LEGAL PROFESSION

UC IRVINE LAW SCHOOL Syllabus for Professor Southworth Fall 2023 Law 507, Section 1 Course Code 84210

Instructor Information

Professor Ann Southworth Office: Law 3500 asouthworth@law.uci.edu

Faculty Assistant: Carolina Jimenez cacosta@law.uci.edu

Office Hours

Mondays, Noon-1 p.m., 2:45-3:30 p.m., and other days by appointment.

Class Meetings

Our regular classes will meet 10:15-11:50 a.m. on Mondays and Wednesdays in EDU Room 1331. We will have no class on Wednesday, August 30th, but we will have a make-up class on Tuesday, September 19th, at 1:45-3:20 p.m. On speaker panel days (listed on the schedule below), we will meet at the Continuing Education Building, Yosemite Room, 10:30-11:45 a.m.

Course Description

This course is designed to prepare you to chart successful, rewarding, and responsible careers in law. It will provide information and perspectives about the legal profession and law practice that will help you navigate your futures. You will learn about lawyers in different kinds of organizations and institutions. Drawing from cross-disciplinary perspectives (in sociology, philosophy, organizational behavior, economics, psychology, and history), the course will also teach you about factors that tend to influence lawyers' behavior and the ways in which lawyers' work and legal practice can influence the societies in which they are embedded. Critical to this orientation, then, is thinking about your own place as a future lawyer. How do you become a "good" lawyer? What *is* a good lawyer? How might various options and choices influence your path?

One of the purposes of this course is to help you decide what to do with your law degree and to appreciate the tradeoffs that various choices entail. To that end, we will systematically examine the different practice settings in which lawyers work, including prosecutors' offices, public defender organizations, small, medium, and large private firms, corporate counsel offices, nonprofit advocacy groups, legal aid, and government agencies. That information will help you assess the fit between various types of practices and your own character traits, values, strengths, and aspirations. Even if you already have decided how to use your law degree, this class will provide a valuable overview of the legal profession and an appreciation for the enormous range of things that lawyers do.

Like courses typically offered at other law schools to satisfy the American Bar Association professional responsibility requirement, this course will teach you the Model Rules of Professional Conduct and other elements of the law that governs lawyers. We will consider gaps and ambiguity in that law and

how lawyers respond (and should respond) to such legal uncertainty. This course will lay the groundwork for understanding the ethical boundaries in legal practice across contexts.

However, we will also consider how basic questions about lawyers' ethics and social responsibilities are contested, even within the profession itself. Legal historian Robert Gordon says this about the dilemmas of professional practice:

There simply is no standard conventional wisdom or consensus, and certainly no source of unambiguous directive rules, that novice lawyers can simply sign on to and complacently accept—at least, none that provides any real guidance to resolving the hard dilemmas of professional practice life. Like anything else really important, the practice of law is a messy, dispute-riddled, contentious, politicized field of ideas and action, calling for sustained reflection and complex discretionary judgment.¹

Heeding Gordon's warning, this course departs from standard legal ethics courses in its emphasis on the relationship between lawyers' ethics and the practice contexts in which lawyers work. A major premise of this course is that lawyers' workplaces are arenas of professionalism, where lawyers' views about their roles and obligations take shape. Those arenas are at least as important as ethics rules, disciplinary committees, liability controls, and lawyers' individual consciences in determining how lawyers frame and resolve ethical conundrums. Therefore, we will study legal ethics in context, paying close attention to lawyers' work settings, economic pressures, and institutional roles.

As future leaders of the profession, you also need to understand issues and problems that confront the profession as a whole. Such issues include the legal services market and its regulation, the distribution of legal services, the profession's demographics and social structure, lawyers' roles in regulatory processes, and the implications of technology and globalization. Whether you like it or not, friends and strangers alike will begin looking to you for commentary on the legal profession and its function in American society. You will be held to account for the public's general skepticism about lawyers. Responding to questions about the profession (and to lawyer jokes) will be easier once you have developed well-informed views about those issues. This course will push you to decide which criticisms are justified, what policy responses are appropriate, and which sectors of the profession will win and lose under various reform proposals.

The course is divided into six parts. Part I introduces the concept of a profession, the market for legal services and its regulation, perspectives on the lawyer's role, professional identity, diversity of the legal profession, and other major concepts and themes that will arise throughout the course. Part II examines the attorney-client relationship, including the allocation of decision-making authority in the relationship and various rules that protect clients against lawyer overreaching. We will then pause to consider two categories of lawyers whose conceptions of role and relationships with clients raise especially dramatic and interesting questions: criminal defense lawyers and prosecutors. Part III focuses on the attorney-client privilege and the duty of confidentiality. We will consider justifications for confidentiality, the duty's exceptions, and its applications to organizational clients. Part IV covers conflicts of interest—a general category of rules designed to ensure that lawyers serve clients loyally. Part V examines issues of professionalism as they arise in the many settings in which lawyers practice. We will first consider lawyers who serve large organizational clients, beginning with lawyers in large law firms and then turning to inhouse counsel for corporate clients and lawyers who work in government. We then examine the public interest sector—lawyers in legal assistance programs and nonprofit advocacy groups. Next, we will study lawyers in solo and small firms, who represent primarily individuals and small businesses, and lawyers who represent primarily plaintiffs. Finally, we will consider mediators, arbitrators, and judges. Part VI addresses issues facing the entire profession, including legal education, unauthorized practice and nonlawyer involvement in the provision of lawyer services, practice across borders and boundaries, lawyer satisfaction and well-being, technology's influence on practice, and the legal profession's future.

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¹ Susan D. Carle, ed., Lawyers' Ethics and The Pursuit of Social Justice xvi (2005).

Learning Goals and Methodology

Over the course of the semester, you will be expected to:

- Know the basic rules and doctrines that apply to the legal profession;
- Learn about the variety of practice settings in which lawyers work and the different pressures these practice settings generate;
- Acquire the tools you'll need to unpack and resolve the legal and ethical issues that lawyers confront in everyday practice;
- Reflect on, analyze and discuss the relationship between your personal values, identity and future professional choices;
- Think critically about diversity, identity, equity, and inclusion across practice areas, experiences, and contexts;
- Identify some of the historical and sociological factors that have influenced the composition and development of the legal profession, the market for legal services, access to justice, and the rules of professional conduct; and
- Consider how existing and emerging trends are likely to shape the delivery of legal services and the future of legal practice and the legal profession.

To accomplish these purposes, we will use a combination of written materials, speakers, and group exercises. We will provide you with empirical accounts of various practice settings, and we will convene panels of lawyers from each practice type to discuss their work and experiences. You will also participate in in-class activities, panel-led discussions, and role-playing exercises built on typical problems confronted in practice, allowing you to imagine how you would respond to challenges that arise in the everyday lives of real lawyers.

Course Materials

The principal required text is Ann Southworth and Catherine Fisk's *The Legal Profession: Ethics in Contemporary Practice* (2d ed. 2019). All other readings will be available on the Canvas course website ("Canvas"). These include the ABA Model Rules of Professional Conduct, the 2023 Update to the textbook, other rules and statutes, and various academic and popular press articles. Canvas includes links to on-line resources, and the academic and popular press articles will be available there. If you prefer to have the Model Rules in book form, you may purchase a copy from the UCI Bookstore.

I do not recommend that you purchase supplemental study guides. The content of this course is sufficiently different from other legal profession and professional responsibility courses that commercially available sources are unlikely to be helpful.

Requirements, Assessments, and Grades

Your final grade will be based on multiple assignments and assessment methods:

- Class Participation 20%
 - o Panel participation (10%)
 - General class participation and attendance, role-play exercises, and a brief reflection memo based on one of those exercises (10%)
- Questions for guest speaker panels
 Quizzes
 Lawyer Interview Paper (due Friday, December 1, 2023)
 30%

• Final Examination 35%

Class Participation (Student Panel Participation, General Class Participation (including role-play exercises) and Attendance) (20% total)

This is a course that expects (and depends on) your class participation and involvement. Class attendance is mandatory (see additional notes below about exceptions), and an unreasonable number of absences will result in ineligibility to take the final examination and, therefore, no credit for the course. The American Bar Association asks law schools to certify attendance. I therefore take attendance at the beginning of each class and speaker panel using an electronic sign-in system. You are responsible for signing in each time you are present.

Learning is a collaborative endeavor, and we share responsibility for making this a good educational experience. I encourage your engagement and productive participation and ask that you help facilitate others' participation. Effective lawyering requires good listening and communication, cross-cultural exchange, teamwork, initiative, responsibility, strategic judgment, planning and prioritizing, timeliness, respect, life-long learning, and more. Take the opportunity to develop these skills this semester and beyond.

In addition to requiring general class participation, I will use a student panel system whereby each of you will be "on call" for 5 classes. The group assigned to form the "panel" for the day's class (usually 8-11 students) should be prepared to answer the study questions and problems contained in the reading assignment and to lead discussion. In addition, those on panel are required to send me an email in advance of class offering at least one comment or question about the assigned reading. Please sign up through Canvas for five (5) student panels by end of the day on Monday, August 21st.

Although I expect those students who are on panel to play a particularly active role in class discussions, I expect all students to participate even when not on panel. I may call on you, whether or not you are on panel for that day, to respond to questions or to analyze problems in class.

You will also participate in at least two role-play exercises this semester. One will be a mandatory negotiation exercise in which all students will participate, and the other will be a role-play exercise for which you will volunteer. Before the class on negotiation, you will be required to submit a short reflection memo. I have highlighted the role-play exercises in the course schedule below. I will post instructions and seek volunteers (except as to the negotiation exercise, in which all students will participate) close to the dates of the role-plays. Generally, students on panel on days with role-play exercises will have first preference on roles.

If you are anxious about participating in class discussions and role-play exercises, please talk to me early in the semester so that we can work together to develop a plan to ensure that you can participate effectively.

Questions for Speaker Panels (9%)

In addition to panel and general class participation, you must also submit one thoughtful question before each speaker panel. **Questions are due via Canvas by noon one school day before the panel.** (For speaker panels on Mondays, that will mean that the due date for questions will be at noon on the previous Friday.) Submitting your question in advance will enable the Legal Profession faculty to moderate a lively discussion. It will also help you to develop an important skill, useful to lawyers regardless of practice area. Drafting well-phrased questions is often critical to successfully preparing for an encounter with a client, colleague, opposing counsel, witness, mediator, or judge.

Quizzes (6%)

We will have three short quizzes during the semester, designed to ensure that you are learning the relevant rules of professional responsibility. The quizzes will be available on Canvas. You will take those quizzes outside of class. You will receive full credit for a quiz if you complete it by the due date and answer

80 percent of the questions correctly. You will receive partial credit for a quiz submitted on time but with fewer correct answers.

Lawyer Interview Paper (30%)

You are required to write a reflective analytical paper of *no more than 3,000 words* based on an interview (roughly one hour) with a practicing lawyer located anywhere in the world. You may interview a lawyer you know or have met, a lawyer assigned to you as a mentor, or any other lawyer you choose. If you are unable to identify a lawyer to interview, I will help you find one.

The paper should focus on any issue(s) raised by or relating to the course materials. It could, for example, address the sources of satisfaction and disappointment in the lawyer's career, reflections on the current state and/or future of the profession, issues relating to the market for legal services, the organizations or conditions of practice, relationships with clients, or other issues relating to legal ethics, professionalism, or practice settings. Please plan to consult with me individually to identify and develop an appropriate paper topic. This is an opportunity for you to personalize the course for yourself and perhaps also to prepare you to bring perspectives you learn from the interview to our class discussions.

The paper is due on Friday, December 1st, 2023, at 5 p.m. (via Canvas). Your paper must document its word count, the date and length of the interview, and whether you conducted it in person, by phone, or by video conferencing application. At the time you submit the paper, you must also submit, as a separate document, a short abstract of the paper. (An abstract is a short paragraph summarizing the paper's content.) In grading, I will emphasize originality, analytical rigor, organization, clarity, style, and good use of interview data and, if relevant, course materials. I will post on Canvas more information about the paper, including instructions, advice on choosing a topic, examples of topics explored by students in past years, and a suggested timeline/checklist.

Final Examination (35%):

You will have a final examination at the end of the semester. We will discuss the exam format and expectations closer to the time of the exam. I will post examples of past exams and memos explaining the issues on Canvas.

I will make an optional mid-semester practice examination available in October, and I will distribute a sample answer. I will not grade the practice exam, and it will not count in your grade for the course. I would be happy to review your midterm answers with you during office hours.

Additional Notes

Email Policy. I am generally available by email and will do my best to respond within 24 hours.

Office Hours. My office hours will be Mondays Noon-1 p.m., 2:45-3:30 p.m., and by appointment. I encourage you to meet with me individually or in small groups by signing up for slots during my regular office hours through Canvas or contacting me by email to set up another time to meet. I would be happy to discuss anything related to the course, navigating law school generally, legal careers, and anything else of interest.

I generally encourage you to participate in office hours as you have questions. You should also meet with me once, preferably individually, no later than Friday, October 6th to discuss possible topics for your lawyer interview paper.

Canvas. This platform, along with email, will provide the primary mode of communicating about logistics relating to this class. Unless otherwise indicated, please submit all questions for guest speakers, answers to quizzes, the reflection memo for the negotiation exercise, the lawyer interview paper, and other course assignments through Canvas. I strongly recommend that you subscribe to Canvas notifications to ensure that you do not miss any updates or notices.

Attendance Expectations. I expect you to attend all classes, guest speaker panels, and class-related activities, and to arrive at each one on time. You must be present for the duration of all class sessions or class-related meetings; failure to attend a class for its entire duration counts as an absence.

If you need to miss a class or other class-related meeting due to an unavoidable urgent matter, illness, or family care-related reason, please contact me by e-mail <u>before</u> that class to request an excused absence. If you are not comfortable explaining the reason for your absence to me, please contact the Assistant Dean for Student Services, Kyle Jones (kjones@law.uci.edu). I understand that the COVID-19 pandemic may pose unavoidable challenges for some of us with respect to attendance, and I will work with you to accommodate absences due to illness and family-related care obligations.

UCI Law's *Policy on Attendance and Verification of Student Identity* requires you to verify your attendance at every class session using UCI Law's secure login and attendance password system (https://apps.law.uci.edu/shib/attendance) ("UCI Law Attendance App"). Students must sign into every class session by entering a "word of the day" that I will provide at the beginning of each class. It is a violation of the Honor Code to share the "word of the day," to share your UCINetID credentials with anyone else, to login on behalf of another person to enter the "word of the day" for them, or to enter the attendance "word of the day" password when you are not present in the online class session.

If you miss a class, you are responsible for learning the information you missed, including but not limited to watching the class recording; obtaining any handouts, assignments, or other materials that I distributed in your absence on Canvas or via e-mail; and handing in any assignments that were due in the class.

Honor Code. As with any of your courses, you are subject to the School of Law Honor Code and the University of California, Irvine Honor Code. The unauthorized use of any electronic or software tool, including but not limited to artificial intelligence-based tools such as ChatGPT, is a violation of UCI Law's Honor Code. The use of such tools in this course is unauthorized and, therefore, a violation of the Honor Code.

Class Recordings. Class sessions will be recorded, but access to those recordings will require my approval. Class recordings are intended to allow a student to view a class the student missed due to an "unavoidable urgent matter" (defined in the Academic Rules) or excused absence. They are not a substitute for attending class. Watching a class recording after the class will count as having attended that class only if I have so indicated in writing.

Student recording of class sessions without my express permission is strictly prohibited, as are the replication, redistribution, sharing, or posting of a class recording. Students who violate this policy are subject to disciplinary action under the Honor Code.

Student Health and Wellness. Your instructors want you to thrive at UCI, and we believe that your physical and emotional well-being are the pathways to getting there. We encourage you to do your best to maintain a healthy lifestyle this semester by eating well, exercising, getting enough sleep, and taking some time to relax. This will help you achieve your goals and cope with stress.

The Law School Student Affairs and Student Services Offices are available to help you with personal and academic advising, counseling, and referrals. Please reach out to Dr. Jennah Jones, Assistant Dean for Student Affairs and Inclusive Excellence (jjones@law.uci.edu, 949-824-1304) or Dean Kyle Jones, Assistant Dean for Student Services (kjones@law.uci.edu, 949-824-1384).

The Law School also provides students with access to a UCI **Counseling Center** (counseling.uci.edu; 949-824-6457). The Counseling Center provides 24/7 urgent care via phone, walk-in services during business hours, crisis intervention, brief individual and couples counseling, groups, and workshops on a variety of personal and academic issues. There is a Satellite Office at the Law School, where Dr. Diana Chan will provide short-term therapy to help you address your concerns. You can schedule an appointment

with Dr. Chan by calling 949-824-6457 - when you call, please specify that you would like to be seen by Dr. Chan during her during her Law School hours.

If you are concerned about a life-threatening situation, we encourage you to contact the **UCI Police Department** at 9-1-1.

For more information on mental health resources, please visit: https://www.law.uci.edu/campus-life/mental-health/.

UCI Public Health Policies. Promoting a healthy environment at UCI Law is a collective effort of everyone in our community—students, staff, and faculty. Your individual choices directly affect the wellbeing of others. You should be familiar with and follow the guidelines outlined on the Student Health Center's COVID Information and Updates page (https://shc.uci.edu/covid-information-and-updates), which includes information about what do if you test positive or are a close contact. You should also be alert for and follow any additional UCI public health policies that may be announced from time to time.

Please do not come to class if you are feeling sick or exhibiting COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html). If you miss a class for this reason, let me know and I will provide you with access to a recording of the class session and answer any questions.

Reading Assignments and Course Schedule

PART I

An Overview of The Legal Profession and The Role of The Lawyer

Monday, Aug. 21

- Chapter 1: The Role of the Lawyer
- Chapter 2: The American Legal Profession: An Overview
- Read sections A and B of Chapter 4: Diversity of the Legal Profession, on your own schedule but early in the semester
- Submit to Canvas a one-page introduction of yourself, including your background, reasons for going to law school, and thoughts about possible future paths after law school. (Please do not worry if your career plans are extremely uncertain. In fact, I fully expect that to be true for most of you.) This is an ungraded memo, and I will not share it with anyone.
- Note:
 - o In addition to discussing the reading assignment in the first class, we will also review course structure, expectations, and panel assignments. **Panels start on Wednesday, August 23rd.**

Wednesday, Aug. 23

- Chapter 3: Amoral Conception and Its Critics, Sections A-E, G
- 2023 Update, pp. 2-4, items on the representation of Harvey Weinstein and ExxonMobil
- Role Play Exercise #1

PART II

The Lawyer-Client Relationship

Monday, Aug. 28

- Chapter 6: Starting, Negotiating, and Ending the Attorney-Client Relationship
- Chapter 7: Protections Against Overreaching, pp. 155-160 (stopping before note on

literary or media rights); 167-70 (stopping before *Hobart* case)

Wednesday, Aug. 30 NO CLASS

Monday, Sept. 4 NO CLASS, LABOR DAY

Tuesday, Sept. 5 Quiz #1 Due

Lawyers in the Criminal Justice System

Wednesday, Sept. 6

- Chapter 14: Criminal Defense, Sections A-D
- Role Play Exercise #2

Monday, Sept. 11

- Chapter 14: Criminal Defense, Section E-F
- Chapter 3: Amoral Conception & Its Critics, Section F

Wednesday, Sept. 13

• Chapter 15: Criminal Prosecution

Monday, Sept. 18

• Guest Speaker Panel 1 — Criminal Defense and Prosecution

PART III

Confidentiality

Tuesday, Sept. 19 1:45-3:20 p.m.

- Chapter 8: Introduction to the Duty of Confidentiality and Attorney-Client Privilege, pp. 179-194; 197-200
- Chapter 9: Exceptions to Confidentiality and Attorney-Client Privilege, Section A
- 2023 Update, p. 5, note 1 on Death or Injury Exception to Confidentiality

Wednesday, Sept. 20

- Chapter 9: Sections, B-C
- Chapter 10: Confidentiality and Privilege and the Organizational Client
- 2023 Update, p. 6, note applications of the crime-fraud exception

PART IV

Conflicts of Interest

Monday, September 25

- Introduction to Part IV, pp. 241-243
- Chapter 11: Concurrent Conflicts of Interest

Wednesday, Sept. 27

- Chapter 12: Conflicts Involving Former Clients
- Chapter 13: Imputed Conflicts

Friday, September 29 Practice Exam Made Available

PART V

Professionalism in Context: A Survey of Practice Settings

The Large Organizational Sector

Large Law Firms

Monday, Oct. 2

- Introduction to Subpart B: Large Organizational Clients, pp. 403-8
- Chapter 16: Large Law Firms, Sections A-B, D-F; skim section C
- Chapter 17: Supervisory and Subordinate Relationships
- RadioLab, "The Bad Show," minutes 9:10-25:24, https://www.wnycstudios.org/podcasts/radiolab/episodes/180092-the-bad-show (link also posted on Canvas)

Wednesday, Oct. 4

- Chapter 18: A Large Firm Lawyer's Downfall
- Bankrupt in Milwaukee excerpt on Canvas
- Role Play Exercise #3

Oct. 9-13, MID-SEMESTER BREAK

Monday, Oct. 16th Quiz #2 Due

Monday, Oct. 16

- Chapter 33: Pro Bono, pp. 877-93
- Guest Speaker Panel 2 Large Law Firms
- Suggestion: read ahead, as Wednesday reading assignment is long

In House Counsel

Wednesday, Oct. 18

- Chapter 19: Counseling, pp. 479-500 (top of page, stopping before Wilkins excerpt)
- Chapter 20: In-House Counsel, Sections A-D

Monday, Oct. 23

• Guest Speaker Panel 3 —In-House Counsel

Government

Wednesday, Oct. 25

- Chapter 21: Government Lawyers
- Chapter 19: Counseling, Section F

• 2023 Update, pp. 10-12 on government lawyers and the struggle over the 2020 presidential election

The Public Interest Practice

Monday, Oct. 30

- Chapter 29: Legal Services, pp. 771-790 (stopping before notes); 2023 Update, p. 15, Notes on Hung
- Chapter 30: Public Interest Law; 2023 Update, p. 15, Note 4 (*Another Wrinkle*)
- Role Play Exercise #4

Wednesday, Nov. 1

Guest Speaker Panel 4 — Government Lawyers

Monday, Nov. 6

• Guest Speaker Panel 5 — Public Interest & Legal Services

The Individual and Small Business Client Sector

Solo Practitioners and Small Firms

Wednesday, Nov. 8

- Chapter 22: Solo and Small Firm Practice
- Chapter 23: Advertising and Solicitation, pp. 611-618; 623-45
- 2023 Update, pp. 12-14 (only items relating to Chapter 23)

Monday, Nov. 13

- Chapter 24: Plaintiffs' Practice, pp. 647-67 (stopping at top of page)
- Guest Speaker Panel 6 Solo/Small Firm, Plaintiffs' Practice

Monday, November 13th, 5:00 p.m.—Reflection memo for Role-Play Exercise #5 due

Lawyers and the Practice of Dispute Resolution

Wednesday, Nov. 15

- Chapter 26: Negotiation
- Role Play Exercise #5 (outside class, reflection memo due by 5:00 p.m. on Monday, Nov. 13th)

Third-Party Neutrals and Judges

Monday, Nov. 20

- Chapter 27: Lawyers as Third-Party Neutrals: Mediation and Arbitration, Sections A-B
- Chapter 28: Judges, Sections A-D
- 2023 Update, pp. 14-15, notes on Chapter 28

PART VI

Challenges and Opportunities for the Profession in the 21st Century

Wednesday, Nov. 22

- Chapter 35: Legal Education, Sections A-C
- Chapter 36: Bar Admission and Discipline and the Law of Malpractice, Sections A-C
- 2023 Update, pp. 21-26 (top of page)

Monday, Nov. 27

- Chapter 32: Unauthorized Practice and Non-Lawyer Involvement in the Provision of Legal Services, Sections A-C, E
- 2023 Update, pp. 16 (bottom of page)-18 (top of page)
- Chapter 34: Practice Across Borders and Boundaries, Sections A-B
- Role Play Exercise #6

Wednesday, Nov. 29

- Chapter 37: Lawyer Satisfaction and Well-Being, pp. 1004-1013 (beginning with the note on recent research on lawyer satisfaction; omitting note 5 on p. 1009)
- Chapter 38: Reflections on the Future of the Legal Profession (and Your Place Within It), Sections A, B & D

Friday, Dec. 1 Quiz #3 Due; Lawyer Interview Paper Due

Monday, Dec. 4 Review Session

Dec. 4-7

Reading Period