

Veterans' Legal Assistance Program
Clinic
Law 678; §001
1-3 Credit Hours
Mondays, 4:15-5:30, Room 206
Syllabus – Fall 2020

Professor:

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Course Description:

Welcome to the Veterans' Legal Assistance Program ("VLAP") Clinic at SIU School of Law. The VLAP provides 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 or bad conduct discharges for military members with post-traumatic stress disorder ("PTSD") or victims of military sexual trauma ("MSA"). The VLAP also assists with some civil legal matters. The VLAP is a member of the Illinois Armed Forces Legal Aid Network.

Course Objectives:

1. The student will become familiar with *Title 38, USC, Veterans*, and 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.
5. The student will learn practical skills required for success in the practice of law.

Student Performance Evaluation:

The Clinic 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/clinic hours; and for 2 credits, **94** class/clinic 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. The classroom portion accounts for one credit hour of work, or 47 hours.

*Additionally, depending on whether you are taking this course for two or three credits, you will need to spend additional time on “**clinic hours**.” If you are taking it for 3 credit hours you need to complete **94 clinic hours**. If you are taking it for 2 credit hours you need to complete **47 clinic hours**. That is an average of **3.4 hours** per week if you are taking the course for **two** credit hours, and an average of **6.7 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 **7.7 hours per week** if you are taking it for **two credit hours** (75 minutes in class, 3 hours preparing for class, and average 3.4 clinic hours) on course-related work; or*

***11 hours per week** if you are taking it for **three credit hours** (75 minutes in class, 3 hours preparing for class, and average 6.7 clinic hours) on course-related work.*

Clinic 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 clinic hours. Other work may also be credited toward clinic hours with instructor approval.

Clinic hours will be tracked in .1 hour increments and documented in Clio. Students will email a weekly total of hours to the instructor via email. Hours are due at the end of each week.

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 and from the instructor.

Microsoft Teams Usage:

We will use a MS Teams for discussion boards, reading materials, and assignments. All classes will “meet” within Teams and utilize its meeting and video capabilities. For the easiest access and optimal experience, you should download the Teams app on to your computer.

Mandatory Course Assignments:

1. Case work product: As assigned by the instructor.
2. Weekly class worksheets due each week prior to class.
3. Military/Veteran writing/presentation assignment. (Provided during first week.)
4. Client memo for assigned case(s).
5. Clinic Hours updated in Clio Activities weekly, and at the end of the course must total appropriate number of Clinic hours for registered credits. **3 credits = 94 Clinic hours; 2 credits = 47 Clinic hours. You will receive an Unsatisfactory grade or an Incomplete, if you do not complete the required hours.**
6. Final brief/memo on status of assigned case(s).
7. 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. The in-class lectures are designed to summarize reading or research topics for the week. Completion of the reading assignments and weekly worksheets **prior** to class is required to understand the lecture and participate in the classroom discussions.

Schedule and assignments:

Watch Teams 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 17**Intro to VLAP**

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

Topics: Who is a Veteran?

Overview of the VLAP.

Syllabus review and discuss Clinic hour requirements.

Overview of Clio practice management software.

Intake and phone procedures.

Calendar and scheduling process.

Tour and discussion of VLAP offices.

NOTE: See Class 7 / September 28 for assignment topics. Choose topic and get approval **prior** to Class 3. Students may **not** present on the same topic. Begin researching and drafting. Presentation given during **Class 7**. Five to eight-minute presentation utilizing some form of teaching aid. Write three to five-page paper on topic, due prior to **Class 8**.

Class 2, August 24**The Basics of Service Connection**

Read: VBM – Ch. 3.1-3.3 (p.55-104)

Complete class topic worksheet.

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 3, August 31**Introduction to Veterans Advocacy**

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

Complete class topic worksheet.

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 4, September 7 NO CLASS - LABOR DAY Military Cultural Competency

Read: Military Service and the Law (IICLE®, 2009, Supp. 2013) (Instructor provided.)
Military Cultural Competence online course narrative. (Instructor provided.)
Online PsychArmor Videos. (Instructor will provide links and info.)

Complete class topic worksheet.

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

Class 5, September 14 Adjudication of Claims

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

Complete class topic worksheet.

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 21 Client Counseling and Interviewing

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

Complete class topic worksheet.

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 7, September 28 Military/Veteran Topic Student Presentations

Five to eight-minute presentation utilizing some form of teaching aid given during this class period.
 Written assignment due prior to next class period. Utilize any feedback or ideas from the presentation in your paper.

Suggested Topics:

1. LGBTQ Soldiers/military members.
2. Woman in the Combat Arms.
3. Women and the draft.
4. Sexual assault in the military.
5. Deployment of National Guard and Reserve to war zones.
6. Economic impact of military service on employers of National Guard and Reserve members.
7. Military service and deployment's impact on families.
8. Family members – the forgotten casualties of war.
9. The military bond – A help or a hindrance to reintegration with civilian society?
10. UCMJ – Commander's tool to maintain good order and discipline, or shield to play favorites?
11. Should the U.S. military have mandatory military conscription?
12. Religion in the military.
13. Effects of privatization and outsourcing of military functions.
14. Diversity and inclusion in the U. S. military.

Class 8, October 5 Establishing Nexus for Service Connection

Read: Required: VBM Ch. 3.4 (p.105-133)
 Optional: VBM Ch. 3.4 (p.134-152)

Complete class topic worksheet.

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 9, October 12**VA's Duties to Claimants**

Read: VBM – 12.5 (906-926)

Complete class topic worksheet.

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 10, October 19**Introduction to Post Traumatic Stress Disorder**

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.

Complete class topic worksheet.

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 11, October 26**Discharge Upgrades**

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

Complete class topic worksheet.**Class 12, November 2****Disability Evaluations, Increases, & TDIU**

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

Complete class topic worksheet.

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 13, November 9**Effective Dates**

Read: Required: VBM 8.1- 8.6 (612-653)
Optional: VBM 8.1- 8.6 (654-674)

Complete class topic worksheet.

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 14, November 16**Non-Service Connected Pension & Survivor Benefits**

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

Complete class topic worksheet.

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

November 21-November 28 Thanksgiving Vacation - No Class/End of Classes

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.*

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) 453-5714, or siucares@siu.edu, or <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](#).*

UPDATED: 8-6-2020