

Professional Responsibility

Professor Gregory Sisk

SYLLABUS – Spring, 2019

References in this syllabus to “Casebook” are to STEPHEN GILLERS, REGULATION OF LAWYERS (10th ed. 2015) (the customized shorter version which is available in the bookstore).

References to “Model Rules” are to the ABA Model Rules of Professional Conduct, which you may find online or otherwise. When you read a Rule, also be sure to read the accompanying official Comments.

References to “Legal Ethics Hornbook” are to GREGORY C. SISK, ET AL., LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION (West Academic 2018). This book is available to you online for free [here](#). References to “Legal Ethics Hornbook” will appear inside brackets like this { as “Optional Additional Reading”. These are NOT assignments, and you are not assigned to read these. Rather, if you want to read further or are interested in how your professor thinks about these issues, this refers you to the particular sections of the hornbook for that topic. [In addition, as part of the customized Gillers book package, you can also obtain “Professional Responsibility: Examples and Explanations” by W. Bradley Wendel, which uses the problem method — very similar to law school exam essay questions — to provide further understanding of the concepts in this course.]

References to “Video Vignette Transcript” are to the document by that name which is available as a pdf download on the course web page.

I. INTRODUCTION AND THE ETHICS RULES

A. Introduction

Casebook ix – xi

B. The Ethics Rules

Casebook 1-12

Model Rules - Preamble and Scope

{Optional Additional Reading: Legal Ethics Hornbook § 4-1.1}

II. THE ATTORNEY-CLIENT RELATIONSHIP

A. Beginning the Attorney-Client Relationship

1. *Creating the Attorney-Client Relationship*

Casebook 13-15

{Optional Additional Reading: Legal Ethics Hornbook § 4-3.2(a), (c)}

2. *Advertising and Soliciting for Clients*

Model Rules – 7.1, 7.2, 7.3

Casebook 241-253

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-2.1 to 4-2.4(e)}

B. Elements of the Attorney-Client Relationship

1. *Competence*

Model Rules - 1.1

Casebook 16-17

{Optional Additional Reading: Legal Ethics Hornbook § 4-5.1(a), (b)}

2. Confidentiality

Model Rules - 1.6, 1.13

Supplement: Catechism of the Catholic Church (255)

{Optional Additional Reading: Legal Ethics Hornbook § 4-6.1}

a. Individual Clients

Casebook 17-26

**{Optional Additional Reading: Legal Ethics Hornbook
§§ 4-6.3, 4-6.5}**

b. Entity Clients

Casebook 26-31

**{Optional Additional Reading: Legal Ethics Hornbook §
4-8.3}**

c. Government Attorney-Client Privilege

Lecture

**{Optional Additional Reading: Legal Ethics Hornbook §
4-8.8(b)}**

d. Exceptions

Casebook 32-40

**{Optional Additional Reading: Legal Ethics Hornbook §
4-6.6}**

3. Agency

Casebook 40-42 (omit Bakery Mach.)

Casebook 44-45

4. Fiduciary Responsibility

Casebook 45

{Optional Additional Reading: Legal Ethics Hornbook § 4-5.5}

5. *Loyalty and Diligence*

Casebook 45-46

Model Rules - 1.2, 1.3

{Optional Additional Reading: Legal Ethics Hornbook § 4-5.3}

6. *Duty to Inform Client*

Casebook 46-49

Model Rules - 1.2(a), 1.4

{Optional Additional Reading: Legal Ethics Hornbook § 4-5.4}

C. **Autonomy of Lawyers and Client**

1. *Lawyer's Autonomy*

Casebook 49-55

Model Rules - 1.2(a)

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-3.3 to 4-3.4}

2. *Client's Autonomy*

Casebook 56-60

3. *Client Counseling, Moral Deliberation, and Religious Faith*

Law Review Excerpts on Web Page:

“Client Counseling and Moral Responsibility”
(1-16)

A Christian Perspective: Teresa Stanton
Collett, *To Be a Professing Woman* (17-22)

A Jewish Perspective: Russell G. Pearce, *The
Jewish Lawyer's Question* (23-28)

A Muslim Perspective: Azizah Y. al-Hibri,
Faith and the Attorney-Client

Relationship: A Muslim Perspective (29-33)

{Optional Additional Reading: Legal Ethics Hornbook § 4-5.2}

C. Terminating the Attorney-Client Relationship

Model Rules - 1.16

1. *Termination by the Client*

Casebook 60-61

{Optional Additional Reading: Legal Ethics Hornbook § 4-3.6(a) to (b)}

2. *Termination by the Attorney*

Casebook 61-63

{Optional Additional Reading: Legal Ethics Hornbook § 4-3.6(c)}

**III. PROTECTING THE ATTORNEY-CLIENT
RELATIONSHIP AGAINST OUTSIDE
INTERFERENCE**

A. Communicating With Another Attorney's Clients

Casebook 65-67

Model Rules - 4.2

{Optional Additional Reading: Legal Ethics Hornbook § 4-11.3}

1. *Civil Matters*

Casebook 67-74

{Optional Additional Reading: Legal Ethics Hornbook § 4-8.4}

2. *Criminal Matters*

Casebook 74-80

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.12(c)(2)}

B. Improper Acquisition of Confidential Information

Casebook 80-83

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-9.6(d), 4-9.6(e) to (f), 4-9.12(c)(3)}

IV. LAWYERS, MONEY, AND THE ETHICS OF LEGAL FEES

Casebook 85-86

A. The Marketplace

Casebook 87-91

B. Unethical Fees

Casebook 91-99

Model Rules - 1.5

Model Rules - 8.3(a)

Video Vignette Transcript: Transcript of “Management Committee Meeting” (33-36)

{Optional Additional Reading: Legal Ethics Hornbook § 4-4.2(a) to (b)}

C. Contingent Fees

Casebook 99-103

Model Rules - 1.5(c), 1.8(i)

{Optional Additional Reading: Legal Ethics Hornbook § 4-4.2(c)}

D. Pro Bono

Casebook 103-110
Model Rules - 6.1
{Optional Additional Reading: Legal Ethics Hornbook § 4-13.4}

V. CONCURRENT CONFLICTS OF INTEREST

Casebook 111-115
{Optional Additional Reading: Legal Ethics Hornbook § 4-7.1}

A. Client-Lawyer Conflicts

Casebook 115-128
Model Rules - 1.8, 5.4(c)
**Video Vignette Transcript: Transcript of “Karen Horowitz
and J. Blair Thomas” (1-3)**
{Optional Additional Reading: Legal Ethics Hornbook § 4-7.3}

B. Client-Client Conflicts

Model Rules - 1.7, 1.10, 1.11
{Optional Additional Reading: Legal Ethics Hornbook § 4-7.4(a) to
(c)(1)}

1. *Criminal Cases*

a. Defense Lawyers

Casebook 129-139
**Supplement: Problem: “I Represent the
Witness Too” (256)**
{Optional Additional Reading: Legal Ethics Hornbook §
4-7.4(c)(3)}

b. Prosecutors

Casebook 139-142
{Optional Additional Reading: Legal Ethics Hornbook § 4-
9.12(a) to (b)}

2. *Civil Cases*

Casebook 142-159

Video Vignette Transcript: Transcript of “Anita Eng and Casper Voll” (4-8)

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-7.4(c)(4), 4-7.4(c)(8), 4-7.6, 4-7.7}

C. The Advocate-Witness Rule

Casebook 159-161

Model Rules - 3.7

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.10}

VI. SUCCESSIVE CONFLICTS OF INTEREST

Casebook 163-175

Model Rules - 1.9, 1.10

{Optional Additional Reading: Legal Ethics Hornbook § 4-7.5}

VII. ETHICS IN ADVOCACY

Casebook 177-180

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-9.1, 4-9.2}

A. The Perjurious Client

Video Vignette Transcript: Transcript of “First Client Interview” (9-12)

Casebook 180-197

Model Rules - 3.3

Supplement: Problem: “Carl’s Story” (256-257)

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.8(a) to (g)}

B. Fostering Falsity

1. *Literal Truth, Exploiting Error, and Silence*

Casebook 197-207

{Optional Additional Reading: Legal Ethics Hornbook §§ 4-9.5(a) to (c), 4-11.2}

2. *Cross-Examining the Truthful Witness*

Casebook 207-211

3. *Coaching the Witness*

Class Discussion

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.8(i)}

4. *Appeals to Bias*

Casebook 211-213

{Optional Additional Reading: Legal Ethics Hornbook § 4-1.4(c)}

5. *Improper Argument*

Casebook 213-223

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.9}

C. Ethics in Discovery [This Section May Be Omitted Due to Time]

***Sleazy in Seattle:* Unfortunately, the *American Lawyer*, which holds the copyright to this article, would not permit me to reproduce it in this supplement without paying a royalty fee for each copy. Instead of passing that charge**

along to you, I have placed many copies (for which the royalty fee has been paid) on reserve in the Law Library.

Supplement:

Affidavit of Payton Smith (258-265)

Declaration of David Boerner (266-276)

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.6(a) to (b)}

D. Destruction or Concealment of Physical Evidence

Casebook 225-239

Model Rules - 3.4

{Optional Additional Reading: Legal Ethics Hornbook § 4-9.7}