

WELCOME AND FIRST WEEK ASSIGNMENTS

PROBLEMS IN PROFESSIONAL RESPONSIBILITY (LAWS554-001-SUMMER-2025)

Introduction and First Week's Assignments

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MTW 4:00 – 6:10 pm

Classroom: Cyberspace via Zoom (<https://sc-edu.zoom.us/j/9654238249>)

GREETINGS, and welcome to the course!

You're receiving this email because you're registered for Problems in Professional Responsibility in the 2025 Summer Term. My name is Bernie Burk (he/him), and I'll be teaching. You'll learn a lot more about how the class is going to work when you read our Rules of the Road (Syllabus), which will be posted on Blackboard this week, but this note will focus on the first week of class so that we all have time to get ready for it—**our first class is next Monday, June 2** (there's been some confusion about the first day in the messages from the Registrar; I've confirmed that Monday, June 2 is the right date).

GETTING ACQUAINTED

I'll answer the same questions that I'm asking you (see below, and anything else you want to know) on the first day of class. But as we start, I also really want to get to know each of you a little better, and have each of you learn something about your classmates beyond what you may have already gathered about each other over the last year or two. So as soon as you're able, please log onto the course site on Blackboard, open the Class Forum and, under the topic heading "Getting Acquainted," please copy and paste the following questions and your *very* brief answers. These questions are all meant to be answered in *at most* a sentence or two, and many in just a few words. The whole set can be completed in less than ten minutes.

I'm including a question about your current thinking on your own career plans and aspirations because I want to tailor the class material and my approach (where there are choices) to your potential practice interests. That said, I know that many of you, like many other law students, are just beginning to think about those issues, so an answer that is highly tentative and likely subject to change, or is just "I don't know yet," is perfectly fine if that's where you're at right now. And feel free to skip any questions whose answers you'd prefer not to share with the class. Here are the questions:

- Your name, including what you prefer to be called and, if you wish, your pronouns:
- What year of law school you're beginning in the Fall:
- Where you're physically located this summer, and what you're doing there:
- What kind(s) of law you'd prefer to practice (or would prefer *not* to practice) in your first job after school, or after a judicial clerkship or other short-term fellowship if you do one (e.g., civil litigation with a concentration in one or more named areas; criminal prosecution or defense; governmental representation other than criminal prosecution; transactional or business advice and negotiation (and whether for smaller or larger business); tax; regulatory; etc.):
- A fun fact about you:

If there's anything about you that you'd like me to know without disclosing it to the entire class, or questions about the course that are specific and personal to you, please email me at bb139@mailbox.sc.edu.

If you have questions about the course whose answers likely apply to others in the class, please post them on the Class Forum, and I'll answer them for everyone.

GETTING STARTED

The Syllabus, which will be posted on Blackboard shortly, has detailed information on the Textbook we'll be using (Burk, Finkelstein & Rapoport, *Ethical Lawyering: A Guide for the Well-Intentioned* (2d ed. 2025), available, among other places, at https://aspenspublishing.com/products/burk-ethicallawyering2?srsId=AfmBOor7eJJZ_5RJ-CkhjzvPY55ujCoOmaPwV2Vnl6g1vOJqKQEXZxrN), the different forms of the Textbook available, and some places where you can find them. You can get more details there, but please note this **IMPORTANT CAUTION: DO NOT BUY OR RENT THE TEXTBOOK'S FIRST EDITION** (published 2021, which is still available on several websites at a steeply discounted price that reflects its dramatically limited utility to any student taking PR now). The Second Edition is new this year and is significantly different from the First.

A quick reminder of something of which you're probably already well aware: This is a regular 3-credit-hour course, but because of the brevity of the Summer Term it is being taught in only 7 weeks of classes (plus the final). That's *half* the number of weeks in a regular semester (14 weeks plus final).

What that means as a practical matter is that, rather than having three hours of classtime per week for 14 weeks, the Summer Term version of the course will go literally twice as fast—6 hours of classtime per week for 7 weeks. We'll be meeting (virtually) on Mondays, Tuesdays, and Wednesdays from 4:00 pm to 6:10 pm (which includes a ten-minute break about halfway through) Eastern Daylight Time; please take any time differences into account if you're spending the summer in a time zone different from South Carolina's.

The first class meeting will begin at 4:00 pm on June 2 (that's next Monday). The Zoom address is <https://sc-edu.zoom.us/j/9654238249>. We will always meet synchronously—that is, everyone gets on the Zoom conference at the same time. Because we will be working together as if this were a live class, you will need to be in front of a webcam *with the camera turned on* for the entire class (except the break).

Here is a Roadmap of the first week's assignments (sorry for the teeny font; I will try to make later Roadmaps easier to read):

Cls	Reading	Txtbk Pages	Focus Rules	Probs	Prof's Comments
	Before the first day of class	None	None	None	Post your answers to the "Getting Acquainted" questions on the Class Forum
	No earlier than June 2; No later than June 6	None	None	The Quiz	Complete the one-question Course Participation Confirmation Quiz on Blackboard. This one-question yes/no check-the-box simply confirms that you will be attending the class, and is required by USC for the University to continue to receive its federal Title IV Financial Aid funding, and for you to keep yours. A 30-second exercise, and thanks.

Mon 6/2 (1)	Course “Rules of the Road” (Syllabus) (on Blackboard)	None	None	None	<p>The first-day reading assignment may seem like a lot of pages. But it’s mostly introductory overview material that should go fairly quickly ((and that I hope you’ll find genuinely interesting and informative). I’m <i>not</i> expecting you to internalize and retain most of the details in these chapters (and to put it in the grittiest possible terms, those details generally won’t be tested on your final exam or on the MPRE). You can read most of the Introduction and first four chapters for the big picture—they provide important background and context for what’s to come.</p> <p>There are just a few things of which I will ask you to have detailed command, as they will come up again and again (and again) throughout the course:</p> <p>Chapter 3.A.2, pp. 32-33; Chapter 3.A.3, pp. 40-41; Chapter 3.A.4, pp. 41-42; Chapter 3.B (introductory paragraph) and 3.B.1, pp. 44-45, 47-49; Chapter 3.B.2-.3, pp. 50-51; Chapter 3.D-.E, pp. 52-53; and Chapter 3.F, pp. 53-55.</p> <p>Please pay special attention to all the different sources and types of consequences that can result from a lawyer’s misconduct. They are conveniently catalogued in the Taxonomy of Professional Woes on pp. 54-55. Print it out, and read it again before each new reading assignment until it is second nature to you. Bring it to class. Hang it on your refrigerator. Tape it to your bathroom mirror. As soon-to-be practitioners yourselves, it should haunt your dreams.</p> <p>Chapter 4 is more background, now focusing on the all-important human element in Professional Responsibility. You should read this chapter for the big picture and overarching concepts rather than any specific details.</p> <p>We will finish Chapter 4 (and, depending on how the time goes, our discussion of Problem 4A-1), and start getting acquainted with actual ethical rules and other lawyer duties in the next class.</p>
	Textbook Introduction	1-4	None	None	
	Ch 1: How to Use this Book	5-16	None	None	
	Introduction to Unit I: Working in a Regulated Profession	17-18	None	None	
	Ch 2: What Lawyers Do, and Where They Do It	19-28	None	None	
	Ch 3: Regulating Lawyer Conduct: Where Guidance and Consequences Come From	29-56	MR [ABA Model Rule] 8.4 & Coms [Comments] [1]-[2]	3A-1 thru 3A-3; MCs [Multiple-Choice Review Questions] Optional	
	Ch 4: Why Smart People Do Stupid Things: Cognitive Biases and the Stresses of Practice	63-64	MR 5.2	4A-1	
	Ch. 4.A: Cognitive Biases	64-79			
	Ch. 4.B: What Do You Do If You Wake Up on the Wrong Side of the Line?	79-80			

Tues 6/3 (2)	<p>Ch 4: Why Smart People Do Stupid Things: Cognitive Biases and the Stresses of Practice (cont'd)</p> <p>Chapter 4.C: Coping with the Stresses of Practice</p> <p>Chapter 4.D: It's Not All About You: Like It or Not, You Are Your Siblings' Keeper</p> <p>Intro to Unit II: The Attorney-Client Relationship</p> <p>Ch 5: The Lawyer as Fiduciary</p> <p>Ch 5.A: What Does It Mean To Be A Fiduciary?</p> <p>Ch 5.B: How Do You Know When You're a Fiduciary?</p> <p>Ch 5.C: Why Lawyers Are Fiduciaries: The Example of Sex With Clients</p> <p>Chapter 5.D: The Lawyer's Fiduciary Duties: An Overview</p>	<p>81-86</p> <p>86-89</p> <p>93-95</p> <p>97</p> <p>97-98</p> <p>98-100</p> <p>100-04</p> <p>104-16</p>	<p>None</p> <p>None</p> <p>None</p> <p></p> <p></p> <p>MR 1.8(j) & Coms [20]-[22]; MR 1.6(a), (c)</p> <p>MR 1.4 & all Coms</p>	<p>None</p> <p>4D-1</p> <p>5A-1; MCs Optional</p> <p>None</p> <p>5B-1</p> <p>5C-1</p> <p>5D-1 thru 5D-5; MCs Optional</p>	<p>In this class, we will finish our discussion of Cognitive Biases and the Stresses of Practice, completing Unit 1. We will then begin our examination of the attorney-client relationship (Unit II).</p> <p>As you begin Unit II, please pay special attention to the "Suggested Approach for Analyzing Professional Responsibility Problems" in the Introduction to Unit II at pp.102-03. You learned in your first year that lawyers (or at least good ones) break down complex problems into manageable pieces and analyze the pieces one by one, stepwise. That is as true of problems in professional ethics and conduct as it is in other areas of the law. The steps suggested comprise one good way to work through many kinds of Professional Responsibility problems (in fact, most of the Problems throughout the entire book, except for the agency issues we'll see in Chapter 6, where the nature of the rights and duties involved requires a different set of analytical steps). We will depend on this method regularly in class, and you should use it to structure your presentations and in class discussion.</p> <p>Please think seriously about the assigned Problems and be prepared to discuss them in class. They all describe challenging practical situations that require reflection and creativity to work your way to the best (or least bad) outcome the facts allow.</p> <p>Chapter 5.D is an introductory overview of (American) lawyers' fiduciary duties to their clients. We will study most of these duties in more detail a little later in the course. However, Chapter 5.D.4 is the course's principal exposition of the duty of candor; and because we won't be circling back to examine it in more detail, it deserves special attention now.</p>
Wed 6/3 (3)	<p>Ch 6: The Lawyer as Agent</p> <p>Ch 6.A: The Lawyer as Agent</p> <p>Ch 6.B: The Lawyer-Agent's Duties to the Client-Principal</p> <p>Ch 6.C: The Division of Authority Between Lawyer and Client</p> <p>Ch. 6.C.1: Client Control Over the Objectives of the Representation</p>	<p>121-22</p> <p>123-40</p> <p>140</p> <p>141-46</p>	<p>MR 1.2(a) & Coms [1]-[4]</p>	<p>6A-1 thru 6A-4 (all subparts)</p> <p>None</p> <p>6C-1 and 6C-2 (all subparts)</p>	<p>The problems in Chapter 6.A are factually intricate, but they illustrate exceptionally important principles about when you, as a lawyer, may, must, or must not act on a client's behalf. Please take the time to focus on each, and see how the small factual differences between Problems dictate completely different legal conclusions in some instances.</p> <p>Please also pay special attention to the "3Cs" approach (pp. 129-31) to resolving uncertainties about what your client wants you to do or not do. It's a technique that is broadly useful across many aspects of the attorney-client relationship.</p> <p>In Chapter 6.C, we switch focus from the ways in which agents (specifically, lawyers) acquire the power to <i>speak for and bind</i> their principals (clients), to the <i>limits</i> on those powers, and correspondingly the respective powers of lawyers and clients to make final decisions on particular issues. We will finish Chapter 6.C next week.</p>