

Professional Responsibility Syllabus

Reed

Meeting time: Monday/Tuesday/Wednesday 12:20 – 1:15 pm*
Location: Room 184

Office: 278 Myron Taylor Hall **Office hours:** Tuesday 1:30-2:30
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TA: Nicholaus Mills **Email:** ncm56@cornell.edu **Office hours:** Tuesday 3:00-4:00
TA: Avery Cummings **Email:** aac246@cornell.edu **Office hours:** Wednesday 4:00-5:00

Course Description

This is a survey course on professional responsibility. This course is about how rights and duties are allocated and enforced in the attorney-client relationship. Basically, it is intended to prepare you to practice law without screwing up and getting yourself or your employer into trouble. It is applicable regardless of the area of practice you are interested in – litigation, transactional, civil, criminal, big firm, small firm or solo practice, private sector or government, for-profit or public interest.

It covers topics such as: conflicts of interest; confidentiality, attorney-client privilege, and work product; liability for participation in client wrongdoing; competence, malpractice, and constitutional ineffectiveness; perjury and false evidence; agency law and decision-making in the attorney-client relationship; formation and termination of the relationship; attorneys' fees, transactions with clients, and handling client property; admission to the bar; advertising and solicitation by lawyers; unauthorized practice of law and multijurisdictional practice; and judicial ethics (including disqualification and recusal standards).

PR Requirement: This course satisfies the Cornell Law School, ABA, and New York courts' professional responsibility requirements. It may **not** be taken S/U.

Learning Outcomes

By the end of the course, you should be able to:

- 1) identify the duties lawyers have to other parties (e.g., individual clients, corporations, third parties, the court), including those which are non-waivable;
- 2) find the appropriate language in the Model Rules, the Restatement of the Law Governing Lawyers, or other source of law to support the duty;
- 3) understand the potential consequences of violating these duties;
- 4) consider the justification and implications of the rules, including ethical considerations.

Therefore, you should ultimately be able to read a set of facts, identify the duties owed, apply the relevant law, analyze whether the lawyer has violated his/her duties, and discuss the consequences.

Materials

Supplement: Martyn, Fox & Wendel, *The Law Governing Lawyers* – 2017-18 or 2018-19 edition (*optional*)

It is helpful to have the rules supplement, but you can access the Model Rules and Model Code of Judicial Conduct from the ABA website, the Restatement from the ALI Collection on HeinOnline, and the federal rules of civil procedure, the Sarbanes-Oxley regulations, and the federal judicial disqualification statute from the LLI. Make sure you are reading the most recent version of the Model Rules (must have Model Rule 8.4(g)) and the comments to the Restatement. Also note the exam will be open-book but closed mode (see below).

E&E: Wendel, *Professional Responsibility: Examples & Explanations* (5th edition 2016) (*optional*)

The E&E makes the application of the rules, comments, cases, and ethics opinions *much* clearer. But if you are confident in your ability to pick up legal rules and principles from cases and class discussion, you're welcome to go without the E&E.

Clicker: iClicker or REEF Polling app (*required*)

I do not provide tech support for iClicker or REEF. If you have difficulties, you can contact Cornell Center for Teaching Innovation (iClicker) or REEF (app). More information about registering and troubleshooting are available on Blackboard.

Other: Cases and other readings (*available on Blackboard*)

Most of the cases are not edited as they would be in a textbook, but you can use the headnotes and key numbers to determine what is relevant to the course. I have also posted questions on Blackboard that you should think about prior to coming to class.

Grading

Exams: Your course grade will be primarily based on a 3-hour, in-class, open-book final exam. The exam will be open-book but “closed mode” which means if you will not have access to files on your hard drive. If you want to have your outline, notes, or rules (if you don't have the supplement), you must print them in advance. The exam will consist of either (a) multiple choice questions + 1-2 short answer questions or (b) 2-3 longer essay questions.

Attendance: Attendance is mandatory and will be measured in two ways. First, participation in the in-class clicker questions. You will not be graded for accuracy, but I will be attentive to patterns indicating random clicking instead of intelligent participation. Second, **I will call on people randomly** to answer questions about the reading. Complete failure to prepare or responding “pass” may result in a grade penalty. If you are unprepared one day, please let me know before class starts.

You do not need to worry about the occasional absence for interviews or other professional or personal obligations. However, repeated failure to attend class will result in a reduction in your final grade, and you may be excluded from the final exam for frequent and un-excused non-attendance following a written warning. If you are going to miss class, I am happy to grant access for occasional justified absences. Please use the online form available from the Registrar:

<https://support.law.cornell.edu/VideoRequest/>

MPRE

This is not intended as an MPRE prep course, but it will assist you. There are a few topics that we will not cover that will be on the MPRE and there are topics that we will cover more in-depth than will be tested on the MPRE. We should cover most of the information by the **March 23** exam.

For additional information about the MPRE, check out the National Conference of Bar Examiners' (NCBE) [website](#). I highly suggest consulting [subject-matter outline](#) and taking one of the [online practice exams](#), even if you are taking a bar-preparation course.

Note for LLM Students

The law governing lawyers is very much an extension of other bodies of doctrine, and not a self-contained subject. The content of this course presupposes familiarity with basic common law subjects including torts, contracts, civil and criminal procedure, evidence, and agency and fiduciary law. The class goes fast and covers a lot of material. LLM students with a common-law degree (e.g. from the U.K., Canada, Australia/NZ, India, Pakistan, South Africa, Israel, etc.) should have very little difficulty adapting knowledge of these doctrines to the American context. Civil law-trained LLMs, however, should be prepared to do some supplemental reading at times to fill in gaps.

Tentative Course Schedule:

See Blackboard for the up-to-date schedule.

Note: MR=Model Rules, R=Restatement

Read all comments for all assigned MR and R readings **every day** –
on days with ** read the comments **very carefully**

Date	Topic	Supplement	E&E	Other
T 1/22	Overview	MR Scope & Preamble MR 8.4, 8.5 R §§ 1, 5, 6	1-15	
W 1/23	I Attorney-Client Relationship	MR 1.18 R §§ 14, 15	23-28	<i>Togstad</i>
	A Formation			
F 1/25*	B Decision Authority & Communication	MR 1.2, 1.3, 1.4, 1.13(a), (g) R §§ 18-27	43-51	<i>dePape,</i> AALS Marijuana art.
M 1/28	C Competence	MR 1.1, 5.1-5.3 R §§ 16, 48-53, 58	129-38	<i>Viner</i>
T 1/29	Ineffective Assistance of Counsel (IAC)	MR 1.14 R § 24	57-9, 144-49	<i>Hinton,</i> <i>McCoy</i>
W 1/30 No Class				
M 2/4	D Non-Clients	R § 57		ABA 92-363 <i>Flatley</i> Beckham art.
T 2/5	Non-Clients	MR 1.13(b)	295-99	<i>Chem Age</i> (skip ¶¶ 11-23)
W 2/6	E Termination	MR 1.16 R § 33, 37, 40, 43	36-40	
M 2/11	II Confidentiality	MR 1.6(a) R § 68-72, 77, 87-90	155-161, 169-74, 197-99	Fed. R. C. P. 26(b)(3)
T 2/12	A Privilege & Work Product	MR 1.13(f), (g) R § 73	180-83	<i>Upjohn, Lindsey</i> (only § III & IV)
W 2/13	Exceptions	MR 4.4(b) R § 78-80**	188-94	Fed.R.Civ.P. 26(b)(5) Fed. R. Evid. 502 <i>Pacific Pictures</i>
F 2/15*	Exceptions & Waiver Crime Fraud	R § 82	186-88	<i>Chen</i>
M 2/18	B Confidentiality	MR 1.6, 1.13(c)	205-09, 212-22	<i>Quest Diagnostics</i>
T 2/19	Confidentiality	MR 1.7 R §§ 60, 75-76		ABA Op. 08-450 <i>A v. B</i> <i>Lindsey</i> (§ III.B)

W 2/20	III	Conflicts of Interest	MR 1.0(c), (e), 1.7, 1.10 R §§ 121-22**	309-14, 317-19, 323-39, 353-55	<i>Westinghouse</i>
F 2/22*	A	Concurrent Representation	MR 1.7 cmt [22], [34]	117, 339-41	<i>BabyCenter</i> NY Bar Op. 2006-1
M 2/25		Application	MR 1.13(f), (g)	107-12, 121-23	<i>US v. Nicholas, US v. Ruehle</i> (same case)
T 2/26		6 th Amendment IAC		361-66, 381-86	<i>Mickens</i> (not Souter dissent p 1253)
W 2/27	B	Former Clients	MR 1.9(a) R § 132**	387-95	
M 3/4	C	Imputation & Screening	MR 1.0(k), 1.9(b), 1.10(a) R § 124	402-14	<i>Dynamic 3D Geosolutions</i>
T 3/5	D	Government/Other	MR 1.11, 1.18	28-29, 396-97, 419-23	
W 3/6	E	Personal	MR 1.8	427-40	
M 3/11		Application			<i>Western Sugar</i>
T 3/12	IV	Wrongdoing	MR 1.0(m), 3.3	231-40	
W 3/13	A	Criminal		248-53	<i>McDowell</i>
M 3/18	B	Evidence	MR 3.4-3.8, 4.1, 5.3, 8.4(c)	274-77, 285-87, 292-94, 441-43	<i>Midwest Motor Sports</i>
T 3/19		Application	R § 119		<i>Wemark</i>
W 3/20	C	Anti-Contact	MR 4.2 R § 99-100	67-71 74-76	
M 3/25	V	Regulation	MR 8.4(g)		ABA Report Volokh art.
T 3/26	A	Discrimination			<i>Janson</i>
T 3/26	B	Unauthorized Practice of Law (UPL)	MR 4	504-06	
W 3/27	1	Multijurisdictional Practice (MJP)	MR 5.5 R § 3	509-14	<i>Birbrower</i>
4/1-4/6		Spring Break			<i>Good luck if taking the MPRE!</i>
M 4/8	2	Advertising		451-53, 455-61, 466-72	ABA Ad Rules & Report
T 4/9	C	Admission		489-95	<i>Converse, Fleck</i>

W 4/10	Admission/Wellbeing		Reed et al. art. Reed & Bornstein ch		
M 4/15	Admission/Wellbeing				
T 4/16	D	Fees	MR 1.5, 1.15 R § 34,** 43	77-81, 85-88, 95-97	ABA Op. 11-458
W 4/17		Fees	MR 1.8(a) R § 40	92-93	ABA Op. 00-418 (p 1-8), Heineman (p. 401-11, 423-27)
M 4/22		Miscellaneous Regulation	MR 6.1, 8.3	499-500, 517-19	Warren
T 4/23		Wrap-up/Review			
W 4/24		[RESERVED]			
M 4/29		[RESERVED]			

****Make-up classes will be on Fridays from 11:20-12:15 in the regular classroom (184).
Recordings for make-up classes will be available on Blackboard.***