

WESTERN STATE UNIVERSITY COLLEGE OF LAW

Criminal Justice Ethics 619A



Fall Session 2013

Mondays: 5:00 – 6:00 PM-Room 206

Professor Dave Porter



I. Course Description

Criminal Justice Ethics (EL / 1 unit)

This course examines in detail the ethical considerations faced by criminal defense attorneys and prosecutors in the practice of criminal law. If I know my client is guilty, but someone else confesses to the crime, do I have to tell anyone? Do I need to disclose the fact that acetone was accidentally spilled on the Breathalyzer machine in the crime lab? What do I do if my client’s girlfriend gives me a baggie of marijuana? What is a *Marsden* hearing? Can I accept sex in lieu of money for payment on a case? These questions, as well as many more, will be answered!

II. Required Text

Pamphlet available on Lexis Webcourse page – Criminal Justice Ethics – Monday 5-6pm - Porter. You must bring this pamphlet to class every day. I have also occasionally assigned additional cases and statutory code sections that you must read prior to each class. Please locate the additional cases and statutory code sections via Lexis or Westlaw.

III. Examination and Grading

Students shall receive a numeric grade for this course. Grades will be based upon a final examination, which will consist of a one-hour or one and one-half hour test comprised of multiple choice and short answer questions.

IV. Attendance and Participation

Attendance and participation are required for all classes. Late arrivals and early departures from class by students are deemed partial absences. Multiple partial absences may be deemed as one or more entire absences from class. Pursuant to the Western State University College of Law Attendance Policy, students may miss a maximum of two (2) classes in a course given once per week.

V. Availability of Professor for Outside Counseling

Please contact Professor Porter via e-mail at daveporter@cox.net or dave.porter@da.ocgov.com.

VI. Dates and Topics

CLASS

SUBJECT MATTER

M 8/26-1st Class

Intro / Attorney-Client Privilege

Read: California Rules of Professional Conduct (CRPC) 3-100, 3-310; American Bar Association Model Rules of Professional Conduct (MR) 1.8; California Business and Professions Code (BP) section 6068(d) & (e); California Evidence Code (EC) sections 952; California Penal Code (PC) section 636; *People v. Canfield* (1974) 12 Cal.3d 699

M 9/2

NO CLASS – LABOR DAY

M 9/9-2nd Class

Attorney-Client Privilege – Disclosures, Negotiations

Read: CRPC 3-100, 5-120, 5-200, 5-310; MR 1.6, 3.3, 3.4, 3.6; BP 6068(e); EC 953, 954; PC 135, 1054; *People v. Meredith* (1981) 29 Cal.3d 682

M 9/16-3rd Class

Attorney-Client Privilege – Disclosures, Prior Convictions; Perjury and the Criminal Defense Attorney – Constitutional Right to Testify, Lying Client

Read: CRPC 3-110, 5-200(a) & (b); MR 1.1, 3.3, 4.1; BP 6068(d); PC 126, 127; U.S. Constitution Fifth and Sixth Amendments; *Rock v. Arkansas* (1987) 483 U.S. 44; *People v. Guzman* (1988) 45 Cal.3d 915; *People v. Johnson* (1998) 62 Cal.App.4th 608; *People v. Jennings* (1999) 70 Cal.App.4th 899; *Nix v. Whiteside* (1986) 475 U.S. 157; Handouts given in last class {OCBA 2003-01 Formal Opinion

M 9/23-4th Class

Ineffective Assistance of Counsel (IAC)

Read: CRPC 3-110; *Strickland v. Washington* (1984) 466 U.S. 668; *People v. Marsden* (1970) 2 Cal.3d 118; review *Nix v. Whiteside* (1986) 475 U.S. 157

M 9/30-5th Class

Conflicts of Interest and the Criminal Defense Attorney – Fee Arrangements, Conflicts

Read: CRPC 3-110, 3-300, 3-310, 3-700, 4-200; MR 1.5, 1.8 1.16; *People v. Lopez* (2008) 168 Cal.App.4th 801

M 10/7-6th Class

Conflicts of Interest and the Criminal Defense Attorney – Representing Multiple Defendants, The Accused and Mental Disabilities, Sexual Relations

Read: CRPC 3-120, 3-320; MR 1.8, 1.9, 1.14; PC 1203.03, 1368; *Medina v. California* (1992) 505 U.S. 437; *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369

M 10/14-7th Class

State Bar Court; Interplay of ABA Model Rules and CA Rules of Professional Conduct

Read: No reading assigned for this class

M 10/21-8th Class

Special Duties of Prosecutors – Prosecutorial Misconduct, Discretion and the Charging Function, Pre-plea Negotiations

Read: CRPC 5-110, 5-200; MR 3.4, 3.8, 8.4; BP 6068(o), 6086.7; *Berger v. United States* (1935) 295 U.S. 78; *Missouri v. Frye* (2012) 132 S.Ct. 1399; *Lafler v. Cooper* (2012) 132 S.Ct. 1376

M 10/28-9th Class

Special Duties of Prosecutors – Brady/Discovery, Duty to Disclose Adverse Facts and Law

Read: CRPC 5-220; MR 3.4, 3.8; PC 1054.1, 1054.3; *Brady v. Maryland* (1963) 373 U.S. 83; *People v. Riggs* (2008) 44 Cal.4th 248; *Roland v. Superior Court* (2004) 124 Cal.App.4th 154

M 11/4-10th Class

Special Duties of Prosecutors – Pretrial Publicity, Jury Selection, Contact with Unrepresented Persons, Judges (Ex parte), Jurors, and Witnesses

Read: CRPC 2-100, 5-120, 5-210, 5-300, 5-310, 5-320; MR 3.6, 3.8, 4.2, 4.3, BP 6068(a); *Sheppard v. Maxwell* (1966) 384 U.S. 333; *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258; *Johnson v. California* (2005) 545 U.S. 162

M 11/11-11th Class

Special Duties of Prosecutors – Argument, Griffin Error, Doyle Error, Recusal

Read: PC 1424; *Griffin v. California* (1965) 380 U.S. 609; *Doyle v. Ohio* (1976) 426 U.S. 610; *Hollywood v. Superior Court of Santa Barbara County* (2008) 43 Cal.4th 721

M 11/18-12th Class

GUEST SPEAKER

M 11/25-13th Class

“CATCH UP” CLASS/REVIEW

M 12/2-14th Class

FINAL REVIEW

F 12/6-15th CLASS

FINAL EXAM 5-7:00 P.M.