SYLLABUS
PROFESSIONAL RESPONSIBILITY—SPRING 2013-
SECTION 298-002 ADJUNCT PROFESSOR – ARTHUR D. BURGER

WEDNESDAY EVENINGS 8:00 P.M. TO 9:50 P.M.
HAZEL HALL ROOM 225

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Office Conferences at School by Appointment

COURSE MATERIALS

American Bar Association, Compendium of Professional Responsibility Rules and Standards, 2012 Ed. In addition, students should obtain from TWEN the authorities identified below. PowerPoint slides for each class will posted on TWEN and displayed in class.

CLASS TOPICS AND ASSIGNMENTS

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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>- Scope of Course</td>
<td>(&quot;ABA Rules&quot;): Preamble, Scope and Rules</td>
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<td></td>
<td>- Morality and Legal Ethics</td>
<td>1.0 (Terminology), 8.4 and 8.5.¹</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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<td>Sources of Law Governing Lawyers (In addition to ABA Model Rules)</td>
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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 Legal Malpractice  
- Statutes  
- Court Rules of Procedure  
- Court Orders  
- Court’s Inherent Powers

**History of ABA’s Ethics Rules**

**Disciplinary Authority For ABA Model Rules; Choice of Law**

Rules 8.4 and 8.5

**Basic Duty of Honesty and Integrity**

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

**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**  
**Creation of Attorney-Client Relationship**

Prospective Clients (Rule 1.18(a))

Court Appointments (Rule 6.2)

Duty of Competence (Rule 1.1)

How does competence implicate ethics?

Who Makes the Decisions? (Rule 1.2)

- Scope and goals of representation versus means to facilitate those goals  
- Clients with Fraudulent or Criminal Goals  
- Advising versus Assisting Clients re Criminal or Fraudulent Intentions

- Duty of Diligence (Rule 1.3)

For Advocates and for Advisors  

ABA Rules: 1.1, 1.2, 1.3, 1.4, 1.13(a), 1.18(a) and 6.2

ABA Formal Ethics Opinion No. 07-448 Court Appointments (not in book)

ABA Legal Ethics Opinion 96-404 –Client Under a Disability (not in book)
- Duty to Communicate (Rule 1.4)
Conforms to agency and fiduciary relationship

- Organizations as Clients (Rule 1.13(a))
Brief introduction to topic

- Impaired Clients (Rule 1.14)

**Class 3** Retainer Agreements, Fees and Billing (Rule 1.5)  
ABA Rules: 1.5 and 1.15, and 5.4

- Retainer Agreements, Required Elements
- Retainer Agreements, Elective Features
- Types of Fee Arrangements
- Reasonableness
- Contingency Fees
- Illegal Fees
- Statutory Fees
- Fee Shifting Statutes
- Fee Sharing

**Care of Property of Others** (Rule 1.15)

- Clients and Third Parties
- Commingling

**Misappropriation, the “Third Rail”**
Presumption of disbarment for misappropriation (In re Addams)

**Class 4** Advertising and Solicitation  
ABA Rules: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 8.4(e).

- Historical Aversion of Advertising and Soliciting
- Bates (Old Notions Begin To Crack)
- Hazards of In-Person Solicitation (Ohralick)
- Political Expression and Non-Commercial Considerations (In re Primus) (Rule 7.3)
- Use of “Runners”
- 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
- Claims of Special Influence (8.4(e))

ABA Legal Ethics
### Classes 5 & 6

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

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

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### Classes 7 & 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)

**ABA Rules:** 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, 4.4, 6.1 and 8.3.

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*Voom HD Holdings v. EchoStar Satellite,* 2012 NY Slip Opinion 0058

**ABA Legal Ethics Opinion 06-442 – Metadata (not in book).**
- Mandatory reporting of other lawyers (Rule 8.3)

Reconciliation of Above Duties With Duties of Confidentiality

- Various Hypotheticals

Termination of Attorney-Client Relationship (Rule 1.16)

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

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)
- Lawyer as Witness (Rule 3.7)
- 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, 1.18 and 3.7.

ABA Opinion No. 05-436-Advance Waivers- (not in book).

Class 11

Special Roles

- Lawyer as prosecutor (Rule 3.8)
- Evaluations For Third Parties (Rule 2.3)
- as third-party neutral (Rule 2.4)
- Amicus Counsel
- Lawyer as Supervisor of Lawyers (Rule 5.1)
- Supervisor of Non-Lawyer Employees (Rule 5.3)
- Lawyer as Subordinate to Supervisor (Rule 5.2)

ABA Rules: 2.3, 2.4, 3.8, 5.1, 5.2, 5.3, 5.4 and 5.6.
Law Firms
- Form of Organization
- Restrictions on Right to Practice (Rule 5.6)
- Fee Sharing
- Multidisciplinary Practice
- Lawyers as Managers
- Fiduciary Duties Among Partners

Class 12 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

Ethics Rules For Practice Before Some Federal Agencies
- Federal Preemption (Sperry v. Florida)

Class 13 Judicial Conduct
- Sources of Law
- Judicial Immunity
- Appearance of Impropriety
- Abuse of Office
- Outside Activities
- Competence and Diligence
- Impartiality-Recusal
- Political Activities

ABA Model Code of Judicial Conduct: (Entire)

Class 14 Review, Questions and Discussion

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. There will be some videos shown depicting various ethical dilemmas faced by lawyers.
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.