



INTRODUCTION TO PROFESSIONAL RESPONSIBILITY: A COURSE OVERVIEW

A. Purpose of the Course

This course is the first step in achieving mastery of the Multistate Professional Responsibility Exam (“MPRE”) because it covers all the rules tested on the MPRE. In most law school–required classes, once the final exam is over, students are not tested on the subject again until they take the state bar exam. However, professional responsibility is unique because students do not have to wait until the bar exam to confront legal ethics.

The MPRE is a section of the state bar exam that students can take before sitting for the actual state bar exam. The MPRE is designed to test one’s understanding of legal ethics through a series of multiple-choice questions. Students will have two hours to answer 60 questions dealing with not only the Model Rules but also the official comments and the ABA’s Model Code of Judicial Conduct. Each state mandates a specific score students must obtain to pass the MPRE. If a student passes, the score will be reported to the state the student plans to practice law in and will count toward getting licensed by the state bar.

Although answering 60 multiple-choice questions in two hours does not seem any more difficult than the average law school exam, the MPRE is a challenging test. The multiple-choice questions can be lengthy, and like most exams, there may be multiple answer choices that seem correct. That is why adequate preparation is critical to passing this exam.

Taking this professional responsibility course and preparing the material each week is a great starting point. Many professional responsibility professors will practice MPRE-type questions with their students. However, students should also consider practicing multiple-choice questions leading up to the exam. It is also very important to read over the rules and comments multiple times, highlighting the disjunctive and conjunctive requirements or any other important part of a rule. Because of the extensive preparation, students should give themselves at least a few weeks to focus primarily on the MPRE preparation. It is probably best to complete your law school’s Professional Responsibility course and take the MPRE exam shortly after that, so the concepts are fresh in your memory and easy to review.

After the MPRE, however, legal ethics do not go away. The purpose of this course is also to provide students with a better understanding of what to do if they are confronted with an ethics-related issue while in practice. In this course, we will explore various ethics-related scenarios and learn how to handle them properly,

a skill that will come in handy when facing numerous real-life ethical situations head-on. It is important to realize that, unlike many other law school courses, professional responsibility applies to each and every lawyer, and the rules learned in this course (or their state equivalent) will follow every member of the bar no matter which road she decides to take in her legal career.

B. How to Prepare for Class

Most students who enroll in professional responsibility will quickly discover that while the Model Rules initially appear straightforward, the details and specifics may be challenging to understand. The language used in the rules can be very ambiguous and semantic. The use of “and” and “or” throughout the rules means some requirements are conjunctive while others are disjunctive. Some rules are lengthy and contain many exceptions, requiring multi-step consideration for any given situation. Due to the nature of the Model Rules, this course offers additional weekly resources to assist students in grasping the rules and understanding how they are applied in practice. As the sequence indicates, each chapter focuses on a different rule or part of a rule. Every week, students should begin preparation by carefully reading the featured rules. Sometimes the rule will be better understood after reading the official corresponding comments. Although all comments are important, students should focus on the comments highlighted at the beginning of each chapter. These comments will sometimes provide a more specific explanation of the rule or describe certain scenarios that are often encountered and fall within the rule’s scope. Reading and understanding the comments is a critical part of class preparation—not only are they extremely helpful, but they are also often tested on the MPRE.

Sometimes the key to understanding one of the Model Rules involves applying it to a certain set of facts. As such, the next step in class preparation is reading the articles and case examples in each chapter that apply the Model Rules to real-life situations encountered in the legal profession. When reading the cases, pay close attention to how the court applies the rule. Consider what the case stands for and illustrates. The discussion questions after each case example and article are there to guide students in that process. Some of the questions will also challenge the students to consider how the outcome of the case might have changed if the lawyer (or other individual) had taken a different course of action. The questions will also prompt students to consider how the rule might change as certain advancements, such as in technology and social media, continue to thrive in the legal profession. The purpose of these questions is not just to challenge the students in legal reasoning and analysis but also to help them better understand the policy or purpose underlying each Model Rule.

The “mind map,” an additional class preparation resource available to students, is a visual flow chart illustrating how certain aspects of the rules connect and fit together. The center of the mind map is the main subject—the rule being dissected. The lines that flow from the center are the main topics or focus points of the

main subject. In this class, these lines may consist of the rules within one particular rule. For instance, if Rule 8 is the main subject, Rule 8.4 might be one of the lines that flows from the center subject. In some mind maps, secondary lines will stem from the main lines. In this course, it might be the requirements within one of the rules. For instance, the secondary lines could be the requirements or guidelines within Rule 8.4.

The mind map is beneficial not only to visual learners but to anyone who wants to understand how the rules all fit together in a given chapter (or even the entire book when looking at the very first introductory mind map). Students should utilize mind maps and stay organized with the course structure, along with reading the rules, comments, cases, examples, and articles. For those who miss utilizing their creative side in law school, drawing out one's own mind map by hand can also be very beneficial. Drawing a mind map maintains organization throughout the course and challenges the creator to understand how the rules fit together. Finally, creative learners might prefer making a mind map as a form of preparing for the exam in addition to writing out an outline because a mind map accomplishes the similar goal of organizing and connecting the concepts, except it does so on a visual level.¹

C. Sequence of Rules

Understanding how the Model Rules of Professional Conduct (“Model Rules”) are set out will assist with class preparation, the final exam, and the Multistate Professional Responsibility Exam (“MPRE”). However, understanding the sequence of the rules will also provide guidance to anyone in the legal profession, including bar applicants or senior lawyers who are confronted with a new task and are unsure of ethical guidelines. The sequence confirms the point made throughout this textbook: there are a myriad of rules governing the legal profession, but the diligent attorney will know which rule to look to in any situation. To that end, the rules are sequenced to create a checklist that must be considered before opening a solo private practice, becoming a partner in a firm, joining in-house counsel at a corporation, or even entering the legal profession altogether.

Chapter 1 of this book, *History and Theory of Professional Responsibility—Where We Started and Who We Are Today*, offers an overview of the discipline and briefly describes the history and status of the legal profession. The majority of those reading this book are currently in law school with hopes of being admitted to their respective state bars. As such, Chapter 2, *The Importance of Integrity—Before and After Entering the Profession*, studies the first step in this process by overviewing the rules regulating admission to the bar, the application process, and behaviors that may prohibit bar admission. However, because the rules and regulations for bar admission do not end once a lawyer is admitted, this chapter also highlights

¹ See generally Tony Buzan & Barry Buzan, *The Mind Map Book: Unlock Your Creativity, Boost Your Memory, Change Your Life* (BBC Active 2002) (providing instructions and ideas on how to create a mind map).

rules focusing on how the legal profession maintains integrity among both newly admitted and senior lawyers. These rules will follow a lawyer into all aspects of her legal career.

After admission to the bar, a new lawyer will be eager to put her hard-earned law degree to the test. To do this, she will need to find clients. Therefore, Chapter 3 addresses obtaining clients through advertising, a very popular and heavily utilized process. It specifically discusses various restrictions the Model Rules place on advertisements and direct solicitations. However, lawyers can also gain clients through pro bono work or judicial appointments. Chapter 4, *Obtaining Clients Through Pro Bono Work, Judicial Appointment, and Other Ways of Creating the Attorney-Client Relationship*, focuses on the rules applicable both to voluntary pro bono work and judicial appointments. Once the new lawyer gets contacted by a person interested in hiring her as his attorney, it may be the start of her first attorney-client relationship.

It is next important to address the duties that a lawyer owes her client. Some of these duties are very standard, including competence, diligence, and sufficient communication. However, the scope of representation, for example, may involve a more in-depth discussion. A diligent and competent lawyer must also be aware of other critical aspects of the attorney-client relationship, including fees and confidential information. These topics are addressed in Chapter 5, *Confidentiality and Attorney's Fees*, and in Chapter 6, *Reality Check—Limited Exceptions to the Duty of Confidentiality*.

Before a lawyer agrees to an attorney-client relationship, she must consider many matters in addition to the ones described. For instance, a lawyer must always consider whether representing a particular client will spark a conflict of interest. Several standard conflicts are to be considered, such as conflicts for current clients or former clients, but there are also specialized conflicts to consider, including whether a lawyer has previously worked for the government or as a judge. In some instances, where a conflict cannot be overcome even with sufficient screening measures, the lawyer may have to decline or terminate representation. These topics are discussed in Chapter 7, *Conflicts of Interest*, and Chapter 8, *The Prosecutor's Rule, Declining Representation, and Sale of Law Practice*.

After the scope of representation is set, attorney's fees are agreed upon, and there are no conflicts of interest to be concerned with, the next big box on the checklist is the actual client representation itself. Chapter 9, *Working on the Case—Responsibilities in Representing Clients*, addresses these responsibilities. To ensure that the client is represented in the most effective manner possible, a lawyer must be a counselor and an advocate for her client at the same time. However, the lawyer should always be conscious of third parties and uphold a high level of integrity in her communications with even those not under her representation.

Although a lawyer might feel invincible at times, the lawyer usually cannot effectively represent her client by herself. To that end, Chapter 10, *You Can't Work This Client's Case Alone; What Are Your Duties in a Law Firm?*, addresses considerations pertinent to lawyers and non-lawyers working together. In many instances, a new lawyer will need to confide in her superiors for legal advice and rely on her paralegals to care for some of the behind-the-scenes work. The applicable rules

discussed in that chapter provide a framework for such interactions within the governing boundaries of professional responsibility.

Lawyers will frequently encounter another important member of the legal profession: a judge. As such, Chapter 11, *The Role of Judges and the License to Practice Law*, provides an overview of relevant judicial ethics concepts. The canons of judicial ethics only apply to judges and judicial candidates but understanding them is an essential part of not only the MPRE exam but also of practicing law. For some, becoming a judge is the milestone of a legal career, making these canons critical to their daily and professional life. For those who do not wish to become judges, it is still beneficial to understand the proper boundaries of judicial conduct, when a judge can and must recuse herself, and how to interact with a judge regarding pending matters in the lawyer's case. The chapter covers relevant rules and duties for such scenarios, including instances involving jurisdictional limitations to one's license to practice law.

Disagreements and misunderstandings happen and even the most diligent lawyers may become the subject of a grievance claim during their career. In addition to disciplinary proceedings, however, lawyers' conduct is regulated by judicial decisions over claims filed against them in civil courts. Chapter 12, *Malpractice Liability—Regulating from Outside the Disciplinary System*, focuses on the issues of attorney exposure and liability. Next, Chapter 13, *Lawyers and Their Role in Protecting Human Rights*, addresses the line between law and morality and the level of responsibility a lawyer may or should take for the actual, real-life consequences of her professional decisions. Finally, Chapter 14, *Balance in the Legal Profession—Contemplative Lawyering and Mindfulness*, discusses many challenges that lawyers face in maintaining the balance between various aspects of their professional and personal lives. It then proposes incorporating Mindfulness practices into a lawyer's daily life as a coping mechanism and possible solution to managing stress while practicing law.