



The Law and Ethics of Lawyering (Law 473, Section 1002)

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Marquette University Law School

Spring 2004

- 1. SESSIONS.** The course meets Tuesdays and Thursdays from 12:30-1:45. The course runs from January 8 through April 22 except for March 9, March 11 (Spring Break) and April 1 (I'll be in Seattle). I do not record attendance or grade in-class participation, so you don't need to inform me if you are unable to attend class.
- 2. TOPIC COVERAGE.** This section emphasizes issues arising in a transactional practice. Litigation-specific issues will be addressed in abbreviated fashion, and some topics specific to a criminal practice will not be covered.
- 3. FINAL EXAM.** The final exam comprises 80% of the final grade. The final exam is currently scheduled for May 3, 2004 at 8:30 am. I intend to style the final exam as a "take home" exam to enable you to use computers, but like an in-class exam, I expect the exam will run just the morning (i.e., approximately 3½ hours). The standard MULS curve will apply to this course.
- 4. WRITING ASSIGNMENTS.** There are 4 short writing assignments (shoot for around 500 words each, but there is no minimum or maximum). Each paper is worth 5% of your final grade. 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 and on-time paper.

I hope you will spend no more than 2 hours working on each paper. If you are spending more time than that, feel free to stop and turn in what you've done. I tolerate weak investment of thought and poor writing, but I do not tolerate late papers. A **HARD COPY OF YOUR PAPER MUST BE IN MY MAILBOX (IN ROOM 110) BEFORE EACH DEADLINE. THERE IS NO GRACE PERIOD—NO EXCUSES!**

Paper #1

Discuss your reactions to the Preamble to the Wisconsin Rules of Professional Conduct for Attorneys (see SCR Chapter [20A](#)) and the Attorney's Oath ([SCR 40:15](#)). Due: any time prior to January 22 at noon.

Paper #2

Discuss the biggest concern, disappointment or frustration with the legal profession that you've learned about since you've been in law school. How do you plan to constructively deal with this issue when you become a lawyer? Due: any time prior to February 19 at noon.

Paper #3

Throughout the semester, you will see mass-media depictions of lawyer behavior covered by the Rules of Professional Conduct. Pick one situation depicted on TV or in the movies, discuss how the situation was handled, assess if the handling was consistent with the principles discussed in class, and discuss if you would have handled things differently. Due: any time prior to March 18 at noon.

Paper #4

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? If different, what would you choose to do in practice, and why? Due: any time prior to April 22 at noon.

5. REQUIRED READING. The principal casebook is *The Law and Ethics of Lawyering* (3d ed. 1999) by Hazard, Koniak and Cramton (ISBN 1-56662-751-6). Get the 1999 edition (not the 1991 or 1993 editions). In addition, you need the supplemental reader from PrintWorld. This reader includes some example documents that are included for discussion and educational purposes only; you should not use these documents in practice.

6. TWEN. YOU MUST REGISTER FOR THE COURSE'S TWEN SITE NO LATER THAN JANUARY 14, 2004 AT 12:30 PM OR I MAY DROP YOU FROM THE COURSE. I send important course-related emails to the TWEN email list, so please use an address you check regularly.

7. OFFICE HOURS. I am in my office (Room 110E) all the time and I invite you to stop by at your convenience. Or, email me to arrange a scheduled time to talk. Also, I use email extensively, so I am also happy to answer questions by email.

8. READING ASSIGNMENTS.

CB = Hazard, Koniak and Cramton casebook

SCR = Wisconsin Supreme Court Rules of Professional Conduct for Attorneys (see Supplement)

FRCP = Federal Rules of Civil Procedure

Supp = supplemental reader

Topic	Readings
Introduction Ethical standards Whistle-blowing	CB 986-987, 1217-1230
Life as a lawyer	CB 1196-1216 Supp 110 (Memo from Clifford Chance associates) Supp 123 (Model Law Firm [Billing] Policy)
The practice of law Regulation of lawyers	SCR 20:2.1, 5.5, 8.4 CB 449-457, 988-1013, 13-18, 920-926 Supp 126 (Appendix 8A-C and 9)
Forming client relationships	SCR 20:1.2(c), 1.8(h)

	CB 457-462 Supp 130 (Contract for Legal Services) Supp 132 (Non-Engagement Letter)
Ending client relationships	SCR 20:1.16 CB 463-469 Supp 133 (End of Representation Letter)
Client identity	SCR 20:1.13 CB 715-718, 731-732, 759-772
Fees and billing	SCR 20:1.5, 1.8(f) CB 489-522
Duty of competence (including diligence and communication)	SCR 20:1.1, 1.3, 1.4 SCR 31 [scan] (not included in Supp) CB 149-176
Duty of loyalty—general	SCR 20:1.7 CB 574-594, 605-607, 618-626, 632-634 Supp 134 (Represented Client Waiver) Supp 136 (Non-Represented Client Waiver) Supp 138 (Representing Multiple Clients) Supp 139 (Start-up Waiver) Supp 141 (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), 1.15, 2.1 CB 469-480, 553-557
Duty of loyalty—adverse positions to client	SCR 20:1.8, 6.4 CB 557-571, 594-595, 735-736
Duty of loyalty—advancing client interests and truthfulness in negotiations	SCR 20:3.1, 3.3, 4.1, 4.3, 4.4 Supp 144 (FRCP Rule 11) CB 1127-1143, 94-101, 1143-1159
Duty of confidentiality—generally	SCR 20:1.6 Supp 146 (FRCP Rule 26(b)(3)) CB 267-274, 203-227
Duty of confidentiality—incriminating evidence	CB 53-61
Client illegality/fraud	SCR 20:1.2(d) and (e), 1.6, 1.13, 8.4 Supp 147 (17 CFR Part 205) CB 282-314
Former clients	SCR 20:1.9 CB 640-667 [scan 650-665] Supp 154 (Former Client Waiver) Supp 155 (Prior Investor Waiver)
Laterals and mergers	SCR 20:1.10-1.12, 1.17, 5.6 CB 667-684, 945-947
Rendering opinions	SCR 20:2.3 CB 101-103, 79-94
Speaking with parties represented by counsel	SCR 20:4.2 CB 533-553
Delegating and supervising work	SCR 20:5.1-5.3 CB 942-945
Duty to rat	SCR 20:8.3 CB 926-934
Marketing	SCR 20:7.1-7.5 CB 1013-1038
Organizing law firms	SCR 20:5.4 CB 1039-1047
Multijurisdictional Practice	CB 1047-1063
Litigation topics	SCR 20:3.1-3.10
[NOTE: THIS SECTION MAY BE FURTHER REFINED	CB 382-448, 346-356

DEPENDING ON OUR SCHEDULE]	
Course wrap-up	Reread CB 1196-1216

9. CONTACT INFO.

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In all emails to me related to this course, please put the words “Ethics Class” in the subject line so that I can keep my courses straight (and avoid unintentional deletion as spam).

More course-related materials, including an electronic copy of this syllabus, are available at http://eric_goldman.tripod.com.