

# PROFESSIONAL RESPONSIBILITY- Fall 2010

## Professor Rose Zoltek-Jick

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**Text:** *Ethical Problems in the Practice of Law, 2008, (Second Edition) by Lisa Lerman and Philip Schrag, Aspen Publishers*

**Supplement (suggested):** *Regulation of Lawyers: Statutes and Standards, 2010 Concise Supplement by Gillers and Simon, Aspen Publishers*

Welcome to a course on Professional Responsibility, the only course you must take in law school.

Professional Responsibility is a course that can be taught with a thousand different emphases but its basic subject matter is the *practice* of law. Through that lens, we will cover the laws and rules governing lawyers, the legal profession, professionalism and ethics.

The course has two overarching goals. First, it is vitally important that each of you gain a mastery of the rules which govern the area of professional ethics. In order to become a lawyer in the vast majority of jurisdictions in the United States, you will be required to take the Multi-State Professional Responsibility Examination (MPRE). This course will serve as part of your preparation for that exam, and in the process, provide you with a deep understanding of the history and current developments in the field of legal ethics. This course however does not cover each and every topic that is part of the MPRE exam and does not substitute for the courses that are given specifically to prepare you for that exam.

Nevertheless, in order to facilitate this first goal, the course instruction will end on November 2<sup>nd</sup>. Your final exam-- a multiple choice exam that will mimic the form of the MPRE-- will be distributed to you on that date, to be taken at home on your honor, **and handed in on NOVEMBER 4<sup>th</sup> to Student Services BEFORE class, and taken up that day in our class time period** – all before the MPRE is administered on November 6, 2010.

There are two additional classes scheduled during make-up times in order to get in the requisite number of classes. Below is the list of dates and times for make up classes. We will also not have class on September 8<sup>th</sup>, as the school is closed for Rosh HaShanah.

<b>Friday, September 24</b>	<b>3:30- 5:00</b>
<b>Monday, October 4</b>	<b>12-1:30</b>

The second goal of this course is to provide an opportunity for you to begin a lifetime of reflection about your role as a lawyer within the larger legal profession and on the meaning of professionalism. The rules of professional responsibility are written in abstract, general language and are designed to warn you about the broad parameters of the pitfalls of practice so that you do not do anything that would hurt others or damage your career. The rules cannot cover every conceivable situation that will arise and they do not address those situations where the professional rules clash with your personal moral code. This class will pose problems that brings both of these gaps to the fore, and will try and help you formulate how you will address these dilemmas -- of silence or of conflict—as they arise in your career. And arise they will..... so it is wise to begin thinking about how to think about how you will behave now before you have to face these situations with real clients and a real career at stake.

This course will challenge you to gain a deeper understanding of your own ethical and moral personal foundation. In this sense, it is not at all prescriptive. The rules are normative and we will learn what they have to tell us about what you are and are not to do as a lawyer; your journey as a self-reflective practitioner will never be quite that clear.

These twin goals of legal mastery of the rules of professional responsibility, and personal reflection and development are the cornerstones of the course, and hopefully two important pillars upon which you can find a career that is personally challenging and fulfilling.

## **EVALUATION**

In addition to the final examination (worth 40%) and class participation (30%), students will be required to submit two short written assignments (30%).

### **Assignment #1:**

**Due: September 14th**

Describe in no more than 3 double-spaced pages a situation that you have encountered on co-op or in legal work pre- law school that you may have witnessed, or been a part of, that troubled you and how it was resolved. This assignment will be for my eyes only and is not in breach of your duty of confidentiality but out of an abundance of caution, use general terms (solo practitioner/large firm/ judicial intern) to describe your co-op employer and initials to identify your client.

If you have so far encountered no such situation, describe a situation that you imagine would trouble you and how you think you will handle it.

### **Assignment # 2:**

**Due: October 29th**

In more than 3 double-spaced pages, discuss the following:  
There is way more to being a lawyer than I realized.....

Below is an outline of the topics for each class and the required reading assignment. Like with all courses, this is a guide and various changes may occur as the class develops.

CLASS	DATE	TOPIC	PAGES
<b>Class 1</b>	<b>(August 31)</b>	Course Introduction How do you serve your client?	Text 301 - 302 Problems 5-3, 9-3 Rule 2.1; Rule 1.8(e)
<b>Class 2</b>	<b>(September 2)</b>	Admission to Practice	Preamble, Text 45 – 71 Problems 1-1, 1-2 Rule 8.1
<b>Class 3</b>	<b>(September 7)</b>	Professional Discipline	Text 73 – 86, 96-105 109-110, 126-128 Problems 2-1, 2-2 Rules 8.4, 8.3, 5.1, 5.2
<b>Class 4</b>	<b>(September 14)</b>	Lawyer Client Relationship (Formation of the Relationship, Competence, Diligence, Communication)	Text 266 – 300 Problems 5-1, 5-2 Rule 1.1, 1.3, 1.4
<b>Class 5</b>	<b>(September 16)</b>	Lawyer Client Relationship  (Scope, Authority, Termination)	Text 304-313; 321-331; 333-334; 344 -350  Problems 5-4, 5-6 Rule 1.2, 1.14, 1.16
<b>Class 6</b>	<b>(September 21)</b>	Client Confidences	Text 152 – 174 Problems 3-3, 3-4 Rule 1.6
<b>Class 7</b>	<b>(September 23)</b>	Exceptions to Client Confidences	Text 176 – 211 Problems 3-6, 3-7, 3-8 Rule 1.6, 1.8(b)

<b>Class 8</b>	<b>(September 24 @ 3:30)</b>	Client Privilege and Work Product	Text 217 - 244 Problem 4-1, 4-2
<b>Class 9</b>	<b>(September 28)</b>	Concurrent Conflict	Text 352 – 388 Problems 6-1, 6-4, 6-5 Rule 1.7, 1.10, 1.18
<b>Class 10</b>	<b>(September 30)</b>	Concurrent Conflict (Organizations, criminal co-defendants, etc.)	Text 393- 425 Problems 7-2, 7-3, 7-4 Rule 1.7, 1.13, 1.8(f)
<b>Class 11</b>	<b>(Monday, October 4@12)</b>	Conflicts: Former Clients	Text 436 – 459 Problems 8-1, 8-2 Rule 1.9
<b>Class 12</b>	<b>(October 5)</b>	Conflicts with Former Clients	Text 459 – 481 Problems 8-3, 8-4 Rule 1.9, 1.10, 1.11
<b>Class 13</b>	<b>(October 7)</b>	Lawyers and Clients: Fees, Property and Trust Accounts	Text 502 - 531; 534-546; 547-550 Problem 9-1 Rules 1.5, 1.15
<b>Class 14</b>	<b>(October 12)</b>	Lawyers and Clients: Professional Boundaries	Text 551 – 561 Problem 9-4 Rules 1.7, 1.8, 1.5(e)
<b>Class 15</b>	<b>(October 14)</b>	Lawyers' Duty to Court	Text 594 – 629 Problems 11-2, 11-3, 11-5 Rule 3.1, 3.2, 3.3, 3.4 (a), (b) 3.5, 1.5(a)(3), 8.4(c)
<b>Class 16</b>	<b>(October 19)</b>	Lawyers' Duty to Court, cont'd	Text 629– 645; 660- 677 Problem 11-9 Rules 3.4 (e) 3.6, 3.7, 3.9, 4.1, 4.2; 4.3, 4.4
<b>Class 17</b>	<b>(October 21)</b>	Lawyers' Duty to Third Persons	Text 680 – 713 Problems 12-1, 12-3 Rules 3.8; 4.2

<b>Class 18 (October 26)</b>	Prosecutors' Special Duties	Text 713 - 723 Problem 12- 4 Rules 4.2, 4.3
<b>Class 19 (October 29)</b>	Restrictions on the Practice of Law	Text 791- 817 Problem 14-1 Rules 5.4, 5.5, 5.6, 7.1,7.2; 7.3, 7.4, 7.5
<b>Class 20 (November 2)</b>	Pro Bono Obligation/Representation of the Poor	Text 819 – 830; 836- 848; 853- 862 Problems 15-1, 15-2, 15-3 Rules 6.1, 6.2, 6.3

## ***Information on the MPRE***

Next Examination: Sat. Nov. 6, 2010

Test Date Application Receipt Deadline: Sept. 28, 2010

Late Application Receipt Deadline: Oct. 14, 2010

Examinees must be present at 9 a.m. on test day.

For more information, go directly to <http://www.act.org/mpre/services>.

## **MPRE Subject Matter Outline**

The following subject matter outline indicates the examination's scope of coverage and the approximate percentage of items that are included in each major area. The outline is not intended to list every aspect of a topic mentioned. Although the test items for each MPRE are developed from these categories, each topic is not necessarily tested on each examination.

- I. Regulation of the Legal Profession (8-12%)**
  - A. Inherent Powers of Courts to Regulate Lawyers
  - B. Admission to the Profession
  - C. Regulation after Admission
  - D. Maintaining Professional Standards--Peer Responsibility
  - E. Unauthorized Practice of Law
  - F. Fee Division with a Non-Lawyer
  - G. Law Firm and Other Forms of Practice
  - H. Contractual Restrictions on Practice

- II. The Client-Lawyer Relationship (10-14%)**
  - A. Acceptance or Rejection of Clients
  - B. Scope, Objective, and Means of the Representation
  - C. Within the Bounds of the Law
  - D. Withdrawal
  - E. Client-Lawyer Contracts
  - F. Fees
- III. Privilege and Confidentiality (6-10%)**
  - A. Lawyer-Client Privilege and the Work Product Doctrine
  - B. Professional Obligation of Confidentiality
  - C. Client-Authorized Disclosure
  - D. Exceptions to Confidentiality
  - E. Special Problems
- IV. Independent Professional Judgment--Conflicts of Interest (12-16%)**
  - A. As Affected by Lawyer's Personal Interest
  - B. Lawyer as Witness
  - C. Acquiring an Interest in Litigation
  - D. Entering into Business Transactions with Client
  - E. Conflicting Interests--Prospective Clients, Current Clients and Former Clients
  - F. Influence by Persons Other than Client
  - G. Imputed Disqualification
  - H. Lawyer's Service as Arbitrator, Mediator, or Judge
- V. Competence, Legal Malpractice, and Other Civil Liability (8-12%)**
  - A. Civil Liability, Including Malpractice
  - B. Maintaining Competence
  - C. Acceptance of Employment
  - D. Exercise of Diligence and Care
  - E. Limiting Liability for Malpractice
- VI. Litigation and Other Forms of Advocacy (12-16%)**
  - A. Authority to Act for Client
  - B. Civility, Courtesy, and Decorum
  - C. Conduct in the Course of Litigation--Claims, Defenses, Testimony, and Evidence
  - D. Client Fraud and Perjury by a Client or Witness
  - E. Communications in Course of Representation
- VII. Different Roles of the Lawyer (4-8%)**
  - A. Lawyer as Advisor
  - B. Lawyer as Evaluator
  - C. Lawyer as Negotiator
  - D. Lawyer as Arbitrator, Mediator, or Other Third-Party Neutral
  - E. Special Obligations of the Lawyer in Public Service
  - F. Appearances before Legislative Bodies

**VIII. Safekeeping Property and Funds of Clients and Others (4-8%)**

- A. Lawyer as Trustee of Funds of Client or Third Persons
- B. Lawyer as Custodian of Property of Client or Third Persons
- C. Disputed Claims

**IX. Communication about Legal Services (6-10%)**

- A. Public Communications about Services
- B. Referrals
- C. Group Legal Services
- D. Direct Contact with Prospective Clients (Solicitation)
- E. Fields of Practice--Limitations of Practice and Specialization

**X. Lawyers and the Legal System (2-6%)**

- A. Lawyer Activity in Improving the Legal System
- B. Impropriety Incident to Public Service

**XI. Judicial Ethics (6-10%)**

- A. Duty to Uphold the Integrity and Independence of the Judiciary
- B. Duty to Avoid Impropriety and the Appearance of Impropriety
- C. Duties of Impartiality and Diligence
- D. Activities to Improve the Legal System
- E. Extra-Judicial Activities
- F. Political Activity of Judges
- G. Candidate for Judicial Office