Objective

The objectives of this course are to teach the substantive law of the subject matter in a comprehensive manner, to consider ethical and professional questions related to the subject matter, and to integrate the subject matter with the analytical and practical skills necessary to the practice of law.

Materials required for the course are:

- Thomas D. Morgan & Ronald D. Rotunda, Professional Responsibility: Problems and Materials (10th ed. 2008); and
- Ronald D. Rotunda, Professional Responsibility – Black Letter Outlines (8th ed. 2008)

Problem numbers in the assignments are to problems in the Morgan & Rotunda book; see pages 26-28 for advice on how to approach the problems. Rule references in the assignments [“Model Rule(s)” or “Rule(s)”] are to the provision(s) of the ABA Model Rules of Professional Conduct (“ABA Model Rules”) that are central to the related problem. Other relevant provisions of the ABA Model Rules, the Texas Disciplinary Rules of Professional Conduct (“Texas Rules”), the ABA Model Code of Judicial Conduct, etc., should also be consulted. Note: For Texas Rules and Ethics Opinions, go to the UH Law Center web page, then go to the O’Quinn Law Library area – under Research Guides, go the Texas Ethics Reporter. The Texas Rules (including comments) are found by going to “Rules of Professional Conduct.” Ethics Opinions are indexed in the Texas Ethics Reporter both by subject and by number.

You are expected to attend class and be prepared on the assignment. A class roll will be circulated at the beginning of each class for you to sign. No one may sign for another person. If you miss the sign-in sheet you are responsible for signing it after class or be counted absent. You may miss three of our 28 classes without penalty, but if you miss more than three classes, you will be dropped and receive no credit. You may have the opportunity to make up two absences by attending review sessions. Students who may be in need of help under the Americans With Disabilities Act should call or e-mail Dean Tennessee.

The final examination will be a closed book examination. Exception: You may use during the examination a “cheat sheet” of no more than four pages (8-1/2” by 11”) written by you in your own handwriting [or handprinting] on one side of the page. You must turn in your “cheat sheet” with your exam answers. Extra examination grading points will be awarded for particularly good “cheat sheets.” You will also have the opportunity to increase your exam grade by one notch via exemplary class participation, or decrease it one notch via the opposite.
PROFESSIONAL RESPONSIBILITY ASSIGNMENTS – FALL 2009

Chapter I: Background and Fundamental Issues

Class 1
Read pages 1-30 and look at Introductory Problem (p. 26) [Achieving Justice for the Innocent Client]. What is your personal philosophy, and how does it affect what you would do in this problem? The course tends to be rules oriented. [Johnny Caspar: “I’m talkin’ about friendship. I’m talkin’ about character. I’m talkin’ about – hell. Leo, I ain’t embarrassed to use the word - I’m talkin’ about ethics.” From Miller’s Crossing (1990).]

Chapter II: Regulation of the Legal Profession
Read pages 31-46 and prepare Problem 1 (p. 32) [Admission to the Bar – Model Rules 4.1, 8.1, and 8.4(c)]. How do you answer questions on a Bar application? The answer is “carefully.”

Class 2
Read pages 46-64 and prepare Problem 2 (p. 46) [Lawyer Discipline and the Disabled Lawyer – Rules 1.1, 1.3, 1.4, 1.6, 8.3(a) & (c), 8.4, and 8.5]. Introduction to lawyer discipline.

Class 3
Read pages 64-83 and prepare Problem 3 (p. 64) [Regulating Lawyers Outside of the Formal Disciplinary System - ABA Model Rules Scope ¶20; Rules 1.1, 1.3, 1.4, 1.8(h), and 4.4]. Introduction to malpractice.

Chapter III: Fundamentals of the Lawyer-Client Relationship

Class 4
Read pages 84-99 and prepare Problem 4 (p. 85) [Undertaking to Represent a Client - ABA Model Rules Scope ¶17; Rules 1.0(k), 1.2, 1.3, 1.16, 1.18, 3.1, and 4.4]. How is the attorney-client relationship created? How is it terminated? Why you need a “non-engagement letter,” as well as an “engagement letter.”

Class 5
Read pages 99-116 and prepare Problem 5 (p. 99) [Billing for Legal Services – Rule 1.5]. This is an area in which the lawyer’s interest may conflict with the client’s interest. Note the difference in Texas Rule 1.04(a) relating to “unreasonable fee.”

Read pages 117-133 and prepare Problem 6 (p. 117) [Handling Client Property and Withdrawing from Representation – Rules 1.15, 1.16, 5.3, and 1.8(i)]. The only specific ethical advice I received in law school was from the Dean on the first day’s meeting of the entire class; he advised us not to commingle – whatever that meant.

Class 6
Read pages 133-148 and prepare Problem 7 (p. 133) [The Duty of Confidentiality - Rules 1.6 and 1.8(b)]. Differentiate among the ethical client confidence, the evidentiary attorney-
client privilege, and the discovery work product doctrine. Note the difference in Texas Rule 1.05(c) relating to voluntary disclosure of client confidences; see also Texas Rule 1.05(e) & (f).

Class 7
Read pages 148-165 and prepare Problem 8 (p. 148) [Confidentiality and the Organization as a Client – Rules 1.6 and 1.13]. The phenomenon of throwing Jonah overboard.

Chapter IV: The Requirement of Loyalty to the Client

Class 8
Read pages 166-179 and prepare Problem 9 (p. 167) [Representing Multiple Parties Dealing With Each Other - Rules 1.0(e) & (n) 1.7, and 1.10; see also former Rule 2.2 (eliminated from the Model Rules, but preserved in Texas Rule 1.07]. A now-deceased lawyer once said, “If two clients are separately represented by the [omitted] law firm in a negotiation, they will receive better representation than they would in separate representations by other lawyers”; the [omitted] law firm has paid out millions of dollars in client claims, partly as a result of that statement. Note the waiver requirement used to be that the client consent “after consultation”; what did “consultation” mean and how did that involve an Aggie? Now, “informed consent, confirmed in writing” is required for a waiver.

Class 9
Read pages 180-198 and prepare Problem 10 (p. 180) [The Duty of Loyalty – Rules 1.6(a). 1.7, 1.8(b), 1.9, 1.13, 3.3, 3.9, and 6.3]. It has been said, “If you want loyalty, get a dog.” Note the possible rationales for the conflict of interest rules: loyalty, maintaining client confidences, avoiding the appearance of impropriety; which of these are valid? Compare Texas Rule 1.06(b) to see the significant differences!

Read pages 198-211 and prepare Problem 11 (p. 198) [Conflicts of Interest in Criminal Litigation – Rules 1.7, 1.8(d)1.13(e), 3.8, 4.4, and 6.3].

Class 10
Read pages 212-225 and prepare Problem 12 (p. 212) [Conflicts Between Client Interests and the Lawyer’s Personal Interest – Rules 1.7 and 1.8]. Of lawyers taking ownership interests in clients’ corporations and rental interests in clients’ bodies. One of my college classmates spoke to the latter situation, but she later bought.

Class 11
Read pages 225-241 and prepare Problem 13 (p. 225) [Representing the Insured and the Insurer - Rules 1.2(a) & (c), 1.6(a), 1.7, 1.8(b) & (f), and 1.16]. See Texas Ethics Opinion number 533. Does Texas subscribe to the one-client or the two-client model? What is really going on in the Texas Ethics opinion?

Read pages 241-255 and prepare Problem 14 (p. 241) [The Lawyer and Her Former Client – Rules 1.6(a), 1.7(b), 1.9 and 1.10]. See 2009 amendment to Rule 1.10. Is it, “Once a client, always a client”? If not, what are the reasons for the rule? Note the possible
rationalies for the conflict of interest rules: loyalty, maintaining client confidences, avoiding the appearance of impropriety; which of these are valid? (this is the same question as for Problem 10)

Class 12
Read pages 256-270 and prepare Problem 15 (p. 256) [Imputed Disqualification – Rules 1.0(c) & (f), 1.9, 1.10, and 5.1]. You need to diagram the situations here.

I will speak briefly about pages 270-286 – Problem 16 (p. 270) [Special Problems of Government Lawyers - Rules 1.0(k), 1.11, 1.12, and 8.4(c); 18 U.S.C. §207]. (No assignment for you).

Chapter V: Advising Clients

Class 13
Read pages 287-301 and prepare Problem 17 (p. 288) [The Lawyer for an Individual Client - Rules 1.1, 1.2, 1.14, 1.16, 2.1, and 4.3]. Just what is the lawyer’s proper role?

Read pages 301-314 and prepare Problem 18 (p. 301) [Advising the Business Corporation – Rules 1.2(a), 1.4 1.6(b), 1.13, and 2.1]. When to and how to climb the corporate ladder; Sarbanes-Oxley is relevant if the corporation falls under that regime.

Class 14
Read pages 314-330 and prepare Problem 19 (p. 314) [Contacts with Represented and Unrepresented Persons – Rules 1.13, 4.1, 4.2, 4.3, 4.4, and 8.4]. Who is represented by a corporation’s attorney? When may you (not) speak to a corporate employee or former employee?

Read pages 330-347 and prepare Problem 20 (p. 330) [The Ethics of Negotiation – Rules 1.2, 1.4, 3.4, 3.8(d), 4.1, 5.6, and 8.4]. What are the differences between a negotiation and a poker game?

Class 15
Read pages 347-363 and prepare Problem 21 (p. 347) [The Lawyer as Evaluator - Rules 1.2(d), 1.13, 2.1, 2.3, 3.4, and 4.1]. Note the relationship among the lawyer, the client, and the person for whom the evaluation is performed.

Read pages 363-379 and prepare Problem 22 (p. 363) [Obligations When the Client May Be Engaged in Fraud - Rules 1.2, 1.6, 1.13, 1.16, 2.3, 3.9, 4.1]. What did Bacall say when she taught Bogey how to whistle? Compare Texas Rule 1.05(e)(7). What is a “noisy withdrawal”?

Class 16
[special presentation]

Class 17
[special presentation]

Chapter VI: Ethical Problems in Litigation
Class 18
Read pages 380-397 and prepare **Problem 23** (p. 380) [The Decision to File a Civil Suit - Rules 1.2(a) & (c), 2.1, 2.4, 3.1, 3.2, and 3.4; Federal Rules of Civil Procedure Rule 11]. Must a lawyer be more than half cocked before he goes off?

Class 19
Read pages 397-415 and prepare **Problem 24** (p. 397) [Litigation Tactics - Rules 3.3, 3.4(e), 3.5, 4.1, 4.4, 8.3, and 8.4]. See Texas Rule 4.04(b), which has no counterpart in the Model Rules (but it did appear in the 1969 ABA Model Code); in connection with this, why is a threat of presenting a disciplinary charge self-defeating? On problem 24 itself, please see me during office hours if your reaction was, “Why didn’t I think of these tactics?” Seriously, this is primarily a rules-oriented course – what are the rules in this area? New problem area: computer discovery and metadata.

Class 20
Read pages 415-431 and prepare **Problem 25** (p. 415) [Disclosure of Law or Facts Favorable to the Other Side - Rules 1.6, 3.3, 3.4, and 4.1]. Note that Rule 3.3 can override Rule 1.6.
Read pages 431-446 and prepare **Problem 26** (p. 431) [Handling Physical Evidence - Rules 1.2(d), 1.4, 1.6, 2.1, 3.3, and 3.4].

Class 21
Read pages 446-468 and prepare **Problem 27** (p. 446) [The Client Who Intends to Commit Perjury - Rules 1.0(f), (h), (i) & (j), 1.2(a), 1.16, 3.3, and 3.4(b)]. Monroe Freedman became notorious for the article beginning on page 465; how do experienced criminal lawyers handle this problem?
I will speak briefly about pages 468-479 and **Problem 28** (p. 468) [The Verdict that May be Tainted – Rules 3.3, 3.4, 3.5, 3.7, 4.4, and 8.4] (No assignment for you).

Class 22
I will speak briefly about pages 479-502 and **Problem 29** (p. 479) [The Crusading Prosecutor - Rules 1.5, 1.6(b), 3.6, and 3.8]. (No assignment for you) Does the name Patrick Fitzgerald mean anything in this context?
Read pages 502-511 and prepare **Problem 30** (p. 502) [The Duty to See Justice Done - Rules – 1.3, 1.4, 1.6, 1.8(b), 1.13, 2.1, 3.3, 3.8, and 4.4]. I once used question similar to D.1. in an exam; the students found it as haunting as I still do.

Chapter VII: The Delivery of Legal Services

Class 23
Read pages 512-534 and prepare **Problem 31** (p. 513) [Marketing Professional Services - Rules 7.1, 7.2 7.3, 7.5 and 8.4]. Has advertising elevated the legal profession? What dangerous weapon do lawyers have that CPAs don’t? See *Edenfield v. Fane*.
Read pages 534-546 and prepare **Problem 32** (p. 534) [The Ethics of Referral to a Specialist - Rules 1.1, 1.5, 5.5. 7.1, 7.2, and 7.4]. Compare Texas Rule 1.04.
Class 24
Read pages 547-560 and prepare Problem 33 (p. 561) [Roles and Responsibilities in a Modern Law Firm - Rules 1.5, 1.16, 1.17, 4.2, 5.1, 5.2, and 5.3].

Class 25
Read pages 561-579 and prepare Problem 34 (p. 561) [Leaving One Law Firm and Forming Another - Rules 1.6, 1.17, 5.4, 5.6 and 7.3]. How should and how should not lawyers leave a law firm? See pages 566-567 for a possible letter to send to clients the lawyer serviced at the old firm. Issues in buying a law practice.
I will speak briefly about pages 579-596 – Problem 35 (p. 579) [The Duty to Work for No Compensation - Rules 6.1 and 6.2] (no assignment for you). What is the effect of today’s current low interest rates?

Class 26
I will speak briefly about pages 596-614 -- Problem 36 (p. 596) [Problems in Class Action Representation - Rules 1.2, 4.3, 1.8, 3.4, 4.3, 7.2] (no assignment for you).
Read pages 614-638 and prepare Problem 37 (p. 614) [The Future of the Practice of Law: Unauthorized Practice, Multijurisdictional Practice, and Ancillary Legal Services – Rules 1.7(b), 1.8(a) & (f), 5.4, 5.5, 5.7, and 7.2]. Has multi-jurisdictional practice and multi-disciplinary practice made Rule 5.5 into a dead letter?

Chapter VIII: The Ethical Conduct of Judges
Class 27
Read pages 639-657 and prepare Problem 38 (p. 640) [Judges’ Disqualifying Conflicts of Interest - Rules 3.5(a) and 8.4(f); ABA Model Code of Judicial Conduct Rules 1.3, 2.11, 3.11, 3.12, 3.13, and 3.14]. Note the relaxation of the absolute standard for disqualification in Terminology [6], “Economic Interest.”

Class 28
Read pages 657-676 and prepare Problem 39 (p. 657) [The Judge as a Political Candidate and Public Figure– Rules 7.6, 8.2, 8.3(b) and 8.4; ABA Model Code of Judicial Conduct Rules 2.13, 2.15, 4.1, 4.2, 4.3, and 4.4]. Is “empathy” a requirement?
Read pages 676-692 and prepare Problem 40 (p. 676) [The Active Federal Judge –ABA Model Code of Judicial Conduct Rules 1.1, 1.2, 2.3, 2.8, 2.10, 2.12, 2.9, 3.1, 3.2, 3.6, and 3.7].

Review Sessions
We will schedule two review sessions at a time convenient to me, but the scheduling will take your input into consideration.

Examination
The examination is scheduled for Saturday, December 12th from 9:00 a.m. to noon.