Welcome to Professional Responsibility, a course that focuses on lawyers and their regulation. Together let's make this a rewarding, challenging, and important course to your law school and initial practicing experiences.

“I am a member of the legal profession, but I'm not a lawyer in the pejorative sense.”
GENERAL COURSE INFORMATION

Our course materials are:


In no particular order, my objectives for this course include:

1. identifying and evaluating core values articulated by our profession and the resulting duties, challenges, and dilemmas that they stimulate;
2. introducing and analyzing broad issues that our profession is debating today and that you will confront and help resolve throughout your practicing career;
3. developing and improving skills at perceiving and resolving ethical dilemmas to enhance your understanding and appreciation of difficult choices raised in the rest of our curriculum and in your initial clerking and practicing experiences;
4. preliminarily exploring important aspects of lawyering, decision-making, and problem-solving that implicate and demonstrate professional values;
5. introducing and quickly surveying the many law sources that influence and regulate professionally responsible decision-making by lawyers; and
6. encouraging development of a thoughtful and reflective, self-aware and self-critical approach to your professionalization, a process which begins now.

Topics and reading assignments for the course follow. Please accept the challenge to prepare for classes actively by developing and frequently writing answers to the questions posed and problems raised in the reading assignments. We will typically cover these questions and problems in the order they appear in the Text and Supp. Many topics may require more than one class period to cover fully. Regrettably, we will not have time to cover the entire Text.

The assignments contain summaries of and references to some but not all of the statutory materials that need to be prepared for each unit. This course will emphasize only the Model Rules [hereafter MR and adopted in some form in 80% of American states], the Florida Rules of Professional Conduct [hereafter RPC], and the Restatement of Law Governing Lawyers [hereafter RST], all of which are reproduced in Supp. We will not cover the earlier ABA Model Code of Ethics and approaches used
by states other than Florida except to the extent that they contribute useful alternatives to current MR, RPC, and RST approaches.

Please read and prepare all provisions of the MR [found in pages 1-121 Supp.], the RPC [found in pages 122-88 Supp.] and the RST [found in pages 189-225 Supp.] along with all pertinent portions of the Comments to each that relate to every assignment. This Syllabus does not specifically list these sources by assignment to give you practice researching them, just as you must when confronting these problems in clerking and practice. Use the tables of contents [Supp. pages 1-2 for MR, 122-23 for RPC, and 189-92 for RST] and the MR Index [pp110-21 Supp.].

This class extensively uses short role plays, small group exercises and discussions, and analysis of videotaped excerpts dramatizing aspects of assigned topics. We will discuss every problem contained in the assigned text and Supp sections and the problem transcripts in Supp. Video clips tracking these transcripts will be shown and evaluated. In addition, video excerpts drawn from popular cultural sources [tv shows and movies] will be introduced, shown, and analyzed, often in small groups. Class also features several short role plays which typically include brief instructions distributed one class in advance. Thorough preparation and serious effort is essential to make these role plays valuable because debriefing these exercises comprises an important class component. These approaches enliven the ethical dilemmas lawyers frequently confront. They force you to make decisions about challenging and contemporary professional responsibility questions. Doing this now also reminds us that you will soon need to address many of these questions and situations in real life.

Occasional short, non-graded written assignments, often done during class, will occur during this course. The course also presents an early practice examination and review session. It also provides an opportunity to learn your Myers-Briggs Personality Type and discuss how it might influence law study strengths and challenges. We will provide group-based feedback but, regrettably, our large enrollment prevents providing much individual feedback regarding many of these learning by doing activities. Equally regrettabley, your entire course mark will be determined by a final examination that will combine multiple choice and essay [focused, written problem solving] formats. This examination will be closed book except that you may use your supplement quick access to the MR, RPC, and RST provisions and comments. Although you should learn the professional rules and how they work, you do not need to memorize them to do well. Please do not write or place outlines or other study aids in your Supp.

Class attendance is required. Standard 304 (e) of the Standards for Approval of Law Schools of the American Bar Association requires “regular and punctual class attendance.” I take role daily and define regular attendance as presence at 90% or more of our classes. Your grade will be reduced if your attendance fails to meet this
definition unless absences are excused by me or the administration. I apologize in advance for any class rescheduling that may result from other commitments growing out of my dispute resolution work abroad and other professional and consulting obligations. I will provide as much notice of make-up classes as possible.

My office hours will be announced. As will be explained in more detail, I want to meet with each of you in small groups twice during the term. I encourage you to stop by if you have questions or concerns of if you would just like to talk. I am available at other times by appointment. please feel free to call me at 392-0412 or make an appointment with one of the secretaries in the Clinic Suite if I am not in when you call. You can also reach me by email at petersdon@law.ufl.edu. I am pleased to answer questions or schedule appointments by email if it is convenient for you but I am also delighted to see you in person.

The following course assignments list topics and page numbers from our Text and Supplement. Role plays and text problems appear in bold. New role plays may be added as the course progresses.

**COURSE ASSIGNMENTS**

**ASSIGNMENT ONE: COURSE INTRODUCTION**

Read pages xxiii-xxv and 1-10 Text and the Preambles to the MR, pp. 3-7 Supp., and the RPC, pp. 122-23. We will introduce ourselves, the course, its learning approaches, and answer a colleague’s ethical question in an exercise which will be explained in class.

**ASSIGNMENT TWO: PROFESSIONALISM AND THE AMERICAN ADVERSARY ADJUDICATION SYSTEM**

Read pages 10-14, 393-418 Text. Before class, please write a short [no more than 3 paragraphs] answer to What Would You Do?, pages 238-39 Supp, You do not need to put your name on your answer but you will need to hand it in at the beginning of class. We will evaluate illustrative video clips, do another in class exercise and discuss aspects of the American adversary adjudicatory system. We will also discuss Which System is Better, pages 417-18 Text. Specific instructions for the Sweltering Palms, Inc. v. Tenant role play, pages 245-48 Supp., will be distributed at the end of class.

**ASSIGNMENT THREE: ADJUDICATION AND MEDIATION**

Read pages 239-45 Supp. We will do the Sweltering Palms, Inc. v. Tenant role play, pages 245-48 Supp. We will also critically evaluate the classic bike dispute Seinfeld episode, introduce Florida’s pioneering embrace of mandatory, court-annexed
mediation, and discuss whether lawyers should have an ethical obligation to counsel clients regarding alternative dispute resolution.

ASSIGNMENT FOUR: CLIENTS: THE CENTRAL RELATIONSHIP

Read pages 21-26, 418-22 Text. We will use video clips to analyze what is necessary to create attorney-client relationships, lawyer’s professional responsibilities regarding accepting or declining clients, and whether they are or should be morally accountable for their clients. Prepare to argue both for and against an attorney client relationship in Professional Exercise [from Trouble at Upper Black Eddy], pages 248-49 Supp.

ASSIGNMENT FIVE: COMPETENCE AND CONFIDENTIALITY

Read pages 32-39 Text, the Florida attorney-client privilege statute, page 226 Supp., and the Federal and Florida discovery rules, pages 226-236 Supp. We will use video clips and hypotheticals presented in class to analyze the sources of confidentiality and differences between them. Regarding Perez v. Kirk & Carrigan, pages 34-37 Text, identify: (1) the source of the confidentiality obligation; and, anticipating future topics, (2) what conflicts of interest Kirk & Carrigan faced in this situation. We will also discuss the My Client is HIV Positive and I Know There’s a Gun problems, pages 38-39 Text.

ASSIGNMENT SIX: CONFIDENTIALITY AND ENTITY CLIENTS

Read pages 39-56 Text. We will use video clips to explore the reach and complications of confidentiality applications to entity clients, analyze the confidentiality implications of Employee confidences at Valley Fabricators, pages 249-50 of Supp., and discuss Slip and Fall, page 53 of Text. We will also discuss what approach on this issue we will recommend to Himilayastan, the central Asian country that we are advising regarding creating ethical rules. Please write your short answer [no more than 3 paragraphs] to the Unexpected Aneurism problem, pages 257-58 Supp., and hand it in at the beginning of the next class. In addition, instructions for the ABC Securities Company role play will be distributed.

ASSIGNMENT SEVEN: CONFIDENTIALITY EXCEPTIONS

Read pages 56-69 Text. We will analyze confidentiality exceptions using video clips and hypotheticals, discuss who wins and why in Arsenic and Ethics, pages 251-57 Supp., do and debrief the ABC Securities Company role play, compare what the lawyers actually did in An Unexpected Aneurism, pages 257-58 Supp., to your answers, and critically assess contemporary confidentiality doctrine. In addition, instructions for the Creati-Virtual, Inc., role play will be distributed.
ASSIGNMENT EIGHT: AGENCY AND LAWYER AUTONOMY

Read pages 69-94 Text. We will use video clips and hypotheticals to analyze agency and autonomy issues, discuss the In a Box, pages 84-85 of Text, and Ms. Niceperson, pages 93-94 Text problems, and do and debrief the Creati-Virtual, Inc., role play.

ASSIGNMENT NINE: CLIENT AUTONOMY AND TERMINATING CLIENT RELATIONSHIPS

Read pages 94-106 Text. We will analyze video clips, explore why Barnes lost while Olfie won, critically evaluate the lawyer’s counseling performance counseling the plaintiff in Lancer v. American Steel, pages 262-63 of Supp, and solve the I’d Rather Die and Accept the Offer problems, pages 101-02 Text.

ASSIGNMENT TEN: COMMUNICATING WITH ANOTHER LAWYER’S CLIENT IN CIVIL MATTERS

Read pages 107-22 Text. We will analyze video clips exploring aspects and dilemmas with this doctrine, assess whether violations were committed Interviewing former employee regarding Lancer v. American Steel, pages 262-63 Supp., and discuss Slip and Fall Redux, page 122 of Text. In addition, instructions for the Are You Kidding Me role play will be distributed.

ASSIGNMENT ELEVEN: FINANCING LEGAL SERVICES: MARKETPLACE ROLES AND UNETHICAL FEES

Read pages 143-67 Text. We will analyze video clips exploring common fee dilemmas, decide what we should do in the Management Committee Meeting, pages 263-66 Supp., do and debrief the Are You Kidding Me role play, and explore the What Are You Worth problem, pages 162-63 Text, by assigning firms to argue for each position and one firm to decide and explain their decision. In addition, instructions for the Who Do You Trust role play will be distributed.

ASSIGNMENT TWELVE: CONTINGENCY FEES

Read pages 173-84 Text and The Florida Bar v. Hollander, pages 266-68 Supp. We will analyze video clips, do and debrief the Who Do You Trust role play, and decide whether we wish to recommend that Himilayastan adopt contingency fees and, if so, what kind of regulation of them we recommend. In addition, please make your decision, writing a no more than two paragraph explanation, on the Law School Pro Bono Proposal, pages 268-69 Supp., and hand it in at the beginning of our next class. Instructions for the Law Firm Pro Bono Decision role play, page 269 of Supp., also
ASSIGNMENT THIRTEEN: MANDATORY PRO BONO

Read pages 173-84 Text. We will examine video clips, discuss the Law School Pro Bono Proposal, pages 268-69 Supp., and do and debrief the Law Firm Pro Bono Decision role play, page 269 Supp. In addition, instructions for the Can I Change Now role play will be distributed.

ASSIGNMENT FOURTEEN: CONCURRENT CONFLICTS OF INTERESTS: LAWYER-CLIENT CONFLICTS 1

Read pages 229-49 Text. We will overview the important area of interest conflicts by watching Anita Eng and Casper Voll, pages 269-72 Supp. Then we will assess possible conflicts of interest in A Leveraged Buyout for Harris Chemical, pages 274-276 Supp. We will also analyze the May the Lawyer be our Client problem, page 245 Text.

ASSIGNMENT FIFTEEN: LAWYER-CLIENT CONFLICTS 2 AND CLIENT-CLIENT CONFLICTS IN CRIMINAL CASES

Read pages 249-70, 283-84 Text. We will analyze video clips, explore the appropriateness of and alternatives to the decision in Karen Horowitz and J. Blair Thomas, pages 272-74 Supp., and resolve the All or Nothing problem, pages 283-84 Text. In addition, instructions for the There's Just A Couple More Things role play will be distributed.

ASSIGNMENT SIXTEEN: CLIENT-CLIENT CONFLICTS IN CIVIL CASES

Read pages 291-310, 312-13 Text. We will analyze video clips, do and debrief the There’s Just A Couple More Things role play, resolve the Will You Represent Us Both problem, pages 312-13 Text, and tackle the May We Do Both Cases problem, page 313 Text, as a split-class writing assignment with some firms writing issues and arguments on behalf of the California office and others from the perspective of the Chicago office. In addition, instructions for the You Want Me To Do What role play will be distributed.

ASSIGNMENT SEVENTEEN: CONFLICTS MALPRACTICE, CONSENT & WAIVER, AND THE INSURANCE TRIANGLE

Read pages 313-33 Text. We will do and debrief the You Want Me To Do What role play, tackle the What Kind of Consent problem, pages 325-26 as an in-class writing assignment, and resolve The Insurer Would Want To Know, pages 332-33.
ASSIGNMENT EIGHTEEN: SUCCESSIVE CONFLICTS AND PRIVATE PRACTICE

Read pages 339-59, 361-62 Text. We will critically evaluate a video clip, do and debrief the Can We Take This One role play, and tackle the Divorce and Default and Do I Still Owe the Record Store problems, pages 361-62 Text. In addition, instructions for the The Revolving Door role play, page 277 Supp., will be distributed.

ASSIGNMENT NINETEEN: IMPUTED DISQUALIFICATION AND MIGRATORY LAWYERS

Read pages 362-78 Text. We will examine a video clip, do and debrief The Revolving Door role play, page 277 Supp., and tackle the You Turned On Us and The Verdict is Unconstitutional role plays, pages 377-78 Text. In addition, instructions for the Alex Evans Interview role play will be distributed.

ASSIGNMENT TWENTY: HONESTY IN ADVOCACY AND INTERVIEWING

Read pages 422-57 Text. We will critically examine video clips, do and debrief the Alex Evans Interview role play, and evaluate the lawyer’s choices in the First Client Interview, pages 277-80 Supp.

ASSIGNMENT TWENTY-ONE: FOSTERING FALSITY OR ADVANCING TRUTH

Read pages 457-85 Text. We will critically examine video clips, evaluate the lawyer’s choices in the Plea Negotiation, pages 280-82 Supp., and tackle The Eye Witness, Parts I and II, pages 484-85 Text.

ASSIGNMENT TWENTY-TWO: EXPLOITING ERROR, SILENCE, DELAY, HARDBALL, INCIVILITY, AND ADVERSE LEGAL AUTHORITY

Read pages 485-92, 496-505, and 507-11 Text. We will analyze video clips, examine the lawyer’s decision-making in Pinnochio’s Lawyer, pages 283-83 Supp. and the Deposition and Conference with the VP for Engineering of American Steel, pages 283-87 Supp., discuss how you would rule and why In the Matter of Neal Morgan, Esq., pages 287-90 Supp., and resolve Carl’s Deception, pages 491-92 Text.

ASSIGNMENT TWENTY-THREE: REAL EVIDENCE

Read pages 513-39 of Text. We will analyze video clips, discuss the problems

ASSIGNMENT TWENTY-FOUR: LAWYERS FOR ENTITIES

Read pages 542-63, 566-71 Text. We will critically evaluate the lawyer’s decisions in Representing the Corporate Client: The Saga of Albinex, pages 292-96 Supp., and Up the Ladder at Valley Fabricators, pages 296-97 Supp. In addition, instructions for the Candy Shack Negotiation role play will be distributed.

ASSIGNMENT TWENTY-FIVE: NEGOTIATION AND TRANSACTIONAL MATTERS

Read pages 597-628 Text. We will examine video clips, do and debrief the Candy Shack Negotiation role play, critically evaluate the lawyer’s decisions in Negotiating Lancer v. American Steel, pages 297-304 Supp. and Felicia Carlyle, Samantha Kelsey, and Ben Butler, pages 304-07 Supp., and tackle The Case of the Substandard Plumbing Lines, and The Case of the Complex Formula, pages 621-22 Text. In addition, instructions for the Final Dilemmas role play will be distributed.

ASSIGNMENT TWENTY-SIX: SUPERVISORY RESPONSIBILITIES, REPORTING MISCONDUCT, AND UNAUTHORIZED PRACTICE

Read pages 746-63, 872-74 Text. We will analyze video clips, assess the ethical issues and best resolutions in An Unexpected Document in American Steel, pages 307-09 Supp., do and debrief the Final Dilemmas role play, and tackle the I Don’t Want to Pry But problem, pages 749-50 Text.

ASSIGNMENT TWENTY-SEVEN: MARKETING LEGAL SERVICES

Read pages 985-97, 1014-17, and 1028-29 Text. We will critically evaluate video clips and resolve the I’m Back on My Feet problem, pages 1028-29 Text.
RECOMMENDED RESOURCES

for Professional Responsibility

• Nathan M. Crystal, An Introduction to Professional Responsibility [Aspen Law & Business 1998] [paperback]

• James E. Moliterno, Professional Responsibility: Course Outline or Roadmap [Aspen Law & Business 1999] [paperback]

• Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method [Aspen Pub., Inc., 2d ed. 1998] [paperback]

• Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession [Oxford University Press 2000]

• Ronald D. Rotunda, Professional Responsibility: A Student’s Guide [ABA Center for Professional Responsibility 2002-03] [paperback]

for Law Study


• Ken F. Hegland, An Introduction to the Study and Practice of Law [West Nutshell Series, 2d ed., 1995] [paperback]

• Martha Peters and Don Peters: Looking at Type and Law Study [CAPT, forthcoming 2003]

• Charles H. Whitebread, Success in Law School: Exam-Taking Techniques [Harcourt, Brace & Jovanich 1989] [paperback]

for Positive Views of Law Study and Practice


for General Ethics

- His Holiness the Dalai Lama, Ethics for the New Millennium [Riverhead Books Paperback, 1999]