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TEACHING PROFESSIONAL RESPONSIBILITY IN LEGAL CLINICS AROUND THE WORLD

At a March 1999 Colloquium on Clinical Legal Education,¹ a group of about 20 people, including a number of law faculty already teaching or planning to teach legal clinics in Central and Eastern Europe and the former Soviet Union, were asked, "What are the goals that you think are most important for a legal clinic?".² The most common answers were teaching about ethics and improving the ethical standards of law practice in participants' respective countries through this focus in legal education. Much of the two-hour session that followed concerned the following questions:

How are "legal ethics" different from "normal" ethics?

What are the problems of ethical norms among lawyers in the various countries that one would seek to improve?

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¹ The Colloquium took place March 15-20, 1999, in Warsaw and Cracow, Poland. It was sponsored by the: Faculties of Law of Jagiellonian and Warsaw University; the Open Society Institute's Constitutional and Legal Policy Institute, Budapest, Hungary; and the Public Interest Law Initiative, Columbia Law School, New York.

² The author co-led this discussion group with Dr. Fryderyk Zoll of the faculty of Jagiellonian University. The session took place on March 16, 1999, at 2:00 p.m. in Warsaw at the Polish Academy of Science.

How would one effectively teach legal ethics in a clinic?

This article begins by outlining the framework of what the related concepts of legal ethics, professional responsibility, and the law regulating lawyers have come to mean in the United States. This framework is not presented because the substance of legal ethical rules in the United States are, or should be, the same as those in any other country. Instead the framework is offered as a starting point for consideration of topics on lawyer regulation and lawyer responsibility on which instruction usefully might be offered in law schools and legal clinics. The substance of the instruction on topics would be developed specific to the country in which the clinic functions. The first section's discussion of the three related concepts regarding lawyer conduct also addresses the Warsaw group's question about distinguishing role-defined "lawyers' ethics" from "normal ethics."

In 1997, Professor Lisa Lerman, and I taught a Comparative Legal Profession and Legal Ethics course to American and Polish law students in the summer program of The Catholic University of America conducted at Jagiellonian University in Cracow, Poland. Because the necessary materials were not already translated into English, nine teams, each comprising one Polish and one or two American students, worked together to find the Polish provisions on major aspects of professional responsibility law, to translate the pertinent materials into English, and to make a class presentation on the comparison of the Polish and the American rules on each topic. With the help of Dr Fryderyk Zoll of Jagiellonian University, Polish students were able to identify and locate the pertinent materials. The list of topics outlined in this article was our starting point, and it proved effective for analysis of the law regulating lawyers in Poland.

As used in this article, "lawyers' ethics" encompass rules of conduct for all legal professions in a country. In the United States, lawyers are admitted to a single legal profession.¹ Poland, like many countries, has more than one legal profession with each profession having different functions. The Polish legal professions are advocate, legal counselor, prosecutor, and notary. As in other civil law countries, Polish law graduates also may enter training in the judicial profession after law school. Did I leave anything out?

Each American state has a code of ethics applicable to all lawyers admitted to the bar of that state. Specialized tribunals, e.g., the United States Securities and Exchange Commission, have the authority to promulgate special rules for lawyers appearing before the body. The United States federal courts have the authority to prescribe their own codes of conduct for lawyers appearing before them just as they have the power to set their own admission standards. The federal courts, however, have chosen not to establish a federal bar exam and generally condition admission to practice before a federal

¹ The authority to license and regulate lawyers in the United States usually rests with the highest tribunal of the system before which the lawyer wishes to practice. A state's highest court delegates authority to bar examiners who devise and grade the examination for admission, examine the educational credentials submitted by the applicant, and review the application for "character and fitness." This admission to the bar of the highest court brings the right to practice before lower courts in the state as well as the general license to practice law in a state for those who do not appear in court. The state's highest court also has the authority to promulgate rules of conduct for bar members and to impose discipline on those who violate the rules. The court appoints others to prepare draft rules of conduct, to investigate cases of misconduct, and to hear evidence on misconduct. A court generally acts on recommendations that come to it from other bodies to which it assigns responsibility.

court on admission to the bar of a state.⁴ Similarly, the majority of federal district courts follow their local state ethics codes rather than promulgating their own standards.⁵

Each Polish profession has its own enabling legislation. Unlike the United States where the authority to regulate admission and conduct standards rests with the courts,⁶ the authority for Polish legal professions rests in the legislature. Polish advocates, legal counselors, and notaries have developed internal codes of ethics. Is this a correct assessment cite? As previously described, American state bar codes are promulgated by the courts, usually the highest court of the state in which they sit. Most are patterned on the American Bar Association (ABA) Model Rules of Professional Conduct.⁷ The ABA is a voluntary, private organization to which American lawyers have no obligation to belong.

State codes of ethics generally are developed as a joint effort between the bar and lawyers. In most states, the highest court works with the state bar to establish committees of lawyers to review the ABA Models and make recommendations on what version of them should be adopted by the state. The court then reviews the work of such bodies, makes any changes it wishes, and promulgates the codes. Most state ethics codes are similar to the Model Rules, but no state is identical. In both the United States and in Poland, important rules regulating lawyers also are found in other bodies of law such as the civil procedure code and the evidentiary rules.

ABA accreditation standards for law schools have required instruction in professional responsibility since 1974.⁸ Most law schools satisfy this requirement through a two or three-credit course in professional responsibility which means 30-42 class hours of instruction.⁹ I have taught a three-credit classroom course in Professional Responsibility, to groups usually ranging from 55-70 students, since 1983. Some schools use clinical courses to satisfy the requirement. A few schools teach professional responsibility "pervasively," meaning they incorporate instruction into other courses in the curriculum.

All American clinics perceive a requirement to be concerned with professional responsibility issues. Clinics will vary in how much formal instruction is provided. One

⁴ For federal district courts, that usually is the state in which the court sits. The federal circuit courts of appeals generally require admission only to some state bar.

⁵ See Linda S. Mullnix, *Multiforum Federal Practice: Ethics and Erie*, 9 GEO. J. LEGAL ETHICS 89 (1995). This article includes a 27-page chart outlining what conduct rules each of the 94 federal district and 12 federal circuit courts cite as authority on ethics issues. She found 74 of the 94 district courts refer to state rules although 10 of those refer to state rules in conjunction with the ABA Model Rules. She argues for replacement of this situation with a single defined code of professional ethics applicable in all U.S. federal courts.

⁶ For an analysis of the source and scope of this power within the courts, see Charles W. Wolfram, *Modern Legal Ethics* 20-33 (1986).

⁷ The Cornell Law School Legal Information Institute web site includes a Legal Ethics Library that provides comparisons of ethics rules, opinions, and case law from several states and the District of Columbia to the ABA Model Rules. The author contributed to the materials for the District of Columbia.

⁸ The standard was adopted in response to concern about participation of lawyers in the Watergate scandals. See Bruce A. Green, *Less is More: Teaching Legal Ethics in Context*, 39 Wm. & Mary L. Rev. 357, 360 & n. 17. ABA accreditation has "teeth" in large part because most states permit only graduates of ABA accredited law schools to sit for the bar.

⁹ A law school classroom "hour" is 50 minutes with a ten-minute break between class hours. Credits normally are calculated on the number of 50-minute class hours that a class meets for a 14-week period. Thus, my three-credit course meets three times a week for 50 minutes or twice a week for 75 minutes for 14 weeks.

important determinant is how much instruction in the subject students have received elsewhere in the curriculum before they come to the clinic. Some clinics require a classroom course in professional responsibility to be taken previously or concurrently. I teach a seminar for students enrolled in clinical externships. In that course, some of my students have taken the required Professional Responsibility course, and some have not. I usually devote two of nine 90 -minute sessions in the class to professional responsibility."¹

To study codes of conduct, American classroom courses on legal ethics in the United States usually focus on the A B A Model Rules of Professional Conduct rather than state bar codes that actually govern lawyers. They focus on the "Model Rules" because most law graduates will go to a number of different states to take the bar examination and practice. The "Model Rules" are used as a common denominator for instruction just as the Uniform Commercial Code is used as the proxy for state codes in a commercial law class. This focus also prepares students for the Multistate Professional Responsibility Examination (MPRE), passage of which is required for admission to the bar of 47 states, the District of Columbia, and four U.S. territories. Because the MPRE is used in multiple states, it also focuses on the A B A Model Rules rather than particular state versions.

Professional responsibility textbooks and most classroom courses go beyond bar codes of ethics to encompass other important bodies of law that govern lawyer conduct, e.g., attorney-client privilege law, malpractice law. Beginning in 1999, the MPRE also will go beyond the ABA Model Rules to include these other aspects of the law governing lawyers. Just as with the Model Rules, some nuances and specifics of these areas of law vary from state to state, but students are taught basic principles that have considerable similarity across jurisdictions. In 1998, the prestigious American Law Institute approved the Final Draft of the Restatement of the Law Governing Lawyers, a comprehensive inventory on the subject.

An American law school clinical course more commonly will focus on the law of the particular state in which the clinic functions than on the general national models used in classroom courses, e.g., the state ethical code rather than the Model Rules, the attorney-client privilege law of the state rather than general concepts of privilege. The state ethical code is directly applicable to the American students' work." For a clinic in a country where there are multiple legal professions, this article suggests that a clinical course focus on the legal rules that would apply to a legal practitioner doing the type of work in which the students are engaged. In a Polish clinic, students most often would function in roles analogous to those of advocates or legal counselors. There might be occasions, however, in which a clinical course also would wish to look at the ethical rules for professions with which the clinic interacts. For example, a clinic working with

¹ For teaching that material, I use Lisa Lcrman, *Ethical Issues in Externships*, in *Learning from Practice: A Professional Development Text for Legal Externs 49-78* (J.P. Ogilvy, Leah Wortham, & Lisa G. Lcrman eds. 1998).

² All states have some form of student practice rule under which students can appear in court. This normally means that students are subject to the state rules of professional conduct as a lawyer would be. See Joan Wallman Kuruc & Rachel A. Brown, *Student Practice Rules in the United States*, *The Bar Examiner*, August 1994, at 40. Even if clinical students are not themselves admitted to a bar for student practice, their supervising lawyers are members of the bar. The supervisor and the clinic must be concerned that nothing a student does violates standards applicable to lawyers.

prisoners or criminal defendants in which the students were functioning similar to advocates might have reason to consider rules applicable to prosecutors and judges.¹⁷

The second section of this article asks why one would want to focus on legal ethics issues in legal clinics. This section argues first that clinics must offer instruction in professional responsibility to ensure student work conforms to professional standards. Second, it considers the ways that clinical instruction in professional responsibility could be useful to development of the practice standards of the profession in the country. Third, it discusses why the American experience suggests that one of the most effective ways to teach about professional responsibility is through a law school clinic.

The third section outlines steps a clinical teacher could take in developing instruction in legal ethics for clinical courses. The Appendix provides an inventory of questions for teachers to review to consider on which topics offering instruction in a clinic is necessary and desirable.¹⁸

I. What is encompassed in teaching professional responsibility?

In the United States, three terms are sometimes used interchangeably to describe a field of instruction for law students: legal ethics; professional responsibility; and the law governing (or regulating) lawyers. I accord the terms different meanings, but all three usages figure in the course titled Professional Responsibility that I have taught since 1983. The law governing lawyers refers to rules and doctrines concerning regulation of lawyers that exist in various bodies of law.

I see "professional responsibility" as a broader concept that implicates the multiple duties, responsibilities, and concerns of a lawyer—to a client, to the courts, to justice being done, to access to justice, to the public perception of the legal profession, to fellow lawyers, to parties and witnesses the lawyer encounters. Much of American rules of conduct for lawyers focus on how these responsibilities should be balanced when they tilt in differing directions as to what a lawyer should do in a particular circumstance.

"Legal ethics" properly describes professional codes of conduct developed for lawyers. As described later, I believe use of the term for the field of study about proper lawyer conduct, on the one hand, defines what students should study too narrowly. On the other hand, the term sometimes is used too broadly and confuses proper conduct in the role of lawyer with other conceptions of ethics.

A. The Law Governing Lawyers

I use the "law governing lawyers" or the "law regulating lawyers" as a foundation for all discussion in the class. This term refers to substantive rules governing lawyers, analysis of the authority under which such legal rules are created, and the mechanism by which norms are enforced. The initial question on any topic in professional responsibility is for me: What is the legal rule, and where is it found?

¹⁷ The American Bar Association also promulgates a Model Code of Judicial Conduct. As with an ethics code for members of the bar, the authority to adopt a judicial conduct code rests with the highest court in a state or federal judicial system. An American judge remains subject to the conduct standards of the state bar(s) to which the judge is admitted, and the judicial conduct standards are additional.

¹⁸ See Philip G. Schräg, *Constructing a Clinic*, 3 Clin. L. Rev. 175 (1996) for an inventory of considerations in designing a clinic generally.

As described in Section Three on steps in organizing professional responsibility instruction, it also is important to consider how seriously various subparts of these rules are taken and where they present problems for lawyers. In what types of proceedings do various parts of the law come up? What are the consequences for violating different aspects of the law? Consider the American law of conflicts of interest as an example. Model Rules 1.7–1.11 and their state counterparts set out rules on conflict of interest. Conflicts of interest encompass how a lawyer's obligations to a client regarding confidentiality and undivided loyalty should be protected when there are conflicts among current clients of the lawyer, among potential clients and current clients, among potential clients and past clients, between a lawyer's personal interest and a client's interest, and between a lawyer's past role for the government and current or potential clients.

It is rare that conflict of interest allegations are the subject of disciplinary proceedings against lawyers. They, however, frequently are the subject of disqualification motions that have the potential consequence of forcing a lawyer to give up a client. Such disqualification can occur far into a representation when there are potentially serious financial consequences for lawyer and client. Accepting a conflicted representation also can be the basis of a suit against the lawyer for malpractice or breach of fiduciary duty. Hence, most large law firms, where many questions of potential conflict arise, designate a partner to be responsible for reviewing representations for conflicts, and there is considerable concern in this regard. Thus, although conflicts of interest problems are rarely the subject of bar discipline against American lawyers, the substantive rules are very important and have considerable potential consequence for lawyers.

In some instances, the "rule" in the law of professional responsibility is only an aspirational standard. Model Rule 6.1 says that a lawyer "should aspire to render at least (50) hours of pro bono publico legal services per year." (The parentheses indicate that states may choose to insert a different figure.) A number of bars have adopted civility standards that are not binding in discipline but provide standards on how lawyers should behave in a number of day-to-day matters.

In other instances, legal rules provide guidance but provide that lawyers have discretion to act within stated bounds. Model Rule 1.6 says a lawyer "may reveal" confidential information of a client "to the extent the lawyer reasonably believes necessary: 1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm." Most states find this protection of confidentiality to tilt too far toward client protection as weighed against other concerns. Some states shift the "may" to a "shall" to require revelation of information for crimes that would result in serious physical harm. Other states add additional circumstances when the lawyer has discretion to reveal."

In yet other instances, the Rules impose a mandatory duty although judgment usually is necessary to determine when the duty applies. Model Rule 8.3 requires that a lawyer "shall inform the appropriate professional authority" when the lawyer has "knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer (...)". Although this is a mandatory duty, judgment still must be exercised to determine if the duty is invoked. In this case, the lawyer is required to report only

" For example, D.C. Rule of Professional Conduct 1.6(c)(2) provides that a lawyer "may reveal client confidences and secrets to the extent reasonably necessary to prevent the bribery or intimidation of witnesses, jurors, court officials, or other persons who are involved in proceedings before a tribunal if the lawyer reasonably believes that such acts are likely to result absent disclosure of the client's confidences or secrets by the lawyer."

if he has sufficient knowledge, the knowledge is of a violation of the Rules, and the violation raises the type of question specified.

Much important law governing lawyers is found outside state codes of conduct (which students study through the surrogate Model Rules). Again, consider the example of conflicts of interest. Model Rules 1.7-1.11 concern conflicts of interest, but many reported cases have resulted from rulings on disqualification motions and claims for malpractice or breach of fiduciary duty. The evidentiary law of attorney-client privilege is a very important body of law regulating lawyers, that lies alongside provisions of the ethical code on protection of client confidences.

B. Professional Responsibility

From the foundation in the "law governing lawyers," I see "professional responsibility" as a broader concept based in and emerging from the foundation of legal rules. For me, "professional responsibility" encompasses the notion of dealing not only with responsibility to client but also with reconciling responsibility to client with responsibilities to the court, to fellow lawyers, and to other parties in day-to-day dealings. In addition, the term implicates responsibility to the profession and the justice system. Public confidence in lawyers affects the confidence that people in the society have in the system of justice. The term "professional responsibility" implicates the philosophy underlying the legal rules and the constructs that the legal rules add up to form. American lawyers are instructed they are part of a "public profession," and that they are officers of the court. American law governing lawyers reflects a strong loyalty to the client, but there is constant debate about how loyalty to client should be balanced with responsibility to the court and respect for the rights of those who have disputes with one's client. A court's right to appoint lawyers to represent clients, even with inadequate or no compensation, has been upheld. One justification is that such responsibilities must flow from the lawyers' monopoly on access to justice.

C. Legal Ethics

Some law school courses are called Legal Ethics, our third term. The term also often is used to describe desirable professional conduct in the profession. For example, the body that advises lawyers on interpretation of the District of Columbia Rules of Professional Conduct is called the Legal Ethics Committee."

I prefer to call a law school course "Professional Responsibility," rather than "Legal Ethics." for several reasons. The term "legal ethics" is properly used to describe the profession's ethical code, but such codes are only a part of the domain of the law governing lawyers. Definition of the subject matter as "legal ethics" may encourage students and others to conceive the domain of lawyer regulation too narrowly. Second, "ethics" commonly is used to describe people's personal codes of conduct, general ideas of right conduct, and notions of the morality flowing from philosophical and religious traditions. The word ethics for many people conjures this usage, and they do not differentiate it from the usage for ethics of a profession flowing from the role of the professional. Indeed, the difficulty in differentiating can become normative - if there are a "la-

¹¹ In the District of Columbia, the body with disciplinary responsibility is called the Board of Professional Responsibility. The Board's decisions may be appealed to the D.C. Court of Appeals, and the Court must impose the most severe sanctions.

wyers' ethics" that are different from "normal ethics," they must be bad. Hence we hear jokes like: "Lawyers' Ethics—the world's shortest book."

The Encyclopedia of Philosophy speaks of ethics as having three different but related meanings: "1) a general pattern or 'way of life,' 2) a set of rules of conduct or 'moral code,' 3) inquiry *about* ways of life and rules of conduct."¹⁶ As to the second definition, the Encyclopedia says we "speak of professional ethics and of unethical behavior." The Encyclopedic Dictionary of Religion defines ethics as referring to 1) "a code of conduct regulating a profession" or 2) "moral philosophy, the meaning of which has varied nearly infinitely in the course of history."¹⁷ Within these definitions, it is appropriate to refer to a lawyer's code of conduct as "lawyers' ethics." The Encyclopedia of Philosophy's definition includes both role-defined professional codes and individual moral codes in its second option. Ethics as more general senses of morality also are implicated in the first definition that includes a usage like "Christian ethics."

In my course, I think of legal ethics as the third meaning from the Encyclopedia of Philosophy—inquiry about what lawyers should do. I encourage my students to consider the law governing lawyers and concepts of professional responsibility against their own "normal ethics" and ethical constructs from philosophy and religion. They must understand, however, that the codification of lawyers' ethics flowing from the role of lawyer may conflict with notions of ethics rooted in other premises.

As previously mentioned, American codes of conduct have become increasingly specific as they attempt to balance the conflicting directions among loyalty to client and obligations to the court or others. The 1969 A B A Model Code provides more detail than the 1908 Canons of Ethics. The 1983 Model Rules are more specific than the Code and some subsequent amendments have been in the direction of greater specificity.¹⁸ The Rules of Conduct for the District of Columbia, the third largest bar in the United States with more than 70000 members, are, in some respects, considerably more specific than the Model Rules.

I have reviewed several draft codes of conduct for the A B A Central and Eastern European Legal Initiative. Those I have reviewed typically articulate many laudable principles, but they usually do not provide much specific guidance on how those principles should be applied in practice situations, particularly when the principles might conflict with one another in application. The following example comes from a draft Rules of Professional Conduct for a Central European country that I reviewed. I have not identified the country. Rule 1 was translated as saying, "The role of a counsel is to assist in protecting rights and legal interests of physical and legal persons." Rule 2 provides: "When performing his/her professional duty injustice and other government, public and commercial institutions, he/she shall protect the interests of a client and the community and ensure enforcement of legal norms." Rule 4 introduces yet another interest for concern: "The counsel's duty is to protect his/her professional dignity. The professional dignity disgracing conduct is considered to be the one that makes the community to loose (sic) its reliance on the B A R and brings disgrace to a counsel's name." Rule 6 bans advertising, solicitation of clients or seeking "clients by ways, which violate friendly relations with his/her colleagues or hurt their dignity." The draft Rules acknowledge these appropriate concerns but provide little in specific guidance about how the obligations to clients,

¹⁶ • 3 *Encyclopedia of Philosophy* 81-82, (Paul Edwards ed., reprint ed. 1992).

¹⁷ Volume A~E *Encyclopedic Dictionary of Religion* 1244, (1979).

¹⁸ See David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 *Geo. J. Legal Ethics* 31. 43-53 (1995) (background on this progression and summary of some of the controversy on whether this direction is a desirable one).

the community, law enforcement, protection of professional dignity, and relations to colleagues should be balanced when they conflict in practice.

The preceding section of the article addresses the question of our small group of law teachers in Warsaw: "How is legal ethics different from "normal ethics"?" Much of a law school professional responsibility course concerns situations where "normal" ethical precepts conflict with each other. For example, it is a "normal" ethical norm to keep the secrets of people who confide in us. Lawyers have even a higher standard for confidentiality of their clients. But when there are dangers to other people (at least dangers of death or serious bodily harm) or possibilities of corruption of the justice system, "lawyers ethics" draw lines regarding when the ethical norm of confidentiality of client information should be overridden."¹⁹ Lawyers' ethics concern how "normal" ethical rules should be applied to someone acting in the role as a lawyer given the function of that role in a legal system. Definition of proper conduct within that role often requires drawing of lines that balance competing ethical principles. Thus, I consider "professional responsibility" to be a better term for describing the required classroom course that I teach.

I also fear students being misled by the term "legal ethics" because much of what I teach is about lawyer self-protection. By this, I do not mean protection of lawyers from discipline or public scrutiny. I mean educating students to realize that loyalty to client has limits imposed by the law. Things that a lawyer might be tempted to do to help a person in need and things that a client might push a lawyer to do may cross those bounds and subject a lawyer to peril of the lawyer's license or worse.

A lawyer in the District of Columbia retired from the government to start a private practice. He took on many needy clients referred to him by his church and charged them nothing. One such client was a Pakistani woman who had fled an abusive husband and whom he helped to become a resident alien. When it was time for her to travel back to Pakistan for the official change of her immigration status, she panicked. She feared a bureaucratic obstacle could be raised to her returning to the United States, and she begged the lawyer to help her get an U.S. passport. Upon her entreaties, the lawyer assisted the client in obtaining an U.S. passport by signing a false statement indicating that the client was someone else whose passport birth certificate she had borrowed. For violation of the federal criminal statute involved, the lawyer was sentenced to 100 hours of community service with the sentencing magistrate saying he "let his heart carry his head." Because of the conduct resulting in this criminal conviction, the lawyer was disbarred in 1989.²⁰ After five years of appeals and rehearing, the lawyer's penalty finally was reduced to a one-year suspension effective in 1989,²¹ but by that time, he had been out of practice for five years.

Another professional responsibility teacher makes the point with the story of a lawyer disbarred in Colorado for helping a client to flee the jurisdiction with her child in violation of a court order. "The client testified that 'the (lawyer) advised her as her

¹⁹ State variations to Model Rules of Professional Conduct Rule 1.6 regarding exceptions to confidentiality are many. Most states find the narrow exception of the MODEL RULE 1.6 too protective of client confidentiality against other interests. For a collection of state rules on confidentiality, see Thomas D. Morgan & Ronald D. Rotunda, *Selected Standards on Professional Responsibility* 133-42 (1998).

²⁰ *In re McBride*, 578 A.2d 1109 (D.C. 1990), modified on rehearing and remanded, 602 A.2d 626 (D.C. 1992) (en banc), Board of Professional Responsibility recommendation affirmed, 642 A.2d 1270 (D.C.1994).

²¹ *In re McBride*, 642 A.2d 1270 (D.C. 1994).

attorney to stay, but as a mother to run." After assisting the client in emptying bank accounts and placing her belongings in storage, the lawyer represented to the court that the child remained in the jurisdiction. She accepted an offer from the husband to continue child support payments even though the court had granted him custody of the child. The client later pleaded guilty to a felony charge for having violated the court order. The court held that the lawyer "used her license to violate the core ethical and professional standards of her profession".²²

Students should be prepared for practice with a thorough grounding of the legal rules governing lawyers and the consequences that can flow from violating them. They must consider that their personal instincts as to right and wrong may differ from legal rules on what lawyers are to do in particular circumstances. They must understand that a decision to follow a personal moral code, which counters the expectations regarding lawyer behavior, can have severe consequences. Both of these examples can prompt a rich class discussion on a lawyer's choice's when he fears the law may not adequately protect people that he strongly believes should be protected.

The following section of the article describes the organization of the classroom course that I teach, which involves 42 class hours of instruction. All of my law school's students are required to take such a course. For students who take a clinic, ethical instruction offered in the clinical course is an addition to this required classroom course, but many students take a clinic before they take the required course. The following section describes the topics covered in the course. Students receive an outline of the topics encompassed in the subject with assignments for each. This includes some topics shown with a strikeover for material that I do not have time to cover in the fifteen weeks of my course. Students then can see that these topics are within the domain of the subject. As an Appendix to this article, I have turned the topics from my outline into questions that law teachers in other countries might consider to assess the law regulating lawyers for the country and to decide the topics to be included in clinical course instruction.

At the first class, I ask my students what they believe the public thinks about lawyers and what being a "professional" means. We then move to identification of the bodies of law governing lawyer conduct and where the authority for each body lies. We look at admission to the bar and the bar disciplinary process that ultimately can lead to losing one's license to practice law as well as to less serious sanctions including suspension from practice for a period of time, probation, monitored practice, a public reprimand, a private reprimand, or an informal admonition.

We briefly consider causes of action for civil damages against lawyers for the benefit of clients or other people who are found to have been aggrieved by lawyers.²³ We acknowledge the body of law that most often speaks to standards of conduct for lawyers in criminal cases: claims for relief based on ineffective assistance of counsel.²⁴

²² Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue about Goals*, 39 *Win. & Mary L. Rev.* 457, 461-62 recounts this illustration given by Professor Judith Mautz of the University of Oklahoma law school. The example comes from *People v. Chapped*, 927 P.2d 829 (Colo. 1996).

²³ The author of the textbook that I use in Professional Responsibility comments: "If the size of my research files is any indication, no topic in this book has witnessed greater change since the first edition (in 1985) than a lawyer's liability to clients and third parties, whether based on traditional malpractice rules or on new theories establishing new responsibilities to nonclients." Stephen Gillers, *regulation of lawyers: problems of law and ethics* 675 (4th ed. 1995).

²⁴ To be successful in a malpractice claim, the plaintiff former client must show that the lawyer's negligent act was the cause of the plaintiff's loss; Charles W. Wolfram, *supra* note 6, at 218 (1986). Many jurisdictions hold (his requirement to mean for a criminal case that the defendant

We then leave this introductory framework on bodies of law governing lawyers, potential penalties for various types of misconduct, and the source of authority to make and enforce such laws and turn to the fundamental obligations of lawyer to client. I describe those fundamental duties as:

- confidentiality including the law of attorney-client privilege found in the law of evidence;
- competence;
- undivided loyalty (and thus avoidance of conflicts of interest);
- communication with clients;
- proper allocation between lawyer and client of the authority to make decisions about a client's legal matters;
- appropriate handling of client funds.

We also consider a lawyer's freedom to accept and reject clients and, once a client has been accepted, the circumstances in which a lawyer is permitted to terminate representation. With this section on obligations of lawyer to client, we start to concentrate on the standards found in the ABA Model Rules of Professional Conduct. The order of topics roughly corresponds to the organization of the Model Rules.

From the starting point of duties to client, we move to "the bounds of advocacy"—the lines that a lawyer may not cross in representing a client. This encompasses subjects including:

- responsibility for the truth of statements by a lawyer, possible consequences of literally true but incomplete statements, and situations where a lawyer may mislead by silence;
- the scope of responsibility of a lawyer for the truthfulness of a client's statements;
- duties to preserve and produce evidence;
- when legitimate discovery³³ crosses the line to abuse;
- permissible and impermissible statements in legal argument;
- the obligation to cite contrary legal authority to the court;
- what a lawyer must do to expedite a court proceeding even if it is in her client's interest to slow it down;
- the dividing line between legal assistance and participation in a client's illegal conduct;
- "civility": appropriate behavior toward other lawyers, the court, opposing parties, witnesses, and all other participants in the system;
- limits on contact with people who are represented by other lawyers;

must prove his innocence. Wolfram, *id.* at 221 & n. 23. As discussed in the footnote cited, some states provide additional obstacles to a malpractice case by a criminal defendant, e.g., some states give absolute immunity to court-appointed counsel. Consequently little law on standards of conduct for criminal defense lawyers has emerged from malpractice cases. The Sixth Amendment right to counsel and Fifth Amendment right to due process in criminal proceedings in the United States Constitution are made applicable to the states through the Fourteenth Amendment due process clause. American courts typically review the actions of criminal defense lawyers through claims of ineffective assistance of counsel brought to challenge the conviction. The United States Supreme Court has become increasingly stringent as to what conduct will qualify for a reversal, but many cases raise the issue and force a review of what defense counsel did and did not do in particular cases. See generally, Wolfram, *id.* at 810-19.

³³ Discovery refers to a lawyer's right to ask written questions (interrogatories), conduct interviews of parties under oath (depositions), or request documents.

- rules against contacting judges without notice to other lawyers involved in the matter;
- comments to the press about pending matters.

We also look at ways that standards for prosecutors differ from those of criminal defense attorneys and how some rules differ in criminal defense as opposed to civil representation.

The next section concerns issues that arise primarily in seeking to make a private law practice profitable and with respect to organization and management of a law firm. This includes rules on:

- making potential clients aware of services offered by a lawyer;
- setting fees;
- permissible and impermissible means of collecting fees;
- dividing fees and associating with non-lawyers;
- lawyers' responsibilities to supervise junior lawyers and non-lawyer employees to assure that duties to clients are fulfilled.

The course then moves to lawyers' obligations to make legal services available to all who need them:

- discretion to decline clients, which for American lawyers is unfettered except when the lawyer is appointed by the court and the exhortation of lawyers to take their fair share of unpopular clients;
- obligation to accept *pro bono*²⁸ matters.

The final section of the course concerns special issues that arise in representing an entity client rather than an individual, e.g., representing a corporation or the government. This raises special issues on matters such as confidentiality and conflicts of interest.

Many courses devote some time to the Code of Judicial Conduct. I do not take the time to do this in our 42 class hours of instruction. I close the course by returning to the questions with which I began:

- public perceptions of lawyers;
- what it means to be a professional.

As previously mentioned, law school accreditation standards require instruction in professional responsibility. This requirement has spurred a considerable development in materials. Recently, I counted 38 textbooks and treatises on my bookshelf. Textbooks normally are supplemented with another book including the original text of the ABA Model Rules of Professional Conduct and other original sources of relevant rules. In the sixteen years I have been teaching the course, the number of texts, as well as the number of scholarly articles and books on the subject, has increased dramatically.

In the United States, professional responsibility teachers debate whether the primary goal should be to teach the body of law governing lawyers or to engage students in moral dialogue.²⁹ Teachers also debate breadth vs. depth: Should one cover the broad range of subjects in lawyer regulation or focus on discussion of a smaller number of problems and concentrate on the mode of ethical decision-making employed? I believe

²⁸ *Pro bono* is short for *pro bono publico* meaning for the public good. In the United States, it commonly is used to refer to representation without charging a fee.

²⁹ For an excellent article on this debate, see Lcrman, *supra* note 22.

ve teachers are most successful at teaching what they believe to be important. Different clinical teachers likely will decide on different emphases in their courses. Regardless of the emphasis that a teacher ultimately chooses, assessment of the rules about lawyers and their enforcement is an important first step. When American teachers debate where emphasis in a course should lie, that debate rests on a common understanding of the domain of the field. That common understanding of the field of professional responsibility is a relatively new phenomenon, having developed primarily since the early 1970s.²⁴

In addition to an inventory of the existing rules for lawyers in their country, teachers also need a sense of whether rules are enforced, if so where, and to what consequence. If some rules of conduct exist but are ignored, teachers and students may consider why. Once the teacher has an idea of the domain of the law regulating lawyers in the country and the state of its enforcement, the clinical teacher can make choices about what the teacher believes must be taught for the good of the clinic and its clients with regard to what the students are doing now. The teacher then can go on to consider what else should be taught for the education of the students and to further the dialogue about desirable standards for lawyers' ethics for the country. Like American teachers, teachers in the region probably would vary in their choice between breadth focusing on the range of law regulating lawyer and depth focusing on moral inquiry about particular problems. I believe, however, that all approaches should start from a platform of knowledge about the existing state of lawyer regulation.

II. Why teach professional responsibility in the clinic?

* It is beyond the scope of this article to discuss the various forces that have influenced the development of professional responsibility as a field of concern in the United States. Some of the areas of increased activity since the early 1970s include the following. The ABA promulgated first the ABA Code of Professional Responsibility in 1969. The ABA Model Rules of Professional Conduct were issued in 1983. At many of the ABA's twice annual sessions, the Rules are amended. The ABA is now engaged in major review of the Model Rules through The Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000"). Each of the major drafting efforts generated considerable debate within the legal profession about appropriate rules. The American Law Institute has been involved for more than a decade The Restatement of the Law: The Law Governing Lawyers. In 1974, in light of concern about involvement of lawyers in the Watergate scandal, the ABA instituted the requirement to teach professional responsibility in law schools. All but three states require passage of the Multistate Professional Responsibility (MPRE) exam for entry to the bar. One of the three with which I am familiar (Maryland) tests significantly on the state's own ethics rules. Civil lawsuits against lawyers have burgeoned including claims for malpractice by clients and claims by third parties for injury. Courts have been willing to impose sanctions for such things as abuse of discovery and filing of frivolous pleadings. Courts have disqualified lawyers found to have conflicts of interest. All these possibilities cause increasing numbers of law firms to appoint inside professional responsibility counsel within the firm to review firm actions. Insurance companies representing lawyers have undertaken considerable efforts to educate lawyers on prudent practices in light of professional responsibility law. Bar disciplinary efforts have received more staff, become more aggressive, and become more open to public view and participation. Bar associations have stepped up their efforts to provide legal ethics advice to inquiring lawyers and training in professional responsibility rules. Questions of lawyers' ethics pervade even popular culture with numerous novels, movies, and some popular television series featuring plots grounded wholly or partly in professional responsibility questions.

The previous section considers the domain of what might be meant by the law regulating lawyers, lawyers' professional responsibility, and legal ethics. It outlined the scope of material I seek to cover in a 42 class hour course on the subject. The following section argues why instruction in professional responsibility in a clinic is both necessary and desirable.

First, if students are providing legal service to clients, one must assure that appropriate professional standards are being observed. One concern is avoidance of liability for violation of disciplinary standards and malpractice. In American clinics, students often are given a form of special admission to practice and thus explicitly made responsible for lawyer standards of conduct.³³ Even without that "hook," students are performing lawyering tasks under the supervision of a licensed attorney. The clinic must be concerned that everything done in the supervising lawyer's name meets professional standards because an American supervisory lawyer is responsible in discipline for things done by non-lawyers acting as the lawyer's agent. The responsible lawyer and clinic also must be concerned with civil liability for malpractice or other civil remedies for violation of lawyer conduct standards. Of course, beyond these questions of liability in lawyer discipline or civil liability, clinical practitioners would want to observe high standards of lawyer conduct because it is the proper thing to do for clients and the appropriate behavior to model in an educational institution.

Second, our Warsaw group seemed to believe that consideration of ethical standards and modeling them in practice in a clinic could have a salutary effect on the practice standards in a country. I advocate planning clinical instruction by assembling the laws regulating lawyers that exist on paper whether they are enforced or not. By that I mean the statute establishing a legal profession, any code of conduct that exists, and rules of law in other bodies, e.g., evidentiary rules on confidentiality, civil remedies for clients who are wronged by lawyers.

Countries likely will vary on how specifically developed such codes of conduct and other rules of law are. Poland has well-developed law on most issues of lawyer conduct previously described although the topics have not been gathered into one comprehensive text. The advocates recently revised their code of conduct. The clinics of Warsaw University and Jagiellonian University used this new code as a draft code of conduct for clinic students. In Poland, a tort for legal malpractice similar to that in the United States exists, although cases apparently are rarely, if ever, brought. Poland has rules similar to American attorney-client confidentiality standards in their evidentiary, civil, and criminal codes.

University clinics' compilations of a country's rules of lawyer conduct, as described in the next section, could provide useful materials for education of legal apprentices and in continuing education for lawyers.³⁴ Compiling materials on the standards for lawyers within the university could encourage professors and students to look critically at the law governing lawyers in the country and the concepts of professional responsibility and legal ethics that it reflects. Thirty years ago there was very little academic literature in the United States on these topics. Today scholarship abounds. Scholarly focus on rules for lawyer conduct and actual lawyer conduct can be a valuable contribution growing from the clinic's work.

³³ *Sec supra* note 11.

³⁴ Continuing education for lawyers in the United States refers to classes taken after a lawyer is already admitted to the bar. Many states require a specified number of hours of continuing legal education instruction to maintain a lawyer's license, and some states require a portion of that to be in professional responsibility.

A third reason to teach about legal ethics in clinical courses is that it is such an effective place to do so.¹² Ethical issues inevitably arise in providing legal service. Just as the experiential education in clinics is effective for teaching skills in practice and about legal doctrine, concrete application is useful in motivating students to consider ethical questions and cement their learning about them. American law teachers often express frustration about how best to motivate students in a required classroom course.¹³ Problems arise from resistance to what is in many law schools the only course required after the first year. Many students seem to have difficulty realizing how commonly ethical issues come up in practice. In the clinic, students with training in the issues and supervisors alert to recognizing them see that ethical issues come up all the time.

Furthermore, ethical issues in the clinic arise in context. This helps students and teachers see that many ethical dilemmas do not have simple, bright-line answers. Judgment must be exercised in recognition of the competing principles at stake.¹⁴ One can teach the rules of professional conduct in a classroom course, but it is difficult in a lecture, a written problem, or even in a simulation to provide the complex context of how ethical problems arise in practice. The complexity of practice motivates students to realize both the importance of understanding professional responsibility law and the nature of the decision-making that must be used in applying it.

III. How would one teach professional responsibility in the clinic?

First, as previously described, I would identify the sources of law on basic topics in the law governing lawyers for the jurisdiction in which the clinic functions. The inventory of topics from my course in the preceding section and the more detailed Appendix that follows offer a starting point for considering the domain of issues within the field. When there are multiple legal professions, focus on rules applicable to the legal profession(s) to which the students' work is most analogous. It likely, however, also will be useful to gather the rules for the other legal professions. In some instances, it will be important to talk about the rules of a profession with which the students interact, e.g., prosecutors or judges. It also may be useful to compare the way rules differ among professions as a way of understanding the rules and looking at them critically.

If materials have not been compiled, students could be assigned responsibility to research and compile the material. As suggested in the next point, priority should go to the topics most likely to come up in the work of the clinic. Collection of rules on paper also needs to be tempered with an assessment of whether the rules are enforced in practice, by whom, and what consequences flow from violation.

Second, consider which of the topics are most central to the work of the clinic. For example, I assume that rules on confidentiality and avoidance of conflicts of interest

¹² Articles on American experiences in teaching professional responsibility include: Luban & Milleniami, *supra* note 18; Thomas L. Shaffer, *On Teaching Legal Ethics in the Law Office*, 71 *Notre Dame L. Rev.* 605 (1996); Thomas L. Shaffer, *Surprised by Joy on Howard Street*, in *Labors from the Heart* 221 (Mark L. Poorman ed., 1996); Loric M. Graham, *Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education* 20 *J. Legal Prof.* 5, 35-41 (1995-96).

¹³ See Luban & Millmann, *supra* note 18 at 37-41.

¹⁴ Luban & Millmann, *id.* at 58-64 consider the teaching of judgment to be the central goal of professional responsibility course and argue it can be done most effectively through application of theory to the practice setting of the clinic.

would be fundamental in any clinic. Some topics taught in a comprehensive classroom course for students going into all types of legal practice might not be relevant to clinics or come up only occasionally. For example, most clinics offer free legal services so rules on setting fees likely would not arise. The Appendix offers a starting point to consider on what topics a clinic should concentrate. A teacher can read through the questions in the Appendix and note those that seem of highest priority to the work of the clinic or matters the teacher believes most strongly should be raised with students.

Third, assemble the citations or text of the legal rules on the topics of that the teacher believes should have priority. Provide them in manual form to students at the outset or in increments as particular topics are studied.

Probably most important is a fourth step: the clinical teacher's recognition and raising of ethical issues as they arise in clinic work. As one would with questions of substantive law or procedure, students can be directed to research the topic, report conclusions, or perhaps write a short analysis of the problem—if the issue is recognized. The student can benefit not only from such research but also from dialogue with the teacher on the subject and discussion among peers. American clinical teachers sometimes refer to the "teachable moment"—the point where a point simply "comes up" in the day-to-day work of the clinic and provides a concrete context and motivating moment to engage the student in learning. Such moments to discuss professional responsibility issues may arise in one-on-one supervision of the student or in case rounds with the class group.

The teacher may decide some topics are so fundamental that readings should be assigned, students should be assigned to make oral or written reports for the class, hypothetical problems should be prepared for discussion, ethical issues should be raised in a simulation, and so on. Likely over time, real situations have arisen in clinic practice that can be the basis for teaching materials.

Practicing lawyers might be asked to come in and talk with students about their view of problems that commonly arise and their answers to the types of ethical issues that arise in clinic cases. The Jagiellonian clinic employs practicing lawyers who work jointly with the professors responsible for the course. These practitioners often comment on ethical questions. Such dialogue with practitioners can increase teacher and student knowledge on what "really happens" regarding lawyer rules. The Jagiellonian clinic also has had the president of the Advocates' Association Cracow speak with the students.

The Civil Law Clinic at Jagiellonian University has incorporated instruction in Professional Responsibility. Let me give two examples of professional responsibility issues that arose in clinic cases—one relatively simple and another requiring more complex analysis.

A woman came to the clinic to ask for some advice about rights to an inheritance of some property. Questioning revealed that it actually was her father who was the heir, but he was not interested in seeking legal advice. This provided an opportunity for the clinic supervisor to engage students on issues regarding the contact and consent necessary to form a client relationship and conflicts of interest.

More complex considerations arose in one of the cases in which the clinic is appointed as a guardian for an absent person. A woman was seeking to raise the support order for her children against her absent former husband. The funds for the children were coming from the government since the husband was absent, but the law requires a support action to be filed against a legally responsible parent. The state retains a right to seek reimbursement for funds paid to the children from the parent against whom there is a support order if he is later found.

The student acting as a guardian opposed the increase in support order saying that, since the husband was absent, the court had no way to determine what would be an appropriate support order based on what he could afford to pay. The court entered an increased support order at a figure lower than the former wife had requested but higher than the current order.

The clinic student did not want to appeal the support order because she thought it was fair, and the father should pay for his children. The clinic supervisor raised the duty to represent the client vigorously. The Polish advocates' code of ethics includes the rule that an advocate must have the permission of a client to appeal. Supervisor and student considered how this principle should apply when the person cannot be found, and the student is functioning as a guardian for his interest. They had to consider whether the proper analogy was advocate to client in this guardianship situation.

Their discussion went on to consider that the appeal not only could result in a lower award for the client but also could result in a higher award as requested by the former wife since she had the right to cross-appeal. It's probably a good idea to include what you actually did. I didn't get that clearly from Fryderyk. You may want to footnote the advocate's rule or any additional explanation of any of this that you think important. Just as in an American clinic, this scenario offers no easy, bright-line answer. The "law governing lawyers" on the point offers some useful information, but determination of whether and how it should apply is not a simple one. This example sounds very similar to the Luban and Millemann's account their clinic's consideration of ethical issues that arose at the University of Maryland.¹⁴

Clinical teachers at Jagiellonian University and Warsaw University have initiated a very useful cooperative project. Joint consideration has been given to issues of professional responsibility topics most likely to be of concern for students in their day-to-day work. Working from the Advocate's Code of Ethics's a draft code of conduct for legal clinics was developed by students and lecturers from the Warsaw and Cracow clinics who produced a draft law on student legal clinics addressing such issues as protection of client confidentiality since the Polish equivalent of the attorney-client privilege does not cover communications to clinic students. I want to be sure I am giving appropriate credit to those who deserve it.

Conclusion

Some people mistakenly characterize clinical education as "practical" as opposed to "theoretical." Learning from practice entails forming analytical constructs—theory—to be tested in the world. Clinical education is more appropriately termed "theory about practice" rather than practice versus theory.

The law regulating lawyers, professional responsibility, and legal ethics are subjects important to the welfare of clients, lawyers, and the legal system in any country. The substance of the law governing lawyers that should apply to lawyers appropriately will vary among countries, but the topics on which rules will and should exist likely are similar across legal cultures. This article offers a framework and mode of analysis on topics that could be considered for instruction on lawyers' professional responsibility in

¹⁴Luban & Millcann, *id.* at 64-83. See also Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 *Fordham L. Rev.* (April 1999) for a discussion of ethical issues that have arisen in externship classes.

law clinics around the world. It also provides suggestions for how clinical teachers might go about organizing instruction in the field for their students.

Clinics must offer instruction in their country's professional responsibility standards to assure that the work of the clinic meets the standards for lawyers doing similar work. If for no other reason, this would be appropriate from a concern for liability. Of course, however, the concern is loftier than that. Clinics seek to provide high quality service, and as educational institutions, they want the habits learned to be model ones that students should carry forward into life after the university.

Teaching materials on lawyers' professional responsibility that are prepared in clinics may be useful for instruction for legal apprentices or in continuing legal education for practitioners. Further, professors and students, by their nature, will look at the law governing lawyers, professional responsibility standards, and legal ethics in a country from a theoretical and critical perspective. Such inquiry by faculty and students can lead to scholarship and interchange with the legal profession(s) regarding what the law governing lawyers, professional standards, and legal ethics for the lawyers of the country should be.

Appendix

The following is organized around the eight units of my 42 class hours in Professional Responsibility. The eight units do not receive equal time. Indeed, coverage of the first four units takes more than three-fourths of the semester.

For my students, these unit headings are followed with an outline of topics and assignments for each. Some topics appear with a strikeover showing that the topic is properly a part of that unit, but we will not have time to reach the topic in class.

This appendix is meant to allow a teacher in another country to contemplate what questions of law regulating lawyers, professional responsibility, and legal ethics should be included in the curriculum of a clinic course. My assumption is that a teacher would begin by choosing the questions on which the teacher thinks that students should have information about the legal rules within the country and on which clinic discussion should be focused. The teacher then would assemble, or have the students assemble, the law regulating lawyers on that question from all pertinent sources in the country's law. Once this has been done for a country, the results can be shared among teachers and clinics.

Attempting to apply the questions below to a particular country may reveal that the questions must be reframed or that different questions should be asked. Analysis of why a question is not apt and what questions should be asked instead still may be useful in stimulating thought about the framework of the law regulating lawyers and concepts of professional responsibility and legal ethics in a country.

In the United States, some courses combine a 30 to 42 class hours of instruction in a classroom course with a clinic course with time set aside in the clinic for discussion of ethical issues that arise. That framework would be needed to address even most of the questions on the list below. For a clinic without extra classroom time, the list of questions must be pared down considerably from those listed below. The teacher would need to set priorities on those most crucial to the clinic's work, and those that the teacher thinks most important to raise as part of the education of future lawyers.

These questions generally are framed as: What is the law on? This also implies additional questions. Where is the law found? Is the law enforced? Who would bring

a claim for violation, and where would that claim be considered? What are the penalties if a violation is found?

Unit one: Framework for regulation of the legal profession

1. Who has the legal authority to make rules about the conduct of the legal professions?
2. Who has the legal authority to decide who will be admitted to the legal professions?
3. What are the standards for admission to a legal profession and the apprenticeship that leads to the legal profession?
4. Are there codes of conduct for the legal professions?
5. Who has the authority to enforce these codes of conduct?
6. Do lawyers have any responsibility to report other lawyers for violations of the rules of conduct, or do they have any other responsibility for seeing that the rules of conduct are followed?
7. For what types of conduct are lawyers disciplined?
8. What are the sanctions that can be imposed for violation of the codes of conduct?
9. Are there constitutional or other legal limits on the authority to prescribe rules of conduct and rules for admission?
10. What activities that members of a legal profession do are restricted only to members of a legal profession?
11. Must lawyers belong to the association of lawyers for their profession? What are the functions of that association?
12. Can lawyers from other countries provide services to clients in the country? Under what circumstances, and what are the rules in this regard?
13. Are there civil causes of action for clients injured by the negligence or intentional bad conduct of a lawyer? What are the requirements for a claim under these laws?
14. Can a criminal defendant receive relief from a conviction based in poor or dishonest representation in his criminal case by a lawyer? If so, what are the standards for the type of representation that would provide relief?

Unit two: Fundamental obligations of lawyer to client

1. What are the basic obligations of lawyer to client?
2. Where are rules on confidentiality obligations of client to lawyer found, and what are they? What are the situations in which a lawyer may or must reveal information that otherwise would be confidential?
3. What are the mechanisms that ensure lawyers give clients competent representation? What are the legal standards for competence?
4. Are there stated norms on what decisions about a client's matter that the client should make and what decisions the lawyer is permitted to make? Are there norms about the type of information that a lawyer should or must communicate to clients?
5. Are there norms that guide what lawyers should do when the lawyer has a client whose ability to make judgments is less than that of a normal adult, e.g., a child, a person with mental illness that impairs judgment.
6. What and where are rules on handling clients' funds?
7. Are there any restrictions on a lawyer's prerogative to accept or reject a client?
8. Once a lawyer has accepted a client, under what circumstances can the lawyer terminate representation before the matter is resolved?

Unit three: Conflicts of interest

1. What rules address conflicts among or between the interests of:
 - current clients of a lawyer?
 - a potential client and current client(s)?
 - a potential client and past client(s)?
 - a lawyer personally and a client?
 - a past role as a lawyer for the government and now for a private client?
2. What kind of analysis about potential clients should a lawyer do before accepting a new client?
3. Who can raise problems about conflict of interest, and where would they be raised?
4. What are the reasons articulated for the rules regarding concerns about conflict of interest:
 - protecting client confidentiality?
 - loyalty to clients?
 - concerns about integrity of the profession and public perception?
 - others?
5. If an individual lawyer has a conflict, are other lawyers with whom he is associated also barred from representation?
6. What would happen if a lawyer needed to become a witness regarding a case in which the lawyer or one of his associated lawyers represented a client?

Unit four: Where duty to client is bounded

1. What are the limits on what a lawyer is permitted to do for a client? What duties of the lawyer in addition to loyalty to client come into play, e.g., duties to the court, obligations to the public, concerns for integrity of the profession?
2. What rules articulate the type of oral and written pleading, argument, and questioning that is judged proper and improper? Who has the authority to enforce these rules?
3. What standards define a frivolous claim or defense that a lawyer should refuse to bring even if a client wishes it? What is the consequence for bringing a frivolous claim or defense?
4. When a lawyer has the opportunity to slow down legal proceeding in a way that is in the client's interest, what rules address whether it is appropriate to do so?
5. What is the lawyer's position when the lawyer knows the client has committed an illegal act in the past? How should that affect and not affect the representation?
6. What is the lawyer's position when the lawyer knows the client currently is committing an illegal act? How should that affect and not affect the representation?
7. What is the lawyer's position when the lawyer knows the client intends to commit an illegal act in the future? How should that affect and not affect the representation?
8. Does the lawyer have an obligation to reveal facts or law unfavorable to the client to the court in any circumstances? Under what circumstances?
9. Does the lawyer have an obligation to reveal facts or law unfavorable to the client to other parties in any circumstances? Under what circumstances?
10. What rules exist about lawyers who make false statements? Do these rules distinguish between to whom the false statement is made and the type of false statement?

11. How do the rules consider a statement true in itself but misleading in the context or by what it omits?

12. How do the rules consider standing silent when silence leaves a misleading impression?

13. What are customary norms of "lawyer courtesy"- accepted ways that lawyers are to behave toward other lawyers, toward the court, and toward other parties the lawyer encounters?

14. What contact can lawyers have with potential witnesses and others who may have knowledge of a client's matter?

15. What direction can a lawyer give her client about questions the client should and should not answer when put by others?

16. Are there rules that govern whether a lawyer may speak to someone represented by counsel in a matter without the lawyer's presence or permission?

17. What rules govern contact between lawyers in court proceedings? What rules govern contact outside the court between advocates and judges? Between prosecutors and judges? Between advocates and prosecutors? Between advocates in a civil proceeding?

18. What rules govern what members of the various legal professions should say to the press about pending cases or people who might be sued or accused of crimes?

19. Is the prosecutor considered to have an obligation to justice and the public that would be articulated differently than that of the advocate?

20. Does the prosecutor have a duty to turn over exculpatory evidence to the defense?

21. What standards is the prosecutor to use in deciding whether to bring a charge?

22. What obligations do lawyers have with respect to physical evidence in their possession or that they know clients have that may be relevant to a current or future legal proceeding?

23. When lawyers are negotiating for clients on a contract, settlement, or other matters, how fully must they reveal information known to them?

Unit five: The business of law practice

1. How are lawyers permitted to make potential clients aware of their services? What types of contacts are forbidden?

2. What rules exist on setting fees?

3. Are there rules on sharing fees with other lawyers or other people who may have referred the case or worked on the case?

4. What methods are a lawyer permitted to employ to collect fees owed?

5. Of what things should a lawyer inform a new client? What matters should be put in a written retainer agreement with the client?

6. Can a member of each legal profession form a business association to provide legal services with other members of that profession, members of another legal profession, or members of professions outside the legal profession?

7. Are their rules on the way the name of a legal practice can be described to the public both with regard to the name itself and the way that name is displayed?

8. If a lawyer wishes to retire or otherwise leave practice, what rules exist about turning the practice over to someone else? Can the practice be sold to another lawyer?

9. Are there rules about what a lawyer can and cannot say about whether he specializes in particular types of law?

10. Can a law firm require lawyers to sign a contract that they will not leave the firm and establish a competing law firm?

11. If a lawyer leaves a firm, what rules govern whether he can take clients with him, and what can he say to clients he now represents about his new association?

12. What is a lawyer's responsibility for the work of other lawyers, apprentices, and other employees of the lawyer?

Unit six: Availability of legal service to all people

1. How are people who cannot afford to hire a lawyer provided with counsel? In what types of cases are people entitled to a lawyer? Are lawyers expected to play a role in making legal services available to people who need them but cannot afford to pay a lawyer by donating *pro bono* representation?

2. In general, are lawyers free to reject potential clients on any basis they wish?

3. Are lawyers expected to consider taking cases of unpopular clients who will find it difficult to obtain representation because of the nature of their case?

4. Do courts appoint lawyers to represent clients? Is there a basis on which a lawyer can refuse to accept an appointment?

Unit seven: The entity client & rules for the judiciary

1. Would any of the previously described rules for representation of clients be stated differently if the client were not a human person but rather a **non-governmental** organization, a for-profit corporation, a partnership, or some other "legal person"?

2. Would any of the previously described rules for representation be different if the lawyer was representing a government agency?

3. What are conduct rules that govern judges in their role as judges?

Unit eight: The legal profession—the public's perception; our perception; our responsibilities

1. When one looks at the law regulating lawyers and the policies that underlie it, what are the various conceptions of a lawyer's professional responsibility that emerge?

2. What do you think is the public's perception of lawyers? Do you think it is an accurate perception? If not, why do you think the perception is different?

3. If the public has an accurate but unfavorable view of lawyers in some regard, does that perception relate to situations:

- in which lawyers are violating rules of professional conduct?

- are following the rules of professional conduct but the public disagrees with the rules?

- are doing things not addressed by the rules of professional conduct or elsewhere in the law regulating lawyers but should be?

4. Are lawyers playing the role in our society that they should be? If not, how should it change?

Additional issues specific to the clinic

1. What tasks are students permitted to do without violating rules on unauthorized practice of law?

2. What must a student tell clients and others with whom the student comes into contact about her status as a student?

3. Are there limitations on what the clinic can and will do for clients that should be part of a retainer agreement or of which clients otherwise should be informed?

4. What mechanisms to review student work should be put in place to assure competent representation and adherence to proper standards of conduct?

ОБУЩЕНИЕ ПРОФЕССИОНАЛЬНОЙ
ОТВЕТСТВЕННОСТИ В СТУДЕНЧЕСКИХ
ЮРИДИЧЕСКИХ КОНСУЛЬТАЦИЯХ В МИРЕ

В марте 1979 года состоялся в Дублине конференция на тему юридической ответственности в рамках программы «Юридическая ответственность в студенческих юридических консультациях». В группе участников конференции юрических факультетов из Центральной и Восточной Европы, а также стран бывшего СССР, которые преподавали или планировали преподавать в студенческих юридических консультациях. В ответах на вопросы конференции отмечены успехи и повышение уровня образования студентов юридических факультетов. Успехи отмечены в том, что студенты юристов...

Чем отличается «этика юриста» от «обычной этики»?

Качественно этика юриста отличается от обычной (гражданской)...

Как эффективно обучить этике в правовой консультации?

Нельзя просто сказать юристу с определенной степенью уверенности, как он должен поступать в той или иной ситуации. Профессиональная этика юриста отличается от обычной (гражданской) этики в том, что она имеет более высокий уровень ответственности. В США этика юриста имеет более высокий уровень ответственности, чем в других странах. Профессиональная этика юриста должна быть более высокой, чем в других странах. Профессиональная этика юриста должна быть более высокой, чем в других странах. Профессиональная этика юриста должна быть более высокой, чем в других странах.

1. Автор статьи благодарит Директора Института Юридической Этики в Колумбийском университете и профессора Конференции, состоявшейся в 10-11 марта 1979 г. в Дублине в Ирландии. Спикером Конференции выступил профессор Юридического университета в Барселоне университета Орегонского штата в Сент-Поле, а также профессор Юридического университета в Рочестере штата Нью-Йорк. Организатором Конференции выступил профессор Юридического университета в Дублине. Автор статьи благодарит профессора Юридического университета в Дублине, который организовал Конференцию. Конференция состоялась 10 марта 1979 г. в Дублине в Ирландии.