

University of Houston Law Center

Pretrial Litigation

Fall 2013

Thursday 6 -9 p.m.

111 TU2

111 TU 2 used for General Sessions, Section breakout rooms used after General Session

Sections & Break out rooms (Three additional breakout rooms will be assigned by first day of class):

John Buckley

Deb Catlett,

Mark Goranson

Giugi Carminati

Objective of the Course: To provide law students with an opportunity to apply pre-trial rules of procedure to a civil case problem. This course will expose students to the use of the Texas Rules of Procedure in an adversarial setting. Students will engage in advocacy, strategic thinking and logical analysis. Students will receive actual experience in interacting with clients, drafting pleadings, interpreting the rules, arguing motions and taking depositions.

Overview of the Course: The class will meet in a general session for select topics for the first hour of class. The class then breaks into smaller sections where they will prepare to prosecute and/or defend various aspects of civil cases. In each small section the class will be taught and supervised by licensed attorneys and/or judges in developing their case. When not meeting for general session, the small sections will meet and will be split into Plaintiff's Counsel and Defense Counsel representing the two sides in a civil lawsuit. In these sections, the students will receive supplemental instruction and will be expected to perform like associates in a law firm reporting to the senior partner. The students' assignments are to investigate the law and the facts, and report on various strategies, file suit, conduct discovery, prepare, respond to and argue pretrial motions, including a summary judgment hearing. The students will be expected to have knowledge of the Texas Rules of Civil Procedure and the Local Rules and fees for State Courts in Harris County, Texas.

As a student in this class, you will prepare for client interviews and prepare a contract for services. You will research and prepare a preliminary jury charge at time you file your initial pleading and an updated jury charge when you submit your notebook at the end of the course. You will draft pleadings and motions, such as original and amended petitions, original and amended answers, motions and discovery, including requests for disclosure, requests for admissions, interrogatories and requests for production and other documents. You will advise your client for deposition preparation and settlement negotiations. You will prepare a motion for summary judgment and/or a response to a motion for summary judgment. You will conduct and defend a deposition using a court reporter, conduct a mediation with a mediator and argue motions before a sitting Judge in a Texas state court. Your professor will provide you with a list of courts conducting hearings. It is your responsibility to contact the court to schedule the hearing. As in actual practice, it is important that work be submitted when due unless your opposing counsel and/or professor have okayed an extension in advance.

You will also maintain a trial notebook and submit it at the end of the semester. During the course of the litigation, you will keep a billable hours statement of activities and charges. You must submit the documents timely, participate in and attend the hearings and conduct a deposition as

required in the syllabus. You may submit any other documents and request hearings relevant to the litigation prior to class. Before each class you are expected to have reviewed the “class preparation” materials posted on TWEN for each class as listed in these guidelines. The general session class and small session classes will address but may not utilize the topics posted on TWEN or listed as powerpoint presentations each week. You are expected to review the designated weeks’ powerpoints whether or not they are utilized in the lecture.

Professional dress is expected for all hearings, client interviews, depositions and mediations. Law office casual is acceptable for daily class. Because this class depends upon the initiative and imagination of the students, there is no accurate and complete way to predict the exact contours of various assignments.

Grading Breakdown: You will receive oral and/or written evaluations, critiques and suggestions on work submitted and oral advocacy.

Class participation: 20 percent; Trial Notebook/10 percent

Daily assignments: 40 percent; advocacy skills 20 percent Final quiz: 10 percent

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Michael Orlando: MOrlando@meyerorlando.com

John Buckley: jbuckley@greerherz.com

Pretrial Litigation Class Schedule and Assignments

As a student in this class, you will prepare agreements, letters, discovery requests, motions and other documents – required and voluntary – that are relevant to the litigation. Under the Texas Rules, some documents are filed with the court with a copy delivered to opposing counsel as reflected in a Certificate of Service. Other documents are served on opposing counsel and are not filed with the court. For the purposes of this class, submit **one copy** of ALL documents you prepare to the professor. Document must be captioned and drafted as they would before filing in Court – Full signature blocks, Certificates of Service, Certification of Conference (if applicable) of Proposed Order, Request for Hearing and cover letter to the clerk. **DOCUMENTS MUST BE SUBMITTED AT THE BEGINNING OF YOUR SECTION CLASS MEETING ON THE DATE THEY ARE DUE.** Depending on the small section you are in the submission may be electronic or by printed copy. You will receive oral and/or written evaluations, critiques and suggestions on work submitted and oral advocacy. You will compile your trial notebook and keep it up to date as the semester progresses and will submit a copy to your professor at the end of the semester.

Please use a footer with your name on the first page of your document. This is a departure from the format you would use in actual Court filings, but required for this class. Remember to have appropriate signature blocks on all documents with actual or electronic signature noted.

Documenting and collecting for the legal time you have invested in a case is an important part of law practice. Keep in mind quote ascribed to Abraham Lincoln: “A lawyer's time is his stock and trade.” A sample billable hour form is posted on TWEN so that you can use it electronically. Submit your billable hour sheets on a weekly basis.

You will do three motion hearings at least one of which will be in court.

Textbooks: Required - Michol O'Connor, *O'Connor's Texas Rules * Civil Trials* (latest edition) (“O'Connors”).

Rebecca Sitterly, et al (NITA), *Flinders Aluminum Fabrication Corp. v. Mismo Fire Insurance Company* (Case File 8th Edition). This case file will be available in Class only (\$24.50) (“Flinders”).

Thomas A. Mauet *Pre Trial* 7th Edition (You are not required to buy - excerpts to be used in this Class will be provided to you in Class at no charge) (“Mauet”).

(Recommended) - David M. Malone & Peter T. Hoffman, *The Effective Deposition*.

Course Materials: Posted on TWEN.

Case Materials: Supplied as the class progresses.

Recommended Software: Adobe Acrobat or Adobe Acrobat Pro

Access to Other Resources: WestLaw, Lexis

TWEN: To access our class web page to <http://lawschool.westlaw.com/twen> and enter your Westlaw ID. If you do not have your Westlaw ID, contact the Westlaw representatives in the library or our account representative, Sarah Williams at sarah.williams@thomson.com. Once logged in,

click on add/drop a course and add the Pre-trial Lit., Fall 2013, Professor Buckley. The password is “RollingStoneRule”. You can contact Westlaw technical assistance at 1-800-937-8529. Your professor may also have a class website. You should also have a Lexis student account for research and forms.

Professor _____

Email/Phone _____/_____

Professor _____

Email/Phone _____/_____

Week	Class Preparation	Assignments Due and Class Activities
Week 1, Thursday Aug 29	<u>Client Interview/Contracts</u> Read <i>O'Connor's</i> Chapter 1. Register for access to TWEN available through Westlaw under Pretrial Lit, Fall 2010, Password: RollingStoneRule. The class will be divided into plaintiff and defense firms. Each of you will have “opposing counsel.” The jurisdiction for this class is Texas. Plaintiff’s attorneys will file the case in the 613th Civil District Court, Harris County, Texas. Consider whether you will choose to be a plaintiff or defense attorney.	General Session: Introduction to course on line forms & research tools Plaintiff/Defense perspective of Personal Injury case Assignments Due: Small Sections Activities: Small sections receive law office memorandum regarding new client assignment. Discuss case upon which we will focus our attention this semester and other pretrial considerations and upcoming client interview. Discuss litigation guides and form books: <i>Texas Pattern Jury Charge</i>, <i>Texas Civil Practice and Remedies Code</i>, <i>O'Connor's Texas Causes of Action</i>, <i>Dorsaneo's Texas Litigation Guide</i>, etc. Class divides into plaintiff and defense law firms. Law firms will choose a managing partner. The managing partner will have such duties as keeping firm contact records, establishing a listserv and facilitating scheduling hearings. Law firms select managing partner. Professors choose litigation teams of opposing counsel. Begin to prepare billable hours statement. See TWEN for sample.

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 2, Thursday Sep 5	<u>Causes of Action/Plaintiff's Lawsuit/Jury Charge</u> Research possible legal issues and prepare outline of questions for initial interview of client. Read TWEN – Course materials posted for weeks 1 and 2 Prepare written contract for services applicable for type of client (e.g., contingency fee contract, hourly fee agreement with or without retainer, fixed fee agreement). See forms online or in print. Submit to professor after client interview. Begin reading <i>O'Connor's</i>, Chapter 2, Plaintiff's Lawsuit, sections B,E,F,G,H. Also, read <i>O'Connor's</i> Requests for Disclosure. <i>Mauet</i> "Introduction to Litigation Planning" "Informal Fact Investigation"	General Session: John Buckley Elements of initial pleadings and case strategies, Venue and jurisdiction, Jurisdiction of Texas and Federal Courts; Requests for Disclosure, Document Preservation. Assignments Due: <i>Client agreement/contract; Forms for execution by client, letters to Defendant explaining role of attorney retained by insurer.</i> Small Session Activities: Client interview, communication and relations (client communication, document preservation) Conduct client interviews and discuss contract for services with client. Discuss relationship with client where fees are being paid by third party. Law firms receive materials from clients. Discuss jury charge, trial notebook, case strategy.

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 3, Thursday Sep 12	<u>Investigation of Law and Facts/Responsive Pleadings</u> Begin investigating facts and law, research of legal issues and elements of potential claims and defenses. Research causes of action. Prepare working jury charge. See <i>Texas Pattern Jury Charge, Texas Civil Practice and Remedies Code, O'Connor's Causes of Action</i>, etc. Read <i>O'Connor's</i>, Chapter 3, Defendant's Pleadings, sections A,B,C,E,G Read <i>O'Connor's</i>, Special Exceptions, Pleas in Abatement, Motions to Transfer Venue HB 274 <i>Mauet</i> Case Evaluation and Strategy <u>Plaintiffs</u> prepare original petitions and requests for disclosure for filing and serving on opposing counsel at the beginning of class. Plaintiffs and Defendants prepare document preservation letter.	General Session: Jean Minck - Responsive Pleadings, HB 274 - Litigation plan and discovery (including Third Party Discovery) Assignments Due: <u>Plaintiffs</u> file original petitions and requests for disclosure with the court and serve on opposing counsel. <i>Working jury charge.</i> <i>Document presentation letter.</i> Small Session Activities: Law firms meet with professors or mentors to discuss case, determine theories and strategies. Responsive pleadings, special exceptions, jurisdiction and venue challenge, pleas in abatement.

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 4, Thursday Sep 19	<u>Communication in Court/Discovery in Texas</u> <u>Defendants</u> prepare responsive pleadings, special exceptions, HB 274 pleas in abatement to file and serve on opposing counsel at the beginning of class. Note: For the purposes of this class, answers must include both a general denial and specific denials. Review Texas Rules regarding pleadings. Read <i>O'Connor's</i>, Chapter 6, Discovery HEARINGS WILL BE SET FOR Week 5. Defendants schedule hearings in their assigned courts or in class as directed following TRCP. If your hearing is to be held in an assigned court, be sure to set your motion for hearing by calling the court coordinator in your assigned court. Your professor will provide a list of courts that have agreed to hold hearings. You must follow TRCP as far as serving the proper documents on opposing counsel and filing them with your professor. *Contact Courts for MSJ hearings Nov 28, 29, 30, Dec. 1, 2, 5, 6	General Session: Judge Cagle Courtroom protocols, demeanor and argument Assignments Due: <u>Defendants</u> file and serve responsive pleadings and dilatory motions on opposing counsel. <i>Litigation Plan/Budget</i> Practice hearing techniques. <u>Plaintiffs</u> must serve and file their responses to the dilatory pleas no later than three days before the hearing scheduled for Week 5. Email service of response on opposing counsel and professors is acceptable under Pretrial class "local rules." File a copy with your professor next class. Small Session Activities: Discovery Firms meet to discuss initial discovery, including requests for disclosure, interrogatories, requests for production and requests for admissions.

Week	Class Preparation	Assignments Due and Class Activities
Week 5, Thursday Sep 26	<u>Discovery Responses/Client Communication/Special Exception Hearings</u> Review <i>O'Connor's</i>, Chapter 6, Discovery and Discovery PowerPoint on TWEN. <u>Plaintiffs</u> and <u>Defendants</u> prepare interrogatories and requests for admissions and requests for production (limit no more than 15 for each). Note: Fifteen (15) is an arbitrary limitation. If you require additional requests, you may file a motion seeking leave to submit additional discovery.	General Session: Mark Goranson Discovery responses, Client Communications Assignments Due: <u>Plaintiffs</u> and <u>Defendants</u> serve interrogatories, requests for production and requests for admissions on opposing counsel and submit to professors. Small Session Activities: Hold Hearings in class or as directed.
Week 6, Thursday Oct 3	<u>Motions to Compel</u> Parties prepare responses to discovery requests. Read <i>O'Connor's</i>, Chapter 5, Pre-Trial Motions – motions to compel, motions to dismiss and motions in limine. Be prepared to use any appropriate motions in your litigation.	General Session: Deb Catlett Discovery Disputes and Sanctions Assignments Due: <u>Plaintiffs</u> and <u>Defendants</u> serve discovery responses on opposing counsel and submit to professors. Small Session Activities: Firms meet to review responses and discuss appropriate <u>pretrial</u> motions. Discuss continued investigation of case and appropriate motions. What facts do you need to proceed with the litigation? Do you need further discovery?

Week	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 7, Thursday Oct 10	<u>Deposition Skills</u> <u>Plaintiffs</u> and <u>Defendants</u> prepare motions to compel to serve and file in class. Prepare Third Party Discovery. <u>Plaintiffs</u> and <u>Defendants</u> prepare responses to motions to compel to serve and file no later three days before the scheduled hearing. Email is acceptable service on opposing counsel and your professors. File a hard copy with your professor next class. Read <i>O'Connor's</i>, Chapter 6, Depositions. Be prepared to discuss deposition theory and practice, depositions of fact and expert witnesses. Read Malone & Hoffman, <i>The Effective Deposition</i>, Chapters 5-11. <i>Mauet</i> Getting Information	General Session: Michael Orlando Client and Witness Interview and Preparation Deposition and Deposition Skills Assignments Due: <u>Plaintiffs</u> and <u>Defendants</u> file and serve motions to compel. Third party discovery to be filed/sent. Small Session Activities: Practice Deposition Skills. Firms meet to discuss and prepare for depositions Week 8. Each law firm will divide questions among the firm's attorneys covering the information deemed relevant by the firm. Plaintiffs and Defendants will conduct their depositions during class time. Rooms TBA.

Week 8, Thursday Oct 17	<u>Depositions</u> Prepare to depose Plaintiff and Defendant per previous instructions. <u>Plaintiffs</u> and <u>Defendants</u> prepare responses to motions to compel to file and serve no later than three days before the scheduled hearing. Email is acceptable service on opposing counsel and your professors. File a hard copy with your professors' next class.	<i>NO GENERAL SESSION – SMALL SESSION ONLY</i> Small Session Activities: Depositions. Opposing counsel prepare for hearings. Assignments Due: <i>Witness Outline.</i> <i><u>Plaintiffs</u> and <u>Defendants</u> prepare responses to motions to compel to file and serve no later than three days before the scheduled hearing.</i>
Week 9, Thursday Oct 24	<u>Summary Judgments / Hearings</u> Research issues to find relevant case law. Read deposition texts and materials. <u>Defendants</u> should be preparing facts and law for motions for summary judgment. <u>Plaintiffs</u> should begin preparing evidence for responses taking into consideration defendant's affirmative defenses and possible no evidence motions. No evidence summary judgment motions may only be filed in combination with traditional summary judgment motions. Read <i>O'Connor's</i>, Chapter 7, Disposition Without Trial. Judge Hittner's article on Summary Judgments in Texas practice (TWEN), and Malone & Hoffman, Chapters 16, 17, 18, 19. Begin preparation for summary judgment and response. Schedule or confirm MSJ hearings with court for weeks (12 – 14).	General Session: Judge Cagle Motions for Summary Judgment Receive deposition transcripts. Assignments Due: Small Session Activities: Summary judgments

<i>Week</i>	<i><u>Class Preparation</u></i>	<i><u>Assignments Due and Class Activities</u></i>
Week 10, Thursday Nov 1	<u>Summary Judgments/Responses/Affidavits</u> Attorneys should evaluate the evidence and the relevant law and form litigation strategy. Read Chapter 4, Mediation; Malone & Hoffman, Chapters 16, 17, 18, 19; article by Judge David Hittner and Lynne Liberato, <i>Summary Judgments in Texas</i> – 46 Hous. L. Rev. 1379 (2010). Review <i>O'Connor's</i>, Chapter 7, Disposition Without Trial-Motions for Summary Judgment. Review case file and prepare documents for summary judgment.	General Session: Michael Orlando Responses to Motion for Summary Judgment; Disposition without Trial Assignments Due: <i>Defendant's MSJ due (First Draft)</i> Small Session Activities: Responses to motions for summary judgment, affidavits and ethical considerations in responses to summary judgment motions Firms meet to review and consider relevant pretrial actions. <u>Summary Judgment hearings in court as scheduled.</u>
Week 11, Thursday Nov 8	<u>Summary Judgment Hearings in Court</u> Confirm summary judgment hearings with the court. Follow up with discovery and other pretrial considerations. <i>Mauet</i> Settlement Client Authorization	General Session: John Buckley Negotiation Theory and Practice Assignments Due: <i>Defendant's MSJ</i> Small Session Activities: Law firms meet to discuss motions and responses. Opposing counsel meet to discuss hearings.

Week	<u>Class Preparation</u>	<i>Assignments Due and Class Activities</i>
Week 12, Thursday Nov 15	<u>Mediation of Claims</u> Alternative Dispute Resolution Begin Reading O'Connor's, Chapter 4, Alternative Dispute Resolution - Mediation	General Session: Bobby O'Connor ADR and Mediation Demonstration Assignments Due: <i>Plaintiff's Response to MSJ (First Draft)</i> Small Session Activities: Discuss summary judgment hearings. Summary Judgment hearings in court.
Week 13, Thursday Nov 22	<u>Mediation of Claims</u> Prepare mediation memorandum/proposed agreement MSJ	<i>NO GENERAL SESSION – SMALL SESSION ONLY</i> Small Session Activity: Mediation of Claims Assignments Due: <i>Mediation memo/statement to Mediator</i> <i>Opinion letter to client re risk and authority</i> <i>Plaintiff's MSJ Response due</i> Summary Judgment hearings (cont.)
Week 14 Thursday 29	<u>Break</u> Thanksgiving	No class assignments
Week 15 Thursday Dec 5	Complete case file.	<i>FINAL CLASS MEETING AT LOCATION TBA</i> Summary Judgment hearing
Week 16-17 Finals	You will be given a take home exam. Case File and Exam Due December 19	Final and Notebook due. Summary Judgment hearings