
A. The required texts are:

(1) Lawyers and the Legal Profession, 4th edition by Roy Simon, Carol Needham and Burnele Powell (LexisNexis 2009) (“Text”). The 4th edition is the only one which is suitable for use this semester.


B. Additional Resources

Each state in the United States and the District of Columbia has its own body of law in professional responsibility area. The leading collection of judicial authority is the ABA/BNA Lawyers’ Manual on Professional Conduct, which is on reserve in the library and available on Westlaw. In researching professional responsibility issues, you might also find it useful to visit some of the following websites:

www.abanet.org/cpr contains material posted by the ABA Center for Professional Responsibility, including the draft proposals of ABA committees, ABA ethics opinions interpreting the ABA Model Rules and links to other ethics resources.

www.legalethics.com, a blog maintained by some law professors, contains an enormous database including rules, regulations, statutes and judicial opinions in addition to commentary on newsworthy events involving judicial and legal ethics.

www.law.cornell.edu contains the American Legal Ethics Library at Cornell Law School, which has links to ethics resources from every jurisdiction in the United States.

www.Illinoisbar.org/CourtsBull/EthicsOpinions posts Illinois State Bar Association Advisory Opinions on Professional Conduct from 1982 to present, which is searchable and can be viewed by subject or opinion number. In addition, it cross-references the Illinois Rules of Professional Conduct cited in its opinions prior to May 2002.

www.mobar.org contains a searchable listing of informal advisory opinions from Missouri’s Legal Ethics Counsel. (Search tip: Omit internal hyphens when searching by opinion number.)

C. Attendance.

The policies of the School of Law regarding preparation and attendance will be honored in this class. An alphabetical class list will be circulated for you to personally sign at every class meeting.
D. Grading.

Your grade for this course will be based on two papers (together worth 20%) and a closed book final exam (worth 80% of the final grade). Each of the papers analyzing judicial opinions described in Part E of this syllabus is worth 10% of the final grade. Timely submission of the short assignments announced in class is also a required component of the course. The Law School plagiarism policy will be enforced for all written material handed in for this class, including short assignments and judicial opinion analyses.

E. Required papers.

1. Paper analyzing an unauthorized practice of law case (10% of the grade in the class)
Locate a judicial opinion decided after January 1, 2005 which addresses the unauthorized practice of law (UPL). You can use an opinion or decision from any state or territory in the United States or from the District of Columbia. The person accused of engaging in UPL can be an attorney licensed in United States or another country or someone who has never been licensed as a lawyer anywhere. Write a paper addressing the following points:

(1) What jurisdiction’s law did the court or tribunal apply?
(2) Describe the actions performed by the person accused of UPL.
(3) How did the court articulate the legal standard for “the practice of law”? 
(4) Recount the court’s reasoning and its conclusion.
(5) Would the case have come out differently if the language for Model Rules 5.5 and 8.5 approved by the ABA House of Delegates in August 2002 had been adopted by the relevant jurisdiction? Explain.
(6) If new language for its version of Model Rules 5.5 and 8.5 has been proposed or adopted in the jurisdiction since August 2002, include it (attaching a copy and indicating its source is fine). Would the case have come out differently if the state’s new language had been in effect? Explain.
(7) What is your own opinion regarding whether this activity ought to be allowed?
(8) Attach a copy of the judicial opinion to your paper.

The UPL papers can be no longer than fifteen pages in length excluding attachments and are due on Friday February 13 at 4:00 p.m. Please place your paper in the box on the desk of my secretary, Toni Dean, whose office is on the second floor of the library in Room 288. For maximum points, papers must correctly state the applicable legal authority and analysis, use proper grammar and diction and be free of typographical errors.

2. Paper analyzing a bar admission case (10% of the grade in the class)
Locate an opinion issued after January 1, 2005 which addresses an application for admission to practice law. You can use an opinion or decision from any state or territory in the United States or from the District of Columbia. Write a paper addressing the following points:

(1) What jurisdiction’s law did the court or tribunal apply?
(2) What procedural phase was the litigation in?
(3) What concerns were articulated regarding the applicant’s admission to practice law?
What was the applicant’s response?
(4) Recount the court’s decision and its reasoning.
(5) Would this application issue be decided differently in another jurisdiction?
(6) What is your own opinion regarding whether the court reached a just result?
(7) Attach a copy of the judicial opinion to your paper.

The bar admission papers can be no longer than fifteen pages in length excluding attachments and are due on Friday May 1 at 1:00 p.m. Please place your paper in the box on Toni Dean’s desk. For maximum points, papers must correctly state the applicable legal authority and analysis, use proper grammar and diction and be free of typographical errors. If the paper is handed in after the deadline, a penalty will be imposed for each hour it is late.

F. Office Hours.

I ordinarily will be available to talk after most classes. Office hours are scheduled this semester on Tuesdays from 1:30 until 3:30 p.m. If you would rather talk on another day or at another time, feel free to contact me by telephone or e-mail and we can set something up. When sending an e-mail, please include a telephone number if possible and use the phrase “Legal Pro” in the subject line.

G. Material to be covered.

I. Introduction to the Regulation of Lawyers in the United States.

A. Become familiar with the Model Rules.
   Read the Introduction to the Regulation of Lawyers at the beginning of the Rulebook (“RB”) along with the editors’ introduction to the ABA Model Rules. By February 2, read Model Rules 1.1 through 8.5 for an overview of each of the rules. During the semester, as Model Rules are mentioned in the assigned reading, be sure to read the comments to that rule as part of your preparation for class.
B. Get an overview.
   Chapter 1: Creating and Maintaining a Profession and
   Chapter 2: The Gates to the Profession

II. Individual Topics.

Chapter 6: Introduction to Secrecy. (Text 71 to 85)
A. Overview
B. The Duty of Confidentiality.
C. The Attorney-Client Privilege.
   1. Elements of the Privilege
   2. Exceptions to the Privilege
      a. Waiver
      b. Crime-Fraud
      c. Joint Clients
      d. Advice of Counsel
      e. Lawyer’s Self-Defense
D. The Work-Product Immunity

E. Physical Evidence

F. A Secrecy Scenario (Text 81 to 85)
   Work carefully through the “Secrecy Scenario.”
   Be prepared to answer each of the sixteen questions in class.

Chapter 7: The Attorney-Client Privilege (Text 87 to 90)
   A. Fundamentals
   B. Application of the Privilege

Chapter 8: Client Identity and the Attorney-Client Privilege (Text 91 to 100)
   A. Identity of the Client
   B. Location of the Client

Chapter 9: The Attorney-Client Privilege and Physical Evidence (Text 101 to 122)
   A. The Categories of Physical Evidence
      1. Evidence given to you by a client
      2. Evidence given to you by a third party
      3. Evidence you find on your own
      4. Evidence you only see but do not touch
      5. Evidence you only hear about but do not see or touch
   B. Handling Physical Evidence
   C. Consequences of Destroying Evidence
   D. Standards for Criminal Justice
   E. The Grisly Case of the Buried Bodies: Armani and Belge
   F. Three Situations to Consider

Chapter 10: Exceptions to the Ethical Duty of Confidentiality (Text 123 to 134)
In addition to the Text for this chapter, be sure to carefully read the RB pages of the selected state variations for Model Rule 1.6 in preparing for class.

A. Exceptions in Model Rule 1.6 to the Duty of Confidentiality
   1. Client’s informed consent.
   2. Implied authority.
   3. Prevent reasonably certain death or substantial bodily harm.
   4. Prevent client from committing crime or fraud reasonably certain to substantially injure another’s financial interests or property and which client has used (or is using) lawyer’s services to further.
   5. Prevent, mitigate or rectify substantial injury to another’s financial interests or property that is reasonably certain to result (or has already resulted) from client’s crime or fraud if client used lawyer’s services to further the crime or fraud.
   7. Defend lawyer against allegations related to representation.
   8. Comply with other law or a court order.

B. Exceptions in Other Model Rules which Trump the Rule 1.6 Duty of Confidentiality
   1. Rule 1.9 (c) Information has become generally known after a representation ended.
   2. Rule 3.3 (a) (3) False evidence offered to a tribunal.
   3. Rule 3.3 (b) Criminal or fraudulent conduct relating to a proceeding before a tribunal.
4. Rule 1.13 Organization clients - a clear violation of law may be revealed to prevent substantial injury to the organization.

C. Another Secrecy Scenario: Is it in the Genes?
*Turn in before class your analysis of the questions which you have been assigned.

Chapter 11: Exceptions to the Attorney-Client Privilege (Text 135 to 137)
A. Waivers
B. Exceptions

Chapter 12: Dead Man Talking - The Privilege After a Client Dies (Text 139 to 160)
A. Attorneys as Voluntary Witnesses
B. Is the Attorney-Client Privilege Subject to a Balancing Test?
C. Treatment of Harmless Disclosures of Privileged Communications

Chapter 13: Corporations, Corruption and Confidentiality (Text 161 to 181)
A. The Attorney-Client Privilege for Organizations
B. A Secrecy Scenario: Let There be Lux?
C. The Attorney-Client Privilege for Corporations in the Courts
   1. Federal Courts.
   2. State Courts.
D. Disclosure of a Corporation’s Confidential Information
   1. Who is Your Client?
   2. Objecting Within the Organization (“Reporting Up”)
   3. Types of Legal Practice
   4. Permitted Disclosures Outside the Entity (“Reporting Out”)
   5. Noisy Withdrawal
E. Another Secrecy Scenario: The Computer Glitch

Chapter 14: Principles of the Adversary System (Text 183 to 199)
A. Defending the Guilty
B. The Lawyer’s Professional Role
C. The Lawyer’s Conscience
D. Should We Reform the Adversary System?
E. Is the Adversary System a Battle Between Equals?

Chapter 15: Civil Matters and the Adversary System (Text 201 to 218)
A. Disclosure of Adverse Evidence in Litigation
B. Fairness in Negotiations
C. Negotiation to End Litigation

Chapter 16: The No-Contact Rule — Communicating with Represented Parties (Text 219 to 237)
A. Outline on Communicating with Represented Parties
B. Communicating with a Represented Adverse Party
C. Things that are Not Exceptions to Rule 4.2
D. The “Authorized by Law” Exception
E. Special Problem: Communicating with Corporate Employees

Chapter 17: The Client’s Role in the Adversary System (Text 239 to 247)
Chapter 18: The Perplexing Problem of Perjury (Text 249 to 270)
   A. What if Your Client Plans to Lie (or Lies) at Trial?
   B. Nix v. Whiteside

Chapter 19: Candor and Deception in Offering Testimony (Text 271 to 282)
   A. May You Ethically Make the False Look True?
   B. When (and What) Can You Tell the Court?
   C. Perjury in Civil Cases

Chapter 4: The Unauthorized Practice of Law by Non-Lawyers (Text 39 to 52)
   A. The Debate over Restrictions on the Practice of Law
   B. Defining “The Practice of Law”
   C. Judicial Application of UPL Standards

Chapter 5: Multijurisdictional Practice and UPL by Lawyers (Text 53 to 69)
   A. The Traditional Approach to Out-of-State Lawyers
   B. The Traditional Approach is Enforced and Expanded
   C. Broader Permission to Engage in Multijurisdictional Practice
   D. The Big Picture Regarding MJP

*Focus particularly on the questions on pages 67 to 68 regarding the actions of David Duncan, Fred Frank and Timothy Wright.

Chapter 20: Introduction to Conflicts of Interest (Text 283 to 302)
   A. An Outline on Conflicts of Interest

I. Concurrent vs. Successive Conflicts
II. Direct Adversity vs. Significant Risk of Material Limitation
III. Actual vs. Potential Conflicts
IV. Three Levels of Conflicts
   a. Immaterial
   b. Consentable
   c. Non-Consentable
V. Personal vs. Vicarious Conflicts
VI. Events that Can Trigger Conflicts
   a. Taking a new client
   b. Taking a new matter
   c. Adding new parties
   d. Adding new issues to an existing matter
   e. Hiring a new attorney
   f. Changes in the personal relationships of the attorneys at the firm
   g. A witness for the opposition is a client in another matter
   h. A firm lawyer may be called to testify in the matter

VII. Negative Consequences of Conflicts
VIII. When are Conflicts of Interest Consentable?

IX. Obtaining Consent to a Conflict of Interest

X. How Courts Decide Motions to Disqualify

XI. Appealing Rulings on Motions to Disqualify
   B. A Meeting of the Law Firm’s Conflicts Committee
   C. A Second Meeting of the Firm’s Conflicts Committee
*Turn in before class your analysis of the conflicts which you have been assigned on pages 301 to 302.

Chapter 21: Who is a “Client”? (Text 303 to 325)
   A. Distinguishing Clients from Non- Clients
   B. When Does a Current Client Become a Former Client?
   C. Ambiguity in Entity Representation

Chapter 22: Concurrent Conflicts of Interest (Text 327 to 347)
   A. An Outline of Concurrent Conflicts
   B. Who is a Current Client?
   C. Conflicts Between Two Current Clients
   D. Conflicts Between a Client and a Third Person
   E. Conflicts with the Lawyer’s Own Interests
   F. Analysis of a concurrent conflict in Lewis v. NFL
   G. The Firm’s Conflicts Committee Meets Again
*Turn in before class your analysis of the conflicts which you have been assigned on pages 343 to 347.

Chapter 23: Conflicts of Interest Based on Work Done for Former Clients (Text 349 to 374)
   A. An Outline on Conflicts with Former Clients
      1. Comparing Concurrent and Successive Conflicts
      2. Grounds for Personal Disqualification under Rule 1.9
      3. The “Substantially Related” Test
      4. Imputed Disqualification and Conflict Checks Under Rule 1.9
   B. Application of the Substantial Relationship Test
      Kaselaan & D’Angelo Assoc. v. D’Angelo
      C. Informally Acquired Confidential Information
      Lansing-Delaware Water District v. Oak Lane Park
   D. Perils of Preliminary Interviews
   E. A Disqualification Scheme
   F. Can You Drop a Client Like a “Hot Potato”?
      Stratagem Dev. Corp. v. Heron Int’l N.V.

Chapter 24: Imputed Conflicts and Fire Walls (Text 375 to 401)
   A. The ABA’s Current Approach to Imputed Disqualification
   B. Other Approaches to Imputed Conflicts of Interest
      1. The ABA’s pre-2002 approach
      2. The Restatement of the Law Governing Lawyers approach
      3. The pro-screening approach in some states
   C. Applying Various Approaches to Conflicts with Former Clients
Chapter 25: Business Transactions with Clients (Text 403 to 411)
   A. The Rules on Business Transactions with Clients
   B. What if You Don’t Follow the Rules?
   C. The Firm’s Conflicts Committee Meets Again
*Turn in before class your analysis of the conflicts which you have been assigned on pages 410 to 411.

Chapter 3: Admission to the Bar (Text 19 to 37)
   A. Law School Graduation and Specific Curriculum Requirements
   B. The Bar Exam and the MPRE
   C. Character and Fitness: Misconduct Before Law School
   D. Character and Fitness: Misconduct During Law School
   E. Character and Fitness: Lying on the Bar Application
   F. Should Lawyers Educated Outside the U.S. be Admitted in the U.S.?

Chapter 26: Intro to Legal Fees- Legal Services for Clients Who Can Pay (Text 413 to 427)
   A. Five Basic Types of Legal Fees
      1. Flat fees
      2. Hourly rate fees
      3. Contingent fees
      4. Value billing
      5. Hybrid fees
   B. How Much is Too Much?
   C. Improper Terms in Fee Agreements
   D. Making Legal Fees More Affordable for the Middle Class

Chapter 27: Legal Services for Clients Who Cannot Pay (Text 429 to 449)
   A. Providing Legal Services for Those in Need
   B. Fee-Shifting Statutes
   C. Pro Bono Work

Chapter 28: Contingent Fees - Promise and Problems (Text 451 to 460)
   A. The Promise of Contingent Fees
   B. Some Problems with Contingent Fees
   C. Should Contingent Fees Be Allowed in Criminal Cases?
   D. Paying a Client’s Living Expenses
   E. What if Contingent Fees Were Prohibited?

Chapter 29: How Do Lawyers Get Clients? Advertising and Solicitation (Text 461 to 485)
   A. A Brief History of Lawyer Advertising 1800 to 1977
   B. The U.S. Supreme Court’s Odyssey Through Lawyer Advertising
      1. Revolution of 1977: Lawyers Win the Right to Advertise Prices
      2. Dividing Line: In-Person Solicitation Can be Prohibited
      3. Lawyers for Non-Profit Groups May Solicit Cases by Mail
      4. Petty State Restrictions are Unanimously Struck Down
      5. Illustrations and Truthful Legal Advice Win Approval
      6. Targeted Mail: Like In-Person Solicitation or Like Newspaper Ad?
      7. Claims of Specialization Get Limited Protection
      8. Truthful Information Gets Another Endorsement
9. Targeted Mail Revisited: Solicitation After an Accident
C. Are Some Lawyers “Super Lawyers” or “the Best Lawyers in America”? 

Chapter 30: How Do Lawyers Get in Trouble? (Text 487 to 505)
A. Misconduct in the Practice of Law
B. Sexual Misconduct with Clients
C. Criminal Prosecutions of Dishonest Lawyers
D. Misconduct Outside the Practice of Law
E. General Counsel John Isselmann (Webpage readings)

Chapter 31: Are You Your Brother’s Keeper? (Reporting Other Lawyers’ Misdeeds) (Text 507 to 523)
A. The Obligation to Report Another Lawyer
B. Do You Ever Have to Report Your Boss?
C. Vicarious Liability: Responsibility for Your Partners and Associates

Chapter 32: Legal Malpractice and Other Suits Against Lawyers (Text 525 to 547)
A. Elements of a Legal Malpractice Claim
B. Other Common Claims Against Lawyers
C. The Standard of Care
D. Malpractice and Ineffective Assistance in Criminal Cases

Chapter 33: Improving Legal Education (Text 549 to 558)
A. The McCrate Report
B. Yet Another Look at the Legal Continuum

Chapter 34: Who Are the Lawyers? (Text 559 to 570)
A. The Growth of the Legal Profession
B. Let’s Take a Second Look

Chapter 35: The Diversity of the Legal Profession (Text 571 to 590)
A. Increased Diversity in the Legal Profession
B. Women in the Legal Profession
C. Why Do We Diversify?
D. Asian-American Lawyers
E. Gay and Lesbian Lawyers
F. Work / Life Balance

Chapter 36: Fighting Discrimination in the Legal Profession (Text 591 to 602)
A. Options for Eliminating Discrimination
B. Empowering Minority Partners Within a Firm
Prof. Burnele V. Powell
Miles & Ann Loadholt Professor of Law
Syllabus
Winter Semester 2009

01 Creating and Maintaining a Profession Ch 1
02 The Gates to the Profession — Keys to the Office Ch 2
03 Admission to the Bar Ch 3
04 Who Are the Lawyers? Ch 34
05 The Diversity of the Legal Profession Ch 35
06 How Do Lawyers Get in Trouble? Ch 30
07 Are You Your Brother’s Keeper? Ch 31
08 Legal Malpractice Suits against Lawyers Ch 32
09 Principles of the Adversary System Ch 14
10 Principles of the Adversary System Ch 14
11 Civil Matters and the Adversary System Ch 15
12 Attorney-Client Privilege Ch 7
13 Client Identity and Attorney-Client Privilege Ch 8
14 The Attorney-Client Privilege and Physical Evidence Ch 9
15 Exceptions to the Ethical Duty of Confidentiality Ch 10
16 Exceptions to the Attorney-Client Privilege Ch 11
17 Dead Man Talking: The Attorney-Client Privilege after a Client Dies Ch 12
18 Corporations, Corruption, and Confidentiality Ch 13
19 The No-contact Rule: Communicating with Represented Parties Ch 16
20 The Client’s Role in the Adversary System Ch 17
21 The Perplexing Problem of Perjury Ch 18
22 Who Is a Client? Ch 21
23 Conflicts of Interest with Current Clients Ch 22
24 Conflicts of Interest with Former Clients Ch 23
25 Imputed Conflicts and Firewalls Ch 24
26 Business Transactions with Clients Ch 25
27 Legal Fees-Introduction to Legal Fees: Legal Services for Clients Who Cannot Pay Ch 26
28 Contingent Fees: Promise and Problems Ch 28
29 The Unauthorized Practice of Law by Lawyers Ch 5
30 How Do Lawyers Get Clients Ch 29
31 How Do Lawyers Get in Trouble Ch 30

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