

Veterans' Legal Assistance Program  
Externship  
Law 675; §002  
1-3 Credit Hours  
Tuesdays, 5:30-6:45, Room 164  
Syllabus – Fall 2019

**Professor:**

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Adjunct Professor

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**Course Description:**

Welcome to the Veteran's Legal Assistance Program ("VLAP") Externship at SIU School of Law. The VLAP will provide legal assistance to area veterans who cannot afford or do not have access to legal representation in the appeals of claims for compensation for service-connected disabilities; and petitions for the upgrade of other-than-honorable discharges for military members with posttraumatic stress ("PTSD") or victims of military sexual trauma ("MST").

**Course Objectives:**

1. The student will become familiar with *Title 38, USC, Veterans*, and will apply various sections in research, writing, and advocacy for veterans filing appeals in disability compensation claims before the Department of Veterans Affairs, and petitions for discharge upgrades.
2. The student will have the opportunity to represent veteran clients in appeals of disability compensation claims before various levels of the Department of Veterans Affairs and the Court of Appeals for Veterans Claims.
3. The student will expand his/her research and writing skills through a comprehensive memorandum covering the factual and legal issues presented in a disability claims appeal; coordinating the administrative forms to pursue the appeal; and outlining a course of action to succeed in the appeal.
4. The student will improve his or her ability to learn from face-to-face interaction with clients and gain experience in representing a client in a claims appeal.

**Student Performance Evaluation:**

The externship is graded on a modified Satisfactory/Unsatisfactory scale (S, S+, S-, U). To complete the course for 3 academic credits, students must complete 140 class/extern hours; and for 2 credits, 94 class/extern hours.

*The American Bar Association standards for accrediting law schools contains 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: (1) 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.” We will spend one 75-minute block of time together each week, which equates to 1.5 classroom hours. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session per week.*

*Additionally, depending on whether you are taking this course for two or three credits, you will need to spend additional time on “**extern hours.**” You will need to average **2.2 hours** per week if you are taking the course for **two** credit hours, and average an additional **5.5 hours** per week if you are taking it for **three** credit hours. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of **6.7 hours per week** if you are taking it for **two credit hours** (75 minutes in class, 3 hours preparing for class, and average 2.2 extern hours) on course-related work; or*

***10 hours per week** if you are taking it for **three credit hours** (75 minutes in class, 3 hours preparing for class, and average 5.5 extern hours) on course-related work.*

**Extern Hours.** Hours spent meeting with or talking to veterans about claims or potential claims; researching a potential client’s claim; reviewing and organizing a client’s records; researching a client’s claim; drafting briefs and memos; observing court proceedings; planning and preparing intake/clinic days; assisting at intake/clinic days; planning and preparing CLEs or other attorney training; and staffing the VLAP office all count toward your extern hours. Other work may also be credited toward extern hours with instructor approval.

Extern hours will be tracked in .1 hour increments, documented in Clio and emailed to the professor. Hours are due at the end of each month.

### **Course Materials:**

*Veterans Benefit Manual, 2017-18 Edition (“VBM”)*

*Military Service and the Law, IICLE publications, 2018. (“MSL”)*

The VBM is available for reading in the VLAP office or on LexisNexis. MSL is available as a downloadable PDF through the law school library’s website.

### **TWEN Usage:**

We will use a TWEN course for discussion boards, reading materials, and assignments.

## **Mandatory Course Assignments:**

1. Case work product: As assigned by the instructor.
2. Participate in a minimum of one scheduled group clinic/intake session. Date, time, location TBD.
3. Extern Hour Submission Forms totaling appropriate number of Extern hours for registered credits. **3 credits = 77 Extern hours; 2 credits = 31 Extern hours. *You will receive an Unsatisfactory grade if you do not complete the required hours.***
4. Final brief/memo on status of assigned case(s).
5. Course reflections/critique/suggestions for improvement memo.

## **Class attendance:**

VLAP students are expected to attend all classes, participate in group clinics, and complete all course work during the semester.

Attendance will be taken at each class period. You will be allowed two (2) absences. If you have more than two (2) absences, you will be withdrawn from the class. Signing the attendance sheet certifies that you have read the assigned material thoroughly enough to discuss it in class or use the knowledge in application to a case under discussion. The in-class lectures are designed to summarize reading or research topics for the week. Completion of the assignments **prior** to class is required in order to understand the lecture and participate in the classroom discussions. If you are unprepared, do not sign the attendance sheet.

## **Schedule and assignments:**

Watch TWEN and emails for current events and news that may change your reading assignments or affect the material we cover that week.

*All reading assignments should be completed before class date, in preparation for class discussion. Any additional reading will be assigned, and the syllabus updated as necessary. We **may deviate** from this syllabus with assignments taken from current events, new cases, or to accommodate guest speakers, scheduling conflicts, etc. Although we will try and adhere to the schedule, we may occasionally jump ahead or fall behind. In such case, we will begin the next class where we left off, unless told otherwise.*

## **Class 1, August 20**

## **Intro to VLAP**

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Read: VBM, 2.1-2.3 (Who is a Veteran?)

Topics: Who is a Veteran?

Overview of the VLAP.

Syllabus review and discuss externship hour requirements.

Overview of Clio practice management software.

Intake and phone procedures.

Calendar and scheduling process.

Tour and discussion of VLAP offices.

**Class 2, August 27****Client Counseling and Interviewing**

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Read: Required: *Client Science: Advice for Lawyers on Initial Client Interviews* (Article)  
Optional: *Interviewing and Counseling Clients in a Legal Setting* (Article)

Topics: Observation, memory, facts, and evidence.  
Client interviewing as problem-solving.  
Purposes in interviewing clients.  
Interviewing dynamics.  
Organizing the interview.  
Preparing for the interview.  
Beginning the interview.  
Information gathering.  
Ascertaining the client's goals.  
Considering a strategy during the interview.  
Closing the interview.  
Questions. (What to ask about. Organizing and formulating questions.)  
Special problems in client interviewing.

**Class 3, September 3****Military Cultural Competency**

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Read: *Military Service and the Law* (IICLE®, 2009, Supp. 2013) (Instructor provided.)  
Military Cultural Competence online course narrative. (Instructor provided.)

Topics: Military branch overview.  
Officer vs. enlisted.  
Military law overview.  
Boot camp.  
Life in the military.  
Transition to civilian life.

**Class 4, September 10****Introduction to Veterans Advocacy**

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Read: 1. VBM – 17.1, 17.5, 17.8, 16.1, 16.2, 16.3, 18.1, 18.2, 18.3  
2. TN, pp 3-12

Topics: Overview of the Department of Veterans Affairs  
Veterans Benefits  
Legal effect of regulations, GC opinions, Manual 21-1MR  
United States Department of Veterans Affairs (VA): administrative review levels  
Filing an Initial Claim  
Segmented Lanes/Fully Developed Claims  
Regional Office Decision  
Notice of Disagreement (NOD)  
Statement of the Case (SOC)  
Appeals to the Board of Veterans Appeals (BVA)  
Appeals to the Court of Appeals for Veterans Claims (CAVC)  
Appeals to the Federal Circuit

**Class 5, September 17****Adjudication of Claims**

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Read: VBM – 12.1, 12.2, 12.3, 12.4, 12.10, 12.11, 13.1, 13.2

Topics/Cases: Filing a Claim

*Rodriguez v. West*, 189 F.3d 1351 (1999)

Rating Decision

Appealing an Initial Decision

*Gallegos v. Principi*, 283 F.3d 1309

Statement of the Case

Formal Appeal to the Board of Veterans Appeals (BVA)

Appealing a BVA Decision to Court of Appeals for Veterans Claims (CAVC)

*Graves v. Principi*, 294 F.3d 1350

**Class 6, September 24****The Basics of Service Connection**

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Read: VBM – Ch. 3.1-3.3 (p.55-104)

Topics/Cases: Three Requirements to Establish Service Connection

*Rose v. West*, 11 Vet. App. 169 (1998)

In-Service Injury or Disease

*Buchanan v. Nicholson*, 451 F.3d 1331 (2006)

Relaxed Standard for Combat Veterans

38 USC 1154

*Stone v. Nicholson*, 480 F.3d 1111 (2007)

The Presumption of Soundness

38 USCS 1111

38 CFR 3.304

*Wagner v. Principi*, 370 F.3d 1089 (2004)

The Line of Duty Presumption

38 USC 105

*Thomas v. Nicholson*, 423 F.3d 1279 (2005)

**Class 7, October 1****Establishing Nexus for Service Connection**

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Read: Required: VBM Ch. 3.4 (p.105-133)

Optional: VBM Ch. 3.4 (p.134-152)

Topics/Cases: Evidence of a Qualifying Present Disability

*Palczewski v. Nicholson*, 21 Vet. App. 174 (2006)

Direct Service Connection

*Lyles v. Shinseki*, 2012 U.S. App. Vet. Claims LEXIS 2437 (2012)

Aggravation

*Contant v. Principi*, 17 Vet. App. 116 (2003)

Secondary Service Connection

*Jones v. West*, 12 Vet. App. 383 (1999)

Presumptive Service Connection

(Optional) *Haas v. Peake*, 525 F.3d 1168 (2006)

*Nehmer v. Dept of Veteran Affairs*, 494 F.3d 846 (2007)

Section 1151 Claims

38 USCS 1151

**Class 8, October 8****VA's Duties to Claimants**

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Read: VBM – 12.5 (906-926)

Topics/Cases: Duty to Assist  
38 USC 5103A – VCAA  
38 CFR 3.103  
Duty to Develop Veteran's Claim  
Benefit of the Doubt Rule  
*Henderson v. Shinseki*, 131 S. Ct. 1197 (2011)  
*Epps v. Gover*, 126 F.3d 1464 (1997) superseded by *Bernklau*  
*Bernklau v. Principi*, 291 F.3d 795 (2002)

**Class 9, October 15****Introduction to Post Traumatic Stress Disorder**

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Read: VBM 3.6 (p.170-200)  
Handout – What is PTSD?  
Assigned essays. Each student will read an assigned essay and present a 3-5 minute summary of the essay and a personal reaction to the essay.

Review of PTSD related cases and service-connection applicability to VA Claims.

*Pentecost v. Principi*, 16 Vet. App. 124 (2002)  
*Sizemore v. Principi*, 18 Vet. App. 264 (2004)  
*Moran v. Principi*, 17 Vet. App. 149 (2003)

**Class 10, October 22****Discharge Upgrades**

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Read: VBN – Ch. 21 (p. 1687-1707)  
Veterans Discharge Upgrade Manual by Conn. Veterans Legal Center

**Class 11, October 29****Disability Evaluations, Increases, & TDIU**

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Read: VBM 5.1 (p. 299-323), 5.5 (p. 379-393), 5.8-5.9 (p. 423-431)

Topics/Cases: Rating Schedule  
*Mauerhan v. Principi*, 16 Vet. App. 436 (2002)  
38 CFR 4.25  
Rule Against Pyramiding  
*Amberman v. Shinseki*, 570 F.3d 1377 (2009)  
Analogous Ratings  
*Green v. Brown*, 11 Vet. App. 472 (1998)  
Requirements for TDIU  
38 CFR 4.16  
*Faust v. West*, 13 Vet. App. 342 (2000)

**Class 12, November 5**

**Effective Dates**

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Read: Required: VBM 8.1- 8.6 (612-653)

Optional: VBM 8.1- 8.6 (654-674)

Topics/Cases: General Rule

*Butler v. Shinseki*, 603 F.3d 922 (2010)

*Ellington v. Peake*, 541 F.3d 1364 (2008)

Staged Ratings

*Meeks v. West*, 216 F.3d 1363 (2000)

Clear and Unmistakable Error

38 USC 5109A

38 USC 7111

*Cook v. Principi*, 318 F.3d 1334 (2002)

Reopened Claims

*Sears v. Principi*, 349 F.3d 1326 (2003)

**Class 13, November 12**

**Non-Service Connected Pension & Survivor Benefits**

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Read: VBM 6.1 (457-461), 6.4 (493-499), 7.1-7.3.2 (511- 557)

Topics/Cases: Disability Pension

*Grantham v. Brown*, 8 Vet. App. 228 (1995)

Access to Medical Benefits

38 CFR 17.36

Accrued Benefits/Substitution

38 USC 5121

38 USC 5121A

VA General Counsel Precedent 8-00

Dependency & Indemnity Compensation

*Tarver v. Shinseki*, 557 F.3d 1371 (Fed. Cir. 2009)

*Barela v. Shinseki*, 584 F.3d 1379 (2009)

Death Pension

**Class 14, November 19**

**Practice Before the U.S. Court of Appeals for Veterans Claims**

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Read: Required: VBM 15.1, 15.2, 15.2.1, 15.2.2, 15.2.3, 15.3, 15.4, 15.5, 15.6, 15.7

Excerpts from the Pro Bono Consortium manual on representation before the CAVC.

Optional: VBM 15.2.3.1 – 15.2.6.3

Topics: Jurisdiction of the U.S. Court of Appeals for Veterans Claims (“CAVC”).

The power of the CAVC and the scope of review.

Organization of the CAVC.

Representation before the CAVC.

Rules of practice and procedure of the CAVC.

Common issues face by counsel for appellants exploring settlement with the VA.

**November 23-December 1**

**Thanksgiving Vacation -**

**No Class/End of Classes**

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## **Policies**

### **Independent Work; Ban on Collaboration:**

*You are allowed to discuss assignments with any other student, but you are not allowed to rely on any written materials from another student. 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, ask your professor.*

### **Notice of Recording:**

*Primarily to assist our students with disabilities or other health issues, SIU School of Law routinely records all classes at the law school. Audio and video recording of classes by students themselves (as opposed to recording by the IT Department) is prohibited. It is an Honor Code violation to create or distribute such recordings when the instructor has prohibited either action (Honor Code I.E.1.g). If you require an accommodation to record this course yourself, please work with Associate Dean Buys to request the appropriate accommodation.*

### **Emergencies Procedure:**

*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 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.*

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