

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

Professional Responsibility, Section 240B, Fall 2014

Course Policies and Reading Assignments

Time: Thursday Evening, 6:30-9:45 pm
Professor: Don Daucher
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A. Reading and participation materials

- 1. Required Materials:** All required texts and current supplementary materials must be brought to all classes.

a. Thomas D. Morgan & Ronald D. Rotunda, Professional Responsibility: Problems and Materials (CONCISE EDITION), (Twelfth Ed., Foundation Press) (“Casebook”)

PLEASE NOTE: As if the bold print above was not enough, we will be using the concise edition of the Morgan & Rotunda text. It is less expensive and satisfactorily comprehensive. If you purchase the regular edition you will have a more difficult time following the weekly assignments and the class discussion and will be spending more money than necessary.

HOWEVER, if you already have or have easier or less expensive access to the regular version of THE TWELFTH EDITION (please do not try to use the eleventh edition) you will be able to use it by using the correct pages for each problem number contained in the index in the front of the regular edition. For example, Problem 12 is at pages 155-169 of the concise version and is at pages 203-216 of the regular version. But, when I refer to specific pages of the book in class I will refer only to the condensed edition.

b. Richard Zitrin & Kevin Mohr, Legal Ethics: Rules, Statutes, and Comparisons, (LexisNexis 2014 edition) – available for purchase through Sarah in the library. Owing to its length and weight, I would suggest that you obtain the electronic version.

c. Kevin Mohr, Supplemental Materials for Professional Responsibility (Fall 2014) (This will be available for purchase **from student services** after the first week of August. It contains copies of the cases, ethics opinions and other secondary materials listed in the right hand column of the weekly reading assignments listed below. **This assigned supplemental reading is not optional.**)

- 2. Other Optional Recommended Texts:** These resources provide helpful practice on multiple choice questions, with answers. They are optional and I would not purchase them. There should be copies in the library and I will have at least one copy which you can borrow for short periods of time.

a. W. Bradley Wendel, Professional Responsibility – Examples & Explanations (Aspen).

b. Patrick Emery Longan, Questions & Answers: Professional Responsibility (LexisNexis).

- 3. Read ALL of the Rules/Statutes:** You are required to read ALL rules and/or statute sections in the Zitlin & Mohn text which the problems or readings in the Casebook refer to or implicate, including both the ABA Model Rules (“Model Rules”) referenced, and the California Rules of Professional Conduct (“CRPC”) and certain California code sections (collectively “California rules”) that would apply to the same issue. You should also read the comments to the Model Rules and discussion to the CRPC. These contain many helpful examples that are important to understanding the rules. For purposes of identifying the corresponding California rule, and the key differences between the Model Rules and California rules, there is a helpful 194 page comparison chart on the State Bar of California website. To access the chart go to www.calbar.ca.gov (the California Bar website) and type “compare Cal MR” in the website search box. Please do not use the chart as a substitute for reading the rules themselves as the chart is from 2005 and some of the rules have changed since then.

B. Class Schedule and Makeup Classes: As described below, the midterm exam will be given during the eighth week of classes on Thursday, October 9 from 6:30 to 8 pm. The class will not meet on Thursday, October 16 (week 9). On the first day of class we will choose a date and time to make up that class. I will want that makeup class to take place some time in September before October 16.

C. Course Coverage and Objectives: Legal ethics is an area of law that will influence all aspects of your professional life – and also a good part of your personal life. The purpose of this course is three-fold:

1. 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.
2. 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.
3. 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.

As mentioned above, California has its own set of rules, set forth in the CRPC and in the California Business & Professions, Civil Procedure, Corporations, Evidence, Insurance, Penal and Probate Codes. Each of these authorities is set out in the Zitlin & Mohr required text. You will have to be familiar with both the Model Rules and the California rules for a number of reasons:

1. Although most of you will practice in California, 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.

2. There are “gaps” in the California Rules and statutes that the courts will sometimes fill by looking to the relevant Model Rule.
3. When the principal adverse effect of a lawyer’s misconduct is in another state, that state’s ethical rules will govern.
4. 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.¹
5. The MPRE is based primarily on the Model Rules. 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 – must also be familiar with 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.

D. Practice Questions, Exams and Grading: Throughout the semester I will distribute practice questions and at least two practice exams. I will be happy to review answers to these with students in my office. *Do not wait until the end of the semester to begin writing practice exams and answering practice questions.*

During every class I will distribute one, two or three multiple choice questions based upon the reading for that class. I will give you time to work together on the answer (with anyone you choose) to each hypothetical and collect and I will collect and keep score of the answers.

The final grade will consist of your score on the classroom multiple choice questions (5-10%), a graded midterm (15%), and a final exam (75-80%). I may also give one or more quizzes during the semester which will be graded and counted. As of now the midterm exam will be Thursday, October 9 during the 8th week of the course from 6:30 – 8 pm. The class will meet for the second half of that class.

E. Classroom Participation: Legal education is a cooperative venture and oral communication skills will be important throughout your life. Each of you must be prepared to participate in class on a regular basis. If you have not read the materials or do not have a brief for an assigned case, you are unprepared. I will randomly call on people in class to describe cases or rules and to answer questions. There is no such thing as “one free pass” any more than there will be when you practice law.

Among other reasons for you to be prepared are (i) The best way to do well in a law school class is to get the most out of each class session. You will get the most out of each class

¹ This situation is very likely if, for example, you were to represent a corporation that has a presence in many different states.

session if you have some idea what the professor is saying; and (ii) It is fairly inconsiderate of the time and efforts of your fellow students to come to class unprepared.

Please note that there is a significant difference between being unprepared and being unable to answer a particular question. No one knows the answer to every law-related question. An important part of the learning experience is testing your own **knowledgeable** opinions and conclusions. No one, however, will be interested in hearing your uninformed guesswork.

I do not deduct points from the grades of students who are unprepared. First, even if you are unprepared I would much rather have you attend class than stay away because you have not done the reading. Second, I have too much to do to be a bookkeeper. Finally, as I said above, you are already penalizing yourself, on both a short term and long term basis, by not getting the most out of each class and doing the very best you can on every assignment.

F. Attendance and Decorum: I will take attendance at the beginning of each class by asking you to sign in for the class on a roll sheet. If you are not signed in, you are absent. **IN ACCORDANCE WITH SCHOOL RULES, IF YOU MISS MORE THAN TWO (2) THREE HOUR CLASSES, YOU WILL BE ACADEMICALLY DISMISSED FROM THE COURSE.** It is a serious violation of the Honor Code to sign in for another student or to have another student sign in for you.

You should be in your seat at the commencement of class to be counted as present for the class. Once again it is fairly inconsiderate of the other students and of the professor to walk in late. Similarly, you should not leave until the end of class. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Registrar or the Academic Dean.

It should go without saying but I don't expect that cell phones, I-pods, head phones, blackberries or pagers and the like will be seen, heard or used in the classroom. You may use your computer but it should be open to course related materials and not to your email, eBay etc. Also, it is considerably more important that you hear and understand what is said in class than that you record every single word.

G. Seating Chart: A seating chart will be distributed at the beginning of the first class session. Please print your full name **legibly** in the seat you choose for your permanent seat. I would rather you not change your permanent seat but if you must please notify me so that I can make the appropriate change on the chart.

H. Office Hours: I am delighted to talk with a student or students almost any time. I will remain after class for questions when that is possible. I will be available by appointment almost every week day and some weekends as time and my teaching schedule permit. Please make appointments through the Appointment Book located at the faculty reception desk on the third floor. If you cannot make a scheduled appointment, please notify the faculty secretary as soon as possible so that another student can see me during that time slot. If you don't have an appointment and want to "take your chances", you are welcome to just drop by my office or to call my extension, 1142. If none of this works for you, let me know and we'll work something out. In particular, I am aware that evening students may have more trouble seeing me before 6 pm than day students. We can work that out too but only if you ask me. Finally, it is pretty

dangerous to make an appointment on the same day as the appointment. I usually look at the appointment book when I arrive in the morning and, if the hours are blank, I may make other plans without crossing out the hours in the book.

I. Online Contact: Sometime before the first day of class I will set up a LexisNexis Web Course for this class. **YOU SHOULD ALREADY KNOW HOW TO REGISTER WITH LEXISNEXIS. SOMETIME PRIOR TO AUGUST 12 I WILL ENROLL YOU IN THE WEB COURSE FOR MY CLASS AND YOU WILL BE ABLE TO ACCESS MATERIALS POSTED TO THE WEB COURSE SITE.** During the semester I will use this web course to send you emails, make class announcements and post course documents such as this syllabus and charts, questions, outlines and charts that pertain to the topics we will study. I may also use the web course to post practice exams and sample answers or to administer quizzes. Finally the web course can be used to hold out-of-class discussions.

The web course will be important to your success in this class. It would be a very bad idea to dither about making sure you have access to the site. You should test your access to the site BEFORE the first day of class. There are computers in the library if you need one.

J. Assigned Reading: The scheduled reading assignments are set forth below by class #. As described above there will be two, three-hour classes during one of the weeks in September. The first four columns of the following chart are self explanatory. The fifth column contains reference to the supplemental reading assignments that you are expected to complete in addition to the readings from the casebook and the Zitrin & Mohr text.²

² The supplemental materials were not available when the first version of this syllabus was prepared. As soon as they are, the references in the fifth column will be amended.

ASSIGNMENT SCHEDULE

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
1	Casebook, pp. 1-19	I. <u>INTRODUCTION: BACKGROUND & FUNDAMENTAL ISSUES</u>		
		II. <u>REGULATION OF LEGAL PROFESSION</u>		
1	Problem 1 (19-30)	All questions	ADMISSION TO THE BAR	<i>Matter of Pasyanos</i> (S211) <i>In re Glass</i> (S27) Cal. Rule 1-200
1	Problem 2 (30-44)	All questions	LAWYER DISCIPLINE AND THE DISABLED LAWYER (DISCIPLINE MACHINERY OF THE BAR)	<i>Matter of Elkins</i> (S202)
2	Problem 3 (44-58)	All questions	REGULATING LAWYERS OUTSIDE THE FORMAL DISCIPLINARY SYSTEM (LEGAL MALPRACTICE)	ABA Model Court Rule on Ins Disclosure Cal. Op. 2012-184 (S309)
		III. <u>FUNDAMENTALS OF THE LAWYER-CLIENT RELATIONSHIP</u>		
2	Problem 4 (59-73)	A.1, 2, 3, 4 B.1, 4 C.1, 2, 3, 4 D.1, 2, 3, 4, 5	UNDERTAKING TO REPRESENT A CLIENT	Cal. Op. 2003-161 (S271)
2	Problem 5 (73-86)	A.1,2a-c, 3, 4a B.1a,b, 2, 4 C.1, 2, 3, 4a,b D.1, 2	BILLING FOR LEGAL SERVICES	<i>Duchrow v Forrest</i> (S89) ABA Op. 93-379 (S230)

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
3	Problem 6 (86-99)	A.1, 2, 3, 4, 5, 6 B.1, 2, 3, 4, 5a,c C.1, 2, 3, 4 D.1a-c, 2, 3, 4	HANDLING CLIENT MONEY & PROPERTY & WITHDRAWING FROM REPRESENTATION	
3	Problem 7 (100-120)	ALL QUESTIONS	THE DUTY OF CONFIDENTIALITY (INCLUDING THE ETHICAL DUTY OF CONFIDENTIALITY, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE)	<i>In re Pacific Pictures</i> (S1) <i>Lenz v Universal Music</i> (S19) <i>Costco v Sup Ct</i> (S48) <i>Holmes v Petrovich</i> (S122) <i>Regents v Sup Ct</i> (S156) <i>Matter of Skinner</i> (S227) Cal Op 1997-150 (S255) Cal Op 2003-161 (S271) Cal Op 2003-165 (S281) Cal Op 2010-179 (S301) Cal Op 2012-184 (S309) ABA Op 11-459 (S240) LA Cnty Bar Ethics Op 525 (S340)
		IV. <u>THE REQUIREMENT OF LOYALTY TO THE CLIENT – CONFLICTS OF INTEREST</u>		
4	Problem 9 (121-134)	A.1, 2, 3 B.2, 3, 4, 5b C.1, 2a,c,d, 3a,b, 4a, 5, 6 D.1a,b, 2a,b	REPRESENTING MULTIPLE PARTIES DEALING WITH EACH OTHER	<i>Yanez v Plummer</i> (S72) Cal Op 2004-165 (S281)

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
4	Problem 10 (134-155)	A.1, 2, 3, 4a-c, 5a,b, 6 B.1, 2, 3a-c,f C.1, 2, 3d D.1, 2b,c, 4	THE DUTY OF LOYALTY	<i>Thelan Reid v Marland</i> (S22) <i>Oasis West v Goldman</i> (S40) <i>RFF Family v Burns</i> (S217) Cal Op 1997-150 (S255) Cal Op 2004-165 (S281)
4	Problem 12 (155-168)	A.1a-c, 2, 3 B.1, 3a,b C.1a,b,d, 2, 3b D.2, 3	CONFLICTS BETWEEN THE CLIENT'S INTERESTS AND THE LAWYER'S PERSONAL INTEREST	<i>Fair v Bakhtiari</i> (S109) <i>Discip Counsel v Detweiler</i> (S227)
5	Problem 14 (168-179)	A.1,2a-c B.1, 2a,b,e, 3, 4a,b C.1, 2, 3, 4, 5, 6 D.1.b	THE LAWYER AND HER FORMER CLIENT	<i>Oasis West v Goldman</i> (S40) <i>San Francisco v Cobra</i> (S55) <i>People v Speedee Oil</i> (S62) <i>Kirk v First Am Title</i> (S132) <i>Ochoa v Fordel</i> (S161) <i>Faughn v Perez</i> (S167) <i>Pound v DeMera</i> (S176) <i>Santa Barbara v Sup Ct</i> (S181) <i>City Nat'l Bank v Adams</i> (S188) <i>Adams v Aerojet</i> (S194) Cal Op 2003-161 (S271) Cal Op 1997-150 (S255) Cal Op 1998-152 (S258)

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
5	Problem 15 (179-196)	A.1, 2, 3.a,c, 4a,c B.1, 2b,c, 3b,c, 4, 5, 6 C.1b, 2b D.1, 2, 3	IMPUTED DISQUALIFICATION	<i>San Francisco v Cobra</i> (S55) <i>Dept of Corp v Speedee</i> (S62) <i>Kirk v First Am Title</i> (S132) <i>Ochoa v Fordel</i> (S161) <i>Faughn v Perez</i> (S167) <i>Pound v DeMera</i> (176) <i>Santa Barbara v Sup Ct</i> (S181) <i>Adams v Aerojet</i> (S194) Cal Op 1997-150 (S255) Cal Op 198-152 (S258) Cal Op 2003-161 (S271)
6	Problem 16 (196-210)	A.1, 2, 3, 4 B.1, 2 C.1, 2	SPECIAL PROBLEMS OF GOVERNMENT LAWYERS	
V. <u>ADVISING CLIENTS</u>				
6	Problem 17 (211-223)	A.1, 2, 3 B.1a,b, 2, 3 C.1, 2b, 3a, 4a D.1, 2a, 3	THE LAWYER FOR AN INDIVIDUAL CLIENT	
6	Problem 18 (223-234)	A.1a, 2a,b, 3a, 4 B.2, 3, 4 C.1, 2b-d, 3a, 4 D.3	ADVISING THE BUSINESS CORPORATION	<i>United States v Ruehle</i> (S5) <i>Regents v Sup Ct</i> (S156)
7	Problem 19 (234-245)	A.1, 2.a-c, 3b,c, 4, 5 B.1b,d, 2, 3a, C.1a, 2, 3b,c	COMMUNICATION WITH REPRESENTED AND UNREPRESENTED PERSONS	<i>McMillan v Shadow Ridge</i> (S153) ABA Op 95-396 (S235)

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
7	Problem 22 (264-271)	All questions	OBLIGATIONS WHEN THE CLIENT MAY BE ENGAGED IN FRAUD	
8			MIDTERM EXAM & CATCH UP	
		VI. <u>ETHICAL PROBLEMS IN LITIGATION</u>		
9	Problem 23 (273-287)	A.1b, 2b, 3, 4 B.1.a,c, 2, 3.c C.1, 2 D.1, 2a, 3	THE DECISION TO FILE A CIVIL SUIT	
	Problem 24 (287-300)	A.1, 2, 3.a,b, 4 B.1, 2 C.1, 2, 3	LITIGATION TACTICS	<i>Malin v Singer</i> (S82) <i>Mendoza v Hamzeh</i> (S97) <i>Clark v Superior Court</i> (S101) <i>Holmes v Petrovich</i> (S122) ABA Op 11-460 (S244) ABA Op 06-442 (S236) Cal Op 2013-188 (S321)
9	Problem 25 (301-312)	A.1, 2a B.1, 2, 3, 4b C.1, 2 D.1, 2b,c	DISCLOSURE OF LAW OR FACTS FAVORABLE TO THE OTHER SIDE	
10	Problem 26 (312-327)	All questions	HANDLING PHYSICAL EVIDENCE	

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
10	Problem 27 (327-346)	ALL QUESTIONS	THE CLIENT WHO INTENDS TO COMMIT PERJURY	
10	Problem 29 (357-370)	A.1, 2, 3, 4, 5, 6 B.1b, 2, 3a C.1a, 2a D.1, 2, 3	THE CRUSADING PROSECUTOR	
VII. <u>THE DELIVERY OF LEGAL SERVICES</u>				
11	Problem 31 (371-395)	ALL QUESTIONS	MARKETING PROFESSIONAL SERVICES	<i>Lenz v Universal Music</i> (S19) ABA Op 13-465 (S248) Cal Op 2001-155 (S265) Cal Op 2004-166 (S290) Cal Op 2005-168 (S296) Cal Op 2012-186 (S317)
11	Problem 32 (395-405)	A.1 B.1, 2a,b, 3, 4 C.1, 2, 3a,b, 4a D.1, 2, 3, 4a	ETHICS OF REFERRAL TO A SPECIALIST; FEE SPLITTING	<i>Mink v Maccabee</i> (S186) ABA Op 13-465 (S248) Cal Op 2004-165 (S281)
12	Problem 33 (405-414)	A.1, 2, 3, 4a, 6b,c B.1, 2b-d, 3	ROLES AND RESPONSIBILITIES IN A MODERN LAW FIRM	<i>Thelan Reid v Marland</i> (S22) <i>Jay v Mahaffey</i> (S76) <i>RFF Family v Burns</i> (S217)
12	Problem 34 (414-427)	A.1, 2, 3, 4, 5 B.1b, 2, 3	LEAVING ONE LAW FIRM AND FORMING ANOTHER	<i>Heller Ehrman LLP v Davis</i> (S13) Cal Op 2014-190 (S325)

Class	Assignment	Focus on Questions	Topic	Supplemental Reading
13	Problem 35 (428-440)	A.1 B.2 C.1, 2, 3	THE DUTY TO WORK FOR NO COMPENSATION	
13	Problem 37 (441-460)	A.1, 2, 3, 4, 5, 6, 7 B.1, 2, 3, 4, 5c C.1, 2c,d, 3 D.1, 4	THE FUTURE OF THE PRACTICE OF LAW	ABA Ethics 2020 Comm, Prelim Issues Outline (S344) Calif MJP Materials Cal Op 2001-155 (S258) Cal Op 2004-165 (S281) Cal Op 2004-166 (S290) Cal Op 2005-168 (S296) Cal Op 2012-184 (S309) Cal Op 2012-186 (S317)
VIII. <u>THE ETHICAL CONDUCT OF JUDGES</u>				
14	Problem 38 (461-476)	A.1, 2b,c, 3, 4b, 5 B.1a, 2a,b, 3 C.1, 2, 3a,b,d D.2	JUDGES' DISQUALIFYING CONFLICTS OF INTEREST	Calif Judges Assoc Adv Op 66 (S332)
	Problem 39 (476-488)	A.1, 2, 3a, 4 B.2, 4 C.1, 4 D.1, 2	THE JUDGE AS A POLITICAL CANDIDATE & PUBLIC FIGURE	
	<i>Date to be announced</i>	<i>FINAL EXAMINATION</i>		