

PROFESSIONAL RESPONSIBILITY

**Course # 298-001
SPRING 2022 SEMESTER**

**PROF. SANDRA AISTARS
SAISTARS@GMU.EDU**

This is an in-person course that meets on Wednesdays from 9:50-11:50 am.

OFFICE HOURS: Due to Omicron , office hours are Wednesdays from 1-3pm via zoom. Please let me know if you would like to drop in, in advance so that I know to look for you.

REQUIRED TEXTS:

Lisa G. Lerman, Philip G. Schrag, and Robert Rubinson, *Ethical Problems in the Practice of Law* (5th Ed., Wolters Kluwer 2020)

Any current publication of the ABA Model Rules and comments. You may use resources available on line via Westlaw, Lexis etc.

OTHER MATERIALS: I may use TWEN or email to make links available to other materials that may be interesting or relevant to our discussions.

COURSE OVERVIEW/DESCRIPTION: This course is a 2 credit problem-based course. It will help you prepare for the MPRE, but more importantly, it will allow you to explore the practical and ethical dilemmas lawyers regularly confront in their work before you encounter them in the real world.

I practiced law in various settings for over 20 years before coming to Scalia Law six years ago to run the Arts and Entertainment Advocacy legal clinic full time, so will encourage you to think about strategic and practical questions in addition to purely legal and ethical questions.

The problems we will discuss will have more layers than typical classroom hypotheticals, and given the nature of the course, may bring up issues that are more personal and emotional than one encounters when coolly analyzing case law. There will be room for disagreement, and nuance in our discussions. When analyzing challenging questions in my own practice, I have often consulted the attorneys I have least in common with in order to develop the fullest understanding of perspectives and outcomes. I encourage you to approach your classmates with that same spirit and respect for their views and experiences.

As you prepare for class, and as we discuss problems in class, please put yourself in the shoes of the lawyer confronting the ethical problem, and be prepared to explain not just what you would do, but your analysis of what is required, permitted, or forbidden by the Model Rules, and any other strategic, practical or other considerations that entered into your analysis.

LEARNING OUTCOMES: By the end of the course students should have

- Read and analyzed the assigned Model Rules;
- Improved their oral advocacy skills by articulating and defending often complex and nuanced answers to challenging ethical problems with reference to the relevant rules and other considerations;
- Improved their client counseling skills through various group discussions and exercises.

BASIS OF EVALUATION & ASSESSMENTS

- This course requires active participation and discussion by all members of the class. Students are expected to come to class prepared to analyze and engage with the assigned material and to present their responses in a sophisticated manner demonstrating an understanding of the underlying reading materials and relevant Model Rules.
- The final grade will be based on a 50-question multiple choice exam modeled after the MPRE. This will be a 2-hour exam administered on April 30 at Noon.
- **Class participation:** I may add or subtract one-third of a letter grade for exceptional participation (or deficient participation) in class meetings.

EMAIL COMMUNICATION: Students must use their MasonLive email account to receive important University information, including communications related to this class. In accordance with University policy I will not respond to messages sent from or send messages to a non-Mason email address.

ATTENDANCE: Regular and punctual attendance is required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs to make appropriate arrangements and notify me.

CLASS RECORDINGS PROHIBITED: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. This is especially important given the nature of our seminar where we will be discussing ethical questions and want to ensure an atmosphere of trust and open discussion.

COVID INSTRUCTIONAL CONTINGENCY PLAN: In the event of COVID isolation requirements, this course will be taught on line and recorded to account for COVID related instructional contingencies.

COVID HEALTH & SAFETY REQUIREMENTS: Please note that under current University health and safety protocols, vaccinations, boosters, face coverings and social distancing are required for all persons on campus. Please refer to the most up-to-date University policies [here](#).

ACADEMIC INTEGRITY: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Additionally, this course in ethics relies on a problem-based textbook/teaching method. In order to ensure that students conduct their own analysis of the problems, and do not disrupt the learning opportunities of future students, you are also specifically prohibited from doing the following pursuant to the Honor Code:

1. ***Using outlines or notes from students who have taken a class using this or an earlier version of this textbook in prior years;***
2. ***Writing the analysis of the problems in a textbook you intend to sell, or using a textbook into which a prior student has written notes on problems;***
3. ***Sharing class notes with other students who are not in this section;***
4. ***Taking any other action by which you avoid analyzing the problems assigned or discussed in class yourself (discussions with current classmates are fine).***

CLASSROOM ACCOMMODATIONS: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

ADDITIONAL SCHOOL POLICIES AND RESOURCES:

STUDENT HONOR CODE - [Click Here](#)

ACADEMIC REGULATIONS - [Click Here](#)

UNIVERSITY LIFE: University Life provides student support resources such as **Counseling and Psychological Services (<https://caps.gmu.edu/>)**, **Student Health Services**

(<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

1/19	<p><u>Chapter 1: The Legal Profession: Bar Admission, History, and Diversity</u></p> <p>Admission to the bar</p> <p>Problem 1-1: Adderall</p> <p>Problem 1-2: The Doctored Resume</p> <p>History and development of the U.S. legal profession</p>	<p>Chapter 1</p> <p>Rule 8.1</p>
1/26	<p><u>Chapter 2: The Legal Profession: Regulation, Discipline, and Liability</u></p> <p>Institutions that regulate lawyers</p> <p>State ethics codes</p> <p>The disciplinary system</p> <p><i>Problem 2-1: The Dying Mother</i></p> <p><i>Problem 2-2: Exculpatory Evidence</i></p> <p><i>Problem 2-3: The Little Hearing</i></p> <p>Civil and criminal liability</p>	<p>Chapter 2</p> <p>Rules 1.2(d), 5.1, 5.2, 5.3, 8.3, 8.4, and 8.5</p>
2/2	<p><u>Chapter 3: Relationships Between Lawyers and Clients</u></p> <p>Formation of the lawyer-client relationship</p> <p>Togstad v. Vesely, Otto, Miller & Keefe</p> <p>Lawyers' duties of competence, diligence, honesty and communication</p> <p><i>Problem 3-1: The Washing Machine</i></p> <p>Strickland v. Washington</p> <p>Missouri v. Frye</p> <p>Lafler v. Cooper</p> <p><i>Problem 3-2: A Desire to Investigate</i></p>	<p>Chapter 3 to 192</p> <p>Rules 1.1, 1.3, 1.4, and 2.1</p>
2/9	<p>Lawyers' duties of competence, diligence, honesty and communication (continued)</p> <p>Lawyer's responsibilities as agents</p>	<p>Chapter 3: 192 to end</p> <p>Rules 1.2, 1.14, and 1.16</p>

	<p>Who calls the shots?</p> <p>Jones v. Barnes</p> <p><i>Problem 3-4: Vinyl Windows</i></p> <p>Terminating a lawyer-client relationship</p>	
2/16	<p>Chapter 4: The Duty to Protect Client Confidences</p> <p>The basic principle of confidentiality</p> <p><i>Problem 4-1: Your Dinner with Anna</i></p> <p>Exceptions to the duty to protect confidences</p> <p><i>Problems 4-2, 4-3, and 4-4: The Buried Bodies, Scenes 1, 2, and 3</i></p> <p>People v. Belge</p>	Chapter 4 to 281 Rule 1.6
2/23	<p>Exceptions to the duty to protect confidences (continued)</p> <p><i>Problem 4-5: Rat Poison</i></p> <p><i>Problem 4-6: Reese's Leases</i></p> <p>Use or disclosure of confidential information for personal gain or to benefit another client</p> <p><i>Problem 4-7: An Investment Project</i></p> <p>Talking to clients about confidentiality</p>	Chapter 4: 281 to end Rule 1.6
3/2	<p>Chapter 6: Conflicts of Interest: Current Clients</p> <p>An introduction to conflicts of interest</p> <p>General principles in evaluating concurrent conflicts</p> <p><i>Problem 6-1: The Injured Passengers, Scene 1</i></p> <p>Conflicts between current clients in litigation</p> <p><i>Problem 6-3: I Thought You Were My Lawyer</i></p>	Chapter 6 to 377 Rule 1.7
3/9	<p>Conflicts between current clients in litigation (continued)</p> <p><i>Problem 6-4: The Injured Passengers, Scene 2</i></p> <p><i>Problem 6-5: Top Gun</i></p> <p>Conflicts Involving Prospective Clients</p> <p><i>Problem 6-6: The Secret Affair</i></p>	Chapter 6: 377 to end Rules 1.7 and 1.18

<p>3/23</p>	<p>Chapter 7: Conflicts Involving Former Clients</p> <hr/> <p>Nature of conflicts between present and former clients</p> <p>Duties to former clients</p> <p>Distinguishing present and former clients</p> <p><i>Problem 7-1: Keeping in Touch</i></p> <p><i>Problem 7-2: A Better Client</i></p> <p>Evaluating successive conflicts</p> <p>Addressing former client conflicts in practice</p> <p>Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm</p> <p>Imputation of former client conflicts to affiliated lawyers</p> <p><i>Problem 7-3: Toxic Waste</i></p>	<p>Chapter 7</p> <p>Rule 1.9 and 1.10</p>
<p>3/30</p>	<p>Chapter 8: Conflicts Issues in Particular Practice Settings</p> <hr/> <p>Representing both parties to a transaction</p> <p>Representing organizations</p> <p><i>Problem 8-1: My Client's Subsidiary</i></p> <p>Representing co-defendants in criminal cases</p> <p>Representing co-defendants in civil cases</p> <p><i>Problem 8-6: The Leased Car</i></p> <p>Representing Family Members</p> <p>Florida Bar Opinion 95-4</p> <p><i>Problem 8-7: Representing the McCarthys</i></p> <hr/>	<p>Chapter 8</p> <p>Rules 1.7, 1.9, 1.10, and 1.13</p>

4/6	<p>Chapter 9: Conflicts of Interest Between Lawyers and Clients</p> <hr/> <p>Legal fees</p> <p>Matter of Fordham</p> <p><i>Problem 9-1: An Unreasonable Fee</i></p> <p>Lawyer as custodian of client property and documents</p> <p>Conflicts with lawyers' personal or business interests</p>	Chapter 9 Rule 1.5, 1.8, 1.10, and 1.15
4/13	<p>Chapter 11: Lawyers' Duties to Courts</p> <hr/> <p>Investigation before filing a complaint</p> <p><i>Problem 11-1: Your Visit from Paula Jones</i></p> <p>Truth and falsity in litigation</p> <p><i>Problems 11-2 and 11-3: Flight from Sudan, Scenes 1 and 2</i></p> <p><i>Problem 11-4: The Drug Test</i></p> <hr/>	Chapter 11 to 644 Rules 3.1, 3.3, 8.4 (c)
4/20	<p>Concealment of physical evidence and documents</p> <p><i>Problem 11-7: Child Pornography</i></p> <p>The duty to disclose adverse legal authority</p> <p>Disclosures in ex parte proceedings</p> <p>Improper influences on judges and juries</p> <p>Agreements not to accept future cases</p> <p>Lawyers' duties in nonadjudicative proceedings</p> <hr/>	Chapter 11: 644 to end & Chapter 12 Rules 3.3, 3.4, 3.5, 3.6, 3.7
	<p>Chapter 12: Lawyers' Duties to Adversaries and Third Persons</p> <hr/> <p>Communications with lawyers and third persons</p> <p><i>Problem 12-1: Emergency Food Stamps</i></p> <p><i>Problem 12-2: Insurance Claims</i></p> <p>Duties of prosecutors</p> <p><i>Problem 12-5: The Prosecutor's Masquerade</i></p> <p>Conduct prejudicial to the administration of justice</p>	<hr/> <p>Rules 3.8, 4.1, 4.2, 4.3, 4.4, 8.4</p>