



The Law and Ethics of Lawyering (Law 473)

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1. Sessions. The course meets Tuesdays, Thursdays and Fridays from 11:00 am to 11:50 am between August 27 and December 5 in Room 325. Class will not held on November 28 or 29 due to the Thanksgiving holiday, and we will have an abbreviated class starting at 11:20 am on October 25.

2. Topic Coverage. While we will address topics applicable to both litigation and transactional practices, the course will be “tuned” for those entering into a transactional practice. As a result, most examples will be drawn from transactional situations, and litigation-specific topics usually will be covered in summary fashion. Also, note that topics specific to a criminal practice will not be covered comprehensively.

3. Grading. Subject to downward adjustments due to the papers (see below), grading will be based 100% on the final exam. The final exam will be held December 12, 2002 at 8:30 am. I anticipate the exam will run between 2-3 hours and may consist of essays, short answers and possibly multiple choice. The standard MULS curve will apply to this course.

4. Writing Assignments. There are 4 short writing assignments. Each paper should be about 1 typewritten page (250-500 words) and take about 1 hour to write. If you are writing a paper for more than 2 hours, stop and turn in what you’ve done.

My goal is to get you thinking and to give you a little feedback, not to create extra make-work or grading pressure. Therefore, the papers will be graded P/F, and Ps will be given automatically if you submit an on-topic paper. I will tolerate poor writing and low investment of thought, but I won’t tolerate missed deadlines. Therefore, late papers will get an F—NO EXCEPTIONS and NO EXCUSES. I may reduce your final course grade by up to ½ grade for each F you receive.

Paper #1

Read the Preamble to the Wisconsin Rules of Professional Conduct for Attorneys (SCR Chapter 20A and 20B) and the Attorney’s Oath (SCR 40:15). Discuss your reactions to these. Is there anything you don’t want to sign up to? Due: any time prior to September 13 at 11 am.

Paper #2

Get a Wisconsin Lawyer magazine. Review the public discipline reports and pick a story. Discuss if you could see yourself getting into similar trouble and what steps you’ll take to avoid doing so. Due: any time prior to October 31 at 11 am.

Paper #3

Read the OPM story on pages 304-308 of the casebook (and reflect upon the materials on pages 942-945). Assume that you are a junior associate working for Singer Hutner and you, instead of the St. Paul lawyer, discover the discrepancy. What are you required to do by the Rules? If different, what would you really do in practice? What adverse consequences (legal, business, moral) might you suffer from either of the foregoing? Due: any time prior to November 26 at 11 am.

Paper #4

Throughout the semester, you will see many media depictions of lawyer behavior regulated by the Rules of Professional Conduct. Pick one situation depicted in the media (periodicals, movies, TV, books, whatever), discuss how the situation was handled, assess if the handling was consistent with the Rules, and discuss if you would have handled things differently (including if you have any personal qualms or reservations about the process or the outcome). Due: any time prior to December 3 at 11 am.

Submit your papers by email to eric.goldman@marquette.edu.

5. Required Reading. The primary casebook is The Law and Ethics of Lawyering (Third Edition, 1999) by Hazard, Koniak and Cramton (ISBN 1-56662-751-6). Its list price is \$74.50, so you may find it cheaper to order online. On July 29, I searched Epinions.com to find price comparisons and found:

- Powells.com had copies at \$40 each (I think they are new; you should check if you care)
- Half.com had used ones as cheap as \$40 (new customers at Half.com can save \$5 by using the coupon "LOVE5" at checkout).
- Walmart.com had new ones for \$60
- Alibris.com had a copy for \$35 (\$5 off if you use the coupon "Spring") (I found this elsewhere, not on Epinions)

Get the 1999 edition (not the 1991 or 1993 editions, which are still being sold). For the latest price comparisons, see http://www.epinions.com/book_mu-2767524.

In addition to the Hazard/Koniak/Cramton book, you will need the supplemental reader. Additional readings may be distributed during the semester.

Note: I have included some sample documents in the supplemental reader. These documents were graciously provided to me by a law firm to facilitate pedagogical discussions in this course. The documents are not exemplars and, as we will discuss in class, may not necessarily succeed in accomplishing their stated objectives.

6. Email List. I will create and maintain a class email list using your Marquette email account (i.e., yourfirstname.yourlastname@marquette.edu). Throughout the semester, I plan to distribute important information about the course using this email list. I WILL ASSUME THAT YOU ARE CHECKING YOUR MARQUETTE ACCOUNT AT LEAST DAILY. If you do not otherwise check this account, you may wish to auto-forward emails to your regular account.

7. Office Hours. I will hold office hours in my office (Room 110) Thursdays from 12:00 to 12:30. In addition, I am happy to meet with you after class on other days or by appointment. I also use email extensively and can answer your questions or converse with you that way if you want.

8. Reading Assignments.

CB = Hazard, Koniak and Cramton casebook

SCR = Wisconsin Supreme Court Rules of Professional Conduct for Attorneys (contained in the Supplement)

Supp = supplemental class reader

Topic	Readings
Introduction to the course	CB 986-987
Overview of being a lawyer	SCR 20 Preamble SCR 40:15 (Supp 88-89) SCR 20:2.1 CB 1196-1216 CB 988-991
Regulation of lawyers	SCR 20:8.4 CB 13-18 CB 920-926 Supp 90-92 (Figures 2 and 3)
Forming client relationships	SCR 20:1.2(c) SCR 20:1.8(h) CB 457-462 Supp 93 (No-Engagement Letter)
Ending client relationships	SCR 20:1.16 CB 463-469 Supp 94-95 (Disengagement Letter)
Fees and billing	SCR 20:1.5 SCR 20:1.8(f) CB 489-522
Client identity	SCR 20:1.13 CB 715-718 CB 731-732 CB 759-772
Duty of loyalty—general	SCR 20:1.7 CB 574-594 CB 605-607 CB 618-626 CB 632-634 Supp 96-97 (Represented Client Waiver) Supp 98-99 (Non-Represented Client Waiver) Supp 100 (Representing Multiple Clients) Supp 101-102 (Start-up Waiver) Supp 103-105 (Dual Rep by Same Firm)
Duty of loyalty—being a fiduciary (including decision-making/control and trust accounts)	SCR 20:1.2(a) and (b) SCR 20:1.15 CB 449-457 CB 469-480 CB 553-557
Duty of loyalty—adverse positions to client	SCR 20:1.8

	SCR 20:6.4 CB 557-571 CB 594-595 CB 735-736
Duty of loyalty—advancing client interests	SCR 20:4.4 CB 1127-1143 CB 94-101
Duty of confidentiality	SCR 20:1.6 CB 203-227 CB 267-274
Managing the duties—client fraud and incriminating evidence	SCR 20:1.2(d) and (e) CB 282-310 CB 53-61
Managing the duties—former clients	SCR 20:1.9 CB 640-667 Supp 106 (Former Client Waiver) Supp 107 (Prior Investor Waiver)
Managing the duties—laterals and mergers	SCR 20:1.10-20:1.12 SCR 20:1.17 SCR 20:5.6 CB 667-684 CB 945-947
Third party communications—rendering opinions	SCR 20:2.3 CB 79-94 CB 101-103
Third party communications—speaking with parties represented by counsel	SCR 20:4.2 CB 533-553
Third party communications—truthfulness in negotiations	SCR 20:4.1 SCR 20:4.3 CB 1143-1159
Duty of competence (including diligence and communication)	SCR 20:1.1 SCR 20:1.3 SCR 20:1.4 CB 149-176
Delegating and supervising work	SCR 20:5.1 to SCR 20:5.3 CB 942-945
Duty to rat	SCR 20:8.3 CB 926-934
Marketing	SCR 20:7.1 to SCR 20:7.5 CB 1013-1038
Unauthorized practice of law	SCR 20:5.5 CB 991-1013
Organizing law firms (including fee-splitting with non-lawyers)	SCR 20:5.4 SCR 20:5.7 CB 1039-1063
Litigation topics [NOTE: THIS SECTION MAY BE FURTHER REFINED DEPENDING ON OUR SCHEDULE]	SCR 20:3.1 to 20:3.10 CB 382-448 CB 346-356
Course wrap-up	Reread CB 1196-1216

9. Contact Info.

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An electronic copy of this syllabus, as well as other course information, is available on my personal website.