PROFESSIONAL RESPONSIBILITY -- FALL 2018

Course Information and Tentative Syllabus

Professor Larry Dessem

I. Classes. Our class will meet on Mondays and Wednesdays from 4:00 to 5:15 p.m. in Room 5. Our first class will be on Monday, August 20, and, because of an anticipatory make-up class on August 21 from 1:00 to 1:55 in Room 5, our last class of the semester will be on Monday, November 26. The final examination in the class will be on Tuesday, December 4 at 8:30 a.m.

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 my cell phone at (573) 289-0161. Please be sure to check the TWEN page 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 give or send me the Motion for an Extension of Time form on the course TWEN site. 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, to both of which we will refer during our class discussions.

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 10. In order to take this examination, students must register by September 20 (regular registration deadline) or September 27 (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/.

I encourage you to take the MPRE on November 10, and, by our anticipatory make-up class on August 21 and otherwise, we should have covered all the textual material related to the MPRE by November 10.

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 significant
differences between the Model Rules and some specific rules in jurisdictions such as New York, California, and Washington, D.C.


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 Examination: [https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.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 our course TWEN page.

The Legal Ethics Forum blog ([http://www.legalethicsforum.com/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://bernaepr.blogspot.com](http://bernaepr.blogspot.com), and the Legal Profession Blog at [http://lawprofessors.typepad.com/legal_profession](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.lopsider.com/](http://www.lopsider.com/), which focuses on ethical issues associated with the use of technology within the legal profession, as well as change and disruption within the profession.

- [http://www.freivogelonconflicts.com](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; and Lawyers Representing Lawyers.

• http://www.law.georgetown.edu/library/research/guides/legal_ethics.cfm, a Legal Ethics Research Guide offered by Georgetown Law Library. Many of the links are to Lexis and Westlaw, but this web site also offers an extensive list of available resources and some Internet links.

• Most states have websites focused on legal ethics issues in that specific state. A search for legal ethics or ethics and the state’s name will bring these quickly to hand.

• Individual federal courts also may 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."

X. Grading. Your grade in this course will be based upon a final examination and nine daily quizzes that will count for approximately 10 – 15% of your total course grade. The quizzes will be given at the beginning of the Monday classes. Each question will be worth two points, but there will be a cap of 16 total points that can be earned on these quizzes over the course of the semester.

As is the case with the Multistate Professional Responsibility Examination, your final examination in this course will be totally closed-book. You will not be able to bring into your final examination any written or electronic material or refer to any material (written or electronic) other than the examination questions. For those of you who use a laptop computer, the examination will be given in “closed” mode, which will block your access to both the contents of your computer and the Internet.

XI. Academic Integrity. Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion.
The School of Law's Honor Code applies to all work done in this course. When in doubt about the Honor Code or about plagiarism, paraphrasing, quoting, collaboration, or any other action that may raise questions of academic integrity, please see me.

XII. Course Discussion and Privacy. University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in section 200.015 of the Collected Rules and Regulations. In this class, students may not make audio or video recordings of course activity, except students permitted to record as an accommodation under section 240.040 of the Collected Rules. All other students who record and/or distribute audio or video recordings of class activity are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

Those students who are permitted to record are not permitted to redistribute audio or video recordings of statements or comments from the course to individuals who are not students in the course without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

XIII. 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 Examination;

• 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.

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

XIV. Suggestions. I am interested in constructive criticism concerning 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 course as we explore professional responsibility and ethical problems in the practice of law.
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In addition to the material assigned each day in the text, be certain to read the Model Rules of Professional Conduct cited in the text. The first part of each daily assignment listed below is the material on which we will focus during the first portion of the class, and the next material listed will be covered in the second portion of the class.

At the outset of each Monday class, our class will start with a single multiple-choice question based on the prior week’s material. There will be 10 of these quizzes, and each correct quiz answer will count for 2 points toward the student’s final grade. However, the maximum number of quiz points that can be earned during the semester is 16.

August 20: Introduction and Chapter 1: The Regulation of Lawyers – Institutions that Regulate Lawyers (pages 1 – 17; 19 – 46). Prepare to answer in class all questions and discuss Problem 1-1.

August 21: This anticipatory make-up class will meet from 1:00 to 1:55 in Room 5. The Regulation of Lawyers: Admission to Practice: Character & Fitness (pages 46 – 63). Prepare to answer in class all questions and discuss Problems 1-2 and 1-3.

August 22: Chapter 2: Lawyer Liability and Professional Discipline (pp. 65 – 96). Prepare to answer in class all questions and Problems 2-1, 2-2 and 2-3. Please also review the following documents (links to which are on the course TWEN site): Missouri Bar Disciplinary Process; Flow Chart of Attorney Disciplinary Process (Missouri); Missouri Supreme Court Rule 5.15; Missouri Supreme Court Rule 5.16).

August 27: We will start this class with our first weekly quiz, then consider Lawyer Liability: Professional Discipline; Civil and Criminal Liability of Lawyers; Client Protection Funds (pp. 96 – 140). Prepare to answer in class all questions and Problem 2-4.

August 29: Chapter 3: Duty to Protect Client Confidences (pp. 141 – 163; 188-196). Prepare to answer in class all questions and Problems 3-1, 3-2, and 3-7.

September 5: Because we do meet on Labor Day (September 3), our weekly quiz will be on Wednesday, September 5. Then we will cover Exceptions to the Duty to Protect Client Confidences (pp. 163 – 173). Prepare to answer in class all questions and Problems 3-3 and 3-4.
September 10: **Chapter 3:** Exceptions to the Duty to Protect Client Confidences (pp. 173 – 188). Prepare to answer in class all questions and Problems 3-5 and 3-6.

September 12: **Chapter 4:** Attorney-Client Privilege (pp. 197 – 225). Prepare to answer in class all questions and Problem 4-1.

September 17: Attorney-Client Privilege, including Client Death; Work Product; and Corporate Privilege (pp. 225-238). Prepare to answer in class all questions and Problems 4-2 and 4-3.

September 19: **Chapter 5:** Relationship between Lawyers and Clients: Formation of Lawyer-Client Relationship; Lawyer’s Responsibilities as Agents; Lawyers Duties to Clients (pp. 239 - 261). Prepare to answer in class all questions and Problem 5-1.

September 24: Lawyers Duties to Clients (pp. 261 - 301). Prepare to answer in class all questions and Problems 5-2 and 5-3.

September 26: Clients with Diminished Capacity; Terminating the Attorney-Client Relationship (pp. 301 – 328). Prepare to answer in class all questions and Problems 5-4, 5-7 and 5-8.

October 1: **Chapter 6:** Conflicts of Interest (pp. 329 – 359). Prepare to answer in class all questions and Problems 6-1, 6-2 and 6-3.

October 3: Conflicts of Interest (pp. 359 – 375). Prepare to answer in class all questions and Problems 6-4, 6-6, and 6-7.

October 8: **Chapter 7:** Conflicts of Interest in Particular Practice Settings (p. 377 – 406). Prepare to answer in class all questions and Problems 7-1, 7-3, 7-4, and 7-5.

October 10: Conflicts of Interest in Particular Practice Settings (pp. 408 – 426). Prepare to answer in class all questions and Problems 7-7 and 7-8.

October 15: **Chapter 8:** Conflicts of Interest Involving Former Clients (pp. 427 – 459). Prepare to answer in class all questions and Problems 8-1 and 8-2.

October 17: Conflicts of Interest Involving Former Clients (pp. 460 – 475). Prepare to answer in class all questions and Problems 8-3 and 8-4.

October 22: **Chapter 9:** Conflicts Between Lawyers and Clients: Legal Fees (pp. 477 - 493; 514 - 522). Prepare to answer in class all questions and Problems 9-1 and 9-2.

October 24: Conflicts Between Lawyers and Clients: Legal Fees; Lawyer as Custodian of Client Property and Documents; Conflicts with Lawyers’ Personal or Business Interests (pp. 522-554). Prepare to answer in class all questions and Problem 9-3.
October 29:  **Chapter 11**: Lawyers’ Duties to Courts: Being a Good Person in an Adversary System; Pre-Filing Investigation; Truth and Falsity in Litigation (pp. 597-640). Prepare to answer in class all questions and Problems 11-1; 11-2, 11-3; 11-4; and 11-6.

October 31: Lawyers’ Duties to Courts: Concealment of Physical Evidence and Documents; Duty to Disclose Adverse Legal Authority; Disclosures in Ex Parte Proceedings; Improper Influences on Judges and Juries; Lawyers’ Duties in Nonadjudicative Proceedings (pp. 640 - 685). Prepare to answer in class all questions and Problems 11-7; 11-8; and 11-9.

November 5: **Chapter 12**: Lawyers’ Duties to Adversaries and Third Parties (pp. 687 -736). Prepare to answer in class all questions and Problems 12-1; 12-2; and 12-4.

November 7: In preparation for the Multistate Professional Responsibility Examination on Saturday, November 12, we will do one of two things in this class (depending on the sentiment of the class):

1. Consider Conflicts Involving Judges, Arbitrators, and Mediators (pp. 570 – 596) and Problems 10-2 and 10-3; or

2. Conduct a course review, with teams of four to five students submitting two questions (with proposed answers) about material concerning which they are unsure. These questions will provide the basis for our class discussion.

November 10: Multistate Professional Responsibility Examination.

November 12: Anne Chambers, the Director of the Missouri Lawyers Assistance Program (MOLAP), will talk about attorney depression, substance abuse, stress, and burnout and the programs that MOLAP offers to address these law practice issues.

November 14: Missouri’s Chief Disciplinary Counsel, Alan Pratzel, will talk about Missouri’s bar disciplinary process and ethical mistakes that new lawyers should avoid.

Nov. 19-23: This week is our Thanksgiving Break.

November 26: Ann Covington, former Chief Justice of the Missouri Supreme Court, will talk with us about professionalism.