

PRETRIAL PRACTICE

Course No. 368 (001) – 2 Credits

Fall 2023

Instructor Information

Jacob Alzamora

jalzamora@gmu.edu

Office hours available by request – please email at least 24 hours in advance

Course Information

Schedule: Tuesdays 8:10 p.m. – 10:10 p.m.

Dates: August 22, 2023 – November 21, 2023

Location: *TBD*

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 yourself 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.

Text and Materials

We will use *Pretrial, Mauet and Marcus, 11th 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 small groups and assign one case to each group for purposes of the three of the written assignments (the legal research memo will not be based on the case files) and all of the

in-class assignments. Please note that both counsel may stipulate to additional facts beyond what is copied in the case files if you wish, but you must prepare an agreed upon written stipulation signed by both counsel and submit them to me via email in advance.

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 Please keep in mind that these are only examples, and some may be outdated or imperfect.

Assignments

Each student will:

- Prepare a short (no more than 4 pages) complaint. 10% of grade.
- Prepare a short set of interrogatories and document requests (no less than 6 and no more than 8 of each; general instructions and directions not necessary). 15% of grade.
- Conduct a deposition (25-30 minutes). You and your opponent must agree in advance on which witness to depose. Both sides may use all of the materials in the case file. 20% of grade.
- Draft a motion to compel or opposition to motion to compel (no more than 5 pages); and argue the motion (10-12 minutes per side). I will provide suggested topics for motions; you and your opponent must agree in advance on the issue for the motion, and notify me via email. 25% of grade.
- Draft a legal research memo (no more than 4 pages) concerning the law on how the parts and subparts of an interrogatory are counted for the purposes of the limits on the number of interrogatories permitted. 15% of grade.
- Conduct a settlement negotiation (20-25 minutes total). 10% of grade.

On each of the assignments you will be working on your own (no team projects). For the motion/opposition; deposition; and negotiation you will have an opponent with whom you will need to coordinate. We will generally assume that all cases are being tried in the Eastern District of Virginia.

In addition to the assignments listed above, class participation during the lectures and critiquing the arguments, depositions, and negotiations of your fellow students will constitute 5% of your grade.

Written assignments are due by the end of the class on the date indicated on the Class Schedule (see below) unless an extension has been requested and approved prior to the deadline. Late assignments may be subject to a reduction in grade.

Contact

Please feel free to contact me via email at the address listed above. If you prefer to talk in person, email me to arrange office hours. If anything is unclear at any point, please ask questions! During class, by email, before or after class, or in office hours – just ask!

Learning Outcome Statements

At the conclusion of this course, the students will:

- Have a better understanding of the flow, sequence, timing, and purpose of various aspects of pretrial practice.
- Have experience preparing some of the documents frequently used and central to the pretrial phase of litigation
- Have practical first-hand experience with depositions, motions arguments, and settlement negotiations.
- Learn many of the day-to-day nuts and bolts of pretrial practice that will prepare them for the early years of civil litigation practice.

Class Schedule

Week	Class Description	Assignment
Aug 22	<ul style="list-style-type: none"> • Overview of Course and Class Assignments • Dividing class into small groups and assigning cases for purposes of assignments • Planning and Pretrial Issues • Informal Fact Investigation • Identifying Claims, Parties, and Jurisdiction • Establishing the attorney-client relationship • Planning the Litigation • Initial Pleadings and Responsive Pleadings • Litigation Hold • Removal 	Read <i>Mauet</i> pp. 3-17; 19-55; 57-83; 85-118; 121-169; 261-265; 365-370

Week	Class Description	Assignment
Aug 29	<ul style="list-style-type: none"> • Discovery - Overview • Scope of Discovery • Discovery Strategy, Timing, and Sequence • Initial Disclosures • Experts • Interrogatories • Document Requests • Subpoenas to Third Parties • Electronically Stored Information • Physical and Mental Examination • Requests for Admissions 	Read <i>Mauet</i> pp. 189-276; 320-332
Sep 5	<ul style="list-style-type: none"> • Preserving Evidence • Spoliation • Objections • Answering Interrogatories • Responding to Document Requests • Supplementing Discovery • Discovery Review • Motions – Overview • General Requirements • Hearings and Argument • “Housekeeping” motions • Dispositive Motions • Summary Judgment • Rule 12 Responses • Discovery Motions 	<p>Read <i>Mauet</i> pp. 149-154; 332-343; 345-365; 370-385</p> <p>Draft a Complaint based on case assigned</p>
Sep 12	<ul style="list-style-type: none"> • Depositions – Overview • Who to Depose and Why • Deposition Preparation • Expert Depositions • Rule 30(b)(6) Depositions • Witness Preparation • Defending Depositions • After the Deposition 	<p>Read <i>Mauet</i> pp. 277-320</p> <p>Draft Interrogatories and Document Requests based on case assigned and side selected</p>

Week	Class Description	Assignment
Sep 19	<ul style="list-style-type: none"> • In-Class Depositions – Each student will take and defend a deposition – Part 1 of 4 	
Sep 26	<ul style="list-style-type: none"> • In-Class Depositions – Each student will take and defend a deposition – Part 2 of 4 	Half of class will draft Motion to Compel and serve opponent
Oct 3	<ul style="list-style-type: none"> • In-Class depositions – Each student will take and defend a deposition – Part 3 of 4 	
Oct 10	<ul style="list-style-type: none"> • Monday Schedule Observed – See you next week! 	
Oct 17	<ul style="list-style-type: none"> • In-Class depositions – Each student will take and defend a deposition – Part 3 of 4 	
Oct 24	<ul style="list-style-type: none"> • Settlement and Mediation – Overview • Evaluating Your Case • Negotiation with Opposing Counsel • Settlement Conference • Mediation • Settlement Agreements • Closing the Case 	<p>Read <i>Mauet</i> pp. 404-436</p> <p>Other half of class will draft Opposition to Motion to Compel and serve opponent</p>
Oct 31	<ul style="list-style-type: none"> • Oral Arguments on Motions to Compel – Part 1 of 2 • Case #4 • Case #5 	

Week	Class Description	Assignment
Nov 7	<ul style="list-style-type: none"> • Oral Arguments on Motions to Compel – Part 2 of 2 • Case #3 • Case #6 	Legal research memo on how parts and subparts of interrogatories are counted for the purposes of limits on the number of interrogatories permitted
Nov 14	<ul style="list-style-type: none"> • Settlement Negotiations – Part 1 of 2 • Case #5 • Case #6 	
Nov 21	<ul style="list-style-type: none"> • Settlement Negotiations – Part 2 of 2 • Case #3 • Case #4 	