

# ADMINISTRATIVE LAW (LAW 533)

Professor McCubbin  
Fall 2021

## SYLLABUS

### **Class Time:**

Tuesdays and Thursdays 9 to 10:15 AM  
Room 204

### **Office Hours:**

Tuesdays and Thursdays 3 to 4 PM  
Room 258 (my office) or via Zoom

**Required Textbook:** Michael Asimow and Ronald M. Levin, STATE AND FEDERAL ADMINISTRATIVE LAW (5<sup>th</sup> ed. 2020). We will also read other materials that will be posted on TWEN.

**Course Outline:** I expect to address the following main topics this semester:

1. Careful Statutory Interpretation
2. The Nondelegation Doctrine
3. Rulemaking Procedures
4. Adjudication Procedures
5. Due Process as to Adjudications
6. Judicial Review of Agency Actions – Procedural Hurdles
7. Judicial Review of Agency Actions – Standards of Review

**Grading:** Your grade will be based on a closed-book final exam during exam week.

**Ungraded Tasks:** We will do several ungraded written exercises (including one or more Multistate Performance Tests (MPTs)) that must be satisfactorily completed to receive credit for the course. These exercises will be designed to improve your writing, hone your analysis of Administrative Law concepts, and give you practice with bar questions.

**Student Learning Objectives:** At the end of this course, each student should be able to:

- distinguish agency rulemakings from agency adjudications;
- explain the process that federal agencies must use to adopt regulations or to conduct formal adjudications;
- identify and apply the procedural requirements that must be satisfied for a party to bring suit against a federal agency action; and
- identify and apply the standard(s) of review relevant to different types of challenges to federal agency actions.

Beyond those substantive objectives, there are also several learning objectives related to how I run the class. For example, I usually do not use PowerPoints; instead, I present and summarize each day's lessons orally. The objective is for students to learn to take good notes from oral presentations. That activity mimics how attorneys in practice have to listen and take notes as they interview clients, take depositions, participate in negotiations, and so on.

Likewise, I call on many different students each day because, as another learning objective, students need to develop the skills to communicate their analysis and arguments extemporaneously ("on the fly"). As part of that, students need to learn to control any nervousness about being called on. Again, this mimics the practice of law since attorneys must regularly respond to questions from a judge, a client, an opposing counsel, or others.

In addition, occasionally I will ask you to talk with one or two other students about the day's lessons, and periodically you may review each other's written work (with my guidance). The learning objectives are for students to develop the ability to work in teams and to give and receive feedback orally and in writing.

Students are also expected to do writing tasks throughout the semester, with the obvious learning objective of continuing to improve their writing skills.

Students are also expected to arrive in class on time, with an equally obvious objective of students learning to be punctual.

Finally, another objective is for students to learn to comply with detailed, lengthy instructions – which you will see in the assignments and out in the practice of law when, for example, you file a brief in a court or submit an application with an

administrative agency.

**Assignments:** For each week of classes, I post the assignments on TWEN by the Friday of the prior week and often much earlier than that. The assignments for the first two weeks are now posted on TWEN in the “Weekly Assignments” forum.

**Tardiness:** You should make every effort to arrive on time to class. Doing so is courteous and professional. However, I recognize that sometimes life just gets in the way, so if you end up being a bit late, come into class quietly, and see me afterwards to explain what happened.

**Class Attendance:** Attendance will be taken daily. You are allowed to sign the attendance sheet only if you did the assigned work and are prepared to discuss it. If you are in class but you did not do the assigned work, you will be marked as absent.

Pursuant to School of Law Rule III.5(f), you are permitted six (6) absences. For any absence after that, you will be subject to Law School Rule III.5(g), which calls for a grade reduction or other penalties.

**Noting Out of Class:** If you would like attend a class session without being called on, you may note out, as follows:

1. Do not sign the attendance sheet; and
2. Leave me a note on the lectern before class begins with your name and the date.

A day of noting out counts as one of your absences.

**Days of No Class:** Occasionally we may not meet if I am out of town or if I have some other conflict. We will make up for any missed sessions with out-of-class exercises that will comply with ABA Standard 310, which specifies the amount of time students must spend on coursework both inside and outside the classroom to earn the three credit hours available in this course.

**Recording Policy:** All sessions of this course will be recorded and available to you for review. You are prohibited from recording the class yourself in any

manner, and doing so is a violation of the Honor Code.

**Meeting With Me Outside Class:** Feel free to drop by my office (Room 258) at any time during the day except on Tuesday and Thursday mornings, when I am preparing for and teaching this class and another.

No appointment is necessary, but if you want to make sure I am available, it is best to send me an email ahead of time. You may also communicate with me through TWEN or regular email (mccubbin@siu.edu).

**Workload Expectations:** ABA Standard 310 expects that your work for this course outside the classroom will equate to twice as much time as we actually spend in the classroom. Your work outside the classroom includes preparing for class, synthesizing your notes from class each week into an outline or other study product, working on our various exercises, memorizing the concepts, and preparing for the exam. Please keep that expectation for out-of-class work in mind as we proceed through the semester.

**Expectations for Proper Classroom Behavior:**

- When you apply to take the bar, the bar examiners ask faculty about the honesty and integrity of our students, so you should strive for proper behavior in the classroom and beyond.
- Occasionally in this course we may discuss difficult policy or legal issues about which reasonable people can have differing views. You should give respect to each other's opinions, listen with an open mind, and think critically about your own point of view and that of others.
- Your behavior in the classroom, including the use of your laptop, should not be distracting to me or other students.
- All SIUC students should engage in safe behaviors to avoid the spread of COVID-19.

If, in my judgment, you do not meet these expectations, I can take various steps to remedy the situation, including having a private conversation with you, putting you in a particular seat in the classroom, banning you from using your phone or laptop, or withdrawing you from the course altogether.

**COVID-19:** SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois

Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send an email to [pandemicinfo@siu.edu](mailto:pandemicinfo@siu.edu)

**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](http://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 at the hyperlinks.

**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](mailto:siucares@siu.edu), <https://salukicare.siu.edu/>. 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.