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Deposition Strategy and Practice
Syllabus
Compressed Course – Spring 2023

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Course Information

Course Instructor:
Robert Denham
(678) 361-1144
bob.denham@comcast.net

Office Hours:
Office hours will be between 1:30 and 2:30 p.m. in the classroom. Meetings may be scheduled through CANVAS or in person during class. If you have questions, feel free to send me a message by email or see me after class.

Required Textbook:
Bradley G. Clary, Sharon Reich Paulsen, and Michael J. Vaneslow, *Successful First Depositions* (West, 4th Ed., 2017).

Course Description and Objectives:
This is an introduction to taking and defending fact and expert depositions. It provides essential strategies for planning for, taking, and defending depositions. The class is highly interactive, providing opportunities to practice preparing for and conducting mock depositions. In-class exercises will be recorded on video and critiqued by the instructor and by other class members.

The class will be conducted in person. Students will conduct mock depositions and play the roles of deposition witnesses in a setting that replicates that of actual depositions, to the extent practicable.

Learning Outcomes:
After completing this course, students should be able to:

1. Perform a case analysis to formulate a deposition strategy and plan.
2. Identify the purposes for which depositions are taken and used.
3. Identify the preparations necessary for arranging and conducting a deposition.
4. Prepare and deliver preliminary remarks at the start of a deposition.
5. Prepare witness examination questions for discovery depositions of a party and non-party.
6. Prepare witness examination questions for depositions for cross-examination, summary judgment, and pinning down testimony.
7. Take mock fact depositions of a party and non-party for particular purposes and issues.
8. Plan for preparing a witness for deposition.
9. Conduct mock preparation of a witness for deposition.
10. Identify strategies and purposes for deposing an expert.
11. Prepare examination questions to take a discovery deposition of an expert.

12. Prepare examination questions to take a deposition to challenge an expert.
13. Conduct mock depositions of experts for purposes of discovery and to challenge the expert.

CANVAS:

Class information and announcements will be distributed by CANVAS at http://elearning.ufl.edu. You are responsible for checking for class announcements on a regular basis.

Course Schedule:
This is an intense and highly interactive compressed course. It encompasses 14 class hours over the course of five days. There will be two one-hour sessions on Monday. There will be three one-hour sessions each day Tuesday through Friday. Sessions will begin on the hour. There will be a 10-minute break at 50 minutes past the hour. The course is worth one credit hour.

As in actual deposition practice, thorough advance preparation is essential. Before the first class, you must read the assigned material in the text, thoroughly study the mock case, and prepare the case themes and stories for your side of the case that will guide your deposition strategies for the remainder of the week. More detail can be found in the Day One Assignment. Before Day Two you will prepare questions or outlines for your first depositions as described in the Assignment description in CANVAS. At the start of Day Two you will be taking depositions and acting as witnesses. This accelerated pace will continue throughout the remainder of the week.

Course Schedule Detail:

Session	Topic	Assignment/Resources
1	Introduction	*Successful First Depositions*, Preface; pp. 1-62
	Class overview	Rules 26 and 30, Federal Rules of Civil Procedure
	Importance of depositions	*Successful First Depositions*, Appendix B – Case record of *Monroe v. Derrick Dawson and CopyMaster Corporation*
	Case analysis and planning to formulate deposition strategy	Group A and Group B – Review confidential information for plaintiff's counsel
		Group C and Group D – Review confidential information for defense counsel
2	Preparing for depositions	Group A and Group B – Prepare case analysis for *Monroe* case from plaintiff's perspective
	Who do you depose, when, and why?	Group C and Group D – Prepare case analysis for *Monroe* case from defense perspective

	Purposes for which depositions are taken and used	Include in the analysis the story to be told; themes; elements of each cause of action; facts to be proved and rebutted through lay witnesses. Further detail for this Assignment is in CANVAS. Class activity: Discuss case analyses (*not* using confidential information furnished to counsel)

3	Taking a fact deposition
	
	 Preliminaries
	
	 Taking a deposition for discovery
		Prepare preliminary remarks to begin deposition.
		
		 Prepare deposition outlines for assigned witnesses. Include questions and themes for purposes of discovery, for use in summary judgment, and to pin down the witness' testimony.
		
		 Prepare to act as a witness for your assigned group.
		
		 See the Assignment in CANVAS for further detail about this Assignment, including the form and contents of the outline.
		
		 Group A – Prepare questions/outline for deposition of Derrick Dawson. Use exhibits as appropriate. (Group C to defend and act as witness)
		
		 Group B – Prepare questions/outline for deposition of Pat Spinner. Use exhibits as appropriate. (Group D to defend and act as witness)
		
		 Group C – Prepare questions/outline for deposition of Melissa Monroe. Use exhibits as appropriate. (Group A to defend and act as witness)
		
		 Group D – Prepare questions/outline for deposition of Peg Meade. Use exhibits as appropriate. (Group B to defend and act as witness)
		
		 Class activity: Mock preliminary remarks.
		
		 Class activity: Mock depositions, in the following order:
		
		     Monroe
		     Meade
		     Dawson

		Spinner
4	Taking a deposition to support or oppose summary judgment	Class activity: Mock depositions.
5	Taking a deposition to pin down a witness' testimony	Class activity: Mock depositions.
6	Deposition challenges How to control a witness	*Successful First Depositions*, pp. 121-153 Class activity: Demonstrations of selected deposition challenges (if time permits). Class activity: Mock depositions illustrating deposition challenges (if time permits). Supplemental reading: McElhaney - Focusing a Deposition http://www.abajournal.com/magazine/article/focusing_a_deposition McElhaney – Deposition Traps http://www.abajournal.com/magazine/article/deposition_traps/
7	Preparing a fact witness for deposition	*Successful First Depositions*, pp. 63-119 Prepare outline for preparing a fact witness Class activity: Conduct mock witness preparation.
8	Mock depositions	Class activity: Mock depositions.
9	Taking expert depositions	*Successful First Depositions*, pp. 155-184

	Preparing for expert depositions Purposes of expert depositions	Federal Rules of Evidence 702, 703 DSM-IV-TR
10	Taking an expert deposition for discovery	Prepare examination questions/outline for discovery deposition of Alain Smithers on the facts and other information that he considered in reaching his diagnosis of PTSD and his qualifications to make such a diagnosis. Prepare examination questions/outline for discovery deposition of Lin Jones on his opinions and the facts and other information that he considered in reaching his opinions. Class activity: Mock depositions.
11	Taking an expert deposition for summary judgment or to pin down witness	Prepare examination questions/outline for Alain Smithers to show that he is not qualified by training or experience to make a diagnosis of PTSD. Prepare examination questions/outline for Alain Smithers to refute his diagnosis of PTSD. Prepare examination questions/outline for Lin Jones to show that he failed to consider the diagnostic criteria for PTSD and their application to Melissa Monroe. Prepare examination questions/outline for Lin Jones to show that he has a bias in favor of employers and is a "hired gun" expert witness. Class activity: Mock depositions.
12	Defending an expert deposition	Class activity: Mock depositions.
13	Mock expert depositions	Class activity: Mock depositions.
14	Review and questions	

Class Preparation:
You are expected to read the material thoughtfully and prepare carefully for each class. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Accordingly, you will have a total of about 300 pages of reading for the course. In addition, you will be preparing written outlines and other materials for the classroom exercises, and you will be preparing for the classroom exercises. The written materials will be graded, as will the classroom exercises. I expect that you will spend at least two hours out of class reading, preparing written materials, and preparing for in-class exercises for every one hour in class. Because of the pace of the class, I strongly encourage you to do as much reading as possible in the textbook – and to study the mock case thoroughly – before the first class session.

Written assignments will be due no later than the beginning of the class session at which they are due. They should be submitted in Word format through CANVAS. I will provide comments on the assignments using the Track Changes function in Word and assign a grade promptly. I strive to return the assignments through CANVAS before the start of the next class day.

Attendance:
Attendance is mandatory, and will be taken at the beginning of each class. Because the class is largely participatory, and the majority of your grade will be based on in-class exercises, it is essential that you attend every class. Missing two or more classes without prior notice to the instructor will result in referral to Student Affairs. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with University policies that can be found at: https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx.

Participation:
The participation grade is determined by attendance, preparation for class, participation in class, and overall effort to complete the assignments. Mock exercises will be recorded on video. Class members will be expected to offer constructive observations of other class participants' performance.

Grading:
The components of the final grade for the course are listed below:

Written Materials	50%
In Class Performance and Discussion Participation	50%

Grades for written assignments, class performance, and class participation will be assigned to determine the final grade for the course. Per law school policy, this class will be graded on a curve. Information on current College of Law grading policies for assigning grade points can be found at: https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current%20students/academic-policies and below:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

University of Florida Policies

University Policy on Accommodating Students with Disabilities:
Students requesting accommodation for disabilities should register first with the Office of the Dean of Students (https://www.dso.ufl.edu/drc/). The Office of the Dean of Students will provide documentation to the student who then must provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking quizzes or exams. Because accommodations are not retroactive, students should contact the Office of the Dean of Students as soon as possible in the semester for which they are seeking accommodation.

University Policy on Academic Misconduct:
UF students are bound by The Honor Pledge, which states: "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: 'On my honor, I have neither given nor received unauthorized aid in doing this assignment.'" The Honor Code (https://sccr.dso.ufl.edu/students/student-conduct-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilities academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

University Policy on Recordings of Class Discussion:
Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

University Policy on Course Evaluation:
Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at https://evaluations.ufl.edu. Evaluations typically are open during the last two or three weeks of the semester, but students will be given specific times when

they are open. Summary results of these assessments are available to students at: https://evaluations.ufl.edu/results/.

Getting Help:
For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at:
- helpdesk@ufl.edu
- (352) 392-HELP
- http://elearning.ufl.edu/ (See "Message Us" at the top)

Other resources are available at http://www.distance.ufl.edu/getting-help for counseling and wellness, disability resources, student complaints, and library help desk support.

Disclaimer:
This syllabus represents my current plans and objectives. As we go through the course, those plans may need to change to enhance the class learning opportunity. Such changes, communicated clearly, are not unusual and should be expected.