Problems in Professional Responsibility

*Syllabus Subject to Change*

Winter 2016 | Monday and Wednesday 3:30 pm to 5:20 pm | Room 127

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A Note About This Course

This course focuses on professional responsibility questions that typically arise in public interest practice, and examines the extent to which the application of ethical principles varies by public interest practice context. The course is designed for students who are interested in exploring ethical issues in the public interest practice context, regardless of where they intend to work after graduation.

Required Texts and Other Course Materials

  


This rules book is relatively thin, and includes the ABA Model Rules and Comments together with the Restatement (3d), the Model Code of Judicial Conduct and other useful items. It also includes a CD containing all the state codes. (By the way, the table of contents to the Restatement (3d) is better organized than the RPCs and gives you a nice overview of the entire field.) You may use another rules book, one other than Martyn, but make sure it is up to date. There have been several changes to the rules by the ABA in recent years. If you choose not to purchase the rules book but instead to use free online resources, you must print out copies of the rules (and committee comments) and keep them in a notebook so you can easily refer to them in class. Links to various sources of the ABA model rules and the Washington Rules of Professional Conduct will be available on the UW Canvas site for this class.

- Additional reading materials listed on the course schedule below will be available on our course website on UW Canvas.

Most class assignments contain readings in addition to your casebook. A short version of The Restatement Third, *The Law Governing Lawyers* (2000), is found in the Martyn , Fox & Wendel, and the complete version (including commentary) can be found on Lexis or Westlaw. All other materials referenced below are posted on the Canvas class website.
Model Rules to Consider for Each Class: At the beginning of most class segments in this syllabus, I have indicated the Model Rules that you should review for that segment. It is very important that you take the time to read those specific rules and the associated comments.

Syllabus Alert: The syllabus will be occasionally updated. Check the website for the most recent version.

Computer Use Policy

You may use laptop computers in class solely for the purpose of taking notes and accessing materials directly related to the course. As a courtesy to your classmates and to me, please refrain from checking, composing, or transmitting emails or other electronic communications (or playing Solitaire) during class time, whether on a laptop, smart phone, or tablet. Also, please do not access the internet during class time unless I ask you to (accessing the course website and materials during class is of course permitted).

Course Grading

This class is graded based on a final exam and class participation. Your final grade will be based on the total number of points you accumulate in the following two categories:

Class Participation (up to 45 points possible). Class participation includes attendance, participation in small group as well as class discussions, and will include three problem sets and two short writing assignments. You are expected to attend all sessions of the class and to have completed all readings assigned before that class. Missing more than three class sessions will have an impact on your grade. I do not keep track of excused/unexcused absences, but rather track aggregate absences. It is your job to manage your allotted absences in terms of illness, professional obligations, and family obligations. Only contact me if you have a significant, serious issue that you know will result in exceeding the allotment (such as caring for a seriously ill family member, ongoing medical issues, etc.). Please do not contact me about your attendance otherwise.

Your participation grade can also be affected if you fail to come to class prepared. Of course, I know that everyone has, from time to time, a day when they cannot be prepared. If you will be unprepared to discuss the assigned reading during any particular class, please email me at least one hour before the start of that class to let me know. Being unprepared for more than two days will result in losing participation credit for the course. It is your job to keep track of whether you have signed the attendance sheet, how many days you have missed class, and how many days you have come unprepared.

Final Exam (up to 55 points possible). The date and time of the exam will be posted on the general exam schedule for the quarter. (Please check the official schedule.) If you need to reschedule, contact Academic Services. This exam will be graded anonymously, and you will receive grading numbers from Academic Services.

Attendance Policy

The American Bar Association’s Accreditation Standard 304 requires “regular and punctual class attendance.” UW Law has adopted this policy. This is particularly important in a required course like this one. Attendance will be taken at the beginning of each class.
Access and Accommodations: Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

SCHEDULE OF TOPICS, READINGS, AND ASSIGNMENTS

Class 1: January 4

Introduction

- Lerman & Schrag 1 – 51
- Review the ABA Model Rules of Professional Conduct to become familiar with their structure and various sections. You do not have to read the comments, but please read the rules themselves.

Class 2: January 6

Admission to Practice

Rule 8.1 (Bar admission and disciplinary matters)

- Lerman & Schrag 52-76 (Chapter 1 Part C)
- Skim Washington Admission to Practice Rules
- Skim Washington Application for Bar Examination

Class 3: January 11

Duty of Competence

Rules 1.1, 1.3, 1.4, 5.1, 5.2, 5.3, 8.3, 8.4

- Lerman & Schrag pp. 79-120; 154-155; Chapter 5, pp. 296-301
ABA Standing Comm. on Ethics and Prof. Resp.: Formal Opinion 06-441 – Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation

“When the Defenders Are the Plaintiffs: Miami-Dade's Overburdened PD's Office May Decline New Clients, Florida Court Says,” available at http://www.abajournal.com/magazine/article/miami-dades_overburdened_pds_office_may_decline_new_clients_florida_court_s(Links to an external site.)

National Legal Aid and Defender's Association, Five Problems Facing Public Defense on the 40th Anniversary of Gideon v. Wainwright

Class 4: January 13

**Formation of Attorney-Client Relationship and Accompanying Duties; Unbundled Legal Services**

*Rules 1.2 1.16, 1.18, 6.1, 6.2, 6.5*

- Lerman & Schrag, pp. 279-293 (especially Togstad); 301-313; 327-332; 370-377
- Focus on Problems 5-1, 5-8
- “A Boost for Unbundling: Lawyers Offering Unbundled Legal Services Must Consider the Ethics Issues”, available at http://www.abajournal.com/magazine/article/lawyers_offering_unbundled_legal_services_must_consider_the_ethics_issues/(Links to an external site.)
- Restatement 3rd of the Law Governing Lawyers §14

NO CLASSES ON JANUARY 18 – FEDERAL HOLIDAY

Class 5: January 20

**Conception of Lawyer Role, Ethical Issues Implicated by Career Choice**

- Simon, *Ethical Discretion in Lawyering*, pages 1083-1084, 1090-1096
- Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, pages 613-624
- Postema, *Moral Responsibility in Professional Ethics*, pages , 63-64, 81 - 89
Class 6: January 25

Case and Client Selection

- Wishnatsky v. Univ. N.D. Clinical Education Program
- “At Unease – Withdrawing from a controversial case was awkward for King & Spaulding”
- Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients* (excerpt)

Class 7: January 27

Ethical Duty of Confidentiality, Privilege, and Attorney Work Product

*Rule 1.6*

- Lerman & Schrag Chapter 3, pp. 159-205; 220-228, Focus on Problems 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7
- William H. Simon, *The Confidentiality Fetish*
- “Confidentiality Agreements: Immoral?”

Class 9: February 1

Privilege (continued)

*Rule 4.4*

- Lerman & Schrag 229-277, Focus on Problems 4-3, 4-4
- Restatement 3rd of the Law Governing Lawyers, §§ 68-75, 77-80, 82-83, 86-89 (you do not have to read the comments)
- *S. v. DeFonte* (optional)
- *Pritchard v. County of Erie* (optional)
- *S. v. Mejia* (optional)
Class 10:  February 3

*Loyalties and Conflicts of Interest*

Rules 1.7, 1.8, 1.9, 1.10, 1.13, 1.15, 1.18, 6.3, 6.4, 6.5

- Lerman & Schrag, Chapter 5, pp. 332-334; Chapter 6, pp. 379-403; 408-421; Chapter 7, pp. 423-437; 450-456;
- Focus on Problems 6-4, 6-5, 6-6, 7-6

Class 11:  February 8

*Loyalties and Conflicts, Ctd.*

- Chapter 8, pp. 471-496; 505-515; Chapter 9, pp. 574-575, pp. 589-593
- Focus on Problems 8-2, 9-3
- *Matter of Jalicia G., available on Canvas*

Class 12:  February 10

* Problem Set 1 (under Quizzes tab) due at noon

NO CLASSES ON FEBRUARY 15 – FEDERAL HOLIDAY

Class 13:  February 17

*Who is the Client? Part I – The Government Lawyer*

*Rule 3.8*

- Lerman & Schrag, Chapter 5, pp. 322-326; Chapter 12, pp. 766-781
- Focus on Problems 5-3, 12-4
- “Would a Prosecutor’s Manual Help?” (optional)
- *State v. Monday, 171 Wash.2d 667 (2011)*
Class 14: February 22

*Who is the Client? Part II – The International Context*

- Bell and Carens, *The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections of a Dialogue Between practitioner and Theorists*
- Rachel Barish, *Professional Responsibility for International Human Rights Lawyers*
- Barbora Bukovská, *Perpetrating Good: The Unintended Consequences of International Human Rights Advocacy*

Class 15: February 24

*Whose Case It Anyway? Diminished Capacity and Other Issues*

*Rules 1.2, 1.14*

- Lerman & Schrag Chapter 5, pp. 334-370
- Focus on Problems 5-4, 5-5, 5-6, 5-7
- *When the Client’s Approach is Deadly*

Guest Speaker: Riddhi Mukhopadhyay, Sexual Violence Law Center

Class 16: February 29

*Who is the Client? Part III – Representation of Entities, Classes, and Multiple Parties*

- Lerman & Schrag Ch. 7, pp.428-437, 463-469
- Susane Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910-1920)*
- Derick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Literature*
- Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*
- Richard Abel, *Why does the ABA Promulgate Ethical Rules?*
- Guest Speaker: La Rond Baker, ACLU of Washington
Class 17    March 2

Communication with Represented Persons, Communications with Unrepresented Persons

Rules 4.2, 4.3

- Lerman & Schrag, Chapter 12, 747-762
- ABA Standing Comm. on Ethics and Prof. Resp., Formal Opinion 11-461
- In re Lawrence, (Oregon Sup. Ct.) (excerpt)
- Engler, Out of Sight and Out of Line: The Need for Regulation of Lawyers’ Negotiations with Unrepresented Poor Persons (excerpt)
- Optional: ABA Standing Comm. on Ethics and Prof. Resp., Op. 97-408

Class 18:    March 7

Truth, Justice, and Autonomy

Rules §§1.0, 1.6, 2.1, 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.4, 8.3, 8.4

- Lerman & Schrag, Chapter 11, pp. 643-678 703-727; Chapter 12, pp. 729-741
- Focus on Problems 11-2, 11-3, 11-4, 12-1
- Optional: "How Social Media Is Pushing the Limits of Legal Ethics"
- Optional: "When the Truth Can Wait"

Class 19:    March 9

Provision of Legal Services and Unauthorized Practice of Law

Rule 5.5

- Lerman and Schrag, Chapter 13, 790-796, 804-819, 824-836, 839 - 848
- ABA Model Definition of the Practice of Law, available at http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/recomm.authcheckdam.pdf(Links to an external site.)
- "ABA Chose Wrong Side in Drafting 'Unauthorized Practice' Rule"
- Optional: Supreme Court of Washington, Order (June 2012), Limited Practice Rule for Limited License Legal Technicians