SYLLABUS
PROFESSIONAL RESPONSIBILITY–SPRING 2012-
SECTION 298-002 ADJUNCT PROFESSOR – ARTHUR D. BURGER

MONDAY EVENINGS 8:00 P.M. TO 9:50 P.M.
FOUNDERS HALL ROOM 111

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Office Conferences at School by Appointment

COURSE MATERIALS

American Bar Association, Compendium of Professional Responsibility Rules and Standards, 2011 Ed. In addition, students should obtain from TWEN the authorities identified below. PowerPoint slides for each class will be posted on TWEN and displayed in class.

CLASS TOPICS AND ASSIGNMENTS

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<th>CLASS NO.</th>
<th>TOPICS</th>
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<td>Class 1</td>
<td>Introduction and Background</td>
<td>ABA Model Rules of Professional Conduct</td>
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<td>(“ABA Rules”): Preamble, Scope and Rules 1.0</td>
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<td>(Terminology), 1.1, 8.4 and 8.5.¹</td>
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<td>- Scope of Course</td>
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<td>- Morality and Legal Ethics</td>
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<td>- What is Being “Ethical?”</td>
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<td>- Ethical Duties to Whom?</td>
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<td>- Notion of “Minimum Standards”</td>
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<td>- Role of Advocate versus Role of Advisor</td>
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Sources of Law Governing Lawyers (In addition to ABA Model Rules)

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<td>- Contracts (Retainer Agreements; Engagement Letters)</td>
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<td>- Case Law on Agents and Principals</td>
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<td>- Case Law on Fiduciary Duties</td>
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¹ Where ABA Rules are assigned to be read, this includes the Comments as well which provide important and authoritative explanations of the Rules.
Case Law on Malpractice
Case Law on Disqualification
Statutes
Tribunal Rules of Procedure and Rules of Conduct
Court Orders
Substantive Law Generally
Court’s Inherent Powers

Basic Duty of Honesty and Integrity

Pervasive and Central to ABA Rules and Concept of Professional Responsibility
Applies Even Outside of Professional Work (Rule 8.4(c))
Specific Applications Later in Course

Disciplinary Authority and Choice of Law

Rule 8.5

Duty of Competence – Rule 1.1

- How Does This Implicate Ethics?

Some Principles on Interpretation Generally

Various Principles That Apply In Interpreting the ABA Rules and Other Authorities
Terminology Section of ABA Rules – (Rule 1.0)

Class 2

Regulation of Legal Profession

Authority to Regulate (Federal Preemption see Sperry v. Florida)
State Courts regulate attorneys through ethics rules such as ABA Model Rules of Professional Conduct

Control Devices For Attorney Misconduct

Bar Discipline (Rule 8.4, and 8.5(a) on Disciplinary Authority)
Reporting Misconduct (Rule 8.3)

ABA Rules: 1.18, 6.2, 5.5 8.1, 8.3, 8.4 and 8.5.
ABA Formal Ethics Opinion No. 07-448 (not in book)

872818v.1
- Contempt of Court
- Disqualification From Case
- Civil Liability
- Criminal Liability

Unauthorized Practice of Law
- Ethical Duty to Avoid – Rule 5.5
- Defining “Practice of Law”
- Unauthorized Practice By Lawyers (Multi-jurisdictional Issues) (Birbrower and Rule 5.5)
- Admission to Practice (Rule 8.1)
- Pro Hac Vice Admissions

Creation of Attorney-Client Relationship
- Elements
- Prospective Clients (Rule 1.18)
- Court Appointments (Rule 6.2)

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<th>Class 3</th>
<th>Retainer Agreements, Fees and Billing (Rule 1.5)</th>
<th>ABA Rules: 1.5 and 1.15. and 5.4</th>
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<td>Retainer Agreements, Required Elements</td>
<td>ABA Ethics Opinion 93-379 (p. 621 in book)</td>
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<td>In Re Addams, 579 A.2d 190 (DC 1990).</td>
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<td>Types of Fee Arrangements</td>
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Care of Property of Others (Rule 1.15)
- Clients and Third Parties
- Commingling
- Misappropriation
- Sanctions (In re Addams)

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<th>Class 4</th>
<th>Advertising and Solicitation</th>
<th>ABA Rules: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 8.4(e).</th>
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<td>Historical Aversion of Advertising and Soliciting</td>
<td>Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978); In Re Primus, 436 U.S. 412 (1978); In Re Parilman, 947 N.E.2d 915</td>
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<td>Bates v. Arizona-Old Notions Begin To Crack</td>
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<td>Hazards of In-Person Solicitation (Ohralik)</td>
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<td>Political Expression and Non-Commercial Considerations (In re Primus) (Rule 7.3)</td>
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<td>Use of “Runners”</td>
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- Targeted Solicitation (Rule 7.3)
- What is “Misleading?” (Rule 7.1)
- Holding Out as an Expert or Specialist (7.4)
- Firm Names (7.5)
- Letterhead
- Firm Websites
- Choice of Law (Parilman)
- Claims of Special Influence (8.4(e))

**Class 5**
Determining and Carrying Out the Goals of the Representation, Diligence, Communication, Shared Decision-Making

- Duty to Communicate With Client (Rule 1.4)
- Fiduciary Relationship
- Who Makes the Decisions? (Rule 1.2)
- Clients with Fraudulent or Criminal Intent
- Advising versus Assisting Clients in Criminal or Fraudulent Acts
- Duty of Diligence (Rule 1.3)
- Organizations as Clients (Rule 1.13)
- Impaired or Unwise Clients (Rule 1.14)

Termination of Attorney-Client Relationship

- When/How to Terminate Relationship (Rule 1.16)
- Mandatory Withdrawal
- Permissible Withdrawal
- Court Approval
- Duties Upon Withdrawal
- “Noisy Withdrawal”

**Classes 6 & 7**
Duty of Confidentiality and Attorney-Client Privilege

- Policy Bases
- When Duty Attaches
- To Whom Is Duty Owed?
- Present Clients (Rule 1.6)
- Prospective Clients (Rule 1.18)
- Past Clients (Rule 1.9)
- Exceptions (Rule 1.6)
- Facts versus Communications
- Contrast with Attorney-Client Privilege (UpJohn)

ABA Rules: 1.1, 1.2, 1.3, 1.4, 1.13, 1.14, and 1.16.

ABA Legal Ethics Opinion 96-404 (p. 630 in book)

ABA Rules: 1.6, 1.8(b), 1.9(c), 1.13 and 1.18.

- “Using” versus “ Revealing” Client Information (Rule 1.8(b))
- Confidentiality With Organization As Client (Rule 1.13)
- Post-Enron Principles (Sarbanes-Oxley etc.)

Class 8
Duties to the Legal System

- Lawyer as “Officer of Court”
- Candor to Court Regarding Facts and Law (Rule 3.1 and 3.3)
- Differences in Civil and Criminal Cases
- Frivolous Claims (Rule 3.1)
- Fairness to Others (Rule 3.4)
- Inadvertent Production of Privileged Material (Rule 4.4)
- “Data Mining”
- Delay (Rule 3.2)
- Court Orders
- Decorum (Rule 3.5)
- Assertions of Personal Knowledge or Opinion (Rule 3.4)
- Publicity (Rule 3.6)
- Ex Parte Contact
- Pro Bono Publico (Rule 6.1)

Duties to Adversaries and Third Parties

- Adversaries (and their employees) (Rules 3.4, 4.1 and 4.2)
- Physical Evidence and Spoliation (Rule 3.4)
- Unrepresented Persons (Rules 3.4, 4.1 and 4.3)
- Represented Persons (Rule 3.4 and 4.2)
- Witnesses and Others (Rules 3.4, 4.1, 4.2 and 4.3)

Reconciliation of Above Duties With Duties of Confidentiality

- Various Hypotheticals
Classes 9 & 10  
**Duty of Loyalty and Conflicts of Interest**

- Basic Concepts
- Sources of Conflicts
- Non-waiveable conflicts (Rule 1.7)
- Duties to Prospective Clients, Current Clients and Former Clients (Rules 1.7, 1.9 and 1.18)
- Issue or “Positional” Conflicts
- Imputation of Conflicts (Rule 1.10)
- Consent to Conflicts (Rule 1.7)
- Advance Waivers
- Government Lawyers (Rule 1.11)
- Rule 1.8 Prohibitions
- Screening and Remedies
- Motions To Disqualify
- Attorney Migration (Rules 1.9 and 1.10)

ABA Rules: 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.18, 3.7 and 5.6.

ABA Opinion No. 05-436, pp. 648 in book.

Class 11  
**Special Roles**

- Advisor (Rule 2.1)
- Evaluations For Third Parties (Rule 2.3)
- Third Party Neutral (Rule 2.4)
- Lawyer as Witness (Rule 3.7)
- Prosecutor (Rule 3.8)
- Criminal Defense Lawyer (Rules 3.1 and 3.3)
- Supervising Lawyer (Rule 5.1)
- Subordinate Lawyers (Rule 5.2)
- Lawyers as Employers (Rules 5.1 and 5.3)
- Prohibiting Restrictions on Right to Compete (Rule 5.6)
- Law Related Services (Rule 5.7)
- Lawyers as Partners (Fiduciary Duties)
- Lawyers as Firm Managers
- Former Law Clerk to Judge (Rule 1.12)
- Reporting Misconduct (Rule 8.3)
- Multidisciplinary Practices (MDP) (Rule 5.4)
- Amicus Counsel
- Representation of Multiple Clients in Same Matter (Rule 1.7 and 1.8(g)
- Outsourcing
- Class Actions

ABA Rules: 1.12, 2.1, 2.3, 2.4, 3.8, 5.1, 5.2, 5.3, 5.4, 5.6 and 8.3

In Re Cater, 887 A.2d 1 (D.C. 2005)

**Class 12**  Judicial Conduct

- Sources of Law
- Judicial Immunity
- Appearance of Impropriety
- Abuse of Office
- Outside Activities
- Competence and Diligence
- Impartiality-Recusal
- Political Activities

ABA Rules: 1.12, 7.6 and 8.2.

ABA Model Code of Judicial Conduct: (Entire)


**Class 13**  Review, Questions and Discussions

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**CLASS ATTENDANCE**

Class attendance is required and will be checked periodically. Where possible, any student who is unable to attend a class should advise me by email or telephone in advance.

**FINAL EXAM**

It will be a closed-book objective test, using a combination of multiple choice and “true/false” questions. Students will NOT be asked to recite or identify Rule numbers or subsections, but rather will be tested on their understanding of the principles in those Rules and other authorities and the application of the Rules to hypotheticals.