

SYLLABUS
Legal Profession
Law 580
Fall 2020
Wednesday
3:30-6:00 p.m.
Via Zoom

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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, 2020 (**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.*

Testing and Grading: There will be a final exam and two (2) mid-term writing assignments. The final will be worth 80% of your grade and each writing assignment will be worth 10%, although 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: In completing these assignments and the final exam, 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, there is no final exam schedule for this class. I anticipate that we will administer it on a convenient day during the final exam period, December 1-11, 2020 at a time to be determined. We will discuss this further as the semester progresses.

Attendance: I do not have tenure and I really like this job. Therefore, I must follow the rules. The Law School rules require that I take attendance, which I will do daily by calling roll. If you sign on late or use a means of connecting that does not reveal your name to me, please be sure to inform me that you are in attendance. If you are unprepared for class, please advise me of that fact by NOON the day of class. 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 appearance via Zoom for class will constitute a representation that you have read the assigned material and are prepared to discuss the material in an intelligent fashion.

You are entitled to three (3) absences. **Unless prior arrangements are approved, more than three (3) absences will result in your withdrawal from the class or a substantial grade reduction, at my discretion.**

Recording of Class Sessions: I will try to record this class as a matter of routine. (Please remind me at the beginning of class to hit the record button.) *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 in the event you are absent from class and have provided me advance warning of your absence. (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. Due to the present COVID-19 work-from-home direction, I do not keep office hours. In fact, due to my own health issues, I prefer to avoid people all together. On the other hand, I am happy to meet with you via Zoom at any time that is convenient for us. I recommend that you send me an email to let me know you'd like to meet.

Problems and Issues. Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please see me so we can discuss it and resolve it. Some of my best growth and development as a teacher have come from students taking the time to alert me to issues or problems I had not previously been aware of.

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 large amount of material, blindly calling on students at random will not likely 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 or her way through an issue for the first time in class.

Prior to class (probably each morning before class), I may send an e-mail via TWEN assigning cases, problems 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 BEFORE NOON (by email or other writing) so that I don't assign anything to you.

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

ASSIGNMENTS-The following is my best current estimate of how we will proceed. *I reserve absolutely the right to change any aspect of the following.*

August:

- 19 Read the ABA Model Rules Preamble, and the Textbook, Preface & Chapter 1 (pp. 1-15) and Chapter XIII, pp. 587-609 on Discipline.
- 26 Read Chapter XII of the text and the first and second assignment on TWEN; Chapter XIV (pp. 623-648) and *Wal Mart Law* from TWEN; stat Chapter XV (pp. 651-708)

September:

- 2 Complete Chapter XV; discuss Chapter XVI (pp. 685-708) and additional material on TWEN; 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 that meets twice as often as it would in a regular fall or spring semester. Thus, the amount of assigned reading and out of class preparation should take you about 6 hours for each class session and 12 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan to spend a total of 18 hours per week (6 in class and 12 preparing for class) on course-related work.*

PLAGIARISM: 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: *We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.*

DISABILITY POLICY. *SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates*

the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations. Accommodation [request](#) and [renewal](#) forms can be found here: <https://law.siu.edu/academics/>.

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) 453-2461, or 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, and her phone number is 618- 453-3135.*

COVID-19. *As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the [SIUC COVID-19 response](#).*