

Professional Responsibility—Fall 2012
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Course Overview

Welcome to the most important class in the law school curriculum. More than any other class you will take during your time in law school, this course is about you and your future. The course is designed to acquaint you with the lawyer’s obligations—both individual and as a member of the legal profession—to the world in which he/she lives. In addition to a discussion of ethical concerns inherent in the practice of law, we will cover lawyer regulation including the Model Rules of Professional Conduct. We also will consider what it means for you to become a member of the legal profession at a time of economic pressure, technological advancement and international competition. A lawyer’s work largely turns upon relationships, namely between the lawyer and client, but also in the connections made with fellow lawyers, other professionals and society in general. This course is your opportunity to reflect upon the lawyer you will become as you build these relationships over the coming years. I consider it my professional responsibility to do all that I can in this course to ensure that you will be well-equipped for a rewarding and meaningful career in the law. I will demand excellence from you in every class; and you should expect the same from me.

Organization of the Course

Syllabus. Please take the time to read this syllabus carefully. It contains important information about the organization of the course, the requirements and your grade. In addition, as you begin to prepare for the exam I believe you will find that the reading assignments list serves as a helpful guide for outlining.

Meetings. We meet twice a week on Mondays and Wednesdays in Room 472 from 2-3:15PM. My office hours are Mondays from 10AM-1PM and by appointment. In addition, you are always welcome to stop in when you see my door open.

Required Materials. Required: (1) PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH by Pearce, Capra & Green; and (2) access to the online version of the AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html; and (3) THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES by Richard Susskind. You may also purchase a copy of the Model Rules if you prefer. I use the ABA’s printed version of the Model Rules, which I recommend because it is the least expensive and the most lightweight. **Please note that when the ABA Model Rules of Professional Conduct are referenced in the casebook, you are responsible for looking up and reading the entire Rule as well as the corresponding Comments.** You are also required to register for TWEN; occasionally additional required reading materials will be posted there. You should check TWEN each week BEFORE prepping for class to confirm the reading assignment.

Class Preparation, the On-Call Policy & Twitter. I expect you to arrive at each class prepared to be on-call. If you have not adequately prepared for class, you may take a pass by submitting me written notice, via either (1) email at least 30 minutes before the start of class, or (2) a written note handed to me before the start of class. Taking a pass means that you likely will be called upon during the next class. Everyone is allowed one free pass. For each additional pass that you take, your grade will be lowered by one-third letter grade. More important, if you have not taken a pass for a class and I call on you and you have not read the assignment for that day, I will lower your final grade by *one full* letter grade (see more on class participation grading below under “Grade”). As fair warning, my calling order is completely random—just because you are on call one day does not mean that you will or will not be on the next, though I will do my best to call on each of you a similar number of times during the semester.

As another aspect of class participation, you are required to set up a Twitter account and to submit at least one Tweet per class whenever I use a live-Tweet wall for teaching purposes. (If you do not wish to set up a

Twitter account, please contact me at your convenience by email to arrange an alternative mechanism for fulfilling this in-class participation requirement.) All Tweets must include the following hashtag in order for you to receive credit: #knakepr (please take care to spell my last name correctly ☺). I will explain in class my pedagogical philosophy for requiring this aspect of class participation.

Writing Assignments. You will be asked to turn in a handful of short written reflective assignments over the course of the semester. While you will not receive a letter grade on these assignments, you will receive credit for completion. Failure to turn in all of the assignments or to make a good-faith effort at completing them will result in a reduction of your final exam grade. Exceptional work may result in an increase of your final exam grade. In past classes typically I have raised 10-15% of students' exam grades on this basis (as well as for in-class participation—for more on that see “Grade” below). The decision to raise or lower grades on this basis is completely within my discretion.

Final Exam. The final exam will consist of multiple choice and essay questions. It is an open book exam, meaning that you can bring anything into the exam room. The exam will be three hours. The best way to prepare for the exam is to read the assigned materials, attend every class and pay attention to class discussion. I will provide you some additional advice and strategy for exam preparation later in the semester.

Grade. Your grade is based primarily on the final exam, though participation in class discussion, small group exercises and the writing assignments also will be considered. I may raise a student's grade to reflect exceptional class participation, TWEN discussion, or writing assignments (please keep in mind with respect both to participation and writing that quality, not necessarily quantity, is what constitutes exceptional work). In past classes typically I have raised 10-15% of students' exam grades on this basis. A student's grade may be lowered for unprofessional conduct in the classroom or failure to participate in class discussion and activities (in addition to the other grounds listed elsewhere in the syllabus).

Attendance. Regular attendance is expected and certainly in your best interest. Not only will attendance at every class inevitably help your grade, but it likely will leave you better prepared for the MPRE (more on that below). The Law College requires you to attend 85% of this course in order to sit for the exam, which means a maximum of four absences. In order to enforce the policy, I will circulate an attendance sign-in sheet at the beginning of each class. If you are tardy and miss the sheet, please see me immediately at the end of the class and sign in. I will treat two such tardies as one absence. If you are concerned about your ability to attend 85% of this course, please contact me via email to review your situation (and please note that an absence for religious or medical reasons will not count toward the four provided I have appropriate notice).

The MPRE. For admission to the bar of most states (including Michigan), you must pass the Multistate Professional Responsibility Exam (MPRE). The MPRE is a multiple-choice exam covering the ABA Model Rules of Professional Conduct and Code of Judicial Conduct as well as generally accepted principles established in federal and state cases regarding the conduct of lawyers. This class will cover a number of subjects included on the exam and will provide a useful background; however, this is not an MPRE review course. Before you take the MPRE, I STRONGLY encourage you to take a review course.

Computers/Cell Phones/Recording Devices. Computers may be used in class for note taking purposes and Twitter participation only. Use of computers or similar devices for any other purpose—including but not limited to Internet surfing, playing games, instant messaging, text messaging, writing email, display of distracting images—is strictly prohibited. If I discover such activity, I reserve the right to lower your final grade up to one letter, ban you from using a computer in the class, or both. Cell phones and pagers must be turned off during class. No taping (audio or video) of any class is permitted except with my permission for the purpose of complying with the Americans With Disabilities Act.

Reading Assignments

This is a syllabus, not a contract. Set forth below is a *tentative* schedule for our meetings, but additional required reading materials may be posted on TWEN and assignments may change as we make our way through the course. **I will announce at the close of class the upcoming assignment. If you are absent, please check on TWEN.** You are responsible for all of the reading listed as “required” whether we discuss it in class or not. **Also, please note that when the ABA Model Rules of Professional Conduct are referenced in the casebook, you are responsible for looking up and reading the entire Rule as well as the corresponding Comments.**

8.27 “The Start-Up of You” in a Legal Profession that Faces Unprecedented Economic Pressures, Technological Innovation, Global Competition and Opportunities. Read packet of materials downloadable on TWEN—click the small paperclip at the top of the class assignment posting for “First Class.” **Written assignment #1 is due today. Please submit IN HARDCOPY at the start of class in 300 words or less a personal statement about what you plan to do with your law degree.**

8.29 Introducing Professionalism and Legal Ethics; The Basic Elements of Law Practice Pp. 1-56 (you might want to read ahead over the long weekend and get started on Richard Susskind’s The End of Lawyers)

9.5 Creating & Ending the Lawyer-Client Relationship Pp. 56-86

9.10 What’s the Point of Learning Anything about Professional Responsibility if We Have No Clients? Read portions of Susskind’s The End of Lawyers as assigned in class; excerpts from Knake, Democratizing the Delivery of Legal Services (download the article here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1800258)

9.11 Makeup Class. 4-5:30 Pasant Theater, Wharton Center (please arrive and be seated no later than 3:45) This is a REQUIRED class. It is a make up for a class that is canceled later in the semester. You have an incredible opportunity to hear from Professor Richard Susskind, author of The End of Lawyers? Rethinking the Nature of Legal Services, joining us from the United Kingdom. Your reading assignment is to finish The End of Lawyers. Also please note the following written assignment must be completed and turned in by Friday, 9/14: **Please provide in 500 words or less your reaction to Professor Susskind’s talk, including specific steps you can take while still in law school to prepare for delivering legal services in the world he predicts.** A recording will be made available on DVD in the library for those unable to attend.

9.12 The Duty of Competence Pp. 86-133

9.17 Allocating Decision-Making Between Lawyer and Client Pp. 133-173

9.19 Finding and Billing Clients Pp. 173-231

9.24 Fees and Billing Pp. 232-297

9.26 Attorney Client-Privilege & The Duty of Confidentiality Reading Assignment to be Announced on 9.24 Will include selections from Pp. 297-387. Check TWEN for final assignment.

10.1 Conflicts of Interest Part I Pp. 387-437

10.3 Conflicts of Interest Part II Pp. 437-454 and see Make Up Class below

10.3 Makeup Class. 4-5:15 Room 473 Conflicts of Interest Part III Pp. 454-486 This class will be recorded and a link made available on TWEN for those of you unable to attend.

10.8 No class

10.10 In class exercise -- Conflicts of Interest Part IV There is no reading assignment for today; you will complete an in class exercise to help identify conflicts of interests.

10.15 Conflicts of Interest Part V Pp. 486-511

10.17 The Lawyer's Duties to the Legal System, the Profession and Nonclients Pp. 511-534

10.22 10.29 Duties to Lawyers and to the Bar Pp. 616-628; Guest Lecture from Professor Dan Katz on Practicing Law in the 21st Century: Technology, Data, and Information Engineering

10.24 Duties to Third Parties and to the Law Pp. 573-616

10.29 Lawyer Speech and the First Amendment Pp. 534-573; Excerpts from Knake, Attorney Advice and the First Amendment (download the article here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1692174)

10.31 Special Ethical Rules: Prosecutors Pp. 629-716 (reading to be narrowed in advance of class—be sure to check TWEN for the final assignment)

11.5 Special Ethical Rules: Judges Pp. 716-767

11.7 What is the Proper Role of a Lawyer? Pp. 767-802

11.12 Professionalism Part I Pp. 903-958

11.14 Professionalism Part II Pp. 958-998

11.14 Makeup Class. 4-5:15 Room 471 Special Responsibilities of a Lawyer Pp. 998-1035 This class will be recorded and a link made available on TWEN for those of you unable to attend.

No class 11.19 & 11.21 Thanksgiving Break

11.26 Competing Visions of Professional Morality Pp. 802-903 (Portions of this reading will be divided among the class, and you will report in small groups about a specific section of the reading—so be sure to check TWEN for the chart that will list the pages you are responsible for reading—you are NOT required to read all of the pages listed above, only the portion specifically assigned to you. The reason for this will be apparent when we meet for class and conduct a small group exercise.) This class will be recorded and a link made available on TWEN for those of you unable to attend.

11.28 Last Class—Parting Thoughts and Exam Review. There is no reading assignment for the last class. ☺