Legal Profession
Spring 2012
Professor Mona Hymel
Syllabus

General Course Information

Course Description: Legal Profession (or Professional Responsibility "PR") is the basic course on the law governing lawyers. This course is about lawyer*ing*, not just law. The ideas covered in this course will govern *your* professional life. We study the rules you have to live by and the consequences if you ignore them. Legal ethics is not merely about being a morally good person, but about being a professionally safe lawyer. Issues of professional responsibility pose some of the most difficult problems that lawyers face in practice. The perplexing nature of these problems usually stems from the fact that troubling issues of professional ethics involve tensions or conflicts among three ideas that are central to the lawyer's role: the lawyer as fiduciary, the lawyer as an officer of the court, and the lawyer as an individual with personal values and interests. Through our study, you will gain an appreciation of the pressures, temptations, and ethical minefields lawyers encounter in various practice fields.

The Instructor: My office is located in room 311, and my phone number is 348-9831. My email address is mhymel@law.ua.edu. My office hours will be after class and additional office hours can be scheduled by appointment. Scheduled office hours will be on Tuesday from 3:30-4:00 p.m. and on Friday from 1:00 p.m. to 2:00 p.m.

Casebook and Materials: Our casebook for the class is Stephen Gillers, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS (8th ed.)(2009). Our supplement is the 2011-2012 Abridged edition of Professional Responsibility Standards, Rules & Statutes (Gillers, ed.). Always bring both books to class. When the casebook refers to ethics or procedural rules, you will be expected to consult those provisions and any accompanying comments in the supplement. Please come prepared to offer your views on the hypothetical problems in the casebook.

Grade in Course: Your grade in the course is based on your exam score, which (of course) is graded "blind." The exam will consist of multiple choice questions. I might consider a few short essays, but will let you know. I will discuss the exam in more detail as the time approaches.

I. Introduction

Assignment 1:

Where Do "Ethics" Rules Come From? Read Gillers, Preface for Students. Pp. xxiii - vi and pp. 1-20, 770-73, 804-808.

Questions to Consider: What roles do the organized bar, state legislatures and supreme courts, and federal agencies play in fashioning rules of legal ethics? What does professional "self-regulation" mean? What is professionalism? What are its defining qualities?

Assignment 2:

The Disciplinary System. Read Gillers, pp. 774-84, 790-792, 799-804.

Questions to Consider: Identify the ethics rules that respondents violated in *Warhaftig* and *Austern*. Whose interests do those rules protect? Were the sanctions imposed commensurate with the offense? Consider the *Himmel* case (p.801-802). How does the duty to report another lawyer's misconduct to disciplinary authorities differ under DR 1-103 of the Code of Professional Responsibility (CPR) and Rules 8.3 of the Model Rules of Professional Conduct (MR's)? Consider the problem "Better Late than Never" (p. 799-800).

II. Basic Elements of the Lawyer-Client Relationship

Assignment 3:

Forming & Ending Relationships: Defining the Scope of Representation. Read Gillers pp. 23-28, 103-106, 79-81; Restatement sec. 14.

The MRs state that whether a lawyer-client relationship exists in a given situation ?depends on principles of law external to these Rules.? (MRs, Scope para. 17). By what principles do you suppose courts decide whether a person or entity is or was a client? What turns on such decisions? In this connection, see Restatement of the Law Governing Lawyers sec. 14 & cmt. Under MR 1.16, when may, and when must, a lawyer withdraw from representing a client? In light of *Nichols* and MR 1.2(c) & cmt. paras. 6-8 and MR 1.3 cmt [4], to what extent may lawyers limit the scope of their engagements? For example, may they arrange to pursue a client=s claim through negotiations, but not to litigate if negotiations fail? To bring a lawsuit but not to cross-examine adverse witnesses?

A. LAWYERS' DUTY OF COMPETENCE & CARE

Assignment 4:

Enforcement Through Discipline and Bans on Unauthorized Practice. Pp. 28-29, 78-79, 660-663, 682-685, 685-689, 690-699.

Could the disciplinary process be used more effectively to promote lawyer competence? To promote adequate supervision of lawyers in a firm or law office? Do licensing and bar admission requirements effectively promote competence? If so, at what cost? For purposes of enforcing rules against the unauthorized practice of law, what is (and what is not) the practice of law? Is lobbying the practice of law? Negotiating contracts? Preparing tax returns? The plaintiff's work in *Tandon* (p. 691)? If a *lawyer* licensed in New York advises a New York client on California law, is she engaged in unauthorized practice? Suppose the client is from California and the lawyer travels to that state to provide the advice? Why do you suppose that lawyers and clients have become interested in recent years in liberalizing restrictions on ?multi-jurisdictional practice? or MJP? See MRs 5.1, 5.3, 5.5, 8.5

Assignment 5:

Malpractice Liability: Duty & Standard of Care. Pp. 701-717, 721-726, Rest. § 15.

Consider *Togstad*. Can a preliminary interview with a prospective client trigger a duty of care to that party? Were the Togstads clients or were they prospective clients,? and does it matter? See Restatement sec. 15. To what standard of care are lawyers held in malpractice cases? Is evidence that a lawyer breached an ethics rule admissible to establish breach of the standard of care? If so, what weight does the evidence receive? With respect to vicarious liability for malpractice, should law firms be permitted to organize as limited liability entities rather than general partnerships? May lawyers use retainer agreements that require clients to submit malpractice claims to binding arbitration? To waive all malpractice claims? See MR 1.8 (h). Must lawyers purchase malpractice insurance or tell prospective clients if they have no insurance?