

WESTERN STATE COLLEGE of LAW at WESTCLIFF UNIVERSITY

Criminal Justice Ethics 619A



Fall Session 2021
Thursdays: 5:00 – 6:00 PM
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 Web course page – Criminal Justice Ethics – Thursday 5:20-6:20 pm - 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 and one-half (1 ½) hour test comprised of multiple choice and short answer questions, each worth 50% of your're the final examination. The final examination is worth 90% of your grade.

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 College of Law Attendance Policy, students may miss a maximum of two (2) classes in a course given once per week. All cases must be briefed for class. Attendance and Participation are worth 10% of your grade.

IV. Learning Outcome

Students will learn the ability to identify ethical issues in law practice contexts which will enable them to make appropriate decisions to resolve such issues.

V. Availability of Professor for Outside Counseling

Please contact Professor Porter via e-mail at daveporter@cox.net or by phone at (949) 351-1394.

VI. Dates, Topics & Reading Assignments

This course will consist of a weekly one (1) hour in class lecture, supplemented by PowerPoint presentations which will be posted after each class, and a minimum of two (2) hours outside preparation which requires reading all cited cases, statutes and additional handouts. **ALL CITED CASES MUST BE BRIEFED FOR CLASS.**

CLASS

SUBJECT MATTER

1st Class-8/19/21

Intro / Attorney-Client Privilege

Read: California Rules of Professional Conduct (CRPC) 1.1, 1.3, 1.6; 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

2nd Class-8/26/21

Attorney-Client Privilege – Disclosures, Negotiations

Read: CRPC 1.1, 1.3, 1.6, 3.6, 3.3, 3.4; 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

3rd Class-9/2/21

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

Read: CRPC 1.7, 3.3; 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

4th Class-9/9/21

Ineffective Assistance of Counsel (IAC)

Read: CRPC 1.1, 1.3, 1.6; *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

5th Class-9/16/21

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

Read: CRPC 1.1, 1.5, 1.7, 1.8, 1.8.10, 1.9, 1.16; MR 1.5, 1.8 1.16; *People v. Lopez* (2008) 168 Cal.App.4th 801

6th Class-9/23/21

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

Read: CRPC1.8.10, 1.7(c)(2); 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

7th Class-9/30/21

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

Read: *Brady v. Maryland* (1963) 373 U.S. 83

8th Class-10/7/21

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

Read: CRPC 3.8, 3.3, 3.4, 3.7; 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

9th Class-10/14/21

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

Read: CRPC 3.4, 3.8(d); 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

10th Class-10/21/21

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

Read: CRPC 4.2, 3.4, 3.5, 3.6, 3.7; 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

11th Class-10/28/21

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

12th Class-11/4/21

Special Duties of Prosecutors Continued

13th Class-11/11/21

GUEST SPEAKER

14th Class-11/18/21

FINAL REVIEW

Final Exam TBA

VII. WESTERN STATE COLLEGE OF LAW 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. 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 Dean Allen Easley at (714) 459-1168; aeasley@wsulaw.edu. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

VIII. WESTERN STATE COLLEGE OF LAW-PROGRAMMATIC LEARNING OUTCOMES

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(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.

I. WESTERN STATE COLLEGE OF LAW REQUIREMENTS FOR STUDENTS IN ZOOM SESSIONS – IF NECESSARY:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.

Optional additional guidelines that may be included in the syllabus:

- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify your professor in advance so you are not marked absent.
- Unless your professor instructs you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.

- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your professor will inform you about the ways in which you should use these tools in that particular class.
- Professors may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.