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Spring 1-2016

LEG 283.01: Trial Preparation

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**UNIVERSITY OF MONTANA-MISSOULA
COLLEGE OF TECHNOLOGY
BUSINESS TECHNOLOGY DEPARTMENT
COURSE SYLLABUS**

Created by Thomas Stanton

ACADEMIC MISCONDUCT STATEMENT: All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or disciplinary sanction by the University.

All students need to be familiar with the Student Conduct Code. The code is available for review online at http://www.umt.edu/SA/VPSA/index.cfm?page/1_321.

COURSE NUMBER AND TITLE: U 283T TRIAL PREPARATION

PREREQUISITES: Successful completion of Civil Litigation for Legal Assistants (LEG 270T) or consent of instructor.

COURSE DESCRIPTION:

Case and claim analysis, collecting and preserving evidence, locating witnesses, jury selection, trial notebook development, post trial assistance, and investigative techniques with emphasis on concluding litigation and post-judgment procedures.

CREDITS AWARDED UPON SUCCESSFUL COMPLETION: 3

REQUIRED TEXT AND MATERIALS: Fundamentals of Litigation for Paralegals, 6th Ed.

Authors: Mauet and Maerowitz

Publisher: Little, Brown and Company.

SUPPLEMENTAL MATERIALS:

As announced and/or distributed by the instructor.

COURSE OBJECTIVES AND SKILLS DEVELOPMENT:

1. Identify sequence of the rules of civil procedure.
2. Learn the contents and operation of the rules of civil procedure.
3. Synthesize the reasons for and the nature of the differences between various jurisdictions.
4. Become familiar with the nature of the client interview and the necessary considerations for case evaluation and strategy.
5. Develop experience determining the proper sequence of documents in a litigation.
6. Develop confidence in formatting pleadings and motions under the local court rules.
7. Learn to identify sources for local court forms.
8. Experience the law practice environment by drafting documents related to a fictional litigation.
9. Compile a form book of typical filings in a local litigation.
10. Understand the role of a paralegal in a litigation practice with relation to document preparation.

INSTRUCTIONAL METHODS:

Class periods will be spent reviewing text analysis of the application of the Federal Rules of Civil Procedure through class discussion. Approximately one-half of the class period will be devoted to studying forms from local courts (in contrast to the forms of the Federal Court analysis presented by the text) in preparation for homework drafting exercises. Questions regarding homework drafting exercises will be addressed at the beginning of each class period.

Instructional methods will therefore involve student question/class discussion, lecture, computer research, drafting, group drafting projects and individual drafting projects.

METHODS OF VALUATION:

Students will be valued in four separate areas: Weekly homework drafting exercises, Class participation, Mid-Term Examination and, Final Examination.

Homework will be valued based on formatting and, language.

Exams will be essay type and graded using an instructor developed rubric.

Class participation will be noted on attendance sheets and compiled at semester end.

PRACTICAL ASSIGNMENTS TO DEVELOP PARALEGAL COMPETENCIES:

Drafting Exercises:

- 1) Research and Investigation producing Demand Brochure
- 2) Complaint
 - a) FRCP 8 Cause of Action
 - b) FRCP 9 Cause of Action
- 3) Summons including Acknowledgement and Praecipe
- 4) Motion to Dismiss
 - a) Brief in Support
 - b) Response
 - c) Reply
- 5) Answer
- 6) Scheduling Order (in compliance with local court rules)
- 7) Discovery
 - a) Interrogatories
 - b) Answers to Interrogatories
 - c) Request for Production of Documents
 - d) Request for Admissions
 - e) Notice of Independent Medical Examiner
 - f) Notice of Deposition
- 8) Motion for Summary Judgment
 - a) Brief in Support (3 pages)
 - b) Response (3 pages)
 - c) Reply (1-2 pages)
- 9) Pretrial Order
- 10) Settlement Brochure for Settlement Conference (5-10 pages)
- 11) Jury Instructions
- 12) Witness List

DETAILED OUTLINE OF SUBJECTS AREAS WITH TIME INCREMENTS FOR EACH:

Week #1

Class #1, 2:

- Syllabus review and explanation of class and objectives (20 minutes)
- **In** class review of final exam from previous semester (20 minutes)
- Explanation of Litigation forms and drafting exercises (20 minutes)
- Review of general content of drafting exercises (40 minutes)
- Determination of Litigation Groups (20 minutes)
- Initial hypothetical case discussion and litigation task identification (40 minutes)

Week #2

Class #3,4:

- Chapter 9: Evidence; text and questions (80 minutes) **Chapter 9 Outline — Evidence**

A. Introduction(15 minutes)

B. **The Paralegal’s Role(15 minutes)**

C. Relevance(15 minutes)

1. Character Traits
2. Habit Evidence
3. Policy Exclusions

D. Hearsay(15 minutes)

1. Is it a “statement”?
2. Was the statement made “out of court”?
3. Is the out-of-court statement “offered to prove the truth **of the** matter asserted in **the** statement?

E. Hearsay Exceptions(1 5 minutes)

1. Admission of a party opponent Fed. R. Evid. 804(d)(2).
2. Prior statements by witnesses Fed. R. Evid. 804(d)(1).
3. Statements against interest Fed. R. Evid. 804(b)(3).
4. Former Testimony Fed. R. Evid. 804(b)(1).
5. Present sense impressions Fed. R. Evid. 804(1)
6. Excited utterances Fed. R. Evid. 804(2)
7. Statement of present or past conditions for medical diagnosis Fed. R. Evid. 804(4)
8. Statement of present state of mind Fed. R. Evid. 804(3)
9. Dying Declarations Fed. R. Evid. 804(b)(2)
10. Records Exceptions Fed. R. Evid. 803
 - a. Recorded Recollections Fed. R. Evid. 803(5)
 - b. Business Records Fed. R. Evid. 803(6)
 - c. Public Records Fed. R. Evid. 803(8)
11. Other Exceptions (Catch-All) Fed. R. Evid. 807

F. Witnesses, Exhibits, Judicial Notice, and Objections(1 5 minutes)

1. Witnesses
 - a. Competency Fed. R. Evid. 601
 - b. Impeachment Fed. R. Evid. 607
2. Expert Witnesses Fed. R. Evid. 702, 706

3. Exhibits Fed. R. Evid. 901
 - a. Real Evidence
 - b. Demonstrative Evidence
 - c. Writings
 - d. Business Records
 - e. Public Records
4. Best Evidence Rule Fed. R. Evid. 100 1-1004
5. Judicial Notice Fed. R. Evid. 201
- G. Privileges(1 5 minutes)
 1. Attorney-client privilege
 2. Work product privilege
 3. Physician-patient privilege
 4. Marital Privileges

- In-class discussion of initial drafting exercise (80 minutes)

Including: examination of form Demand Brochure, determination of pertinent research plan and investigation plan, discussion of format, discussion of evidence concerns, location of similar forms and templates, identification of purpose of demand brochure, discussion of timing of demand brochure, application of form demand brochure to hypothetical litigation scenarios, in class drafting (time permitting)

Week #3

Class #5, 6:

- Chapter 10: Discovery; (80 minutes) Chapter 10 Outline — Discovery

- a. Introduction(15 minutes)
- b. Discovery Overview(15 minutes)
 1. Types of Discovery
 2. The Paralegal's Role
 3. Computerized Litigation Support
 - a. Conducting Research
 - b. Locating information about parties and witnesses
 - c. Organizing discovery
- c. Scope of Discovery(15 minutes)
 1. Relevance
 2. Insurance agreements
 3. Statements
 4. Experts
 5. Privileges
 1. What privilege law applies?
 2. What is the applicable federal or state privilege law?
 6. Trial Preparation Materials
- d. Discovery Strategy: A Seven-Step Process(15 minutes)
 1. What facts are needed in order to establish a winning case on the client's claims (or defeat the opponent's claims)?
 2. What facts already have been obtained through informal fact investigations?

3. What “missing” facts must still be obtained through formal discovery?
4. What discovery methods are most effective for obtaining the missing facts?
5. What facts and witnesses, already identified through informal investigation, must be pinned down by formal discovery?
6. What restrictions does the client’s litigation budget place on the discovery plan?
7. In what order should the discovery proceed?
 - a. When should discover start?
 - b. In what order should discovery be carried out?
- e. Interrogatories(15 minutes)
 1. Law
 2. Practice Approach
 - a. Topics: what information should I seek?
 - b. Drafting the Interrogatories
 - c. Responses to Interrogatories
- f. Requests to Produce Documents and Subpoenas(1 5 minutes)
 1. Law
 2. Practice Approach
 - a. Timing
 - b. Organization
 - c. Drafting Requests to Produce
 - d. Responses to Requests to Produce
 3. Document requests and subpoenas to nonparties
 4. Document Productions
- g. Depositions(15 minutes)
 1. Law
 - a. Timing
 - b. Notice
 - c. Location
 - d. Persons Present
 - e. Recording
 - f. Signing, Correcting, and filing
 - g. objections
 2. Practice Approach
 - a. Scheduling the deposition
 - b. Preparing for the Deposition
 - c. Preparing the Client for Deposition
 - d. Taking notes at the deposition
 - e. Summarizing the Deposition
 - i. Chronological summary
 - ii. Subject matter summary
 - iii. Topic Index
 - iv. Narrative summary
- h. Physical and Mental Examinations(15 minutes)
 1. Law

2. Practice Approach
- i. Requests for Admissions(1 5 minutes)
 1. Law
 2. Practice Approach
 - a. Timing
 - b. What to Request
 - c. Drafting the Requests
 - d. Choosing a response
 - e. Requesting party's responses
- j. Discovery Motions(1 5 mintites)
 1. Protective Orders
 2. Orders compelling discovery
 3. Sanctions for Abuse

In class discussion of Complaint and Summons drafting assignments (80 minutes) Including examination of form Complaints, examination of form Summons (local examples), discussion of format, discussion of FRCP 8 and FRCP 9 vis a vis MRCP8 and MRCP 9, parties, jurisdiction, location of similar forms and templates, identification of purpose of demand Complaint and Summons, discussion of timing and statutes of limitation, application of form Complaint and Summons to hypothetical litigation scenarios, in class drafting (time permitting)

Week #4

Class #7, 8:

Chapter 11: Settlements; text and questions

Chapter 11 Outline (80 minutes)

A. Preparing a Settlement Brochure

B. Settlement Contracts

1. Releases, Covenants not to sue, and loan receipts
2. Drafting the Agreement
3. Structured and installment settlements
4. Terminating the suit
5. Offers of Judgment
6. Evidence Rules

- In-class discussion and development of litigation time table for Cases A and B

- Additional class time for questions regarding drafting Complaint and Summons (80 minutes)

Week #5

Class #9, 10:

Monday: Presidents' Day: No Class

Wednesday: Review of Motion Practice (40 minutes)

Including types of motions, purpose of motions, timing of motions, contents of motions (including standard of review, facts, argument, conclusion sections), briefs in support of motions, responses to motions, replies to motions, orders relating to motions, service of motions,

and format of motions.

In class discussion of Motion to Dismiss drafting assignments (40 minutes)
Including examination of form Motion to Dismiss, Response to Motion to Dismiss, Reply to Response to Motion to Dismiss, discussion of applicable FRCP and MRCP, multiple party practice, location of similar forms and templates, identification of purpose of Motion to Dismiss, Response, Reply, application of form Motion to Dismiss, Response, Reply to hypothetical litigation scenarios, in class drafting (time permitting)

Week #6

Class #11, 12:

Review Answers (40 minutes)

Including purpose of Answers, timing of Answers, contents of Answers, response to allegations in Complaint, Affirmative defenses, pertinent FRCP and MRCP, defense case research, development of defense theory of case, overview of defense litigation strategy, anticipated initial discovery review

In class discussion of Answer drafting assignments (40 minutes)

Including examination of form Answer (simple and complex), discussion of applicable FRCP and MRCP, multiple party practice, location of similar forms and templates, identification of purpose of Answer in hypothetical litigation scenarios, in class drafting (time permitting)

In class drafting exercise review (80 minutes)

Litigation teams will use this class period to discuss status of team litigations privately with instructor and each other to determine future course of litigation.

Week #7

Class #13, 14:

- Chapter 12: Trial Preparation, Trial, and Appeal; text and questions (80 minutes)

Chapter 12 Outline

A. The Paralegal's Role

B. Pretrial Conferences

C. Organization of Files

D. Trial Materials ~

1. Divider Method

2. Trial Notebook Contents E. Theory of the Case

F. Witness Preparation

G. Order of Trial

H. Paralegal Role During Trial

I. Appeal

In class discussion of Scheduling Order drafting assignments (80 minutes) Including examination of form Scheduling Order, discussion of applicable FRCP and *MRCP*, multiple party practice, location of similar forms and templates, identification of purpose of Scheduling Order in hypothetical litigation scenarios, in class drafting (time permitting)

Initial discussion of Discovery drafting assignment (time permitting)

Week #8

Class #15, 16:

- Discussion of Chapter 13: Enforcement of Judgments (80 minutes)

Chapter 13 Outline

A. Demand Letter

B. Fair Debt Collection Practices Act

C. Abstracts of Judgment

D. Writs of Execution

E. Wage Garnishment

F. Locating Assets

- In-class discussion and development of discovery drafting assignments (80 minutes) Including review of purpose of interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, review of forms for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, review of applicable FRCP and MRCP for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, location of similar forms and templates for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, application of hypothetical litigation scenarios to interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, inclass drafting (time permitting)

Week #9

Class #17, 18:

- Discussion of Chapter 14: Alternative Dispute Resolution (80 minutes)

Chapter 14 Outline

A. Mediation

B. Arbitration

C. Preparing for Arbitration

E. Local Alternative Dispute Resolution

- (Continued from previous week) In-class discussion and development of discovery drafting assignments (80 minutes)

Including review of purpose of interrogatories, answers to interrogatories, requests for

production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, review of forms for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, review of applicable FRCP and MRCP for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, location of similar forms and templates for interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, application of hypothetical litigation scenarios to interrogatories, answers to interrogatories, requests for production of documents, requests for admissions, notice of independent medical examiner, notice of deposition, inclass drafting (time permitting)

Week #10 Spring Break

Week#11: Class #21, 22:

Review of Motion Practice (40 minutes)

Including types of motions, purpose of motions, timing of motions, contents of motions (including standard of review, facts, argument, conclusion sections), briefs in support of motions, responses to motions, replies to motions, orders relating to motions, service of motions, and format of motions.

In class discussion of Motion for Summary Judgment drafting assignments (120 minutes)

Including examination of form Motion for Summary Judgment, Response to Motion for Summary Judgment, Reply to Response to Motion for Summary Judgment, discussion of applicable FRCP and MRCP, interplay of discovery on Motion for Summary Judgment, Response to Motion for Summary Judgment, Reply to Response to Motion for Summary Judgment, location of similar forms and templates, identification of purpose of Motion for Summary Judgment, Response, Reply, application of form Motion for Summary Judgment, Response, Reply to hypothetical litigation scenarios, in class drafting (time permitting)

Week #12

Class #23, 24:

In class discussion of Pretrial Order drafting assignments (80 minutes) Including examination of form Pretrial Order, discussion of applicable FRCP and MRCP, multiple party practice, location of similar forms and templates, identification of purpose of Pretrial Order in hypothetical litigation scenarios, in class drafting (time permitting)

In class litigation team and instructor discussion (80 minutes)

Including discussion relating to status of litigation, anticipated and actual outcome of litigation, adequacy and accuracy of litigation planning, applicability of research to hypothetical litigation

scenarios, strength of pleading and motions, alternatives to litigated conclusion

Week #13 Class #25,26:

Discussion and development of Settlement Brochure (80 minutes)

Including contents of settlement brochure, timing of settlement brochure, pertinent FRCP and MRCP to settlement brochures and use in litigation, local examples of settlement brochure, in class drafting of settlement brochure

Settlement Conference with litigation teams (80 minutes)

Review nature and procedure for settlement conference, discuss merits of case, role of paralegal in settlement conference, proceed with settlement conference and related documents in necessary

Week#14

Class #27, 28:

In class discussion of Witness List and Jury Instructions drafting assignment (80 minutes)

Including contents of Witness list, anticipated testimony from identified witnesses, determination of how expected witness testimony will fit with Theory of Case, overview of review of testimony with witness, paralegal role in witness preparation; examination of form jury instructions, review purpose of jury instructions, review contents and strategies relating to jury instructions, in class drafting of witness list and jury instructions (time permitting)

In class drafting period, litigation team review, litigation outcome and review, debriefing of class and student input for course improvement, assignment development, and skill development assessment. (80 minutes)

Week #15

Drafting and continuity (80 minutes)

In class question period regarding drafting exercises and redrafting exercises, creation of form book for typical litigation, additional in class drafting time for drafting exercises. (Continued) In class discussion of Witness List and Jury Instructions drafting assignment

Including contents of Witness list, anticipated testimony from identified witnesses, determination of how expected witness testimony will fit with Theory of Case, overview of review of testimony with witness, paralegal role in witness preparation; examination of form jury instructions, review purpose of jury instructions, review contents and strategies relating to jury instructions, in class drafting of witness list and jury instructions (time permitting)

- Review for Final Exam (80 minutes) **Final Exam** per U.M.- C.O.T. final exam schedule.

Please Note: This is a general calendar for identifying course topics and content. A calendar of actual class dates will be distributed in the first week of class.

SYLLABUS REVISION DATE: January 2016

ATTENDANCE POLICY: All students are expected to attend every class unless excused by the instructor prior to class. Failure to attend will adversely affect a student's grade, possibly to the point of failure.

DISABILITY ACCOMODATION STATEMENT : If any student requires special consideration for any reason, it is the responsibility of the student to contact the instructor to discuss the matter and mutually craft a resolution prior to any situation that might give rise to the special consideration requested.

CLASS MEETING TIME AND PLACE:

Meeting Time: 11:00 AM to 12:40 PM, Tuesdays and Thursdays

Meeting Place: Classroom HB 13

INSTRUCTOR CONTACT INFORMATION:

Thomas H. Stanton, Tom.Stanton@umontana.edu, (406) 243-7850, Faculty Office, (North-East corner Business Administration Building, East Campus), For office hours: by appointment or see schedule on office door.

MISSED/LATE COURSEWORK POLICY:

Missed or late course work can be turned in within 24 hours of the assignment due date for 50% credit. Missed or late course work turned in after 24 hours of the assignment due date will be awarded no credit. This policy can be amended at the discretion of the instructor upon proof of adequate justification.

TESTING POLICY:

Make up tests or quizzes will not be given unless the instructor is contacted at least one hour prior to the scheduled time for the test or quiz. It is the student's responsibility to contact the instructor either in person or in writing regarding an anticipated missed test or quiz.

Addendum: This class schedule is tentative and is subject to change due to anticipated guest speakers and subjects of expanded concentration or review.

CELL PHONE POLICY: Please set your cell phone to vibrate or turn it off during class times. If your cell phone causes an interruption, the entire class may be penalized and/or you may be asked to leave class permanently.