

Syllabus for Professional Responsibility for FLLMs

Prof. Megan L. Davis
Mlwilso3@central.uh.edu

This document is a syllabus, not a contract. Therefore, it is subject to change. Any changes will be announced by me in class, posted on the course website, or distributed via email to the entire class.

I. Required Course Materials

- × [JEFFERSON ET AL., PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH \(4th ed. 2020\)](#) (the casebook or “CB”); and
- × [MICHAEL L. SEIGEL & JAMES L. KELLEY, LAWYERS CROSSING LINES: TEN STORIES](#) (Carolina Academic Press 2010).
- × **Recommended Supplement** – [JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY STANDARDS, RULES, AND STATUTES \(2021-2022 abridged edition\)](#)
You will need a current copy of the [ABA Model Rules of Professional Conduct](#) (the “Model Rules” or “MRs”); and a current copy of the [ABA Model Code of Judicial Conduct](#), both of which are included in the recommended Dzienkowski supplement.

II. Instructor Information

I can most easily be reached via email at mlwilso3@central.uh.edu. Further information about this course will be posted on the course Canvas website. My office hours will be determined based on the needs of the class after the beginning of the semester and by appointment. I will frequently be available at other times, as well as after most class meetings on Zoom.

III. Course Objectives and Learning Outcomes

By the end of this course, my goals are for you to be able to:

- × recognize ethical issues and identify whether the law governing lawyers or the ABA Model Rules of Professional Conduct or both apply;
- × have knowledge and understanding of substantive and procedural law regulating lawyers’ conduct;
- × apply the elements of the law governing lawyers and the Model Rules of Professional Conduct to fact patterns;
- × understand and articulate policy arguments commonly used in the field of legal ethics;

- × locate resources to address professional responsibility concerns;
- × anticipate legal ethics issues you may face and contemplate what you should, would, or could do in the circumstances;
- × develop skills in legal analysis and reasoning, legal research, problem-solving, and written and oral communication related to legal ethics and professional responsibility;
- × identify proper professional and ethical responsibilities lawyers owe to clients and the legal system;
- × recognize the trends that will influence the future of lawyers' work; and
- × employ professional skills needed to participate in the legal profession as a healthy, competent, and ethical attorney.

IV. Attendance Requirements

This course is in person. It is expected you will be on-time, and prepared to begin when the class starts. In the event we have to move the class online, the course will be offered via Zoom. The course Zoom link will be provided to you via email in the event of such occurrence, and is not to be shared with anyone who is not registered for this course. During class, all class members are to have their videos on for the entire class session. If for some reason a student's video cannot be turned on for all or part of a class meeting, the student must contact and receive permission from me in advance of that specific class meeting to be able to attend class without video.

V. Attendance Policy

The Law Center requires that students attend a minimum of 80% of a course's class sessions. Therefore, you are permitted no more than five (5) absences. Any student missing more than five class sessions may be dropped from the course. Although I will take attendance at the beginning of each class session, students are responsible for keeping track of their absences. Students who arrive late, leave early, are unprepared, or do not have their video on will be marked absent.

VI. Class Preparation and Participation

All students are to read and be ready to discuss the entire assignment for each class meeting. Reading the Model Rules for each assignment includes reading the commentary accompanying each Model Rule. Although the assigned problems appear in the casebook before the principal cases and textual materials, ***I strongly encourage you to answer the assigned problems after you have read the assigned cases and textual materials.***

I will call on students at random, although I may announce a two- or three-student panel at the beginning of each class. If I call on you and you are unprepared, you will be marked absent.

The second time I call on you, your final grade for the course may be reduced by 1/3. The third time you are unprepared, you may be dropped from this course.

VII. Wellness Assignment

You must complete the Wellness Assignment. You will maintain a Three Good Things Journal. More details about the Wellness Assignment (Good Things Journal) will be posted on the course website after the beginning of the semester. This wellness assignment will be graded on a pass/fail basis. If you pass, you earn full credit; if you fail, you receive a zero. The Wellness Assignment will constitute 10% to your final grade in this course.

VIII. Final Examination

Your final examination will be an **in-person closed book** exam. The date and time will be posted to the course description page. The exam will likely be comprised of multiple-choice questions and essay questions. Further details about the final exam will be provided to the class after the beginning of the semester. The final examination will account for 90% of your final grade in this course.

IX. Final Grade

Your final grade for this course will be calculated as follows:

- x Wellness Assignment (10%) and
- x Final Examination (90%).

X. Professionalism

I respect your time and education by doing my best to start and end our class meetings promptly. Doing so requires that you are ready to begin at the time that class is scheduled to start. Please be prompt. Any failure to exhibit professionalism may result in a reduction of your class participation score or more severe sanction.

XI. Multi-State Professional Responsibility Examination (the “MPRE”)

Studying for or taking the Multi-State Professional Responsibility Examination (“MPRE”) is not related in any manner whatsoever to the requirements for or successful completion of this course. The MPRE is required for admission to the bar in most states, including Texas. Although this Professional Responsibility course will undoubtedly provide useful background for the MPRE, this course is *not* an MPRE preparatory course. I provide the following MPRE

information to you merely as a courtesy. I strongly encourage you to take an MPRE review course prior to taking the MPRE. For more information concerning registration for the MPRE, you should visit <http://www.ncbex.org/exams/mpre/>.

XII. Diversity, Inclusion, and Wellness

My classroom is an inclusive learning space. At UHLC, we are committed to ensuring inclusive online and classroom learning spaces, where you will be treated with respect and dignity and where everyone is provided the equitable opportunity to participate, contribute, and succeed. In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status, or other diverse identities that one may bring to class. Our class is richer for this diversity.

Inclusive learning spaces facilitate the innovation and creative thought that enhance student success. This success arises from the participation, support, and understanding of you and your colleagues. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we are all expected to engage respectfully and with regard to the dignity of all others. If you feel like your class performance is negatively impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Student Services is an excellent resource and can be reached at 713-743-2182. Finally, I encourage you to bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Law Center's Diversity and Inclusion committee. The D&I committee's charge includes "[building] on the Law Center's strengths as a diverse and inclusive environment." You can contact the committee directly at UHLCD&I@uh.edu.

Your suggestions are encouraged and appreciated. Please let me know ways to improve the effectiveness of this course for you personally, for other students, or for student groups.

XIII. Preferred Name/Pronouns

I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of your preference early in the semester so that I may make a notation to my records.

XIV. Honor Code

The UHLC [Honor Code](#) applies to all aspects of my class. You are responsible for knowing all Honor Code provisions and for complying with them. Feel free to ask me if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course.

XV. Counseling and Psychological Services

[Counseling and Psychological Services](#) (“CAPS”) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “[Let’s Talk](#)” program, a drop-in consultation service at convenient locations and hours around campus.

The Texas Lawyers’ Assistance Program (“TLAP”) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. [TLAP’s website](#) includes a page with links to sources about mental health that are of interest to law students.

XVI. Anti-Discrimination and Sexual Misconduct Policies

UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University System’s [Anti-Discrimination Policy](#) and [Sexual Misconduct Policy SAM](#).

Please be aware that under the Sexual Misconduct Policy, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the Sexual Misconduct Policy extends to alleged conduct by University employees and students.

XVII. Reading Assignments

Below are overviews of topics I plan for us to cover as a class, the corresponding learning outcomes, and the required reading assignments for each week. These reading assignments are also posted on the course webpage. I plan for us to cover one assignment per class period. However, there will inevitably be days where it will take us more than one class period to cover one 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. However, if you miss a class, check with a classmate or me to learn whether we completed the entire assignment on the day you missed class. *It is your responsibility to keep track of what assignment number we are on throughout the semester.*

Reading references below are to:

- × PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH (4th edition) casebook (“CB”);

- × 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.”); and
- × [ABA Model Code of Judicial Conduct](#) (“CJC”).

Unit One: Introduction; Lawyer Regulation and the Disciplinary System

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
- × Begin contemplating how as a lawyer a person should, would, or could respond to ethical dilemmas.

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

- CB:** pp. 1-38 (including problems 1-1 to 1-15)
- MR** 8.1

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

- CB:** pp. 38-48, 56-61 (including problems 2-1 to 2-6)
- MRs** 1.8(a), 5.3, 5.4, 5.5, 5.7, 8.3, 8.4, and 8.5

Unit Two: Lawyer-Client Relationship

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
- Identify the elements of lawyer malpractice actions

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

- CB:** pp. 61-88 (including problems 2-7 to 2-11)
- MRs** 1.1, 1.2(b-d), 1.13, 1.16, 3.1, 6.2, Rest § 14; FRCP 11

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

- CB:** pp. 88-117 (including problems 2-12 to 2-19)
- MRs** 1.1, 1.2(c), 1.3, 1.4, 1.8(h), 1.18, 5.1, 5.3, 8.4, 8.5, Rest § 48; U.S. CONST. amend. VI.

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

- CB:** pp. 117 to top of p. 126; bottom of p. 127 to 143 (including problems 2-20 to 21-24)
- MRs** 1.2, 1.3, 1.14, 1.16(a), 2.1, 3.2, Rest § 21-22, U.S. CONST. amend. VI.

Unit Three: The Business, Technology, and Marketing of Legal Services

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
- 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. 145-147; 152-157; 161-168; 177-189 (including problems 3-1 to 3-5)
- MRs** 1.1, 1.5, 7.1, 7.2, 7.3, 7.4, and 7.5

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

- CB:** pp. 189-199; 202-206; 211-215 (including problems 3-6 to 3-13)
- MRs** 1.4(b), 1.5, 1.8(a, d, e, f, & i), 1.15, 2.1, 7.1; Rest §§ 18, 35

Unit Four: Attorney-Client Privilege and Confidentiality

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
- 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. 231-260 (including problems 4-1 to 4-4)
- MRs** 1.6, 1.13(f), Rest §§ 68, 69, 70, 72, 73, FRE 501-502, FRCP 26

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

- CB:** pp. 265-276; 279-286 (including problems 4-5 to 4-8)
- MRs** 1.6, 1.13(f), 3.4(a), 4.4, Rest § 71, 73, FRE 502

Assignment #10 – Duty of Confidentiality: Scope and Exceptions

- CB:** pp. 286-309 (including problems 4-9 to 4-14)
- MRs** 1.1, 1.6, 1.9, 1.18

Unit Five: Conflicts of Interest

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 permitted when a positional conflict of interest exists
- Evaluate the enforceability of a prospective conflict of interest waiver
- Recognize with 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 interest
- Evaluate when representation is permitted where a conflict exists between a client's interests and a lawyer's interest
- Identify imputed conflicts of interest

Assignment #11 – Conflicts of Interest: Concurrent Conflicts

- CB:** pp. 311-339 (including problems 5-1 to 5-9)
- MR** 1.7, Rest § 14

Assignment #12 – Concurrent Conflicts: Positional Conflicts; Personal Conflicts

- CB:** pp. 339-349 (including problems 5-10 to 5-14)
- MRs** 1.7, 1.8, 3.7

Assignment #13 – Conflicts of Interest: Successive or Former Client Conflicts; Government Lawyers

- CB:** pp. 349-364 (including problems 5-15 to 5-18)
- MRs** 1.9, 1.10, 1.11 and 1.12

Assignment #14 – Conflicts of Interest: Imputed (Vicarious) Conflicts; Conflicts in Criminal Cases

- CB:** pp. 364-380 (including problems 5-19 to 5-25)
- MRs** 1.9, 1.10, 1.11 and 1.12

Unit Six: Lawyer Duties to the Court and Third Parties

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
- Analyze whether a lawyer must report misconduct by other lawyers under Rule 8.3

Assignment #15 – Lawyer’s Duties to the Court

- CB:** pp. 381-403 (including problems 6-1 to 6-9)
- MRs** 1.6, 3.1, 3.2, 3.3, FRCP 11

Assignment #16 – Communicating with Judges and Jurors; Trial Publicity

- CB:** pp. 403-423 (including problems 6-10 to 6-15)
- MRs** 3.4, 3.5, 3.6, 8.2, 8.4

Assignment #17 – Criticism of Judges; Civility; Opposing Parties; Unrepresented Persons

- CB:** pp. 423-450 (including problems 6-16 to 6-21)
- MRs** 4.1, 4.2, 4.3, 4.4, 8.4(a)

Assignment #18 – Duties Regarding the Law and the Legal Profession

- CB:** pp. 450-471 (including problems 6-22 to 6-29)
- MRs** 1.2(d), 1.6, 1.13, 4.1, 4.4(a), 5.1, 5.2, 5.6(b), 8.3, Rest § 56, 17 CFR § 205 et seq.

Unit Seven: Unique Responsibilities of Prosecutors and Judges

Learning Outcomes

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

- Recognize the unique responsibilities and obligations of prosecutors/judges
- Analyze a prosecutor's decision to charge under Rule 3.8
- Evaluate whether a prosecutor has satisfied the duties to the accused
- Understand judicial recusal standards and the process for seeking recusal

Assignment #19 – Prosecutorial Ethics

- CB:** pp. 473-481; 490-493; 499-501; 507-518 (including problems 7-1 to 7-5)
- MR** 3.8

Assignment #20 – Judicial Ethics

- CB:** pp. 518-526; 541-551 (including problems 7-6 to 7-12)
- Review the [ABA Model Code of Judicial Conduct](#)

Unit Eight: Special Topics in Professional Responsibility

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
- Discuss special obligations of lawyers to the public, including pro bono service

Assignment #21 – Competing Visions of Professional Morality: Feminist; Racial Justice; Special Privileges and Responsibilities: Pro Bono Work; Understanding Implicit Bias; Mental Health and the Legal Profession

- CB:** pp. 578-584; 604-619; 679-680; 694-696; 699-701 (including problems 8-24 to 8-28; 9-29; 9-32)
- MR 6.5**