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

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

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Office Conferences at School by Appointment

COURSE MATERIALS

American Bar Association, Compendium of Professional Responsibility Rules and Standards, 2014 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

<table>
<thead>
<tr>
<th>CLASS NO.</th>
<th>TOPICS</th>
<th>READING ASSIGNMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<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>
</tr>
</tbody>
</table>

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

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.)

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)

Duties to Adversaries and Third Parties

- Adversaries (and their employees) (Rules 3.4, 4.1 and

ABA Legal Ethics  
Opinion No. 10 -457 –  
Law Firm Web Sites (pp.  

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

Upjohn v. U.S., 449 U.S.  
383 (1981); U.S. v.  
Jacobs, 117 F.3d 82 (2d  
Cir. 1997).

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.

Voom HD Holdings v.  
EchoStar Satellite, 93  

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
- 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)
-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

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

Class 13 Judicial Conduct

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

Class 14 Review, Questions and Discussion

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 Model Code of Judicial Conduct: ( Entire)

ABA Ethics Opinion 462 Feb. 21, 2013-Judges’ Use of Social Media (Not in book)
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.