

Professional Responsibility

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Room 206
Monday-Friday, 1:30-4:30 pm

Description

This course is intended to acquaint students with the organization and regulation of the legal profession. Upon successfully completing the course, students should be familiar with the ABA Model Rules of Professional Conduct and other laws governing the profession, and understand how lawyers encounter and handle ethical issues as they arise in practice.

Requirements & Grading

I expect you to read the assigned material thoroughly before class, attend each class meeting, and participate actively in class. will be based on a final examination consisting of multiple choice questions, similar in format to the Multistate Professional Responsibility Examination (MPRE). Excessive absences (2 or more classes), persistent lack of preparation, or inattention during class (including but not limited to inappropriate use of computers or electronic devices) may result in a reduction of your grade.

Elon Law School has adopted the following attendance policy for all courses:

The Law School administers a policy that a student maintain regular and punctual class attendance in all courses in which the student is registered, including externships, clinical courses, or simulation courses. Faculty members will give students written notice of their attendance policies before or during the first week of class. These policies may include, but are not limited to: treating late arrivals, early departures, and/or lack of preparation as absences; imposing grade or point reductions for absences, including assigning a failing grade or involuntarily withdrawing a student from the class; and any other policies that a professor deems appropriate to create a rigorous and professional classroom environment.

In case of illness or emergency, students may contact the Office of Student and Professional Life, which will then notify the student's instructors. A student may notify the faculty member directly of a planned absence and should refer to individual faculty members

regarding any policy that may apply. In the case of prolonged illness or incapacity, the student should contact the Office of Student and Professional Life.

The Law School honor code applies to all activities related to your law school study, including but not limited to conduct during class and examinations.

Course Material

ABA Model Rules of Professional Responsibility (available online and in various print editions)

Assigned cases are available via the course website: emfink.net/ProfessionalResponsibility.

Outline & Reading Assignments

1 The Legal Profession

1.1 Law as a Profession

- ABA Model Rules, 5.4-5.6, 6.0-6.5
- Appeal of Lane, 544 N.W.2d 367 (Neb. 1996)
- Matter of Trester, 226 P.3d 558 (Kan. 2010)
- Turner v. Rogers, 131 S.Ct. 2507 (2011)

1.2 Regulation of Lawyers

- ABA Model Rules, Preamble, 8.1-8.5
- In re Riehlmann, 891 So.2d 1239 (La. 2005)
- In re of Reinstatement of Whitworth, 261 P.3d 1173 (Okla. 2011)
- Milavetz, Gallop & Milavetz P.A. v. U.S., 130 S.Ct. 1324 (2010)
- In re Creasy, 12 P.3d 214 (Ariz. 2000)

2 The Attorney-Client Relationship

2.1 Forming the Relationship

- ABA Model Rules, 1.2-1.4, 1.8(f), 1.13, 1.14, 1.16, 1.18, 2.1

2.2 Competence & Malpractice

- ABA Model Rules, 1.1-1.4
- Padilla v. Kentucky, 130 S.Ct. 1473 (2010)
- Milavetz, Gallop & Milavetz, P.A. v. U.S., 130 S.Ct. 1324 (2010)

2.3 Attorney Fees & Client Property

- ABA Model Rules, 1.5, 1.15, 1.8
- Swift, Currie, McGhee & Hiers v. Henry, 581 S.E.2d 37 (Ga. 2003)

2.4 Advertising & Solicitation

- ABA Model Rules, 7.1-7.6
- *Hayes v. New York Attorney Grievance Committee*, 672 F.3d 158 (2d Cir. 2012)
- Print Ads
 - Better Call Pete
 - Not Guilty
 - Life is Short
 - Surprise
 - Cupid
- Video Ads
 - Machete
 - Thanks Dan!
 - Locked & Loaded
 - Big Bucks
 - Need a Lawyer?
 - Divorce EZ

3 Client Confidentiality

3.1 Confidentiality & Privilege

- ABA Model Rules, 1.2, 1.6, 1.9(c), 1.13, 1.16, 1.18, 2.1
- *Matter of Anonymous*, 932 N.E.2d 671 (Ind. 2010)

3.2 Exceptions to the Duty of Confidentiality

- ABA Model Rules, 1.6, 1.13, 4.4(b)
- *Peterson v. Bernardi*, 262 F.R.D. 424 (D.N.J. 2009)
- *In re Seagate Technology, LLC*, 497 F.3d 1360 (Fed. Cir. 2007)
- *McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003)
- *State v. Gonzalez*, 234 P.3d 1 (Kan. 2010)

4 Conflicts of Interest

4.1 Conflicts: General Principles

- ABA Model Rules, 1.7, 1.10

4.2 Conflicts Between Lawyer and Client

- ABA Model Rules, 1.7, 1.8
- *Mendoza Toro v. Gil*, 110 F.Supp.2d 28 (D.P.R. 2000)

4.3 Conflicts Involving Current Clients

- ABA Model Rules, 1.7, 1.8, 1.13, 1.18
- *GSI Commerce Solutions, Inc. v. BabyCenter, LLC*, 618 F.3d 204 (2d Cir. 2010)
- *Brown v. Kelton*, 380 S.W.3d 361 (Ark. 2011)
- *In re Dresser Industries, Inc.*, 972 F.2d 540 (5th Cir. 1992)

4.4 Conflicts Involving Former Clients

- ABA Model Rules, 1.7, 1.9, 1.13
- *In re Carey*, 89 S.W.3d 477 (Mo. 2002)

4.5 Imputed Conflicts

- ABA Model Rules, 1.9(b), 1.10

5 Duties to Tribunals, Adversaries, & Others

5.1 Candor & Misrepresentation

- ABA Model Rules, 1.2(d), 1.6, 3.1-3.9, 4.1, 8.4
- *Nix v. Whiteside*, 475 U.S. 157 (1986)
- *U.S. v. Long*, 857 F.2d 436 (8th Cir. 1988)
- *Roth v. La Societe Anonyme Turbomeca France*, 120 S.W.3d 764 (Mo. App. 2003)

5.2 Fairness & Zealous Advocacy

- ABA Model Rules, 3.1-3.9
- *Mancia v. Mayflower Textile Services Co.*, 253 F.R.D. 354 (D. Md. 2009)
- *In re Anonymous Member of South Carolina Bar*, 552 S.E.2d 10 (S.C. 2001)
- *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991)

5.3 Communications with Persons Other Than Clients

- ABA Model Rules, 3.5, 4.2, 4.3
- *Palmer v. Pioneer Inn Associates Ltd.*, 59 P.3d 1237 (Nev. 2002)