Legal Profession
Southern Illinois University School of Law
Prof. Mark Schultz

SYLLABUS

1. Communication

Office: Room 222
E-mail: mschultz@siu.edu
Voice: 1-618-713-7056 (mobile number)

Office Hours: Tuesday, 1:00 to 4:00. If those times do not work, then catch me right after class or drop me an email and we will find a time that works for both of us.

E-Mail: I will be happy to respond to questions sent via e-mail. Please put the words "LEGAL PROFESSION CLASS" in the subject of your e-mail. I get lots of e-mail, and doing this will make it much more likely that I will read and respond to your e-mail. Please do not expect an instant response—I try to limit my email review to a few times a day. But please also feel free to follow up if you don’t hear back from me after a couple of days because e-mail sometimes gets lost in the vast amounts of spam I receive. Please do communicate with professionalism, respect, courtesy, and proper English.

2. Required Materials and Reading Assignments


The Model Rules:

I’d recommend printing out a copy – you can also find them on all of the standard databases.

Illinois Rules of Professional Conduct:
http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/default_NEW.asp
(We will occasionally look at these, where they depart from the Model Rules).

3. Course Perspective and Objectives

This class is different.

Most law school classes prepare you to represent clients. This class teaches you the rules of our profession. This distinction makes a big difference.

Your professional conduct is the subject of this class, rather than your clients’ conduct or goals. This class is about what you must and must not do.
Most law classes spend a lot of time on the close cases and the hard issues. The purpose of that emphasis is to teach you to think like a lawyer and to prepare you to do the sorts of things that clients pay lawyers to do.

Law school is not, however, the only place that people learn about the law, nor are typical legal education methods the only or best way to teach the law for all purposes. To use a very simple analogy, we all must learn traffic laws before we can drive: when to yield, when to stop, when to go, and even which side of the road to drive on. Teaching these rules by reading judicial opinions that interpreted very difficult issues would just be silly. All drivers must learn the basic rules of the road to drive, and the tiny minority that encounter more difficult issues must call on lawyers in very rare instances.

This class provides you with the rules of the road for law practice. A few of you may go on to represent lawyers in ethics or malpractice cases, but preparation for that work is not our focus. Instead, this class is more like the classes on law that doctors, educational administrators, human resources directors, business people and other professionals must take. Here, you will learn the fundamental rules and obligations that will govern how you act every single day of your professional life.

Our focus is largely on the ethical rules governing lawyers. You need to learn these rules. At first, you need to learn them to pass the MPRE and gain admission to the bar. You cannot promptly forget these rules, however, as many lawyers promptly forget the Rule Against Perpetuities after passing the bar exam. You will need to know these rules and use them everyday in your professional life.

We lawyers occupy a unique position in society. We have a lot of power and we occupy positions of tremendous trust. Society expects us not to abuse this position while our clients expect us to serve them. We may not always find it easy to meet the expectations of both.

We cannot decide how to resolve the conflicts we lawyers face simply by “being a good person.” Unlike the movies or other fiction, most dilemmas in life are not black and white. For lawyers, the picture is often murkier because of the many quandaries inherent in our profession. Fortunately, we have rules that make the picture much clearer. These rules wisely steer us clear of such conflicts or help provide answers when they still inevitably do arise.

My goals are to teach you:

• to identify legal and ethical issues arising from the practice of law;
• to understand how law practice generates ethical dilemmas sufficiently to understand the context in which ethical rules are applied;
• to develop a “speaking familiarity” (in the words of the National Conference of Bar Examiners) with the ABA Model Rules of Professional Conduct and ABA Model Code of Judicial Conduct so that:
  • you can pass the MPRE; and
  • you can identify and resolve issues arising in your practice;
• to understand some of the current controversies that have generated recent changes in the rules and that may generate future changes.
4. Preparation and Participation

If you don’t prepare, it will be deducted from attendance and participation.

This class is based on a model code—i.e., it is a statute-based class. We will not spend time trying to discern rules developed in judicial opinions. Instead, the rules are set forth clearly in the code and our job is to interpret them and understand them well enough to apply them. I chose a problem-based text because I believe it lends itself best to this task.

The nature of the material has a few important consequences for preparation and class conduct. The good news is that preparation is not difficult relative to some other classes. The ball is not hidden in a dense Supreme Court opinion. You simply need to read the Model Rules—always read the Model Rules and related Comments—read the problems and consider carefully the questions that follow.

You do, however, need to prepare. We need to base class discussion on understanding rules and problems that you have already read. It would be a waste of our time to spend half of each class walking through rules that are plainly set forth. You need to prepare thoroughly and contribute meaningfully.

5. Assessment

a. Participation. 10% of final grade.

b. Exams. There will be a mid term and final exam. The exams will consist solely of objective multiple choice questions. Each will count for 45% of your grade.

The midterm is during the class period on Monday, March 6. The final is on Wednesday, May 3rd, at 8:15am.

6. Absences & Class Preparation

You are all familiar with the school’s attendance policy. Since this class meets twice a week, you are permitted 6 absences.

If you have not prepared for class, do not sign the attendance sheet. Doing so if not prepared would constitute academic dishonesty. If you are unprepared, you may “note out” by leaving a slip of paper at the front. I will not call on you – but you should not sign the attendance sheet and it will count as an absence, with all the resulting consequences.

Excessive absences without excuse will result in withdrawal from the class.

In consultation with the Associate Dean, I may at my discretion and/or as required by law and school policy make exceptions to the foregoing
on a case-by-case basis to accommodate disabilities or other extraordinary circumstances, including, but not limited to illness or death in the family.


I grant you limited, non-transferable permission to record the class on your own or a fellow student’s behalf for the sole purpose of preparing for this class and the assignments associated with it, but you must inform me beforehand. You may distribute any such recording solely to your classmates currently enrolled in the present semester of this class. You may not perform, distribute, or make available such recording publicly. It is an infringement of both copyright law and the SIU Law Honor Code to create or distribute such recordings in violation of the limited license granted to you in this paragraph. [Honor Code I.E.1.g]. Reviewing a recording does not excuse an absence.

8. Workload Expectations. 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. The amount of assigned reading and out of class preparation should take you about 6 hours for the 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 week (3 in class and 6 preparing for class) on course-related work.


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. If you have any questions about emergency procedures, please contact Judi Ray (judiray@siu.edu).

Disability Policy. Disability Support Services provides the required academic and programmatic support
services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. [http://disabilityservices.siu.edu/](http://disabilityservices.siu.edu/). Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement 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] 453-5714, or siucares@siu.edu, [http://salukicares.siu.edu/index.html](http://salukicares.siu.edu/index.html). 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.
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Problems 6 & 7

Problems 7 & 8

Recorded Lesson, Problems 13, 14, & 15

Problems 9 & 10

Problems 10 & 11

Problems 16 & 17

Recorded Lesson, Problems 13, 14, & 15

Problems 16 & 17

Recorded Lesson, Problems 13, 14, & 15

Problems 6 & 7

Class WAC Exercise - Problem 19 & 16

Group 8

Problems 16 & 17

Also PG 603 - 606

Problems 12 & 16

Group 4

Problems 9 & 10

Problems 16 & 17

Group 4

Recorded Lesson, Problems 13, 14, & 15

Problems 7 & 8

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**March 2017**

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April 2017

Legal Profession Spring 2017
Legal Profession Spring 2017

Legal Profession

Outline of Readings With Rules

Southern Illinois University School of Law, Law 580
Prof. Mark Schultz

I. Regulation of the Legal Profession

1. Introduction

2. Admission to the Bar
Prob. 1
MR 8.1 & Comments

3. Attorney Disciplinary Rules

a. Standards for Discipline
Prob. 2
MR 8.4 & Comments
MR 1.1 & Comments
MR 1.3 & Comments

b. Choice of Law
Prob. 2 (cont.)
MR 8.5 & Comments

c. Reporting Another Lawyer's Misconduct
Prob. 2 (cont.)
MR 8.3 & Comments

4. Regulation of Attorney Behavior outside of Disciplinary Law

a. Malpractice
Prob. 3
MR 1.8(h)(1)-(2) & Comments [14]-[15]

b. Other Law
Prob. 3 (cont.)
II. The Lawyer-Client Relationship: Its Scope, Creation, and Termination

1. Obligations to Prospective Clients; Limiting the Scope of Representation
   Prob. 4
   MR 1.2(c) & Comments [6]-[8]
   MR 1.18(a)-(b) & Comments [1]-[3], [9]

2. Allocation of Authority Between Lawyer & Client
   Prob. 4 (cont.)
   MR 1.2(a)-(b) & Comments [1]-[5]
   MR 1.4 & Comments
   MR 1.16(a)(3) & Comments [4]-[6]
   MR Rule 2.1 & Comments

3. The Financial Relationship
   a. Billing
      Prob. 5
      MR 1.5 & Comments
   b. Fee Splitting
      Prob. 32
      MR 1.5(e) & Comment [8]
      MR 7.2(b)(4) & Comment [8]
   c. Handling Client Property
      Prob. 6
      MR 1.15 & Comments

4. Declining and Terminating Representation
   Prob. 6
   MR 1.16 & Comments
   MR 1.6 & Comments

5. Collecting Fees From Clients
   MC EC 2-23 & n. 37
   MR 1.6(b)(5) & Comment [11]
III. The Lawyer-Client Relationship: Duties of Confidentiality

1. The Attorney-Client Privilege, the Work-Product Privilege and the Professional Duty of Confidentially Distinguished
   - Prob. 7
   - MR 1.6(a), (b)(2), (b)(4), Comments [1]-[5], [7], [9]-[11], [15]-[17]
   - MR 4.4(b) & Comments [2]-[3]
   - MC DR 4-101(A)
   - IL RPC 1.6
   - Supplement 144-55 (Skim)

2. Organizational Clients & Exceptions to the Duty of Confidentiality
   - Prob. 8
   - MR 1.6(b)(1) & Comment [6], [12]-[13]
   - MR 1.6(b)(3) & Comment [8], [14]
   - MR 4.1 & Comments

IV. The Lawyer-Client Relationship: Duties of Loyalty

1. Introduction to Conflicts: Representing Multiple Parties Dealing with One Another
   - Prob. 9
   - MR 1.7 & Comments [1]-[8], [14]-[21], [26]-[33]
   - MR 1.0(e) & Comments [6]-[7]

2. Conflicts of Interest between Clients in Different Cases
   - Prob. 10
   - MR 1.7 & Comments [9], [22]-[25], [34]-[35]

3. Conflicts of Interest in Criminal Litigation
   - Prob. 11
   - MR 1.8(d) & Comment [9]

4. Conflicts with Lawyer's Personal Interests
   - Prob. 12
   - Comments [10]-[12] to MR 1.7
   - MR 1.8(a)-(c), (e), (j)-(k) & Comments [1]-[8], [10], [17]-[20]

5. Conflicts When Representing Insurers and the Insured
   - Prob. 13
   - Comment [13] to MR 1.7
   - MR 1.8(f) & Comments [11]-[12]

6. Conflicts Concerning Former Clients
   - Prob. 14
   - MR 1.9 & Comments; 1.18(c) & Comments [4]-[6]
Legal Profession Spring 2017

7. Imputed Conflicts
   Prob. 15
   MR 1.10 & Comments
   MR 1.18(c)-(d) & Comments [7]-[8]
   Comment [20] to MR 1.9

8. Government Service
   Prob. 16
   MR 1.11 & Comments

V. Problems when Advising Clients
1. Problems When Advising Individuals: Counseling Wrongdoing, Diminished Capacity, Third Party Interests
   Prob. 17 MR 1.2(d) & Comments [9]-[13] MR 1.14 & Comments

2. Problems When Advising Corporations
   Prob. 18
   MR 1.13 & Comments

3. Contact with Third Parties
   Prob. 19
   MR 4.2 & Comments; MR 4.3 & Comments

4. The Ethics of Negotiation
   Prob. 20
   MR 4.1 & Comments

5. Opinion Letters & Evaluations for Third Parties
   Prob. 21
   MR 2.3 & Comments

6. Problems of Client Fraud and Crime
   Prob. 22
   MR 1.6
VI. Problems in Litigation

1. Frivolous Suits
Prob. 23 MR 3.1 & Comments MR 3.2 & Comments

2. Tactics
Prob. 24
MR 3.3(a)(1) & Comments [1]-[2]
MR 4.4(a) & Comment [1]

3. Duty of Candor
Prob. 25
MR 3.3(a)(1)-(2) & Comments [1]-[4]

4. Handling Physical Evidence
Prob. 26

5. Client Perjury
Prob. 27
MR 3.3(a)(3), (b), (c) & Comments [5]-[13], [15]

6. Jurors & Witnesses
Prob. 28
MR 3.4 & 3.5

7. Prosecutorial Ethics
Prob. 29
MR 3.6 & 3.8

8. Integrity of the System
Prob. 30

9. Supervisory Duties and Responsibilities
Prob. 33
MR 5.1 & Comments MR 5.2 & Comments

VII. Advertisement & Solicitation

Prob. 31 MR 7.2 & Comments MR 7.3 & Comments

Prob. 32
MR 7.4 & Comments
VIII. Judicial Ethics
Prob. 38, 39, 40
Review the relevant portions of the Model Code of Judicial Conduct, as referenced in the readings