

Professional Responsibility and Ethics

The Ethics of Criminal Advocacy: Prosecution and Defense Perspectives

Law 6218-30

Professor Roger Fairfax

Syllabus

This section of the required Professional Responsibility and Ethics course will focus on issues of professional responsibility and ethical conduct in the context of the criminal advocacy. Like the traditional sections of the PRE course, this section will engage with the ABA Model Rules of Professional Conduct and other core standards of professional responsibility. However, this section will take up many of the issues through the lens of the prosecution and defense functions.

Learning Outcomes: A student who completes this course will have exposure to the professional responsibility and ethical challenges particularly facing prosecutors and criminal defense attorneys, and will have familiarity with the core standards of professional responsibility.

Required Materials: The core materials include: ABA Model Rules of Professional Conduct [as amended through 2018]; ABA Model Code of Professional Responsibility [as amended through 1981]; and ABA Standards on Criminal Justice (Prosecution Function and Defense Function) (4th ed., 2015). All of these core materials are available in the public domain. Please note that students must bring a *printed* hardcopy of these core standards for use in class and on the final examination. Additional assigned readings will be made available via email or in class.

I. Introduction to the Study of Legal Ethics

Class #1 **Overview and History of Regulation of the Legal Profession**

Additional Assigned Readings

Class #2 **Attorney Discipline and Regulation**

Readings: ABA Model Rules of Professional Conduct 5.5, 8.1, 8.2, 8.3, 8.4, 8.5
ABA Model Code of Professional Responsibility, Canons 1, 3

Additional Assigned Readings

II. Professional Responsibility, Legal Ethics, and the Criminal Defense Function

Class #4 The Role of Defense Counsel

Readings: ABA Model Rules of Professional Conduct, Preamble, Scope, 1.0, 6.1, 6.2, 6.3, 6.4, 6.5
ABA Model Code of Professional Responsibility, Preamble, and Canon 8
ABA Standards on Criminal Justice (Defense Function) 4-1.1, 1.2, 1.6, 1.12, 1.13, 2.1

Additional Assigned Readings

Class #5 Competence of Defense Counsel

Readings: ABA Model Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 2.1
ABA Model Code of Professional Responsibility, Canon 6
ABA Standards on Criminal Justice (Defense Function) 4-1.3, 1.9, 3.1, 3.2, 3.3, 3.6, 3.7, 3.8, 3.9, 4.1, 4.6, 5.1, 5.2, 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 9.6

Additional Assigned Readings

Class #6 The Duty of Zealous Advocacy and its Limits

Readings: ABA Model Rules of Professional Conduct 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.9, 4.1, 4.2, 4.3, 4.4
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Defense Function) 4-1.3, 1.4, 3.7, 3.8, 4.2, 4.3, 4.5, 4.6, 4.7, 7.2, 7.4, 7.5, 7.8, 7.9, 7.10

Additional Assigned Readings

Class #7 The Crisis of Indigent Criminal Defense

Readings: ABA Model Rules of Professional Conduct, Preamble, Scope, 1.0, 6.1, 6.2, 6.3, 6.4, 6.5
ABA Model Code of Professional Responsibility, Preamble, and Canon 8
ABA Standards on Criminal Justice (Defense Function) 4-1.1, 1.2, 1.8, 2.1

Additional Assigned Readings

Class #8 Confidentiality

Readings: ABA Model Rules of Professional Conduct 1.6, 1.8, 1.9, 1.14, 1.18
ABA Model Code of Professional Responsibility, Canon 4
ABA Standards on Criminal Justice (Defense Function) Standard 4-2.2, 3.1

Additional Assigned Readings

Class #9 **Conflicts of Interest**

Readings: ABA Model Rules of Professional Conduct 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.18, 2.3
ABA Model Code of Professional Responsibility, Canon 5
ABA Standards on Criminal Justice (Defense Function) Standard 4-1.7, 3.4

Additional Assigned Readings

III. Professional Responsibility, Legal Ethics, and the Prosecution Function

Class #10 **The Prosecutorial Role**

Readings: ABA Model Rules of Professional Conduct 3.8
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Prosecution Function) 3-1.1, 1.2, 1.3, 1.4, 1.8, 1.13, 2.1, 2.2, 2.3, 3.1, 3.2

Additional Assigned Readings

Class #11 **The Prosecutor and Discovery**

Readings: ABA Model Rules of Professional Conduct 3.8
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Prosecution Function) 3-5.4, 5.5

Additional Assigned Readings

Class #12 **Prosecutorial Discretion and its Regulation**

Readings: ABA Model Rules of Professional Conduct 3.8
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Prosecution Function) 3-4.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.6, 5.7, 5.8, 5.9

Additional Assigned Readings

Class #13 **Prosecutorial Misconduct, Wrongful Convictions, and the ‘Duty to Do Justice’**

Readings: ABA Model Rules of Professional Conduct 3.8, 4.1, 4.2, 4.3, 4.4
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Prosecution Function) 3-1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.12, 2.5, 3.1, 4.1, 5.4, 5.5, 7.1, 8.1, 8.3
ABA Standards on Criminal Justice (Defense Function) Standard 4-9.4

Additional Assigned Readings

IV. Other Topics in the Ethics of Criminal Advocacy

Class #14 Relations with Witnesses, Jurors, Third Parties, Opposing Counsel, and the Tribunal

Readings: ABA Model Rules of Professional Conduct 3.3, 3.5, 3.6, 4.1, 4.2, 4.3, 4.4, 8.2, 8.4
ABA Model Code of Professional Responsibility, Canon 7
ABA Standards on Criminal Justice (Defense Function) 4-7.1, 7.2, 7.3, 7.4, 7.6, 7.7, 7.8
ABA Standards on Criminal Justice (Prosecution Function) 3-3.2, 3.3, 3.4, 3.5, 5.1, 5.3,
6.2, 6.3, 6.4, 6.7

Additional Assigned Readings

Class #15 Marketing, Accepting, and Terminating Representation

Readings: ABA Model Rules of Professional Conduct 1.5, 1.15, 1.16, 1.18, 7.1, 7.2, 7.3, 7.4, 7.5
ABA Model Code of Professional Responsibility, Canon 2
ABA Standards on Criminal Justice (Defense Function) Standard 4-3.1, 3.4, 3.5, 3.10, 3.11

Additional Assigned Readings

Class #16 Ethical Issues in White-Collar Criminal Practice

Readings: ABA Model Rules of Professional Conduct 1.6, 1.7, 2.4, 3.4, 4.1, 4.2, 4.4, 5.7, 6.4, 8.4,
1.13

Additional Assigned Readings