

PROFESSOR JOHN DZIENKOWSKI
Professional Responsibility – Summer 2019
COURSE INFORMATION

Required Texts:

One: CASEBOOK: The 13th Edition Full/Unabridged Editions with Casebook Plus. I will require that all students complete the objective questions on Casebook Plus, so you will either have to buy the Casebook Plus edition of the book or the new or used book plus the objective questions directly from West Academic. The questions alone cost approximately \$35.

T. Morgan, R Rotunda & J. Dzienkowski, *Professional Responsibility: Problems and Materials* (13th ed. 2018) with Casebook Plus ISBN: 9781642420326

Two: MODEL RULES BOOK: The course requires the study of the 2019 ABA Model Rules of Professional Conduct. I recommend the following supplement because it has the new advertising rules enacted by the ABA in 2018.

T. Morgan, Selected Standards on Professional Responsibility (2018) ISBN: 9781640201446.

NOTE: My exams are open note and open book and having the Model Rules in a book during the exam is helpful. You could use an online version for the class but you may not search the internet so you could not use it during the examination.

Class Preparation and Attendance:

We will cover approximately 35-40 pages per day. Please read one topic ahead. Attendance is very important to your preparation for the final examination. This syllabus is intended as a goal and not an imperative. We will trim assignments as time requires.

After the first class day, in order to generate class participation, I will prepare an on call list for the class. You will be expected to be on call for one discrete topic a couple of times in the semester. Each class will have approximately 2-3 students on call for an assigned topic. I will expect those on the list to be prepared to answer questions based upon the assigned material. I can accommodate planned absences but if you skip class or if you are unprepared your class participation credit will suffer. When you are on call during a class, you are expected to be in the room at least 5 minutes before class starts so we can test your microphone connection.

Objective Examination Questions - 65% of the Grade

The examination will consist of 65-100 objective (multiple choice) questions. This exam be open book and will count 65% of your final grade. The questions will come from the assigned reading and class lecture. *For the examination, you are responsible ONLY for content of the 2019 Version of the Model Rules and not the Model Code.* You can prepare for the examination by studying the Model Rules questions available on the Casebook Plus platform or through CALI in your law school library or on the internet. I also have some sample questions on line. And, you can also practice taking objective questions on ethics from the questions found on line at www.ncbex.org or in many of the MPRE study books.

Essay Examination Questions – 20% of the Grade

The examination will also contain two short essay questions and this section will constitute 20% of the final grade.

Short Paper on an Ethics Topic of Your Choice – 10% of the Grade

Every student will be responsible for writing a 5 page double spaced 1 inch margins paper on a current ethics topic. I strongly suggest that you select a topic in an area of law that you would like to practice in as it will give you some insight into the current issues faced by lawyers in that practice area. The paper is due on the last day of class and should be submitted online. No extensions will be granted.

Casebook Plus Objective Questions by Casebook Problem – 5% of the Grade

Students will be expected to complete the assigned objective questions in Casebook Plus by the end of the classes with a score of 60% or higher. A failure to complete the questions with this minimum score will result in a proportionate reduction of the points awarded for this section. There are two sets of questions, one general one and one by casebook problem. I will only require completion of the set that correlates to the problems in the book.

Class Participation

I reserve the right to raise a grade to the next step for class participation or to lower a grade one step because of poor performance or lack of attendance. In this on line class, participation on your on call day or in the discussion forums will count towards class participation credit.

Multistate Professional Responsibility Examination (MPRE)

Most states require that all members of the bar pass the MPRE examination. The examination is offered three times a year throughout the country. A packet describing the examination is available online at www.ncbex.org and at the top of the page there is a sign up link for the MPRE. Most states allow you to take the MPRE as a second year; however, a few states (Alabama, Illinois, and Florida for example) require that you take the MPRE within one year of taking the bar exam. In that case, you must wait until your third year to take the MPRE. Please look up your state to verify when you may take the exam so that it counts for your bar admission. This may change year to year so please look at the relevant state law.

NOTE: In the future, the MPRE will be going to a computerized testing format at a testing center. Please see the website for more information.

Comparing this On-line Class to My Traditional Class

I have spent considerable time putting together this class into discrete modules with powerpoints and on-line material. The reading assignments and material are not onerous. I expect students to do the reading before class so that they can follow our dialogue about the material. I am very excited to teach my class in this format and I look forward to the first day of class.

Professional Responsibility of Lawyers

SYLLABUS

**May 28-July 3. Exams July 8th -12^h
Review Session will be on July 6th 12:00-2:00 CST.**

All page numbers are to the 13th edition.

We may finish a class in the middle of a topic and cover the rest of it in the next class.

May 28th

**Introduction to the Course and Grading
Multistate Professional Responsibility Exam**

Topic 1: The Legal Profession [Very short discussion]

The American Legal Profession pages 1-9
Codes of Professional Responsibility..... pages 16-20
Design and Topics of the Various Codes.....Online
Changes in the Last Half Century.....pages 9-16

Topic 2: Admission to the Bar

Requirements for Admission to the Bar (page 35)

Educational and Knowledge Standards..... pages 44-48
Citizenship, Residency, and In-State Office pages 48-49
Character and Fitness - Problem 1.....pages 36-41

The Application Process

Candor in Applications Process & MR 8.1 pages 41-44
(MR 8.1, MR 8.4)

After we cover this material, you should do the Casebook Plus Questions for Problem 1.

Topic 3: Lawyer Discipline & The Disabled Lawyer

Problem 2pages 49-50
Conduct That Subjects a Lawyer to Discipline & MR 8.4.....pages 50-55
Range of Sanctions..... pages 65-67
Aggravating and Mitigating Factors in Discipline Cases.....pages 55-57
Interstate Discipline - Choice of Ethics Rules & MR 8.5.....pages 57-60
Duty to Report Another Lawyer's Misconduct.....pages 60-64
(focus on Himmel case and Riehlmann cases)
(MR 8.4, 8.3, 8.5)

After we cover this material, you should do the Casebook Plus Questions for Problem 2.

May 29th

Fundamentals of the Attorney-Client Relationship

Topic 4: Undertaking to Represent a Client

Problem 4pages 90-91
Duties to Prospective Clients
 Competence: MR 1.1 & Togstad case.....page 98
 MR 1.18 and Text.....pages 91-92
Dealing with Prospective Clients Through the Internet...pages 93-94
Counseling Individuals in a Pro Bono Clinic.....pages 93
Factors in Whether a Relationship has been formed.....pages 97-98
Freedom to Reject Cases: Factors.....pages 94-97
Documenting the Decision to Represent a Client.....pages 98-99

Allocating Decisions in the Representation & MR 1.2....pages 98-106
(MR 1.1, 1.2, 1.18, 6.5)

After we cover this material, you should do the Casebook Plus Questions for Problem 4.

Topic 5: Unintended Clients (Including Entity Representations)

Corporate Employees: Perez case..... Online
Drafting Documents for a Nonclient: Parker case..... Online
Japanese Investors Case Study..... Online
Reviewing Unintended Client Exam Questions..... Online
(MR 1.18, 4.3, 1.13(f))

June 3th
Topic 6: [We will cover unintended material from prior class in this class]
Employment Arrangements and Compensation

Problem 5pages 106-107
MR 1.8(a)'s Duty to Charge Only a Reasonable Fee.....pages 112-115
Nonrefundable Fees.....pages 109-111
Must the Fee Agreement be in Writing? MR 1.8(b), (c)...pages 107-109
Increasing a Fee During a Representation.....pages 111-112
Special Rules for Contingent Fees & MR 1.5(c), (d).....pages 118-122
Sharing Fees with Attorneys Outside of the Law Firm....MR 1.5(e)
Personal Injury Fee Agreements.....Online
Commercial Litigation Agreement.....Online
(MR 1.5)

After we cover this material, you should do the Casebook Plus Questions for Problem 5.

June 4th
Topic 7: Handling Client Property and Withdrawing from a Representation

Problem 6pages 122-123
MR 1.15 and Fiduciary Duty to Clients.....pages 124-125
Handling Client Funds & MR 1.15(a), (b), (c)pages 124-126
Handling Client Physical Property.....page 126
Duties Upon Receipt of Client Property & MR 1.15(d)...pages 126-128
Disputes Involving Client Property & MR 1.15(e).....pages 126-128
Withdrawing from a Representation
 Mandatory Withdrawal.....pages 129-130
 Permissive Withdrawal & MR 1.16(b).....pages 130-132
Duties to Client Upon WithdrawalMR 1.16(d)
Attorney Liens and Other Security Interests.....pages 133-139
(MR 1.15, 1.16, 1.8(i))

After we cover this material, you should do the Casebook Plus Questions for Problem 6.

Performance of the Attorney-Client Relationship

June 5th
Topic 8: Confidentiality

The Basic Duty of ConfidentialityMR 1.6

The Attorney-Client Privilege: Proposed FRE 503.....pages 140-142
Nona Byington Case Study.....Online
 The Buried Bodies CaseOnline
 Spaulding v. Zimmerman.....Online
 Examining the Other Exceptions to Confidentiality
 (MR 1.6)

After we cover this material, you should do the Casebook Plus Questions for Problem 7.

June 10th

Topic 9: An Overview of Conflicts of Interest Policy, Rules, and Implementation

Policies Underlying the Regulation of Conflicts.....Online
 Why Conflicts Management is So Important to Law Firms.....Online
 The Important Concept of Imputation..... Online
 Law Firm Conflicts Checking Systems.....Online
 An Overview of the Conflicts of Interest Rules.....Online

Topic 10: Conflicts: Representing Multiple Parties

Representing H & W in a Divorce: Problem 9page 180
 (MR 1.7)
 Directly Adverse or Materially Limited?.....pages 180-182
 Hypo: Representing Passenger and Driver in an Accident..Online
 Hypo: Holding an Investment in the Opposing Party.....Online
 Waiver of the Conflict by the Client.....pages 182-185
 Mirror Image Wills and Confidentiality.....pages 189-191
 Nonconsentable Conflicts.....pages 185-188
 Remedies for Conflicts of Interest.....pages 191-193

After we cover this material, you should do the Casebook Plus Questions for Problem 10.

June 11th

Topic 11: Representing Multiple Parties in Forming a Deal: Lawyer as Intermediary

Vineyard Venture.....Online.
 (2001 Version of MR 2.2)

Topic 12: Representing Multiple Clients in Criminal Litigation

Problem 11pages 216-217
 Effect on the Representation & Comment 23.....pages 217-221
 Hypo: Representing Twins Charged with a Crime.....Online
 The Public Interest in Prohibiting Conflicts.....pages 221-223
 Publication Rights Related to the Representation.....pages 226-228
 (MR 1.7, 1.8(d))

After we cover this material, you should do the Casebook Plus Questions for Problem 11.

June 12th

Topic 13: Duty of Loyalty: Suing a Present Client on an Unrelated Matter

Suing International Bolts: Problem 10pages 193-194
 Loyalty to Clients.....pages 194-201
 Texas Rule and Federal Courts in Texas - Dresser.....Online

Is International Bolts a Current Client.....	pages 202-207
The Retroactive Entity Rule: Jesse v. Danforth.....	pages 206-207
Firing a Current Client; The Hot Potato Rule	pages 207-209
Advanced Consent & Comment 22 to MR 1.7.....	pages 209-212
Positional Conflicts of Interest	
Text.....	pages 212-216
Hypotheticals.....	Online

June 17th

Topic 14: Personal Conflicts of Interest

Investing in a Client: Problem 12.....	pages 228-229
Stock in a Client & MR 1.8(a).....	pages 229-233
Using Confidential Client Information & MR 1.8(b).....	pages 233-236
Accepting Gifts/Bequests from Clients & MR 1.8(c).....	pages 236-238
Financial Assistance to Clients in Litigation	MR 1.8(e)
Third Party Payors of Another Person's Legal Services....	MR 1.8(f)
Aggregate Settlement Rule.....	MR 1.8(g)
Settling Past Malpractice or Limiting Future Malpractice...MR 1.8(h)	
Proprietary Interests in Cause of Action.....	MR 1.8(i)
Intimate Relations with Clients & MR 1.8(j).....	pages 238-241
MR 1.8	

After we cover this material, you should do the Casebook Plus Questions for Problem 12.

June 18th

Topic 15: Former Client Conflicts

Suing a Former Client: Problem 14	pages 259
Same or Substantially Related Matters.....	pages 260-268
American Airlines & Analytica Hypos.....	Online
Using/Disclosing Former Client Confidential Information. pages 269-270	
Playbook Information: Maritrans.....	Online
(MR 1.9, 1.8(b))	

After we cover this material, you should do the Casebook Plus Questions for Problem 14.

June 19th

Topic 16: Imputed Disqualification

Imputed Disqualification: Problem 15	pages 272-273
General Concepts of Imputation.....	pages 273-276
Special Rules for Personal Conflicts.....	pages 274
Special Rules for Migratory Lawyers.....	pages 276-283
Family Members in Opposing Law Firms.....	pages 283-283
Use of Screening and Its Effectiveness.....	pages 286-289
(MR 1.10)	

After we cover this material, you should do the Casebook Plus Questions for Problem 15.

Topic 17: Government Lawyers Conflicts Lecture

The Revolving Door Between Government Service and Private Practice
The Concept of Screening
The Definition of a Matter

The Concept of Personal and Substantial Participation
 Judges and Conflicts
 Law Clerks and Negotiating for Employment
 (MR 1.11, 1.12)

After we cover this material, you should do the Casebook Plus Questions for Problem 16.

Topic 18: Advising Individual Clients

Advising an Individual Client: Problem 17.....pages 322-323
 Advice vs. Advocacy.....pages 324-327
 Limitations on the Advice a Lawyer May Give.....pages 327-329
 Clients Under a Diminished Capacity.....pages 329-333
 Hypotheticals on Diminished Capacity.....Online
 Lawyering for Those Not Capable of Forming a Relationship
 (MR 1.2, 1.14)

After we cover this material, you should do the Casebook Plus Questions for Problem 17.

June 24th

Topic 19: Advising the Business Corporation

Representing Entities: Problem 18.....pages 322-323
 Who is the Client?.....pages 324-327
 Up the Ladder and Reporting Outside the Entity.....pages 327-329
 Hypos Involving Closely Held Entities and Government Clients... Online
 Noisy Withdrawal.....Online
 The Lawyer Who is Fired or Who Withdraws.....Online
 Lawyer Liability for Failing to Act.....pages 329-333
 OPM Leasing Hypothetical.....Online
 Special Problems of In-House Counsel.....pages 333-336
 (MR 1.13)

After we cover this material, you should do the Casebook Plus Questions for Problem 18.

Topic 20: Client Fraud

When Client May Be Engaged in a Fraud: Problem 22..pages 385-386
 Disclosure of Client Fraud (MR 1.6, 1.13, and 4.1).....pages 387-390
 National Student Marketing case.....Online
 Enron, Worldcom & Tyco Hypos.....Online
 SEC Responses to the Corporate Frauds.....pages 390-401
 (MR 1.13, 1.6, 4.1)

After we cover this material, you should do the Casebook Plus Questions for Problem 22.

June 25th

Topic 21: Contact With Represented and Unrepresented Persons

Basics of MR 4.2.....Online
 Hypotheticals.....Online
 Copying Opposing Clients on Correspondence
 Duty to Ask When Negotiating with Unrepresented Persons
 Can Unrepresented Persons Waive MR 4.2
 Problem 19.....pages 336-337
 Interviewing Employees and Former Employees.....pages 337-340
 Client to Client Direct Communications.....pages 340-342
 Prosecutors and Law Enforcement Activities.....pages 342-345

Dealing with Unrepresented Parties Review.....MR 4.3
(MR 4.1, 4.2, 4.3)

After we cover this material, you should do the Casebook Plus Questions for Problem 19.

ADVOCACY ETHICS

June 26th

Topic 22: The Decision to File a Civil Suit

Frivolous Litigation: Problem 23..... pages 406
Ethical Standards (MR 3.1) and Judicial Rules (Rule 11)..pages 407-10
Delay Tactics.....pages 410-415
(MR 3.1, Rule 11)

Advocate Witness Rule
Hypotheticals.....Online
(MR 3.7)

After we cover this material, you should do the Casebook Plus Questions for Problem 23.

Topic 23: Litigation Tactics

Using Deception to Gather Evidence.....pages 432-436
HP Pretexting Scandal
Paulter Case
NY County Ethics Opinion
Inadvertently Disclosed Confidentiality Information..pages 436-439
(MR 4.1, 4.4)

After we cover this material, you should do the Casebook Plus Questions for Problem 24.

July 1

Topic 24: Disclosure of Unfavorable Facts or Law

Candor about Adverse Legal Authority.....pages 444-447
Incomplete or Inaccurate Discovery Responses.....pages 447-452
Lawyers' Duty Client False Deposition Testimony....pages 453-458
(MR 3.3(a))

After we cover this material, you should do the Casebook Plus Questions for Problem 25.

Topic 25: Client Perjury

Problem 27.....	pages 479-480
Lawyer's State of Mind.....	pages 480-483
Decision to Call A Witness Who May Testify Falsely...	pages 483-487
Calling a Defendant Who May Commit Perjury.....	pages 487-496
Reasonable Remedial Measures.....	pages 496-500
(MR 3.3)	

After we cover this material, you should do the Casebook Plus Questions for Problem 26 & 27.

REGULATION OF THE LEGAL PROFESSION

July 2nd We will review material from Client perjury in this class or move on to Future of Law Practice if we finish early.

Topic 26: Roles and Responsibilities in a Modern Law Firm

Overview of Firm Responsibilities.....	Online
Problem 33.....	pages 591-592
Duties of Supervisory Lawyers.....	pages 592-597
(MR 5.1, 5.2, 5.3)	

After we cover this material, you should do the Casebook Plus Questions for Problem 33.

June 3rd

Topic 27: Future of the Practice of Law

Unauthorized Practice of Law.....	pages 671-677
Lawyer Control Over the Practice of Law and Its Profits...Online	
(MR 5.4, 5.5)	
Multijurisdictional Practice of Law & MR 5.5.....	pages 677-683
NonLaw Entities Practicing Law.....	pages 683-691
Alternative Legal Service Providers to Big Law.....	Online

After we cover this material, you should do the Casebook Plus Questions for Problem 37.

Topic 28: Delivery of Legal Services

Bates v. Arizona.....	Online
Problem 31.....	pages 549-552
Advertising.....	pages 552-560
Solicitation.....	pages 560-566
New Developments in Advertising.....	pages 566-572
New Developments in Solicitation.....	pages 572-576
(MR 7.1 through 7.4)	

After we cover this material, you should do the Casebook Plus Questions for Problem 31.

NOTE: There are problems on material that we did not cover and you may wish to review those if you are studying for the MPRE.

July 6th 12:00-2:00 CST - Review Session for the Exam