

**The John Marshall Law School
LL.M. Program in Information Technology**

IT 812

**THE PROFESSIONAL RESPONSIBILITY OF
A TECHNOLOGICAL LAW PRACTICE**

Spring 2003
Wednesday, 6:00 pm to 8:00 pm

SYLLABUS

Purpose of the Course: This course explores emerging developments in the use of the Internet as a vehicle to facilitate, advance and deliver legal services in ways designed to maximize the opportunities and potential of the lawyer, and examines the lawyer's obligations, particularly to the rules of professional responsibility, in the use of these methods. The course serves as a micro-analysis of the application of pre-existing policies to innovations in commerce as a whole and the legal profession in particular. The course examines:

- Opportunities to redefine the delivery of legal services within ethical constraints;
- The application of policies that advance core values to technological innovations in the delivery of legal services;
- Difficulties resulting from the contrasting fast pace of technological capabilities and the deliberate pace of policy-making; and
- The relationship between professional responsibility and moral values in a technological law practice.

Class 1: Real world ethics in a cyber-based practice. A course overview examining the application of pre-existing ethics rules to technology-based practices.

Suggested readings: [Cyberlawyers: Impact of the Internet on the Law Practice and Legal Ethics](#), McCauley
[E-Ethics: Being a Professionally Responsible Attorney in the Age of Information](#), Theoharis
[Regulation Cyberspace Won't be Easy](#), Beck
Transforming the Law, Susskind

Class 2: The application of the rules of professional responsibility. When do we create the attorney-client relationship in cyberspace? Are alternatives to regulation effective?

Assigned readings: [ABA Model Rules of Professional Conduct](#) – Please scan the rules & comments
[Internet Sites Offer Their Visitors Real Sense of Place](#)
[Attorney-Client Relationship in Cyberspace](#): The Peril and the

Promise
[Best Practice Guidelines](#)

Suggested readings: [The New Civic Virtue of the Net](#), Post and Johnson
[Dispute Resolution in Cyberspace](#): Engineering a Virtual
Magistrate System, Post

Class 3: Jurisdiction and the Unauthorized Practice of Law. Can an ajurisdictional medium be regulated through a state structure?

Assigned readings: [Attorneys on the 'Net: Jurisdiction](#)
[Birbrower, Montalbano, Condon & Frank, P.C. v. Superior](#)
Court of Santa Clara County
Pennsylvania Inquiry 98-85, Lawyers' Web Pages: Disciplinary
Authority, Choice of Law and Jurisdiction (handout)
[Iowa Opinion 96-14](#)
[ABA Model Rule 8.5](#)

Suggested readings: [The Ethical Boundaries of Selling Legal Services in Cyberspace](#)
[Jurisdiction in a World Without Borders](#), Burke

Class 4: Unbundled legal services, casual advice, competence and the scope of representation. What are the professional obligations associated with the use of technology to provide less than full representation?

Assigned readings: [MR 1.1 and 1.2, with comments](#)
Casual Legal Advice on the Internet, Krakaur (handout)
[Improving the Delivery of Legal Services](#) Through the
Internet
Assigned websites

Suggested readings: Special Report: Online Advice (handout)

Classes 5 and 6: Confidentiality and Privacy: Expectations and Realities. Discussion issues include online client screening and intake, encryption of client communications, misdirected communications, intra-firm monitoring, stored data and ASP's, and the role of disclaimers.

Assigned readings: [MR 1.6 and its comment](#)
[MR 1.18, comment and report's notes](#)
[ABA Formal Opinion 99-413](#), Protecting the Confidentiality
Of Unencrypted E-mail
[Illinois State Bar Assoc. Advisory Opinion 96-10](#)
ABA Formal Opinion 92-368, Misdirected Communications
(handout)
[Arizona Opinion 02-04](#)
[New York State Opinion 749](#)

[ASP Goes Bankrupt](#) (handout)
[Do Not Read Unless You Agree to the Following](#)
ALAS Bulletin No. 2000-15 (handout)
Assigned website disclaimers

Suggested readings: [When E-Mail Messages Come With a Tail of Legalese](#)
[Computer Forensics Lab Plumbs](#) the Depths of E-mail
Evidence
Disappearing Inc. makes e-mail messages secure (handout)
[The Use of Internet Website Disclaimers by Attorneys](#),
Biernath, Ellerbee, Lamberth and Mannion

Class 7: Conflicts of Interest in Cyberspace: On the Internet, No One Knows You're a Dog

Assigned readings: [MR 1.7 through 1.10 and 1.14, with comments](#)
Assigned websites

Class 8: The Virtual Law Firm, MDP's, VC's and Fees. Discussion issues include the professional independence of a lawyer, fee-splitting and the resulting limitations on mechanisms to deliver legal services.

Assigned readings: [MR 1.5, 5.5, 5.7 and 7.5, with comments](#)
[Report of the ABA Commission on Multidisciplinary Practice](#)
Assigned websites

Suggested readings: [State MDP Reports](#)

Class 9: Other Fee Issues: Examines the use of technology-based alternatives for the delivery of legal services, including database management, document assembly and expert systems, and the dimensions of compensations.

Assigned readings: Productize This! (handout)
[Legal Advice Without the Lawyers](#)
[Automated Legal Documents](#)

Class 10: Law Firm Domain Names. Issues including misleading names, trademarks, sabotage and parody.

Assigned readings: [MR 7.1 and 7.5, with comments](#)
[Ohio Opinion 99-4](#)
[AZ Opinion 2001-05](#)
iWinCases.Com (handout)
[Electronics Boutique Holdings Corp. v. Zuccarini](#)
[A Squatter's Grudge](#)
When Domains Go Unrenewed, the Opportunists Swoop In
(handout)

Big Hack Attack

Suggested readings: [What's in a Law Firm Site Name?](#)
When Your Site is Ridiculed (handout)

Class 11: Client Development 1. Application of the existing ethics rules, the false and misleading standard, retention requirement, labeling and required disclaimers, lawyer spamming

Assigned readings: [MR 7.1 through 7.5, with comments and reporters' notes](#)
[A Re-Examination of the ABA Model Rules](#) of Professional
Conduct Pertaining to Client Development in Light of
Emerging Technologies
[Ohio Opinion 2000-6](#)
[In re Canter](#)

Class 12: Client Development 2. Discussion issues involve the challenges to the ethics rules resulting specifically from technology-based marketing, including meta tags and links.

Assigned readings: [District of Columbia Opinion No. 302](#)
[New York City Bar Opinion 2000-1](#)
[New Mexico Opinion 2001-1](#)
[District of Columbia Opinion No. 316](#)
[South Carolina Opinion 01-03](#)

Class 13: The Ethics of Shared Information. Can too much information be a bad thing? The discussion looks at class actions, multiple actions, sealed firms, terms of settlement and electronic access to public information.

Assigned readings: [Disappearing Decisions](#)
[Class Action](#)
[Judge Denies Studio's Bid to Keep Testimony Off the Web](#)
[Plaintiff Gets OK to Post Documents on Web Site](#)
[Courts Consider Privacy Perils of Electronic Filing](#)
Virginia Divorce Lawyers Oppose Electronic Access to
Files (handout)

Class 14: The Morality of the Delivery of Legal Services Through Technology. The discussion looks beyond the ethics rules for appropriate conduct.

Assigned readings: [Norton Rose press release](#)
[Posting Leaves Greedy Associates Antsy](#)

Class 15: Paper Presentations. Students will have an opportunity to present their term papers for discussion.

Instructor

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Course Overview

This course examines emerging developments in the use of the Internet as a vehicle to advance the practice of law and maximize the opportunities of lawyers in the delivery of their services, while exploring the issues that pertain to the ethics, professional responsibility and moral values as lawyers use technology to advance their practices. Students are expected to advance the discussion through their participation in class. Several reading assignments are set out which are designed to give you background and insight into the issues to be discussed in each class. A few of these readings are lengthy law review articles, but most are listserv notes, web sites and on-line newspaper-style articles. Most of the materials are online and readily accessible. If you come across any cold links, please report them to me ASAP. Some readings are available only in hard copy and will be passed out prior to the class in which they are discussed.

We will be making frequent reference to the ABA Model Rules of Professional Responsibility. Many of the Model Rules were amended in 2001, but these rules have not generally been adopted by the states. Therefore, we will be discussing both the new rules and those that were in place in 2001. You should have both sets of rules and bring them to class each week.

Grading

Participation: Your class participation will constitute 40 percent of your final grade. Participation involves meaningful contribution and advancement of the discussion. Although you may not participate without attending, you should not assume that attendance is in and of itself satisfactory participation.

Paper: A final paper will account for 60 percent of your grade. The paper should be approximately 20 double-spaced pages of text, plus endnotes or footnotes. It should reflect good research, be current and, above all, advance the scholarship of the subject matter. In other words, you should boldly go where no one has gone before. Creative analysis is highly recommended.

A short statement of your topic is to be submitted by March 26th. I will review this with you on April 2nd or earlier if you would like. The paper is due on April 30th. You may turn your paper in earlier. However, papers may not be turned in after the 30th unless you have a very compelling excuse. You may submit your papers by email or on disk, but you must submit a hard paper copy as well.

The last class period is dedicated to presentations of papers on a voluntary basis. This is an opportunity for students to increase their class participation.

