

Legal Profession - Law 580
Spring 2023
Tuesday & Thursday
11:00 – 12:15
Room 202

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NOTE: I utilized Professor Mark Brittingham's Syllabus as a starting point in preparing this Syllabus and I thank him for his assistance.

Required Textbook: Regulation of Lawyers: Problems of Law and Ethics, Stephen Gillers, Aspen 2018, *Eleventh Edition*. Please note that this textbook is short (by typical law school standards).

Companion (optional) Material: Model Rules of Professional Conduct, 2022 Edition, by the American Bar Association (**OR** any other set of the ABA Model Rules of Professional Conduct that includes the comments). **The rules and comments are available online, 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.

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

Course Description & Learning Objectives: 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, 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 we will cover is tested on the Multistate Professional Responsibility Examination (MPRE).

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. **I do not teach you those skills.** 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 many 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.**

Testing and Grading: There will be a final exam and one (1) mid-term exam. I may also consider class participation, including discussion board participation, 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.*

**** The best way to prepare for the exams is to read the assigned material, including the cases (even when you aren't assigned a case) and end-of-chapter self-assessment questions and answers. Also, read the assigned ABA Model Rules and their comments. ****

Independent Work & Ban on Collaboration: I may administer the mid-term exam on a take-home basis, to be completed outside of class. In completing that assignment, 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.

Midterm Exam: 30-question, one-hour, multiple-choice MPRE-style exam. Date TBD.

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

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 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 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 in accordance with 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: 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. **So, please come to class prepared.**

Before class (typically the week before), I will send an e-mail via D2L 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.

Class Assignments: My best current estimate of how we will proceed is the following. It is only an estimate. It is possible that we will 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.*

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 listed, you are responsible for reading those **Rules and the Comments** for each rule.

Week 1

- 1) January 17: Read the ABA Model Rules Preamble, and the Textbook Preface & Chapter 1 (pp. 1-15).
- 2) January 19: 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) January 24: 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) January 26: 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) January 31: Read Chapter XIV, pp. 623-650. Read the assigned article about ABA resolution regarding ownership of law firms by non-attorneys. **Rule 4.3; Rule 5.4; Rule 7.3**

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

- 6) February 2: 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 8.3**

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

Week 4

- 7) February 7: Read XVI, pp. 685-708. Marketing Legal Services. **Rule 7.3**

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

- 8) February 9: 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

Week 5

- 9) February 14: 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) February 16: 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) February 21: 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) February 23: 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) February 28: 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) March 2: **Mid-Term.**

Week 8

- 15) March 7: 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) March 9: Read Chapter V, pp. 185-207. (Continued.) **Rule 1.5**

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

March 11-19, SPRING BREAK

Week 9

- 17) March 21: Read Chapter V, pp. 207-226. (Continued.) **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) March 23: Read Chapter V, pp. 226-247. (Continued.) **Rule 1.7; Rule 3.7**

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

Week 10

19) March 28: 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) March 30: 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) April 4: Read Chapter VII, pp. 322-343. (Continued.) **Rule 3.3; Rule 8.4**

People v. Marshall, p. 339

22) April 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

Week 12

23) April 11: 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

24) April 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

Week 13

- 25) April 18: 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

- 26) April 20: 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

Week 14

- 27) April 25: 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

- 28) April 27: Assignment TBD.

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 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. 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. 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.*

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/>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Please email her at judiray@siu.edu, or call 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 emails to pandemicinfor@siu.edu.*

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: January 23, 2023