

**SYLLABUS**  
**Legal Profession**  
**Law 580**  
**Fall 2019**  
**Tuesday & Thursday**  
**1:30-2:45 p.m.**  
**Room 102**

**Mark Brittingham**  
**Clinical Assistant Professor**

Room 256  
453-8744  
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**NOTE:** I have utilized Professor John Erbes's Syllabus in preparing this Syllabus. Therefore, much contained herein is his work, & I thank him for his assistance.

**Textbook:** Regulation of Lawyers: Problems of Law and Ethics, Stephen Gillers, Aspen 2018, Eleventh Edition. Please note that this textbook is rather short (by typical law school text standards). In order to ensure that we meet the ABA workload requirements (see below), I will assign additional materials via TWEN for you to read and consider.

**Companion Material:** Regulation of Lawyers: Statutes and Standards, Gillers, Simon & Perlman, Aspen/Wolters Kluwer, 2019 (**OR** any other set of the ABA Model Rules of Professional Conduct and Code of Judicial Conduct that includes the comments). The rules and comments are available on line so I don't require that you purchase or rent a hard copy. Nevertheless, you **MUST** have ready access to the rules and comments while in class.

**Course Description & Learning Objectives:** This course examines the Rules of Professional Conduct that attorneys must follow, along with related topics such as the attorney-client privilege, maintaining confidentiality of information, conflicts of interest, attorney fees, ethics & civility in advocacy, and attorney discipline. The course will also address malpractice, attorney liability to third parties, and (if time permits) judicial ethics. The objective of the class is to teach you how to stay out of trouble after you graduate. Also, much of the material that we will cover is tested on the Multistate Bar Exam on Professional Responsibility (MPRE).

To ensure that you understand how the Rules of Professional Conduct are applied in practice, and how malpractice & other professional liability may be avoided, we will consider the language of the rules, the official comments relating to them, cases addressing rules or malpractice, and many hypotheticals. *I will regularly require you to prepare a written answer to a hypothetical for class. I will assign a hypothetical at least one (1) day in advance. You will need to submit your written answers to me electronically before class begins at [mabritt@siu.edu](mailto:mabritt@siu.edu).*

**Testing and Grading:** There will be a final exam and two (2) mid-term assignments. I may also consider class participation in determining final grades. *Please note that the final exam may test over materials discussed in class or materials covered by the text, or both. In other words, I may*

choose to test over materials covered by the text that we do not discuss in class.

**Independent Work; Ban on Collaboration:** The mid-term exams/assignments will likely be performed as take-home tests, to be completed outside of class. In completing those assignments, you are not allowed to obtain help from any other person (including any other student). This ban on collaboration includes obtaining written materials from another student or communicating with another student about an assignment. If you fail to comply with this requirement for independent work, you can be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. When in doubt about how to proceed, ask me (Mark Brittingham).

**FINAL EXAM:** Presently, the final exam in this class will be administered Friday, December 6, 2019 at 1:15 p.m.

**Attendance:** I do not have tenure and I really like this job. The Law School rules require that I take attendance. Therefore, attendance will be taken daily on an attendance sheet circulated during class. If you are unprepared for class, please advise me of that fact the NIGHT before class commences. I believe that you will learn valuable material even if you are unprepared for the class. Therefore, I prefer that you attend even if you are not prepared. By letting me know in advance that you are not prepared, I can avoid humiliating you by calling on you. However, do not let this happen very often or I will revoke your privilege. If you do not so inform me in advance of class, your genuine signature on the attendance sheet will constitute a representation that you have read the assigned material and are prepared to discuss the material in an intelligent fashion. Your signature on the attendance sheet also conclusively establishes your presence during that class period. Correlatively, the lack of such a signature conclusively establishes your absence. So be certain to sign the attendance sheet each day.

You are entitled to six (6) absences. **More than six (6) absences will result in your withdrawal from the class or a substantial grade reduction, at my discretion.**

**Recording of Class Sessions:** I understand that the Law School will automatically record this class as a matter of routine. *Your attendance at class without objection (made to a Dean) will constitute your consent to this recording.* Presumably these recordings will be available to you. More on this during the semester as we learn more from the Associate Dean & IT folks. HOWEVER, you may NOT record the class on your own (on your phone or other recording device).

**TWEN:** There is a TWEN page for the course. You must sign on to the TWEN page immediately so that I can contact you as needed. Please consult the TWEN page regularly. Changes in class meetings, assignments, and other important material will be presented on the TWEN page. It is your responsibility to check the TWEN page regularly. It is my favorite and most common method of communicating with you.

**Office Hours:** My office is Room 256, on the second floor of the law school. My established office hours for the semester Tuesday, Wednesday & Thursday, 10:45 a.m. to noon. If you would

like to meet with me at another time, send me an e-mail and we can arrange a time to meet. Otherwise, I will also nearly always be available immediately after class.

**Computers in the Class:** A few years ago I banned computers in this class because I believed that students weren't paying adequate attention in class. Since then I have continued the policy and it appears to work well, so you may not use your computer OR PHONE in class. YOU NEED TO PAY ATTENTION IN THIS CLASS, not just because you must pass it to graduate, but because you must also pass the MPRE. **COMPUTERS AND PHONES ARE NOT ALLOWED IN CLASS. I WILL REMOVE FROM CLASS ANY STUDENT VIOLATES THIS RULE.** The penalty for a second violation of this rule will be removal from the course. (If you have a formal accommodation that this rule frustrates, please let a Dean or me know promptly.)

**Course Schedule & Assignments:** I have few illusions about upper-level law students and their level of preparation for classes, but you should have no illusions about my expectations from you in this class. Because we will be dealing with a huge amount of material, my usual method of calling on students at random is not likely to work very well (although I will certainly do it). We do not have the time to waste on some marginally-prepared student trying to think his way through an issue for the first time in class. As you can tell from the assignments for the first week of class (below), we will cover a great deal of material each day.

Prior to class (probably each morning before class) I will send an e-mail via TWEN assigning cases and other materials to certain students. I will expect those students to be prepared to discuss those materials in class. As indicated above, if you will be absent or unable to prepare, please let me know the NIGHT BEFORE (by email or other writing) so that I don't assign anything to you.

PLEASE NOTE: much of the material we will cover is on the bar exam. It has been my experience that it is very difficult to learn this material adequately by relying solely on the bar review materials. If you pay attention and do the assignments in this class, you **WILL** find the related questions on the bar exam much easier than you would if you hadn't taken this class.

## **ASSIGNMENTS**

### **Week of August 19:**

- 20 Read the ABA Model Rules Preamble, and the Textbook, Preface & Chapter 1 (pp. 1-15) and the 1<sup>st</sup> item in the TWEN Course Materials-*Pop Goes the Law*. Also read Chapter XII (pp. 499-542) We will start this chapter the first day of class but we will not finish it. Start reading the next 9 items on TWEN.
- 22 Complete Chapter XII and the first ten (10) items on TWEN.

### **Week of August 26:**

- 27 Chapter XIII, subpart D (pp. 587-609) (skip subparts A-C & E).
- 29 Complete Chapter XIII and start Chapter XIV (pp. 623-648).

**Week of September 2:**

- 3 Complete Chapter XIV & *Wal Mart Law* from TWEN.
- 5 Complete discussion of Chapter XIV and materials from TWEN. Prepare Chapter XV (pp. 651-682).

**Week of September 9:**

- 10 Complete discussion of Chapter XV and discuss Chapter XVI (pp. 685-708) and additional material on TWEN.
- 12 Complete discussion of Chapter XVI and begin Chapter II (pp. 17-82).

Thereafter, we will go straight through the book from Chapter II through Chapter VI, to page 279. We will skip pp. 146-154 & 209-211. **We will add** pp. 610-621 to our discussion of Ineffective Assistance of Counsel (pp. 185-206). We will skip subparts A & B to Chapter VII, and cover subparts C-G (pp. 322-366). We will then do Chapters IX & X. At that point, if there is time remaining, we will visit Chapter XI (along with pp. 671-683) and Chapter VIII.

After you read the *Upjohn* case at p. 36, read the *Samaritan Foundation* and *Caldwell* cases on TWEN. When you read *Unethical Fee* (pp. 117-126), read *Chen v. Chen* on TWEN. When you read WHO GETS THE MONEY (p. 155-159), read the *Fohrman v. Alberts* case on TWEN.

I will likely post additional reading materials on TWEN which I will announce in class.

**OTHER IMPORTANT STUFF**

**WORKLOAD EXPECTATIONS:** *NOTE that the amount of time you must spend preparing for each class is substantial. The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: not less than one hour of classroom or direct faculty instruction and **two hours** of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, so the amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of **9 hours per week (3 in class and 6 preparing for class) on course-related work.***

**PLAGIRISM:** Plagiarizing another's work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also

be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as: *passing off another's ideas, words, or work as one's own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author's work with quotation marks, footnotes, or other appropriate designation in such a way as to make clear the true author of the work.*

**EMERGENCY PROCEDURES:** *Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at [www.bert.siu.edu](http://www.bert.siu.edu), Department of Safety's website [www.dps.siu.edu](http://www.dps.siu.edu) (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.*

*Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.*

**DISABILITY ACCOMMODATION POLICY:** *Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.*

**SALUKI CARES:** *The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or [siucares@siu.edu](mailto:siucares@siu.edu), <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is [judiray@siu.edu](mailto:judiray@siu.edu), and her phone number is 618-453-3135.*