confidentiality: criminal or fraudulent conduct of clients in business entity and other representation
Text: pp. 523-548
Rules Supp: Rules 1.2, 1.6, 1.13, 1.16, 2.3

Week 7-October 8, 2010

I. Confidentiality Duty in the Civil Context; Intersection with Attorney-Client and Work Product Privilege
Text: pp. 258-271
Problem: 3-3 (b), p. 259
Rules Supp: Rule 1.6, 1.13, 1.18; Model Code DR 4-101; Rest. §§ 59-67, 68-72, 77-80
Other: Read Minnesota's Rule 1.6 at www.courts.state.mn.us/lprb

II. Confidentiality and Conflicts of Interest: clients with diminished capacity; third parties
Text: pp. 146-154; 344-348
Problem: 2-7Z (on Twen)
Rules Supp: Rules 1.2(a), 1.4, 1.6, 1.14, 1.16, 1.7(a)(2), 1.8(f), 2.1; Restatement § 24(2)

Week 8-October 15, 2010

I. Conflicts of Interest: current clients
Text: pp. 271-290; 504-521
Problem: 3-4 (a)(b)(f), p. 271-73
Rules Supp: Rules 1.7, 1.8, 1.9, 1.10, 1.13, 1.16, 1.18, 2.3, 6.3, 6.4, 6.5

II. Conflicts of Interest: former clients; prospective clients; imputation
Text: pp. 290-299; 299-305
Problem: 3-5Z (on Twen)
3-6, p. 299
Rules Supp: Rules 1.0(k), 1.9, 1.10, 1.8(k), 1.18, 1.11, 1.12, 1.13
Other: Lennartson v. Anoka-Hennepin I.S.D. 11, 638 N.W.2d 494 (Minn. App. 2002); 662 N.W.2d 125 (Minn. 2003)

No class October 22-Fall Break

Week 9-October 29, 2010

No additional assignment. Essay due to instructor by 8:00 a.m.

Week 10-November 5, 2010

I. Conflicts of Interest: Advocate-witness rule; representation of multiple parties and codefendants

Text: pp. 305-314; 315-321; 322-335(skim); 154-162
Problem: 3-8, p. 315
Rules Supp: Rule 1.0 (b)(e)(f)(n), 3.7, 1.7, 1.8(f); 1.18; Code 5-101, 5-102; Restatement § 108
Optional: Pine Island Farmers Coop v. Erstad, 649 N.W.2d 444 (Minn. 2002)

II. Conflicts and Other Issues in Family law, Estate Planning and Real Estate

Text: pp. 335-344; 561-585; 551-562; 577-486
Problem: 3-10(a)(b), p. 335-36
5-4(c), p. 567-63
4-9(b), p. 478
Rules Supp: Rules 1.4, 1.6, 1.7, 1.8(a) (c) (f), 1.9, 1.14, 1.15, 2.1, 4.3, 5.3, 5.4, 5.5

Week 11-November 12, 2010

I. Limitations on Trial Tactics: pretrial publicity; duties to tribunals; rights of third parties

Text: pp. 162-173; 173-187
Problems: 2-10, p. 173
Rules Supp: Rules 1.2(d), 1.4(b), 3.3, 3.4, 3.5, 3.6, 3.8, 3.9, 4.1, 4.4, 8.2, 8.4

II. Special Duties of Prosecutors

Text: pp. 187-208
Problem: 2-11(a), p. 187
Rules Supp: Rules 3.6, 3.8, 4.2

Optional: Zealous Representation and Alternative Dispute Resolution

Text: pp. 428-442
Rules Supp: Rules 1.1, 1.2, 1.4, 1.12, 2.1, 2.4

Week 12-November 19, 2010

I. Civil Litigation: limitations on zealous representation; commencement of actions, investigation, and discovery

Text: pp. 359-371
Problem: 4-1(a), p. 360
Rules Supp: 2.1, 3.1, 3.2, 3.4(d), 4.2, 4.3

II. Civil litigation: communication with unrepresented parties; methods of acquiring evidence

Text: pp. 371-387; 387-395
Problem: 4-2, p. 371-72
4-3(a)(b), p. 387-88
Rules Supp: Rules 1.2(d), 1.4, 2.1, 2.4, 3.4(f), 4.2, 4.3, 4.4, 1.1, 1.2(d), 4.4, 8.4

No class November 26-Thanksgiving

Week 13-December 3, 2010

II. Civil Litigation: discovery abuse; negotiation

Text: pp. 395-408; 408-427
Problem: 4-4(c)(d), p. 397-98; 4-5(a)(b)(e)(f), pp. 408-410
Rules Supp: Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.4, 5.2, 3.4(a)(d)(f), 7.3, 8.4 (d), Fed R. 501, 26(b)(3)
Other: View the ABA ethical guidelines for settlement negotiations at www.abanet.org/litigation/ethics
View Rule 33 of the Rules of Civil Procedure at www.law.cornell,edu/rules/frcp

Week 14-December 6, 2010 (a Monday)

I. Lawyer Communication with the Public: Attorney Advertising

Text: pp. 442-477
Problem: 4-7(a)(b), p. 442-44
Rules: 7.1, 7.2, 7.3, 7.4, 7.5

II. Lawyers in Public Service: Judges

Text: pp. 590-615
Problem: 6-1(a)(c), pp. 590-91
Rules Supp: Canons, 1, 2, 3, and 4 of Code of Judicial Conduct; 28 U.S.C. §§ 144, 455, p. 721; Rule 3.5

An Optional Review Session will be scheduled (if there is interest) for Saturday, December 11.