SYLLABUS
PROFESSIONAL RESPONSIBILITY—FALL 2015
SECTION 298-002 ADJUNCT PROFESSOR – ARTHUR D. BURGER

WEDNESDAY EVENINGS 8:00 P.M. TO 9:50 P.M.

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COURSE MATERIALS

American Bar Association, Compendium of Professional Responsibility Rules and Standards, 2015 Ed. The assigned readings below that are not in the book will be posted on TWEN. PowerPoint slides for each class will also be posted on TWEN and displayed in class.

CLASS TOPICS AND ASSIGNMENTS

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<th>CLASS NO.</th>
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<td>Class 1</td>
<td>Introduction and Background</td>
<td>ABA Model Rules of Professional Conduct (“ABA Rules”): Preamble, Scope and Rules 1.0 (Terminology), 8.4 and 8.5.¹</td>
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  - Scope of Course
  - Morality and Legal Ethics
  - Ethical Duties to Whom?
  - Role of Advocate versus Role of Advisor

Sources of Law Governing Lawyers (In addition to ABA Model Rules)

  - Contracts (Retainer Agreements; Engagement Letters)
  - Case Law on Agents and Principals
  - Case Law on Fiduciary Duties
  - Case Law on Legal Malpractice
  - Statutes

¹ Where ABA Rules are assigned to be read, this includes the Comments as well which provide important and authoritative explanations of the Rules.
Court Rules of Procedure  
Court Orders  
Court’s Inherent Powers

History of Lawyer Regulation and ABA’s Ethics Rules

Disciplinary Authority; 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

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

Class 2 Creation of Attorney-Client Relationship

- Prospective Clients (Rule 1.18(a))
- Retainer Agreements (Rule 1.5(b))
- 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 as Distinguished from Means to Reach those Goals
- Clients with Fraudulent or Criminal Goals
- Advising as distinguished from assisting Clients who have Criminal or Fraudulent Intentions

Duty of Diligence (Rule 1.3)

Applies Equally to Advocates and Advisors
Duty to Keep Client Informed (Rule 1.4)

Conforms to agency and fiduciary principles

Organizations as Clients (Rule 1.13(a))

Brief introduction to topic of entity clients

Impaired Clients (Rule 1.14)

How to Determine the Client’s Intentions

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

ABA Ethics Opinion 93-379 Billing (not in book)

In Re Addams, 579 A.2d 190 (DC 1990)

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)

ABA Rules: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 8.4(e).

Class 4  Advertising and Solicitation

ABA Rules: 436 U.S. 447

- 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)

ABA Legal Ethics
Opinion No. 10-457 –
Law Firm Websites (pp. 677-687 in book).

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


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.


Lester v. Allied Construction, No. CL08-150, Virginia Cir. Ct. for Charlottesville, Oct. 21, 2011

ABA Legal Ethics
Opinion 06-442 –
Metadata (not in book).
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)
- 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
- Corporate Affiliates
- 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).

ABA Opinion 95-390- Conflicts in Corporate Family (pps. 615 to 638 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)
- Lawyers as Managers

Law Firms

- Forms of Organization
- Restrictions on Right to Practice (Rule 5.6)
- Fee Sharing
- Multidisciplinary Practice
- 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
- Non-lawyer online services for consumers (LegalZoom etc.)

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 Rules: 2.1, 2.3, 2.4, 3.8, 5.1, 5.2, 5.3, 5.4 and 5.6.

ABA Rule: 5.5

Sperry v. Florida, 373 U.S. 379 (1963)

ABA Rule: 8.2

ABA Model Code of Judicial Conduct: (Entire) (pp. 351-396 in book)

ABA Ethics Opinion 462 Feb. 21, 2013-Judges’ Use of Social Media (Not in book)
Class 14  Review, Questions and Discussion

CLASS ATTENDANCE

Class attendance is required and will be checked. 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. Topics will encompass all assigned readings and all matters discussed in class. 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 those principles to hypothetical situations.