

Legal Professions L643 - Fall 2023

Course Syllabus

Instructor	Professor Harlan Sands, J.D., M.B.A.	Meeting times	T/Th 1:00–2:15 PM
Phone	216-687-2256	Office Hours	T/Th 2:30-3:30 PM or by appointment
Office	LB 211	Classroom	LB237



Required texts/materials: [Professional Responsibility: Problems of Practice and the Profession, Seventh Edition](#)

by Nathan M. Crystal, Grace M. Giesel ISBN 9781543810738 (hardcover) | ISBN 9781543816822 (ebook).

Textbook purchase has access to the **Connected eBook with Study Center** on CasebookConnect, including: lifetime access to the online ebook with highlight, annotation, and search capabilities; **practice questions**, study aids; an **outline tool** and **other helpful resources**.

Direct access to The ABA Model Code of Professional Conduct is here:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/, and The Ohio Code of Professional Conduct is here:
<https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/ProfConduct/profConductRules.pdf>

Where cases, rules, statutes, or other materials outside the Casebook are assigned, you are responsible for obtaining and reviewing that material.

Assignments: See weekly reading assignments as listed in syllabus and added during semester. I expect you to study assigned material in advance to maximize your meaningful participation in class. Where Casebook reading includes references to Model Rules of Professional Conduct, you are expected to read any cited Model Rules, and any related comments.

Attendance and Grading:

Your grade will be based primarily upon three quizzes (30%) and a final exam (60%), all of which will build upon materials covered in class and assigned readings. The remainder of your grade will come from meaningful class participation (10%). Absences, late arrivals, and/or unpreparedness will downgrade participation grades accordingly. I reserve option to raise a student's grade to reflect exceptional participation.

Our final exam will take place during the regularly scheduled exam period at the end of the semester. The final exam will include multiple choice, MPRE-style questions and/or short answer/essay questions.

Academic Integrity/Student Conduct: Given that this course is designed to promote principles of legal ethics and professional responsibility, and that integrity, honesty, civility, and professionalism are all important elements of every state's bar admissions process, it is imperative that all law students conduct themselves accordingly during our studies together. All students are expected to adhere to academic integrity standards and not engage in conduct that constitutes discrimination or harassment on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital

status, or socioeconomic status. See https://www.csuohio.edu/sites/default/files/3344-21-02_Academic_Misconduct_Policy_Compliance.pdf for further guidance on academic integrity standards and policies.

General Guidance: Use of electronic devices in the classroom - other than laptops - is strongly discouraged; it is my experience that the presence of smart phones/personal electronic devices could significantly detract from your ability to focus, so please restrict your use of electronic devices to laptops, and then only to review class material, related statutes/guidelines, and to take notes. No recording of class lectures are permitted. Accommodations for students with documented disabilities can and will be made as required by our Office of Disability Support Services. If there are any other questions related to your particular ability to complete course requirements, please come see me on an individual basis.

Class schedule outline (tentative): Below is planned schedule for our class; however, it is subject to change as the semester evolves. "C&G" refers to Crystal and Giesel text. Additional reading assignments ("ARA"s) are noted below. You should also read the Ohio Rules of Professional Conduct ("ORPC") and the ABA Model Rules ("MR's") or Rules from the ABA Code of Judicial Conduct that accompany each problem assignment, and any additional materials that are referenced below or assigned (see Blackboard for additional reading assignments for each week).

WEEK	CLASS/TOPIC	TEXT READINGS/PREPARATORY MATERIALS
1	<u>August 22/24</u> Course Introduction/Expectations Regulation of Legal Profession Professional Rules and Standards	Ohio Rules of Professional Conduct/Model Rules: Preface, Preamble, Scope, Terminology MR 4.3 (Communications with unrepresented individuals), MR 8.4 (Misrepresentation) C&G 1-21; Focus on <i>In re Pautler</i> , 5-13 (including Rule Review pp.12-13)
2	<u>August 29</u> Philosophies of Lawyering	C&G 21–38, 59-63 (Philosophy) Problem 1-5 Quality of Life/Discrimination in Practice of Law (C&G 633-38) MR/ORPC 8.4(g)
2	<u>August 31</u> Regulating Attorney Conduct Admission to Practice	C&G 39-48 (Admission); Discipline (Problem 1-3), Duty to Report (Problem 1-4) MR/ORPC 8.3(a) Rule Review MR 2.1 (attorneys are not limited to legal advice) Chapter 1 Wrap-up (Assessments C&G 62-63)
3	<u>September 5</u>	CMBA – Rebecca McMahon and Chris Klasa, Cleveland Metropolitan Bar Association Bar Admission, Attorney Misconduct, and Discipline
3	<u>September 7</u> Attorney-Client Relationship	Duty of Competency (C&G 66-79 including <i>Togstad</i> case)

	Duty of Competency	Competence of Counsel in Criminal Cases (Problem 2-1, Strickland standard) MR/ORPC 1.1, 1.3, 1.18 (Including Rule Review p.79)
4	<u>September 12-14</u> Attorney Fees and Trust Accounts	Quiz 1 C&G 79-103 (Problem 2-3 including Rule Review p.94) MR/ORPC 1.5, 1.8(e) and (f), 1.15, 3.4, and comments Problem 2-4, Rule Review 1.15 (pp.102-103)
5	<u>September 19</u> Engagement Agreements	C&G 103-110, examples MR/ORPC 1.2 (a) and (c), 1.4, 1.5, 1.16, 1.8
5	<u>September 21</u> Termination of Attorney-Client Relationship	C&G 110-120 ABA Formal Opinion #471 (obligation to protect client after termination) Rule Review 1.4, 1.16 (p.119)
6	<u>September 26/28</u> Allocation of Authority/Diminished Capacity/Competency	C&G 120-136 (including Rule Review 1.14 and Assessments 132-136) Competency to stand trial/insanity defense
7	<u>October 3/5</u> Ethical Duty of Confidentiality Duty of Confidentiality and Use of Technology	Scope/Exceptions to Duty of Confidentiality (C&G 137-148, Problem 3-1) MR/ORPC 1.6 (Duty of Confidentiality), 1.1, 1.16 Confidentiality and Use of Technology (C&G 206-215 and Problem 3-5) See Google Terms and Services https://policies.google.com/terms?hl=en-US
8	<u>October 10</u> Attorney-Client Privilege	Attorney-Client Privilege and Work Product Doctrine (C&G 215-228 and Problem 3-6 with Assessments) Rule Review 1.6, 1.2 (p.222)
8-9	<u>October 12/17</u> <u>Ethical Duty of Confidentiality and its Exceptions</u> <u>Honesty and Candor in Practice</u>	Quiz 2 March 9: Exception to Ethical Duty for False Testimony (C&G 162-183 and Problem 3-3(a)(1), (2), (3), (6) and 3-3(b)) <i>Nix v. Whiteside (p.176)</i>

		Ethical and Legal Obligations when Encountering Illegal or Fraudulent Acts by Clients (C&G 185-203)
9	<u>October 19</u>	Guest Lecturer: Honesty and Candor at Tribunal James Hodes, Esq., Lead Counsel in <i>US v. Encep Nurjaman et al</i> , before Military Commissions at Guantanamo Bay, Cuba
10	<u>October 24/26</u> Conflict of Interest	Direct Adversity between Current Clients (C&G 229-243 and Problems 4-1); MR/ORPC 1.7, 1.8 Material Limitation Conflicts: Business Transactions (C&G 243-251 and Problem 4-2)
11	<u>October 31/November 2</u> Conflict of Interest	Material Limitation Conflicts: Tort Actions (C&G 251-258 and Problem 4-3) Material Limitation Conflicts: Insurance Defense (C&G 258-267 and Problem 4-4)
12	<u>November 7</u>	Friday Schedule – No Class
12-13	<u>November 9/14</u> Conflict of Interest	Quiz 3 Material Limitation Conflicts: Co-Defendants (C&G 268-275 and Problem 4-5) Former and Prospective Clients (C&G 275-284 and Problem 4-6) Imputed Disqualification 286-87 only (MR 1.9(b) limits disqualifications)
13	<u>November 16</u> Ethics and Legal Malpractice Insurance	Guest Speaker: Gretchen Mote, Director of Loss Prevention, Ohio Bar Liability Insurance Co.
14	<u>November 21</u> Special Duties of Prosecutors/Defense Attorneys	Role of Criminal Defense Lawyer (C&G 308-317) Special Duties of Prosecutors (C&G 417-432)
14	<u>November 23</u> Ethics and Negotiation	Negotiation (C&G 361-379 and Problem 5-7) Rule Review (C&G 392-93)
15	<u>November 28</u> Delivery of Legal Services	Marketing of Legal Services (C&G 543-565 and Problem 7-1, also OPRC 7.2)

15	<u>November 30</u>	Wrap Up/Review
16	<u>TBD</u>	Final Exam

LEARNING OUTCOMES

Topic	Learning Outcomes - at the end of each topic, you will be able to:
Introduction; Lawyer Regulation and the Disciplinary System	<ul style="list-style-type: none"> • Examine why standards of ethical behavior are critical to effective practice – and part of lawyers' role in society • Understand moral and legal obligations for honesty and candor • Explain framework for rules/laws that regulate conduct • Understand how standards for bar admission and discipline encourage lawyers provide competent and ethical representation • Review Ohio Bar standards/expectations • Recognize how attorney disciplinary system works
The Attorney- Client Relationship	<ul style="list-style-type: none"> • Understand various roles and obligations of attorneys and clients • Recognize what actions may create a lawyer-client relationship • Evaluate whether a lawyer-client relationship exists • Recognize consequences of establishing a lawyer-client relationship • Understand obligations to consult with clients regularly • Evaluate when a lawyer and/or client may end a lawyer-client relationship • Determine what actions a lawyer must take before withdrawing from representation • Distinguish situations that require a lawyer to withdraw from representation, situations that permit a lawyer to withdraw from representation, and situations in which a lawyer is not permitted to withdraw from representation • Understand retainer agreements and appropriate fee structures

Competence & Allocating Authority	<ul style="list-style-type: none"> • Learn standards that establish baseline for competent legal representation • Understand meaning of “diligence” with respect to competent representation • Distinguish levels of performance and conduct that subject lawyers to discipline, civil liability, and findings of ineffective assistance of counsel • Evaluate elements of lawyer malpractice actions • Recognize decision points that arise during representation, and understand what decisions are allocated to attorneys/clients • Understand how to manage dynamics of attorney/client relationship, including communication and decision-making strategies • Apply appropriate allocation principles for those decisions not clearly allocated to clients
Fees & Billing	<ul style="list-style-type: none"> • Distinguish types of fees a lawyer may charge • Define and determine how/what fees are “reasonable” • Understand purpose and function of trust accounts and funds that should be maintained separately
Confidentiality & Privilege	<ul style="list-style-type: none"> • Describe relationship between attorney-client privilege and duty of confidentiality • Explain rationale for attorney-client privilege • Identify necessary elements for attorney-client privilege • Identify who has authority to waive attorney-client privilege • Determine individuals to whom an attorney owes the duty of confidentiality • Identify scope of information within duty of confidentiality and exceptions • Analyze whether duty of confidentiality and exceptions balance client/attorney/societal interests
Conflicts of Interest	<ul style="list-style-type: none"> • Evaluate when representation is permitted when conflicts of interest exists • What constitutes proper informed consent to a concurrent conflict of interest • Understand different obligations to current, past, and potential clients • Understand material limitations that define conflicts in cases involving criminal cases, torts, law firms, and business matters • Evaluate what constitutes a conflict situation when an attorney may be a witness • Explain characteristics of “informed consent” that could ameliorate conflict situations • Determine when representation is permitted when conflicts of interest are imputed to a tainted lawyer’s firm

Honesty and Candor (Conduct and Practice)	<ul style="list-style-type: none"> • Establishing credibility as character trait • Understand relationship between obligation of honesty and candor as it relates to confidentiality, conflict of interest, fees, roles and responsibilities, and fellow attorney conduct • Understand attorney obligations for honesty and candor in front of tribunals - and in practice • Explain rules against making false statements of fact or law to a tribunal • Understand rule requiring attorney to take reasonable remedial measures to correct misrepresentations if lawyer comes to know evidence presented is false
Prosecutorial and Criminal Defense Ethics	<ul style="list-style-type: none"> • Explain importance of “vigorous” vs. “zealous” representation • Explain various roles as Officers of the Court • Recognize unique role of prosecutor as minister of justice • Recognize boundaries of prosecutor discretion to charge • Analyze role and requirements of prosecutors in ensuring a defendant’s right to counsel • Understand role of criminal defense attorney in preparing trial tactics and strategy • Differentiate constitutional obligation to disclose evidence (Brady Rule) from requirements under MR 3.8 • Identify proper prosecutorial conduct at different stages of a criminal action • Analyze and articulate policy behind rule requiring prosecutors to rectify and avoid wrongful convictions
Negotiations and Effective Client Representation	<ul style="list-style-type: none"> • Establishing credibility as part of personal reputation • Understanding appropriate negotiation strategies and tactics with respect to ethical obligations
Attorney Advertising	<ul style="list-style-type: none"> • Distinguish solicitation from advertising • Identify States’ interest in regulating lawyer advertising as commercial speech • Recognize the ways in which lawyers are advertising with new media and technologies that may not be governed directly by the Rules • Analyze whether a lawyer solicitation or advertisement complies with the Rules