

Professional Responsibility

Elon Law School
Fall 2021
Monday & Wednesday 3:45–5:15 pm
Rooms 207

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Description

This course is intended to acquaint students with the organization and regulation of the legal profession, the nature of the attorney-client relationship, and the duties that attorneys owe to clients and others. Upon successfully completing the course, students should be familiar with the ABA Model Rules of Professional Conduct and other sources of law governing the legal profession, and be able to apply these rules to issues that arise in legal practice. The course will also help prepare students for the Multistate Professional Responsibility Examination (MPRE), but will not cover all of the topics tested on that exam.

Course Material

All assigned material will be available online via the course website: emfink.net/ProfessionalResponsibility. The website also has study aids and links to other supplementary material.

Suggested supplement (optional): Grace M. Giesel, *Mastering Professional Responsibility* (2d ed., Carolina Academic Press 2015).

Policies

Grading

Your grade will be based on a final examination consisting of multiple choice questions, similar in format to the Multistate Professional Responsibility Examination (MPRE). You will receive a copy of the Rules of Professional Conduct to use during the exam, which will otherwise be closed-book/closed-notes.

Class Preparation, Attendance, & Participation

Successful performance in this course depends on completion of all reading assignments before class, regular and prompt class attendance, and constructive engagement during class. Elon Law School's standards and ABA guidance for awarding course credit assume at least two hours of out-of-class student work for each hour of classroom instruction.

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.

Disability Accommodations

For disability accommodation requests, contact the Elon Law Registrar's Office.

Honor Code

The Law School honor code applies to all activities related to your law school study, including conduct during class and examinations.

Schedule & Assignments

Law as a Regulated Profession

August 30

The Legal Profession

- Andrew Abbott, *The System of Professions* (1988) (Excerpts)
- *People v. Alfani*, 125 A. 671 (NY 1919)

Regulation of Lawyers

- NC Rules of Professional Conduct: Preamble & Scope; Rule 1.0 (Terminology)
 - N.B. The NC Rules of Professional Conduct closely follow the ABA Model Rules in most respects. Where they differ substantially, I have assigned the relevant provisions of the ABA Model Rules instead.
- Restatement § 1
- NC Gen. Stat. §§ 84-15, 84-16, 84-23
- *In re Creasey*, 12 P.3d 214 (Ariz. 2000)
- *Sheller v. Superior Court*, 71 Cal.Rptr.3d 1697 (Cal. App. 2008)

Professional Gatekeeping & Regulation

September 1

Bar Admission

- NCRPC Rule 8.1
- NC Gen. Stat. §§ 84-1, 84-2, 84-4.1, 84-4.2, 84-24, 84-32
- Restatement §§ 2-3
- *In re Converse*, 602 N.W.2d 500 (Neb. 1999)
- *Appeal of Lane*, 544 N.W.2d 367 (1996)
- Committee of Character and Fitness of the Supreme Court of Illinois, *In re Application of Hale*, (April 10, 1999)
- *In re Hinson-Lyles*, 864 So.2d 108 (La. 2003)
- *Matter of Anonymous*, 875 N.Y.S.2d 925 (N.Y. App. Div. 2009)
- *Page v. Oath, Inc.*, C.A. No. S20C-07-030 CAK (Del. Super. Jan. 11, 2021)

Unauthorized Practice of Law

- NCRPC Rule 5.5
- Restatement § 4
- NC Gen. Stat. §§ 84-2.1, 84-2.2, 84-4, 84-5, 84-5.1, 84-6, 84-7, 84-7.1, 84-8, 84-9, 84-10.1
- *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 70 Cal.Rptr.2d 304 (Cal. 1998)
- *Estate of Condon v. McHenry*, 76 Cal.Rptr.2d 922 (Cal. App. 1998)
- *In re Trester*, 172 P.3d 31 (Kan. 2007)

Attorney Discipline

- NCRPC Rules 8.2, 8.3, 8.4, 8.5
- Restatement § 5
- NC Gen. Stat. § 84-28, 84-36
- *Neal v. Clinton*, No. CIV 2000-5677, slip op. (Ark. Cir. Ct. Jan. 19, 2001)
- *In re Riehlmann*, 891 So.2d 1239 (La. 2005)
- *In re Diaz*, 288 P.3d 486 (Kan. 2012)
- *In re Gates*, Misc. Case No. 18-00301-KRH (Bankr. E.D. Va. 2018)
- *Matter of Giuliani*, No. 2021-00506, slip op. (NY App. Div. June 24, 2021)

September 6

No class (Labor Day)

September 8

Law Firms

- NCRPC Rules 5.1-5.4, 5.6, 5.7
- Restatement §§ 9-13
- *Lawyer Disciplinary Board v. Veneri*, 524 S.E.2d 900 (W. Va. 1999)
- *In re Columbia Valley Healthcare System, L.P.*, 320 S.W.3d 819 (Tex. 2010)
- *Hoff v. Mayer, Brown, & Platt*, 772 N.E.2d 263 (Ill. App. Ct. 2002)
- *Cardillo v. Bloomfield 206 Corp.*, 988 A.2d 136 (N.J. Super. 2010)

September 13

Advertising

- NCRPC Rules: 7.1, 7.2
- *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)
- *Florida Bar v. Pape*, 918 So.2d 240 (2005)
- *Hayes v. New York Attorney Grievance Committee*, 672 F.3d 158 (2d Cir. 2012)
- *Hunter v. Virginia State Bar*, 744 S.E.2d 611 (Va. 2013)

Solicitation

- NCRPC Rules: 7.3, 7.6
- *NAACP v. Button*, 371 U.S. 415 (1963)
- *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447 (1978)
- *In re Primus*, 436 U.S. 412 (1978)
- *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985)
- *Shapiro v. Kentucky State Bar Assn.*, 486 U.S. 466 (1988)
- *Florida Bar v. Went for It*, 515 U.S. 618 (1995)

The Attorney-Client Relationship

September 15

No class

September 20

Prospective Clients

- NCRPC Rule 1.18
- Restatement § 15
- *Clark Capital Management Group, Inc. v. Annuity Investors Life Ins. Co.*, 149 F.Supp.2d 193 (E.D. Pa. 2001)

Establishing Representation

- MRPC Rule 6.2
- Restatement § 14
- *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980)
- *Ferranti Intern. PLC v. Clark*, 767 F. Supp. 670 (E.D. Pa. 1991)

Declining and Terminating Representation

- NCRPC Rule 1.16
- Restatement §§ 31-33
- *Demov, Morris, Levine & Shein v. Glantz*, 53 N.Y.2d 553 (N.Y. 1981)
- *Whiting v. Lacara*, 187 F. 3d 317 (2d Cir. 1999)
- *Motion to Withdraw as Counsel for Defendants Ray and Cantwell, Sines v. Kessler*, No. 3:17-cv-00072 (W.D. Va. 2019)
 - Attorney's brief in support of motion
 - Defendant Cantwell's opposition
 - Plaintiff's response
 - Defendant Cantwell's reply
 - Order granting motion

September 22

Scope of Representation & Authority

- NCRPC Rule 1.2, 1.8(g)
- Restatement §§ 21-23, 25-27
- *L.F.S. Corp. v. Kennedy*, 337 S.E.2d 209 (S.C. 1985)
- *Morris v. Ohio Casualty Insurance Co.*, 35 Ohio St. 3d 45 (Ohio 1988)
- *Makins v. District of Columbia*, 861 A. 2d 590 (D.C. 2004)

Organizational Clients

- NCRPC Rule 1.13
- Restatement §§ 96 & 97
- *In the Matter of Silva*, 636 A.2d 316 (R.I. 1994)
- *Brennan v. Ruffner*, 640 So. 2d 143 (Fla. 1994)
- *In re Grand Jury Subpoena: Under Seal*, 415 F. 3d 334 (4th Cir. 2005)
- *U.S. v. Stein*, 463 F. Supp. 2d 459 (S.D.N.Y. 2006)

Clients with Diminished Capacity

- NCRPC Rule 1.2
- Restatement §§ 24

September 27

Competence, Diligence, & Communication

- NCRPC Rules 1.1, 1.3, 1.4, 1.14; 2.1
- Restatement §§ 48-58
- Equitania Insurance v. Slone & Garrett, 191 S.W.3d 552 (Ky. 2006)
- TIG Insurance v. Giffin Winning Cohen & Bodewes, 444 F. 3d 587 (7th Cir. 2006)
- Ang v. Martin, 114 P. 3d 637 (Wash. 2005)
- Marker v. Greenberg, 313 N.W.2d 4 (Minn. 1981)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Knowles v. Mirzayance, 556 U.S. 111 (2009)
- Lee v. U.S., 137 S. Ct. 1958 (2017)

September 29

Attorney Fees

- NCRPC Rule 1.5, 1.8(f)
- Restatement §§ 34-35, 38-43, 47
- Matter of Cooperman, 633 N.E.2d 1069 (N.Y. 1994)
- In the Matter of Fordham, 423 Mass. 481 (Mass. 1996)
- Culpepper & Carroll, PLLC v. Cole, 929 So. 2d 1224 (La. 2006)

Client Property

- MRPC Rule 1.15
- Restatement §§ 44-46
- Nebraska State Bar Association v. Statmore, 352 N.W.2d 875 (Neb. 1984)

Financial Dealings Between Lawyer and Client

- NCRPC Rule 1.8(a), (c), (d), (e)
- Restatement §§ 36
- Committee on Prof. Ethics v. Mershon, 316 N.W.2d 895 (Iowa 1982)
- Saladini v. Righellis, 426 Mass. 231 (1997)

October 4

Review of Professional Regulation and Attorney-Client Relationship

Confidentiality & Privilege

October 6 & 11

Duty of Confidentiality

- NCRPC Rules 1.6, 1.9(c), 1.13, 1.14, 1.18; 4.4(b); 8.6
- Restatement §§ 59-67
- In re Advisory Opinion No. 544 of NJ Sup. Court, 511 A. 2d 609 (N.J. 1986)
- Dougherty v. Pepper Hamilton LLP, 133 A. 3d 792 (Pa. Super. Ct. 2016)
- Matter of Tennant, 392 P. 3d 143 (Mont. 2017)
- U.S. v. Franklin, 598 F. 2d 954 (5th Cir. 1979)
- In re Original Grand Jury Investigation, 89 Ohio St. 3d 544 (Ohio 2000)
- McClure v. Thompson, 323 F.3d 1233 (9th Cir. 2003)

October 13 & 18

Client Communication Privilege and Attorney Work Product

- Restatement §§ 61-67 (Duty of Confidentiality)
- Restatement §§ 68-86 (Client Communication)
- Restatement §§ 87-93 (Work Product)
- People v. Belge, 83 Misc. 2d 186 (NY County Court 1975)
- X Corp. v. Doe, 805 F. Supp. 1298 (E.D. Va. 1992)
- Jones v. U.S., 828 A. 2d 169 (DC App. 2003)
- Hofmann v. Conder, 712 P. 2d 216 (Utah 1985)
- In the Matter of a Grand Jury Investigation, 453 Mass. 453 (Mass. 2009)
- Sporeck v. Peil, 759 F. 2d 312 (3d Cir. 1985)

- U.S. v. Deloitte LLP, 610 F. 3d 129 (D.C. Cir. 2010)
- Blumenthal v. Kimber Mfg., 265 Conn. 1 (2003)

Conflicts of Interest

October 25

Conflicts Involving Current Clients

- NCRPC Rules 1.7 & 1.8; 6.3, 6.4, 6.5
- Restatement §§ 121, 122, 125-127, 128-131, 134-135
- Glueck v. Jonathan Logan, Inc., 653 F. 2d 746 (2d Cir. 1981)
- Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d 267 (NY App. Div. 2004)
- Visa USA, Inc. v. First Data Corp., 241 F. Supp. 2d 1100 (N.D. Ca. 2003)
- In re Dresser Industries, Inc., 972 F. 2d 540 (5th Cir. 1992)
- In re Morse, 748 S.E.2d 921 (Ga. 2013)
- In re State Grand Jury Investigation, 983 A.2d 1097 (N.J. 2009)

October 25

Conflicts Involving Former Clients

- NCRPC Rules 1.9, 1.11, 1.12, & 1.13
- Restatement §§ 132-33
- Gutting v. Falstaff Brewing Corp., 710 F. 2d 1309 (8th Cir. 1983)
- NuStar Farms, LLC v. Zylstra, 880 N.W.2d 478 (Iowa 2016)
- Wilson P. Abraham Construction v. Armco Steel Corp., 559 F. 2d 250 (5th Cir. 1977)

October 27

Imputation of Conflicts

- NCRPC Rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.18
- Restatement §§ 123-124
- Cinema 5, Ltd. v. Cinerama, Inc., 528 F. 2d 1384 (2d Cir. 1976)
- People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc., 20 Cal. 4th 1135 (Cal. 1999)
- Kala v. Aluminum Smelting & Refining Company, Inc., 81 Ohio St. 3d 1 (1998)

November 1

Review of Confidentiality and Conflicts

Duties to the Legal System, Opposing Parties, & Others

November 3, 8, & 10

Duties to Tribunals and Opposing Parties

- NCRPC Rules 3.1-3.9
- Restatement §§ 105-120
- Nix v. Whiteside, 475 U.S. 157 (1986)
- People v. DePallo, 754 N.E.2d 751 (NY 2001)
- State v. Hischke, 639 N.W.2d 6 (Iowa 2002)
- U.S. v. Long, 857 F. 2d 436 (8th Cir. 1988)
- In re Litz, 721 N.E.2d 258 (Ind. 1999)

November 15 & 17

Duties to Persons Other Than Clients

- NCRPC Rules 4.1-4.4
- Restatement §§ 94-95, 98-103
- In re Disciplinary Proceeding Against Haley, 126 P. 3d 1262 (Wash. 2006)
- Niesig v. Team, 76 N.Y.2d 363 (N.Y. 1990)

November 22

Review of Duties in Litigation and Duties to Non-Clients

December 3

Final Exam