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Ministry of Education and Science of Ukraine

National Aviation University

Educational and Research Institute of Law

Department of Criminal Law and Process

Approved

# Rector

\_\_\_\_\_\_\_\_\_\_\_\_\_

«\_\_\_»\_\_\_\_\_\_\_\_\_\_\_\_2018.



# Quality Management System

**SYLLABUS**

**on**

## **«Advocacy and Notary Service in Ukraine»**

### Field of Study: 08 “Law”

### Specialty: 081 “Law”

Education Professional Program: “Jurisprudence”

Year of Study – 2 Semester – 4

Classroom Sessions – 34 Examination – 4 семестр

Self-study – 71

Total (hours/ECTS credits) – 105/3.5

Index СB - 9-081/17-3.10

**QMS NAU S 13.01.03-01-2018**

### The Syllabus on «Advocacy and Notary Service in Ukraine » is based on the educational and professional program and Bachelor Curriculum № СB– 9-081/17 for Speciality 081 “Law” Education Professional Program “Jurisprudence” and correspondent normative documents, order № 207/од of 27.04.2018.

Developed by

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Discussed and approved by the Department of Criminal Law and Process, Minutes № \_\_\_\_\_\_\_of " " 2018.

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Discussed and approved by the Graduate Department Speciality 081 “Law” Education Professional Program “Jurisprudence” - The Department of Commercial, Air аnd Space law, Minutes № \_\_ of " " 2018.

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Discussed and approved by the Scientific – Methodological – Editorial Board of the Educational and Research Institute of Law, Minutes № \_\_ of \_\_\_\_\_\_\_\_\_" " 2018.

Head of the SMEB \_\_\_\_\_\_\_\_\_\_\_\_**V. Vyshnevetskii**

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| AGREED  Director of the Educational and Research Institute of Law  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ I. Sopilko | Director of the Institute of  Innovative Technologies and Leadership  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_K. Babikova  “\_\_\_”\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2018 |
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Document level – 3b

The planned term between the revisions – 1 year

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**1. INTRODUCTION**

The Syllabus «Advocacy and Notary Service in Ukraine» is developed on the basis of "Methodological Guidelines for the Development and Design of Educational and Work Curriculum Programs of disciplines", put into effect by the order of 16.06.2015. №37 / order.

Discipline «Advocacy and Notary Service in Ukraine» is classified as a group of criminal-legal and civil-law disciplines which studying offenses and measures to combat them. In-depth study of the course allows students to obtain the basics of professional knowledge in this type of legal activity, to properly orient and apply the current legislation of Ukraine in the performance of their professional duties, to promote the development of the skills of future lawyers in using the tools and methods provided for by law to protect the constitutional rights of citizens when providing various types of qualified legal aid. The purpose of teaching is to obtain a systematic knowledge of objectives, functions, the main activities of the Bar and notaries.

The tasks of studying the discipline are:

* assimilation of theoretical foundations of the essence and content of advocacy, as well as categorical apparatus used in teaching discipline (lawyer of Ukraine, lawyer, advocacy, defense, representation, agreement on the provision of legal assistance, etc.);
* expansion of knowledge about the problems of the modern legal profession, types and forms of advocacy provided by law and applied in practice;
* familiarization with legal and organizational support of lawyers, law offices and lawyers' associations;
* understanding of the notion and task of the notary, the structure of the notary, sources of the notary process, the Code of professional ethics of notaries of Ukraine;
* study regulations governing notaries activities in Ukraine.

As a result of studying the discipline «Advocacy and Notary Service in Ukraine» the student must:

**Know:**

- regulatory legal acts of Ukraine regulating the advocacy of Ukraine;

* the history of the birth and development stages of Ukrainian Bar;
* legal basis of the activity of the Bar and its functioning;
* system and structure of advocacy bodies;
* concept, meaning, system of principles of organization and activity of the advocacy;
* guarantees of the independence of barristers in the exercise of their powers;
* professional rights and obligations of the notary.

**To be able to:**

* to correctly interpret and apply procedural norms defining the status of a lawyer in criminal, civil, economic and administrative proceedings;
* to draw up and apply procedural legal documents from the notary and advocates;
* protect the rights of citizens in relations with law enforcement agencies;
* substantiate and defend their legal position.

The educational material of the discipline is structured on a modular basis and consists of one training module, which is a logically complete, relatively independent, integral part of the academic discipline, the mastering of which involves modular control work and analysis of the results of its implementation.

The educational discipline «Advocacy and Notary Service in Ukraine» is based on the knowledge of such disciplines as: "Theory of State and Law", "Legal Deontology", "Constitutional Law of Ukraine" and is the basis for studying such disciplines as "Notary Law", and others.

Knowledge and skills received by a student during the study of this discipline are used further in the study of many of the following disciplines of vocational training of a specialist with basic and complete higher education.

**2. CONTENT OF EDUCATIONAL DISCIPLINE**

**2.1. MODULE # 1 «Advocacy and Notary Service in Ukraine»**

**Topic 2.1.1. History of advocacy.**

Historical aspects of the formation of advocacy (bar, solicitor, trial attorneys) Evolution of social relations as the basis for the emergence and existence of advocacy. Advocacy of Greece and Rome. Organization of the Bar for the Lithuanian Statutes. The organization of the lawyer's profession in "The rights that the Little Russian people are condemning". Advocacy during the judicial reform of 1864. Development of advocacy in the Soviet period. Development of democratic principles of the organization of advocacy in Ukraine. Advocacy in the context of the Constitution of Ukraine, the Criminal Procedure Code, the Law of Ukraine "On the Bar and Practice of Law" and other regulatory documents.

**Topic 2.1.2. The concept of a bar. Its tasks, organizational forms, types and principles of advocacy. Barrister’s self-government.**

The Bar in Ukraine: legal status, tasks and principles of its activities at the present stage. The rule of law, legality, humanism, democracy, voluntariness, independence and self-government as the principles of the organization and functioning of the bar.

Organizational forms of advocacy: legislative regulation and practice in Ukraine. Features of advocacy individually. Law bureau (legal practice, lawyer's office) as one of the organizational forms of advocacy. Legislative settlement and practice of lawyer unions in Ukraine. Creation, reorganization, liquidation of law firms - law bureau and lawyer unions. Types of advocacy. Professional rights and duties of advocates.  Legal professional privilege (advocate secrets). Suspension and termination of the right to practice advocacy. Features of the status of a lawyer of a foreign state. Realization of lawyer activity in Ukraine by a lawyer of a foreign state.

Barrister’s self-government. Principles and tasks of barrister’s self-government. **The Ukrainian National Bar Association. Organizational forms of** barrister’s self-government. Conference of advocates of the region. Council of advocates of the region. Chairman of the Bar Council of the region. Composition and powers of the Bar Association Qualification and Disciplinary Commission. Audit Committee of the region's lawyers. Composition and authority of the High Qualifications-Disciplinary Commission of the Bar.

Grounds for bringing an advocate to disciplinary responsibility. The procedure for conducting disciplinary proceedings against an advocate. Stages of disciplinary proceedings against an advocate. Consideration and decision making in a disciplinary case. Appealing a decision in a disciplinary case. The highest revision commission of the Bar. Congress of Advocates of Ukraine: structure and functions. The powers and procedure of the Council of Advocates of Ukraine. The powers of the chairman of the Council of Advocates of Ukraine. Obligation of decisions of the organs of barrister’s self-government. Financial support of barrister’s self-government bodies.

**Topic 2.1.3. Ethics of advocacy.**

The Rules of Professional Conduct as a set of ethical foundations of advocacy. Concept and characteristic the basic principles of advocacy ethics. The principle of confidentiality. Practical aspects of implementation of the Rules of Professional Conduct. Ethical principles of acceptance of the assignment for mediation between clients. Principles of acceptance of the client’s instruction by several attorneys, law office or law firm. Application of the Rules of Professional Conduct to activities of law offices and law firms. Ethical aspects of attorney’s relations with the preliminary investigation and administrative jurisdiction authorities. Attorney’s fee. Unilateral termination of the legal services agreement. Attorney’s relations with the court and other participants of the court proceedings. Observance by the attorney of the principle of legality in relations with the court. Respect for attorney’s profession in all areas of the attorney’s activity, that is, in the professional, social, publicity areas, and so on. Liability for the breach of the rules of professional conduct.

**Topic 2.1.4. The implementation of defense ( assertion,  behalf,  protection) and representation attorneys in various forms of legal proceedings.**

Advocacy in the context of the Concept of Criminal Justice Reform. The right todefense and its contents.  Criminal defence lawyer and his procedural position under the Criminal Procedure Code of Ukraine. General rules for the participation of a defense counsel in criminal proceedings. Rights and duties of a counsel at pre-trial investigation and in court. Documents confirming the powers of the counsel. Providing legal aid to a witness. Representation in criminal proceedings. Obligatory participation of a defense counsel in criminal proceedings. Attracting a defender to a separate procedural action. Refusal of a defender or his replacement. Defender's request. Submitting complaints to a defender. Inspection of the criminal proceedings. Participation of the counsel in conducting investigative (search) actions. Attorney's participation in appeal and cassation proceedings. Granting a lawyer free legal aid in criminal proceedings.

Organization of the lawyer's work in the civil process. Procedural status of the lawyer in the civil process. Rights and duties of a lawyer in a civil process. Tactics of representing the interests of individuals and legal entities in civil legal proceedings. The activity of a lawyer at the stage of judicial review of civil cases. The essence of the provision of legal aid during the appeal of court decisions.

Organization of the work of a lawyer in the commercial process. The procedural status of a lawyer in the commercial and administrative process. Procedural status of a lawyer in administrative proceedings. Tactics of representing the interests of individuals and legal entities in commercial and administrative proceedings. Activity of the lawyer at the stage of judicial review of economic affairs. The essence of the provision of legal aid during the appeal of court decisions. Representation of the interests of individuals and legal entities by the lawyer in commercial and administrative proceedings. International standards for the profession of advocate. Relations of the barrister of a foreign state with the bodies of the barrister's self-government. Representation by a lawyer the interests of individuals and legal entities in the organs of state power of Ukraine and international judicial institutions.

**Topic 2.1.5.** **Notary activity in Ukraine. The concept, objectives and functions of the notarial law.**

The history of the emergence and formation of a notary as a legal institution. Latin Notary and its Commandments.

Concepts, features, functions and principles of notarial activity in Ukraine. Sources of notary law. Notary activity, its procedure and citizens' legal consciousness. Notary, as a system of bodies and officials.

**Topic 2.1.6. Notary as the main subject of notarial relations. System and competence of notarial bodies.**

Requirements for notary's office. Internship of persons intending to engage in notarial activities. Organization and activities of the qualifications commissions of the notary. Preparation of the qualification exam. The procedure for issuing a certificate on the right to engage in notarial activities and the grounds for its cancellation. Oath of the notary, its value. Rights and duties of the notary. Notary's ethics.

The system of notarial bodies and officials obliged to perform notarial acts in Ukraine. Organization of work of state notary offices. Organizational issues of the activities of private notaries.

Activities of state notary archives. Organization of work of officials, who are obliged to perform notarial acts. The work of consular offices and diplomatic missions regarding the commission of notarial acts.

The role of the judiciary in regulation of the activities of notaries. Activities of the Ukrainian Notary Chamber.

The notion of competence of notary organs. Classification of notarial acts. Concept and meaning of subject and territorial competence. Exceptions to the general rule of territorial competence.

**Topic 2.1.7. General rules for notarial acts.**

Features of the notarial process, its contents and stages. The notion of notarial acts and the general rules of its commission.

Place and time of notarial acts. Procedure for establishing the identity of a citizen who applied for a notarial act. Verification of citizens 'legal capacity and legal capacity of legal entities involved in transactions, as well as verification of representatives' credentials. Signing of notarized documents. Recovery of the information and documents necessary for the commission of notarial acts.

Grounds for refusal to perform notarial acts and procedural procedure for refusing to perform notarial acts. Appeal against actions of the notary and refusal to perform notarial acts.

Concepts and types of notarial acts.

Office work of the notary's office. Preparation, registration and registration of notarial documents.

The procedure for the recovery of state duty. Grounds for exemption from payment of state duty.

**Topic 2.1.8. General rules of certification of transactions. Issuance of notary certificates. The use of a notary laws of foreign countries**

The concept of the transaction and the requirements for its validity. The value and benefits of notarization of transactions. Transactions that require mandatory notarization. General rules for the certification of transactions by notary bodies.

Procedure for certification of real estate alienation agreements. Certification of agreements on the pledge of real estate, vehicles, goods in circulation and processing. Certification of contracts on privatization of state-owned property. Certification of constituent agreements. Marriage contract certification. Certification of a collateral agreement. Notarization of wills. Notarization of orders. Notarization of designation of authority.

Order of appointment and duties of the executor of the will. Issuance of the certificate to the executor of the will.

General provisions of inheritance. Issue of the certificate of the right to inheritance.

Issuance of a certificate of title to a share in the common property of the spouses (in the life of both spouses and in the event of the death of one of them).

Imposition of prohibitions and seizures on the alienation of immovable property. Issuance of a certificate on the acquisition of property at an auction (public bidding) for the realization of the pledged property.

Notarization of documents intended for action abroad. Enforcement of the right of inheritance under legal aid agreements. Execution of instructions of foreign jurisdictional bodies and appeal of notary bodies of Ukraine with instructions to foreign bodies of justice.

International agreements in the field of notarial activities.

The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, the Apostille Convention. Apostille and features of its placement. Consular legalization.

**3. THE READING LIST**

**3.1. Basic recommended sources**

3.1.1. Конституція України // Відомості Верховної ради України. – 1996. – № 30. – Ст. 141.

3.1.2. Кримінальний процесуальний кодекс України: в редакції станом на 04.09.2016р. – С.:ТОВ «ВВП Нотіс»., 2016. – 324 с.

3.1.3. Про судоустрій і статус суддів: Закон України від02.06.2016 № 1402-VIII  // Відомості Верховної Ради України. – 2016, № 31, ст. 545.

3.1.4. . Про адвокатуру та адвокатську діяльність: Закон України від 5.07.2012 р.№ 5076-VI р. № 2887-ХН // Відомості Верховної Ради України. – 2013. – № 27. – Ст. 282.

3.1.5. Про безоплатну правову допомогу Закон України від 02.06.2011 р. // [Електронний ресурс]. – Режим доступу: [www.rada.gov.ua](http://www.rada.gov.ua).

3.1.6. Основні положення про роль адвокатів: (прийняті восьмим Конгресом ООН з попередження злочинів у серпні 1990 р. в Нью-Йорку) //[Електронний ресурс]. – Режим доступу: kmkdka.com/on-the-role-of-lawyers.

3.1.7. Правила адвокатської етики: Схвалено Вищою кваліфікаційною комісією адвокатури при Кабінеті Міністрів України 17.11.2012 р. // Адвокатура в Україні. – К., 2012. – Електронний ресурс : Режим доступу – http://search.ligazakon.ua/l\_doc2.nsf/link1/MUS20912.html.

3.1.8. Кримінальний процесуальний кодекс України. Науково-практичний коментар / За загальною редакцією професорів В. Г. Гончаренка, В.Т. Нора, М.Є. Шумила. – К.: Юстініан, 2012. – 1224 с.

3.1.9. [Зейкан Я.П](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?Z21ID=&I21DBN=EC&P21DBN=EC&S21STN=1&S21REF=10&S21FMT=fullw&C21COM=S&S21CNR=20&S21P01=3&S21P02=0&S21P03=A=&S21COLORTERMS=0&S21STR=%D0%97%D0%B5%D0%B9%D0%BA%D0%B0%D0%BD,%20%D0%AF%D1%80%D0%BE%D1%81%D0%BB%D0%B0%D0%B2%20%D0%9F%D0%B0%D0%B2%D0%BB%D0%BE%D0%B2%D0%B8%D1%87). Адвокат: навички професії: практ. посібник: 2-ге вид, стер. / Я.П. Зейкан. – К.: КНТ, 2008. – 788 c.

3.1.10.[Синеокий О.В.](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?Z21ID=&I21DBN=EC&P21DBN=EC&S21STN=1&S21REF=10&S21FMT=fullw&C21COM=S&S21CNR=20&S21P01=3&S21P02=0&S21P03=A=&S21COLORTERMS=0&S21STR=%D0%A1%D0%B8%D0%BD%D0%B5%D0%BE%D0%BA%D0%B8%D0%B9,%20%D0%9E%D0%BB%D0%B5%D0%B3%20%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80%D0%BE%D0%B2%D0%B8%D1%87) Адвокатура как институт правовой помощи и защиты: новый курс адвокатского права и адвокатской криминалистики: учеб. пособие: изд. 2-е, испр. и доп. / О.В. Синеокий. – Х.: Право, 2012. – 516 с.

3.1.11.Фіолевський Д. П.Адвокатура: підручник. / Д.П. Фіолевський. – 3-тє вид., випр. і доп. – К.: Алерта, 2014. – 624 с.

3.1.12. Фурса С.Я. Адвокатура України: Навчальний посібник: у 2 кн. / С.Я. Фурса. – К.: Видавець Фурса С.Я., КНТ, 2006. – Кн. 1. – 940 с.

3.1.13. Адвокатура України: підручник/ Погорецький М.А., Яновська О.Г. – К.: Юрінком Інтер, 2014. – 368 с.

3.1.14. Про розмір плати за видачу свідоцтва про право на зайняття нотаріальною діяльністю: постанова Кабінету Міністрів України від 22.02.1994 р., № 102 // http://zakon1.rada.gov.ua/

* + 1. Перелік документів, за якими стягнення провадиться у безспірному порядку на підставі виконавчих написів нотаріусів: Затв. Постановою Кабінету Міністрів України від 29.06.1999 р., № 1172 // ОВУ. — 1999. — № 26. — Ст. 69.

3.1.16. Порядок ведення Державного реєстру обтяжень рухомого майна. Затверджено постановою Кабінету Міністрів України від 05.07.2004 р., № 830 // ОВУ. — 2004. — № 27. — том 1. — стор. 196. — стаття 1770.

3.1.17.Про створення Консультативно-методичної ради з питань нотаріату при Департаменті нотаріату та реєстрації адвокатських об’єднань : наказ Кабінету Міністрів України про затвердження Положення, Склад колегіального органу від 29.04.2010 № 368/7 [Електронний ресурс] — Режим доступу: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v-368323-10>.

3.1.18. Порядок вчинення нотаріальних дій нотаріусами України: Наказ Міністерства юстиції України № 282/20595 від 22.02.2012 р.[Електронний ресурс] — Режим доступу: http://zakon4.rada.gov.ua/laws/show/z0282-12

**3.2 Other recommended sources**

3.2.1. Кони А.Ф. Отцы и дети судебной реформы: К пятидесятилетию Судебных Уставов. / А.Ф. Кони. – М.: Статут, 2003. – 352с.

3.2.2. Нотаріат України: Книга 1. Організація нотаріату з практикумом: Підручник у трьох книгах / за заг. ред. д.ю.н., професора, заслуженого юриста України С.Я.Фурси. – 3 – те вид., доповн. і переробл. – К.: Алерта, 2015. – 484 с.

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**АРКУШ ПОШИРЕННЯ ДОКУМЕНТА**

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**АРКУШ ОЗНАЙОМЛЕННЯ З ДОКУМЕНТОМ**

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**АРКУШ РЕЄСТРАЦІЇ РЕВІЗІЇ**

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**АРКУШ ОБЛІКУ ЗМІН**

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**УЗГОДЖЕННЯ ЗМІН**

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