PROFESSIONAL RESPONSIBILITY -- FALL 2017

Course Information and Tentative Syllabus

Professor Larry Dessem

I. Classes. Our class will meet on Monday, Tuesday, and Wednesday from 3:30 to 4:20 in Room 7. Our first class will be on Monday, August 21, and our last class of the semester will be on Wednesday November 29.

II. Contact Information. I welcome your questions, and I encourage you to raise those questions during our class periods so that your colleagues can benefit from both the questions and my responses. I will be happy to entertain individual questions immediately after class, and I'll also be happy to schedule other mutually convenient times to talk. You can reach me on my email at dessemrl@missouri.edu or on the phone at 573 882-7066 (office) or 573 256-6825 (home). Please be sure to check the TWEN site for our course regularly, as I will use that site to send you course material and otherwise communicate with you.

III. Disability Accommodations. If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. The Office of Disability Services is the campus office responsible for reviewing documentation provided by students requesting academic accommodations and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

IV. Intellectual Pluralism. The Law School welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this course may address concerns to myself, one of the law school deans, or the University’s Director of the Office of Student Rights and Responsibilities (http:osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of both this course and the instructor at the end of the course.

V. Attendance and Participation. I consider class attendance and participation to be extremely important and believe that not only your success, but the success or failure of our class, will depend, in part, upon the preparation and participation of each student in the class. For this reason, I expect any student who will not be present in class, or who will not be prepared to participate, to send me an email or give me a note explaining your inability to meet this class
requirement. I also reserve the right to impose all sanctions permitted by the Law School upon students who, without a valid excuse, do not attend class or are not prepared to participate.

VI. Class Preparation. I will expect that each student has carefully read all of the day’s assigned text material and has come to class prepared to discuss both that material and any questions contained in that material. In addition to reading the text, you should separately read all citations to the Model Rules of Professional Conduct in the textual material. As you present your analysis of problems in class, I will expect that you have carefully studied all applicable Model Rules and Comments to the Rules and that will you use them in your analysis.

Our class sessions primarily will involve discussion of the problems set forth in the text, so please come to class each day ready to discuss, and solve, these problems. You also should be prepared to answer any questions contained within the assigned text, as well as questions contained within the “For Example” sections throughout the text.

Because our class discussions will focus on the textbook problems, your analysis and fresh approach to these problems will make for more interesting classes for us all. Students in this course therefore are not permitted to (1) read or utilize any other student’s (or other person’s or publisher’s) notes, analysis, or outline of these problems—other than notes prepared by a fellow student in our course; (2) share your own analysis—in notes or otherwise—with students who may take this course in future years; or (3) take notes concerning the problems in your book if you intend to resell that book to others.

Please be sure to bring to each class our text and a copy of the Model Rules of Professional Conduct. We will refer to Model Rules provisions in class, and you will be permitted to bring your hard copy into the final examination (during which you won’t be able to access any electronic materials other than any class notes you may have saved on your laptop).

VII. Multistate Professional Responsibility Examination. In order to become admitted to virtually all United States jurisdictions, an attorney must pass the Multistate Professional Responsibility Examination (MPRE). The next administration of the MPRE will be Saturday, November 4. In order to take this examination, students must register by September 14 (regular registration deadline) or September 21 (late registration deadline, which requires double the normal registration fee). Additional information, as well as 15 sample MRPE questions, can be found at http://www.ncbex.org/exams/mpre/.

As we study the ABA Model Rules of Professional Conduct, it may be helpful for you to compare those model rules with the rules of professional conduct in the jurisdiction in which you plan to practice. Some of these state rules are virtually identical to the Model Rules (e.g., Delaware, the rules of which are cited throughout our textbook), but there are major differences between the Model Rules and some specific rules in jurisdictions such as New York, California, and Washington, D.C.
VIII. Texts. Our texts will be Lerman & Schrag, *Ethical Problems in the Practice of Law* (4th ed. 2016) and Lerman, Schrag & Gupta, *Model Rules, State Variations, and Practice Questions: 2017-2018* (or another publication containing the current version of the ABA Model Rules of Professional Conduct). You can confirm whether a version of the Model Rules other than Lerman, Schrag & Gupta’s 2017 text is up to date by checking the most recent amendments to the Model Rules at: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html.

IX. Additional Resources. In connection both with this course and your legal practice, you may find the following resources to be helpful.

The website of the American Bar Association’s Center for Professional Responsibility not only lists the most recent changes to the Model Rules of Professional Conduct but contains a legislative history of the Model Rules, links to the ethics rules of each state (showing adoption of the Model Rules and Comments), comparisons of the Model Rules to the Restatement of the Law Governing Lawyers, and has a link to the Multistate Professional Responsibility Exam: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

The Restatement of the Law Governing Lawyers (3rd ed. 2000) concerns the regulation of lawyers, civil judicial remedies involving lawyers, lawyer criminal offenses, and law firm structure and organization. Provisions of the Restatement are cited in our text, and there is a link to the Restatement on the course TWEN page.

The Legal Ethics Forum blog (http://www.legalethicsforum.com/blog) contains daily commentary from leading law professors and some practicing attorneys concerning legal and judicial ethics and the law of lawyering. In addition to the commentary posted on the site, this blog contains a very good collection of links to other legal ethics resources (such as legal ethics journals and ABA and state ethics resources) and sites for legal ethics in specific practice areas, bar associations around the world, judicial ethics, and other legal ethics blogs.

Two other legal ethics blogs for your consideration are Professor Alberto Bernabe’s Professional Responsibility Blog at http://bernabepr.blogspot.com, and the Legal Profession at http://lawprofessors.typepad.com/legal_profession, both of which also contain regular commentary and links to helpful professional responsibility sites on the Internet.

Other Internet materials on ethics and professionalism recommended by the American Society of Legal Writers (Scribes) include:

- http://www.freivogelonconflicts.com/, Freivogel on Conflicts, described as "A Guide to Conflicts of Interest for Lawyers," which gathers material into multiple topics
such as Co-Counsel/Common Interest, Corporate Families, Enjoining Conflicts, Investing in Clients/Stock for Fees, Lawyers Representing Lawyers.

- [http://www.law.georgetown.edu/library/research/guides/legal_ethics.cfm](http://www.law.georgetown.edu/library/research/guides/legal_ethics.cfm), a Legal Ethics Research Guide from Georgetown Law Library. Many of the links are to Lexis and Westlaw, but this site also offers an extensive list of other resources and links.

- Most states have websites specific to legal ethics issues in the specific state. A search for legal ethics or ethics and the state will bring these quickly to hand.

- Individual federal courts may also have rules governing lawyers practicing in the court. For example, the Seventh Circuit has "Standards for Professional Conduct," that govern "Lawyers' Duties to Other Counsel," "Lawyers' Duties to the Court," and the Courts' "Duties to Lawyers." [http://www.ca7.uscourts.gov/Rules/rules.htm#standards](http://www.ca7.uscourts.gov/Rules/rules.htm#standards).

**X. Grading.** Your grade in this class will be based upon a final examination. You will be able to bring into your final examination any written material, including the Lerman/Schrag text and Model Rules supplement, another hard copy of the Model Rules, your class notes, course handouts, and other material that you believe will be useful. For those of you who use a laptop computer, the exam will be given in “open laptop” mode, which will enable you to access the contents of your computer during the examination but not the Internet. With this one exception, you will not be able to bring or access electronic media.

**XI. Learning Objectives.** During this semester’s course, students will:

- Learn the ABA’s Model Rules of Professional Conduct and, to a much lesser extent, the differences between the Model Rules and disciplinary rules adopted in Missouri and other states;
- Learn the competing policy objectives behind the Model Rules;
- Gain knowledge useful for passing the Multistate Professional Responsibility Exam;
- Gain a better understanding of how the relevant state disciplinary codes impact the daily practice of law; and
- Become better able to spot ethical issues in legal practice, begin to develop a framework with which to analyze such issues, and learn where to turn for help in resolving such issues.

Assessment in this course will be summative (based on a final examination), but the daily problems that will be discussed in class should provide formative student assessment as well.

**XII. Suggestions.** I am interested in constructive criticism about this course, and I hope you will share your thoughts with me as the semester progresses. If you have not understood a particular point, chances are that others could profit from further explanation. I look forward to a good semester as we explore professional responsibility and ethical problems in legal practice.
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In addition to the material assigned each day in the text, also be certain to read the Model Rules of Professional Conduct cited in the text.

August 21: Introduction (pages 1 – 17). Prepare to answer in class all questions in text.

August 22: Chapter 1: The Regulation of Lawyers – Institutions that Regulate Lawyers (pp. 19-46). Prepare to answer in class all questions and discuss Problem 1-1.

August 23: Chapter 1: Character & Fitness for the Profession (pp. 46-63). Prepare to answer in class all questions and discuss Problems 1-2 and 1-2.

August 28: Chapter 2: Lawyer Liability and Professional Discipline (pp. 65-90, plus the following documents in TWEN: Missouri Bar Disciplinary Process; Flow Chart of Attorney Disciplinary Process (Missouri); Missouri Supreme Court Rule 5.15; Missouri Supreme Court Rule 5.16). Prepare to answer in class all questions and discuss Problems 2-1 and 2-2.

August 29: Chapter 2: Reporting Lawyer Misconduct and Responsibility for Conduct of other Lawyers (pp. 90-102). Prepare to answer in class all questions and discuss Problem 2-3.

August 30: Chapter 2: Legal Protections for Subordinate Lawyers; Civil and Criminal Liability of Lawyers; Client Protection Funds (pp. 102-140). Prepare to answer in class all questions and discuss Problem 2-4.

August 31: Anticipatory Make-Up Class. 1:00 – 1:50 in Room 3. Chapter 3: Client Confidences (pp. 141-163). Prepare to answer in class all questions and discuss Problems 3-1 and 3-2.

September 4: Labor Day. No class.

September 5: Chapter 3: Client Confidences (pp. 188-196). Prepare to answer in class all questions and discuss Problem 3-7.

September 6: Chapter 3: Client Confidences (pp. 163-173). Prepare to answer in class all questions and discuss Problems 3-3 and 3-4.

September 7: Anticipatory Make-Up Class. 1:00 – 1:50 in Room 3. Chapter 3: Client Confidence (pp. 173-188). Prepare to answer in class all questions and discuss Problems 3-5 and 3-6.
September 11: Chapter 4: Attorney-Client Privilege (pp. 197-218). Prepare to answer in class all questions and discuss Problem 4-1.

September 12: **Anticipatory Make-Up Class. 1:00 – 1:50 in Room 3.** Chapter 4: Crime-Fraud Exception to Attorney-Client Privilege; Client Death; Work-Product (pp. 219-238). Prepare to answer in class all questions and discuss Problems 4-2 and 4-3.

September 12: [Regular Class at 3:30] Chapter 5: Formation of Attorney-Client Relationship; Lawyers’ Responsibilities as Agents; Competence (pp. 239-261). Prepare to answer in class all questions and discuss Problem 5-1.

September 13: Chapter 5: Competence in Criminal Cases (pp. 261-274). Prepare to answer in class all questions and discuss Problem 5-2.

September 18: Chapter 5: Diligence; Communication; Contractual Duties (pp. 274-293). Prepare to answer in class all questions and discuss Problem 5-3.

September 19: **Anticipatory Make-Up Class. 1:00 – 1:50 in Room 3.** Chapter 5: Client Competency (pp. 293-312). Prepare to answer in class all questions and discuss Problems 5-4 and 5.5.

September 19: [Regular Class at 3:30] Chapter 5: Representing Juveniles (pp. 313-328). Prepare to answer in class all questions and discuss Problems 5-7 and 5-8.

September 20: Chapter 6: Conflict of Interests (Current Clients) (pp. 329-351). Prepare to answer in class all questions and discuss Problem 6-1.

Sept. 25-27: We will not meet on any of these three days, these classes having been anticipatorily made up.

October 2: Chapter 6: Conflict of Interests (Current Clients) (pp. 352-364). Prepare to answer in class all questions and discuss Problems 6-2, 6-3, and 6-4.

October 3: Chapter 6: Conflict of Interests (Current Clients) (pp. 364-375). Prepare to answer in class all questions and discuss Problems 6-6 and 6-7.

October 4: Chapter 7: Current Client Conflicts in Particular Practice Settings (pp. 377-391). Prepare to answer in class all questions and discuss Problem 7-1.

October 9: Chapter 7: Current Client Conflicts in Particular Practice Settings (pp. 393-405). Prepare to answer in class all questions and discuss Problems 7-3, 7-4 and 7-5.

October 10: Chapter 7: Current Client Conflicts in Particular Practice Settings (pp. 405-406; 408-426). Prepare to answer in class all questions and discuss Problems 7-7 and 7-8.
October 11: Chapter 8: Conflicts involving Former Clients (pp. 427-449). Prepare to answer in class all questions and discuss Problem 8-1.

October 16: Chapter 8: Conflicts involving Former Clients (pp. 449-459). Prepare to answer in class all questions and discuss Problem 8-2.

October 17: Chapter 8: Conflicts involving Former Clients (pp. 460-475). Prepare to answer in class all questions and discuss Problems 8-3 and 8-4.

October 18: Chapter 9: Lawyer/Client Conflicts (pp. 477-493). Prepare to answer in class all questions and discuss Problems 9-1 and 9-2.

October 23: Chapter 9: Lawyer/Client Conflicts (pp. 514-534). Prepare to answer in class all questions and discuss Problem 9-3.

October 24: Chapter 9: Lawyer/Client Conflicts (pp. 534-554). Prepare to answer in class all questions.

October 25: Chapter 10: Conflicts for Government Lawyers and Judges (pp. 555-570). Prepare to answer in class all questions and discuss Problem 10-1.

October 30: Chapter 10: Conflicts for Government Lawyers and Judges (pp. 570-590; 592-596). Prepare to answer in class all questions and discuss Problem 10-3.

October 31: Chapter 11: Lawyers’ Duties to Courts (pp. 597-624). Prepare to answer in class all questions and discuss Problems 11-1 and 11-2. Written problems for tomorrow’s class are to be emailed to Professor Dessem by 9:00 this evening.

November 1: Course/MPRE Review Class. In teams of two – four students, students are to submit in writing two questions that they are not sure about in our course (along with their proposed answer). These questions, and your questions during the class, will be discussed in this class.

November 6: Chapter 11: Lawyers’ Duties to Courts (pp. 624-634; 635-640). Prepare to answer in class all questions and discuss Problems 11-3; 11-4; and 11-6.

November 7: Chapter 11: Lawyers’ Duties to Courts (pp. 640-661). Prepare to answer in class all questions and discuss Problems 11-7 and 11-8.

November 8: Chapter 11: Lawyers’ Duties to Courts (pp. 661-685). Prepare to answer in class all questions and discuss Problem 11-9.

November 13: Chapter 12: Lawyers’ Duties to Adversaries and Third Persons (pp. 687-710). Prepare to answer in class all questions and discuss Problem 12-1.
November 14: Chapter 12: Lawyers’ Duties to Adversaries and Third Persons (pp. 710-717; 718-726; 728-736). Prepare to answer in class all questions and discuss Problems 12-2 and 12-4.

November 15: We will not meet this day, but have previously made up this class.

Nov. 20 – 22:  This week is our Thanksgiving Break.

November 27: Missouri’s Chief Disciplinary Counsel, Alan Pratzel, will talk with us about Missouri’s bar disciplinary process and ethical mistakes that new lawyers should avoid.

November 28: Anne Chambers, the Director of the Missouri Lawyers Assistance Program (MOLAP), will talk with us about attorney depression, substance abuse, stress, and burnout and the programs that MOLAP offers to address these law practice issues.

November 29: Ann Covington, former Chief Justice of the Missouri Supreme Court, will talk with us about professionalism.