

**Law B 510**

**Summer 2021**

**Problems in Professional Responsibility**

**Dates/Times: Asynchronous**

**Instructor:**

Professor Kimberly Ambrose

*A lawyer's either a social engineer or he's a parasite on society.*

-- Charles Hamilton Houston (1895-1950)

*Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.*

Model Rules of Professional Conduct Preamble [13]

**Course Description and Objectives:**

In this course we will explore the ethical issues that lawyers deal with on a regular basis through detailed study of the ABA's Model Rules of Professional Conduct and their state counterparts, particularly Washington's Rules of Professional Conduct (RPC's). The ethical rules that govern our profession are not necessarily intuitive, and lawyers often face ethical dilemmas to which the rules and their interpretation provide no clear answer. Learning the basic rules and their application is very important – and will be tested when you sit for the bar – but this course also asks you to consider the gray, or more complicated, ethical questions that arise in practice, as well as the meaning of ethics, morality, and the lawyer's role in serving justice. The summer quarter is compressed, so weekly readings will be longer than you may be used to.

In this course, I hope you will:

- enhance your sensitivity to ethical dilemmas regularly encountered by attorneys,
- understand the many sources of law that set and influence the standards of professional legal practice;
- learn to identify and evaluate the legal profession's fundamental values and the resulting duties and challenges they raise;
- learn to effectively collaborate with a team to problem solve;

- critically evaluate the legal profession and your role in it; and
- prepare to pass the professional responsibility portion of the bar exam (particularly the MPRE-- however; this course is not a substitute for an MPRE prep course.)

### **Required Texts and Course Materials:**

- Lisa G. Lerman & Philip G. Schrag, *Ethical Problems in the Practice of Law (Concise 4th ed. 2016)* ISBN: 978-1-4548-9128-4 Wolters Kluwer (Aspen Casebook Series).
- Optional: Susan R. Martyn, Lawrence J. Fox & W. Bradley Wendel, *The Law Governing Lawyers; National Rules, Standards, Statutes and State Lawyer Codes (2020-21)*.

### **Summer Course Format:**

This course will be offered in a “hybrid” asynchronous format which will include pre-recorded lectures, written assignments and participation in pre-assigned small group discussions as follows:

1. One short live introductory Q & A session to discuss the course format. Attendance is optional and it will be recorded.
2. Pre-recorded lectures. This will allow you to self-pace during the week. I will hold office hours via Zoom during our regular meeting time on Wednesdays and one-on-one or group appointments to discuss the materials are available upon request.
3. Three on-line small group discussions, to be scheduled during assigned weeks at a time convenient to the group members.
4. Short practice quizzes on CANVAS (ungraded).

Professional Responsibility is the only law school course where you study the law of lawyering. On the MPRE you are tested on “national” rules of professional responsibility, *i.e.*, the ABA Model Rules. During this course we will work through the various topics covered in these rules, using the Lerman and Schrag text, which summarizes the rules and then focuses on what happens when they are applied to real-life situations. What we learn in the bulk of the course deals with (1) questions and situations that are not expressly addressed or easily answered by the rules, and (2) how practitioners are forced to fill in the gaps

While memorizing the Model Rules is important for the MPRE and can be accomplished without spending time in a live class, discussion is valuable to understand how the rules work in real life. There is often more than one right answer to an ethical dilemma and there is almost always considerations that lawyers have that transcend the Rules of Professional Conduct. Under normal circumstances, class time is spent discussing the ethical problems in the text, which are based on real situations that lawyers have encountered in practice. This summer is still not normal and gives us the opportunity to

reimagine how we learn the Rules and their application. In lieu of class time discussion, you will be asked to write out your answers to the assigned problems (an opportunity to practice an important lawyering skill), share your answers with your pre-assigned small group and review their answers (an opportunity to practice another important lawyering skill: collaboration), and then meet every other week to discuss the problems and choose the “best” answer of the group (an opportunity to practice listening, learning from each other and articulating your analysis.) My hope is that this format will be structured enough to keep you focused to get through the material in a short summer quarter and flexible enough that you will be able to attend to the many other responsibilities you may have like work and family.

This rules book is relatively thin, and includes the [ABA Model Rules and Comments \(Links to an external site.\)](#) together with the Restatement (3d), the Model Code of Judicial Conduct and other useful items. *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 *may* want to print out copies of the rules (and committee comments) and keep them in a notebook so you can easily refer to them while taking quizzes and participating in discussions. The Restatement Third, The Law Governing Lawyers (2000) is found in the Martyn, Fox & Wendel; the complete version (including commentary) can be found on Lexis or Westlaw. Links to various sources of the ABA model rules and the Washington Rules of Professional Conduct are included here and available on the UW Canvas site for this class.

- [The Washington Rules of Professional Conduct. \(Links to an external site.\)](#) (WRPC)
- Additional assigned cases and other readings are cited in the syllabus and are available online or on Canvas, as noted.
- The Gallagher Law Library’s [PR page Links to an external site.](#) is an excellent resource for you both during and after this class is over.

### **Course Expectations and Grading:**

In order to earn credit you must complete the following assignments:

1. Weekly short written answers to assigned Problems, uploaded on CANVAS on Sundays by midnight. (generally 500 word limit.)(10 points each).
2. On-line discussions with small groups resulting in one written Problem submission (3X). (10 points each).
3. Short essay (500 words) on career choice and professional responsibility. (10 points).
4. Final timed 20 question multiple-choice quiz on CANVAS (you must earn 60%, you may have two attempts.) The quiz will be open book and open rules. It will be available on CANVAS from July 29 - August 3, 2021. (40 points).

5. Small Group Peer and Self-Assessment. You must complete this assessment of your own group participation as well as the participation of your fellow group members in order to receive credit for the course.

### **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 in this course.

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 206-543-8924 or [uwdrs@uw.edu](mailto:uwdrs@uw.edu) or [disability.uw.edu](http://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.

### **Religious Accommodations:**

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy \(https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/\)](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) (Links to an external site.) (Links to an external site.) (Links to an external site.). Accommodations must be requested within the first two weeks of this course using the [Religious Accommodations Request form \(https://registrar.washington.edu/students/religious-accommodations-request/\)](https://registrar.washington.edu/students/religious-accommodations-request/) (Links to an external site.) (Links to an external site.) (Links to an external site.).

### **Student Learning Technologies (UW-IT) Support:**

Contact [help@uw.edu](mailto:help@uw.edu) or 206-221-5000 for UW NetID and general networking support. UW-IT maintains a help desk at the Odegaard Undergraduate Library.

### **Research Services Librarians:**

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page \(Links to an external site.\)](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at [lawref@uw.edu](mailto:lawref@uw.edu). You are also welcome to visit the Reference Office on L1 to speak with the Research Services librarian on duty. If you

have a detailed research question or would prefer to meet privately with a librarian, you may set up an appointment.

## Course Reading Schedule and Assignments

### Pre-course Survey (due June 21st, 9:00am)

#### Week 1: Modules 1 and 2

**Monday, June 21<sup>st</sup>, 9:30-10:00 AM [Via Zoom](#)**– Live Discussion/Q&A about syllabus, course structure and expectations. Please review the syllabus and bring any questions you have. This will be recorded and available on [CANVAS' Zoom](#).

#### Monday June 21<sup>st</sup>, [Module 1: Intro to the Rules and Admission to Practice](#)

You should begin your study by reading through the **ABA Model Rules of Professional Conduct** ([Links to an external site.](#)). Become familiar with their structure and the various sections. You do not have to read all of the comments, but do read the rules themselves. Also take a quick look at the [“Blue-line” Washington Rules of Professional Conduct](#) available on the law library’s website. This will give you an idea of where the Model Rules and the Washington Rules differ. The Washington State Bar Association requires a short “state-specific” bar exam component that will likely test those areas where Washington’s Rules of Professional Conduct differ from the ABA’s Model Rules.

- *Rule 8.1 (Bar admission)*
- Lerman & Schrag 1-57 (Introduction, Chapter 1: The Regulation of Lawyers)
- Skim Washington [Admission to Practice Rules \(Links to an external site.\)](#) (“APRs”)
- Skim Washington [Application for Bar Examination](#)
- [In re the Bar Application of Tarra Simmons \(Links to an external site.\)](#), 190 Wn.2d 374 (2018).
- [Against the Odds: Shon Hopwood on reforming the character and fitness requirement\(Links to an external site.\) \(Links to an external site.\)](#), The Practice, Center on the Legal Profession, Harvard Law School. (Shon Hopwood is a UW Law graduate '15).

**WRITTEN ASSIGNMENT #1: [PROBLEM 1-2 The Doctored Resume \(500 word limit\)--](#)  
\_Due on CANVAS, Sun, Jun 27<sup>th</sup> 11:59pm.**

#### Wednesday June 23<sup>rd</sup>, [Module 2: Professional Discipline and other Liability of Lawyers](#)

*Rules 8.3 and 8.4 (misconduct); Compare WRPC 8.3 and 8.4*

- *Rules 5.1-5.3 (supervisors)*
- Lerman & Schrag 59-100 (Chapter 2: Lawyer Liability)
- Skim [Washington State Rules for Enforcement of Lawyer Conduct \(Links to an external site.\)](#)

- *Review:* The Coversheet to the [Proposed Amendments \(Links to an external site.\)](#) to the Discipline Rules which may soon be adopted by the Washington Supreme Court and will "streamline" the disciplinary process.
- *Skim* [2020 WSBA Lawyer Discipline Report \(Links to an external site.\)](#) Focus on p. 6-14 to get a feel for the scope of discipline in our state -- how many lawyers are disciplined and what they are disciplined for.
- *In Re Christopher*, 153 Wn.2d 669, 105 P.3d 976 (2005)

There are two videos in this Module -- the first I recorded last summer and the second video is Francesca D'Angelo who is a Senior Disciplinary Counsel in the [WSBA Office of Disciplinary Counsel. \(Links to an external site.\)](#), a recorded zoom class from a previous quarter.

An update to my video from last summer: more bar complaints have continued as fallout from the Trump Administration, including [one filed last summer \(Links to an external site.\)](#) (optional read) against William Barr for misconduct and for violating his duty of loyalty to the country (the complainants assert his client is the U.S. not President Trump.). The DC Bar just rejected that complaint this month. Meanwhile the complaints against Rudy Giuliani continued to pile up in NY and are pending before the NY Attorney Grievance Committee (their discipline is handled by this group which falls under the judicial branch.)

**WRITTEN ASSIGNMENT #2:** [PROBLEM 2-3 The Little Hearing \(500 word limit\)--Due on CANVAS, Sun, June 27<sup>th</sup> 11:59pm.](#)

**Week 2: Modules 3 and 4**

*Schedule a meeting with your small group this week. Review [Tips for Small Groups](#)*

**Monday June 28<sup>th</sup>, [Module 3: The Duty to Protect Client Confidences](#)**

*Rule 1.6 (confidentiality); Rules 1.0(f) ("knowingly"), 1.2(d) (counseling criminal conduct), 1.16(a) and (b) (withdrawal from representation), 3.3 (candor to tribunal), 4.1 (truthfulness), 8.4(c) (dishonesty)*

- Lerman & Schrag pp. 101-154
- Restatement §§ 59, 60, 66, found in Martyn or other source

**WRITTEN ASSIGNMENT #3:** [Problem 3-6 Reese's Leases \(1000 Word Limit\)--Exchange with your small group before meeting this week.](#)

**Wednesday June 30<sup>th</sup>, [Module 4: The Attorney-Client Privilege and Its Exceptions](#)**

Lerman & Schrag 155-176 (Chapter 4)

- Optional: William H. Simon, *The Confidentiality Fetish* [ON CANVAS](#)

**SMALL GROUP DISCUSSION:** Problem 3-6 Reese's Leases: exchange written answers, schedule small group discussion to choose "best answer".

**WRITTEN SMALL GROUP ASSIGNMENT:** [Upload your small group's "best answer."](#)--  
**Due on CANVAS, Sun, July 4<sup>th</sup> 11:59pm.**

**Week 3: Modules 5 and 6**

**Monday July 5<sup>th</sup>, Holiday 4<sup>th</sup> of July Observance**

**Wednesday July 7<sup>th</sup>, [Module 5: Relationships Between Lawyers and Clients:](#) Formation and termination of the representation,**

*Rules 1.1 (competence), 1.0(d) ("fraud"), 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.18(a) and (b)(prospective clients), 6.2 (accepting appointments), 2.1 (advisor), 8.4(c)(misconduct through fraud).*

- Lerman & Schrag pp. 177-225
- [Engagement Agreements: A Cornerstone of Law Firm Risk Management, NWLawyer, October 2017. \(Links to an external site.\)](#)
- Optional: [Accidental Clients](#)

**WRITTEN ASSIGNMENT #4:** [PROBLEM 5-1 The Washing Machine \(500 Word Limit\)](#)--  
**Due on CANVAS Sun, July 11<sup>th</sup> 11:59pm.**

Optional: [Bybee Torture Memo](#); [OPR Decision](#)

**[Module 6: Scope of Representation](#) – who calls the shots? Clients with diminished capacity, terminating the relationship.**

*Rules 1.2 (scope), 1.3 (diligence), 1.4 (communication), 2.1 (advisor), 8.4(c) (misconduct); 1.14 (client with diminished capacity), 1.16 (terminating representation).*

- Lerman & Schrag pp. 225-247
- Optional: *Parting Ways: [The Mechanics of Withdrawal, \(Links to an external site.\)](#) NWLawyer, November 2017, [\(Links to an external site.\)](#) 12-17.*

**WRITTEN ASSIGNMENT #5:** [PROBLEM 5-3 Vinyl Windows \(500 Word Limit\)](#)--**Due on CANVAS Sun, July 11<sup>th</sup> 11:59pm.**

**Week 4: Modules 7, 8 and 9**

**Schedule a meeting with your small group this week.**

**Monday July 12<sup>th</sup>, [Module 7: Concurrent Conflicts of Interest](#)**

*Rules 1.7 (concurrent conflicts), 1.8 (specific conflict rules), 1.10 (imputation of conflicts to others in a firm), 1.18 (prospective clients)*

- Lerman & Schrag pp. 249-284 (Chapter 6)
- Restatement §§ 121–122

### **Module 8: Concurrent Conflicts in Different Settings**

*Rules 1.7 (concurrent conflicts), 1.13 (organizational clients), 1.8(f)and(g)(multiple clients)*

- Lerman & Schrag pp. 285-319 (Chapter 7)
- Optional: [U.S. v. Schwartz](#) (edited)
- Optional: [Things Fall Apart, Hard Choices in Public Interest Law](#)

### **Wednesday July 14<sup>th</sup>, Module 9: Conflicts Involving Former Clients**

Guest Speaker: Lucinda Fernald, *General Counsel Foster Garvey*: This lecture was recorded via Zoom during Spring PR and I'm using it here with permission. It is great to watch last as a summary of MR 1.7 and 1.9 and how conflicts of interest play out in large firms.

*Rules 1.7 (concurrent conflicts), 1.9 (former clients)*

- Lerman & Schrag pp. 321-365 (Chapter 8)
- [ABA Formal Opinion 479, December 15, 2017.](#)
- Plain English Consent Form on CANVAS.

**SMALL GROUP DISCUSSION:** Problem 8-2 *Toxic Waste*, exchange written answers, schedule small group discussion to choose “best answer”.

**WRITTEN SMALL GROUP ASSIGNMENT:** [Upload your small group’s “best answer.”--](#)  
**Due on CANVAS Sun, July 18<sup>th</sup> 11:59pm.**

### **Week 5: Modules 10 and 11**

#### **Monday, July 19<sup>th</sup>, Module 10: Conflicts between Lawyers and Clients: Legal Fees; Trust Accounts; Lawyers’ personal and business interests**

*Rules 1.4 (communication), 1.5 (fees), 1.8(a) (business with clients), 1.8(d) (media rights), 1.8(c) (advances), 1.8(f) (payments from others), 1.8(h) (limiting lawyer liability), 1.8(i) (investments in causes of action), 1.15 (Safeguarding property), 1.16(d)(financial details upon termination), 5.4 (professional independence), WRPC 1.15A and B, WRPC 1.5*

- Lerman & Schrag 367-433 (Chapter 9)
- [Theresa Olson Jail-Sex News Stories on CANVAS.](#)

- Optional Skim: [In re Olson](#), Washington Supreme Court lawyer disciplinary order, WSBA No. 16402 (2005) on CANVAS.

**WRITTEN ASSIGNMENT # 7: [Problem 9-1 An Unreasonable Fee \(500 word limit\)](#)--Due on CANVAS Sun, July 25th 11:59pm.**

**Wednesday, July 21<sup>st</sup>, Module 11: [Conflicts Issues for Government Lawyers, Judges and Other Adjudicators](#)**

*Rules 1.9 (former clients), 1.10 (imputation), 1.11 (former government employees), 1.12 (former judges), 1.13 Comment [9](organizational clients), 2.4 (third-party neutrals)*

- Lerman & Schrag pp. 435-469 (Chapter 10)

**Week 6: Modules 12 and 13**

**Schedule a meeting with your small group this week.**

**Monday, July 26<sup>th</sup>, [Module 12: Lawyer's Duties to Courts](#)**

*Rules 1.2 (scope of representation), 1.16 (declining or terminating representation), 3.1(meritorious claims), 3.3 (candor), 8.4(c) (misrepresentations)*

- Lerman & Schrag pp. 471- 538 (Chapter 11)
- Module 12-1 (p. 471-504)
- Module 12-2 (p. 505-538)

**SMALL GROUP DISCUSSION:** Problem 11-5 *Child Pornography*, exchange written answers, schedule small group discussion to choose "best answer".

**WRITTEN SMALL GROUP ASSIGNMENT: [Upload your small group's "best answer."](#)--Due on CANVAS Sun, August 1<sup>st</sup> 11:59pm.**

**Wednesday, July 28<sup>th</sup>, [Module 13: Lawyers' Duties to Adversaries and Third Persons](#)**

*Rules 4.1-4.4; 3.8, 8.4(d)*

- Lerman & Schrag pp. 539-589 (Chapter 12)
- [Embattled Deputy Prosecutor Resigns, Seattle Times, February 16, 2012 \(Links to an external site.\)](#)
- [Optional: State v. Monday, 257 P.3d 551. \( 2011\).](#) [Excerpt on CANVAS](#)
- Optional: In re James Konat, [WSBA Disciplinary Board Findings of Fact](#)

**Final Quiz Prep Module**