**Seminar Outline: Ethics in Bankruptcy and Commercial Litigation – Navigating the Model Rules of Professional Conduct**

**I. Introduction**

* Welcome and Speaker Introduction
* Purpose and Objectives of the Seminar
* Overview of the ABA Model Rules of Professional Conduct (MRPC)
* Ethical Challenges Unique to Bankruptcy and Commercial Litigation
* **Example from Film**: *The Firm* (1993) – Highlights ethical dilemmas in corporate law, including conflicts of interest and fraudulent billing practices.

**II. Historical and Legal Basis of the Model Rules**

* Origin and Development of the MRPC
* How Bankruptcy and Commercial Litigation Attorneys Are Held to High Ethical Standards
* Variations in Ethics Rules by Jurisdiction and Federal Bankruptcy Courts
* **Case Example**: *In re Snyder, 472 U.S. 634 (1985)* – U.S. Supreme Court case discussing attorney discipline and professional responsibility.

**III. Core Ethical Principles in Bankruptcy and Commercial Litigation**

* **Competence (Rule 1.1)**
	+ Understanding complex financial transactions, bankruptcy code, and commercial disputes
	+ Keeping up with evolving regulations and case law
	+ **Movie Example**: *Michael Clayton* (2007) – Demonstrates the dangers of attorneys lacking competence or ethical judgment in corporate cases.
* **Confidentiality of Information (Rule 1.6)**
	+ Handling sensitive financial and business information
	+ Navigating confidentiality agreements in commercial disputes
	+ **Case Example**: *Upjohn Co. v. United States, 449 U.S. 383 (1981)* – Landmark case on attorney-client privilege in corporate settings.
* **Conflicts of Interest (Rules 1.7-1.9)**
	+ Representing multiple creditors or debtors
	+ Conflicts involving bankruptcy trustees, creditors’ committees, and business partners
	+ **Movie Example**: *The Lincoln Lawyer* (2011) – Highlights conflicts of interest and attorney ethics in criminal and corporate cases.
* **Candor and Duty of Fair Dealing (Rules 3.3 & 4.1)**
	+ Full and fair disclosure in bankruptcy filings
	+ Avoiding misleading statements in commercial litigation
	+ **Case Example**: *In re Bradley, 495 B.R. 747 (Bankr. S.D. Texas. 2013)* – Attorney sanctioned for failure to disclose material facts in a bankruptcy case.

**IV. Attorney-Client Relationship and Fiduciary Duties in Bankruptcy Cases**

* **Scope of Representation (Rule 1.2)**
	+ Managing expectations in debtor and creditor representation
	+ Navigating limited-scope representation agreements
* **Communication and Transparency (Rule 1.4)**
	+ Keeping clients informed in complex restructuring and litigation matters
	+ Addressing unrealistic client expectations
* **Fees and Compensation (Rule 1.5 & 1.15)**
	+ Disclosure of fees in bankruptcy proceedings (11 U.S.C. § 329 & Rule 2016)
	+ Handling client trust accounts and retainers ethically
	+ **Case Example**: In re Valldares, 415 B.R. 617 (Bankr, S.D. Fla, 2009*)* – Discusses candor as to fees.
* **Withdrawal and Termination of Representation (Rule 1.16)**
	+ Ethical withdrawal in bankruptcy proceedings and ongoing litigation
	+ Court approval considerations in withdrawing from representation
	+ **Movie Example**: *A Civil Action* (1998) – Shows the difficulties attorneys face when they want to withdraw from representation due to ethical conflicts.

**V. Responsibilities to the Court, Creditors, and Other Parties**

* **Duty of Candor Toward the Tribunal (Rule 3.3)**
	+ Full disclosure of financial affairs in bankruptcy filings
	+ Avoiding misrepresentations in commercial disputes
* **Fairness to Opposing Party and Third Parties (Rule 3.4)**
	+ Ethical discovery practices in commercial litigation
	+ Document retention and spoliation concerns
	+ **Case Example**: *Zubulake v. UBS Warburg LLC, 220 F.R.D. 212 (S.D.N.Y. 2003)* – Landmark case on e-discovery and ethical obligations to preserve evidence.
* **Trial Publicity and Media Relations (Rule 3.6)**
	+ Managing high-profile bankruptcy cases ethically
	+ Communicating about litigation in public forums

**VI. Special Ethical Considerations for Bankruptcy Practitioners**

* **Duties to the Bankruptcy Estate and Creditors**
	+ Representing fiduciaries (trustees, committees) ethically
	+ Avoiding conflicts when representing multiple stakeholders
* **Fraudulent Conduct and Bad Faith Filings**
	+ Identifying and reporting fraudulent bankruptcy schemes
	+ Ethical issues in advising businesses on bankruptcy strategies
	+ **Case Example**: Mata v. Avianca, Inc.*, 678 F.Supp 3d 443 ( S.D. NY 2023).* – filing non-extant cases and practicing without a license.
* **Third-Party Payments and Dual Representation**
	+ Ethical considerations when fees are paid by a third party
	+ Duty of loyalty and independence when representing debtors in possession

**VII. Ethical Challenges in Commercial Litigation**

* **Settlement Negotiations and Alternative Dispute Resolution**
	+ Truthfulness in settlement discussions (Rule 4.1)
	+ Duty to disclose material facts when required
* **Technology, E-Discovery, and Attorney Conduct**
	+ Preserving electronic evidence ethically
	+ Avoiding metadata breaches and inadvertent disclosure
	+ **Case Example**: *Rimkus Consulting Group, Inc. v. Cammarata, 688 F. Supp. 2d 598 (S.D. Tex. 2010)* – Addresses e-discovery sanctions for spoliation of evidence.

**VIII. Case Studies and Interactive Discussion**

* Analysis of Recent Disciplinary Cases in Bankruptcy and Commercial Litigation
* Hypotheticals on Ethical Dilemmas and Group Discussion
* **Case Example for Discussion**: Matter of Struther, 877 P.2d. 789 (Ariz., 1994). Fee agreement to keep fee awarded by the count and contingency fee considered unethical).
* Q&A on Ethical Best Practices

**IX. Conclusion and Key Takeaways**

* Summary of Key Ethical Principles
* Practical Steps to Ensure Compliance with the MRPC
* Resources for Continuing Legal Education and Ethics Guidance

**X. Closing Remarks and Networking Opportunity**

* Final Thoughts and Best Practices
* Additional Resources for Bankruptcy and Commercial Litigation Attorneys
* Contact Information and Ethics Helpline References