



NATIONAL PARALEGAL COLLEGE

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Professional Responsibility and Legal Ethics

PLG-109

Syllabus and Course Guide

The Crestpoint Professional Responsibility and Legal Ethics course is a pre-recorded class. This means that all lectures will be made available at the outset of the class. The student should listen to all 15 lectures at his or her convenience.

The assessments for this course include:

- 10 “short” assignments
- 2 research paper
- 2 examinations

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work.

INSTRUCTORS:

Instructor: Stephen Haas (shaas@crestpoint.edu)

COURSE DESCRIPTION:

Anyone who works in the legal profession, whether an attorney or a paralegal, must have a fundamental understanding of the professional codes of conduct and laws dealing with the ethical obligations of members of the legal profession. This course covers the basic principles governing the ethical practice of law for both lawyers and paralegals. In addition, it provides students with the necessary tools for identifying and resolving ethical problems and gives practical tips to implement in everyday practice. The areas that will be covered in this course include the regulation of attorney and paralegal conduct, confidentiality, the unauthorized practice of law, conflicts of interest, the handling of client funds, advertising, billing, fee splitting, disciplinary procedures and malpractice. Although this course will provide students with an understanding of the universal concepts of professional responsibility, each jurisdiction

has its own minor variations on these concepts. Therefore, students are also encouraged to explore their local rules of professional conduct.

COURSE OBJECTIVES:

At the completion of this course, the student should be able to:

- Research and apply the Model Rules of Professional Conduct.
- Apply the distinction between “practicing law” and performing tasks permitted to a paralegal in order to avoid “unauthorized practice of law.”
- Determine what client information is protected by the attorney-client confidentiality rule.
- Describe when, to whom, and in what manner confidential client information may be disclosed.
- Determine the point at which an attorney-client relationship has been formed.
- Describe the duties of zeal and loyalty that legal professionals owe to their clients.
- Apply the “conflict of interest” rules.
- Apply the ethical rules regarding the “business of law”; i.e., promotion and advertising.
- Define contingency fees and determine whether they are appropriate in a given situation.
- Describe the rules governing proper communication with the presiding judge.

READING ASSIGNMENTS:

All reading assignments refer to the Crestpoint courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. There are also video lessons recommended throughout this syllabus. There are highly recommended to assist with learning the course materials.

In addition to the courseware’s electronic form, you may also view/print out a PDF version of the courseware that includes:

- 1) The courseware
- 2) Selection sections of the Model Rules of Professional Conduct that will be discussed in class
- 3) All lectures slides

See the course materials page for the link.

School Virtual Library

All Crestpoint students are encouraged to take advantage of the Crestpoint virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

The Crestpoint virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance are available on the lower right portion of the default login screen for Lexis Advance.

Crestpoint students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

WRITTEN ASSIGNMENTS:

At the outset of the course, the course assignments will be posted on the “Assignments and Exams” page.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *Crestpoint Student Handbook*.

To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.

Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not on the appropriate order	Answers most of the questions in the exercise but not completely and/or not on the appropriate order	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment
Demonstrates Understanding Of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the students comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all point and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

EXAMINATIONS:

Examinations will be posted on the Crestpoint website when indicated on the syllabus of the course. The examinations may consist of multiple choice and/or short essay questions. The 2 examinations will cumulatively count for 30% of the student's course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the Crestpoint website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each open ended examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student's answer comes to an "incorrect" conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student's knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student's answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

CRESTPOINT ACADEMIC ADVISOR

Each Crestpoint student is assigned an academic advisor upon enrollment. Your academic advisor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your academic advisor upon enrollment. If you have not received such an email or do not know who your academic advisor is, please contact Anne Lewis at anne@crestpoint.edu.

CRESTPOINT PLAGIARISM POLICY

All work done by Crestpoint students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the Crestpoint plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
 - a) putting quotation marks around the quoted material;
 - AND
 - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the Crestpoint plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, Crestpoint students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database.

Policy on the use of Artificial Intelligence in the completion of academic assessments

AI (artificial intelligence) resources such as ChatGPT and Bard can be useful in a number of ways. However, it can also be abused, as students may be tempted to use AI-generated content in place of the work needed to build the skills necessary to complete their academic programs.

Students are expected to submit substantially their own work product. To the extent student assessments are copied and pasted from AI platforms, they must be framed by quotation marks or block quotes with appropriate citations, just as though they were citing any other Internet source. Submitting work copied from AI sources without attribution is plagiarism and will be dealt with accordingly.

Submitting content generated by AI with proper quoting and attribution is not plagiarism. However, heavy use of AI-generated content in an assessment may show lack of original work and grading will reflect that. At the grader's discretion, assignments composed substantially of AI-generated content will be awarded little or no academic credit.

For more information regarding the Crestpoint Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the Crestpoint Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

COURSE GRADES

The following formula will be used to calculate final grades

$$(Cumulative\ exam\ scores\ x\ .75) + (cumulative\ weekly\ discussion\ x\ 5) + (assignment\ points\ x\ 18.75) = raw\ score$$

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) may be deducted for each missed weekly interaction.

Extra credit may be available for certain in-class activities, high class participation and high message board participation, as may be announced by the instructor. Penalties for missed weekly interactions and/or for extensions are applied at the discretion of the instructor and/or the administration of Crestpoint.

The following conversion chart is then applied based on the total raw points you have earned:

>470	=	A+
440-469	=	A
415-439	=	A-
390-414	=	B+
360-389	=	B
335-459	=	B-
310-334	=	C+
280- 309	=	C
255-279	=	C-
225-254	=	D
<225	=	F

All examinations and assignments are due no later than Sunday, December 29, 2024 at 11:59 PM EASTERN TIME.

Lecture and Reading Assignments Schedule

Class 1

Introduction to the Regulation of the Legal Profession This class will first introduce the various sources of ethics laws and rules, which may differ from state to state (our course will focus on rules of general applicability). Next, we will explore the essentials of how and why a legal professional must report misconduct. We will discuss the types of discipline an ethical lapse may trigger, such as sanction and disqualification. We will also focus on civil and criminal liability that can also result from actions that would also constitute legal ethics violations.

Courseware Reading:

Chapter 1: Introduction to the Legal Profession

- Introduction to Legal Ethics
- Sources of Ethics Law
- Reporting Misconduct
- Discipline, Sanction, Disqualification
- Civil and Criminal Liability

Case law and Ethical Rules:

Model Rules of Professional Conduct Rule 5.3

As a legal assistant, this rule will have a profound impact on your practice. This rule provides that a law firm or a lawyer has an ethical responsibility to properly supervise non-lawyer assistants. When reading this rule, remember that legal ethical rules do not technically apply to non-lawyers. Therefore, the rules have to put the onus on the attorney to make sure that his or her subordinates follow the ethical rules.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/regulation-of-the-legal-profession-module-1-of-5>

Class 2

In this class, we will explore the critical subject of what it means to be engaged in the “unauthorized practice of law” – what a non-lawyer can and cannot do regarding the practice of law. We will analyze the role of the paralegal vis a vis the role of a lawyer in a legal representation and discuss when the line between preparing documents and doing research and actually practicing law is crossed. In addition, we will touch on the management and supervision of a law firm in the context of the ethical rules and examine the supervisory rule that an attorney must assume with regard to a paralegal working under the attorney.

Courseware Reading:

Chapter 1: Introduction to the Legal Profession

- The Unauthorized Practice of Law
- The Management of Law Firms: Supervisors and Subordinates

Case law and Ethical Rules:

Faretta v. California, 422 U.S. 806 (1975)

In this case, the Supreme Court carved out an important exception to the unauthorized practice of law rules. The Court held that in a criminal case, the defendant has a constitutional right to defend him or herself. Although it may be a bad idea in practice, the Court held that the right to an attorney and the right to due process under the 5th and 6th Amendments allow a person to represent himself at trial.

Class 3: (Assignment/ Lexis walkthrough)

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

Class 4

This class will explore the duties that a legal professional owes to a client, including loyalty and advocating zealously, diligently, and competently. We will look at the limits the duty to act zealously, especially when they may conflict with the general responsibility to be honest to the court and even opposing counsel. In this vein, we will discuss the “advocacy” system adopted by the American legal system and compare it to the civil European system, in which the duty of zealous advocacy is much weaker. We will also discuss the essentials of safeguarding client property, and perhaps most importantly, how to handle a client’s money and the harsh consequences that can result from failure to do such in an appropriate manner

Courseware Reading:

Chapter 2: Duties to the Client and the Client’s Rights

- Loyalty, Advocating Zealously, Diligence, Competence
- Safeguarding Client Property

Case law and Ethical Rules:

Model Rules of Professional Conduct Rule 1.15

This critical ethical rule sets forth the requirements for safeguarding client property. This is an important rule to know and to follow because nothing will get an attorney disbarred faster than embezzling or even simply misappropriating client money; and nothing will get a legal assistant fired faster than sloppy management of client money.

Model Rules of Professional Conduct Rule 1.4 and comment 1

This rule lays out the important requirement that the attorney keep the client informed of the progress of the case. We will discuss the practical ramifications of this rule, such as how often the law firm and client should communicate, what information and developments on the case must be communicated to the client, etc.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/the-attorney-client-relationship-module-2-of-5/>

Class 5

In this class, we will examine the important question of which decisions during the course of a representation are to be made by the attorney and which decisions are reserved for the client. Generally, a client makes substantive decisions – whether or not to settle, for example - while a lawyer concentrates on strategy. We will discuss how the adversary system is furthered and at the same time, the search for the truth is safeguarded, by leaving some tactical decisions to the attorney, always keeping in mind that the client is, in fact, the “boss” of the representation.

Courseware Reading:

Chapter 2: Duties to the Client and the Client’s Rights

- What the Client Decides in a Case
- What the Lawyer Decides in a Case

Case law and Ethical Rules:

Model Rules of Professional Conduct Rule 1.2

This rule quickly summarizes what the lawyer decides in a case and what a client decides in a case. The client makes decisions that are substantive in nature, while strategy is usually left to the lawyer. Reading and knowing these rules is essential to a practice that represents individual clients in trials, especially when the client involved in the case might be somewhat less than completely cooperative.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/the-attorney-client-relationship-module-2-of-5/>
(first 3 sections)

Class 6

In this class, we will start by focusing on situations in which an attorney may or must withdraw from a representation. We will look at a key difference in the wording of the ethical rules, between the words “must withdraw” that sometimes appear in ethical rules, and the words “may withdraw,” which appear at other times in the rules. We will also focus on some of the key issues that must be kept in mind when an attorney withdraws from a case, such as maintaining confidentiality of the erstwhile client.

Courseware Reading:

Chapter 3: Duties to Others

- Withdrawal and Disqualification

Case law and Ethical Rules:

Model Rules of Professional Conduct Rule 1.16

Another important ethical rule, this rule explains when an attorney may or in some cases must withdraw from a case. We will use these rules to analyze various situations that are in the “grey area” of what type of case a lawyer may or may not take.

Class 7

Tonight we will consider the duties that a legal professional owes, particularly to the adversary and to the court. For example, the rules always require “candor to the tribunal.” Without it, truth cannot be ascertained, and the system fails. We will discuss the delicate balancing act that must be performed by the legal professional and one balances the responsibility to zealously advocate for one’s client and the responsibility of candor a legal professional owes to one’s colleagues and to the court.

Courseware Reading:

Chapter 3: Duties to Others

- Duties to the Opposing Party
- Duties to the Court

Case law and Ethical Rules:

Nix v. Whiteside, 475 U.S. 157 (1986)

This Supreme Court case dealt with the very interesting issue of whether an attorney may put a client on the witness stand, when he or she knows that the client will lie. It is generally a client’s decision as to whether to testify; in fact, a client has a constitutional right to testify on his or her own behalf. However, an attorney may not call a witness who will lie on the stand. So, what can an attorney do when a client insists on lying on the stand? That is the balancing test that the Court here undertook. We will discuss the results of the case and we will discuss the practical ramifications of the case regarding this all-too-common scenario.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/duties-to-attorneys-the-court-and-other-parties-module-3-of-5>

Class 8

The rules regarding confidentiality, attorney/client privilege, and the work product doctrine are among the most critical in the litigation process and in the practice of law in general. It is crucial to the representation of a client that a legal professional know what may be disclosed to whom and what must be kept confidential. In this class, we will begin our discussion of the confidentiality rules. We will discuss the two primary doctrines relating to the protection of client information: the rule of attorney-client confidentiality and the evidentiary attorney-client privilege.

Courseware Reading:

Chapter 4: Confidentiality

- Confidentiality
- Attorney/Client Privilege

Case Law and Ethical Rules

Model Rules of Professional Conduct Rule 1.6

This rule sets forth the ethical rules regarding attorney-client confidentiality. The rule carves out the exceptions to the rule as well. This is, of course, the starting point, for any discussion of attorney-client confidentiality.

Swidler & Berlin v. United States, 524 U.S. 399 (1998)

This case, which involved an investigation into the White House travel records, dealt with the question of whether attorney-client confidentiality rules survive the death of the privilege holder. We will discuss the policy reasons that went into the development of the confidentiality rules in the first place. Also, we will analyze whether those reasons mandate extending that rule beyond the death of the privilege holder.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/the-attorney-client-relationship-module-2-of-5/>
(last 3 sections)

Assignment 1 can be completed at this point.

The midterm exam will be posted at this point.

Class 9

In this class, we will first discuss the “work product doctrine,” a doctrine which protects certain proprietary information produced during legal representation from being discoverable by the adversary. This rule often inspires heated debates regarding what evidence is discoverable and what evidence is protected. A case’s outcome may hinge on whether a particular document is protected by these rules. Next, we will discuss other relationships that are deemed by the law to be worthy of protection to the extent that the law will prevent confidential information produced in the course of those relationships from being introduced as evidence in a court room.

Courseware Reading:

Chapter 4: Confidentiality

- The Work Product Doctrine
- Other Privileged Relationships

Case Law and Ethical Rules

Hickman v. Taylor, 329 U.S. 495 (1947)

In this landmark Supreme Court case, the Court announced the “work product” doctrine. Under that rule, a litigant and her or her attorneys cannot be forced to turn over notes and opinions prepared by that party in anticipation of litigation. We will discuss the reasons for the doctrine, how it operates and, most importantly, what exceptions exist and why they exist.

Upjohn Co. v. United States, 449 U.S. 383 (1981)

This case dealt with a critical issue in the corporate world regarding the attorney-client privilege. Namely, exactly who in a corporation is considered a “client” of the corporate attorneys? Under the old rule, under the “control group” of the corporation could count on its statements to corporate attorneys being protected by the attorney-client privilege. What are the problems with that rule? When reading this case, think about why the attorney-client privilege exists. Then think about applying that logic to this question and think about whether you agree with the way the 6th Circuit went about doing to.

Class 10

Over the course of their careers, legal professionals may represent clients involved in matters that involve or may compromise the representation of other clients. Rules have been drafted to govern when a lawyer is disqualified from representing a client in a particular case due to a conflict of interest. An attorney who has served on a litigation team on behalf of a corporate client in one matter may be barred from representing that client's adversary in another matter. We will also discuss when an entire firm can be disqualified from representing a client because of a conflict that one of its members may have. Finally, we will discuss what a former government employee must consider if she intends to use in the private sector the legal skills and contacts she gained while working for the government.

Courseware Reading:

Chapter 5: Conflicts of Interest

- The Limits to Representation
- Former Clients Rules
- Imputed Disqualification
- Government Service and Going Private

Case Law and Ethical Rules

Model Rules of Professional Conduct Rule 1.7

This ethical rule gives the Model Rules' guidelines for handling conflicts of interest that arise between different current clients. This must be read as a starting point for the discussion of conflicts of interest.

Model Rules of Professional Conduct Rule 1.9

This ethical rule gives the Model Rules' guidelines for handling conflicts of interest that arise between different former clients. Note that the rules are less strict with regard to former clients because the attorney is not conflicted with two current duties of loyalty.

Model Rules of Professional Conduct Rule 1.11

This rule sets forth the former clients rules as they relate to legal professionals who worked for the government and are now joining the private sector. Because of the sensitivity of government information that legal assistants are privy to, the ethical rules have a special category for people in government who transfer to the private sector.

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/conflicts-of-interest-module-4-of-5>

Class 11

This class will explore what kind of business an attorney may engage in with a client. We will discuss what rules must be followed if a lawyer drafts an instrument (particularly a will) that includes a gift to the lawyer. Furthermore, we will discuss the rules an attorney must follow if he is on a media-worthy case and/or if he plans to negotiate for literary or media rights. At the end of the class, we will cover one of the thornier issues in the study of conflicts, regarding corporate representation. When is a legal professional representing the corporate entity, and when is she representing the employee?

Courseware Reading:

Chapter 5: Conflicts of Interest

- Doing Business with Your Client
- Drafting Yourself a Gift
- Negotiations for Literary or Media Rights
- Providing Financial Assistance
- Other Conflict of Interest Issues
- Conflicts in corporate representation

Case Law and Ethical Rules

Model Rules of Professional Conduct Rule 1.8

This rule continues with the conflict of interest rules by dealing with a host of other attorney-client activities. These include soliciting gifts from a client, doing business with a client, and even having sexual relations with a client. These rules are, of course, critical to know and follow so as to avoid being subject to discipline for actions that may not seem inherently wrong, but are nevertheless unethical.

Assignment 2 can be completed at this point.

Class 12

In this class, we will begin our discussion of the “business” aspect of running a law practice. Specifically, we will devote this class to a discussion of attorney’s fees. We will discuss what makes a fee “reasonable” and the prohibition against charging unreasonable attorney’s fees. In addition, we will look at the all-important issue of fee splitting; whether with another attorney or with a non-lawyer. We will examine the circumstances under which fee splitting is ethical and some alternatives in cases when fee splitting is unethical.

Courseware Reading:

Chapter 6: “Lawyering”

-Fees

Case Law and Ethical Rules

None

Video Lesson:

<https://lawshelf.com/videocoursesmoduleview/the-business-of-law-module-5-of-5>

Class 13

Here, we will examine the all-important issue of how a law firm may and may not solicit clients. We will discuss the strict rules against misleading advertising and in general, the rules governing attorney advertising. We will look at the freedom of speech concerns that go into shaping the attorney advertising rules. Finally, we will focus on the rules governing in person solicitation, including the prohibition against the practice sometimes referred to as “ambulance chasing” which tarnishes the reputation of the legal community.

Courseware Reading:

Chapter 6: “Lawyering”

-Advertising

-Solicitation of clients

Case Law and Ethical Rules

Model Rules of Professional Conduct Rules 7.1 and 7.2

Suggested reading: Comments to Rules 7.1 and 7.2

These Model Rules deal with how a lawyer communicates his services. While lawyers are entitled to the First Amendment's freedom of speech, they must be careful to communicate honestly and not mislead clients or potential clients.

Model Rules of Professional Conduct Rule 7.3

Suggested reading: Comments to Rule 7.3

This Model Rule deals with soliciting clients. It specifies who a lawyer may or may not solicit from in person. The rule is important to protect vulnerable people from aggressive lawyers.

Goldfarb v. Va. State Bar, 421 U.S. 773 (1975)

It has been a longstanding practice that bar associations and ethical rules dictate how much an attorney or legal professional may charge for his or her services. In addition to setting maximum prices, the rules often set minimum prices as well, to ensure quality of service. In this case, such price fixing came under attack on antitrust grounds. The Court had to balance the interest of regulating the legal profession to ensure competent service to clients against the rules that ensure a free market.

Fla. Bar v. Went for It, 515 U.S. 618 (1995)

This case deals with attorney advertising. Advertising by attorneys has long been frowned upon by the profession. However, it is well established that a blanket prohibition against attorney advertising is unconstitutional under the First Amendment. This case discusses the limits of attorney advertising regulation. We will use this case to discuss the rules regarding attorney advertising and the policy reasons behind such rules.

Class 14

This class will begin our analysis of the responsibilities of an attorney in communicating with various parties involved in a representation. Tonight, we will focus on communication with judges and juries. We will look at the “ex parte communication” rule and when such communications are allowed. Also, we will discuss the strong prohibition against communication with jurors and the criminal laws (jury tampering laws, obstruction of justice, etc.) that also play into those rules.

Courseware Reading:

Chapter 7: Judges, Jurors, Witnesses, and Courtroom Decorum

-Communication with Judges: Avoiding Impropriety and Performing Impartially

-Communication with Jurors

Case Law and Ethical Rules

None

Class 15

Our final class will continue with our analysis of the responsibilities of an attorney in communicating with various parties involved in a representation. Tonight we will focus on communications with witnesses and even with opposing parties. The possibility that an opposing party may be intimidated by opposing counsel has led to the enactment of strict rules regarding communications with opposing parties. Finally, we will discuss the general rules of courtroom behavior, including the types of statements an attorney may and may not make during the course of a court proceeding.

Courseware Reading:

Chapter 7: Judges, Jurors, Witnesses, and Courtroom Decorum

-Communication with Witnesses

-Courtroom Decorum

Case Law and Ethical Rules

Model Rules of Professional Conduct Rule 3.6

This Model Rule deals with communication with the media regarding a pending trial. Once again, it is the First Amendment's freedom of expression and freedom of the press that must be balanced against the interests of holding a proceeding that does not turn into a media circus. This is especially important in criminal cases, where the interest of the defendant in having a fair trial is also paramount.

Model Rules of Professional Conduct Rules 4.2 and 4.3

These are important rules that relate to communication with a party by a legal professional that represents the opposing party. Since the right to an attorney is considered so important, the rules assure the right to counsel by preventing opposing attorneys from contacting a party except through his or her attorney. The rules differ slightly based on whether the contacted party is represented by counsel. We will discuss these rules and, based on them, what the best course of action is when contacting an opposing party.

Suggested reading: Comments to Rules 3.6, 4.2 and 4.3

The final exam will be posted at this point.

All examinations and assignments are due no later than Sunday, December 29, 2024 at 11:59 PM EASTERN TIME.