

**Legal Profession - Law 580**  
**Fall 2023**  
**Monday & Wednesday**  
**11:00 – 12:15**  
**Room 102**

Martin Parsons  
Assistant Professor of Practice  
Cell: 217-418-5032  
[martin.parsons@siu.edu](mailto:martin.parsons@siu.edu)

**Required Textbooks:**

*Regulation of Lawyers: Problems of Law and Ethics*, Stephen Gillers, Aspen 2018, **Eleventh Edition**. Yes, there is a newer version available, but to minimize your textbook expenses, we will use this version. It is readily available as a used textbook on Amazon or possibly from students who took my class in the past year.

*Model Rules of Professional Conduct*, 2022 Edition (or 2023 Edition), by the American Bar Association (**OR** any other set of the ABA Model Rules of Professional Conduct that includes the comments). We will reference the Model Rules and comments daily. In my experience, having a **hard copy** of the rules provides a tremendous benefit to learning the material.

**Course Description:** This course examines the Rules of Professional Conduct that attorneys must follow, along with related topics such as attorney-client privilege, maintaining the confidentiality of information, conflicts of interest, attorney fees, ethics, civility in advocacy, and attorney discipline. The course will also address malpractice and attorney liability to third parties. The objective of the class is to teach you how to stay out of trouble after you graduate. Also, much of the material we will cover is tested on the Multistate Professional Responsibility Examination (MPRE).

**Learning Objectives:** By the end of this course, students will:

- Know the ABA Model Rules of Professional Conduct and how to use the Comments to aid in interpreting them.
- Become familiar with how to research ethics opinions from bar disciplinary organizations, as well as state and federal case law pertaining to legal ethics.
- Correctly identify, explain, and apply professional conduct rules and interpretive standards to real and hypothetical problems in class discussions.
- Identify and critically reflect upon the ethics and professional responsibility aspects of their persona and identity as law students and lawyers.
- Develop the ability to critique the development of professional conduct rules and attorney disciplinary systems.
- Engage and consider non-dominant perspectives on professional codes of conduct with respect and empathy.

**IMPORTANT MPRE NOTE:** Although this class will help prepare you for the material tested on the MPRE, this course alone **WILL NOT** prepare you to succeed on the MPRE. A large part of preparing for the MPRE is learning how to take the test. You all have access to BARBRI MPRE test preparation materials, and you should use those resources.

To ensure that you understand how the Rules of Professional Conduct are applied in practice, and how malpractice and 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 hypotheticals. We may also engage in electronic discussions of current ethical topics.

Each of you will be given the opportunity to brief and present at least one case during the semester. We will typically discuss two cases per class. Because of the level of understanding and preparation I require, I will assign those cases with sufficient time for you to adequately prepare. **You will read the case material in the textbook, review the full case, draft a written case brief, and stand to present your case brief and analysis to the class. By 10:00 a.m., the day of your assigned brief, you will email a copy of your written brief to my T.A., Steven Mattingly: [steven.mattingly@siu.edu](mailto:steven.mattingly@siu.edu).**

**Testing and Grading:** There will be a final exam and one (1) mid-term exam. I will also consider class participation and written assignments in determining final grades. *Please note that the final exam may test material 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.*

**Grades:** Your final grade will be determined by your performance on the two exams, your class participation, and your writing assignment in the following percentages:

5% - Case Presentation  
5% - Class Participation.  
10% - Writing Assignment.  
30% - Midterm Exam.  
50% - Final Exam.

**Midterm Exam:** 30-question, one-hour, multiple-choice MPRE-style exam on **October 4, 2023**.

**Final Exam:** 60-question, two-hour, multiple-choice MPRE-style exam. Date TBD.

**Exam Advice:** Many students ask me the week before the exam, “Prof. Parsons, what is the best way to prepare for the exam?” While that is a great question, having the answer to that question at the **beginning** of the course is more helpful than having it the week before the exam. So, here you go:

**\*\* Read the assigned material, including cases (even when you aren’t assigned a case) and the end-of-chapter self-assessment questions and answers. Read the assigned Model Rules AND the comments. The **comments** are important because they often provide helpful examples of the rule in action. Engage in our discussions in class to help you know if you understand the rules. Do 60 or more Barbri or other MPRE practice questions before each exam AND read the explanations.\*\***  
**[Some of this advice was adapted from feedback from a student who did very well on the exams.]**

**Independent Work & Ban on Collaboration:** You are not allowed to obtain help from any other person (including any other student) or generative artificial intelligence (including, but not limited to, ChatGPT) on your case briefs, D.E.I. Writing Assignment, or any other writing assignment in this course. This ban on collaboration includes obtaining written materials from any other person or generative artificial intelligence and communicating with any other person about an assignment. If you violate the ban on collaboration policy, you will receive a failing grade on that assignment. You also 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.

**Attendance:** The law school rules require that I take attendance. We will use a sign-in sheet to document your attendance. If you are unprepared for class, please advise me of that fact by 8:00 a.m. on the day of class. I believe 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 embarrassing you by calling on you. However, do not let this happen very often or I will revoke your privilege. If you do not 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 intelligently.

You are entitled to six (6) absences. **Unless prior arrangements are approved, more than six (6) absences will result in your withdrawal from the class or a grade reduction per School of Law Rules III.5(f)-(g).**

**Recording of Class Sessions:** The law school records this class. Please speak with Dean Ray if you 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 another recording device).

**D2L:** There is a D2L page for the course. You are automatically granted access to the D2L page because of your registration in this course. Changes in class meetings, assignments, discussions, and other important material will be presented on the D2L page. It is your responsibility to check the D2L page regularly. It is my most common method of communicating with you.

**Office Hours:** My office is in room 212B. I have blocked one hour after class for student meetings. You can schedule a meeting using my scheduling link:  
<https://calendly.com/lahq/student-meeting>

**Course Schedule/Assignments/Participation:** I found that calling on students at random improves student preparation and participation. Your participation also makes the class more interesting and we are all better engaged and learn more when we all participate. A portion of your final semester grade will be based on your class participation. **So, please come to class prepared and participate.**

Before class (typically the week before), I will send an e-mail via D2L assigning cases, problems, and other materials to certain students. I 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. This contributes to your class participation grade.

**Diversity, Equity, and Inclusion Writing Assignment:** Date: **TBD**. We will look at ABA Model Rule 8.4(g) which prohibits harassment and discrimination based on “known” or “explicit” bias. We will explore whether the rule should be expanded to include “unknowing” or “implicit” bias. The exploration will begin with our own unconscious/implicit biases and their impact on our relationships with our colleagues, peers, and clients. Then we will discuss whether legislation is an effective means to minimize implicit bias and what other means could be used. Additional instructions will be provided at the time of the assignment.

**ABA Model Rules of Professional Conduct:** Most reading assignments include references to one or more of the Model Rules of Professional Conduct. In addition to the assigned pages from the Textbook listed, you are responsible for reading the **Rules and the Comments** for each rule.

**IMPORTANT MPRE NOTE (REPRISE):** Although this class will help prepare you for the material tested on the MPRE, this course alone **WILL NOT** prepare you to succeed on the MPRE. A large part of preparing for the MPRE is learning how to take the test. You all have access to BARBRI MPRE test preparation materials, and you should use those resources.

**Class Schedule:** My best current estimate of how we will proceed is the following. It is only an estimate. We may move more slowly than I project, so I have reserved time at the end to finish. *I reserve the right to change any aspect of the following. I will likely update this schedule at the end of each class.*

### **Week 1**

- 1) August 21: Read the ABA Model Rules Preamble, and the Textbook: Why It’s Important: A Preface for Students (pp. xxvii – xxix to \*\*\*) & Chapter 1 (pp. 1-15). **Rule 1.0**
- 2) August 23: Chapter XIII, pp. 587-609 on Discipline. **Rule 1.15; Rule 1.7; Rule 1.8; Rule 8.3; Rule 8.4**

### **Week 2**

- 3) August 28: Read Chapter XII, pp. 501-521. Control of Quality: Reducing the Likelihood of Professional Failure  
  
In re Glass, p. 509  
Leis v. Flynt, p. 516
- 4) August 30: Read Chapter XII, pp. 521-542. Continued. **Rule 5.4, Rule 5.5**  
  
Birbrower v. Superior Court, p. 523  
Liner v. Insurance Claims Consultants, Inc., p.531

### **Week 3**

- 5) September 4 – Labor Day/No Class
- 6) September 6: Read Chapter XIV, pp. 623-650. Control of Quality: Nonlawyers in the Law Business. **Rule 4.3; Rule 5.4; Rule 7.3**

Read the assigned article about the ISBA resolution regarding ownership of law firms by non-attorneys.

NAACP v. Butter, p. 625  
In re Primus, p. 633  
United Trans. Un. V. v. State Bar, p. 640

#### **Week 4**

- 7) September 11: Read Chapter XV, pp. 653-671; (**SKIP subpart C on Judicial Campaign Speech**). Free Speech Rights of Lawyers. **Rule 3.6; Rule 3.8; Rule 8.2**

Gentile v. State Bar of Nev., p. 657  
In re Hotzman, p. 667

- 8) September 13: Read XVI, pp. 685-708. Marketing Legal Services. **Rule 7.1, Rule 7.3**

Ohralik v. Ohio State Bar Ass'n, p. 689  
Zauderer v. Office of Discipline, p. 695  
Shapiro v. Kentucky Bar Assn., p. 699

#### **Week 5**

- 9) September 18: Read Chapter II, pp. 19-52. Defining the Attorney-Client Relationship. **Rule 1.0; Rule 1.18; Rule 1.6; Rule 1.8; Rule 1.9; Rule 1.13; Rule 3.3; Rule 4.2; Rule 8.4; Rule 8.5**

Perez v. Kirk & Carriga, p. 27  
Upjohn v. U.S., p. 36

- 10) September 20: Read Chapter II, pp. 52-81. Defining the Attorney-Client Relationship (Cont.) **Rule 1.2; Rule 1.3; Rule 1.4; Rule 1.16**

Taylor v. Illinois, p. 53  
Choice Hotels v. Grover, p. 55  
Nichols v. Keller, p. 61  
Jones v. Barnes, p. 68  
Olfe v. Gordon, p. 74

#### **Week 6**

- 11) September 25: Read Chapter III, pp. 83-108. Protecting the Attorney-Client Relationship Against Outside Influence. **Rule 3.4; Rule 4.1; Rule 4.2; Rule 4.3; Rule 4.4; Rule 8.4**

Niesig v. Team I, p. 88  
U.S. v. Carona, p. 97  
In re Eisenstein, p. 102

- 12) September 27: Read Chapter IV pp. 109-132. Lawyers, Money, and the Ethics of Legal Fees.  
**Rule 1.5; Rule 1.8; Rule 3.1**

Brobeck v. Telex, p.111  
In re Lauren S. Fordham, p. 119

### **Week 7**

- 13) October 2: Read Chapter IV pp. 132-145; (**SKIP pp. 146-155**); pp. 155-159. (Continued.)  
**Rule 1.5**

Goldfarb v. VA Bar, p. 132  
Evans v. Jeff D., p. 138

- 14) October 4: **Mid-Term.**

### **Week 8**

- 15) October 9: Read Chapter V, pp. 163-184. Concurrent Conflicts of Interest.  
**Rule 1.7; Rule 1.8; Rule 1.9; Rule 1.10; Rule 1.11; Rule 1.13; Rule 8.5**

In re Neville, p. 169

- 16) October 11: Read Chapter V, pp. 185-207. (Continued.) **Rule 1.5**

Cuyler v. Sullivan, p. 188  
Wheat v. U.S., p. 197

### **Week 9**

- 17) October 16: Read Chapter V, pp. 207-226. (Continued.) Criminal Cases (Prosecutors) **Rule 1.7; Rule 1.8; Rule 1.9; Rule 1.10; Rule 1.11; Rule 1.13; Rule 8.5**

Young v. U.S. Exrel, p. 209  
People v. Adams, p. 211  
Fiandaca v. Cunningham, p. 216

- 18) October 18: Read Chapter V, pp. 226-247. (Continued.) Confidentiality and Privilege in Multiple Client Representation. **Rule 1.7; Rule 3.7**

Simpson v. James, p. 231  
Public Svc v. Goldfarb, p. 238

### **Week 10**

- 19) October 23: Read Chapter VI, pp. 249-277. Successive Conflicts of Interest. **Rule 1.6; Rule 1.9; Rule 1.10; Rule 1.11; Rule 1.16; Rule 1.18**

Analytica v. NPD Research, p. 252  
Cromley v. Board of Ed., p. 266  
Armstrong v. McAlpin, p. 273

- 20) October 25: Read Chapter VII, pp. 283-287; (**SKIP subparts A & B, pp. 287-301**); pp. 301-322.  
Topic: Ethics in Advocacy. **Rule 1.2; Rule 1.16; Rule 3.3**

Nix v. Whiteside, p. 305

### **Week 11**

- 21) October 30: Read Chapter VII, pp. 322-343. (Continued.) **Rule 3.3; Rule 8.4**

People v. Marshall, p. 339

- 22) November 1: 7th Circuit Court of Appeals Live Oral Arguments (No Class)

### **Week 12**

- 23) November 6: Read Chapter VII, pp. 343-365. (Continued.) **Rule 3.3; Rule 3.4; Rule 4.1; Rule 8.4**

Zapata v. Vasquez, p. 345  
Mullaney v. Aude, p. 359  
Thul v. One West Baur, p. 363

- 24) November 8: Read Chapter VIII, pp. 369-401. Special Considerations in Criminal Prosecution.  
**Rule 3.4; Rule 3.8, Rule 5.1, Rule 5.3**

In re Ryder, p. 371  
People v. Meredith, p. 379

### **Week 13**

- 25) November 13: Read Chapter IX, pp. 403-424. Negotiation and Transactional Matters.  
**Rule 1.0; Rule 1.2; Rule 1.4; Rule 1.16; Rule 1.16; Rule 3.3; Rule 3.9; Rule 4.1; Rule 4.3; Rule 8.3; Rule 8.4**

Fire Insurance Exchange v. Bell, p. 414  
Hoyt Prop. V. Prod. Res., p. 417  
Virzi v. Grand Truck, p. 420

- 26) November 15: Read Chapter X, pp. 429-459. Lawyers for Companies and Other Organizations.  
**Rule 1.7; Rule 1.13; Rule 3.2; Rule 4.3**

In re Grand Jury Sub., p. 436  
Tekni-Plex v. Meyner, p. 443  
Murphy & Demory v. Admiral, p. 452

## ***November 18-26: Thanksgiving Break***

### **Week 14**

27) November 27: Read Chapter XIII, pp. 543-556. Malpractice and Breach of Fiduciary Duty.

#### **Rule 1.8**

Togstad v. Vesely, Otto, Miller & Keefe, p. 547

Tante v. Herring, p. 553

28) November 29: Chapter XIII, pp. 556-578. Proving Lawyer Liability. **Rule 1.6; Rule 1.7**

Smith v. Haynsworth, Marion, McKay & Geurard, p. 557

Rodriguez v. Disner, p. 559

Viner v. Sweet, p. 562

Peeler v. Hughes & Luce, p. 570

Mashaney v. Board of Indigents' Defense Services, p. 574

### **OTHER IMPORTANT STUFF**

**UNIVERSITY POLICIES:** Supplemental syllabus information from the University is contained in a separate document, which is posted under the Syllabus content folder on D2L and incorporated herein by reference.

**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 a week. Thus, the amount of assigned reading and out-of-class preparation should take you about 3 hours for each class session and 6 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 9 hours per week (3 in class and 6 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](http://disabilityservices.siu.edu). You may request accommodations at any time, but timely requests help to ensure 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. Please send approved accommodations to your faculty through the DSS online portal.

**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/>. Associate Dean Doug Lind ([dlind@siu.edu](mailto:dlind@siu.edu), 618-453-8713) and Assistant Dean Judi Ray ([judiray@siu.edu](mailto:judiray@siu.edu), 618-453-8135) are available at the School of Law to help students access university resources.

**SAFETY AWARENESS FACTS AND EDUCATION** Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>

Updated: September 1, 2023