

**TRIAL ADVOCACY – LAW 537
Summer 2019**

Professor: Melissa Day

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Administrative Assistant: Cynthia Heisner, 453-8738

Office Hours: No specific hours – please call, text or e-mail to schedule an appointment, if needed. I am available evenings during the week and throughout the weekend, if necessary

Class Meeting Information: Monday & Wednesday, 6:00-8:30 p.m.
Courtroom (Room 108)

Course Overview and Objectives:

The purpose of this course is to build the foundational skills you will need to try a bench trial and jury trial in a courtroom setting. The trial advocacy course will focus exclusively on those skills. The course objectives are three-fold:

- to achieve mastery of basic trial skills, including case analysis, opening statements,
- closing arguments, direct and cross examinations, and use of exhibits;

- to try two cases in an actual courtroom setting; and

- to develop confidence in public speaking and courtroom procedures.

Weekly Course Rhythm

PRIOR to each class meeting, there will be specific reading assignments that **MUST BE COMPLETED** before you arrive at class. Before we get into to the nuts and bolts of the week’s topic, there will be a brief “quiz” regarding the reading assignment for each class. Students will be randomly called upon to answer questions covering all aspects of the assigned chapter.

Following the quiz, we will discuss the assigned materials and how they connect to the particular activity being discussed that evening.

In addition to the discussion of materials, we will discuss the substantive topic(s) set forth in the syllabus. The class will consist of some lecture, a brief review of pertinent articles/videos, skills practice, including evidentiary objections, and the weekly advocacy exercise.

Basic Rules

The Spring Trial Advocacy program, including trials, meets for seven weeks. It is critical that you adhere to the following rules in order to achieve the goals/objectives referenced above.

1. **Dress:** For the class sessions and trials, you must wear appropriate courtroom attire.
2. **Computers:** Computers are not generally permitted in class. Computers will be allowed for completion of the MPT assignment during the second class session.
3. **Class Participation:** You are never allowed to “note out,” “pass,” or decline to participate whether as an attorney, witness, or observer. ***If you can't live by this rule, please drop the class now so you don't waste everyone else's time.*** Abiding by this rule means you must show up prepared for class, every time. Keep in mind that all trial work takes place in front of other people. You must learn now to overcome embarrassment, self-consciousness, fear of public speaking, and other phobias that might interfere with your effective representation of a client in court.
4. **Punctuality:** Please arrive on time for all classes.
5. **Partners:** A couple of exercises during the semester require a partner. Depending on enrollment numbers, it is possible that someone may have to try a case without a partner. If you would prefer to work alone, please let me know as soon as possible.

Course Materials:

Text: Our course text is Charles H. Rose III, *Mastering Trial Advocacy* (Thomson-West) (1st ed 2014).

Case Files: We will use two case files in the course. The bench trial assignment will be provided at or before the second class meeting. The jury trial materials will be distributed following the completion of the bench trials.

TWEN: Articles and updates will be posted throughout the duration of the class. Please check the Trial Advocacy Summer 2019 TWEN page at least daily.

Advocacy Resource Center (ARC): throughout the class, videotaped lectures, articles and other helpful information can be reviewed from Stetson University College of Law's Advocacy Resource Center – <http://www.law.stetson.edu/advocacy-resource-center/>.

Grading:

- A. Grading Philosophy. This course is graded. Law school rules allow sections with 12 or fewer students to use a median between 3.1 and 3.4. Some of you may be worried that advocacy is all about style and therefore cannot be graded. To the contrary, there are objective evaluation criteria that can be applied to every skill we will learn this term.
- B. How Your Grade is Determined. There are several components to your grade.
1. *Written Elements and Proof Checklist* (10%). This is a written elements and proof checklist for the first trial. A template will be provided for you on the course website.
 2. *Written Case Analysis Memorandum* (20%). This is a written case analysis of the final trial case. A template will be provided for you on the course website.
 3. *Weekly Advocacy Exercises* (Prepared/Unprepared). In class, you will perform the skill live being addressed that week, receiving critiques and coaching from me. These exercises are not graded, but if you fail to participate or show a lack of preparation in the classroom, you will receive a .1 reduction in your final course grade for every such lapse. Any missed class will also result in a .1 reduction in your final course grade.
 4. *Graded Trials*. In the graded trials, you put together the individual skills you've worked on during the weekly advocacy exercises. It is in the trials themselves that you earn a grade.
 - a. First Trial (Bench) (20%). In this trial, you will try a small case with one witness per side. This will give you experience giving an opening statement, conducting a direct and cross examination, and arguing on closing. You will be graded on your performance for each of these skills using a detailed rubric that you will be provided in advance of trial and according to the grading standards listed in subparagraph "c" below.
 - b. Final Trial (50%). In the final trial, you will be expected to give either an opening or closing statement, to conduct the direct examination of at least one witness, and to conduct the cross examination of at least one witness. You will also serve as a witness in another trial. You will be graded on your performance for each of these skills—including your performance as a witness—using a detailed rubric that you will be provided in advance of trial. In addition, you will be expected to serve as a juror in another group's trial.

5. *Ungraded Assignments.* You will have one ungraded written assignment. Although it is ungraded, you will not pass the class unless you turn this assignment in. This assignment is a memo assessing your final trial performance at the end of the semester. A template will be posted on the course web page.
6. *All Assignments Must Be Completed to Pass the Course.* Although there are weights assigned to each component of the class, you cannot pass unless you complete them all. For example, if you decide not to turn in your case analysis or participate in the final trial, yet complete all other requirements, you will fail the class.

d. Workload. 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: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fourteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, consisting of two combined weekly plenary and lab sessions. The amount of assigned reading and out of class preparation should take you, on average, about six (6) hours per class week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending an average of 9 hours per class (3 in class and 6 preparing for class) on course-related work. Please understand from the beginning that this class carries a heavy workload. We make no apologies for the demands placed on your time during the term (and when you practice, neither will your supervisors, judges, clients or opponents).

Attendance:

In a skills class, it’s difficult to learn if you aren’t present. An advocacy course requires your presence so you can learn, and through you, others can learn. If, due to illness or other unavoidable event, you are unable to attend class, call me in advance and let me know. Missing more than two classes may result in expulsion from the course.

Audio/Visual recordings:

You may be required to record certain advocacy exercises and/or the bench and jury trials. Your participation in the class constitutes permission for others to record your participation as a witness or opposing counsel in their advocacy exercises.

Students with Disabilities:

The law school’s policies and procedures regarding students with disabilities may be found online at www.law.siu.edu. Students with disabilities requiring reasonable accommodations should contact the Registrar’s office.

Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

CLASS SCHEDULE AND READING ASSIGNMENTS – Summer 2019*

**Additional assignments may be posted intermittently on TWEN – Please check TWEN daily*

Reading and Assignment Schedule

| Week | Dates | Topic | Reading Assignment & Lecture | Advocacy Assignment (draft—written or video, as appropriate-- due by 5 pm the night before class unless otherwise specifically noted) | Written Assignment (when assigned, emailed to instructor by 5 pm the day before class) |
|------|---------|--------------------------------------------------------------------------|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1 | June 10 | Course Introduction Trials and Storytelling | Rose Chapter One Storytelling materials available on TWEN | Bring to class a one-to-two-page memo addressing what you hope to gain from this class. Note, this assignment is due in class – not the night before. | |
| 2 | June 12 | Case Analysis Theory Development Developing Trial Notebook | Rose Chapter Two | Merit letter (MPT assignment) Case file for first trial provided in class. | You may use your laptops to complete the MPT assignment. |
| 3 | June 17 | Closing Arguments Working in Reverse | Rose Chapter Ten | AE1: Closing Argument | |
| 4 | June 19 | Intro to Direct Examination | Rose Chapter Five Rose Chapter 11 | AE 2: Direct examination in --performance as counsel --performance as witness | |

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|------|---------|----------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 5 | June 24 | Intro to Cross Examination | Rose Chapter Seven | AE 3: Cross examination --performance as counsel --performance as witness | |
| 6 | June 26 | Opening Statements Bench Trial Review/Final Preparation | Rose Chapter Four Review Chapter One | AE 4: Opening Statement | |
| 7 | July 1 | Bench Trials: One and Two | | AE 5: First Trial: | Reflections on First Trial (use template provided on course webpage) |
| 8 | July 3 | Bench Trials: Three & Four | | | |
| 9 | July 8 | Case Analysis, Theme and Theory Development for Final Trial | Review Ros Chapter Two Cease File for Second Trial | Email Completed Fact Analysis/Elements of Proof by 5:00 p.m. the night before class and bring copy to class Work with professor in class on case analysis and theory and theme development. Students will receive final trial assignments and case files after the bench trials are completed. | Final Case Analysis Memo Due at Final Trial |
| 10 | July 10 | Voir Dire and Jury Strategy | Rose Chapter Three Article: Evidence Without Rules | | |
| 11 | July 15 | Direct Examination with Exhibits | Rose Chapter Six | AE 6: Direct Examination with Exhibits using assigned case file for Trial 2. | Reflections on Direct Examination with Exhibits |
| 12 | July 17 | Cross-Examination and Impeachment | Rose Chapter Eight | AE 7: Cross-Examination and Impeachment using Case File 2 | Reflections on Cross-Examination and Impeachment |
| 13 | July 22 | Final Trial One (as assigned by instructor) | | AE 8: Final Trial | Final Self-Assessment Memorandum Due via email to Professor Day no later than 5:00 p.m. Friday, July 27, 2019 |
| 14 | July 24 | Final Trial Two (as assigned by instructor) | | | |