CLASS PROCEDURES AND OBJECTIVES:

Course Objective: The objectives are 1) to give students an opportunity to further study and reflect on the law governing professional responsibility and civil procedure, and 2) to prepare students to address the ethical and professional issues that they will encounter as civil litigators.

Texts: I am not assigning formal text books. I will distribute in or before class many of the reading materials, primarily edited cases and excerpts from my articles and CLE materials. In addition, we will study many civil procedure and professional rules and statutes. I expect you to find these laws on your own. You may do so online, or you may also use a rulebook. Your rulebooks from your Legal Profession and Civil Procedure classes likely will contain most of the assigned rule and statutory material.

Make-up Classes: We may have make-up classes. I will discuss in class.

Class Participation: This is a very small class. I hope that you all feel free to regularly participate.

Email: I regularly email the class to distribute handout materials and otherwise update the class. I expect you to monitor your law school email often, particularly on the days immediately preceding our classes.

Attendance: You must attend class and sign the roster every day. If you miss the roster, you may not retroactively sign it without my prior permission. You may not sign the roster if you are more than 10 minutes late. If you miss more than nine classes, for whatever reason, you will be automatically withdrawn from the course. Whether that withdrawal will be a pass or a fail will depend on the reasons why you missed class. I do not need to discuss your reasons for missing class if you miss nine or fewer sessions.

Final Examination and Grades: Your grade will be based on your score on the final exam. The exam will be scheduled, in-class [not “floating”], and it will last three hours. It will consist of essay and multiple-choice questions, similar to those in the tests in the handout book. It will be an open book exam but you may not use an electronic device during the exam to access notes or other material.

Office Hours: I should be in the office from 9 am to 4:30 pm on most days, particularly class meeting days.

Syllabus Key:

Handouts – Course Materials selected/prepared and distributed by Prof Andrews
“MRPC” – The ABA Model Rules of Professional Conduct – Find on-line or in your own Rulebook
“ARPC” – The Alabama Rules of Professional Conduct – Find on-line or in your own Rulebook
“FRCP” – The Federal Rules of Civil Procedure– Find on-line or in your own Rulebook
“ARCP” – The Alabama Rules of Civil Procedure– Find on-line or in your own Rulebook
“ARE” -- The Alabama Rules of Evidence– Find on-line or in your own Rulebook
Code -- The Alabama Code (statutes) – Find on-line or in your own Rulebook
USC -- The United States Code– Find on-line or in your own Rulebook
SYLLABUS – READING ASSIGNMENTS

I. Introduction to Course (1 Day)

II. Overview of “Zealous Advocacy,” “Just Causes” and the History of Regulation of Lawyer Conduct in Civil Litigation (2 Days)

Read: Andrews “Zealous Advocacy” article [handout]
Model Rules (and comments) 1.2, 1.3, 1.16, 3.3, 3.4, and 6.2

Research: Find on-line the lawyer’s oath in the state in which you attend to practice

III. Competency (4 days)

Read:  MRPC (and comments) 1.1, 1.2(c), 1.3, 1.4
Davis case [handout]
Andrews’ CLE materials [handout]

IV. Modern Procedural and Professional Restraints on Civil Pleadings and Motions

Federal Rule 11 (4 Days)

History
Read: FRCP 11 (current)
Advisory committee notes addressing 1983 and 1993 amendments to Rule 11

Mechanics
Read: FRCP 11
Cases: Garr, Mars, Taco Bell and Wright [handouts]

Other Federal Procedural Statutes and Limitations (1/2 Day)

Read:  28 USC 1927
Federal Private Securities Reform Act (“PSLRA”), 15 USC 78u-4(c)
FRCP 26(g)
Suzuki case [handout]

Professional Rules (1 Day)

Read: Model Rule (and comments) 1.3, 3.1 through 3.4
ARPC 3.1 and 3.10
ABA Opinion re Statute of Limitations, ABA Opinion, 94-387 [handout]

Alabama Rule 11 and Alabama Litigation Accountability Act (1/2 Day)

Read: ARCP 11
ARPC 3.1 and 3.4
Alabama Code §§ 12-19-270 thru 276 (Alabama Litigation Accountability Act)
V. Confidentiality, Work Product Protection and Privilege (4 Days)

Introduction

The Professional Duty of Confidentiality and Its Exceptions (1/2 Day)
Read: MRPC (and comments) 1.2(d), 1.6, 1.8(b), 1.9(c), 1.13, 3.3, 3.4(a), 4.1

Work Product and Privilege

Privilege
Read: Alabama Rule Evidence 502

Work Product
Read: FRCP 26(b)(3)
*Hickman* case [handout]
Other cases [handout]

Waiver
Read: ARE 510
FRCP 26(b)(5)
MRPC 4.4

VI. Witnesses

Who? The No-Contact Rule (2 Days)
Read: MRPC 4.2
ARPC 4.2
*Gaylard* case [handout]
Alabama General Counsel Opinions 2002-03 [handout]
Andrews’ CLE paper [handout]

What? (3 Days)

Instructions not to Cooperate
MRPC 3.4(f)
ARPC 3.4(f)

Respect and Disclosure of Interests
MRPC 4.3
*Arnold* case ([handout]

Truthfulness – Pretextual Calling
4.1, 4.2, 4.3, 4.4, 8.4
*Gatti* case [handout]
Alabama OGC Opinions 1989-31 and 2007-05 [handout]

Truthful Testimony - Inducements, Coaching and False Testimony (1 Day)
Read: MRPC 3.4,
*Arnold* case (Handout),
Alabama OGC Opinion re Payment of Witnesses (Op. 1997-02) (Handout)
Alabama Code, Tampering with Witness/Evidence, 13A-10-121, 123, 124, 129
VII. Special Issues at Trial (2 Days)

False Evidence and perjury
Read: MRPC (with comments) 1.2(d) & (e), 1.6, 3.3(a)(3), 3.3(b), 3.3(c)
Alabama Code re Tampering 13A-10-121, 123, 124 and 129
Alabama OGC Opinion [handout]

Communications with the Court and Jury
Read: MRPC 3.5
Alabama Code re Interference with Judicial Proceedings, 13A-10-130

Talking to the Media
Read: MRPC 3.6

VIII. Multi-Jurisdictional Litigation Practice (3 Days)

Admission and authority to practice
Read: MRPC 8.1

Choice and Conflict of Law Issues
Read: MRPC Preface, Preamble, Scope

Unauthorized Practice, Multi-Jurisdictional Practice and Choice of Law
Read: MRPC 5.5, 8.5
Ala Code §§ 33-3-1 & 33-36 (Unauthorized Practice of Law)

IX. Other

X. Final Review