

WESTERN STATE UNIVERSITY COLLEGE OF LAW
READING ASSIGNMENTS – VERSION 1.0 (08/18/16)

COURSE: PROFESSIONAL RESPONSIBILITY
SECTIONS: 240-A
SEMESTER: FALL 2016
TIME: T 9:45 to 11:15 A.M.
TH 9:45 to 11:15 A.M.
PROFESSOR: MOHR

I. **REQUIRED TEXTS.** The required texts must be brought to all classes.

Thomas D. Morgan, Ronald D. Rotunda & John S. Dzienkowski, Professional Responsibility: Problems and Materials, Twelfth Edition [“CONCISE”] (Foundation Press 2014) (“**Casebook**”)

Richard Zitrin & Kevin E. Mohr, Legal Ethics: Rules, Statutes & Comparisons (LexisNexis 2016) (“**Selected Standards**”)

Kevin Mohr, Supplemental Materials for Professional Responsibility (Fall 2016) (“**Supplement**”).¹

You are expected to have read any rules or statute sections in the Selected Standards to which the problems or readings in the Casebook refer. The Supplement includes cases and state bar ethics opinions to be read for class. On the first class day, I will discuss other study materials to help you to prepare for class.

II. **COURSE COVERAGE & OBJECTIVES.** The field of legal ethics is an area of law that permeates all aspects of your professional life – and also a good part of your personal life. The purpose of this course is three-fold. *First*, the course will identify for you the substantive rules or standards of legal ethics, not only the minimum standards to which all lawyers must conform, but also professional conduct to which all lawyers should aspire. *Second*, by discussing factual situations that present ethics issues, the course is intended to expose you to the kinds of problems you will confront in your practice, and provide a basis for understanding how you might ethically resolve those problems. *Finally*, the course will help you prepare for the bar exam, not only the Multistate Professional Responsibility Examination (MPRE) which all prospective lawyers must take, but also the California Bar Exam, which tests professional responsibility every exam in the essay and performance parts of the exam. The course, however, is not a bar preparation course. Although it will help you prepare for that exam, the course’s primary objective is to educate you about practical ethical concerns, how to identify them and how to address them in your practice so that you will become and remain a trusted and respected member of the legal profession.

Unlike other states that have adopted some version of the *ABA Model Rules of Professional Conduct* (“Model Rules”),² California has its own set of rules, the *California Rules of Professional Conduct* (“California Rules”). California also sets out ethical duties for lawyers in the *Business & Professions Code*. In addition, provisions of other California Codes, including the Civil Procedure Code, Corporations Code, Evidence Code, Insurance Code, Penal Code, and Probate Code, directly govern lawyer conduct. Many of these authorities are set out in the Selected Standards or discussed in the cases and ethics opinions in the Supplement. You must also be familiar with the Model Rules as well as both sets of California regulations (rules & statutes), for a number of reasons. *First*, although most of you will practice in California and be subject to California’s rules and statutes, most California rules have analogous sections in the Model Rules. When construing a California ethical rule or statutory section, the California courts and California Bar often consider cases applying analogous sections in the Model Rules. *Second*, there are “gaps” in the California

¹ The Supplement will be available for purchase beginning the week of August 7, 2016.

² Until several years ago, there were still several jurisdictions that had rules based on the *ABA Model Code of Professional Responsibility* (“ABA Code”), which is included in your Selected Standards book. Now, however, no jurisdiction still has ABA Code-based rules. The last state to dispense with a set of rules based on the ABA Code was New York, which adopted a set of rules patterned on the Model Rules effective April 1, 2009.

Rules and statutes that the courts will sometimes fill by interpolating the relevant Model Rule. *Third*, when a lawyer's misconduct occurs in relation to a matter before a tribunal in another jurisdiction, or the principal adverse effect of the lawyer's misconduct is in another jurisdiction, that jurisdiction's ethical rules (which will be based on the Model Rules) will govern. See Model Rule 8.5; Cal. Rule 1-100(D). *Fourth*, most jurisdictions now allow lawyers in limited circumstances to practice in jurisdictions in which they are not admitted ("multijurisdictional practice" or "MJP"). See Model Rule 5.5. If you are authorized to practice in another jurisdiction under one of these MJP provisions, that jurisdiction's rules will control, even if you are not fully licensed in that jurisdiction.³ *Finally*, and least importantly, the MPRE is based primarily on the Model Rules.⁴ For all of these reasons, a lawyer practicing in California – whose conduct is generally governed by California Rules and statutes – must also be familiar with the Model Rules. We will consider both sets of professional conduct regulations in this course.

Legal ethics often involves "gray areas." Thus, the study of legal ethics is fact-specific. Class discussions will focus on the factual situations presented in each problem in the Casebook (supplemented with my hypotheticals), the governing rules, and the policies and rationales underlying the rules. The Casebook contains questions that identify the issues for each problem, creating a framework for class discussion. We will use those questions to supplement our understanding of the principles. I expect everyone in the class to have done the reading and be prepared to participate in class discussion each day. See *Classroom Participation, below*.

- III. **CLASSROOM PARTICIPATION.** Legal education is a cooperative venture. You must be prepared to participate in each class. You may have your final grade increased by up to two (2) grade points (e.g., from 2.5 to 2.7) to reflect *consistent and outstanding* contributions to class discussions. Please note, however, that there is a difference between being unprepared and being unable to answer a particular question. You will *not* be down-graded for venturing an incorrect answer. One of the best ways to learn how to think and analyze like a lawyer is to take chances, put your ego on the line, and venture a reasoned view of how a matter should be resolved. Nevertheless, each time you "pass" or are demonstrably unprepared, you will lose 0.1 grade points (out of 4.0) on your final grade. See *IV. Class Attendance, below*. Moreover, when you "pass" or are demonstrably unprepared, I will call on you in each succeeding class until you satisfactorily demonstrate you are prepared. Finally, coverage of reading assignments is fluid, i.e., we will not always cover all of the assigned material during the scheduled class periods. Often, we will carry over the assignments to the next week, particularly at the beginning of the semester. You will not be excused from being prepared because you might have read the material a week or two before and now claim that you "don't remember it."

MINIMAL PREPARATION FOR CLASS: ISSUE STATEMENTS. To be minimally prepared, I expect that for every assigned case in the Case Supplement, every student will have **typed** an issue statement (*minimum 12-point font – ARIAL font only*) that incorporates both facts and law. See *Case Briefs: How to Brief A Case (Mohr), Section II.D.*, on writing issue statements. Occasionally during the semester, I will collect these issue statements without warning. Failure to submit a satisfactory issue statement will result in your being downgraded 0.1 grade points (out of 4.0) on your final grade. Finally, bring **hard copies** of your issue statements to class; merely having them on your computer will result in your being given the **same 0.1 grade point reduction.**

If I ask for an issue statement, submit it with your **NAME** on the paper – **NOT** your exam number.

³ This would occur if, for example, you represented a corporation with a presence in many different states. By availing yourself of the limited opportunity to practice in the other jurisdiction, you are deemed to have submitted yourself to the jurisdiction and rules of that jurisdiction's lawyer regulatory authority. See PROBLEM 37.

⁴ I write "primarily," because the MPRE also covers issues such as formation of the attorney-client relationship, legal malpractice and Judicial Ethics that are not covered in any lawyer ethics code. To the extent the MPRE covers subject matter governed by a lawyer ethics code, however, the Model Rules apply.

A Note About The Supplemental Readings. A quick review of the Course Schedule, (see XVI. Course Schedule, below), will show that much of the supplemental reading is front-loaded, that is, most of the supplemental readings relate to Casebook problems that we will consider during the first half of the course. This is unavoidable because the early problems are “foundational,” i.e., they present legal ethics concepts that will recur throughout the course.

Confidentiality. For example, Problem 7, concerning the duty of confidentiality, will be central to nearly every problem we cover. The same can be said of Problem 4, which presents an overview of the attorney-client relationship; Problem 10, which addresses the duty of loyalty; and Problems 2 and 3, which address the duty of competence. In August 2003, the ABA made radical changes to its confidentiality rules, reflected in MR 1.6 and 1.13, which may have restricted lawyers’ ability to counsel clients. Seeing that the pendulum may have swung too far, the ABA in 2008 issued a Report and Recommendation on how the government should treat the attorney-client privilege of corporate clients. As we shall see, California maintains the strictest confidentiality duty for lawyers in the United States, which may conflict with federal law, i.e., SEC Regulations promulgated pursuant to the Sarbanes-Oxley Act. Which law should a California lawyer follow?

Conflicts of Interest and Ethical Screens. There is a substantial amount of reading concerning problems 9 to 15 (Conflicts of Interest). Conflicts of interest, which arise continually during law practice because of a lawyer’s core duties of confidentiality and loyalty, is a very active area of law with which both the courts and the Bar have wrestled. The direction in which California goes to resolve the issues arising from conflicts will have a substantial effect on the size and scope of legal practices in the coming decades. Note that, in addition to recently-decided cases, I have also included “foundational” cases in this area, i.e., cases which other courts repeatedly refer to in making their decisions (e.g., *SpeeDee Oil*, *Adams v. Aerojet-General*, and *City National Bank v. Adams*). Of particular note in the conflicts area is the ABA’s February 2009 revision of a rule that, if adopted in a jurisdiction, would broadly permit “ethical screening” of lawyers in private practice in the jurisdiction (ethical screening is already permitted for government lawyers under California case law.) That rule, Model Rule 1.10, can be found in the 2016 Selected Standards. Also with respect to Rule 1.10 (and Rules 1.11 and 1.18), the California Court of Appeal in 2010 decided an extremely important case on the controversial issue of ethical screening, *Kirk v. First American Title Ins. Co.*, which I have included in its entirety beginning at page 145 of the Supplement. Over half the jurisdictions now permit some degree of ethical screening in private practice.

ABA and State Bar Ethics Opinions. I am also introducing you to ABA Formal Ethics Opinions and State Bar of California Formal Ethics opinions. The former are drafted by the ABA’s Standing Committee on Ethics and Professional Responsibility. Although they are not binding in any jurisdiction, nearly every court in the United States has relied upon them in discipline and malpractice cases, as well as in other cases involving issues of professional obligation (e.g., in criminal cases involving ineffective assistance of counsel). The California opinions, drafted by the State Bar’s Committee on Professional Responsibility and Conduct (“COPRAC”), will help those of you who remain in California to resolve ethics problems you confront in your practice. As with the ABA opinions, California courts have repeatedly relied upon COPRAC opinions’ reasoning. The ethics opinions in the supplement also provide excellent background and guidance on many of the issues we will address during the semester.

IV. **CLASS ATTENDANCE.** Attendance and participation are required for all classes. As noted above in *III. Classroom Participation*, “passing” or failure to be prepared will result in your losing 0.1 grade points (out of 4.0) on your final grade.⁵ Being on time for class is a simple courtesy to your fellow students and your professor. Coming late to class, leaving early, or leaving for a prolonged period during class without prior permission, counts as an absence. Students may be absent no more than four (4) classes (out of 28 classes). Students who miss more than the

⁵ Each student, however, may be excused for *any* reason from *participating* in an *attended* class *once* during the semester by requesting an excuse the *day before* class. Unless I confirm your request *before* class, however, you will not be excused. This “one free pass” does not allow you to take an extra absence.

permitted number of classes will be administratively dismissed from the class. You – and you alone – are responsible for keeping track of your attendance; you will not receive a warning that you have reached the allowed number of absences.

- V. **COMMERCIALLY-PREPARED STUDY AIDS.** Commercially-prepared study aids such as Course Outlines, canned briefs, etc. are not allowed during class. I will confiscate any such materials brought to class.
- VI. **EXAMINATIONS AND GRADING.** Each student will receive a numeric grade for the course. Course grades will be based on a final examination given during the final examination period, on **Tuesday, December 13, 2016**. The final will consist of approximately 60% essay questions and 40% multiple choice. Practice Examinations: I will distribute previously-given essay exams about two weeks before the final and will review them at a Review Session.
- VII. **OFFICE HOURS.** My scheduled office hours are **Tuesdays, from 12:00 to 1:00 p.m. and 4:30 to 6:15 p.m.** To make an appointment during these times, write your name in one of the slots in the Appointment Book on the Second Floor. Although you may come in without an appointment during those hours, you should first contact one of secretaries to make sure I do not have another appointment at the time you wish to visit.

I am also available to see you during other hours on days that I am on campus. For appointments during non-office hours, you must arrange with me directly. You can leave messages at 714-459-1147. Speak clearly and slowly and leave your name and phone number. You can also reach me by e-mail at kejmoehr@netscape.net [**preferred address**] or kmohr@wsulaw.edu. See *Virtual Class*, below.

- VIII. **VIRTUAL CLASS.** I will set up a Virtual Computer Classroom (a course web page) by Week #2. I will post course information on that site. We will also be able to conduct further class discussion on-line. **Everyone must enroll.** I regularly e-mail students with information relevant to the course; you are responsible for signing up with a valid e-mail address that you check regularly. Each of you will be responsible for signing up for the course and checking the web site on a regular basis. **This is a course requirement.**
- IX. **RECORDING CLASSES.** If you want to audio record a class, you must ask for permission *in person* before each class. Otherwise, no recording is permitted.

NO VIDEO-RECORDING OR PHOTOGRAPHS ARE PERMITTED DURING ANY CLASS.

- X. **CLASSROOM TIME, MAKE-UP CLASSES & SPECIAL CLASS SESSIONS.** Because of some State Bar obligations I have, it is possible that I may have to cancel a class and reschedule it. If that happens, it may require that we meet on the weekend.
- XI. **PREPARING FOR CLASS.** Please note that the Course Schedule on the following pages is divided into six columns: Week, Dates, Assignment, Focus on Questions, Topic and Supplemental Readings. The first, second, third and fifth columns are self-explanatory. In the fourth column, I've tried to narrow your focus to those questions that are most relevant to the kinds of issues you might confront in your practices. The last column sets out the supplemental cases, ethics opinions, etc., for which you are responsible. For the court cases (at pages 1 to 235 of the Supplement), but not ethics opinions and other supplemental material, you are responsible for preparing a typed issue statement for each case listed by name in column five, and bringing a hard copy of each issue statement to class. See *III., Class Participation*, above.
- XII. **COMPLIANCE WITH ABA STANDARD 310.** This Course is in compliance with ABA Standard 310 regarding requirements for credit hours earned. See http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_310_guidance_memorandum_authcheckedam.pdf

XIII. WESTERN STATE COLLEGE OF LAW – PROGRAMMATIC LEARNING OUTCOMES.

1. **Doctrinal Knowledge.** Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.
2. **Practice Skills.** Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.
3. **Legal Analysis.** Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.
4. **Legal Research.** Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.
5. **Communication.** Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).
6. **Advocacy of Legal Argument.** Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.
7. **Client Sensitivity and Cultural Competency.** Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

8. **Legal Ethics.** Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

XIV. **ARGOSY UNIVERSITY INSTITUTIONAL LEARNING OUTCOMES.**

1. **Analytical Reasoning.** Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems
2. **Effective Communication.** Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation
3. **Information Competency.** Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action
4. **Interpersonal Effectiveness.** Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals
5. **Personal and Professional Integrity and Ethical Behavior.** Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.
6. **Professional Competence.** Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

XV. **DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

XVI. COURSE SCHEDULE

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷
1	8/18, 8/23	Casebook, pp. 1-19		I. <u>INTRODUCTION: BACKGROUND & FUNDAMENTAL ISSUES</u>	
				II. <u>REGULATION OF LEGAL PROFESSION</u>	
		Problem 1 (20-30)	ALL QUESTIONS	ADMISSION TO THE BAR	1. HYPO: VIETNAM WAR BOMBER ; ⁸ POLIN BAR ADMISSION FACTORS ; <i>In re Glass</i> (S40); <i>In re Chang</i> (S36); <i>Matter of Pasyanos</i> (S217); <i>In re Grimsley</i> (S223); Cal. Rule 1-200.
		Problem 2 (30-44)	ALL QUESTIONS	LAWYER DISCIPLINE AND THE DISABLED LAWYER (DISCIPLINE MACHINERY OF THE BAR)	2. <i>Matter of Elkins</i> (S210).
		Problem 3 (44-58)	ALL QUESTIONS	REGULATING LAWYERS OUTSIDE THE FORMAL DISCIPLINARY SYSTEM (LEGAL MALPRACTICE)	3. <i>Lee v. Hanley</i> (S30); ABA Model Court Rule on Insurance Disclosure; Cal. Rule 3-410; Cal. Op. 2015-193 (S327).
2	8/25, 8/30			III. <u>FUNDAMENTALS OF THE LAWYER-CLIENT RELATIONSHIP</u>	
		Problem 4 (59-73)	A.1,2,3,4 B.1,4 C.1,2,3,4 D.1,2,3,4	UNDERTAKING TO REPRESENT A CLIENT	4. HYPO: THE PARTY ATTORNEY ; Cal. Op. 2003-161 (S261) [A.1-4,C.]. ⁹
		Problem 5 (73-86) BEGIN	A.1,2.a-c,3,4.a B.1.a,b,2,4.a,b C.1,2,3,4 D.1,2	BILLING FOR LEGAL SERVICES	5. HYPO: LEGAL FEES ; ABA Op. 93-379 (S231).

⁶ Class discussion will focus on the questions that follow each problem. Be sure to do the readings that follow the questions, *and read carefully the supplemental court decisions, ethics opinions and other materials that are referenced in the column labeled "Supplemental Reading."*

⁷ References to "S" followed by a number refer to the page in the Supplement. Other items listed under "Supplemental Readings," e.g., hypotheticals and handouts, will be available by the class before the class in which they are discussed.

⁸ The handouts for Problem 1 were available on **August 10, 2015**.

⁹ Where applicable, numbers in brackets identify the specific question in the problem to which the supplemental reading relates.

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷	
3	9/1, 9/6	Problem 5 (73-86) COMPLETE	A.1,2.a-c,3,4.a B.1.a,b,2,4.a,b C.1,2,3,4 D.1,2	BILLING FOR LEGAL SERVICES	5. HYPO: LEGAL FEES ; ABA Op. 93-379 (S231).	
		Problem 6 (86-99)	A.1,2,3,4,5,6 B.1,2,3,4,5.a,c C.1,2,3,4 D.1.a-c,2,4	HANDLING CLIENT MONEY & PROPERTY & WITHDRAWING FROM REPRESENTATION	6. <u>Scheer v. State Bar</u> (S8); Cal. Op. 2015-192 (S317); ABA Op. 15-471 (S245).	
4	9/8, 9/13	Problem 7 (100-120)	ALL QUESTIONS AND OTHER MATERIALS AT PP. 116-120	THE DUTY OF CONFIDENTIALITY ¹⁰	7. CONFIDENCES & PRIVILEGE HANDOUT ; <u>Lenz v. Universal Music</u> (S21); <u>Ardon v. City of Los Angeles</u> (S24); Costco Wholesale v. Super Ct (S37) ; <u>Holmes v. Petrovitch</u> (S110); <u>Matter of Skinner</u> (S228); Cal. Op. 1997-150 (S252); Cal. Op. 2003-161 (S261); Cal. Op. 2003-165 (S271); Cal. Op. 2010-179 (S286); Cal. Op. 2012-184 (S294); Cal. Op. 2015-192 (S317); Cal. Op. 2016-195 (S334); ABA Op. 11-459 (S237). HANDOUT (PROBS. 4, 5 & 7): THE UNPAID FEE.	
		IV. THE REQUIREMENT OF LOYALTY TO THE CLIENT – CONFLICTS OF INTEREST				
		Problem 9 (121-134)	A.1,2,3 B.2,3,4,5.b C.1,2.a,c,d,3.a,b,4.a,5,6 D.1.a,b,2.a,b	REPRESENTING MULTIPLE PARTIES DEALING WITH EACH OTHER	9. Conflicts Handout #1: OVERVIEW ; HYPO: COVENANT MARRIAGE ; Handouts: CONFLICT LETTERS	

¹⁰ There are three separate topics in this problem: The ethical duty of confidentiality, the attorney-client privilege, and the work product doctrine. The additional materials at pages 116-120 concern: (i) privilege and work product in corporate setting; (ii) common interest privilege among multiple parties; and (iii) limits on confidentiality where there is a risk of injury to third parties, i.e., as set forth in MR 1.6(b)(1), (2) and (3). Note that California has no equivalent to MR 1.6(b)(2) and (3).

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷
5	9/15, 9/20	PREPARE PROBLEMS 10-15 FOR CLASS ON 9/25/2013.¹¹			
		Problem 10 (134-155)	A.1,2,3,4.a,b,5.a,b,6. B.1,2,3.a-c C.1,2,3.d,e D.1,2.b,c,4 AND PUBLICATION RIGHTS (154)	THE DUTY OF LOYALTY	10. Oasis West v. Goldman (S29) ; <u>M'Guiness v. Johnson (S96)</u> ; <u>Edwards Wildman v. Super Ct. (S106)</u> ; Cal. Op. 1997-150 (S252) [A.4.b]
		Problem 12 (155-168)	A.1.a,b,2,3. B.1,3.a,b C.1.a,b,d,2,3.b D.2,3 AND THIRD PARTY PAYOR (166)	CONFLICTS BETWEEN THE CLIENT'S INTERESTS AND THE LAWYER'S PERSONAL INTEREST	12. <u>In re Marriage of Murchison (S89)</u> ; <u>Matter of Bradley (S203)</u> ; <u>Disciplinary Counsel v. Detweiler (S225)</u> ; Cal. Rules 3-120, 3-300; 3-310(B); 3-320.
		Problem 14 (168-179) Problem 28 (354-356)	A.1,2.a-c B.1,2.a,b,e,3,4.a,b C.1,2.a,b,3 D.1.b AND Prob. 28 (D.1-4) [LAWYER AS WITNESS]	THE LAWYER AND HER FORMER CLIENT; GOVERNMENT LAWYERS ¹²	14. Conflicts Handout #2: MIGRATING LAWYER; HYPO: THE LAW CLERK; Oasis West v. Goldman (S53) ; <u>City & County of San Francisco v. Cobra (S68)</u> ; <u>People v. SpeedDee Oil (S75)</u> ; <u>In re Marriage of Murchison (S89)</u> ; <u>Costello v. Buckley (S92)</u> ; <u>Ochoa v. Fordel (S169)</u> ; <u>Pound v. DeMera DeMera Cameron (S175)</u> ; <u>City of Santa Barbara v. Super Ct (S180)</u> ; <u>City Nat'l Bank v. Adams (S187)</u> ; <u>Adams v. Aerojet (S193)</u> ; Kirk v. First American Title (S145) ; Cal. Op. 2003-161 (S261); Cal. Op. 1997-150 (S252)
Problem 15 (179-196)	A.1,2,3.a-c,4.a,c B.1,2.b,c,3.b,4,5,6 C.1.b,2.b,3 D.1,2,3	IMPUTED DISQUALIFICATION	15. Same as Problem 14; refer to Cal. Op. 1997-150 in relation to A.4; See also Kirk v. First American Title (S145) .		

¹¹ We will cover the substance of Problems 9-15, *Conflicts of Interest*, during Weeks 4-6, with a carry-over to the first day of Week #7. Beginning in Week 4 and going into Week 5, I will lecture on Conflicts of Interest. To help you follow the lecture, I will distribute an outline during Week 4. You will, however, have to read ahead through Problem 15. The lecture will cover topics from all of the problems. During Weeks 5 and 6, we will discuss Problems 10-15 individually.

¹² **NOTE:** Although I have not assigned **Problem 16**, my lectures and handouts will cover government lawyer conflicts, for which you are responsible.

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷
6	9/22, 9/27	Same as Week #5	SAME AS WEEK #5	CONTINUE DISCUSSION OF CONFLICTS SUMMARIZE & FINISH CONFLICTS OF INTEREST	SAME AS WEEK #5
V. <u>ADVISING CLIENTS</u>					
7	9/29, 10/4	Problem 17 (211-223)	A.1,2,3 B.1.a,b,2,3 C.1,2.b,3.a,4.a D.1,2.a,3	THE LAWYER FOR AN INDIVIDUAL CLIENT	
		Problem 18 (223-234)	A.1.a,2.a,b,3.a,4 B.2,3,4 C.1,2.b-d,3.a,4 D.3	ADVISING THE BUSINESS CORPORATION	18. <u>United States v. Ruehle</u> (S13);
8	10/6, 10/11	Problem 19 (234-235)	A.1,2.a-c,3.b,c,4,5 B.1.b,d,2,3.a C.1.a,2,3.b,c	COMMUNICATION WITH REPRESENTED AND UNREPRESENTED PERSONS	19. <u>McMillan v. Shadow Ridge</u> (S166); ABA Op. 95-396 Summary (S236); <i>see also</i> Cal. Rule 2-100.
VI. <u>ETHICAL PROBLEMS IN LITIGATION</u>					
9	10/13, 10/18	Problem 23 (273-287)	A.1.b,2.b,3, 4 B.1.a,c,2,3.c C.1,2 D.1,2.a,3.a-c	THE DECISION TO FILE A CIVIL SUIT	23. <u>Osborne v. Todd Farm Service</u> (S85).
		Problem 24 (287-300)	A.1,2,3.a,b,4 B.1.c,2 C.1,2,3	LITIGATION TACTICS & CIVILITY	24. <u>Osborne v. Todd Farm</u> (S85); <u>Crawford v. JP Morgan</u> (S102); <u>Clark v. Super Ct</u> (S127); <u>Holmes v. Petrovitch</u> (S135); <u>Malin v. Singer</u> (S120); Cal. Op. 2013-188 (S306); ABA Op. 11-460 (S241).
10	10/20, 10/25	Problem 25 (301-312) Problem 20 (253)	A.1,2.a B.1,2,3.b,4.b C.1,2 D.1,2.b,c <u>Brady v. Maryland</u> (Prob. 20, C.3 (CB253) & Prob. 29, D.1 (CB368)	DISCLOSURE OF LAW OR FACTS FAVORABLE TO THE OTHER SIDE	25.

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷
10	10/20, 10/25	Problem 26 (313-316)	A.1,2,3	HANDLING PHYSICAL EVIDENCE	26. <u>Issue</u> : Confidentiality of client's identity
11	10/27, 11/1	Problem 27 (327-346)	ALL QUESTIONS	THE CLIENT WHO INTENDS TO COMMIT PERJURY	
		Problem 29 (357-370)	A.1,2,3.a,c,4,5,6 B.1.b,2,3.a C.1.a,2.a D.1,2,3	THE CRUSADING PROSECUTOR	
VII. <u>THE DELIVERY OF LEGAL SERVICES</u>					
12	11/3, 11/8	Problem 31 (371-395)	ALL QUESTIONS	MARKETING PROFESSIONAL SERVICES	31. HYP O: INTERNET ADVERTISING; Cal. Op. 2001-155 (S255); Cal. Op. 2004-166 (S280) [B.4]; Cal. Op. 2012-186 (S302)
		Problem 32 (395-405)	A.1 B.1,2.a,b,3,4 C.1,2,3.a,b,4.a D.1,2,3,4.a	ETHICS OF REFERRAL TO A SPECIALIST; FEE SPLITTING	32. HYP O: FEE SPLITTING; <u>Mink v. Maccabee</u> (S185); Cal. Op. 2004-165 (S271)
		Problem 33 (405-414)	A.1,2,3,4.a,6 B.1,2.b-d,3	ROLES AND RESPONSIBILITIES IN A MODERN LAW FIRM	33. <u>Edwards Wildman v. Super Ct.</u> (S106); <u>Jay v. Mahaffey</u> (S114)
13	11/10, 11/15	Problem 34 (414-427)	A.1,2,3,4,5 B.1.b,2,3 AND SALE/PURCHASE OF LAW PRACTICE (425-426)	LEAVING ONE LAW FIRM AND FORMING ANOTHER	34. Cal. Op. 2014-190 (S310)
		Problem 35 (428-440)	A.1 B.2 C.1,2,3 AND PAYING COSTS (435-437), FINANCING LEGAL SERVICES FOR POOR (437-440)	THE DUTY TO WORK FOR NO COMPENSATION	

WEEK	DATES	ASSIGNMENT	FOCUS ON QUESTIONS ⁶	TOPIC	SUPPLEMENTAL READING ⁷
13	11/10, 11/15	Problem 37 (441-460)	A.1,2,3,4,5,6,7 B.1,2,3,4,5 C.1,2,c,d,3 D.1,3,4	THE FUTURE OF THE PRACTICE OF LAW	37. ABA Ethics 2020 Commission, PRELIMINARY ISSUES OUTLINE (S48); California MJP Rules; Cal. Op. 2001-155 (S255); Cal. Op. 2004-165 (S271); Cal. Op. 2004-166 (S280); Cal. Op. 2012-184 (S294); Cal. Op. 2012-186 (S302); Cal. Op.2015-193 (S237)
VIII. THE ETHICAL CONDUCT OF JUDGES					
14	11/17, 11/22	Problem 38 (461-476)	A.1,2,b,c,3,4,b,5 B.1.a,2.a,b,3 C.1,2,3.a,b,d D.2	JUDGES' DISQUALIFYING CONFLICTS OF INTEREST	38. HYPO: BIASED JUDGE; HYPO: CONTEMPT; <i>Williams v. Pennsylvania</i> (S1); <i>In re Complaint Judicial Misconduct I</i> (S7); <i>In re Complaint Judicial Misconduct</i> (S11); Cal. Jud. Assn. Op. 66 (S324)
		Problem 39 (476-488)	A.1,2,3 B.2,4 C.1.a,3 D.1,2 AND NON-JUDICIAL ACTIVITIES (487-488)	THE JUDGE AS A POLITICAL CANDIDATE & PUBLIC FIGURE	39. Cal. Jud. Assn. Op. 66 (S324)
15	TBD¹³		REVIEW SESSION		
16	<u>Tuesday, December 13, 2016</u>		1:00 – 4:00 p.m.	FINAL EXAMINATION	

¹³ I will try to schedule a **Review Session** during the reading week.