

# Professional Responsibility

## Reading Assignments and Learning Objectives

Below is an overview of the topics I plan for us to cover this semester, the corresponding learning outcomes, and the required daily reading assignments. I plan for us to cover one assignment per class period. However, there will be days where it may take us more or less than one class period to cover an assignment. I will do my best to keep the class abreast of instances where I think we will not reach or complete the next day's assignment. If you miss a class, it is your responsibility to check with a classmate to learn whether the class completed the entire assignment on the day you missed. You are responsible for keeping track of what assignment number the class is on throughout the semester.

The required reading materials referenced below are:

- [JEFFERSON ET AL., PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH \(5th edition 2023\)](#);
- [MICHAEL L. SEIGEL & JAMES L. KELLEY, LAWYERS CROSSING LINES: TEN STORIES](#) (2d ed. 2010);
- Current [ABA Model Rules of Professional Conduct](#) (the “Model Rules” or “MRs”); and
- Current [ABA Model Code of Judicial Conduct](#).
  
- The recommended (*not required*) supplement for this course is [JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY STANDARDS, RULES, AND STATUTES \(2023-2024 abridged edition\)](#) (contains the Model Rules and the Model Code of Judicial Conduct).

**Model Rules:** When an assignment includes a provision or provisions from the Model Rules, you are *required to read the accompanying comments* immediately following each rule as well.

**Casebook Multiple Choice Questions:** We will review most of the casebook multiple choice questions in class. In completing the reading assignments, I encourage you to answer the assigned multiple-choice questions *after* reading the assigned cases and textual materials that follow the questions in the casebook.

**Guided Reading Questions:** I will post Guided Reading Questions to accompany each reading assignment on our Canvas page. The Guided Reading Questions are designed to help you identify important information from the assigned materials. Although we will likely discuss the answers to these questions in class, I will *not* collect your responses as a written exercise.

**Abbreviations:** Following are the abbreviations used below for the reading assignments:

- PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH (5th edition) casebook (“CB”);
- LAWYERS CROSSING LINES: TEN STORIES (2d edition) (“LCL”);

- the current [ABA Model Rules of Professional Conduct](#), including the corresponding comments (“MRs”);
- RESTATEMENT (THIRD) LAW GOVERNING LAWYERS (“Rest”);
- Federal Rules of Evidence (“FRE”);
- Federal Rules of Civil Procedure (“FRCP”);
- Federal Rules of Criminal Procedure (“FED. R. CRIM. P.”);
- [ABA Model Code of Judicial Conduct](#) (“CJC”);
- materials available on the course Canvas page are indicated by “(Canvas);” and
- materials available in the recommended Dzienkowski supplement are indicated by “(supplement).”

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## Unit One: Introduction; Lawyer Regulation and the Disciplinary System

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### *Learning Outcomes*

At the end of this unit, I expect students to be able to:

- distinguish between sources of legal and ethical rules governing lawyer conduct;
- evaluate what constitutes the unauthorized practice of law;
- understand how the lawyer disciplinary system works;
- consider the necessity of attorney licensing, including the character and fitness requirements for admission to practice; and
- contemplate how a person should, would, or could respond to ethical dilemmas as a lawyer.

### **Assignment #1 – Introduction to PR and Legal Ethics; The Practice of Law**

- CB:** pp. 1-7; 25-41 (includes Questions 1-1 to 1-3)
- MRs** Preamble, 1.0, 1.1, 5.5, 8.1; TEX. PENAL CODE § 38.123 (Canvas); TEX. GOV’T CODE § 81.101 (Canvas)

## **Assignment #2 – Working with Nonlawyers; Unauthorized Practice of Law**

- CB:** pp. 46-56 (do not read *Birbrower*); 65 (beginning mid-page) - 71 (includes Questions 2-1 to 2-6)
- MRs** 1.8(a), 5.3, 5.4, 5.5, 5.7, 8.3, 8.4, 8.5

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## **Unit Two: Lawyer-Client Relationship**

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### ***Learning Outcomes***

At the end of this unit, I expect students to be able to:

- analyze what actions may create and end a lawyer-client relationship;
- understand the allocation of authority between a lawyer and client and the duty to communicate;
- recognize the lawyer’s obligations to a client with diminished capacity;
- analyze what constitutes competent legal representation under the Model Rules;
- evaluate the supervisory roles of practicing lawyers under the Model Rules;
- distinguish what actions subject a lawyer to disciplinary actions and civil malpractice actions;
- understand what constitutes ineffective assistance of counsel in criminal matters; and
- identify the elements of lawyer malpractice actions.

## **Assignment #3 – Creating Lawyer-Client Relationship; Ending the Relationship**

- CB:** pp. 71-85 (stop at end of Question 2-7)
- CB:** pp. 86 (beginning at the bottom of the page) - 96 (includes Questions 2-9 to 2-11)
- MRs** 1.1, 1.2(b-d), 1.13, 1.16, 3.1, 6.2, Rest § 14; FED. R. CIV. P. 11 (supplement)

## **Assignment #4 – Competence; Malpractice; Ineffective Assistance of Counsel**

- CB:** pp. 101-125 (includes Questions 2-12 to 2-19)
- MRs** Scope [20]; 1.1, 1.2(c), 1.3, 1.4, 1.8(h), 1.18, 5.1, 5.3, 8.4, 8.5; U.S. CONST. amend. VI

## **Assignment #5 – Decision-Making within Atty/Client Relationship**

- CB:** pp. 126-137; 139-151 (includes Questions 2-20 to 2-24)

- MRs** 1.2, 1.3, 1.6, 1.7, 1.8(a & d), 1.14, 1.16(a), 2.1, 3.2, 3.3, 3.6(a), 8.4(b); U.S. CONST. amend. VI
  - LCL:** pp. 69-89 (*The Legal Doctor Kevorkian*)
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## **Unit Three: The Business, Technology, and Marketing of Legal Services**

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### ***Learning Outcomes***

At the end of this unit, I expect students to be able to:

- distinguish solicitation from advertising;
- understand the States' interests in regulating lawyer ads as commercial speech;
- recognize the ways in which lawyers are advertising with new media and technologies that may not be governed directly by the Model Rules;
- determine whether a lawyer solicitation or advertisement complies with the Model Rules;
- distinguish the types of fees a lawyer may charge;
- analyze whether a lawyer's fee is reasonable under the Model Rules; and
- analyze what funds or property a lawyer must maintain separately from the lawyer's property, including in a trust account.

### **Assignment #6 – Finding Clients: Solicitation; Advertising**

- CB:** pp. 153-155; 172-180; 190-202 (includes Questions 3-1 to 3-5)
- MRs** 1.1, 1.5, 7.1, 7.2, 7.3

### **Assignment #7 – Fees and Billing: Hourly Fees; Contingent Fees**

- CB:** pp. 203-206 (including Simulation); 210-212; 217 (begin with Question 3-10) - 218; pp. 226-228 (includes Questions 3-10 to 3-13)
- MRs** 1.4(b), 1.5, 1.8(a, d, e, f, & i), 1.15, 2.1, 7.1

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## **Unit Four:** **Attorney-Client Privilege, Work-Product Protection, the Lawyer's Duty of Confidentiality**

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### ***Learning Outcomes***

At the end of this unit, I expect students to be able to:

- distinguish between the duty of confidentiality under Rule 1.6 and the attorney-client privilege evidentiary rule;
- evaluate the scope of information covered by Rule 1.6 and the attorney-client privilege; and
- determine whether the exceptions to the duty of confidentiality apply to fact patterns.

### **Assignment #8 –Attorney-Client Privilege: Basics; Corporate Atty/CI Privilege**

- CB:** pp. 245-276 (through the Practice Pointer) (includes Questions 4-1 to 4-5)
- MRs** 1.6, 1.13(f), FRE 501-502 (supplement), FRCP 26 (supplement)

### **Assignment #9 – Attorney-Client Privilege: Waiver; Crime-Fraud Exception**

- CB:** pp. 281-291; 294-302 (includes Questions 4-6 to 4-9)
- MRs** 1.6, 1.13(f), 3.4(a), 4.4, FRE 502 (supplement)

### **Assignment #10 – Work-Product Doctrine; Duty of Confidentiality**

- LCL:** pp. 203-218 (*Death of a Client Confessor*)
- CB:** pp. 302-318 (includes Questions 4-10 to 4-12)
- MRs** 1.1, 1.6, 1.9, 1.18

### **Assignment #11 – Exceptions to Duty of Confidentiality**

- CB:** pp. 318-335 (includes Questions 4-13 to 4-16)
- MRs** 1.6, 1.13, 3.3, 4.1(b)

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## Unit Five: Conflicts of Interest

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### *Learning Outcomes*

At the end of this unit, I expect students to be able to:

- analyze whether a concurrent conflict of interest exists;
- evaluate when representation is permitted where a concurrent conflict of interest exists;
- recognize when a positional conflict of interest exists;
- evaluate whether representation is allowed when a positional conflict of interest exists;
- evaluate the enforceability of a prospective conflict of interest waiver;
- recognize when a successive conflict of interests exists;
- evaluate whether representation is permitted when a successive conflict of interest exists;
- determine whether a conflict exists between a client's interests and a lawyer's interests;
- evaluate when representation is allowed where a conflict exists between a client's interests and a lawyer's interest; and
- identify imputed conflicts of interest.

### **Assignment #12 – Conflicts of Interest: Concurrent Conflicts**

- CB:** pp. 337-365 (includes Questions 5-1 to 5-9)
- MR** 1.7, 1.5, 1.7, 1.13, 1.15, 3.3, 3.4, 5.1
- LCL:** pp. 111-130 (*Of Chinese Walls and Comfort Zones*)

### **Assignment #13 – Concurrent Conflicts: Positional Conflicts; Personal Conflicts**

- CB:** pp. 366-377 (includes Questions 5-10 to 5-14)
- MRs** 1.4, 1.7, 1.8, 2.1, 3.7
- LCL:** pp. 91-109 (*The Case of Casanova and His Clients*)

### **Assignment #14 – Conflicts of Interest: Successive or Former Client Conflicts; Government Lawyers**

- CB:** pp. 377-395 (includes Questions 5-15 to 5-18)
- MRs** 1.9, 1.10, 1.11 and 1.12
- LCL:** pp. 183-201 (*The Nefarious “Zinkster”*)

## **Assignment #15 – Conflicts of Interest: Imputed (Vicarious) Conflicts; Conflicts in Criminal Cases**

- CB:** pp. 396-408 (includes Questions 5-19 to 5-25)
- MRs** 1.9, 1.10, 1.11 and 1.12
- LCL:** pp. 3-16 (*Breaking Up Is Hard To Do*)

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## **Unit Six: Lawyer Duties to the Court and Third Parties**

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### ***Learning Outcomes***

At the end of this unit, I expect students to be able to:

- analyze whether a lawyer has fulfilled duties to the court under the Model Rules;
- understand what a lawyer must do when confronted with the perjury trilemma;
- analyze what a lawyer must do in the case of inadvertent disclosure of confidential client information; and
- analyze whether a lawyer must report misconduct by other lawyers under Rule 8.3.

### **Assignment #16 – Lawyer’s Duties to the Court**

- CB:** pp. 409-436 (includes Questions 6-1 to 6-10)
- MRs** 1.6, 3.1, 3.2, 3.3, FRCP 11 (supplement)
- LCL:** pp. 51-68 (*The Ironic Road to Club Fed*)

### **Assignment #17 – Communicating with Judges and Jurors; Trial Publicity**

- CB:** pp. 437-446 (includes Questions 6-11 to 6-16)
- MRs** 3.4, 3.5, 3.6, 8.2, 8.4
- OJ Simpson handout** (Canvas)

### **Assignment #18 – Criticism of Judges; Civility; Opposing Parties; Unrepresented Persons**

- CB:** pp. 461-462; 471-485 (includes Questions 6-17 to 6-22)
- MRs** 4.1, 4.2, 4.3, 4.4, 8.2, 8.4(a)

### **Assignment #19 – Duties Regarding the Law and the Legal Profession**

- LCL:** pp. 157-182 (*Lights, Camera, Malfeasance*)

- CB:** pp. 486 – 493; 497-508 (skip *In re Himmel*) (includes Questions 6-23 to 6-30)
- MRs** 1.2(d), 1.6, 1.13, 4.1, 4.4(a), 5.1, 5.2, 5.6(b), 8.3

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## Unit Seven: Unique Responsibilities of Prosecutors and Judges

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### *Learning Outcomes*

At the end of this unit, I expect students to be able to:

- recognize the unique responsibilities and obligations of prosecutors and judges;
- analyze a prosecutor’s decision to charge under Rule 3.8;
- evaluate whether a prosecutor has satisfied the duties to the accused; and
- understand judicial recusal standards and the process for seeking recusal.

### **Assignment #20 – Prosecutorial Ethics**

- CB:** pp. 509-517; 530-534; 541-543; 555-557 (includes Questions 7-1 to 7-6)
- LCL:** pp. 17-49 (*From White Knight to Rogue: The Unraveling of a Veteran Prosecutor*)
- MRs** 3.3, 3.4, 3.6, 3.8, 4.1, 8.1, 8.3, 8.4

### **Assignment #21 – Judicial Ethics**

- CB:** pp. 561-570; 587-590; 595-599 (includes Questions 7-7 to 7-12)
- LCL:** pp. 131-156 (*Vegas Judge Gone Wild*)
- CJC Rules** 1.1, 1.2, 1.3, 2.2, 2.3, 2.5, 2.7, 2.8, 2.9, 2.10, 2.16, 3.1

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## Unit Eight: Special Topics in Professional Responsibility

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### *Learning Outcomes*

At the end of this unit, I expect students to be able to:

- reflect upon competing visions of professionalism and morality;
- articulate considerations for developing a personally satisfying career in the law; and
- discuss special obligations of lawyers to the public, including pro bono service.

### **Assignment #21 – What is the Proper Role of a Lawyer? or Special Privileges and Responsibilities of Lawyers**

- Reading materials to be determined*