



## **NATIONAL PARALEGAL COLLEGE**

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### **Professional Responsibility and Legal Ethics**

#### **PLG-109-2006**

#### **Syllabus and Course Guide**

The NPC Professional Responsibility and Legal Ethics course meets 15 times over the course of the 10-week term in the NPC interactive classroom. Each session consists of approximately 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

Unless otherwise noted, class starts at 7:00 PM Eastern Time on Tuesdays and Thursdays, beginning on Tuesday, June 2, 2020.

Attendance at class will satisfy the weekly interaction requirement. All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been taken pursuant to the NPC Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken or granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 30 days from the date of the original deadline.

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. It is also critically important that students realize that:

1. A grade of “Incomplete” is the same as an “F” and is a failing grade.
2. A grade of “Incomplete” will result in a reduction in the student’s grade point average.

3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.
4. Two consecutive Incompletes may subject the student to dismissal from the college under NPC's chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from NPC.
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per NPC policy. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

## **INSTRUCTORS:**

Instructors:

Stephen Haas ([shaas@nationalparalegal.edu](mailto:shaas@nationalparalegal.edu))

Grader:

Susan Israel ([susan@nationalparalegal.edu](mailto:susan@nationalparalegal.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 ethical rules by utilizing the American Bar Association's "Model Rules of Professional Conduct."
- Access the rules of professional conduct that are applicable in any jurisdiction throughout the country.
- Compare the role of the paralegal vis a vis the attorney that he or she is working under.
- Apply the distinction between "practicing law" and performing tasks permitted to a paralegal in order to avoid "unauthorized practice of law."
- Describe the process through which a paralegal determines what client information is to be classified as confidential.
- Identify and 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.
- Define the various factors that constitute a "conflict of interest."
- Apply the ethical rules regarding the "business of law" including promotion and advertising.
- Assess whether a fee charged by a law firm is reasonable or an unethical overcharge.
- Describe the rules governing proper communication with the presiding judge.

## **READING ASSIGNMENTS:**

All reading assignments refer to the NPC 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.

**In addition to the courseware's electronic form, you may also order a book 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**

**You may order this book at: [www.freewebstore.org/npc-courseware-books](http://www.freewebstore.org/npc-courseware-books)**

## **School Virtual Library**

All NPC students are encouraged to take advantage of the NPC 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 NPC 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.

NPC also subscribes to the Library Information Resources Network (LIRN), which allows our students access to scores of databases containing hundreds of thousands of academic articles and publications. For research that is not legal in nature (for example, for business and general education courses), it is anticipated that students will use LIRN to access reliable academic sources for research papers. Online training in the use of LIRN resources is available here: [Library Information Resources Network](http://www.lirn.org).

NPC 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, five assignments will be posted on the “Assignments and Exams” page. The 5 assignments will cumulatively count for 40% of the student’s grade for the course.

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 NPC 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 about 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 *NPC 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)
<b>Thoroughness</b>	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
<b>Demonstrates Understanding Of the Assignment and has come to an appropriate conclusion</b>	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.
<b>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.)</b>	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.
<b>Organization</b>	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.
<b>Critical Thinking and Analysis</b>	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 NPC website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% 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 NPC 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 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.

*Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.*

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.

For more information on examinations, please see the *NPC Student Handbook*.

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

### **Early Assignment Submission Incentive Policy**

NPC encourages students to submit their assignments as early as possible. In order to facilitate early submissions, students are advised that in exchange for submitting assignments in the five six weeks of the course, they will be awarded the opportunity to re-do or fix up an assignment after it is graded in order to increase the grade.

The following limitations apply:

1. When resubmitting an assignment, a student will only be able to increase their grade to a maximum of 3 or by one full point, whichever is greater. For example, if a student submits an assignment within the first six weeks of the course and receives a 1.5 or a 2.0, the student may make corrections suggested by the instructor and can potentially raise the grade to a maximum of 3. A student who initially receives a grade of 2.5 may raise the grade as high as 3.5 with a resubmission.
2. A student may use this ability up to two (2) times per course.
3. Students are not guaranteed the maximum increase if their corrections do not merit such a change. A grader has the discretion to award a smaller or no increase if the student does not follow the graders feedback.

To resubmit an assignment under this policy, please contact the course grader.

**The early assignment submission deadline is Sunday, July 12, 2020 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

### **NPC STUDENT MENTOR**

Each NPC student is assigned a student mentor upon enrollment. Your student mentor 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 student mentor upon enrollment. If you have not received such an email or do not know who your student mentor is, please contact Anne Lewis at [anne@nationalparalegal.edu](mailto:anne@nationalparalegal.edu).



## NPC PLAGIARISM POLICY

All work done by NPC 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 it not used.

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

Under the NPC 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 NPC 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, NPC 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. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

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

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

## NPC COURSE MESSAGE BOARDS

All students are encouraged to post and participate in course message board discussions. The message boards are an excellent way to "meet" and communicate with other students and the

instructors, graders and mentors. To find the course message boards, click on message boards and scroll to the bottom.

## WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

- 1) Attend a live lecture and take and pass a short quiz given during class (where applicable)  
OR
- 2) Submit at least one assignment  
OR
- 3) Take at least one examination  
OR
- 4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student’s response (which is necessary only if the student does not attend a live lecture or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Sunday.

Any student who does not fulfill this requirement during a given week may receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to NPC and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Academic Support ([academicsupport@nationalparalegal.edu](mailto:academicsupport@nationalparalegal.edu)) as soon as possible.

***Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.***

## COURSE GRADES

The following formula will be used to calculate final grades

$$\text{Cumulative exam scores} + (\text{assignment points} \times 10) = \text{raw score}$$

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 NPC.

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

>474	=	A+
445-474	=	A
420-444	=	A-
395-419	=	B+
365-394	=	B
340-364	=	B-
315-339	=	C+
285-314	=	C
260-284	=	C-
230-259	=	D
<230	=	F

## OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders will run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance in and participation at these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

Please keep an eye on the course message boards to details as to when these will be held.

**All examinations and assignments are due no later than Sunday, August 23, 2020 at 11:59 PM EASTERN TIME; That's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

**Please see the end of this syllabus for a note on NPC course extensions policy!**

## **Lecture and Reading Assignments Schedule**

### **Class 1**

**Tuesday, June 2, 2020**

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.

## **Class 2**

**Thursday, June 4, 2020**

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

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.

**Assignment 1 can be completed at this point.**

## **Class 3: (Assignment/ Lexis walkthrough)**

**Tuesday, June 9, 2020**

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**

**Thursday, June 11, 2020**

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.

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.

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.

**EXAMINATION #1 will be posted at this point.**



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

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.

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

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.

**Assignment 2 can be completed at this point.**

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

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

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 6<sup>th</sup> Circuit went about doing to.

**THURSDAY, JULY 2: NO CLASS**

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.

**Assignment 3 can be completed at this point.**

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 4 can be completed at this point.**

**EXAMINATION #2 will be posted at this point**

**The early assignment submission deadline is Sunday, July 12, 2020 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

## **Class 12**

**Tuesday, July 14, 2020**

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

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**

Goldfarb v. Virginia State Bar

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.

Florida Bar v. Went For It, Inc.

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**

**Tuesday, July 21, 2020**

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



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.

**Assignment 5 can be completed at this point.**

**EXAMINATION #3 will be posted at this point.**

**All examinations and assignments are due no later than Sunday, August 23, 2020 at 11:59 PM EASTERN TIME; That's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

## **NPC EXTENSIONS POLICY**

**1) Extensions that conform to the rules below may be requested from the “Assignments and Exams” page on the NPC student website.**

**2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.**

**3) The maximum possible extension allowed under the NPC system are as follows:**

- **A student who has submitted one assignment or exam may take an extension of up to seven (7) days.**
- **A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).**
- **A student who has submitted three assignments or exams (or any combination) may take an extension of up to seven (7) additional days (21 days total).**
- **A student who has submitted four assignments or exams (or any combination) may take an extension of up to seven (7) additional days (28 days total).**
- **A student who has submitted five assignments or exams (or any combination) may take an extension of up to two (2) additional days (30 days total).**
- **No extensions of more than thirty (30) days beyond the deadline are possible for any reason at all.**

**4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you may be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.**

**5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for a**

*significant period of time.* Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty discussed above applies. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.