

WESTERN STATE UNIVERSITY COLLEGE OF LAW
COURSE POLICIES & READING ASSIGNMENTS

COURSE: PROFESSIONAL RESPONSIBILITY REVISED – corrected Selected Standards
SECTION: 240
SEMESTER: Summer 2013
TIMES: Tuesday and Thursday – 6:30 to 9:30 pm
PROFESSOR: Michael J. Doubet
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- I. **REQUIRED TEXTS.** All required texts and supplementary materials must be brought to all classes.

Thomas D. Morgan & Ronald D. Rotunda, Professional Responsibility: Problems and Materials, (11th Ed., Foundation Press) (“Casebook”)

Thomas D. Morgan & Ronald D. Rotunda, 2013 Selected Standards on Professional Responsibility (Foundation Press) (“Selected Standards”)

Supplemental Readings: Please access the supplemental readings (in the right hand column of the reading list below) online, on Westlaw or Lexis (for cases) and/or on the California State Bar website (using the link indicated). Please note that the opinions for the State Bar Review Court are not available on Lexis, but are available on Westlaw. The ABA materials can be accessed through the Lawyer’s Manual on Professional Conduct, on the web at BNA.com. You should treat all of these materials as you would cases, and prepare case briefs for these materials prior to class.

IMPORTANT NOTE: Read ALL of the Rules/Statutes: You are expected to have read ALL rules and/or statute sections in the Selected Standards (including the Comments and Discussion) to which the problems or readings in the Casebook refer, including both the ABA Model Rules (ABA MR) referenced (including the Comments), and the California Rules of Professional Conduct (CRPC) (including the Discussion) that would apply to the same issue. The Comments for the ABA MR and to a lesser extent, the Discussion in the CRPC, which contain many helpful examples and illustrations that are important to understanding the rules. You will note that the Sarbanes Oxley materials referenced in the reading list are also set forth in the Selected Standards. For purposes of identifying the corresponding California Rule of Professional Conduct, and the key differences between the ABA and California Rules, there is a helpful comparison chart on the State Bar of California website. Here is the link http://calbar.ca.gov/calbar/pdfs/ethics/aba_to_ca.pdf. Please do not use the chart as a substitute for reading the rules themselves. There are a few new developments, and the chart may not be up to date in all areas.

- II. **COURSE COVERAGE & OBJECTIVES.** Legal ethics is an area of law that pervades 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 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 legal practice, and discuss how you can ethically resolve those problems. Finally, the course will help you prepare for the ethics related examinations lawyers must take, including the Multistate Professional Responsibility Examination (MPRE) and the California Bar Examination, which tests professional responsibility in the essay and performance portions of the exam. The course, however, is not a bar review course or an MPRE preparation course. Although it assists such

preparation, the course's primary objective is to educate you about practical ethical concerns and how to deal with them in your future practice.

Unlike other states that have adopted either the ABA Model Rules of Professional Conduct ("Model Rules") or the ABA Model Code of Professional Responsibility ("ABA Code"), California has its own set of rules, the California Rules of Professional Conduct ("California Rules"). California also sets out ethical guidelines for lawyers in the Business & Professions Code. Each of these authorities is set out in the Selected Standards. You will have to be familiar with both the Model Rules and the California Rules for a number of reasons.¹ First, although most of you will practice in California and that California has its own set of rules and statutes, the California rules usually have analogous sections in the Model Rules. When construing a California ethical rule or statutory section, the courts and California Bar often refer to cases that have construed analogous sections in the Model Rules. Second, the California Ethics Rules Revision is in the process of revising the California Rules to make them more consistent, but not entirely consistent with the ABA Model Rules. Third, there are "gaps" in the California Rules and statutes that the courts will sometimes fill by interpolating the relevant Model Rule. Fourth, when the principal adverse effect of a lawyer's misconduct is in another state, that state's ethical rules will govern. Fifth, there is a movement in the legal profession to allow lawyers in limited circumstances to practice in jurisdictions in which they are not admitted. This is called multijurisdictional practice ("MJP"). If you practice in another state, that state's rules will control, even if you are not licensed in that state.² Finally, the MPRE is based primarily on the Model Rules.³ For purposes of the MPRE, where the Model Rules and the California Rules conflict, the former control. For all of these reasons, a lawyer practicing in California – whose legal conduct is governed by the California Rules and statutes – must also be familiar with the Model Rules or ABA Code. We will at times consider all three sets of professional conduct rules in the course, with an emphasis on the California Rules and statutes and the Model Rules.

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 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 situations 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 III. Classroom Participation, below.*

CLASSROOM PARTICIPATION. Legal education is a cooperative venture. You must be prepared to participate in each class. During each class, students will be asked to answer questions and hypothetical problems by submitting their responses using the CPS response pad. In essence, each class will include a quiz on the assigned materials. You must have your response pad with you in order to participate. Failure to respond to the questions posed in class will result in a lowering of your final grade in the course by .1, each time you are unprepared. The participation portion of your grade in the course cannot be made up in any manner if you fail to attend class or fail to bring your response pad to class with you. To encourage group and class participation, I have allocated a portion of the course grade based on class participation.

Being prepared means that you completed ALL of the assigned reading and homework. If you have not completed all of the reading and answered the assigned questions, you are

¹ Of the two ABA ethics codes, the Model Rules, adopted by 44 states, are the most important.

² This situation is very likely if, for example, you were to represent a corporation that has a presence in many different states.

³ I write "primarily," because the MPRE also covers issues such as formation of the attorney-client relationship and legal malpractice that are not covered in any of the three ethics codes. To the extent the MPRE covers subject matter in an ethics code, the Model Rules apply.

unprepared. If you wish to challenge this determination, you must turn in to me all work done by you in preparation for class (e.g., written answers to the questions, case briefs, outlines or breakdowns of rules, and etc.) in writing, at the end of the same class session for which I mark you unprepared, before I leave the classroom. *Note that this requirement may not be met at any time other than immediately after class and only by turning in to me a hard copy (paper) and not a computer version of your work.* Students who are unprepared will have their final grade in the course lowered each time they are unprepared.

PLEASE NOTE: There is a difference between being unprepared and being unable to answer a question. I expect you to stay sufficiently ahead of the class in your preparation to insure your readiness to participate in each class. The assertion that you did not anticipate the class getting so far, you read the assignment too long ago to remember it, or you completed some but not all of the assignment will not excuse a failure to be prepared for class. I will not reduce your grade simply because you incorrectly answer a question unless I believe that your answer reflects inadequate preparation. If you “pass” or are demonstrably unprepared, I may 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.

- III. **CLASS ATTENDANCE.** Attendance and participation are required for all classes. Being on time for class is a simple courtesy to your fellow students and your professor. Coming late to class – even if you are only a few seconds late – leaving early or leaving for a prolonged period during class without prior permission, counts as an absence. **Students may be absent no more than two (2) times. Students who miss more than the allowed number of classes will be academically 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.
- IV. **EXAMINATIONS AND GRADING.** Each student will receive a numeric grade for the course. Course grades will be based on one final exam worth 80% of your grade, weekly assignments (both group and individual) and an assessment of your overall participation in the course (in class, online, including the online hypotheticals on the course webpage, and completion of all assigned practice exams) worth 20% of your grade. The final exam will consist of 50 multiple choice questions and one essay question.
- V. **OFFICE HOURS.** Office hours will be held on an appointment basis. I will also be available after class for a period of time to answer questions. You can make an appointment in advance by email, or you can just let me know before the class or on the break that you would like to meet. You may also submit questions by email or on the cures website and I will make every effort to respond to you, or I will respond to you during the class in which we cover the material in question.
- VI. **VIRTUAL CLASS.** I have set up a course webpage for the course on the Westlaw TWEN platform. The course webpage includes PowerPoint slides for the course, numerous hypothetical problems located on the Discussion Board covering each of the subject matter areas that we will study, and additional information. Everyone must sign onto the course webpage with a current valid email that you check regularly because I regularly e-mail students with information relevant to the course. The excuse that you did not get my email will not be accepted. If your email address has changed, please be sure to update it through Westlaw. I cannot update your email address or send your email to an address other than the one at which you are registered on TWEN. Each of you will be responsible for signing up for the course and checking the web page on a regular basis.

VII. COURSE SCHEDULE

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
1	Casebook, pp. 1-30		I. <u>INTRODUCTION: BACKGROUND & FUNDAMENTAL ISSUES</u>	
			II. <u>REGULATION OF LEGAL PROFESSION</u>	
1	Problem 1 (32-46)	A. through D	ADMISSION TO THE BAR	<u>Pasayanos</u> , 4 Cal. State Bar Ct. Rptr. 746 (Rev.Dept. 1/13/2005)
1	Problem 2 (46-62)	A. through D	LAWYER DISCIPLINE AND THE DISABLED LAWYER (DISCIPLINE MACHINERY OF THE BAR)	<u>In re Silverton</u> , 36 Cal.4th 81, 113 P.3d 556, 29 Cal.Rptr.3d 766 (Cal. 6/23/2005)
1	Problem 3 (62-82)	A through D	REGULATING LAWYERS OUTSIDE THE FORMAL DISCIPLINARY SYSTEM (LEGAL MALPRACTICE)	<u>Orsonio v. Weingarten</u> , 124 Cal.App.4th 304, 21 Cal.Rptr.3d 246 (11/22/2004)
			III. <u>FUNDAMENTALS OF THE LAWYER-CLIENT RELATIONSHIP</u>	
1	Problem 4 (84-97)	A. through D	UNDERTAKING TO REPRESENT A CLIENT	Cal. Ethics Op. 2003-161, available on the California State Bar Website at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
1	Problem 5 (98-115)	A. through D ,	BILLING FOR LEGAL SERVICES	ABA Op. 93-379 Cal. Formal Opin. 2006-171 available on the California State Bar Website at http://calbar.ca.gov/calbar/pdfs/ethics/CAL%202006-171.pdf
2	Problem 6 (115-131)	A. through D.	HANDLING CLIENT MONEY & PROPERTY & WITHDRAWING FROM REPRESENTATION	Cal. Ethics Op. No. 2007-174 available at http://calbar.ca.gov/calbar/pdfs/ethics/2007-174.pdf
2	Problem 7 (131-148)	ALL QUESTIONS	THE DUTY OF CONFIDENTIALITY	Cal. Op. 1986-87 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129 <u>Bak v. MCL Financial Group, Inc.</u> (2009) 170 Cal.App.4 th 1118
2	Problem 8 (148-167)	ALL QUESTIONS	MORE ON THE DUTY OF CONFIDENTIALITY (CORPORATIONS)	ABA Formal Opin. No. 08-453 (2008) <u>Tritek Telecom Inc. v. Sup. Ct (Mak)</u> (2009) 169 Cal.App.4 th 1385

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
		IV. <u>THE REQUIREMENT OF LOYALTY TO THE CLIENT – CONFLICTS OF INTEREST</u>		
2	Problem 9 (168-182)	A. through D.	REPRESENTING MULTIPLE PARTIES DEALING WITH EACH OTHER	ABA Op. 05-436 <u>U.S. v. Nicholas</u> , 2009 WL 890633 (C.D. Cal. 2009)
2	Problem 10 (182-201)	A. through D	THE DUTY OF LOYALTY	<u>Cal West Nurseries v. Superior Court</u> , 129 Cal.App.4th 1170, 29 Cal.Rptr.3d 170 (5/31/2005)
3	Problem 11 (201-215)	A. through D	CONFLICTS OF INTEREST IN CRIMINAL LITIGATION	<u>People v. Doolin</u> (2009) 45 Cal.4 th 390
3	Problem 12 (215-228)	A. through D	CONFLICTS BETWEEN THE CLIENT'S INTERESTS AND THE LAWYER'S PERSONAL INTEREST	<u>Fletcher v. Davis</u> , 33 Cal.4th 61, 90 P.3d 1216, 14 Cal.Rptr.3d 58 (Cal. 6/10/2004)
3	Problem 13 (229-245)	A. through D	REPRESENTING THE INSURED AND THE INSURER	Cal. Op. 1995-139 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129 ABA Formal Opin. No. 08-450 (2008)

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
3	Problem 14 (245-261)	A. through D	THE LAWYER AND HER FORMER CLIENT	<u>Knight v. Ferguson</u> , 149 Cal.App.4 th 1207 (2007)
3	Problem 15 (261-275)	A. through D	IMPUTED DISQUALIFICATION	<u>Ochoa v. Fordel</u> , 146 Cal.App.4 th 898 (2007) New ABA MR 1.10 (adopted 2/09)
3	Problem 16 (275-291)	A. through D	SPECIAL PROBLEMS OF GOVERNMENT LAWYERS	<u>City and County of San Francisco v. Cobra Solutions</u> , 38 Cal. 4th 839 (2006) <u>City of Santa Barbara</u> , 122 Cal.App.17, 18 Cal.Rptr 403 (2004)
			V. <u>ADVISING CLIENTS</u>	
4	Problem 17 (292-307)	A. through D	THE LAWYER FOR AN INDIVIDUAL CLIENT	Cal. Op. 1989-112 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129
4	Problem 18 (307-320)	A. through D	ADVISING THE BUSINESS CORPORATION	Sarbanes-Oxley Materials (in 2007 Selected Standards of Professional Responsibility)

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4	Problem 19 (307-320)	A. through D	COMMUNICATION WITH REPRESENTED AND UNREPRESENTED PERSONS	<u>La Jolla Cove Motel & Hotel Apartments, Inc. v. Sup. Ct.</u> , 121 Cal.App. 773, 17 Cal. Rptr.3d 467 (2004) <u>US v. Carona</u> – 2008 US Dist. LEXIS 37392 (C.D. Cal. 2008)
4	Problem 22 (367-384)	A. through D	OBLIGATIONS WHEN THE CLIENT MAY BE ENGAGED IN FRAUD	Sarbanes-Oxley Materials (in 2007 Selected Standards of Professional Responsibility)
VI. <u>ETHICAL PROBLEMS IN LITIGATION</u>				
4	Problem 23 (385-403)	A. through D	THE DECISION TO FILE A CIVIL SUIT	Zamos v. Stroud, 32 Cal. 4 th 958 (2004)
	Problem 24 (403-421)	A. through D	LITIGATION TACTICS	California Attorney Guidelines of Civility and Professionalism of http://www.calbar.ca.gov/calbar/pdfs/reports/Atty-Civility-Guide.pdf
5	Problem 25 (421-439)	A. through D	DISCLOSURE OF LAW OR FACTS FAVORABLE TO THE OTHER SIDE	Cal. Op. 1986-87 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129
5	Problem 26 (439-454)	A. through D	HANDLING PHYSICAL EVIDENCE	

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
5	Problem 27 (454-475)	ALL QUESTIONS	THE CLIENT WHO INTENDS TO COMMIT PERJURY	Cal. Op. 1996-146 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129
5	Problem 29 (487-511)	A. through D	THE CRUSADING PROSECUTOR	North Caroline State Bar v. Nifong, Amended Finds of Fact, Conclusions of Law and Order of Discipline, available at http://www.ncbar.com/discipline/printorder.asp?id=505
VII. <u>THE DELIVERY OF LEGAL SERVICES</u>				
6	Problem 31 (523-546)	ALL QUESTIONS	MARKETING PROFESSIONAL SERVICES	Cal. Op. 2001-155 available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10133&id=1129
6	Problem 32 (548-558)	A. through D	ETHICS OF REFERRAL TO A SPECIALIST; FEE SPLITTING	<u>McIntosh v. Mills</u> , 121 Cal.App.4th 333, 17 Cal.Rptr.3d 66 (8/3/2004)
6	Problem 33 (559-574)	A. through D	ROLES AND RESPONSIBILITIES IN A MODERN LAW FIRM	<u>In re Cohen</u> , 847 A.2d 1162 (D.C. App. 4/29/2004) ABA Formal Opin. 08-451 (2008)

WEEK	ASSIGNMENT	FOCUS ON QUESTIONS	TOPIC	SUPPLEMENTAL READING
6	Problem 34 (574-594)	A. through D	LEAVING ONE LAW FIRM AND FORMING ANOTHER	ABA Op. 99-414
6	Problem 35 (594-610)	A. through D	THE DUTY TO WORK FOR NO COMPENSATION	Proposed Cal. RPC 1-650 (See the website for the State Bar of California)
		VIII. <u>THE ETHICAL CONDUCT OF JUDGES</u>		
7	Problem 38 (655-672)	A through D	JUDGES' DISQUALIFYING CONFLICTS OF INTEREST	ABA Formal Opin. No. 08-452 (2008)
	Problem 39 (672-691)	A through D	THE JUDGE AS A POLITICAL CANDIDATE & PUBLIC FIGURE	
7	Catch-up		CATCH-UP AND REVIEW FOR FINAL	
	<i>Date to be announced</i>	<i>FINAL EXAMINATION</i>		