Pretrial Practice
Course Syllabus
Spring, 2012
Meeting Tuesdays 1:30-3:20pm

Professor: Rich Kelsey
Telephone: (703) 993-8973
Email: rkelsey@gmu.edu

Course Materials

Material will be assigned each class, and will **almost certainly** change from time to time. The following resources will play a role in the class, though they are not meant to be a complete list of cases and resources.

Case Law

**Text-Book – Pretrial (Thomas A. Mauet) DO NOT PURCHASE UNTIL WE DISCUSS**

(2nd Cir. Sept. 2002).
(SDNY Nov.3, 1995):
Metropolitan Opera Ass'n v. Local 100, Hotel Empl. & Rest. Empl. Int'l Union, 2003 US
Dist. LEXIS 1077 (SDNY, Jan. 28, 2003).

Rules and Standards

Federal Rules of Civil Procedure (26-35, 45 mostly)
Federal Rules of Evidence (we may touch a few of these)
Virginia Rules (Rule 4.0-4.15)
Sedona Principals (I will provide)
Course Coverage & Objectives

The students will work through the litigation pre-trial process in order to gain appreciation for litigation tools, tactics, and strategies. The students will be introduced to discovery issues and discovery problems commonly occurring in Virginia State and Federal Courts. The students will be introduced to concepts letting students appreciate handling of complex litigation – with a focus on the types of assignments most first and second year litigators might get at a law firm.

This is a practical skills class. We will work through real issues and real questions just as if the students were associates working with a partner on a new piece of litigation.

We will discuss overall litigation tactics and strategies – and how those tactics and strategies might apply to a given case. This will include considering a client's business decisions and other client considerations. (Real life!)

We will formulate discovery, consider the types and timing of discovery, work on and refine discovery. This is also a writing class, and you will draft discovery and memoranda. We will consider and formulate possible motions – and discuss the strategies and tactics of motions’ practice, including why and when to file discovery – as well as why and when not to file.

This class will focus on building the evidentiary blocks essential to supporting or defending a cause of action. We will look at and consider the standards for such proof, the type of evidence we have and need, and means of procurement of helpful evidence.

This class will focus on e-discovery, computer forensics, and electronic evidence, as well. No – you need no technical background! You need, however, to understand how electronic discovery and electronic evidence play a central role in building and defending a case – particularly in a pre-trial setting. As a new associate working on commercial litigation – you will be tasked to handle e-discovery issues. As a lawyer in a competitive market – you will need to understand, as many lawyers currently do not – the role of electronic evidence in building and defending cases.

Below is a preliminary Syllabus. Like real litigation, what we do from week to week may well change. (Read that line again) Like real litigators – you will change and move as the demands of the litigation require.

Why take this class?

1. You actually want to learn how to litigate
2. You plan on being a litigator
3. You recognize that 95% of cases never go to trial – and therefore are litigated to conclusion through pre-trial strategy and discovery
4. You want to discuss and learn about e-discovery and electronic evidence
5. You need two credits and you want a fun class with a great Professor
6. You are in the Litigation Track and must take this
7. All or any of the above
Grading

Each student will be assigned litigation tasks throughout the semester. These may be a short 3-5 page motion, draft discovery, including admissions, requests for documents, or interrogatories. Each student will participate in litigation strategy class discussions on filing of answer, counter-claims, dispositive motions, discovery, etc. You may be assigned a group project as well.

Grading will be as follows:

Discovery assignment – 35%

Final assignment – Motion – 35%

Class participation 30%

(Class participation will be broken down into two components, attendance 30% and participation 70%) (The ceiling on attendance is an A) (I do take attendance, so familiarize yourself with the attendance requirements for getting credit.)

A word of caution – assignments are due at the time noted. Late assignments lose a grade. (e.g. A goes to A-, etc) Grades drop each 12 hour period thereafter if late.

Classes

Tuesday, January 10, 2012

Introductions. Discussion of class format and introduction to litigation and pre-trial issues and concepts. Discuss “knowing your Court” and “Knowing your Judge.” Distribute and discuss new complaint just arrived from registered agent for client. Outline client(s) needs and circumstances. Break into competing firms.

Tuesday, January 17, 2012

Strategy meeting with Plaintiff’s and Defendant Firms. Group discussion on initial strategies for defense & discovery plan.

Tuesday, January 24, 2012

Review proposed strategies and tactics for complaint. Discuss who to depose, why, and what we want from that person. Discuss order of possible discovery – types of discovery, and what we may want to do in coordinating with co-defendants? Can we do that? Who do we depose on from Plaintiff?
Tuesday, January 31, 2012

Discuss state court tactics and discovery issues. Address motions’ practice and compare and contrast Federal Courts with Virginia Courts. Examine strategies and tactics – and rules for filing motions. Consider how complaint might be handled in State Court. What do you know about Virginia procedure?

Tuesday, February 7, 2012


Tuesday, February 14, 2012

E-discovery and Electronically-storied Evidence (“ESI”) What role is e-discovery in current litigation? What are the costs? How to handle it. What is the law? The Federal Rules -- What are the high’s and lows? What must you know as a Lawyer? How can you guide your client? How to you actually find the ESI you need – and your Partner has charged you to locate?

Tuesday, February 21, 2012

Discuss discovery assignment – goals, objectives, strategies. Review all discovery weapons at your disposal. What is the purpose of discovery? What is the end game?

Tuesday, February 28, 2012

Group meetings with each firm. Final strategy for discovery and depositions prep. Assign deposition teams.

Tuesday, March 6, 2012

The Sedona principals! Choosing an electronic vendor – preserving evidence, addressing the storing, collection, and preservation of ESI. Oh – and what happens if you destroy ESI – or paper evidence relevant to a case. Spoliation – Yuck! Woe be unto the junior associate who gets blamed for this! Review of Spoliation Case law.

Friday, March 9, 2012

Your assignment is due via e-mail to me by 10PM.

Tuesday, March 13, 2012

No class. Spring Break. Act responsibly – or at least don’t get caught.
Tuesday, March 20, 2012

Discuss discovery assignments – review discovery foibles and errors.

Tuesday, March 27, 2012

Depositions.

Tuesday, April 3, 2012

Depositions

Tuesday, April 10, 2012

Your Partner will discuss the final assignment. We will focus on motion strategy, research tips, and formulating your arguments.

Tuesday, April 17, 2012

**Final class.** Discuss practice tips, experience, and observations as lawyer and law clerk. Address litigation tips for both strategy and for working with clients and opposing counsel. Discussion of expectations on junior associates, and working with and for multiple senior lawyers.

Friday, April 27, 2012

Your final assignment is due to me via e-mail before 6PM. Late assignments will be marked down at 6:01 PM.