

**PROFESSIONAL RESPONSIBILITY
SYLLABUS**

**PROFESSOR M. D. YOCHUM
FALL, 2008**

WEEK #1

- Introduction to Model Rules of Professional Conduct (MRPC)
- History of Lawyer Regulation
- Bar Admission Rules
 - i) Character Issues

Materials:

- * MRPC: Preamble and Scope; Rule 8.3
- * Pa.B.A.R. 103, 203(b), 203
- * 42 Pa.C.S.A. §2522 (oath)
- * 42 Pa.C.S.A. §2524(b)

Cases:

- * *Application of Graham*, 279 N.W. 2d 836 (Minn. 1979)
- * *In re Comverse*, 258 Neb. 159 (1999)
- * *In re Widdison*, 539 N.W. 2d 671 (S.D. 1995)
- * *Schumacher v. Nix*, 965 F.2d 1262 (3d 1996)
- * *In re Himmel*, 125 Ill. 2d 531 (1988)

WEEK #2

- Malpractice and Control of Representation
- Formation of the Attorney Client Relationship
- Insurance/Limitation on Liability

Materials:

- * MRPC: Rules 1.1; 1.3, 1.2(a) (Comments 1, 3, 7); Rules 1.4(a), (b) (Comments 2, 3); Rules 1.8(h), 5.4(d)
- * 15 Pa.C.S.A. §2925

Cases:

- * *Togstad v. Vesely, Otto, Miller & Keefe*, 29 N.W.2d 686 (Minn. 1980)
- * *Fiorontino v. Rapport*, 693 A.2d 208 (Pa. Super. 1997)
- * *Ziegelheim v. Apollo*, 128 N.J. 250 (1992)
- * *McMahon v. Shea et al.*, 547 Pa. 128 (1997)
- * *Blanton v. Womancare*, 38 Cal. 3d 396 (1985)
- * *Ala. State Bar Op.* 2002-04
- * *ABA F.O.* 02-425

WEEK #3

- Declining Representation and Discharge
- Permissive Withdrawal
- Frivolous Arguments
- Pro Bono Obligations and Appointments
- Obligation and Termination; Attorney's Liens
- Instructions from Superiors

Materials:

- * MRPC Rules 1.16, 8.4(c), 3.1, 6.1, 6.2, 8.4(d) 5.1 and 5.2

Cases:

- * *Clark v. Sup. Ct. Co. on P.R.*, 320 Ark. 597 (1995)
- * *Fowkes & Price v. Shoemaker*, 443 Pa. Super. 343 (1995)
- * *Bothwell v. Republic Tobacco*, 912 F. Supp. 1221 (D. Neb. 1995)
- * *Berry v. Martin*, 163 Pa. Comn. 49 (1994)
- * *In re Charges of Unprofessional Conduct*, 653 N.W. 2d 452 (Minn. 2002)
- * *Commonwealth v. McDaniels*, 785 A.2d 120 (Pa. Super. 2001)
- * ABA FO-03-429
- * *Ames v. Miller*, 2001 U.S. Dist. LEXIS 10341 (N.D. Tex.)
- * Utah State Bar Op. No. 02-05
- * *State v. Wright*, 271 S.C. 534 (1978)

WEEK #4

- Communication and Client Control
- Incapacitated Clients
- Settlement Offers
- Confidential Information
 - i) Privilege Distinguished
 - ii) Permissive Revelation
 - iii) Mandatory Disclosure
 - iv) ADR
 - v) Client Property
 - vi) The Lying client
 - vii) Commercial Information

Materials:

- * MRPC Rules 1.2, 21., 1.0(e), 1.4(g), 1.14, 1.16, 3.3, 4.1, 1.15, 3.4(a), 5.6(g), 1.8(g), 1.9(c)

Cases:

- * EO-93-21 (Ala)

- * EO-93-3 (Ala)
- * *Harris v. Baltimore Sun Co.*, 330 Md. 595 (1993)
- * Phila. Bar. Op. 94-21
- * EO-2000-3 (Alaska)
- * *In re Ryder*, 263 F. Supp. 360 (E.D. Va. 1967)

Cases (cont.):

- * *People v. Meredith*, 631 P.2d 46 (Cal. 1981)
- * *State ex rel. Sowers v. Olwell*, 64 Wash. 2d 828 (1964)
- * PA FO-95-13
- * PA FO 95-3
- * ABA FO 87-353
- * Phila Bar OP 95-5
- * PA OP 95-18
- * *In re Schafer*, 66 P.3d 1036 (Wash 2003)
- * *Commonwealth v. Mitchell*, 483 Mass. 535 (2003)
- * ABA FO 94-387
- * Vermont Op. No. 93-4

WEEK #5

- Conflicts of Interest
- Fee Problems and Business Dealings with Clients
- The “Gulf Oil” Test
- Imputed Disqualification
- Proprietary Interests in Litigation
- Present and Former Clients
- Government and Judicial Employment

Materials:

- * MPRC: Rules 1.7, 1.0(g), 5.4(c), 1.8(f), 1.10, 1.8(j), 1.8(e), 1.9, 1.11, 1.12

Cases:

- * *In re Manuel Enterprises, Inc.*, 140 F.3d 463 (3d Cir 1998)
- * *Hotz v. Minyard*, 304 S.C. 225 (1991)
- * *Westinghouse Elec. Corp. v. Gulf Oil Corp.*, 588 F. 221 (7th Cir. 1978)
- * *LaSalle Nat’l Bank v. County of Latrobe*, 703 F.2d 252 (7th Cir. 1983)
- * *Commonwealth v. Boring* 684 A.2d 561 (Super. Ct. Pa 1996)
- * ABA FO 97-406
- * *Schnabel v. Taft Broadcasting*, 525 S.W.2d 819 (Mo. App. 1975)
- * *Anderman v. Mancuso*, 830 A.2d 388 (Conn. App. 2003)
- * *In re Brown*, 298 Ore 285 (1984)
- * *Mississippi Bar v. Atty H.H.*, 1996 Miss LEXIS 75 (1996)
- * *Rubinstein v. Statewide Grievance*, 2003 Conn. Super. LEXIS 1727

WEEK #6

- Conflicts of Interest (continued)
- Issues in Insurance Representation
- Criminal Representation Issues
- Conflicts with Lawyer's Interest

Materials:

*MPRC: Rules 1.7, 72., 1.8(d)

Cases:

- * *Employers Casualty Co. v. Tilley*, 496 S.W.2d 552 (Tex. 72)
- * *American Ins. Assn. v. Kentucky Bar Ass'n.*, 917 S.W.2d 568 (KY 1996)
- * *In Re Allstate*, 722 S.W.2d 947 (MO 1987)
- * Phila. Bar OP 94-11
- * *Cincinnati Ins. Co. v. Wills*, 717 NE2d 151 (Ind. 1999)
- * *In Re Insurer Billing Rules*, 299 Mont. 321 (2000)
- * ABA FO 324
- * ABA FO 87-355
- * *In Re Thrasher*, 662 NE 2d 546 (Ind. 1996)
- * Phila. Bar Guidance 91-28
- * Phila. Bar OP. 92-4
- * Phila. Bar OP 93-26
- * *Mickens v. Taylor*, 122 S.Ct. 1237 (2002)
- * *Cuyler v. Sullivan*, 446 U.S. 335 (1980)
- * *Wheat v. U.S.*, 486 U.S. 153 (1988)
- * *Maxwell v. Superior Court of LA Cty*, 30 Cal 3d 666 (1982)

WEEK #7

- Organization as the Client
- Fees

Materials:

* MRPC: Rules 1.13, 1.5

Cases:

- * ABA Op. 91-361
- * *Smythe v. O'Brien*, 198 Pa. 222 (1901)
- * *Duffy v. Colonial Trust Co.*, 287 Pa. 348 (1926)
- * *Comm. on Legal Ethics v. Gallagher*, 180 W.Va. 3323 (1988)
- * *Levit v. Katcher*, 30 Phila. 525 (1996)
- * ABA F.O. 93-379
- * *Shaffer v. Superior Ct. of L.A.*, 33 Cal. App. 4th 993 (1995)
- * *In re Raytech Corp.*, 206 B.R. 649 (B.C. Conn 1997)
- * Kansas F.O. 95-08
- * *Eckell v. Wilson*, 409 Pa. Super 132 (1991)

- * Phila. Bar Assoc. Op. 2003-4
- * *Wright v. Arnold*, 877 P.2d 616 (Ok. App. 1994)
- * Phila. Bar Assn. Op. 2003-4

WEEK #8

- Fairness in Litigation
- Exparte Communication
- Represented Persons
- Lawyer as Witness
- Advocacy in the Media

Materials:

- * MRPC: Rules 3.5, 4.2, 4.1, 3.7

Cases:

- * *Gentile v. State Bar of Nevada*, 501 U. S. 1030 (1991)
- * Phila. Bar Op 91-27
- * *Cluggage's Lessee v. Swan*, 4 Binney 150 (PA 1811)
- * Col. Bar. Op. 70
- * ABA F.O. 86-1516
- * *Roe v. Mobile Cty. Apportionment Board*, 672 So.2d 1206 (Ala. 1995)
- * *In Re Moore*, 665 NE 2d 40 (Ind. 96)
- * *Estate of Schwartz v. H.B.A. Management, Inc*, 673 So.2d 116 (Fla. App. 1996)
- * Phila. Bar. Op. 93-9
- * *Gaylord v. Homemakers of Montgomery, Inc.*, 675 So.2d 363 (Ala. 1996)
- * Phila. Bar. Op. 94-22
- * Phila. Bar. Op. 142
- * P.A. Op. 95-4

WEEK #9

- Advocacy Restrictions (continued)
- Judicial Ethics

Materials:

Review the Model Code of Judicial Conduct

Note: Full reading of the foregoing is wise for the MPRE, but we will only review portions dealing with speech and political activity.

Cases:

- * *Republican Party v. White*, 536 U.S. 765 (2002)
- * *In re Miller*, 2000 Pa. Jud. Disc. LEXIS 7

WEEK #10

- Advertising

Materials:

MPRC Rules 7.1 – 7.5

Cases:

- * *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)
- * *In re 95-30*, 550N.W. 2d 616 (Minn. 1946)
- * *Peel v. Atty. Registration*, 496 U. S. 91 (1990)
- * *Ohralik v. Ohio State Bar Assn.*, 436 U. S. 447 (1978)
- * *In re Primus*, 436 U.S. 412 (1978)
- * *Shapero v. Kentucky Bar*, 486. U. S. 466 (88)
- * *Florida Bar v. Went for It Inc.*, 115 S.Ct. 2371 (1995)
- * *Flicker v. Curran*, 119 F.3d 1150 (4th Cir. 1997)