

2018 AALS Conference on Clinical Legal Education
Gathering Momentum:
Learning from the Past, Responding to the Now, Planning for the
Future
April 29 – May 2, 2018
Chicago, IL

*Experiential Education and Professional Responsibility: Training
Ethical Lawyers in Extraordinary Times*

Concurrent Session
Monday, April 30, 2018
4:00-5:30 p.m.

Presenters

Constance A. Browne, Clinical Associate Professor of Law, Boston University
School of Law
cbrowne@bu.edu.

Margaret (Peggy) Maisel, Associate Dean for Experiential Education, Clinical
Professor Law, Boston University School of Law
pmaisel@bu.edu.

Sue Schechter, Field Placement Director and Lecturer-in-Residence, UC Berkeley
School of Law
sschechter@law.berkeley.edu.

Paul R. Tremblay, Clinical Professor of Law and Director of the Community
Enterprise Clinic, Boston College Law School
paul.tremblay@bc.edu.

Title: Experiential Education and Professional Responsibility: Training Ethical Lawyers in Extraordinary Times

Description of Presentation

This concurrent session will provide an opportunity to present, discuss, and explore ways that law schools are teaching or might teach Professional Responsibility, an ABA-required course, in an experiential way. Historically, Professional Responsibility faculty have struggled to find an engaging and relevant way to teach this incredibly important subject to their students. Beyond being an ABA requirement, it is the one course where we know the issues will touch upon our students' careers as lawyers and professionals with special responsibilities to the public. We believe it is crucial that students grapple with professional responsibility issues generally, and also those issues embedded in current events, in a meaningful and real way while they are in school. With that training students will be better prepared and more aware of how to effectively deal with these issues when they face them out in their practices. We will identify professional responsibility issues that have emerged both in these extraordinary times and in past events. Using those stories and examples, we will present innovative models of teaching Professional Responsibility in an experiential way, including through simulations that could be part of clinical courses. These current models are replicable in various settings such as in-house clinics, transactional community clinics, and field placement companion courses. We hope that this presentation and discussion will illustrate ways to teach students how to fulfill their professional responsibilities in the communities they serve.

Title: Experiential Education and Professional Responsibility: Training Ethical Lawyers in Extraordinary Times

Plan for Concurrent Session

What does it mean to teach Professional Responsibility/Legal Ethics at this moment? What is essential; what is extraordinary?

What are some ways to teach Professional Responsibility/Legal Ethics experientially and topically?

Agenda

1. Introductions of Panelists and Participants

2. What topics are essential to teaching Professional Responsibility and Legal Ethics – Group Brainstorm

3. What is Essential from Where We Sit – Especially Now?

4. Extraordinary Times – How We Teach Difficult Topics Experientially – with Examples
 - Paul Tremblay – The Torture Memos; Ethics Examples from the Community Enterprise Clinic
 - Connie Browne – Me Too Sexual Harassment; The \$130,000.00 Payment; and Simulations
 - Peggy Maisel – Presentations – How to Use Them; What They Are; How They Have Changed to Respond to the Times.
 - Sue Schechter – You are Trump’s Lawyer’s Lawyer; Trump’s Lawyer; Daniel’s Lawyer – Role Play

5. Wrapping Up – What Really Matters When Teaching Professional Responsibility/Legal Ethics

Table of Materials

Effective and Ethical Depositions Syllabus, Constance A. Browne, pages 4-11.

Legal Externship/Legal Ethics, Peggy Maisel, pages 12-25.

Criminal Field Placement Ethics Seminar Syllabus, Sue Schechter, pages 26-39.

Civil Field Placement Ethics Seminar, Sue Schechter, pages 40-49.

Professional Responsibility Syllabus, Paul R. Tremblay, pages 50-56.

Ethics Examples for the Community Enterprise Seminar, Paul R. Tremblay, pages 57-58.

BOSTON UNIVERSITY SCHOOL OF LAW
EFFECTIVE AND ETHICAL DEPOSITIONS
JD 958 (A1)
PROFESSOR CONSTANCE A. BROWNE

SECTION ONE – LEARNING OUTCOMES

Welcome to Effective and Ethical Depositions! I look forward to working with you throughout the semester. This seminar is designed to help you achieve the following learning outcomes.

1. Students will gain an appreciation of professionalism in the practice of law by preparing and conducting various deposition exercises within the context of an employment discrimination case.
2. Students will recognize and resolve ethical dilemmas arising from the sometimes conflicting duties of confidentiality, candor to the tribunal, fairness to third parties and opposing counsel.
3. Students will acquire knowledge of the substantive areas of professional responsibility, civil procedure and evidence as these areas relate pretrial discovery.
4. Students will demonstrate effective and appropriate oral communication skills.
5. Students will engage in the life-long professional behavior of improving through reflection and assessment.

SECTION TWO – REQUIRED AND RECOMMENDED BOOKS

I have assigned the following books for the Effective and Ethical Deposition Seminar:

Title: *Depositions in a Nutshell* - **Required**
Authors: Moore, Binder, Bergman & Light
Year: 2016
Publisher: West Group

Title: *Model Rules of Professional Conduct* - **Required**
Authors: Center for Professional Responsibility
Edition: 2017 Edition
Publisher: ABA

PLEASE NOTE – DO NOT BUY THE POLISI V. CLARK: PLAINTIFF’S MATERIALS BOOK MENTIONED BELOW UNTIL AFTER OUR FIRST CLASS AND PLEASE DO NOT BUY THE DEFENDANTS’ MATERIALS.

*Title: Developing Deposition Skills: Polisi v. Clark and Parker & Gould: **PLAINTIFF’S MATERIALS - Required***
Author: Bocchino & Sonenshein
Edition: 2nd
Publisher: NITA

SECTION THREE – CREDIT HOURS AND EXPECTATIONS

You will receive three credit hours for the Effective and Ethical Deposition seminar. Per ABA guidelines, you should anticipate a workload of roughly 42.5 hours per credit for the semester, which includes both in-class and out-of-class time. For elaboration, we suggest that the students consult BU Law’s Credit Hour Policy: <http://www.bu.edu/law/current-students/jd-student-resources/curricular-requirements/jd-degree-requirements/#credit-requirements>

SECTION FOUR – POLICIES

1. **Attendance.** You are expected to attend and be prepared for each class.
2. **Class Participation.** Please participate. This is how you will internalize different deposition skills so that they become “second nature.” Volunteer for role-plays, practice the different deposition exercises, and take a chance. I will ask you to do exercises repeatedly. This repetition is important to build your competence so you can progress to mastery!
3. **Written Work.** Your written work is due to me via email no later than the beginning of class. My email address is: cbrowne@bu.edu.
4. **Grades.** You will receive+ three credits for this seminar. I will grade your ongoing class participation, written work, “interim performances,” and final deposition as follows:

- a. **Ongoing Class Participation and Attendance**
(Minus, Acceptable, or Plus)

A final average of “minus” could lower a final grade by one increment. A final average of “acceptable” will not change a final grade. A final average of “plus” could raise a final grade by one increment.

b. Written work

(Minus, Acceptable, or Plus)

As with ongoing class participation and attendance, a final average of “minus” could lower a final grade by one increment. A final average of “acceptable” will not change a final grade. A final average of “plus” could raise a final grade by one increment.

c. Interim Performances – 50%

- i. Basic Discovery Questioning of Adverse Party – 10%
- ii. Questioning an Entity and Dealing with Difficult Deponents – 20%
- iii. Taking and Defending Trial Depositions – 20%
- iv. Final Deposition – 50%

Each student will take a final deposition. This deposition will last for 1½ hours. The final depositions are scheduled to begin during the last week of class. We will arrive at a specific schedule later in the semester.

I will defend each deposition. In addition to planning and taking this final deposition, I will expect you to demonstrate that you know the rules that we discussed during the semester. These rules include selections from the: (1) Rules of Civility; (2) Rules of Professional Conduct; (3) Rules of Civil Procedure; and (4) Rules of Evidence.

5. **Working Together.** I encourage you to work with each other on assignments. The written work you do on each assignment, however, must be your own.
6. **Professional Responsibility Requirement.** You may satisfy your professional responsibility requirement by taking this seminar. The seminar has a dual focus: effective and ethical deposition practice.
7. **My Office and Contact Information.** My office is located at Room 1302(g) in the law school. My office hours are weekly by appointment. My contact information is: (clinic telephone) 617-603-1522; (mobile phone) 617-877-8427; and (email address) cbrowne@bu.edu.

SECTION FIVE – CLASS ASSIGNMENTS

MONDAY, JANUARY 22, 2018

CLASS ONE: INTRODUCTION, PROFESSIONALISM, DUTIES TO PROSPECTIVE CLIENTS

CLASS COVERAGE: Course Goals, Syllabus, Reading Materials, Enrollment, Introduction of Prospective Client, and Basic Ethical Duties to Prospective Clients

READING ASSIGNMENT

ABA Model Rules of Professional Conduct (hereafter “Ethical Rule”) Preamble and Scope; Ethical Rule 1.18 and Comments 1 through 4 (Duties Owed to Prospective Clients); Ethical Rule 1.9 and Comments 1 through 3 (Duties Owed to Former Clients); Ethical Rule 1.6(a) and Comment 1 (Confidentiality of Information); Restatement (Third) of Law Governing Lawyers, Chapter 2, Topic 2, § 14 (Formation of a Client-Lawyer Relationship); *DeVaux v. American Home Assurance Co.*, 444 N.E.2d 355 (1983); Moore, Binder, Bergman & Light, *Deposition in a Nutshell* (Deposition Nutshell), Chapter 14, Pages 283-290 (Civility and Rapport).

MONDAY, JANUARY 29, 2018

CLASS TWO: CASE PREPARATION, COMPETENCE AND DILIGENCE

CLASS COVERAGE: Preparation for a Deposition, Analysis of Legal Elements and Facts Regarding Liability, and Discussion of Competence, Diligence and Making Mistakes

READING ASSIGNMENT: *Polisi v. Clark and Parker & Gould* (Nita Casefile); Ethical Rule 1.1 and Comments (Competence); Ethical Rule 1.3 and Comments (Diligence); Ethical Rule 3.1 and Comments (Meritorious Claims and Contentions); 389 *Pinckney v. Andrews* 853 (9th Cir. 2004); Preamble and Scope of Ethical Rules, Pages 1-5.

FIRST WRITTEN ASSIGNMENT:

“Road to Compass” – Memo on Liability and Damages

MONDAY, FEBRUARY 5, 2018

CLASS THREE: ACCEPTING OR DECLINING REPRESENTATION, CONFLICTS OF INTEREST, DEPOSITION PREPARATION

CLASS COVERAGE: Continue to Prepare for a Deposition; “Road to Compass” Legal Element Factual Analysis Method; Other Factual Analysis Methods; Ways to Develop Deposition Outlines; the Scope of Discovery

READING ASSIGNMENT: Ethical Rule 1.7 and Comments 1-8, 14-20, 23 and 29-32; (Conflicts of Interests – Current Clients); Ethical Rule 1.16 and Comments 1-9 (Declining or Terminating Representations); *Nathanson v. MCAD*, Civ. A. 19901657, 2003 WL 22480688 (Mass. Super. Sept. 16, 2003); Deposition Nutshell, Chapter 1, Pages 3-12 (Three Primary Deposition Goals); Deposition Nutshell, Chapter 16, Pages 349-380 (Deposition Preparation for Attorney)

SECOND WRITTEN ASSIGNMENT:

Initial Deposition Outline Plan for Deposing the Adverse Party

MONDAY, FEBRUARY 12, 2018

CLASS FOUR: PREPARING A DEPONENT AND TAKING A DEPOSITION

CLASS COVERAGE: In-Class Deposition Role-Plays

READING ASSIGNMENT: Constellation of Rules: Civil Procedure Rule 26(b)(1), Civil Procedure Rule 30(c)(1), and Evidence Rule 612; *Napolitano v. Omaha Airport Authority and Cary Schott*, No. 8:08CV299, 2009 WL 1740826 (D. Neb. June 15, 2009) (attorney client privilege and work-product doctrine); Deposition Nutshell, Chapter 2, Pages 13-45 (T-Funnel Questioning); Chapter 3, Pages 47-76 (Timeline Questioning); Chapter 13, Pages 257-281 (Beginning and Concluding Depositions)

FROM TUESDAY, FEBRUARY 13TH THROUGH TUESDAY, FEBRUARY 20TH

FIRST VIDEO-TAPED PERFORMANCE – BEGINNING THE DEPOSITION, BASIC QUESTIONING OF ADVERSE PARTY, AND CONCLUDING THE DEPOSITION

TUESDAY, FEBRUARY 20, 2018 (No Class Monday, February 19, 2018 in Observance of Presidents’ Day)

CLASS FIVE: REVIEWING, REFLECTING, AND SETTING SELF-IMPROVEMENT GOALS

CLASS COVERAGE: Review the First Performances and Introduce Second Performance Assignment.

READING AND REFLECTION ASSIGNMENT:

Instructions Given to Deposition Actors; Review Your Deposition Video; and Complete Self-Reflection Form

MONDAY, FEBRUARY 26, 2018

CLASS SIX: TAKING AND DEFENDING ENTITY DEPOSITIONS

CLASS COVERAGE: Prepare for Second Performance

READING ASSIGNMENT: Deposition Nutshell, Chapter 19, Pages 409-424 (Inquiring About Practices and Policies); Chapter 18, Pages 395-407 (FRCP 30(b)(6) “Subject Matter” Depositions); Ethical Rule 1.13 and Comments 1-6 and 10 (Organization as Client); Ethical Rule 4.2 and Comments (Communication with Person Represented by Counsel); Ethical Rule 4.3 and Comments (Dealing with Unrepresented Person); Ethical Rule 4.4(a) and Comments (Respect for Rights of Third Persons); Ethical Rule 3.4 and Comments (Obstructing Access to Evidence); Civil Procedure Rule 30(c)(2) (Instructions Not to Answer); Lawrence J. Fox, Defending a Deposition of Your Organizational Client’s Employee: An Ethical Minefield Everyone Ignores, 44 S. TEX. L. REV. 185 (2002)

FROM TUESDAY, FEBRUARY 27TH – THROUGH FRIDAY, MARCH 2ND

SECOND VIDEO-TAPED PERFORMANCE – QUESTIONING AN ENTITY AND AN EVASIVE DEPONENT ABOUT A SENSITIVE TOPIC

SPRING BREAK: MARCH 3, 2018 – MARCH 11, 2018

MONDAY, MARCH 12, 2018

CLASS SEVEN: REVIEWING, REFLECTING AND SETTING SELF-IMPROVEMENT GOALS

CLASS COVERAGE: Review Second Performances and Complete Self-Reflection Form; Discuss Methods for Dealing with Difficult Deponents and Difficult Counsel; Rules of Civility; Motions to Compel and Motions for Protective Orders.

READING ASSIGNMENT: Review Reading from Class Six; Read Rules of Civility; DISCOVERABILITY AND ADMISSIBILITY OF PLAINTIFF'S PAST SEXUAL BEHAVIOR IN TITLE VII SEXUAL HARASSMENT ACTION, 73 A.L.R. Fed. 748 (Originally published 1985); A.W. v. I.B. Corp., 224 F.R.D. (D. Me. 2004)

IN-CLASS PERFORMANCE MOTIONS ARGUMENTS: Motions for Protective Orders and Motions to Compel Deponent to Answer

MONDAY, MARCH 19, 2018

CLASS EIGHT: DEFENDING DEPOSITIONS AND RESPONDING TO DEONENTS' ANSWERS – PART I

CLASS COVERAGE: Decision Tree When Responding to Deponents' Answers

READING ASSIGNMENT: Deposition Nutshell, Chapter 4, Pages 77-116 (Obtaining Helpful Answers); Chapter 5, Pages 117-134 (Cementing Helpful Answers); Chapter 6, Pages 135-160 (Undermining Harmful Answers); Chapter 7, Pages 151-175 (Responding to Inconsistent Statements); Chapter 8, Pages 177-182 (Responding to Implausibilities); Chapter 9, Pages 183-206 (Responding to Evasive, Forgetful or Uncertain Deponents)

MONDAY, MARCH 26, 2018

CLASS NINE: DEFENDING DEPOSITIONS AND RESPONDING TO DEONENTS' LIES – PART II

CLASS COVERAGE: Continue with Defending Depositions; Dealing with Deponents' Lies, Reasonable Remedial Measures, Errata Sheets

READING ASSIGNMENT: Constellation of Rules: Ethical Rule 1.6 and Comments (Confidentiality of Information); Ethical Rule 4.1 and Comments (Truthfulness in Statements to Others); Ethical Rule 3.3 and Comments (Candor Toward the Tribunal); ABA Opinion 93-376 (1993) (Lawyer's Obligation Where a Client Lies in Response to Discovery Requests); Lies My Client Told Me, Roger Geller and Susan Strauss Weisberg Massachusetts Bar Counsel's Office (2001); EBC, Inc. v. Clark Building Systems, Inc., 618 F.3d 253 (3rd Cir. 2010)

FROM TUESDAY, MARCH 27TH – THROUGH FRIDAY, APRIL 6TH

**THIRD VIDEO-TAPED PERFORMANCE – TAKING AND DEFENDING TRIAL
DEPOSITION OF ADVERSE WITNESSES WHO HAVE GIVEN FALSE TESTIMONY
IN PRIOR DEPOSITION**

MONDAY, APRIL 9, 2018

**CLASS TEN: REVIEWING, REFLECTING, AND SETTING SELF-IMPROVEMENT
GOALS**

CLASS COVERAGE: Review Videos on Reasonable Remedial Measure and Videos
of Third Performance. Review for Final Depositions

TUESDAY, APRIL 10TH – FRIDAY, APRIL 20ST

FINAL DEPOSITION PERFORMANCES

MONDAY, APRIL 23, 2018

CLASS ELEVEN: FINAL CLASS - REVIEW OF SEMESTER

Legal Externship/Legal Ethics Spring 2018

Professor Peggy Maisel

Office: Room 1302E Telephone: 617-358-2182 E-mail: pmaisel@bu.edu

Course Information:

Class Meeting: **Wednesday, 4:20 p.m.-6:20 p.m.**

Location: 513

Credit Hours: 3

Per ABA guidelines, you should anticipate a workload of roughly 42.5 hours per credit for the semester for the SEMINAR, which includes both in-class and out-of-class time. For elaboration, you may consult BU Law's Credit Hour Policy: <http://www.bu.edu/law/current-students/jd-student-resources/curricular-requirements/jd-degree-requirements/#credit-requirements>

Course Description:

This CLASS IS RESTRICTED to students who have received permission from the Office of Experiential Education to enroll. This is the companion academic component for students enrolled in the Legal Externship: Fieldwork course. This two hour weekly seminar examines legal practice and the ethics of lawyering, including conflicts of interest, competency, confidentiality, pro bono obligations, special ethical obligations of government and in-house attorneys, and ethical billing. The seminar requires students to write a 15-page paper and make a class presentation. In addition, each student keeps a reflective journal chronicling their educational experience and reactions to the practice of law observed at the field placement. NOTE: Students who enroll in this component of the externship may count the credits towards the 6 credit Experiential Learning requirement or the Professional Responsibility requirement. It may not be used to satisfy more than one requirement. COREQUISITE: Legal Externship: Fieldwork (JD 924). GRADING NOTICE: This class does not offer the CR/NC/H option.

However, please note that all of your fieldwork credits count towards the 6-credit experiential learning requirement.

Course Materials:

1. Rhode & Luban, *Legal Ethics Stories*, Foundation Press, 2006 (specific chapters). There are fourteen copies of this book available at the library on reserve, so you do not need to purchase it, if you prefer.

2. Wortham, Scherr, Maurer & Brooks, *Learning from Practice*, West, 2016 (specific chapters). Information on purchasing chapters from this book is in “E” on page 7 of this syllabus.
3. You must have access to the Model Rules of Professional Conduct in class by either buying any of several available “rules” books or by accessing the ABA Model Rules and comments at: http://www.abanet.org/cpr/mrpc/mrpc_toc.html. The state rules of professional conduct are available at: <http://www.law.cornell.edu/ethics/listing.html>.

Course Objectives:

OBJECTIVES	ASSESSMENTS
Upon successful completion of this course, students should be able to:	Students will be assessed on these learning objectives through:
Demonstrate an understanding of the legal professional responsibility and ethical issues faced by lawyers in a variety of legal settings	Classroom discussion and problem solving exercises; journal reflections on field placement experience; final presentation and paper
Recognize and analyze how to solve ethical issues in practice, including how to apply the Rules of Professional Conduct and other legal authority	Classroom discussion and problem solving exercises; journal reflections on field placement experience
Development of a range of lawyering skills through placement and work in a law office	Supervisor’s mid-term and final evaluations of students; journal reflections
Understanding of a range of roles of attorneys through readings and sharing of experience of the placement experiences	Classroom discussion
Ability to reflect and self-evaluate on the learning process	Journal reflections on field placement experience
Ability to give a clear and effective presentation.	Final presentation

Please note that although the course satisfies the Law School’s and ABA’s professional responsibility requirements, it is not designed to prepare you for the bar-tested MPRE.

Assignments and Grading:

Seminar: You will receive a letter grade for the seminar portion of the Legal Externship, determined as follows:

- **Final paper (35%)** - the final paper will be evaluated on
 - 1) the substance (legal analysis, depth of understanding of the topic, creativity in approach, construction of arguments, depth of sources), and
 - 2) the mechanics (proper citation, clear writing style, proper grammar and punctuation, organization of material).
- **Class presentation (20%)** - the class presentation will be evaluated on the quality, timeliness and appropriateness of the written materials (readings, outline, and problems) handed out to the class the week before the presentation, preparation, creativity, ability to engage the rest of the class in the material and understanding of the topic.
- **Comments/participation in class presentations (5%)** –5% of your grade will be based on your participation in your fellow classmates’ final presentations, which includes listening, actively participating in activities, asking questions, and providing thorough and thoughtful observations on the feedback forms you will be asked to fill out.
- **Journal Entries (25%)** - journals are evaluated on depth of analysis and perception, quality and accuracy of writing, and identification of ethical issues in practice. The expectation is that all journals will be submitted on time.
- **Class participation (15%)** - class participation includes timely attendance at all classes, preparing for class by doing the readings and other assignments, and active involvement in class discussions, problem solving, and other exercises.

Fieldwork:

You will receive a P/F grade for completing the fieldwork portion of your externship. All of your fieldwork credits count towards the 6-credit experiential learning requirement. Credits are awarded as follows:

- 3 credits, JD 924A1 = 150 hours total (averages 12 hrs/wk)
- 4 credits, JD 924A2 = 200 hours total (averages 16 hrs/wk)
- 5 credits, JD 924A3 = 250 hours total (averages 20 hrs/wk)
- 6 credits, JD 924A4 = 300 hours total (averages 24 hrs/wk)
- 7 credits, JD 924A5 = 350 hours total (averages 28 hrs/wk)
- 8 credits, JD 924A6 = 400 hours total (averages 32 hrs/wk)
- 9 credits, JD 924A7 = 450 hours total (averages 36 hrs/wk)

Before the end of add/drop, please double-check your course schedule to make sure you are enrolled in the fieldwork section that corresponds to the number of credits you would like to receive. If you have questions about your schedule, including questions about how many credits you should commit to, please don’t hesitate to contact me.

Your externship begins the first week of classes and ends the last week of classes. You may not end your externship early, even if you have already finished your hours. If, due to extenuating

circumstances, you need to end the externship prior to the last week of classes, you **MUST** get permission from me in advance, as well as permission of your fieldwork supervisor.

If you stay on track with your hours, you should have no issues completing your fieldwork by the end of classes. However, if you do need to finish your hours beyond the last week of classes, you may log all hours worked until the last day of finals.

To receive a passing grade for your fieldwork, you must turn in weekly timesheets logging your hours, signed by your field placement supervisor. The timesheet, with instructions, will be emailed to you by the externship program administrator, Lou Brum (lbrum@bu.edu) at the beginning of the semester. Please keep copies of the signed timesheets for yourselves.

To receive a passing fieldwork grade, you must also fill out a final evaluation of your placement, that we will email to you the final week of classes.

Course Policies:

A. Class Attendance and Participation

This is a course in legal ethics. Because so much of the learning in this course takes place in the classroom, you must plan to attend all classes. Since the class size is small, failure to show up or coming to class late affects the learning experience for everyone. Attendance at all classes is expected unless you have requested an excuse in advance of the scheduled class. Absences will normally be excused only for illness or similar unavoidable cause. If a last minute illness or emergency prevents you from being in class without having been excused in advance, please call or email me. There is a presumption that no student will have more than two excused absences during the semester. We reserve the right to assign a failing grade to any student who has excessive absences.

Please be on time for class. Students who are late for class will lose class participation points.

We would like you to limit your use of computers to accessing your notes on the readings, and the Model Rules of Professional Conduct. Students observed using their computers for other uses will lose class participation points. It is *much* more obvious than you think it is when you do other things on your computer!

For further information regarding law school attendance and grading policies, you may consult the Academic and Disciplinary Regulations available from the law school.

B. Paper and Class Presentation

In addition to the journal entries which are described below, each student must write a **fifteen to twenty page** (including footnotes) research paper on some aspect of the ethics of lawyering or the legal profession which has arisen in your field placement, is related to the assigned class

readings, or is on a legal ethics topic. Your paper should show understanding of the topic and if appropriate you should have a thesis or take a position. Do not exceed the page requirements.

The paper should have 1” margins and be in 12pt. Times New Roman font. The text should be double spaced, and the footnotes should be single spaced in 10 pt., on the same page as the text to which they refer. You should use footnotes to give references for general propositions of law as well as all cases, statutes, rules, law review articles etc. Be careful to fully cite to all ideas that are not your own. Make sure that you cite to the most recent version of the Model Rules of Professional Conduct. You should NOT be citing to the 1983 version unless you have a specific reason for doing so. It is now a requirement of the School that all courses with a paper requirement distribute the guide to avoid plagiarism prepared by the Office of Associate Dean Gerry Muir. The guide is available on the Course Blackboard site. Please review the guide as you prepare your paper.

Please note that a brief two page outline of your topic should be uploaded to Blackboard by **5:00 p.m. on Tuesday, February 13 2018 (Week 5)**. To give you an idea of possible topics, a list of topics done by previous students in the program is provided on the Blackboard site. Soon after you submit your paper proposal, I will meet individually with you to discuss your topic. The paper is due by the last day of finals, **Friday, May 11 by 5 p.m.** Please e-mail me a copy and upload your paper, in word format, to Blackboard.

C. Class Presentations

Each student will present their topic and findings during one of the last class meetings of the semester. Each class presentation will be **between 30 - 35 minutes**. This is not much time so please plan accordingly. Do not try to do too much. While some students are worried that they will not have enough material, that is rarely the case. More often, students do not have enough time to get through all that they wanted to cover. Rehearse and time what you plan to do, and enjoy yourself. Presentations are a great learning opportunity for you and for your classmates.

The material can be presented in a variety of ways. It is recommended that you do NOT lecture, but try to employ methods to involve the rest of the class. You can use problems similar to those discussed in class during the semester, plan a simulation or role play, lead a discussion, use a movie clip, diagrams and/or use other visual aids to illustrate your ideas. If you use PowerPoint or other presentation software, use the slides to visually engage your classmates and illustrate your points. Try to limit the amount of text on each slide.

By noon of the Sunday before a student’s presentation, that student should send via email an outline of the presentation to class members and course professors. Include in your outline any applicable sections of the Model Rules as well as questions for discussion. You should also select **readings** (no more than 5 pages) for the rest of the class to review prior to the class discussion. Be selective in choosing the readings. Try to choose a case, a portion of a law review article, or a newspaper or magazine story that encapsulates your topic. The rest of the class will be expected to read the materials prior to the class presentation. In the outline or materials that you distribute to the rest of the class, consider assigning roles or “homework” for your classmates so that they will be prepared and involved in your topic.

D. Journals

Each student is required to submit seven (7) journals, 3-5 FULL pages each, throughout the semester. The journals should be typewritten, double-spaced in 12 pt. font, with 1” margins. Please include your name and the journal number both in the document file name and on the journal itself. Journals should be uploaded as word documents to blackboard using the “Journals” feature under “Tools”

Because recollections are strongest if they are recorded immediately following the event, I encourage you to write your entries regularly even if the journal is not due until the following week. This will make writing the journals easier. ***Points will be deducted for journals that are submitted late.***

The journal assignments will ask you to write on “guided” topics in addition to writing on the general suggested topics listed below. Some journals will require you to discuss a subject with your supervisor. Therefore, please read the journal assignments at least a week in advance so that you have ample time to prepare your entry.

In addition, please spend one page of every journal reflecting on the assigned readings.

The journals are an opportunity for you to learn from your experience by writing about your subjective and emotional reactions to the placement. They help you get the most out of your experience by writing down your thoughts about what you are doing and learning. They also help your professors monitor your placement.

In writing your journals, think about (but do not be limited by) the following suggested topics:

- A description of an experience at your placement, and your reactions and feelings about that experience;
- An analysis of what you are learning about the profession, yourself as a person and future attorney, your supervisor, the organization, or the particular practice of law at your placement;
- Your reactions to the readings, class discussion and/or guest speaker;
- Your progress towards your learning goals;
- Your observations regarding an ethical topic;
- A critique of your own ability and skill, or performance on an assignment;
- The sky is the limit, be creative!

E. Use of Westlaw and Lexis at your placement

The policies are as follows:

LEXIS

The Lexis policy with regard to students working on externships during the semester is that students doing work for school credit may use Lexis. This includes private companies. The only limitations are that you cannot use Lexis if the work is being billed to a client, nor can students use Lexis if you are working in a court. Lexis has widespread usage in courts, and because the use is not charged to the courts, students who are in court placements must gain access through the courts.

WESTLAW

Westlaw has a much stricter policy. The permitted use is exclusive to public interest non-profit entities. Government agencies, courts, companies and law firms are excluded from the policy, as they derive economic benefits from the student's use, even if the student does not.

If you have any questions about these policies, please speak to me or speak to your Lexis or Westlaw representative.

F. Purchasing “Learning From Practice”

Some of the readings for this course come from *Learning from Practice: A Text for Experiential Legal Education* (Wortham, Scherr, Maurer, & Brooks eds. West 3rd ed. 2016). You are welcome to purchase the entire text in hard copy; it costs \$95 from Amazon or directly from West. Members of Amazon prime can also rent the book for the semester for about \$22.00.

You can also purchase individual chapters directly from West for printing or reading online, at a cost of \$6.00 per chapter. To purchase chapters, follow these instructions:

- 1) Go to WestAcademic.com.
 - 2) Click on the Store tab in the upper right.
 - 3) On the next page, in the search box, enter the phrase “Wortham, Scherr.”
 - 4) The next page starts a list that includes both the whole book and the individual chapters in the book.
 - 5) Find the entry for each chapters listed below and click “Add to Cart.” You will need to return to the list of chapters to add each new chapter.
 - 6) After adding all of the chapters below to your Cart, you can proceed to checkout and complete your purchase. West will then provide you instructions for reading and printing them through West's Law School Exchange.
 - 7) You will receive codes that allow you to access the relevant chapter. Make sure to use those codes quickly. You will lose access unless you do so within a relatively short period of time.
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January 17, 2018 (Week One)

Learning from Practice; Setting Goals; Working with Supervisors

Read: Rhode & Luban, read pages 1-7; skim pages 7-15.

Read: Learning from Practice, chpt. 2, pages 15-25 (posted on Blackboard).

Read: Either: Learning from Practice Appendix 1.1: The MacCrate Report; **OR** Appendix 1.3: Lawyering Effectiveness Factors – The Schultz & Zedeck Studies (both are posted on Blackboard).

Read: Learning from Practice, chpt. 8, read pages 213-219, 226; skim pages 219-225 (posted on Blackboard).

Read: Alexander & Smith, “Law Student Supervision: An Organized System”, 15 NO.4 Legal Econ. 38 (May/June 1989) available at: http://heinonline.org/HOL/Page?handle=hein.journals/lwpra15&div=34&g_sent=1&collection=journals (AND posted on Blackboard).

Assignment for class: complete exercise 2.1 on pages 17-18 from Learning from Practice. Email your completed assignment to Professor Maisel by **Tuesday, January 16** at 5:00 p.m. Limit your response to 2 double-spaced pages.

Be prepared to discuss in class your choice of placement, the reasons for your choice, as well as ideas you have for working with your placement supervisor to ensure that you have a rewarding educational experience.

Review the Work Summary in the Course Documents folder on Blackboard. Keeping track of your assignments is considered a “best practice” for any job you have. A running record of your work helps you identify assignments that will best help your skill development, and will also help you update your resume and prepare for interviews. Begin documenting your assignments as soon as you begin your externship.

Also please **review** the Supervisor’s Midterm and Final Evaluations, posted in the Course Documents folder, so you can see how your supervisors will assess your performance this semester.

January 24, 2018 (Week 2)

The Lawyer Client Relationship: Case Acceptance and Competence

Read: Rhode & Luban, chpt. 1, “Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?” by David B. Wilkins, *as follows*:

- pages 17-29 – Read
- pages 29-41 – Pick one section only from A-E, and be prepared to discuss that section with the rest of the class
- pages 42-45 – Skim
- pages 46-53 – Read

Read (optional): Learning from Practice, chpt. 10, “Ethical Issues in Externships: An Introduction” (available for purchase or on library reserve).

Read: “After Backing Alt-Right in Charlottesville, A.C.L.U. Wrestles With Its Role”, The N.Y. Times, Aug. 17, 2017 by Joseph Goldstein available at <https://nyti.ms/2v5mDGL>

Read: AFP, “‘Serial’ hero Adnan Syed gets second chance in US court” The Express Tribune, June 10, 2017 available at: <https://tribune.com.pk/story/1432230/serial-hero-adnan-syed-gets-second-chance-us-court/>

Read: Model Rules and comments: 1.1, 1.2, 1.3, 1.4, 1.16, 6.2, 6.3 and 6.4.

Journal #1, Due by Tuesday, January 23 by 5:00 p.m.: Competence

*** In addition to general journal topics, please also discuss any concerns you have about becoming competent in your placement as well as any thoughts you have on how you will become competent. Include your definition of competence. Describe what you have done or what your supervisor has done to help you to become competent in your placement so far.

January 31, 2018 (Week 3)

The Lawyer Client Relationship: Confidentiality and its Exceptions

Read: Rhode & Luban, p. 175- 201.

“Spaulding v. Zimmerman: Confidentiality and Its Exceptions” by Roger C. Cramton.

Read: “‘Isn’t that the Trump Lawyer?’: A Reporter’s Accidental Scoop” The N.Y. Times, September 19, 2017 by Kenneth P. Vogel available at <https://nyti.ms/2ybKF4Y>

Read: Stempel, Jonathan, “GM settles hundreds of ignition switch lawsuits,” Reuters, June 23, 2007. Available at: <http://www.reuters.com/article/us-gm-recall-settlement-idUSKBN19E25A>

Read: Weiss, “GM Lawyers Won’t Face Michigan Ethics Probe”, ABA Journal, March 28, 2016. Available at: http://www.abajournal.com/news/article/gm_lawyers_wont_face_michigan_ethics_probe

Read: Michigan Rules of Professional Conduct: 1.6 and 1.13, available at:

Read (optional): Learning from Practice, Chpt. 11, pages 279-293: Ethical Issues in Externships: Confidentiality (available for purchase or on library reserve).

Read closely Model Rule 1.6 and its comments.

Read also Model Rules 1.1, 1.2, 1.3, 1.4, 1.13, 1.16, 2.3, 3.3, 3.4, 4.1, 4.4, 8.4.

Journal #2, Due by Tuesday, January 30, by 5:00 p.m.: Confidentiality

***As part of the regular journal, please discuss what your understanding is of confidentiality at your placement. If you have not talked with your supervisor as yet about confidentiality, please discuss confidentiality with him or her and include in this journal your understanding of that discussion.

February 7, 2018 (Week 4)

Loyalties and Conflicts of Interest

Read: Rhode & Luban, p. 203- 232. “Bankrupt in Milwaukee: A Cautionary Take” by Milton C. Regan, Jr.

Review and read: Rhode & Luban, p. 42-46. “Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?” by David B. Wilkins.

Read (optional): *Learning from Practice*, Chpt. 12, pages 295-313: Ethical Issues in Externships: Conflicts of Interest (available for purchase or on library reserve).

Read Model Rules: 1.4, 1.7, 1.8, 1.9, 1.10, 1.13, 1.16, 1.18, 2.4, 4.1, 6.5.
Pay particular attention to Model Rules 1.7, 1.8, 1.9 and 1.10.

Journal #3, Due by Tuesday, February 6 by 5:00 p.m.: Ethical Dilemmas

“Interview” your supervisor and ask them for an example of a difficult ethical issue that they have faced at some time in their practice. Find out what steps they took to resolve the problem.

Evaluate how the ethical dilemma was resolved and whether you agree with the resolution.
Determine whether there was anything that your supervisor could have done to avoid the ethical issue in the first place.

February 14, 2018 (Week 5)

Practice Settings I: Direct Client Representation;

Read: Rhode & Luban, p. 139-173

“United States v. Kaczynski: Representing the Unabomber” by Michael Mello

Read: Bello, “Loughner lawyer is ‘One-Woman Dream Team’”, USA Today January 11, 2011, available at: http://www.usatoday.com/news/washington/2011-01-11-lawyer11_ST_N.htm

Read Model Rules: 1.2, 1.4, 1.14, 3.2, 4.1, 4.2, 4.3, 4.4.
Consider in particular Model Rule 3.8.

Paper topic and two-page outline, due on Tuesday, February 13 by 5:00 p.m.

February 21, 2018 (Week 6)

Practice Setting I: Law Firms

Diversity in the Profession and Ethical Billing

Guest Speaker: Sheila Bridges

Read: Rhode & Luban; 233-254 and 287-302.

“Greed on Trial” by Alex Beam

“What’s Sex Got to Do With It? Diversity in the Legal Profession”, by Deborah Rhode.

Read: “Ethical Billing Maximizes Likelihood of Getting Paid”, by Richard Levine and Bernard Posner, Mass. Lawyers Weekly, July 21, 2011, available on Blackboard

Read Model Rules 1.2, 1.3, 1.4, 1.14, 1.16, 2.1, 3.2.
Consider in particular Model Rules 1.2 and 1.14.

Journal #4, Due by **Tuesday, February 20**, by 5:00 p.m.

Prepare a self-evaluation of your performance in the fieldwork so far, and make an appointment for next week to discuss your progress with your supervisor. In your journal for this week, write about how you will approach that meeting. Review the feedback that you have received so far. If

you do not think that you are receiving adequate feedback on your work, think about strategies for improving the quality of the feedback and write about that in your journal. Also review the list of goals that you prepared for the first class. Re-evaluate your goals and think about the experiences and assignments that you have had thus far. Think about the experiences or assignments you would like to have for the remainder of the semester. Bring the goals form you filled out at the beginning of the semester to your meeting with your supervisor. Together, define goals for the rest of the semester.

February 28, 2018 (Week 7)

Pro Bono Obligations; Access to Justice

Read: Rhode & Luban, p. 255-286

“In Re Arons: the Plight of the “Unrich” in Obtaining Legal Services”, by David C. Vladeck

Read: “Addressing the Justice Gap,” New York Times, August 23, 2011,
available at: <http://www.nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html>

Read Model Rules: 6.1, 6.2, 6.3, 6.4, 6.5, 1.5

March 14, 2018 (Week 8)

Practice Settings IV: The Judiciary: Judicial Ethics

Guest Speaker: Associate Justice Andrew Grainger (ret.) MA Appeals Court

Read: Matter of Gary Crossen: 450 Mass 533 (on blackboard)

Read: Model Code of Judicial Conduct

Journal #5, Due by Tuesday, March 13 by 5:00 p.m.: Journal and Mid-Semester Review

In addition to your “regular” journal, discuss your mid-semester meeting with your supervisor that you should have had last week. What were your impressions of the conversation?

March 21, 2018 (Week 9)

Practice Setting Three: In-House Counsel

Guest Speaker: Clarke Bruno, Anbaric Transmissions

Read: Learning from Practice, Chapter 23, pgs. 657-664 (posted on Blackboard)

Read: Rhode & Luban, p. 89-118

“Travails in Tax: KPMG and the Tax Shelter Controversy”, by Tanina Rostain

Read: Everson, “Lawyers and Accountants Once Put Integrity First” New York Times, June 18, 2011, available at:

<http://www.nytimes.com/2011/06/19/opinion/19everson.html?scp=1&sq=Lawyers%20and%20Accountants%20Once%20Put%20Integrity%20First&st=cse>

Read Model Rules: 1.6, 1.13, 5.1, 5.2, 8.4.

March 28, 2018 (Week 10)

Prosecuting Ethical Violations;

Ethics of Prosecutors and Defense Counsel

Guest Speaker: Brian Wilson, Director of the Prosecutor Clinic

Read: Rhode & Luban, p. 119- 138, “In the Pink Room” by Stephen Gillers.

Read: Liptak, “\$14 Million Jury Award to Ex-Inmate Is Dismissed” New York Times, March 30, 2011, available at:

http://www.nytimes.com/2011/03/30/us/30scotus.html?_r=1&scp=1&sq=%2414%20Million%20Jury%20Award%20to%20Ex-Inmate%20is%20Dismissed&st=cse

Read: Preamble to the Model Rules, Model Rules 3.8, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7.

ASSIGNMENT: Prepare Mock Bar Counsel Hearing: Instructions will be provided

Journal #6, Due by Tuesday, March 27 by 5:00 p.m.

In addition to the usual topics, in this journal, please imagine that you are in a job interview and are asked to pick one issue or experience from your externship that was important. Describe what the experience was, why it was important to you, and what you learned from the experience.

April 4, 2018 (Week 11)

Class Presentations

April 11, 2018 (Week 12)

Class Presentations

April 18, 2018 (No Class, Substitute Monday Schedule)

Journal #7, Due by Tuesday, April 17, 2018 by 5:00 p.m.: Final Journal

Your last journal should evaluate your experience at your job placement. Please describe in what ways your expectations and learning goals were met or not met in your placement. (In writing this entry, you should review the statement of learning and goals prepared for the first class and reworked at mid-semester). Evaluate the training and supervision that you received. Discuss whether you would recommend the placement to other students. Evaluate your supervisor's ability to teach and mentor you. Describe what the high point of the placement was, what the low point was, and any pearls of wisdom you would pass on to a future student.

April 25, 2018 (Week 13)

Class Presentations

Before your last day of your externship, please plan a time to sit down with your externship supervisor for an exit meeting. Among other things, discuss the supervisor's final evaluation that we have emailed them and asked them to fill it out and return it to our office.

Also please fill out the evaluation of your placement that we will email to you. A passing fieldwork grade is dependent upon your completing the evaluation.

Friday, May 11, 2018 – Final papers due by 5:00 p.m. Please upload your papers to Blackboard and e-mail me a copy.



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CRIMINAL FIELD PLACEMENT ETHICS SEMINAR
Section 295C
Syllabus Fall 2017

Instructor

Prithika Balakrishnan
Deputy Public Defender
San Francisco Public Defender's Office prithika.balakrishnan@sfgov.org

Placement Support

Sue Schechter, Field Placement Program Director sschechter@law.berkeley.edu (510) 643-7387

Administrative Support

Emily Best, Field Placement Program Administrator ebest@law.berkeley.edu, (510) 642-6818

Field Placement Program Student Assistants, fieldplacementprogram@law.berkeley.edu

Meeting Time and Location

The first class will be held Tuesday, August 22, 6:25 pm, room 132.

After that we will be meeting on Tuesday evenings from 6:25pm to 9:25pm in room 130. Our meeting dates are as follows:

- Class 1: August 22
- Class 2: September 12
- Class 3: September 26
- Class 4: October 10
- Class 5: October 17
- Class 6: October 24
- Class 7: November 7
- Class 8: November 14

Classes will be comprised of various components, including a discussions, role playing, hypotheticals, guest speakers for most classes, and student presentations. In addition, Sue Schechter will meet with each of you individually at least once during the semester for a private discussion about your placement. You will earn three make-up/extra credit points when you attend the meeting with the instructor.

Course Description and Objectives

The Criminal Field Placement Ethics Seminar is the two-unit companion course to the Criminal Field Placement Program, where students work in criminal non-profit and government agencies under the supervision of attorneys to receive academic credit. Students will gain an exposure to and have an opportunity to explore professional responsibility issues, especially as they arise in their field placement settings. Students will be urged to reflect on their field placements and incorporate the skills they are learning into the classroom discussions and presentations.

The seminar meets the law school's Professional Responsibility requirement. The field placement meets the law school's Professional Skills requirement.

The goals of the seminar and the Field Placement Program include the following:

- To provide students with an opportunity to reflect on their field placement experiences.
- To introduce students to professional responsibility topics, particularly as they relate to your criminal field placements.
- To engage students in discussions around topics relevant to criminal law practice.
- To encourage students to learn from each other regarding how to deal with challenges at their field placements and how to deepen their field placement experiences.
- To expose students and provide them opportunities to practice their professional skills in the context of their field placements.
- To examine the settings students are working in and the types of lawyering students are observing with the goal of helping students make more informed choices when they move forward in their legal careers.
- To learn to reflect on and discuss how the ethics rules and cases students work on promote or impair justice, and how those rules help or hinder prosecutors and defenders from doing their jobs.

Course Materials

The following materials will be referred to throughout the semester:

The ABA Model Rules of Professional Conduct:

Without commentary: <http://www.law.cornell.edu/ethics/aba/>

With commentary: http://www.abanet.org/cpr/mrpc/mrpc_toc.html

The California Rules of Professional Conduct: <http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct/CurrentRules.aspx>

A chart comparing the two is available at: <http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=MIP6xb6dO5w%3d&tabid=856>

In addition relevant ethical articles to the class speaker and MPRE questions will be uploaded to bCourses throughout the semester.

Course Requirements and Method of Assessment

The Field Placement Criminal Ethics Seminar is a graded seminar course.

A “credit hour” at Berkeley Law is an amount of work that reasonably approximates four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on course-related work as described above.

We will be meeting eight times during the semester. Given the small number of class sessions, attendance at each class is required. If an emergency or similar circumstance arises, I ask that you notify me of your impending absence via email as far in advance of class as possible.

Students are expected to come to the seminar fully prepared to participate and share about their placement experience thoughtfully and meaningfully in class. I anticipate lively discussions stimulated by hypothetical questions, real-life scenarios and the guest speakers. This class is a seminar, not a lecture. Do not expect me to do most of the talking.

To ensure participation and to show consideration to others, I ask that students not access the Internet or engage in emailing/instant messaging during class. During guest speakers and class presentations I would like all laptops closed.

Each of the Field Placement seminars has similar paperwork requirements. Throughout the semester, you will submit 14 timesheets, three memos, and one presentation outline. Each is due on Monday at noon via uploading to bCourses. Timely submission of each of these documents forms part of the course grade.

Additional forms relating to your field placement (Forms A-G) periodically must also be uploaded to bCourses, but the timeliness of submission is a factor in your grade. Greater detail about grading for the field placement component is attached at the end of this syllabus.

The course grade is based on a 100 point scale. The grade will be computed as follows:

Attendance and Class Engagement: 48 points

Attendance - coming to class (6 points per class, 3 point for attending but missing more than 30 minutes for any reason, 0 points for missing class unless discussed and agreed upon memo written). It is expected that students will come to class prepared and participate in the class discussions.

Memos: 30 points

Students will prepare three memos during the course of the semester. Each memo is to be 500-750 words and double-spaced. Memos must be posted to bCourses by 12:00 PM (noon) the Friday prior to class. Memos will be graded on a scale of 0-10. The topic for the first memo appears towards the end of this syllabus. See the attached Memo Grading Standards

for scale explanation

If you submit a memo late, please submit it as close to the original deadline as possible. At the latest, it must be submitted by the deadline for the following memo or you will not receive any credit for the submission.

Memo deadlines are at noon on the following dates:

Memo #1: Friday, September 8

Memo #2: Friday, October 6

Memo #3: Friday, November 3

Student Presentations: 22 points

Each student will deliver one presentation to the class on a substantive professional responsibility topic of their choice. Instructor is happy to offer guidance, suggestions or discuss ideas prior to assist them in declaring a topic. Students must email me their topic for approval by Tuesday, September 12th to be confirmed in that class meeting.

Presentations will start the following class. The presentation should be no more than 15 minutes in length. The presentation should be well-delivered, interesting and creative and help the audience learn something. Points will be given for the visual presentation and delivery. Instructor is happy to meet outside of class to give feedback post presentation on the delivery itself.

Students will be graded on the substance (16 points) and delivery of their presentation (6 points). There is no required format for the presentation. Please be creative. Students may utilize technology (e.g., Powerpoint) if they wish, but it is not required. (2 extra points for the first two people to deliver presentations).

NOTE: Make Up/Extra Credit

Students can earn three make-up/extra credit points when they attend the individual meeting with the instructor.

Class Schedule/Assignments

Class 1, August 22, 2017: Introduction, Overview and Orientation

The class will be combined with the Civil Field Placement Ethics Seminar and the Field Placement Work shop for orientation, introductions, field placement reporting requirements and a lecture on giving effective presentations.

Guest Speaker: Bill Fernholz

Assigned Readings:

ABA Standard 303 and 304

Shultz Zedeck - Effective Lawyering Skills List

Bill Fernholz Biography

California Rule of Court: 9-42(d) Permitted Activities of Law Students

Gabriel, Russell and Sinha, Hans P. "Criminal Justice Law Placements." *Learning From Practice, A Text for Experiential Legal Education*, Third Edition. Ed. Leah Wortham, Alexander Scherr, Nancy Maurer, and Susan L. Brooks. St. Paul: West Academic Publishing, 1998. Chapter 20

Class Check-In and Goal Setting

Class 2, September 12, 2017: Introduction to the Rules and the Adversary System

Guest Speaker: Damoun Bozorgzadarbab, Clinical Social Worker II UCSF/Citywide Case Management Forensic Program, Police Department Mental Health Trainer

NO STUDENT PRESENTATIONS

Assigned Readings:

ABA Model Rules of Professional Conduct (hereinafter ABA Model Rules)

Preamble

Scope

MR 1.1: Competence

MR 1.2: Scope of Representation

MR 1.3: Diligence

MR 1.4: Communication

MR 1.6: Confidentiality of Information

Articles:

https://drive.google.com/file/d/0B7mYPJzMoUm_cnJnQldqY21NVXpkYVFNRndzN2VLNzZPbUVj/view?usp=sharing

<https://www.nytimes.com/2017/06/20/us/seattle-police-shooting-charleena-lyles.html>

<https://ww2.kqed.org/stateofhealth/2013/12/16/sharp-drop-in-psychiatric-beds-leaves-severely-mentally-ill-with-few-places-to-go/>

<http://www.sfgate.com/bayarea/article/5-years-in-verdict-is-positive-for-S-F-5289195.php>

Class 3, September 26, 2017, Prosecutor Ethics

TWO STUDENT PRESENTATIONS

Assigned Reading:

ABA Model Rules:

M.R. 3.8: Special Responsibilities of a Prosecutor
Comment to M.R. 3.8

M.R. 3.7: Lawyer as a Witness

Articles:

<http://reason.com/archives/2016/06/23/confessions-of-an-ex-prosecutor>

http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/posner_and_rakoff_debate_whether_courtroom_lawyers_ever_make_a_difference.html

<http://www.sfweekly.com/news/a-lack-of-conviction/>

Class 4, October 10, 2017, Ethical Implications and Self-Care for Attorneys

Guest Speakers: Curtis Briggs, Attorney for Shrimp Boy Trial and Recovered Addict

ONE STUDENT PRESENTATION

Assigned Readings:

Articles:

<http://www.sfgate.com/crime/article/Shrimp-Boy-Chow-s-lawyers-no-longer-want-7966909.php>

<https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html>

Class 5, October 17, 2017 Defense Ethics

Guest Speakers:

Malik Wade, ex-federal inmate, Executive Director Scholastic Interest Group
Caramad Conley, wrongfully convicted inmate and exoneree

NO STUDENT PRESENTATIONS

Assigned Reading:

ABA Model Rules:

M.R.: 1.3 Diligence

M.R.: 1.6 Confidentiality

M.R.: 1.16 Declining Representation

Articles:

<http://www.oaklandpost.org/2017/08/07/49563/>

<http://www.ozy.com/true-story/the-art-of-the-drug-deal/65416>

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3119>

<https://www.keker.com/news/press-releases/caramad-conley>

<https://archives.sfexaminer.com/sanfrancisco/sf-man-struggled-to-catch-up-to-a-world-transformed-while-he-sat-falsely-imprisoned-for-years/Content?oid=2907434>

<http://www.sfgate.com/crime/article/Wrongfully-convicted-S-F-man-poised-to-get-3-5-5619070.php>

<https://nij.gov/journals/274/pages/victim-impact-wrongful-convictions.aspx>

Class 6, October 24, 2017: Zealous Representation, Confidentiality, and Perjury

Guest Speakers: TBD

TWO STUDENT PRESENTATIONS

Assigned Readings:

ABA Model Rules:

Preamble: Section [2]

M.R.:1.3: Diligence

M.R.:3.8: Candor to the Tribunal

M.R.: 4.1: Truthfulness in Statements to Others

M.R.:4.2: Communication with Person Represented by Counsel

M.R.:4.3: Dealing with Unrepresented Person

M.R.: 8.4: Misconduct

Articles:

http://ideaexchange.uakron.edu/cgi/viewcontent.cgi?article=1052&context=ua_law_publications

https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/?utm_term=.b07061e30ee0

<http://www.nytimes.com/1993/10/15/news/a-triumph-of-one-man-s-personality-the-american-courtroom-s-buffalo-bill.html>

<http://www.marinij.com/article/NO/20170406/LOCAL1/170409871>

Class 7, November 7, 2017: Counseling Clients, Preparing Witnesses, and the Ethics of Cross Examination

TWO STUDENT PRESENTATIONS

Assigned Readings:

ABA Model Rules:

M.R.:1.16: Declining or Terminating

Representation M.R.:3.4: Fairness to Opposing Party and Counsel

M.R.: 4.4(a): Respect for Rights of Third Persons

ABA Model Rules to review (previously assigned):

M.R.:1.2(d): Scope of Representation / Counseling Client

M.R.:1.4(b): Communication / Facilitating Client's
Informed Decision Making
M.R.: 3.3: Candor Toward the Tribunal
M.R.: 8.4(c): Misconduct / Dishonesty, Fraud,
Deceit, or Misrepresentation

Articles:

[https://www.theguardian.com/society/2017/mar/
19/victims-rape-spared-ordeal-cross-examination-court](https://www.theguardian.com/society/2017/mar/19/victims-rape-spared-ordeal-cross-examination-court)

Class 8, November 14: Lawyer's Ethics in a Time of Crisis, LOOKING FORWARD
Class will be from 6-10 pm today. We will be screening an hour and 15 minute film.

Guest Speakers: Jeffery Adachi, San Francisco Public Defender (Screening Film Defender)

NO STUDENT PRESENTATIONS

Watch Video Interview:

[https://ww2.kqed.org/forum/2017/04/13/sf-public-defender-jeff-adachi-talks-immigration-
police-shootings-and-his-new-documentary/](https://ww2.kqed.org/forum/2017/04/13/sf-public-defender-jeff-adachi-talks-immigration-police-shootings-and-his-new-documentary/)

Assigned Readings:

Articles:

<http://www.rafu.com/2017/03/documentary-defender-focuses-on-jeff-adachi/>

ABA Model Rules to review (previously assigned):

M.R.:1.1:Competence

M.R.1.2(d): Scope of Representation / Counseling Client

M.R.1.13: Organization as Client

M.R.:3.1: Meritorious

Criminal Field Placement Ethics Seminar - Law 295C and 295.6B

Fall 2017 Memos

In the Berkeley Law Criminal Field Placement Ethics Seminar and Field Placement Program, besides the class meetings, we use directed memos as an additional way to provide an ongoing and contemporaneous reflective component, which the ABA requires (Standard 304: Clinics, Simulations and Field Placements). The directed memos provide students an opportunity to delve more deeply into their criminal field placements and to reflect on their externship experience. (The current Standard 304 is posted on the bCourses class site.)

Memos should be submitted to the bCourses site in a timely fashion. Memos should be about 500-750 words in length. You must include your name, assignment name, and semester on the top of each entry. Memos are due by noon on the following days:

September 8
October 6
November 3

Memo #1: Field Placement Learning Goals/Plans and Professional Responsibility: Ethics/Morals
Due by noon on Friday, September 8

Part 1: Setting Goals and Developing a Learning Plan

Review your Form A submission (application) and elaborate on the goals you discussed. Identify two learning goals you hope to achieve during your placement in each of the following areas - for a total of 6 goals:

- 1) Personal
- 2) Substantive Law, and
- 3) Lawyering Skills

For Lawyering Skills, use the 26 Effective Lawyering Skills list in your first reading assignment (August 22). What specific steps will you take and/or have you already taken to ensure that you will meet your learning goals? Devise and discuss a specific and detailed plan you can implement during the semester to help meet your goals.

We urge/require you to discuss this part of your memo with your supervising attorney as part of your orientation or introduction to the placement.

Part 2: Professional Responsibility: Ethics/Morals

As a newcomer to the study of professional responsibility, please discuss your own ethics and moral in relation to the topic of professional responsibility in the legal profession. Have you given it much thought? Has the topic been discussed in your classes or your work? What do you think it means to be a moral, ethical, and/or professional responsible lawyer? Discuss this topic in relation to your criminal field placement, what you are seeing and what you hope to see as the semester unfolds.

Memo #2: Placement Description and Criminal Professional Responsibility
Due by noon on Friday, October 6

Part 1: Defining and Communicating with your Client

Depending on whether you are a public defender or on the prosecution side, thinking about who your client is, where they came from, what their needs are, and how you can best help them raises interesting legal, ethical and personal questions. On the defender side, use this prompt to describe how you are defining who your client is and how you are working with them. On the prosecutor side, is it always clear what it means to represent the state or the government? Think

about an instance or few instances in your field placement where interesting questions were raised about this topic and use this prompt to reflect on how you approached them and what you learned from them.

Part 2: Criminal Professional Responsibility

Now that you are about halfway through your fall field placement, reflect back on your thoughts about professional responsibility/ethics/morals and especially as it relates to criminal law practice. Has your perspective changed based on what you are seeing with your supervisors, your office, the field placement, the reality of practice? You are encouraged to discuss this topic with your supervising attorney or others in your office and you are welcome to focus on one aspect or just your general approach to Part 1.

Memo #3: Justice, Bias, and Access; Interview; and Resume/Cover Letter or Interview Description Due by noon on Friday, November 3

Part 1: Justice, Bias and Access

Given the legal profession's concern for justice and all that entails, discuss your views about how this comes up at your placement. Is your agency organized in a way that acknowledges bias and promotes access to justice issues? What more or less could the agency be doing to acknowledge and address these issues? Give a few concrete suggestions and feel free to dream a bit if 'you ruled the world'.

Part 2: Interview someone at your externship

Select someone to interview at your externship. It does not need to be your supervising attorney, but ideally it should be someone you admire at your placement. Ask that person about their legal career - why he/she decided to work with this agency, about their current position, and their career path goals and aspirations. Ask them for insights into good and bad lawyering. Ask them about professionalism, civility and advice as you embark on your legal career.

Part 3: Resume/Cover Letter or Interview Description

Draft a brief description of your field placement that you plan to put on your resume or in your cover letter or use in an interview. You are strongly encouraged to review this with your supervising attorney - they will be interested to see how you describe the experience and may have some input about what to include.

MEMO GRADING STANDARDS

The 10-point memo

- It fulfills the assignment in a fresh and mature way. The memo is exciting to read.
- The organization gives the reader a sense of the necessary flow of the argument or explanation.
- Organizational guides are used as appropriate.
- The prose is clear, apt, and occasionally memorable. The memo contains few, if any, errors (e.g., errors of grammar, spelling or word choice) that undermine the overall effectiveness of the memo.

The 8-point memo

- The assignment has been followed and fulfilled at a better-than-average level.
- The organization is clear, but perhaps not as forceful it could be.
- The expression is more than competent. Not only is sentence structure correct, but sentence length and variety are used effectively.

The 6-point memo

- The assignment has been followed at a satisfactory level. The reflection, while generally sound, is predictable.
- The organization could be improved. Some paragraphs could be better placed and developed.
- Some sentences could be improved and there are errors in grammar, spelling, and punctuation.

The 4-point memo

- There is limited or superficial reflection.
- The organization is unclear, paragraphs are not well-developed or arranged, and transitions are incorrect or missing.
- There are numerous errors in grammar, spelling, and punctuation. Lack of proofreading may turn a 3- point memo into a 2-point memo.

The 1-point memo

- It is off the assignment without prior approval.
- The organization seems haphazard or arbitrary; and/or the memo is short of minimum length requirements.
- There are numerous and consistent errors of grammar, spelling, or punctuation.

The 0-point memo

- It is a memo that was never turned in or was turned in after the deadline for the subsequent memo.

Adapted from *Grading Student Papers: Some Guidelines for Commenting on and Grading Students' Written Work in Any Discipline*, A Joint Publication of the University of Maryland's Freshman Writing Program and the Center for Teaching Excellence. Available at: <http://www.cte.umd.edu/teaching/resources/GradingHandbook.pdf>

Field Placement Grading

The following information is provided by Sue Schechter, Field Placement Director.

Field Placement Attendance: Students should have an established work schedule approved by their supervising attorney by the beginning of the semester. This schedule must be reported to the Field Placement Program through Form C - Confirmation Sheet.

Students' work schedules are expected to track the academic calendar. Students are required to work a minimum of 14 weeks over the course of the semester. For every 1 unit, students must work 4 hours a week. Students will not receive academic credit for the Field Placement unless they have completed the required number of hours (i.e.: 4 units = 224 hours, or 16 hours a week) in a manner that is satisfactory to the supervising attorney and the instructors. Students who fail to complete the hours in a satisfactory manner may not receive some or all their requested units. Students are required to meet the Law Registrar's deadlines for adding or dropping field placement units.

Students who are scheduled to work on a federal (or other) designated holiday may count those hours towards their placement hours. Students who miss their placement hours for other reasons are required to make them up in accordance and agreement with their supervising attorneys.

Grades: The Field Placement part is graded on a Credit/No Credit basis.

Students are expected to act in a professional and ethical manner. The minimum expectations are that students will:

- Work the agreed-upon number of hours (4 hours a week per unit for 14 weeks);
- Submit the weekly time-sheets and other written work by the due dates - students who are more than 1 week late without prior notice with more than 3 assignments risk not receiving academic credit for their placements;
- Perform work of a satisfactory quality as deemed by the supervising attorney and/or the field placement instructors;
- Behave in an ethical and professional manner in connection with their academic or professional assignments in the placement.

Failure to abide by the above understanding may result in some or all of the credit being denied for the placement.

bCourses

This seminar has a page on bCourses, <http://bCourses.berkeley.edu>. Students are required to check bCourses for additional required readings and announcements. Students are also required to submit paper work and assignments on bCourses. Students must put their names, placement name, assignment name, seminar name and semester at the top of all materials that they submit.

Forms

Students are required to submit forms to bCourses. Forms from supervising judges and law clerks that cannot be uploaded should be turned into the Field Placement Program Office in 471 Boalt Hall or submitted via email at fieldplacementprogram@law.berkeley.edu. The forms are:

Form	Description	DUE DATE
Form A	Student Application Students will not receive a CL # unless there is a completed Student Application on file with the Field Placement Office. Students must follow the Law Registrar's Office deadlines for registration, including adding or dropping units.	Monday, August 21
Form B	Supervisor's and Student's Externship Agreement Form Student should bring his form to their supervising attorneys to complete.	Friday, September 1
Form C	Student Confirmation/Travel Insurance Form Updated student and supervising attorney contact information, dates of travel and emergency contact information.	Friday, September 1
Form D	Student Weekly Timesheet Students are expected to tally their hours on the form and to keep a copy for their records. Timesheets should be completed on a weekly basis and posted to bCourses.	Weekly on Mondays at noon for the previous week. <i>In the case of a Monday holiday timesheets are due on Tuesday.</i>
Form E	Student Mid-Term Self-Assessment	Friday, October 6 at noon.
Form F	Student Final Report and Student Evaluation	Friday, December 1, 2017, or within one week of the student's last day of work at the placement.
Form G	Supervisor Final Evaluation of Law Student Extern Your supervisor will also verify that for each unit of credit you have produced 5 - 10 pages of original legal research and writing. (E.g., for a 10-unit placement students are expected to have produced 50-100 pages of work.)	Friday, December 1, 2017, or within one week of the student's last day of work at the placement.

At the beginning of the semester, supervising attorneys will be emailed an introductory letter, including forms B and G and a [BACE Supervising Attorney Manual](#).

Individual Interim Meetings

The Field Placement Director, Sue Schechter, will meet (at least) once with all registered students to check in on the field placement experience. Students are welcome and urged to contact either the Lecturer or Sue if they have questions or concerns about their placements or the Field Placement Program.

Site Visits

During the semester, the Field Placement Director conducts site visits to many of the placements to meet with supervising attorneys. If the Director plans to make it to your placement, she will make a concerted effort to inform you of the visit.



**Civil Field Placement Ethics Seminar – Law 295
Syllabus Spring 2018**

Lecturer

Evonne Silva, Compliance Counsel & Director of People Systems, ACLU of Northern California
esilva@aclunc.org, (209) 648-4927 (cell)

Administrative Support

Emily Best, Field Placement Program Administrator
ebest@law.berkeley.edu, (510) 642-6818

Placement Support

Sue Schechter, Field Placement Program Director
sschechter@law.berkeley.edu, (510) 643-7387

Field Placement Program Student Assistants
fieldplacementprogram@law.berkeley.edu

Course Meetings

- The course's first meeting will be held Tuesday, January 9 from 6:25 pm to 8:55 pm in **Boalt 100**.
- The remaining eight meetings will be held on the following Tuesdays from 6:25 to 8:55pm in **Boalt 134**.

January 16
January 30
February 6
February 20

March 6
March 20
April 3
April 10

Course Description

The Civil Field Placement Ethics Seminar is the two-unit companion course for law students who are in field placements with non-profit and government agencies in the San Francisco Bay Area. Students will explore professional responsibility issues as they arise in their field placement settings and will have opportunities to reflect on their field placements.

While there will be lectures and guest speakers on selected professional responsibility rules, the course aims to have students learn by doing and by engaging with each other in small group and class-wide discussions. Students will be urged to reflect on their field placements and incorporate the skills they are learning into the classroom discussions and presentations.

The seminar meets the law school's Professional Responsibility requirement. The class is not designed to be a test-preparation course for the MPRE, and it will not cover all concepts tested on the MPRE.

Course Materials

Students are expected to read the assigned materials and come to the seminar fully prepared to participate meaningfully in class. Readings will consist of the American Bar Association Rules of Professional Conduct, the California Rules of Professional Conduct, relevant federal and state laws, cases, and other materials. Links to the rules and reading materials will be posted on bCourses. While cases will be posted to bCourses, students may also download them from either Westlaw or LexisNexis. PowerPoint presentations may be used as part of

lectures. However, students should take notes during lectures; the presentations will not be posted on bCourses or otherwise made available.

Learning Outcomes

Students in the course will be expected to achieve the following Berkeley Law Learning Outcomes:

- Knowledge and understanding of substantive and procedural law;
- Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- Using the law to solve real-world problems and to create a more just society.

The course also has the following course-specific learning outcomes:

- Be able to identify and resolve professional responsibility issues as they relate to their field placements.
- Understand the resources available to resolve professional responsibility issues.
- Examine the settings where they are working and the types of lawyering they are observing to help them make more informed choices about their legal careers.

Assignments

Students will be required to submit three memoranda and make two presentations.

Presentations

- **Placement Presentation:** The first presentation will be a brief presentation of 2-3 minute to the students in the class about your placement. The goal is to introduce the organization's mission to others through either (1) rallying support for a project or issue that your agency is working on or (2) making a plea for funding for your agency. Ultimately, the primary goal of the presentation is to persuade the audience to care about the agency's work. Students should not simply identify the work that the organization does.
- **Presentation on Professional Responsibility Topic:** Each student will present one of the following topics to the class:

Class on **February 6:** Confidentiality

Class on **February 20:** Conflicts

Class on **March 20:** Duties to Clients

Class on **April 3:** Zealous Advocacy, Candor, and Civility

The presentation will discuss an aspect of the professional responsibility rule or topic, and can be based in part on an article that you find, read and summarize. While the presentation format is up to the student and creativity is encouraged (create a PowerPoint, demonstrate an ethical problem with a skit, etc.), at a minimum, the presentation **must** (1) have a cognizable beginning, middle, and end; (2) engage the other students, through a guided discussion, role play, or other activity; (3) explain a practical aspect of the ABA Model Rule (and CA rule to extent they significantly differ); and (4) endeavor to discuss how the rule or topic relates to the field placement experience. For example, a student may demonstrate potential conflicts involving hypothetical concurrent clients at her field placement by using a role play followed by questions posed to the class. **Students must obtain the Lecturer's approval for their proposed presentation topic at least one week ahead of the class.** This means you are expected to turn in a detailed outline (not a draft Powerpoint) prior to noon on Tuesday the week before your presentation.

The presentation should last a minimum of 7 minutes and a maximum of 10 minutes.

Grading

The course will be graded according to a standard Berkeley Law curve. Students will be graded on a maximum 100-point scale allocated into the following parts:

1. 9 points for Attendance
Class attendance is mandatory. Students receive 1 point for attending each class. If an extraordinary circumstance prevents you from attending, please email the Lecturer in advance. Students may have one absence excused for extraordinary circumstances. To ensure fairness to your colleagues, in the rare situation where you have two or more excused absences from class (e.g., serious illness, out-of-state trial competitions), you will be required to write a Memo summarizing the content of the readings for the most recent class you have missed.
2. 9 points for Participation
Class participation is mandatory. Students are expected to ask questions, actively grapple with scenarios, and participate in large- and small-group discussions. The instructor will evaluate each student's participation in each class, awarding a total of 1 point per class session. Students are expected to come to class with at least one question for each of the outside speakers.
3. 45 points for Memos (15 each)
Memos will be due **by noon** on the following dates (one point will be deducted for late memos):
Monday, February 12
Monday, March 12
Monday, April 9

Students will write three memos that are 500-750 words (double-spaced, paginated). See Memo Descriptions on pages 9-10 and on bCourses. The memos will be graded on a scale of 0-15 (see Memo Grading Standards on page 11).
4. 37 points for Presentations
As explained above, students will do two presentations during the course. The first will be a brief presentation introducing the student's field placement to the class. The second will be a presentation on a professional responsibility topic. Students should bring any technology that they plan to use for their presentations.
 - A. 12 points for Placement Presentation: 6 points for content, 6 points for presentation skills
 - B. 25 points for Presentation on Professional Responsibility Topic: 15 points for content and organization of material, 10 points for presentation skills

School-wide Policy

A "credit hour" at Berkeley Law is an amount of work that reasonably approximates four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of

these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on out-of class, course-related work as described above.

Course Policy on Use of Electronic Devices in the Classroom

You may use a laptop or other device to access reading assignments during class. However, we strongly encourage you to take hand-written notes. (Research shows that students absorb information better this way.) Further, accessing the internet (or apps) during class—except for class-related activities—is prohibited. You cannot check your Facebook page and successfully make meaningful contributions to class. **ALL DEVICES MUST BE PUT AWAY DURING STUDENT PRESENTATIONS.**

bCourses

Students are required to check the course bCourses page for additional required readings and announcements. Students are also required to submit paperwork and assignments on bCourses. Students must put their names, placement name, assignment name, seminar name and semester at the top of all materials that they submit.

Field Placement Grading

The following information is provided by Sue Schechter, Field Placement Director.

- A. Field Placement Attendance: Students should have an established work schedule approved by their supervising attorney by the beginning of the semester. This schedule must be reported to the Field Placement Program through Form C – Confirmation Sheet.

Students' work schedules are expected to track the academic calendar. Students are required to work a minimum of 14 weeks over the course of the semester. For every 1 unit, students must work 4 hours a week. Students will not receive academic credit for the Field Placement unless they have completed the required number of hours (i.e.: 4 units = 224 hours, or 16 hours a week) in a manner that is satisfactory to the supervising attorney and the instructors. Students who fail to complete the hours in a satisfactory manner may not receive some or all their requested units. Students are required to meet the Law Registrar's deadlines for adding or dropping field placement units.

Students who are scheduled to work on a federal (or other) designated holiday may count those hours towards their placement hours. Students who miss their placement hours for other reasons are required to make them up in accordance and agreement with their supervising attorneys.

- B. Grades: The Field Placement part is graded on a Credit/No Credit basis.

Students are expected to act in a professional and ethical manner. The minimum expectations are that students will:

1. Work the agreed-upon number of hours (4 hours a week per unit for 14 weeks);
2. Submit the weekly time-sheets and other written work by the due dates – students who are more than 1 week late without prior notice with more than 3 assignments risk not receiving academic credit for their placements;
3. Perform work of a satisfactory quality as deemed by the supervising attorney and/or the instructors;
4. Behave in an ethical and professional manner in connection with their academic or professional assignments in the placement.

Failure to abide by the above understanding may result in some or all of the credit being denied for the placement.

Forms

Students are required to submit forms to **bCourses**. Forms from supervisors that cannot be uploaded should be turned into the Field Placement Program Office in 471 Boalt Hall or submitted via email at fieldplacementprogram@law.berkeley.edu. The forms are:

Form	Description	DUE DATE
Form A	<p>Student Application</p> <p>Students will not receive a CCN unless there is a completed Student Application on file with the Field Placement Office. Students must follow the Law Registrar's Office deadlines for registration, including adding or dropping units.</p>	Monday, January 8, 2018
Form B	<p>Supervisor's and Student's Externship Agreement Form</p> <p>Students should bring this form to their supervising attorneys to complete and sign.</p>	Friday, January 19 at noon.
Form C	<p>Student Confirmation</p> <p>Updated student and supervising attorney contact information.</p>	Friday, January 19 at noon.
Form D	<p>Student Weekly Timesheet</p> <p>Students are expected to tally their hours on the form and to keep a copy for their records.</p> <p>Timesheets should be completed on a weekly basis starting 1/16 (record 0 hours if you have not yet started at your placement) and posted to bCourses.</p>	Weekly on Mondays at noon for the previous week. In the case of a Monday holiday timesheets are due on Tuesday.
Form E	Student Mid-Term Self-Assessment	Friday, February 23 at noon.
Form F	Student Final Report and Student Evaluation	Friday, April 20, or within one week of the student's last day of work at the placement.

Form G	Supervisor Final Evaluation of Law Student Extern	Friday, April 20, or within one week of the last day of work at the placement.
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At the beginning of the semester, supervising attorneys will be emailed an introductory letter, including forms B and G and a [BACE Supervising Attorney Manual](#).

Class Schedule

Date	Topic	Activities	Reading Assignments / Relevant Rules
1/9	Orientation		<ul style="list-style-type: none"> Syllabus Setting Learning Goals Overview What does professional responsibility and ethics mean in the context of your field placement?
1/16	The Attorney-Client Relationship: Who is Your Client?	<ul style="list-style-type: none"> Placement Presentations Sign-up for Presentations on Professional Responsibility Topic 	<ul style="list-style-type: none"> ABA Model Rules: 1.2, 1.13, 1.14 California Rules: 3-600 Geoffrey P. Miller, <i>Government Lawyers' Ethics in A System of Checks and Balances</i>, 54 U. Chi. L. Rev. 1293 (1983)
1/30	The Attorney-Client Relationship: Creating and Terminating the Relationship	<ul style="list-style-type: none"> Placement Presentations 	<ul style="list-style-type: none"> ABA Model Rules: 1.16, 1.18 California Rules: 3-700 <i>Zenith Ins. Co. v. Cozen O'Connor</i>, 148 Cal. App. 4th 998 (2007) Loeffler - How to Avoid the Surprise Attorney-Client Relationship
2/6	Confidentiality	<ul style="list-style-type: none"> Student Presentations on Professional Responsibility Topic: Confidentiality 	<ul style="list-style-type: none"> ABA Model Rules: 1.6, 1.9, 1.13, 1.18 California Rules: 3-100, 3-600 Cal. Bus. & Prof. Code § 6068(e)
2/20	Conflicts of Interest	<ul style="list-style-type: none"> Student Presentations on Professional Responsibility Topic: Conflicts of Interest 	<ul style="list-style-type: none"> ABA Model Rules: 1.7, 1.8, 1.9, 1.10, 1.11 California Rules: 3-300, 3-310, 3-320 U.S. Code: 18 U.S.C. § 207 <i>In re Charlissee C.</i>, 45 Cal. 4th 145 (2008)
3/6	Cause Lawyering and Access to Justice		<ul style="list-style-type: none"> ABA Model Rules 6.1, 6.2, 6.4, 6.5 California Rules 1-600, 1-650 California Bus. & Prof. Code § 6073
3/20	Duties to Clients: Competence, Diligence, Communication	<ul style="list-style-type: none"> Student Presentations on Professional Responsibility Topic: Duties to Clients 	<ul style="list-style-type: none"> ABA Model Rules: 1.1, 1.3, 1.4, 2.1 California Rules: 3-110, 3-500 California Bus. & Prof. Code § 6068

			<ul style="list-style-type: none"> • <i>Janik v. Rudy, Exelrod & Zieff</i>, 119 Cal. App. 4th 930 (2004) • The Lawyer, The Addict, <i>NY Times</i> (July 15, 2017) • Time Management Matrix
4/3	Zealous Advocacy, Candor, and Civility	<ul style="list-style-type: none"> • Student Presentations on Professional Responsibility Topic: Zealous Advocacy, Candor, and Civility 	<ul style="list-style-type: none"> • ABA Model Rules: 3.1, 3.3, 3.4, 8.4 • California Rules: 5-120, 5-200 • Northern District of California Guidelines for Professional Conduct • Order Granting Mot. for Sanctions and to Compel Discovery, <i>Claypole v. County of Monterey</i> (N.D. Cal. Jan. 12. 2016)
4/10	Responsibilities in Legal Organizations and Firms	<ul style="list-style-type: none"> • Course Wrap-Up 	<ul style="list-style-type: none"> • ABA Model Rules: 5.1, 5.2, 5.3 • California Rules: 2-400 • Gross, <i>Ethical Problems of Law Firm Associates</i>, 26 Wm. & Mary L. Rev. 259 (1985)

Memos

Civil Field Placement Ethics Seminar – Law 295 and 295.6A

In the Berkeley Law Civil Field Placement Ethics Seminar and Field Placement Program, besides the class meetings, we use directed memos to provide an ongoing and contemporaneous reflective component, which the ABA requires (ABA Standard for Approval of Law Schools 304 (2016): Clinics, Simulations and Field Placements). The directed memos provide students an opportunity to delve into ethics and professional responsibility topics, while reflecting on how they apply to their externship experiences.

Memos must be submitted via bCourses by noon on the dates listed below. Memos should be about 500-750 words in length. You must include your name, assignment name, and semester on the top of each entry.

Student Name, Fall 2017 Placement Name Civil Field Placement Ethics Seminar Memo #

Memos are due **by noon** on the following days:

Memo #1: February 12

Memo #2: March 12

Memo #3: April 9

MEMO #1: PROFESSIONAL RESPONSIBILITY SCENARIO - DUE FEBRUARY 12

An intake appointment at your office is made by Peter, who is the father of Carla. Carla is an adult with a developmental disability. Her main source of income is from Social Security. She also has a part time job at a grocery store, where she earns two hundred dollars a month. Carla got a notice from Social Security that said she didn't accurately report her income to Social Security, and as a result she received too much money in benefits. The notice says she has to re-pay \$5,000, but she can ask Social Security to waive collection if she can show that she does not have the money and that the overpayment was not her fault. You know that some social security recipients have a "representative payee," which is a person, often a family member, who agrees to manage the social security benefits for people who are unable to manage the benefits themselves. One of the duties of the representative payee is to report the recipient's work income to Social Security. You know that Carla may be able to successfully have the collection waived by Social Security by arguing she did not understand her reporting requirements, and that it was the duty of her representative payee to report her income.

What are your obligations to Carla during this intake meeting? What are your obligations to Peter? How will you decide who your client or potential client is, and how and when will you communicate that to Carla and Peter?

Support your response with ABA Model Rules and California Rules of Professional Responsibility, materials discussed in class, and any relevant observations from your field placement.

MEMO #2: PROFESSIONAL RESPONSIBILITY SCENARIOS - DUE MARCH 12

You are an attorney for a state commission that performs environmental reviews of major housing projects across the state. Your job requires you to review projects and make recommendations to commissioners regarding whether projects should be approved. As part of your job, you learn that a developer will be building a new major housing development, which may result in a nuisance impact on one of your family member's homes. Based on your review, you recommend to the commissioners that the project be approved, which they do. However, you learn from several commissioners that they were uneasy about approving the project based on the noise it would generate.

Your family member finds out about the development and wants to figure out ways to derail it, fearing that it will diminish her property value based on the traffic and noise it will generate. She asks you for advice as to what she should do and also asks you about what you know about the project. She would like you to help her lobby the local planning commission so that it denies the approvals the development requires. She says that it's your civic duty to be involved. What can you do to help your family member, if anything?

Support your response with ABA Model Rules and California Rules of Professional Responsibility, materials discussed in class, and any relevant observations from your field placement.

MEMO #3: JUSTICE, BIAS, AND ACCESS; INTERVIEW; AND RESUME/COVER LETTER OR INTERVIEW DESCRIPTION - DUE APRIL 9

Part 1: Interview: Given our discussions of professional responsibility rules, norms and practices, select someone to interview at your placement to learn more about their perspective on these issues and more – their path, their advice, etc. You are encouraged to discuss their views on justice, bias and access and how they see their organization meeting unmet needs, serving the public, etc., Your memo should not just be a transcription of the interview but a reflection of their path and perspectives in relation to yours. Use this memo as a way to wrap up any thoughts about your placement, the people who work there, the environment, and any suggestions, thoughts you have about ways they could be more effective in their mission.

Part 2: Resume/Cover Letter or Interview Description. Draft a brief description of your field placement that you plan to put on your resume or in your cover letter or use in an interview. You are strongly encouraged to review this with your supervising attorney – they will be interested to see how you describe the experience and may have some input about what to include.

Memo Grading Standards

The 14-15 point memorandum

- It fulfills the assignment in a thoughtful and original way. The memorandum is interesting to read.
- The organization gives the reader a clear sense of the flow of the argument or explanation. Organizational guides are used as appropriate.
- The writing is clear, apt, and occasionally memorable. The memorandum contains few, if any, errors (e.g. grammatical, spelling, punctuation, typographical or word choice) that undermine the overall effectiveness of the memorandum.

The 11-13 point memorandum

- The assignment has been fulfilled in a thoughtful way.
- The organization is clear and organizational guides are used as appropriate.
- The writing is clear and the memorandum contains few, if any, errors.

The 8-10 point memorandum

- The assignment has been followed at a better than average level.
- The organization is good, but could be improved.
- The writing is strong, but could be improved. The memorandum contains a few errors.

The 5-7 point memorandum

- The assignment has been followed at a satisfactory level. The reflection, while generally sound, is not particularly thoughtful.
- The organization could be improved. Some paragraphs could be better placed and developed.
- Some sentences could be improved and there are several errors.

The 3-4 point memorandum

- There is limited or superficial reflection. Not all parts of the assignment are fulfilled.
- The organization is unclear, paragraphs are not well-developed or arranged, and transitions are incorrect or missing.
- There are numerous errors.

The 1-2 point memorandum

- It is off the assignment without prior approval.
- The organization seems haphazard or arbitrary; and/or the memorandum does not meet minimum length requirements.
- There are numerous errors.

The 0-point memorandum

- It is a memorandum that was never turned in.

Adapted and revised from Grading Student Papers: Some Guidelines for Commenting on and Grading Students' Written Work in Any Discipline, A Joint Publication of the University of Maryland's Freshman Writing Program and the Center for Teaching Excellence. Available at: <http://www.cte.umd.edu/teaching/resources/GradingHandbook.pdf>.

Professional Responsibility—Spring 2018

Prof. Paul R. Tremblay
Center for Experiential Learning, F339
paul.tremblay@bc.edu

x 20256
978-273-4233 (cell phone)

Required Texts:

Lisa G. Lerman & Philip G. Schrag, *Ethical Problems in the Practice of Law* (4th ed. 2016), ISBN-13: 978-1454863045.

Lisa G. Lerman, *Ethical Problems in the Practice of Law: Model Rules, State Variations, and Practice Questions* (2017-2018 ed.), ISBN-13: 978-1454875352; or any rules supplement published during or after 2014.

Course Information:

This course is offered for 3 credits. Students may elect to receive a fourth credit by writing a research paper, described in a separate memo. At any such student's election, that extra-credit paper may satisfy the law school's upper-level writing requirement.

The course will be graded based upon one three-hour, open-book, in-class examination. Students must also participate in assigned classroom discussion activities, with advance notice provided.

Tentative Syllabus, v. 3

Tuesday, January 16

The Topic: Introduction to the course and its themes; beginning discussion of bar admission issues.

Read: Pages xxxiii-xxxvii; 1-17; 42-59

The Assigned Problem: "Weed," Problem 1-2

Thursday, January 18

The Topics: Admission to the bar, continued; professional discipline.

Read: Pages 19-41; 59-63

The Problem: "The Doctored Résumé," Problem 1-3

Tuesday, January 23

The Topics: Reporting other lawyers' misconduct, and responsibility for subordinate and supervising lawyers' misconduct.

Read: Pages 65–96; Model Rule 8.3 and its Comments

The Problems: “The Dying Mother,” Problem 2-1
“Exculpatory Evidence,” Problem 2-3

Thursday, January 25

The Topics: More on reporting other lawyers' misconduct; introduction to lawyer liability (including malpractice) in various contexts.

Read: Pages 96–140; Model Rules 5.1 and 5.2 and their Comments

The Problem: “The Little Hearing,” Problem 2-4

Tuesday, January 30

The Topics: Confidentiality: The basic principles; and revelation of past criminal conduct.

Read: Pages 141–163; Model Rule 1.6(a), 1.6(b)(1), and Comments [1]–[6], and [16]–[17]; Restatement (Third) of the Law Governing Lawyers, § 60(1)(a) (posted on Canvas)

The Problems: “Your Dinner with Anna,” Problem 3-1
“The Missing Persons, Scene 1,” Problem 3-2

Thursday, February 1

The Topics: Confidentiality continued: The risk of future injury or death.

Read: Pages 163–174

The Problems: “The Missing Persons, Scenes 2 and 3” Problems 3-3 and 3-4
“Rat Poison,” Problem 3-5

Tuesday, February 6

The Topics: Confidentiality: Client fraud, and other exceptions.

Read: Pages 175–196; Model Rule 1.6(b)(2)–(6) and Comments [7]–[15] and [18]–[20]; Model Rule 4.1 and its Comments

The Problems: “Reese’s Leases,” Problem 3-6
“An Investment Project,” Problem 3-7

Thursday, February 8

The Topics: A different version of confidentiality: the attorney-client privilege.

Read: Pages 197–225

The Problem: “Murder for Hire,” Problem 4-1

Tuesday, February 13

The Topics: More on the attorney-client privilege, including the corporate version; plus the work-product doctrine.

Read: Pages 225–238; Restatement and *Samaritan* excerpts (posted on Canvas)

The Problems: “The Secret Confession,” Problem 4-2
“Worldwide Bribery,” Problem 4-3

Thursday, February 15

The Topics: Forming the lawyer-client relationship, principles of agency, plus basic duties of competence.

Read: Pages 239–261; Model Rules 1.1 and 6.5 and their Comments

The Problems: “The Chat Room,” Problem 5-x (posted on Canvas)
“The Washing Machine,” Problem 5-1

Tuesday, February 20

The Topics: Duties owed to clients: Communication and honesty.

Read: Pages 261–293; Model Rule 1.4 and its Comments

The Problem: “Torture,” Problem 5-3

Thursday, February 22

The Topics: Who calls the shots? Plus, ending the relationship.

Read: Pages 293–328; Model Rules 1.2, 1.14, 1.16 and their Comments.

The Problems: “Vinyl Windows,” Problem 5-5
“The Foster Child,” Problem 5-7

Tuesday, February 27

The Topics: Conflicts of Interest, Part 1: Concurrent conflicts in civil matters.

Read: Pages 329–359; Model Rule 1.7 and its Comments

The Problems: “The Injured Passengers, Scene 1,” Problem 6-1
“Food Poisoning,” Problem 6-2
“I Thought You Were *My* Lawyer,” Problem 6-3

Thursday, March 15

The Topics: Conflicts of Interest, Part 2: More concurrent conflicts in civil matters.

Read: Pages 359–75; Model Rule 1.18 and its Comments

The Problems: “The Injured Passengers, Scene 2,” Problem 6-4
“The Prisoners’ Dilemma,” Problem 6-5
“The Secret Affair,” Problem 6-7

Tuesday, March 20

The Topics: Conflicts of Interest, Part 3: Finish concurrent conflicts in civil matters, including organizations.

Read: Pages 377–92; Model Rule 1.13 and its Comments

The Problems: “Motion to Disqualify,” Problem 7-1

Thursday, March 22

The Topics: Conflicts of Interest, Part 4: More concurrent conflicts—criminal, family, and insurance defense.

Read: Pages 393–426; Model Rule 1.4 and its Comments

The Problems: “Police Brutality, Scenes 1, 2, and 3” Problems 7-3, 7-4,
and 7-5;
“Representing the McCarthys,” Problem 7-7

Tuesday, March 27

The Topics: Conflicts of Interest, Part 5: Successive conflicts.

Read: Pages 427–459; Model Rule 1.9 and its Comments

The Problems: “Keeping in Touch,” Problem 8-1
“Toxic Waste,” Problem 8-2

Thursday, March 29

No Class: Easter Recess

Tuesday, April 3

No Class: Administrative Monday

Thursday, April 5

The Topics: Conflicts of Interest, Part 6: Imputed conflicts.

Read: Pages 461–75; Model Rule 1.6(b)(7) and Comments 13 and 14; and Model
Rule 1.10 and its Comments

The Problems: “A Brief Consultation,” Problem 8-3
“The Fatal Shot,” Problem 8-4

Tuesday, April 10

The Topics: Conflicts of Interest, Part 7: Conflicts between lawyers and
clients—legal fees.

Read: Pages 477–514; Model Rule 1.5 and its Comments

The Problems: “An Unreasonable Fee?,” Problem 9-1
“Rising Prices,” Problem 9-2

Wednesday, April 11 [A Makeup Class at noon in EW 100]

The Topics: Conflicts of Interest, Part 8: Further conflicts between lawyers and clients.

Read: Pages 514–554; Model Rule 1.8 and its Comments

The Problems: “The Impoverished Client,” Problem 9-3
“Starting a Business,” Problem 9-x (posted on Canvas)

Thursday, April 12

The Topics: Duties to courts and adversaries, Part 1: Candor to the court.

Read: Pages 609–31; Model Rule 3.3 and its Comments

The Problems: “Flight from Sudan, Scenes 1 and 2,” Problems 11-2 and 11-3

Tuesday, April 17

The Topics: Duties to courts and adversaries, Part 2: More candor to the court.

Read: Pages 631–40

The Problems: “The Drug Test,” Problem 11-4
“Refreshing Recollection,” Problem 11-6

Thursday, April 19

The Topics: Duties to courts and adversaries, Part 3: Concealment/sharing of physical evidence; discovery obligations.

Read: Pages 640–65; Model Rule 3.4 and its Comments

The Problems: “Child Pornography,” Problem 11-7
“The Damaging Documents,” Problem 11-8

Monday, April 23 [A Makeup Class at noon in EW 100]

The Topics: Communications with others: third parties, represented and unrepresented.

Read: Pages 687–719; Model Rules 4.2 and 4.3 and their Comments

The Problems: “Emergency Food Stamps,” Problem 12-1

“The Complaining Witness,” Problem 12-2

Tuesday, April 24

The Topics: Duties of prosecutors; conduct prejudicial to the administration of justice.

Read: Pages 719–43; Model Rules 3.8 and 4.2 and their Comments

The Problems: “The Prosecutor’s Masquerade,” Problem 12-4
“The Corrupt Governor,” Problem 12-5

Thursday, April 26

The Topics: Multijurisdictional practice (“MJP”) and multidisciplinary practice (“MDP”).

Read: Pages 795–813; 875–900; Model Rules 5.4 and 5.5 and their Comments

The Problem: “Special Education,” Problem 13-3

A Note About Class Attendance: The Academic Policies and Procedures Handbook states the following: “Regular and punctual class attendance is required. Failure to attend classes regularly is grounds for exclusion from the exam or reduction in the final grade at the discretion of the professor. It is the responsibility of each student to contact his or her instructor and to request to be excused for any unavoidable situation necessitating absence from classes or to provide the Dean of Students with documentation of the medical or family emergency that may have contributed to an unexcused absence.” As an ethics teacher, I respect the Handbook. Please let me know if you need to miss a class.

Ethics Examples for the CEC Seminar
Wednesday, March 21, 2018¹

1. Bryan represents ABC, Inc., a nonprofit corporation he recently established. ABC has three board members, but our primary—and perhaps *only*—contact is with Mary McCarthy, who told us to list her as president. Earlier, Mary described the founders group as including differing factions that wanted different goals and identities for the organization going forward. This leads to these questions:

- a) What should Bryan do differently, if anything, to make proper decisions for the organization going forward?
- b) Before we incorporated ABC, who (or what) was our client? Who (or what) is a former client now, if anyone or anything?
- c) Separate from all of that, Mary would like to add the BC Legal Services LAB name and logo to the ABC website. Is that OK?

2. a) Andrew represents Skating Teens, Inc., a Massachusetts nonprofit organization in good standing. STI organizes ice hockey events for girls. Its founder, president, and most active participant is Dave Gariepy. Dave needs guidance from the CEC about his liability—including any risks to his house or his car, for example—should some girl get hurt while engaged in STI activities. Andrew needs guidance about his counseling responsibilities in response to these questions from Dave.

b) STI has become more well-known lately thanks to some national sports news coverage. Organizers of girls hockey leagues in other states have been contacting Dave, wanting to become a part of STI. Dave has asked us to assist these founders in other states to create nonprofit organizations there, and to apply for tax-exempt status for them. If we had the resources, could we do that?

3. a) Heekyoung has assisted Good Deeds in Our Neighborhood, Inc., a nonprofit organization the CEC created last semester, to apply for 501(c)(3) status using the Form 1023-EZ. GDION's lead founder and most prominent spokesperson is Henry Cassidy. Last semester, Henry's student Zach learned with some certainty that Henry was not very honest about a lot of things he would tell Zach. What obligation do we have in aiding Henry to apply to the IRS for the tax exemption using the streamlined Form 1023-EZ?

b) Heekyoung, consistent with Bryan and Junshi on their separate matters, has advised her client GDION that it should not solicit funds before applying to the Massachusetts AG for a certificate of solicitation. She has also told the client that once the forms have been sent to the AG it is less of a problem soliciting funds, even if technically the AG's directive is that a nonprofit must have a certificate of solicitation. Is that advice proper? If so, how?

¹ All client names and missions have been changed for distribution at the AALS Clinical Conference.

4. a) Junshi's client West Roxbury Racers (WRR) is a Massachusetts nonprofit organization, established before the client came to the CEC. WRR organizes bicycling excursions. It would like to have 501(c)(3) status. Junshi is telling André, WRR's current president, that WRR should engage in more educational activities if it can ever qualify as a tax-exempt organization. If André agrees, what responsibilities, if any, does Junshi have to ensure that WRR is actually engaged in that work before assisting the organization to complete the Form 1023-EZ?

b) If Junshi has any doubts about the above, could he, or should he, insist that WRR complete a standard Form 1023, which costs \$225 more, takes about six months longer to process, and has a greater chance of an IRS rejection?

5. a) Hailey's client Banjos for All, a sole proprietorship owned by Antoinette Cepeda, is an increasingly successful small business, with a growing customer base. BFA provides its banjo lessons through two or three independent contractors Antoinette pays through a fee-for-service basis. Hailey will advise Antoinette soon about the strict employment laws in Massachusetts. If Antoinette chooses (as many small startup businesses do) to continue to treat the helpers as independent contractors, what are Hailey's responsibilities?

b) Hailey's other client, Defense for Workers Everywhere, is an immigrants-rights nonprofit in Lowell. DFWE is run by Rob Chambers, a charismatic and tireless advocate for undocumented workers. But Rob is not on the governing board. DFWE the formal organization has three board members, who Rob admits are entirely titular. One of Hailey's assignments is to arrange a governance structure where the public face will show the three board members, all safe professionals, but the actual governance will be in the hands of immigrants, who prefer not to have their names on public documents. Is there anything that would limit Hailey's creative work to accomplish that mission?

6. a) Sam has represented Linda Enrico, the entrepreneur who is developing a business involving the sale of a health food product using an extract from hemp, which is related chemically to marijuana, and also marijuana products once their sale becomes legal in the Commonwealth. Sam just established an LLC for Linda's business (LE Ventures LLC), and will advise her about the LLC's operating agreement. Even after the sale of recreational marijuana becomes legal in Massachusetts, it will remain a federal crime. Does that reality limit in any way Sam's work for the LLC or Linda?

b) What, if anything, is Linda's client status now that Sam has established the LLC?

c) Sam has also been developing a membership agreement for FabLabs Together, Inc., the artisan and entrepreneurship community workplace in Plymouth, MA. One aspect of the membership agreement (as we will all recall) is to assign to FabLabs Together some share of the royalties earned from the products created at FabLabs Together by the members who participate. In crafting that agreement, does Sam have any duty to attend to the interests of the members beyond what the FabLabs Together organizers request? Does his agreement need to be fair in any objective way?