Pretrial Practice - Fall 2019

COURSE SYLLABUS

Meets Mondays 4:00 pm – 6:00 pm

Professor: Joe Esposito
Email: EspositoMediation@gmail.com and jesposi5@gmu.edu (please email both)
Phone: 301-602-6434

A. Course Overview

The purpose of this course is to teach the nuts and bolts of pretrial practice. As fewer cases reach trial, there has been increased emphasis on the pretrial phase. But pretrial practice has always been critical because what transpires pretrial is what leads to a successful dispositive motion, a favorable settlement, a winning verdict -- or defeat. If you plan to do civil litigation, this is what you will spend the vast majority of your career doing.

The goal is to familiarize you with the fundamentals of the key aspects of pretrial practice, including pleadings, discovery, motions practice, and settlement, as well as some of the other issues and challenges litigators regularly encounter. We will endeavor to make this course very practical, as reflected in the assignments and in-class exercises: drafting a complaint and written discovery requests; drafting a short legal research memo; writing and arguing a motion to compel or opposition to a motion to compel; conducting a short deposition; and negotiating a settlement. This will also afford you an opportunity to work on your litigation writing, an invaluable skill.

B. Text and Materials

We will use Pretrial, Mauet and Marcus, 10th Edition, which is very informative and an easy read. Mauet also has several case files, which we will use for all of the assignments (except the legal research memo). We will divide the class into four small
groups and assign one case to each group for purposes of three of the written assignments and all of the in-class assignments.

You should also have the Federal Rules of Civil Procedure. I will provide via TWEN several examples of complaints, interrogatories and document requests, motions to compel and oppositions, and deposition transcripts – please keep in mind that these are examples, and some may be outdated or not quite perfect.

C. Assignments

Each student will:

1. Prepare a short (no more than 4 pages) complaint - 10% of grade.

2. Prepare a short set of interrogatories and document requests – (no more than 8 interrogatories and 8 document requests) - 15% of grade.

3. Draft a motion to compel or opposition to motion to compel (5 page maximum), and argue the motion – 25% of grade (I will provide suggested topics for motions; you and your opponent must agree in advance – and notify me – on the issue for the motion)

4. Conduct and defend a 30-minute deposition (you and your opponent must agree in advance on which witnesses to depose – one member of group will play witness when not taking or defending deposition) – 20% grade

5. Draft a legal research memo (4 page maximum) concerning the proper means of challenging an ambiguous/convoluted 30(b)(6) deposition notice in which topics for testimony are unclear – 15% of grade

6. Conduct a 20-minute settlement negotiation – 10% of grade

On each of the assignments, you will be working on your own (no team projects), but for the motion/opposition, deposition, and negotiation, you will have an opponent
from your four-member group, so you will need to coordinate. We will generally assume your case is in the Eastern District of Virginia.

In addition, classroom participation, (during the lectures and critiquing the arguments, depositions, and negotiations by fellow students), will represent 5% of grade.

D. Contact

You may contact me by email (please use both my mediation and GMU emails), or by phone. I am happy to meet after class, or before class if arranged in advance.

If anything is unclear, please ask questions – in class, by email, by phone, or before/after class.
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<th><strong>WEEK</strong></th>
<th><strong>ASSIGNMENT DUE DATES</strong></th>
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| **Aug 26** | Overview of Course and Class Assignments (dividing class into small groups and assigning cases for purposes of complaints, discovery, motion/oppositions, depositions and negotiations) | Planning and Pretrial Issues | Informal Fact Investigation | Know Rules, Court, Judge | Complaint | Answer | Litigation Hold | Removal  
| **Sept 9** | Motions | Initial Disclosures | Sequence of Discovery | Coordination with Co-Defendants | Experts | Interrogatories | Document Requests  
| | Mauet, pp 191-277, 343-362 |
| **Sept 16** | Requests for Admission | Physical Inspection | Objections | Overview of Depositions | Deposition Preparation | Witness Preparation | Defending Depositions | Rule 30 (b) 6 Depositions | Who to Depose and Why  
| | Mauet, pp 238-240, 255-257, 277-330 |
| **Sept 23** | Expert Depositions | Document Production | ESI | Use of Vendor | Preserving Evidence | Spoliation  
| | Mauet, pp 259-277 |
| **Sept 30** | Summary Judgment Motions | Settlement and Mediation  
| | Mauet, pp 368-381, 400-432 |
| **Oct 7** | Interrogatories and Document Requests – Sept 30  
| | Oct 7: Half of class will draft Motions to Compel (and serve opponent)  
| | Oct 28: Other half of class will draft Oppositions (and serve opponent)  
| **Oct 15** | Depositions (each student to take deposition and then defend when another student in group takes)  
| **Oct 21** | Mauet, pp 330-341 |
| **Oct 28** | Nov 4 Nov 11 | Motion to Compel Oral Arguments (one student will move to compel, one will oppose)  
<p>| | Mauet, pp 330-341 |
| <strong>Nov 11</strong> | Nov 11: Legal Research Memo re: Procedure for Challenging Ambiguous/Convoluted 30(b)(6) Deposition Notice |</p>
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<th>Nov 18</th>
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<td>Negotiation sessions (two students will negotiate against each other)</td>
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