

## **Professional Responsibility — Spring 2015**

### **Required Course Materials**

- A. HAZARD, KONIAK, CRAMTON, AND COHEN, THE LAW AND ETHICS OF LAWYERING (5th ed. 2010);
- B. MICHAEL L. SEIGEL AND JAMES L. KELLEY, LAWYERS CROSSING LINES: TEN STORIES (2nd ed. 2010); and A current copy of the Model Rules of Professional Conduct. (I recommend MARTYN, FOX, AND WENDEL, THE LAW GOVERNING LAWYERS: NATIONAL RULES, STANDARDS, STATUTES, AND STATE LAWYER CODES (2014-15), but any current copy of the Model Rules of Professional Conduct will do.)

### **Teaching Objectives and Philosophy**

My teaching objectives for this course are to teach the substantive law of professional responsibility in a comprehensive manner, to consider ethical and professional questions related to various areas of the legal profession, and to integrate the subject matter of this course with the analytical and practical skills necessary to practicing law. A more complete statement of my teaching philosophy is available on my webpage at [www.law.uh.edu/faculty/mduncan](http://www.law.uh.edu/faculty/mduncan).

### **Grading**

This semester your final grade for this class will be comprised of three components: (1) a wellness exercise worth 10% of your final grade; (2) a group project worth 20% of your final grade; and (3) a final examination worth 70% of your final grade:

#### **(1) Wellness Exercise –**

This component of your grade will be graded on a pass/fail scale and will be worth 10% of your final grade. (In other words, students will either earn full credit or zero credit for this portion of their grade.)

#### **(2) Group Project –**

Each student will be required to sign up for and participate in one of several group projects. The Group Project assignment will be graded and count for 20% of your final course grade. Details about the Group Project will be provided in class toward the beginning of the semester.

#### **(3) Final examination –**

The grade you earn on the course final examination will count for 70% of your final course grade. The exam will be a three-hour open book exam *likely* comprised of both essay and multiple choice questions.

## **Extra Credit**

There will be an opportunity to earn extra credit by successfully completing a Billing Exercise, the details of which will be provided to the class early in the semester.

## **Reading Assignments**

The reading assignments for the semester are posted on the course webpage. The Model Rules of Professional Conduct indicated for each assignment are certain to come up during our class discussions; you should be familiar with them ***and their corresponding comments*** before coming to class. In addition, be sure to read and be prepared to discuss any relevant provisions of the Model Rules as referenced in the texts as well.

As a general rule, I will cover one assignment in each class period, although I may cover less or more, depending on the subject matter and class discussion. I will do my best to let the class know in advance when I believe that we will be unable to complete an upcoming assignment in a single class meeting, although my being able to predict such occurrences is an inexact science at best. When necessary, I will communicate to the class by making an announcement in class, by e/mailing the entire class, or by posting the announcement on the course website. Unless otherwise instructed by me, you are to read the next assignment in its entirety even if you believe that the previous day's assignment was not completely covered in class.

## **Professionalism in the Classroom**

### **A. Class Preparation and Participation**

All students are to have read the entire assignment in preparation for each class meeting. I will call on students at random, although I will typically announce a three- or four-student panel at the beginning of each class.

If you are unprepared when I call on you, you will be marked absent for the day. The second time you are unprepared, your final grade for the course will be lowered by 1/3 (*e.g.*, a B becomes a B-). Any student who is unprepared for more than two days will be dropped from the course.

### **B. Use of Computers and Electronics**

The use of computers, electronic note-taking devices, or other electronics during class time is prohibited. All cell phones and other devices that might make noise during class are to be in silent mode and put away during our class meetings.

### **C. Other Professionalism Issues – Tardiness and Baseball Caps**

I respect your time and education by doing my best to start and end our class meetings promptly. Doing so requires that you be in your seat and ready to begin at the time that this class is scheduled to start. Please be prompt. Additionally, please remove all baseball caps at the beginning of our class meetings; caps are to remain off until class is over.

## **Accommodating Students with Disabilities**

The American with Disabilities Act (the “ADA”) requires that the University of Houston make reasonable accommodation to persons with disabilities as defined within the meaning of the ADA. Students who feel they need assistance under the ADA guidelines should contact me or Student Services to discuss such consideration.

## **Attendance Requirements**

Students must attend at least 80% of all classes that are scheduled to meet. Therefore, any student missing more than five (5) classes will be dropped from the course. It is likely that you will have to miss class for medical, religious, family, or other reasons. Therefore, use your permitted absences wisely. I take attendance by passing out an attendance sheet at the beginning of each class. It is your responsibility to make sure that you personally sign the attendance sheet each day before I leave the classroom. If you are late to class or leave the class early, you will not be permitted to sign the attendance sheet for that day and will be counted absent.

## **Multi-State Professional Responsibility Examination (the “MPRE”)**

Although Professional Responsibility is a required course pursuant to ABA and UHLC policies, Professional Responsibility course is *not* a Multi-State Professional Responsibility Examination (“MPRE”) prep course. As those wishing to practice law must pass the MPRE prior to being granted a law license, students often ask me about the MPRE. I therefore include the following information concerning the MPRE for your information only. *Your studying for or taking the MPRE is not related in any manner whatsoever to the requirements for or successful completion of this course.*

My understanding is that the MPRE is next scheduled to be administered on March 28, 2015 and August 15, 2015. For information concerning registration for the MPRE or to verify the accuracy of this information, you should visit <http://www.ncbex.org/about-ncbe-exams/mpre/test-dates-deadlines-and-fees/>. I provide this information to you merely as a courtesy.

## **Skeletal Outline of Professional Responsibility**

- A. The Relationship of Law, the Lawyer, and Ethics
- B. Conformity to the Law
  - 1. Criminal Law
  - 2. Tort Law Claims by Non-Clients
    - a) Negligent Misrepresentation
    - b) Intentional Torts
- C. Corporate Fraud and Lawyer Action
- D. Confidentiality
  - 1. Attorney-Client Privilege
    - a) Corporations and the Attorney-Client Privilege
    - b) Work-Product Doctrine
    - c) Documents
    - d) Crime Fraud Exception
    - e) Waiver of Attorney-Client Privilege
  - 2. Professional Duty of Confidentiality

- a) Scope of the Duty of Confidentiality
    - b) Exceptions
      - (1) Self-Defense
      - (2) Client Fraud
      - (3) When Death or Bodily Harm May Result
  - 3. Confidentiality and Privilege in the Electronic Age
- E. Conflicts of Interest
  - 1. Concurrent Conflicts
  - 2. Successive Conflicts
  - 3. Imputed Conflicts and Migratory Lawyers
  - 4. Government Lawyers
  - 5. Advanced Topics in Conflicts of Interest – Who Is the Client?
    - a) Individual or Enterprise
    - b) Almost Clients
    - c) Insured and Insurer
- F. Litigation
  - 1. Client Perjury
  - 2. How Far for a Client?
- G. Prosecutorial Ethics
- H. Lawyer-Client Relationship
  - 1. Fees
  - 2. Handling Property of Clients and Others
  - 3. Scope of Lawyer's Authority
  - 4. Ending the Relationship
- I. Competence
  - 1. Checks on Incompetence
  - 2. Malpractice
  - 3. Ineffective Assistance of Counsel
- J. Advertising and Solicitation