

**ADVANCED CIVIL PROCEDURE: DISCOVERY  
LESSON PLAN  
WINTER/SPRING 2010**

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**Course Objective:**

ADVANCED CIVIL PROCEDURE: DISCOVERY is designed to enable the student to learn:

1. an in depth knowledge of the rules, case law and ethical guidelines associated with federal discovery practice,
2. in depth analysis of deposition law and,
3. how to conduct and defend depositions.

**Required Learning Resources**

Thompson – West: Federal Civil Judicial Procedures and Rules, Annotated 2009\*  
Kosieradzki case compilation and essays

**Final Paper**

All students will write a final substantive paper involving one of the topics from the syllabus. The topic will be selected and approved by instructor by the conclusion of the second unit. The paper must satisfy the upper-level writing requirement as set forth in <http://www.stthomas.edu/law/academics/PolicyCatalog/III-A-3.html>. The first draft of the paper will be reviewed by the instructor at mid-term. The paper will be returned with comments to be developed/incorporated into a final draft.

**Grading**

75% Final paper  
10% Quizzes  
15% Class participation

**Reading Assignments**

Students will be expected to have read all assigned materials prior to meeting in class.

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\* 2010 version not available until February 9, 2010.

## **Week 1, January 13, 2010: Overview of discovery, depositions, interrogatories, document requests**

### ***Learning objectives:***

Introduction and overview of the class. Review Civil Procedure principals of discovery, interrogatories, document requests, e-discovery and depositions.

### ***Recommended Reference Material:***

- Fed. R. Civ. P. 26(b) and Advisory Comm. Notes: Discovery scope and limits
- Jeffrey W. Stempel and David F. Herr, *Applying Amended Rule 26(b)(1) in Litigation: The New Scope of Discovery*, 199 F.R.D. 396 (2001).
- Fed. R. Evid. 401 definition of "Relevant Evidence"
- Fed. R. Civ. P. 30 and Advisory Comm. Notes: Depositions by oral examination
- Fed. R. Civ. P. 33 and Advisory Comm. Notes: Interrogatories to parties
- Fed. R. Civ. P. 34 and Advisory Comm. Notes: Producing documents, electronically stored information and things

### ***Demonstration "Real Time" Court Reported deposition***

*Estimated teaching time: 2 hr*

## **Week 2, Jan. 20: Responsive written discovery - interrogatories and document requests**

### ***Learning objectives:***

Learn the rules of acceptable objections and responses to objections for written discovery. Understanding the ethical guidelines relating to discovery practice.

### ***Assigned Material:***

- Fed. R. Civ. P. 33 and Advisory Comm. Notes
- Fed R. Civ. P. 34 and Advisory Comm. Notes
- *Horace Mann Ins. v. Nationwide Mutual Ins. Co.*, 238 F.R.D. 536 (D. Conn. 2006)
- *Athridge v. Aetna*, 184 F.R.D. 181 (D.D.C. 1998)
- *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633 (D. Minn. 2000)
- Model Rules of Professional Responsibility, 3.4(a).
- C. B. Hanson, *When does zealous advocacy become obstruction?* MN LAWYER (April 7, 2008).
- Mark Kosieradzki and Kara Rahimi, *Dealing with Evasive Discovery*, Trial Vol. 44, No. 6 (June 2008).

### ***Quiz: all assigned materials for both week 1 & 2***

### ***Paper Topic selection***

*Estimated teaching time: 2 hr*

## **Week 3, Jan. 27: The Role of the Interrogating Lawyer - rules & goals**

### ***Learning objectives:***

Learn the legal/ethical obligations of the interrogating lawyer and how to plan for a deposition.

#### The Rules

Ethics Guideline; purpose and manner of inquiry

#### The Discovery Plan

Identify legal theories & evidentiary issues

Discovery of facts: “who, what, where, when and why”

Neutralize landmines

Capture information for motions

Anchor cross-examination

### ***Assigned Material:***

- Model Rule of Professional Responsibility 4.1 and 4.3

*Estimated teaching time: 2 hr*

## **Week 4, Feb. 3: The Role of the Interrogating Lawyer - Structuring questions**

### ***Learning objectives:***

Learn how to formulate deposition questions.

#### Structuring Questions

Broad to narrow inquiry

Exhaustion

Restating & summarizing

Takeaways/sound-bites (one fact-one question)

Bracketing

Boxing in testimony

Establishing Rules / Standards of care

### ***Demonstration & workshop***

*Estimated teaching time: 2 hr. lecture and demonstration/workshop*

## **Week 5, Feb. 10: The Role of the Interrogating Lawyer - Structuring expert witness questions**

### ***Learning objectives:***

Learn how to formulate deposition questions.

#### **Structuring Questions**

Broad to narrow inquiry

Exhaustion

Restating & summarizing

Takeaways/sound-bites (one fact-one question)

Bracketing

Boxing in testimony

Establishing Rules / Standards of care

Expert witness depositions

### ***Assigned Material:***

- Fed. R. Civ. P. 26(a)(2) and Advisory Comm. Notes

### ***Demonstration & workshop***

*Estimated teaching time: 2 hr. lecture and demonstration/workshop*

## **Week 6, Feb. 17: The Role of the Defending Lawyer - Witness preparation**

### ***Learning objectives:***

Learn techniques and limitations for preparing witnesses for depositions. Identifying the risk of inadvertent common law privilege waiver by improper witness preparation.

- Party v non-party
- Presence of third parties
- Materials used to refresh recollection

### ***Assigned Material:***

- Fed. R. Evid. 501 Privileges
- Fed. R. Evid. 502 Attorney Client Privilege and Work Product
- Fed. R. Evid. 612 Refreshing recollection

### ***Recommended Reference Material:***

- Thompson, Minnesota Practice, Evidence, 501.04E (2001).
- Thompson, Minnesota Practice, Evidence, 612 (2001).

### ***Demonstration & workshop***

### ***First draft of course Paper due***

*Estimated teaching time: 2 hr lecture and demonstration/workshop*

## **Week 7, Feb. 24: The Role of the Defending Lawyer - Objections**

### ***Learning objectives:***

To learn the procedural law which defines the scope and limitations of defending attorney objections at depositions and the ethical prohibition of obstructive conduct.

### **Assigned Material:**

- Fed. R. Civ. P. 30(c) and Advisory Comm. Notes
- Fed. R. Civ. P. 30(d) and Advisory Comm. Notes
- *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993)
- *In re: Stratosphere Corp. Sec. Litig.*, 182 F.R.D. 614 (D. Nev. 1998)
- *In the Matter of Anonymous Member of the South Carolina Bar*, 552 SE2d 10 (SC 2001)
- *3M Innovative Properties Company v. Tomar*, 2006 WL 2670038, slip op. (D. Minn. Sept. 18, 2006)
  
- Minnesota Rules of Professional Conduct Rule 3.4(a)
- Model Rule of Professional Responsibility 3.4(a)
- C. B. Hanson, *When does zealous advocacy become obstruction?* MN LAWYER (April 7, 2008).

*Estimated teaching time: 2hr lecture*

## **Week 8, March 3: The Role of the Defending Lawyer - Instruction not to answer**

### ***Learning objectives:***

To learn the procedural law and ethical rules, which defines the scope and limitations of defending attorney ability to instruct a client not to answer deposition questions.

### **Assigned Material:**

- Fed. R. Civ. P. 30(c)(2) and Advisory Comm. Notes
- *Redwood v. Dobson, et al.*, 2007 WL 397499 (7<sup>th</sup> Cir. Feb.7, 2007)
- *Sequoia Properties v United States*, 2002 WL 507537 (E.D.Cal. 2002)
- Mark Kosieradzki and Joel Smith, *Deposition misconduct warrants attorney sanctions*, Minnesota Lawyer (March 26, 2007).

***Quiz: all assigned materials to date***

*Estimated teaching time: 2hr lecture*

## **Week 9, March 10: Fed. R. Civ. P. 30(b)(6) - corporate designee depositions**

### ***Learning objectives:***

Learn what is a 30(b)(6) corporate designee deposition, its purpose, and the duties of a designating party, and its attorney, when responding to a 30(b)(6) corporate designee notice. Learn how to establish a foundational record for “matters” of inquiry.

### ***Assigned Material:***

- Fed. R. Civ. P. 30(b)(6) and Advisory Comm. Notes
- *United States v. Taylor*, 166 F.R.D. 356 (M.D.N.C. 1966)
- *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633 (D. Minn. 2000)

### ***Demonstration & workshop structuring 30(b)(6) foundation questions***

*Estimated teaching time: 2hr lecture and demonstration/workshop*

## **Week 10, March 17: Fed. R. Civ. P. 30(b)(6) – scope of notice and logistics**

### ***Learning objectives:***

To explore the parameters of what can be designated as “matters” of inquiry: ie., facts, claims, defenses, ultimate facts, conclusions, and contentions. Explore the case law relating to number/time limitations of 30(b)(6) depositions

### ***Assigned Material:***

- Fed. R. Civ. P. 30(b)(6) and Advisory Comm. Notes
- *EEOC v. Caesars Entertainment, Inc.*, 237 F.R.D. 428 (D Nev., 2006).
- *Wilson v. Lakner*, 228 F.R.D. 524 (D. Md. 2005)
- *Sabre v. First Dominion Capital, LLC* 2001 WL 1590544 (S.D.N.Y.)
- *Canal Barge Co. v. Commonweath Edison Co.*, 2001 WL 817853 (N.D. Ill. July 19, 2001)
- *Ameristar Jet Charters, Inc. v. Signal Composites, Inc.*, 244 F.3d 189 (1 Cir 2001)
- *Quality Aero Technology, Inc. v Telemetrie Elektronik GMBH*, 212 FRD 313 (E.D. N.C. 2002)

*Estimated teaching time: 2hr*

## **Week 11, March 24: Fed. R. Civ. P. 30(b)(6) – scope of inquiry**

### ***Learning objectives:***

To understand the authority involving questions which go beyond the scope of the 30(b)(6) notice. To explore the consequences of inquiry which goes beyond the scope of the 30(b)(6), deposition notice

### ***Assigned Material:***

- Fed. R. Civ. P. 30(b)(6) and Advisory Comm. Notes
- *King v. Pratt & Whitney*, 161 F.R.D. 475 (S.D. Fla. 1995)
- *Paparelli v. Prudential Insurance Co.*, 108 F.R.D. 727 (D.Mass.1985)

### ***Quiz: all assigned materials to date***

*Estimated teaching time: 2hr*

## **March 31: SPRING BREAK**

## **Week 12, April 7: Document depositions - Fed. R. Civ. P. 30(b)(6), 30(b)(2) & 34**

### ***Learning objectives:***

To learn how to use document depositions to ensure complete responses to document production requests by understanding the relationship between 30(b)(6), 30(b)(2) & Rule 34.

### ***Assigned Material:***

- Fed. R. Civ. P. 30(b)(2) and Advisory Comm. Notes
- Fed. R. Civ. P. 45 and Advisory Comm. Notes: Subpoenas
- Mark Kosieradzki, *It's all in the Documents*
- Deposition Notice

*Estimated teaching time: 2hr*

## **Unit 13, April 14: Sanctions**

### ***Learning objectives:***

To understand the consequences of failing to comply with rules of discovery.

### ***Assigned Material:***

- Fed. R. Civ. P. 37 and Advisory Comm. Notes
- Fed. R. Civ. P. 30(d)2) and Advisory Comm. Notes
- *St. John's Episcopal Church v. Brewmatic Co.*, 2000 WL 1220726 (Minn. App. 2000)
- *Chase v. Burlington Northern Sante Fe Corp.*, Anoka Cty Ct. No. C4-05-1607 (Oct. 15, 2009)
- *Fuqua v. Horizons/CMS Healthcare Corporation*, 199 F.R.D. 200 (N.D.Tex.2000).
- C. B. Hanson, *When does zealous advocacy become obstruction?* MN LAWYER (April 7, 2008).

### ***Final paper due***

*Estimated teaching time: 2 hr*

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