

Law 580: Legal Profession

Summer 2023

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Course Overview

In the aftermath of the Watergate scandal in the 1970's, the American Bar Association began requiring law schools to teach courses in legal ethics as an accreditation requirement. The requirement continues today in Standard 303 of the ABA Standards and Rules of Procedure for Approval of Law Schools, which mandates that all law students “satisfactorily complete” at least “one course . . . in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” Most states also require candidates to pass the Multistate Professional Responsibility Examination (MPRE) before obtaining a law license.

This course is designed to satisfy ABA Standard 303. Throughout the term, we will study the sources of law that govern lawyers: the ABA Model Rules of Professional Conduct, the Restatement (Third) of the Law Governing Lawyers, and case law from state and federal courts construing the rules. The law of lawyering includes several important topics: character and fitness requirements to become a lawyer, attorney disciplinary codes and procedures, prohibitions against the unauthorized practice of law, forming the attorney-client relationship, attorney-client privilege, conflicts of interest, attorney fees, civility in practice, candor to the tribunal, the ethics of legal practice, malpractice, attorney liability to third parties, and other related topics.

Ethical standards and rules of professional conduct are important for you to understand not only at the beginning of your career, but throughout it. Not all the rules are intuitive, and some of them are complex and highly technical in nature. Lawyers who understand and live by the rules of professional conduct thrive in their practices and build positive reputations for themselves. In contrast, lawyers who either don't understand or fail to live by the rules can face disciplinary sanctions, tort liability for malpractice, or even criminal charges—not to mention the infamy of a bad reputation.

Important Note: This is **not** an MPRE prep course. You'll learn most of the rules and standards that are tested on the MPRE (but not all—for instance, we likely will not have time to cover the code of judicial ethics), but the course does not focus on the tips and tricks required to take the MPRE. You have access to BARBRI's MPRE test preparation materials, and I encourage you to use those to prepare for the 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 and Restatement 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.

Course Materials and Necessary Equipment

Required Books

- Stephen Gillers, *Regulation of Lawyers: Problems of Law and Ethics* (11th edition, Aspen 2018), ISBN 978-1-4548-9129-1. Although there is a newer edition of the book (the 12th edition), I am using the 11th edition to maximize opportunities for students to find used copies and save money.
- Thomas D. Morgan, *Selected Standards: Professional Responsibility* (2023 Edition, Foundation Press), ISBN 978-1-63659-965-6. **Note: we will use this book EVERY DAY in class.**

Course Software

- Desire to Learn (D2L). All course materials, assignments, quizzes, and examinations will be posted on D2L. When you registered for this course, you were automatically enrolled in the D2L course page.
- Microsoft Teams. All synchronous sessions will use Microsoft Teams. The link to the Teams sessions will be posted on the D2L page.

Other Requirements for Synchronous Online Sessions

- A computer with a working video camera and microphone. **Note:** you will also need this for the final examination.
- High-speed internet connection. **Note:** you will also need this for the final examination.
- A distraction-free place to participate in synchronous class sessions. **Note:** for the live synchronous sessions, accessing class from a phone or car while driving or otherwise attempting to multitask will result in an assessed absence.

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.

Instructor Availability

No Office Hours

Because this is an online summer course, I am not keeping regular office hours at the School of Law. Instead, I will remain online after each class to answer questions. If you need to speak with me privately, please email or text me to schedule a time of mutual convenience for our meeting.

Contact Information

You can contact me via email at cbehan@siu.edu or through the D2L email portal. My cell number is 618-521-1849. You can message me on this phone number.

Communicate to Resolve Issues and Clear Up Misunderstandings

Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please let me know so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems of which I had not previously been aware.

Course Rhythm, Workload, and Attendance & Participation

Course Rhythm

This course covers all the substance and material of a standard 14-week course in 7 weeks. Thus, each week is divided into two parts and four sessions. Each part includes two sessions: (1) an asynchronous session that you do on your own, and (2) a live synchronous session online in which you join with the rest of the class.

- **Part One: Monday and Tuesday.**
 - Asynchronous Session. The asynchronous session consists of a podcast lecture with built-in quiz questions and learning activities. Generally speaking, it covers the rules (including comments and restatement) pertaining to the cases and problems that will be covered in the live synchronous session. On some days, the asynchronous session will cover cases and problems. To ensure that you stay current with the class (and to receive attendance credit for the asynchronous session), you must complete the asynchronous materials before we meet as a class for the synchronous session.
 - Synchronous Session. This is a live session on Microsoft Teams that all of us attend at the same time. This session includes traditional classroom analysis of assigned cases and problems, group work, and in-class reflective writing assignments.
- **Part Two: Wednesday and Thursday.** Repeat the same cycle as Part One, except with new rules, a new podcast, and new reading assignments.
- **Exceptions.** As noted in the reading and assignment schedule at the end of this memorandum, there are a couple of exceptions to the normal weekly rhythm.

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 fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class. The amount of

assigned reading and out of class preparation should take you about 6 hours for each half of the week and 12 hours total for the week. In addition, you'll spend an hour on the asynchronous podcasts and four hours in class each week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 17-18 hours per week on course-related work. The reading assignments and workload in this class are designed to satisfy ABA Standard 310.

Attendance and Participation

Attendance

As with all law school courses, attendance is required. You may miss up to six (6) class sessions without penalty. If you exceed six (6) absences, you are subject to the penalties of School of Law Rule III.5(g), which could include withdrawal from the course or a failing grade.

For purposes of the attendance policy, class sessions include both the asynchronous and synchronous sessions. To get attendance for an asynchronous session, you must complete it prior to the associated synchronous session for that part of the week. For the synchronous sessions, MS Teams automatically tracks attendance.

Participation

I expect students to show up prepared to class and ready to participate. To ensure a high level of participation, I cold-call on multiple students each session. Because of the compressed timeline for this class, I will divide the class into two halves (Group A and Group B) after the first class meeting. The reading schedule will indicate which group is "on call" for each case and problem in the assigned reading for the day.

When I cold-call on a student, I grade that student's performance using the following standards:

- **8-10 points.** Highest level of preparation and anticipation of follow-up questions. **Student's performance enhances the understanding of the overall class and demonstrates the highest standards of preparation, engagement, and performance.**
- **5-7 points.** Acceptable level of preparation. Student understands the basic facts and holding of the cases. Student is adequately prepared for problems and follow-up questions but may require extra guidance and direction from professor to meaningfully contribute to the class discussion. Student demonstrates some difficulty answering questions accurately or concisely. **Student's preparation and performance makes a positive contribution to overall class discussion and the understanding of classmates.**
- **0 points.** Manifestly inadequate preparation. Student cannot answer basic questions about the case. Student wastes classroom time searching for information that a prepared student would have readily at hand. Student is unfamiliar with notes cases, discussion materials, and problems. **Student's lack of performance and preparation detracts from the classroom experience for others and falls short of minimum standards of classroom professionalism. The signal for a 0 is when I announce I will move on to another student. Note: a student receiving a 0 will also be assessed as absent for that day.**

In addition to cold-calling on students, I will also occasionally assign in-class reflective writing assignments, to be completed on D2L. These assignments are graded using the same rubric as above and count towards your overall class participation grade. The entire class must participate in these writing assignments. If you miss class on a day when there is a reflective writing assignment, you cannot make it up.

On-Line Class Protocol

I expect the following from anyone attending online classes:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is streaming movies or video during class. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your connection will be much better than simply using wifi.
- Attempting to attend class while driving somewhere else does not count as class attendance. Should it become apparent that is what you're doing, I'll assess an absence for the day.
- Turn off all programs on your computer except MS Teams, D2L, and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.
- Do not use your cellphone during this class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- If you are speaking, your video camera must be on. When your camera is on, please ensure the area around you is free from distractions, including pets and people. Remember, your online presence is intended to substitute for your personal presence in the classroom as much as possible.
- To help with bandwidth issues, you are permitted to turn your camera off when you are not speaking.
- When your camera is off, you are still part of the class. This means you are required to listen and to participate when called on, without me having to repeat the question or summarize the classroom discussion up to that point because you were not listening. If I call on you and you are not available to respond, ask me to repeat the question, or indicate in any way that you were checked out of class with your camera off, you'll be assessed an absence for the day.
- A few things to consider when your camera is on.
 - You are free to use a virtual background if you'd like, provided it is not overly distracting.
 - If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.

- The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
 - The light source in the room should be in front of you, not behind you.
 - Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear as a primary outfit.
 - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function to indicate this.
 - If something happens to your internet connection during class, log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).
 - Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold conversations with others during class.

Policy on Recording Class

Classes are automatically recorded. Your participation in class constitutes permission to be recorded. You are not, however, authorized to record class yourself. If you need access to a class recording, please contact me.

Grading and Assessment

Your grade for the course consists of the following components.

Preparation and Participation. 10%.

As discussed above, the preparation and participation grade includes your performance when being cold-called in class and your in-class writing assignments. These grades will be averaged and scaled to be worth 10% of your final grade.

Perp of the Day Assignment. 10%.

There will be a sign-up sheet on D2L for this assignment. By noon on the day your post is due, you'll post a written discussion board piece about someone who has violated one of the rules we are discussing in class that week. It can include a state or federal reported case, or an opinion from a bar disciplinary organization, or even an example from a movie or television show. **If you want to use an example from a movie or television show, you must first obtain permission from me.** I will provide you with a research guide, prepared by our law librarians, that will assist you in your research.

Your written post will summarize the case, provide a hyperlink to the written opinion (or video clip if from a movie or television show), and identify two insightful discussion questions that arise from the case. The Perp of the Day discussion board postings are part of the assigned reading for the course. To encourage engagement and participation in the Perp of the Day discussions, at least five of the questions on the final examination multiple choice will be based on Perp of the Day postings and in-class discussions.

The Perp of the Day assignments will begin Week Two of the class. I will provide you with a rubric, a research guide, and an example Perp of the Day post during Week One.

Perp of the Day Discussion Board Responses. 5%.

You are expected to respond and participate in an online discussion and dialogue with your classmates on the Perp of the Day Discussion Board postings. Each group (A and B) will alternate responsibility for comments on the Perp of the Day postings by week. The Reading Schedule lists which group is responsible for responding each week. You must comment on at least one posting each of the weeks your group is assigned. Your comments should be insightful, engaging, and respectful. You can comment on as many Perp of the Day Discussion Board postings as you would like, but you will not get full credit unless you post during your assigned weeks. At the end of the term, you will be required to cut and paste your responses into a document, along with the original dates you posted them, and submit the document to D2L.

Final Examination. 75%.

The final examination will be a combination of multiple choice and essay. It will take place on D2L using Respondus Lockdown Browser and video proctoring. Everyone will take it at the same date and time. More details about the examination, including format and the date and time of the examination, will be provided to you later in the term.

Writing Across Curriculum and Bar Assessments

The Perp of the Day assignments satisfy the School of Law Writing Across the Curriculum requirement. The MPRE-style multiple-choice questions in the podcasts satisfy the bar assessment requirement.

Reading and Assignment Schedule

Gillers refers to the textbook.

- The assigned pages include all materials: cases, notes, and problems. Principal case names are listed in italics. You are expected to be prepared with problem solutions to discuss in class when called on. “I don’t know” or “I haven’t thought about it” are not acceptable answers.
- On SYNC days, each group is on call for all materials in the pages listed next to the group name.
- BOTH groups are responsible for the “Self-Assessment Questions and Answers” problems in class. We will occasionally discuss these in class, as time permits. To incentivize your paying attention to them and working through them on your own, 5-10 of them will be converted to multiple choice or essay questions on the final examination.

MRPC refers to the ABA Model Rules of Professional Conduct. All MRPC reading assignments *include* the comments.

Restatement refers to the Restatement (Third): The Law Governing Lawyers

This reading schedule is subject to change based on my assessment of how class is going and whether we need to spend additional time on any of the topics covered in the course.

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
1 12-16 Jun	1	12 June	ASync	Introduction to the Course <u>Chapter I</u> : Intro to the Law of Lawyering	Gillers, Chapter 1, 1-15 MRPC, Preamble and Rule 1.0 MRPC 5.4 and 5.5 Restatement §§1-4 Two podcasts and associated materials (one of the podcasts is an advance makeup for June 19 holiday).
	2	13	Sync	<u>Chapter 12</u> : Control of Quality: Reducing Likelihood of Professional Failure: --Admission to Bar --Transient Lawyers & Multijurisdictional Firms --UPL	Gillers, Chapter 12, 499-542 Group A: 499-521. <i>In re Glass, Leis v. Flynt</i> Group B: 521-542. <i>Birbrower, Linder</i>
	3	14	ASync	<u>Chapter 13</u> : Control of Quality: Remedies for Professional Failure	MRPC 8.1-8.4 Restatement §§ 5-8 Podcast and associated materials
	4	15	Sync	<u>Chapter 13</u> : --Malpractice and Breach of Fiduciary Duty --Proving Lawyer Liability --Liability Beyond Malpractice	Gillers, Chapter 13, 543-587 Group A: 543-561 <i>Togstad, Tante, Smith, Rodriguez</i> Group B: 561-587 <i>Viner, Peeler, Mashaney, Petrillo</i>

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
2 19-23 Jun Group A Discussion Responses	5	19 June	ASync Juneteenth holiday	Because of holiday, no podcast or Perp of the Day for 19 June. The makeup for 19 June's podcast is one of the two podcasts on 12 June.	
	6	20	Sync	<u>Chapter 13</u> : Remedies for Professional Failure: --Discipline --Constitutional Protection in Criminal Cases	Gillers, Chapter 13, 587-619 Group B: 587-600 <i>In re Warhaftig, Siderits, Stropnick</i> Group A: 600-619. <i>Schiff, Strickland, Padilla</i>
	7	21	ASync	<u>Chapter 14</u> : Control of Quality: Nonlawyers in the Law Business (and related issues) <u>Chapter 15</u> : First Amendment Rights of Lawyers	MRPC 3.6, 3.8, 4.3, 5.4, 7.3, 8.3 Restatement §§ 4, 9-10, 109, 114 Podcast and associated materials
	8	22	Sync	<u>Chapter 14</u> : --Nonprofit Entities and Intermediaries --For-Profit Enterprises <u>Chapter 15</u> : --Public Comment About Pending Cases --Public Comment About Judges	Chapter 14 & 15: Gillers, 623-671 Group A: 623-651 <i>Button, Primus United Transportation,</i> Group B: 653-671 <i>Gentile, In re Holtzman, White</i>
3 26-30 Jun Group B Discussion Responses	9	26 June	ASync	<u>Chapter 16</u> : Marketing Legal Services	MRPC 7.1-7.3, 7.6
	10	27	Sync	<u>Chapter 16</u> : --Defining the Borders --Defining the Center	Gillers, Chapter 16, 685-706 <i>Ohralik, Zauderer, Shapero</i> Both groups on call for all material in chapter

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
				--Defining the Methodology	
	11	28	ASync	<u>Chapter 2</u> : Defining the Attorney-Client Relationship	MRPC 1.0, 1.2, 1.3, 1.4, 1.6, 1.8, 1.9, 1.13, 1.16, 1.18, 3.3, 4.2, 8.4, 8.5 Restatement §§ 14-33 Podcast and accompanying materials
	12	29	Sync	<u>Chapter 2</u> : --Is There a Client --What Do Lawyers Owe Clients --Autonomy of Attorneys and Clients --Terminating the Relationship	Gillers, Chapter 2, 19-81 Group A : 19-51 Group B : 52-81
4 3-7 July Group A Discussion Responses	13	3 July	ASync	<u>Chapter 3</u> : Protecting the A/C relationship against outside interference	MRPC 3.4, 4.1, 4.2, 4.3, 4.4, 8.4
	14	4	Sync	July 4 holiday; no class this day	Makeup : I will post a second podcast covering the materials in Chapter 3 Gillers, Chapter 3, pages 83-109 <i>Niesig, Carona, Eisenstein</i> Podcast
	15	5	ASync	<u>Chapter 4</u> , Lawyers, Money, and the Ethics of Legal Fees	MRPC 1.5, 1.8, 3.1 Restatement §§ 34-47
	16	6	Sync	<u>Chapter 4</u> : --Role of the Marketplace --Unethical Fees --Contingent Fees --Minimum Fee Schedules	Gillers, Chapter 4, 109-160 Group A : 109-130 <i>Brobeck, Fordham</i> , Group B : 132-160 <i>Goldfarb, Evans</i>

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
				--Court-awarded Fees --Mandatory Pro Bono --Who Gets the Money	
5 10-14 July Group B Discussion responses	17	10 July	ASync	<u>Chapter 5</u> , Conflicts of Interest	MRPC 1.5, 1.7-1.13, 8.5 Restatement 121-125
	18	11	Sync	<u>Chapter 5</u> : --Client-Lawyer Conflicts --Client-Client Conflicts	Gillers, Chapter 5, 163-207 Group B: 163-185 <i>Neville</i> Group A: 185-207 <i>Cuyler, What</i>
	19	12	ASync	<u>Chapter 5</u> : --Criminal Cases (prosecutors) --Civil Cases --The Advocate-Witness Rule	Gillers, Chapter 5, 207-244. Covered via Podcast. <i>Young, Adams, Fiandaca, Simpson, Goldfarb</i>
	20	13	Sync	<u>Chapter 6</u> : --Private Practice --Imputed Disqualification for Migratory Lawyers --Government Service	Gillers, Chapter 6, 249-277 Group A: 249-263 <i>Analytica</i> Group B: 263-280 <i>Cromley, Armstrong</i>
6 17-21 July Group A Discussion Responses	21	17 July	ASync	<u>Chapter 7</u> , Ethics in Advocacy	MRPC 1.2, 1.16, 3.3 Restatement §§ 110-112, 118-120 Gillers, Chapter 7, 281-301
	22	18	Sync	<u>Chapter 7</u> : --Truth and Confidences --Fostering Falsity or Advancing Truth --Hardball and Incivility --Misstating Facts, Precedent, or Record	Gillers, Chapter 7, 301-345; 353-368 Group B: 301-332 <i>Nix</i> , Group A: 332-345; 353-368 <i>Marshall, Zapata, Mullaney, Thul</i>

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
				--Obligation to Reveal Adverse Legal Authority	
	23	19	ASync	<u>Chapter 8</u> , Special Issues in Criminal Prosecutions	MRPC 3.4, 3.8, 5.1, 5.3 Restatement §§ 21-25, 50-52, 66, 118-120
	24	20	Sync	<u>Chapter 8</u> : --Real Evidence --Issues Concerning Prosecutors	Gillers, Chapter 8, 369-402 Group A: 369-386 <i>Ryder, Meredith</i> Group B: 386-401
7 24-28 July Group B Discussion Responses	25	24 July	ASync	<u>Chapter 9</u> , Negotiation and Transactional Matters	MRPC 1.2, 1.4, 1.16, 3.3, 3.9. 4.1, 4.3, 8.3, 8.4 Gillers, Chapter 9, 403-428 <i>Bell, Hoyt, Virzi</i> All covered by podcast
	26	25			
	27	26	ASync	<u>Chapter 10</u> , Lawyers for Companies and Other Organizations	MRPC 1.7, 1.13, 3.2, 4.3 Gillers, Chapter 10, 429-459 All covered by podcast <i>In Re Grand Jury Subpoena, Tekni-Plex, Murphy & Demory</i>
	28	27			
8 31 July-4 Aug	29	31 July		TBD	TBD
	30	1 Aug	Sync	TBD	TBD
		2		Reading Day	
		3		Final examination schedule not yet published. The exam will take place via D2L using Respondus Lockdown Browser, with video proctoring. Everyone will take the examination at the same time and date, which will be announced in plenty of time for you to plan and prepare. More details about final examination to follow.	