UNIVERSITY OF ALABAMA SCHOOL OF LAW

LEGAL PROFESSION
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SYLLABUS, COURSE REQUIREMENTS AND GRADING CRITERIA

I. INTRODUCTION

Welcome to Legal Profession. This 3-credit course meets on Tuesdays, Wednesdays, and Thursdays from 1-1:50 p.m. in Room 187. The Legal Profession course addresses questions of legal ethics and professional responsibility. This course satisfies the law school and the ABA's professional responsibility requirement. It also will help with your preparation for the Multistate Professional Responsibility Examination (the "MPRE"), although there will be subjects covered on that exam that we don't cover in class and vice versa. We *will* work through most of the relevant material for that exam in class; much of the rest is easy and can be picked up through bar prep materials and independent study.

II. COURSE MATERIALS AND BACKGROUND READING

Our main text will be Lisa G. Lerman and Philip G. Schrag, *Ethical Problems in the Practice of Law, Third Edition* (Aspen 2012). In addition, we will be using John S. Dzienkowski's *Professional Responsibility Standards, Rules & Statutes*, which provides a variety of primary legal ethics resources, such as the ABA Model Rules of Professional Conduct, the Restatement, and other codes, rules, and materials. You should bring both books to each class. You're welcome to purchase or obtain alternative rules volumes, including printing out the Rules from the ABA website, as long as you're prepared in class to look at both the Rules and Comments.

Although we'll be focusing on the ABA Model Rules rather than Alabama's own professional responsibility rules, you might want to take a look at them too. They can be found at http://www.alabar.org/ogc/ropc.cfm, among other places.

There are plenty of secondary resources available for those who have questions about particular topics or just find certain areas particularly engaging. They're not really necessary for this class or for the exam. Still, students who are interested in consulting these works for additional insights into particular issues may wish to turn to Deborah L. Rhode and Geoffrey C. Hazard, Jr., *Professional Responsibility and Regulation*, 2nd ed. (Foundation Press 2006); George M. Cohen and Susan P. Koniak, *Foundations of the Law and Ethics of Lawyering*, 2nd ed. (Foundation Press 2012; Ronald S. Rotunda and John S. Dzienkowski, *Professional Resonsibility: A Student's Guide, 2011-2012* (Thomson/West 2011); or W. Bradley Wendel, *Examples and Explanations: Professional Responsibility*, 3rd ed. (Aspen Publishers 2010). Of course, there are also standard commercial outlines, supplemental study materials (I recommend the "Q & A" series), and other such materials, if you want them.

III. COURSE COVERAGE

The readings for the course are offered below, and are subject to revisions, which I will announce in class. They are numbered roughly by unit, and some will move faster than others; please try to stay a little bit ahead for each classFor each class, in addition to the reading in the casebook, you should look up the full version of any pertinent Model Rules *and comments* in your rules supplement. We will spend a great deal of time going through the problems in each chapter, so please make sure that you read and think about the listed problem for each class (for further discussion, see Part IV of this syllabus). I may use the TWEN page I have established for this course to assign additional materials where necessary. Note that chapter 15 is only provisionally assigned at this point.

[SEE NEXT PAGE]

Schedule of Assignments

Date	Topics, problems and cases to be discussed in class	Pages of textbook assigned and relevant rules
Introduction and Chapter 1: Regulation of Lawyers		
1	Introduction to the course Institutions that regulate lawyers State ethics codes Admission to practice	Casebook 1-55, 56-68; Model Rules: Preamble and Note on Scope
2	Admission to practice, cont. The character and fitness inquiry **1-2** ***Weed*** **1-3** ***The Doctored Resume***	Casebook 68-78 (except Problem 1-1 on 55-56); Model Rule 8.1
Chapter 2: Lawyer Liability		
3	Professional discipline Process and grounds for discipline Reporting misconduct by other lawyers **2-2** ***Exculpatory Evidence***	79-97, 100-116 Model Rules 5.1-5.3, 8.3
4	Professional discipline, cont. Lawyers' responsibility for ethical misconduct by superiors and colleagues **2-3** ***The Little Hearing*** Legal protections for subordinate lawyers **Kelly v. Hunton & Williams** ***"The whistleblowing associate"*** Civil liability of lawyers Criminal liability of lawyers Client protection funds	117-155
Chapter 3: The Duty to Protect Client Confidences		
5	The basic principle of confidentiality **3-1 & 3-2** ***Your Dinner with Anna, Scenes 1 & 2*** Exceptions to the duty to protect confidences Revelation of past criminal conduct **3-3** ***The Missing Persons, Scene 1***	159-179 (top), 220-228 Model Rule 1.6
6	Confidentiality, continued **3-4 & 3-5** ***The Missing Persons, Scenes 2 & 3*** ***People v. Belge*** Risk of future injury or death **Spaulding v. Zimmerman** ***"The undisclosed aneurysm"***	179-198 (middle) Model Code DR 4-101
7	Confidentiality, continued **3-6** ***Rat Poison*** **3-7** ***Your Dinner with Anna, Scene 3*** Client frauds and crimes that cause financial harm **3-8** ***The Dying Mother*** Other exceptions to the duty to protect confidences **3-9** ***Reese's Leases***	198-220 Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16 (a) & (b), 3.3, 4.1, 8.4(c),

Chapter 4: The Attorney-Client Privilege and the Work Product Doctrine		
8	Confidentiality and attorney-client privilege, compared The elements of attorney-client privilege Client identity Waiver The crime-fraud exception The death of the client **4-3** ***A Secret Confession*** The work product doctrine The privilege for corporations **Upjohn Co. v. United States "Investigating corruption"** **4-4** ***Worldwide Bribery***	229-277
Chapter 5: Relationships Between Lawyers and Clients		
9	Formation of the lawyer-client relationship **Togstad v. Vesely, Otto, Miller & Keefe** ***"You have no case."*** Lawyers' responsibilities as agents Lawyers' duties of competence, honesty, communication and diligence **5-1** ***The Washing Machine***	279-302 Model Rules 1.1, 1.3, 1.4, 6.2
10	Competence in criminal cases **Strickland v. Washington** ***"Capital case, not enough mitigating evidence"*** Candor and communication **5-2** ***Lying to Clients*** Candor in counseling **5-3** ***Torture*** Who calls the shots? The competent adult client **Jones v. Barnes** ***"Who decides what to argue on appeal?"***	302-346 Model Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c)
11	Who calls the shots? Continued Clients with diminished capacity **5-4** ***The Package Bomber*** **5-5** ***Vinyl Windows*** **5-7** ***The Foster Child*** Terminating a lawyer-client relationship	346-377 Model Rules 1.2, 1.4, 1.14, 1.16

Chapter 6: Concurrent Conflicts of Interest: General Principles		
12	An introduction to conflicts of interest General principles in evaluating concurrent conflicts **6-1** ***The Injured Passengers, Scene 1*** Conflicts between current clients in civil litigation Suing a current client **6-2** ***I Thought You Were My Lawyer!***	379-407 Model Rule 1.7, 1.10
13	Conflicts between current clients in civil litigation, continued Cross-examining a current client Representation of co-plaintiffs or co-defendants in civil litigation **6-3** ***The Injured Passengers, Scene 2*** Positional conflicts: Taking inconsistent positions in litigation **6-5** ***Top Gun*** Conflicts involving prospective clients **6-6** ***The Secret Affair***	407-421 Model Rule 1.7, 1.10
Chapter 7: Concurrent Conflicts in Particular Practice Settings		
14	Representing both parties to a transaction Representing organizations **7-1** ***A Motion to Disqualify*** Representing criminal co-defendants **7-3, 7-4, and 7-5** ***Police Brutality, Scenes 1, 2 and 3***	423-450 (top) Model Rules 1.7, 1.13
15	Representing family members **Florida Bar Opinion 95-4** **7-6** ***Representing the McCarthys*** Representing insurance companies and insured persons **7-7** ***Two Masters*** Representing plaintiffs in class actions Representing parties to aggregate settlements of individual cases	450-469 Model Rules 1.7, 1.8(f) and (g)
Chapter 8: Conflicts Involving Former Clients		
16	The nature of conflicts between present and former clients Duties to former clients Distinguishing present and former clients Evaluating successive conflicts **8-1** ***Keeping in Touch*** Addressing former client conflicts in practice **8-2** ***The District Attorney*** Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm ***8-3 A Dysfunctional Family Business***	471-504 Model Rules 1.7, 1.9
17	Imputation of former client conflicts to affiliated lawyers **8-4** ***The Firm's New Partner*** **8-5** ***The Fatal Shot***	505-519 Model Rules 1.7, 1.9, 1.10

Chapter 9: Conflicts Between Lawyers and Clients		
18	Legal fees Lawyer-client fee contracts **Brobeck, Phleger & Harrison v. Telex Corp.** ***"The hidden million-dollar minimum fee"*** **In the Matter of Fordham** ***"Too many hours?"*** **9-1** ***An Unreasonable Fee?*** **9-2** ***Rising Prices***	521-543 Model Rules1.4, 1.5, 7.1, 8.4
19	Legal fees, continued Regulation of hourly billing and billing for expenses ***Scenes from a Law Firm*** Contingent fees Forbidden and restricted fee and expense arrangements **9-3** ***An Impoverished Client*** Fee disputes Dividing fees with other firms or with nonlawyers Payment of fees by a third party	543-589 Model Rules 1.4, 1.5, 1.8(a), (d), (e), (f) (h), & (i), 1.16(d), 5.2, 5.4, 7.1, 8.3, 8.4
20	Legal fees, continued Lawyer as custodian of client property and documents Client trust accounts Responsibility for client property Administering estates and trusts Conflicts with lawyers' personal or business interests Business transactions between lawyer and client **9-4** ***Starting a Business*** Gifts from clients Sexual relationships with clients Intimate or family relationships with adverse lawyers Imputation of lawyer-client conflicts to other lawyers in a firm	589-605 Model Rule 1.5, 1.7, 1.8(a) and (c), 1.10, 1.15, 5.2, 8.3
Chapter 10: Conflicts Issues Government Lawyers and Judges		
21	Successive conflicts of present and former government lawyers **10-1** ***A Lawyer for Libya***	607-642 Model Rules 1.9-1.12
Chapter 11: Lawyers' Duties to Courts		
22	Being a good person in an adversary system Investigation before filing a complaint Truth and falsity in litigation The rules on candor to tribunals A lawyer's duties if a client or witness intends to give false testimony **Nix v. Whiteside** ***"He said he saw something metallic"*** A lawyer's "knowledge" of a client's intent to give false testimony **11-2** ***Flight from Sudan, Scene 1*** A lawyer's duties if a client intends to mislead the court without lying **11-3** ***Flight from Sudan, Scene 2***	643-675 Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 8.4(c)
23	Truth and falsity in litigation, continued False impressions created by lawyers during litigation **11-4** ***The Drug Test***	675-692 Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

	11-5 ***The Body Double*** Lawyers' duties of truthfulness in preparing witnesses to testify Concealment of physical evidence and documents Duties of criminal defense lawyers with respect to evidence of crimes **11-7** ***Child Pornography***	
24	Concealment of documents and evidence in civil cases **11-8** ***The Damaging Documents*** The duty to disclose adverse legal authority Disclosures in ex parte proceedings Improper influences on judges and juries Lawyers' duties in non-adjudicative proceeding	692-727 Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c)
Chapter 12: Lawyers' Duties to Adversaries and Third Persons		
25	Communications with lawyers and third parties Deception of third persons **12-1** ***Emergency Food Stamps*** Restrictions on contact with represented persons Restrictions on contact with unrepresented persons **12-3** ***The Break-In*** Duties of prosecutors ***12-4 The Prosecutor's Masquerade*** Conduct prejudicial to the administration of justice Are lawyers really too zealous?	729-787 Model Rules 3.8, 4.1-4.4, 8.4
Chapter 15: A Changing Profession		
26	Advertising and solicitation Advertising **Bates v. State Bar of California** ***"Can Lawyers Behave Like Car Salesmen?"*** Solicitation Problem 15-2 ***Do You Need a Lawyer?*** Geographic and interdisciplinary expansion of law practice Multijurisdictional practice Multidisciplinary practice The effects of economic recession Temporary and contract lawyers Offshoring and onshoring Future structural changes in the legal profession Large firms Small firms Less need for lawyers Globalization of law practice Investment in law firms and lawsuits by persons who are not lawyers	Casebook 906-948; Model Rules 5.4, 5.5, 7.1-7.5

IV. GRADES AND EVALUATION

Grades will be determined through a combination of three forms of evaluation.

A. CLASS PARTICIPATION (25%)

This will be a heavily participation-oriented course, centered on the problems contained in each chapter and noted above in the schedule of readings. Each week, ***half*** of the class will be on call, according to where their last name falls in the alphabet: A-M or N-P. If it is your week on call, you should be especially prepared to talk out loud about the problems, the issues they raise, and the Model Rules and other legal doctrines implicated by each one. You may be asked to play the role of one of the characters in the problem, to perform in front of the class in teams, to lead the class in an exercise, to perform an interpretive dance, to take up the deadly serpent, or a variety of other activities. Even if you are not singled out to perform in this manner, you will still be responsible for taking an active role in class discussion for the week. Needless to say, merely being ready to perform on a day that you are called on will not get you full participation marks. I encourage you to participate actively in class discussion generally, during on-call weeks and otherwise.

B. SHORT WRITTEN COMMENT (25%)

Each student must turn in ***one*** written comment on one of the assigned problems (with additions or exceptions noted in class) over the course of the semester. It will work like this: No later than 10 or 11 days after your on-call week – that is, no later than the second Monday after your on-call week – you will be responsible for emailing and handing to me a short discussion, about 4-5 pages single-spaced in length, that elaborates on one of the problems you were responsible for discussing. Think of it as looking more or less like a short answer to an exam question: you should identify the issues raised by the problem, identify the ethical rule(s) or other law(s) that are relevant to the problem, and explain how the ethical rule or law applies to the problem. You may discuss any relevant ethical, legal, strategic, and moral issues. This is not an exact formula, however, and I certainly welcome some creativity on your part in how you respond. For instance, you could focus on analyzing some particular aspect of the problem; you could follow up on an intriguing aspect of the class discussion of the problem; you could talk about how you think the applicable ethical rule is or is not consistent with your general sense of morality or ethics; you could talk about how and why a rule should be redrafted to deal with problems like the one you are discussing; and so on. Again, you are only responsible for doing this ***once*****,** not for every week you are on call. I encourage you, however, not to wait till the last couple of weeks to do this. To make sure you understand the deadlines: If you were on call during the week of January 13, and decide to write on one of the problems selected for that week, you would have until Monday, January 27 to turn in the assignment.

C. EXAMINATION (50%)

The remainder of your grade will come from a closed-book final examination at the end of the semester, which will be entirely multiple-choice. Specific details and discussion concerning the final exam will be given in class.

I would be happy to discuss your papers and/or exams with you after grades have been turned in, for the sole purpose of discussing ways of improving your performance on future examinations. Grades may be changed only for mathematical or clerical errors.

Let me add an important note on the exam and studying for the exam, based on my experience and goals teaching this class. Although the casebook is wide-ranging and interesting, and much of this discussion will reflect itself in your written comment assignments, the exam itself is more straightforward. It is a multiple-choice exam modeled more or less after the MPRE. As such, its primary focus will be on the Model Rules themselves. I recommend that in studying for the exam itself, you focus on the Model Rules, reading them and the comments through as many times as you need to be confident. Of course, the class reading and discussion will aid in your understanding the Rules, but when studying for the exam I suggest you focus much of your energy on the Rules themselves.

V. OFFICE HOURS AND CONTACT INFORMATION

My office hours will be Tuesday and Thursday from 2-4 p.m. in Room 360. Feel free to stop by to discuss questions on the class or anything else. No appointments are necessary during office hours. If you can't make it during those hours or if I am unavailable, feel free to make an appointment to stop by at another time. I'm also happy to schedule lunch or coffee with groups of students.

I can be reached by email at phorwitz@law.ua.edu. You may also leave a note in my faculty mailbox or contact my assistant, Donna Tucker. I will try to return emails promptly, but there may be delays depending on my availability or your question.

You must sign up for the TWEN page for this class. We'll discuss the use of the TWEN page further in class.

VI. MAKE-UP CLASSES

If I need to miss a class, I will schedule a make-up period well before the end of classes.

VII. ATTENDANCE AND PARTICIPATION

The ABA and AALS rules require students to be in "regular attendance." I take this rule seriously, as does the school. A student who is absent from more than 20% of the regularly scheduled classes of any course may be dismissed from that course. The learning process is materially affected when absences exceed 20% of scheduled classes, whatever the reason for those absences may be. Accordingly, the rule limiting absences to 20% of regularly scheduled classes covers *all* absences, including those caused by illness, emergencies, or work. A student with absences exceeding 20% of the regularly scheduled classes will be reinstated only if he or she satisfies the instructor that he or she can cure the academic deficiencies caused by the record of absenteeism, *and* demonstrates to the satisfaction of the Dean's Office that the record of absenteeism or any portion thereof is attributable to extraordinary reasons beyond the student's control. I will be distributing an attendance sheet at every class.

Moreover, because this class should be a wide-ranging *discussion* about the professional responsibilities of lawyers – a subject on which I hope you all have opinions! – and because it is so heavily problem-based, I take seriously your obligation to read and think about the materials assigned for each class. As noted above, although I welcome volunteers, I will also be calling on students who will be on call for a particular week and will be expected to participate fully in that week's discussion. Even if you are not on call for that week, I nevertheless expect you to be prepared and to engage in discussion, class exercises, and so on. A student who is unprepared for class may be counted as absent for that day. Thus, please make every effort to come to class ***prepared*** and on time, and ready to focus on this class only. If you are aware in advance that you will be absent from class, or that you cannot do the reading, please let me know, or leave a message for my mailbox.

VIII. LAPTOP POLICY

This class will be a largely laptop-free zone. The reasons for this are many and obvious, but I understand that you are accustomed to taking notes by laptop and I appreciate that this is a significant change. But I have ample experience with this class, and with how the no-laptop policy has gone in previous years, and I am convinced that this policy is sound and has resulted in students enjoying and getting more from the class than they would otherwise, and the students have tended to agree. That said, I will maintain a signup list each day, so that up to fifteen people can sign up to take notes by laptop. I emphasize "take notes." Shopping, Facebooking, or whatever you kids do these days will distract your fellow students and result in a marked absence and the loss of laptop privileges in the class for the remainder of the semester. You are, of course, welcome to take notes by hand, or to record the lectures. I understand that the Dean of Students may also permit laptop use for some students by special arrangement.

I would add that this is a discussion- and problem-based class, and you will get more from the class, both in terms of what you learn and in terms of grades, by participating actively in the class. This policy should encourage and help you rather than hurting your performance, although again I acknowledge that it may be a change from what you are used to.

IX. DISCLAIMER

This is a syllabus, not a binding contract. In the words of Justice Holmes, "It is an experiment, as all life is an experiment." Dates and details are subject to change. Actual mileage may vary. Void where prohibited.

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