

SYLLABUS
Legal Profession
Law 580
Fall 2021
Wednesday
4:30-7:00 p.m.
Room 108 (Courtroom)

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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 2021, Twelfth 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 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: I may administer the mid-term assignments and the final exam on a take-home basis, 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 may 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 is scheduled for Friday, December 3, 2021 at 1:15 p.m. 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 based on who is identified on Zoom as having signed on. 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 on 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 in 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 believe that the law school records this class as a matter of routine, but I am not certain. Please speak with Dean Ray if need access to class recordings. *Your attendance at class without objection (made to a Dean) will constitute your consent to this recording.* 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 regular 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. If you find that I am in my office, please feel free to stop by BUT do so from the hallway, not inside my office. Thank you.

Course Schedule & Assignments: This semester, we cover an entire week's material in one class. Consequently, the workload for each class is substantial. Also, 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 way through an issue for the first time in class.

Prior to class (probably each morning before class), I will 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 the NIGHT BEFORE (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 had not taken this class.

ASSIGNMENTS-The following is my best current estimate of how we will proceed. It is only an estimate. Experience tells me we will move more slowly than I project, so I have reserved plenty of time at the end to finish. *I reserve absolutely the right to change any aspect of the following. In fact, I will likely update this schedule at the end of each class.*

August 18: Read the ABA Model Rules Preamble, and the Textbook, Preface & Chapter 1 (pp. 1-15) and Chapter XIII, pp. 574-597 on Discipline.

August 25: Read Chapter XII of the text and Assignments 2 & 3 on TWEN.

September 1: Complete prior assignment & do Chapters XIV, XV (skip subpart C on Judicial Campaign Speech) & XVI and *Wal Mart Law* from TWEN.

September 8: Complete prior assignment and do Chapter II (pp. 7-84).

September 15: Complete prior assignment and do Chapters III.

September 22: Do Chapter IV (pp. 85-142; SKIP pp. 144-52). Also Assignment 4 from TWEN.

September 29: Complete prior assignment and do Chapter V.

October 6: Complete Chapter V and do Chapter VI.

October 13: Complete Chapter VI and do Chapter VII (SKIP subparts A & B, pp. 276-290).

October 20: Complete Chapter VII and do Chapter VIII.

October 27: Complete Chapter VIII, do Chapters IX & X.

November 3: Complete prior assignment. Do pages 651-661 & Chapter XI on Judges.

November 9 & 16: Complete what we have thus far failed to complete.

After you read the *Upjohn* case at p. 37, read the *Samaritan Foundation* and *Caldwell* cases on TWEN. When you read *Unethical Fee* (pp. 117-126), read *Chen v. Chen* and *Fohrman v. Alberts* cases in Assignment 4 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:

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, <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, and her phone number is 618- 453-3135.*

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 email to pandemicinfor@siu.edu.*