

Professional Responsibility – Problems from Practice

Course Description

The course is concerned with the law governing lawyers, particularly the rules of ethics, but also such topics as admission to the bar, malpractice, the attorney-client privilege, and the history, structure and current trends in the legal profession. Instead of reading appellate decisions, we will work on about forty problems, most of which are based on real situations that lawyers faced. I will provide you with the relevant legal framework (most importantly, the Rules of Professional Conduct and the materials in the textbook) and then ask you to step into the shoes of a lawyer who has to make a critical decision, often caught between conflicting loyalties. Class discussions will explore and evaluate the legal, ethical and strategic justifications for each possible course of action. After the discussion of each problem, I will reveal what happened in the real case.

Course Goals and Student Learning Outcomes

I. Goals

These are the skills that I hope you will pick up or improve upon this semester:

1. **Develop ethical antennae.** I hope that this course will help you to recognize when something in your future work requires you to pause and do some ethics research before beginning or continuing to work on the problem at hand. Suppose you are in your fourth year of practice at a law firm or prosecutor's office, and you are asked to work along with several other people on a proceeding against Multinational Packaging Corporation. That name rings a bell. After your second year in law school, you had a summer job at a law firm that represented Multinational Packaging, which was suing a competitor on a matter different from the current issue, and you wrote a memo on the issue of personal jurisdiction in that case. The fact that this situation raises an "ethical" question is not intuitive.

2. **Learn what conduct is usually required, forbidden, or left to your discretionary judgment . . . and where to look to find out.** Once you recognize that a problem raises ethical issues, it is almost always a good idea to do some research in applicable ethics codes, statutes, case law, bar opinions, and other sources to obtain some guidance about what to do about it. But it's a good idea to know something about the profession's norms before you begin that research; familiarity with the substance of the law governing lawyers will help you to know where to look (as well as helping you to spot the ethical issues). I hope that by the end of this course you will be sufficiently familiar with the main sources of ethics law, so that you can quickly find some relevant law.

3. **Discover your personal standards of professionalism.** As you will see, the ethics rules leave a great deal to the discretion of lawyers, both because the rules don't cover all situations and because many rules explicitly state that a lawyer "may" do something, without a lot of additional guidance. Perhaps this course will help you to figure out what you should do when

you are free to decide – especially in those difficult situations in which two values, such as helping your client and being fair to other people, seem to conflict.

4. Develop perspective to assess critically the judgments that the rule-writers and courts have made. The law governing lawyers is neither obvious nor immutable. Many rules differ from state to state and country to country, and they change from decade to decade. I hope that studying professional responsibility will enable you to assess which rules are sound and which should be reformed. As lawyers, you may well have a role (particularly through bar committees in your state, but through other means as well) in interpreting, challenging, or amending some of the law of lawyering.

5. Learn how to protect your clients from yourself. There is an inherent conflict of interest in almost every lawyer-client relationship (not only those in which the lawyer is charging a fee). I hope that you will be able to become aware of situations in which you might be advantaging yourself (or a cause in which you believe) to the detriment of a client, or of situations in which you might deceive a client to make yourself look good (for example, to hide a mistake or to justify a higher fee).

6. Get a leg up on staying out of jail or losing your license. This is a pretty modest goal, and you might think you don't need a course in professional responsibility to achieve it. But a great many lawyers, including graduates of this law school, have gotten into serious trouble that they might have avoided if they had taken professional responsibility more seriously. In fact, the reason that this course became a standard, required course for law students was that so many lawyers were convicted of crimes in connection with the Watergate scandal of the Nixon administration.

7. Hone your skill at reading a dense code. This is not a “new” project for you; you began to learn how to read codes when you studied the Federal Rules of Civil Procedure. Here you will get more practice at this important legal skill – important because the importance of common law is fading as more and more law becomes codified. The Rules of Professional Conduct (the most important of many sources of ethics law) are not as dense as the Internal Revenue Code or many other statutes, codes or sets of rules that you will encounter, but the Rules and their Comments are sufficiently challenging to give you more practice at understanding the content of a code.

8. Become acquainted with the history, structure, satisfactions and flaws of the American legal profession. The last two chapters of the textbook (on how the legal profession is changing in the 21st century, and on the provision of legal services to people who can't afford to pay for them) are different from the other chapters; they will give you an overview of the nature of the legal profession today and how it is changing. Chapter 13 also includes materials about possible careers in law and about job satisfaction in those careers. When you read those chapters, I hope that you will come away with an understanding of some of the current problems and controversies facing the American bar.

9. Have fun. This isn't exactly a “skill,” but this is one of my goals and it is very important to me. I wouldn't want to teach a course that is tedious, trivial, or nannyish, although this course could be taught in any of those ways. My coauthors and I crammed our book full of stories and

surprises that I hope will entertain as well as enlighten you, and I would hope that our classroom hours will be engaging as well. To this end, the classes will focus on problems rather than appellate cases or recitations of doctrine, and we will have pictures, short audio and video recordings, small group discussions, and lots of polling in addition to plenary discussions of the problems. Also, nearly all of the problems are based on situations that a lawyer actually faced, and you will get to hear the often-fascinating stories of what happened in the real cases. I hope that these features enliven the course for you.

I welcome your feedback on these goals and on any other aspects of the course.

II. Anticipated learning outcomes

I hope that by December, you will be able to do these things:

1. Be able to recall and discuss the key aspects of the law governing lawyers, or at least how to find the relevant law and understand what you discover. The most important sources are the Model Rules of Professional Conduct (though you should be aware that in practice, your state may have adopted some variations of some of those Rules), but you should also be familiar with some of the other sources discussed in Chapter 2 of the text. I don't expect you to have memorized this body of law in detail, but you should know its basic structure and concepts—well enough (a) to be able to find the relevant law when you encounter an ethical issue in practice and (b) with a little extra study of those rules that we don't cover in the course, pass the MPRE.
2. Recognize when a situation that arises or could arise in practice presents an ethical issue, so that you don't blunder into trouble (as some of the lawyers we will learn about have done). You should, of course, not only be able to see that there is an ethical issue but also be able to articulate what kind of problem it is so that you can research the relevant law.
3. In situations that confront you with conflicting loyalties (e.g., between loyalty to two different clients, between a client and a court, or between a client and your own reputation in your community), be able to explain the nature of the conflict and the pros and cons of each possible action you might take.
4. At least with some of the rules and doctrines, be able to say why the existing standard is ideal, or if it is not ideal, how it could be improved.